



# Legislative UPDATE

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## **TML LEGISLATIVE UPDATE “APP” NOW AVAILABLE FOR MANY SMART PHONES**

City officials, like everyone these days, use their smart phones to conduct daily business. Keeping up with essential municipal news on many of those phones just got easier!

To download the *TML Legislative Update* application to your smart phone, [click here](#) on your phone’s browser and click on the link that is appropriate for your device. The app should then install automatically.

(Note: The app is currently available for Blackberry, Windows phones, and Google Android phones. An iphone app is currently unnecessary because of the web-browsing capability of that phone.)

## **WILL STATE’S RIGHTS TRANSLATE TO CITIES’ RIGHTS?**

“Government that’s closest to the people is the best government.” That’s what Gov. Rick Perry said in an interview on NBC’s *Today* show two days after his victory in the November general election.

The election also swept into office a multitude of candidates supported by the Tea Party movement who share Gov. Perry’s view that Washington has infringed upon the powers of state governments and burdened the states with costly mandates.

In his interview with Meredith Vieira on *Today*, Perry said: “I think governors, whether you're Democrat or Republican, should be pushing back from Washington, D.C., and saying, ‘Listen, leave us alone. We know how to best to run our states. That government that's closest to the people is the best government.’”

Tea Party leaders have echoed those views. Mark Meckler, co-founder of the Tea Party Patriots, was quoted by the Associated Press the week before the election saying: “The best government is local government.” And, the North Texas Tea Party, in its statement of principles, makes this appeal: “If you believe that government close to the people governs best...we implore you to stand up and join our peaceful re-revolution.”

It’s a theme the governor sounded frequently during his re-election campaign. In an op-ed column authored by Perry in August 2009, he argued that the states, not Washington, should take the lead on health care reform.

“Instead of handing down ‘one size fits all’ mandates on how it’s going to be, Washington should be enabling states to set their own agendas, and solve their own problems,” Perry said.

Of course, this raises the question of whether the governor has adopted a new, consistent political philosophy that refrains from imposing state mandated restrictions on the ability of local governments to solve their own problems. Or is this just typical, meaningless campaign rhetoric designed to garner votes?

Perry certainly knows that “local control” is a popular message with voters. An opinion poll commissioned by TML in 2004 found that Texans overwhelmingly agreed that local tax and budget decisions are better handled by locally elected officials than by the state legislature.

But in the past, when Perry has advocated state-mandated restrictions on municipal and county budgets or state-mandated elections on local revenue increases, he has argued that such proposals do not violate local control “because empowering taxpayers is the ultimate form of local control.”

Would the governor feel the same way if Congress mandated statewide elections empowering taxpayers to vote on increases in state revenue? Or would he see that as a “one size fits all” mandate that prevents states from solving their own problems?

With the legislative session just weeks away, local officials will soon find out whether Gov. Perry truly believes that the best government is the one closest to the people.

## **“WE SUPERSEDE YOU”**

The article above questions whether the governor will refrain from supporting state-mandated restrictions on the ability of local governments to solve their own problems. Only time will tell

how he treats city and other local government officials throughout the upcoming legislative session.

But what about state legislators? How do they view city and other local government officials? It is clear that some state legislators believe that “local control” is just fine, so long as local leaders govern in a way that conforms to those legislators’ personal and/or political philosophies.

Hundreds of bills are filed each legislative session that would erode local control. Many of those bills are designed to directly supersede the decisions of local officials. Those decisions range from how much revenue is needed to carry out citizens’ needs to which property should be zoned how, and everything in between.

It is true that cities are “creatures of the state.” With that distinction comes the fact that the state legislature can pass laws that limit just about every facet of municipal government. How do some legislators view city and other local government officials? Please [click here](#) to see a two-minute video showing how one committee chairman in the Texas House described the relationship at a November 16, 2010, interim meeting.

## SENATE BLOCKS MANDATORY COLLECTIVE BARGAINING LEGISLATION

On Wednesday, Senate Majority Leader Harry Reid’s (D-NV) procedural motion to advance debate on mandatory federal collective bargaining legislation (S. 3991) fell five votes short of the 60 needed. The motion failed by a vote of 55 to 43. (Both Texas senators voted against the legislation.)

The current version of the bill was similar to earlier versions and would require cities and towns over 5,000 population to enter into collective bargaining agreements with their public safety employees. However, unlike earlier versions, this one exempted sheriffs’ deputies in states that currently do not provide for collective bargaining for those employees.

In any form, the National League of Cities (NLC) opposes this bill on the grounds that it interferes with state and local laws, violates principles of federalism, and may be unconstitutional. With time running out in the lame duck session, this vote signals that the bill is, for all practical purposes, dead for this legislative year.

*By Neil Bomberg and reprinted with permission from the National League of Cities.*

## FEDERAL JUDGE HEARS OPEN MEETINGS ACT CHALLENGE

On November 23, U.S. District Judge Robert Junell held a one-day bench trial in Austin regarding the constitutionality of the criminal provisions of the Texas Open Meetings Act (Act). The lawsuit is based on the same legal principles as a previous one involving city officials from the City of Alpine. The previous case was ultimately dismissed on procedural grounds.

In 2006, the same judge upheld the criminal provisions in the Act. On appeal in 2009, the question was presented as to whether the speech of local government officials made pursuant to their official duties has the same constitutional protections that the First Amendment to the U.S. Constitution grants to other types of speech. A three-judge panel of the U.S. Court of Appeals for the Fifth Circuit held that when a state seeks to restrict the speech of an elected official on the basis of its content, a federal court must apply the “strict scrutiny” standard of review. Strict scrutiny: (1) shifts the burden of proof to the government; (2) requires the government to prove that its action or regulation pursues a compelling state interest; and (3) demands that the government prove that its action or regulation is “narrowly tailored” to further that compelling interest. In other words, the state would have to prove that the criminal provision of the Act is *not* unconstitutional.

Shortly after the opinion of the three-judge panel was issued, however, the entire court dismissed the case by a 16-1 decision without the benefit of hearing oral arguments. The case was dismissed due to a lack of standing because the plaintiff was no longer a city official (he was term-limited as a councilmember). The court thus deemed the case moot.

The main issue in the current lawsuit is whether the three-judge panel decision in the previous suit should have precedential value. The city official plaintiffs point out that the panel decision has already been cited by legal scholars, judges, and attorneys as precedent that should be followed. Further, the plaintiffs contend that, although the Fifth Circuit ultimately dismissed the case on mootness grounds, the decision to dismiss did not invalidate the panel decision. If the judge uses the panel decision as precedent, the “strict scrutiny” test will be applied to the criminal provisions of the Act. Because that standard creates a very high legal hurdle, the criminal provisions in the Act will likely be struck down if that standard is applied.

Newspapers around the state have once again published editorials that contain various misleading statements or outright false information. TML members should be aware that the League has not funded the lawsuit in any way. Moreover, the TML Board of Directors decided in 2008 that League should not be a party to the suit, but should provide the type of support that is expected in a lawsuit that could impact every city (e.g., through “friend of the court” briefs and other non-financial means of support).

Despite the League’s attempts to clarify the incorrect statements of various media outlets and other groups about the nature of the lawsuit and the fact that TML is not “behind it,” misinformation continues to flow freely. One of the city councilmembers who testified at the November 23 trial made a valiant effort to explain why he is involved in the lawsuit, and his editorial (which has appeared in at least one daily newspaper) is printed in full below:

## ***Texas open meetings law needs improvement***

*While I agree with the spirit of the [Fort Worth] Star-Telegram Editorial Board's gallant defense of the Texas Open Meetings Act in the Nov. 26 editorial, "Texas law keeps public business in the public eye," I feel compelled to point out a couple of straw men.*

*In your zeal to editorialize, you stated: "What the plaintiffs want is nothing less than judicial approval of backroom meetings and under-the-table deals involving public business." This is simply not the case, with all due respect, which a review of Judge Robert Junell's hearing transcript would validate. (Editor's note: The transcript of the trial is available on the TML Web site here.) [legal, Open Government, Misc, November 2010 TOMA Trial Transcript]*

*Your caricature of my purpose in challenging TOMA, to "perk up [my] public profile" or to "avoid the ordeal of public debate" cheapens the importance of what we should be discussing. I abhor secret meetings and the political culture of concealment and darkness they foment. A history of the 20th century is a compendium of the human catastrophes that can emerge from such environments.*

*I also detest the use of TOMA, in my world here-and-now, as an instrument of power wielded by some in elected positions of authority to stifle the behavior, or even the thoughts and speech, of other elected officials for their own advantage. It is this unintended, negative consequence of TOMA that I seek to change. While some may scoff at the plaintiffs' concerns as vague fears of imaginary speech police, the bullies of whom I am mindful are not imaginary, I assure you.*

*My apprehension about testifying in this case was that the political fringes, both left and right, would inevitably and unfairly accuse me of favoring secret meetings. Nevertheless, I thought that the political capital expended would still be worth it, for I knew that secret meetings, or as you put it "backroom meetings and under-the-table deals," are a red herring diverting attention from the real issue.*

*That issue, in my opinion, is confusion, and the desire of some to maintain and even embellish such confusion as a means to attain personal objectives.*

*If an elected official discusses public policy on the radio with a quorum of his peers listening; or if that same official runs for re-election and mails a flyer to his constituents and his fellow elected leaders; or if he e-mails a proposed agenda to his peers and requests an open meeting; he is committing a crime in each example.*

*Or are they? Your answer could depend on which lawyer you questioned, or if you asked the proverbial man-on-the-street. You would likely get as many different answers as individuals asked. That is confusion.*

*TOMA is a vague and confusing law, made more so by opinions handed down by attorneys general and appellate court rulings throughout its 43-year history. Confusion creates a milieu of silence and non-action, hesitation that stems from fear of reprisal, including jail time and fines, or of simply making a mistake.*

*All of this leads to a void in understanding that enables those in positions of authority to devise their own interpretation of TOMA, often empowering it with applicability to those within their sphere of influence. This interpretation may be self-serving and intimidating -- yet cloaked in the protective garb of confusion, it generally has its way.*

*My initial tepid response to this lawsuit abated once I read a draft of the plaintiffs' complaint. Described therein was my experience with the idiosyncrasies of TOMA during my four years in public office, and I felt motivated to rectify a flaw embedded in this most admirable law.*

*I would welcome "the ordeal of public debate" of this unintended consequence of TOMA, provided our starting point is a mutual disdain for secret meetings of any sort and our intent is to discuss and bring clarification to the real issue at hand.*

*Mel LeBlanc represents District 1 on the Arlington City Council.*

The November 26 editorial to which Councilmember LeBlanc refers is available online [here](#).

## **TxDOT PROPOSES REWRITE OF STATE HIGHWAY BILLBOARD RULES**

The Texas Department of Transportation (TxDOT) has proposed a rewrite of its billboard rules to strengthen enforcement, increase fees, and provide consistency between primary and rural road programs. TxDOT invited interested parties to participate in the rewrite process. The parties included city and county officials, TML staff, sign companies, individuals from scenic organizations, and landowners.

Of interest to cities, the proposed rules would add additional reporting requirements for any city that has chosen to be "certified" by TxDOT to enforce state billboard rules. The reporting requirements include: (1) an annual sign inventory; (2) a sign enforcement plan; and (3) reports on sign enforcement efforts.

Other changes proposed by TxDOT include: (1) a sign owner must get written permission from a city that regulates signs before receiving its permit from TxDOT; (2) the location of signs near parks; (3) the definition of "commercial or industrial area"; and (4) when roadways become subject to billboard rules. The proposed rules also address where a sign can be relocated due to a state highway project.

Comments will be accepted on these rules until January 28, 2011. A public hearing on the rules will be held on January 10, 2011, at 1:00 p.m. at the Greer State Highway Building in Austin. The full text of the proposed rules is available [here](#).

## **MUNICIPAL DERIVATIVES SETTLEMENT**

The Texas attorney general's office announced on December 7 that Bank of America entered into a \$67-million agreement with twenty states that will resolve the states' antitrust investigation into the bank's marketing of municipal derivatives.

(Municipal derivatives are used to invest the proceeds of municipal bonds. Because municipal bonds commonly fund multi-year public works projects, most of their proceeds cannot be spent immediately, and must be invested to earn interest until they are ripe for use. These investment vehicles are known as municipal derivatives, an umbrella term that refers to various tax-exempt investment vehicles.)

The settlement comes following Bank of America's self-reporting of its own wrongdoing to the U.S. Department of Justice. Under the agreement, Bank of America must make full restitution to any state, local, and not-for-profit entity with which it entered into municipal derivative agreements between 1998 and 2003.

According to the attorney general's office, "Qualifying governmental and not-for-profit entities will receive notice of eligibility and, to obtain restitution, must participate in the claims process established under [the] agreement. Eligible Texas entities are expected to receive approximately \$3.5 million from the restitution fund."

## **COMPTROLLER RELEASES UPDATED BUDGET AND PURCHASING MANUALS**

The Texas comptroller's office has released updated versions of two useful manuals for city officials.

- The *Budgeting Manual for Texas Cities 2010* is available [here](#).
- The *Model Purchasing Manual for Texas Cities & Counties 2010* is available [here](#).

## **CABLE ASSOCIATION APPEALS STATE CABLE FRANCHISE DECISION**

The previous edition of the *TML Legislative Update* reported that the Texas Cable and Telecommunications Association (TCTA) lost its federal district court challenge to the state law

provision that requires incumbent cable providers to fulfill obligations under existing cable franchise agreements until those agreements expire. [Click here](#) to read that detailed article.

On November 19, TCTA filed a notice that it will appeal the trial court's ruling to the Fifth Circuit Court of Appeals. TML will continue to monitor the case, but it appears almost moot because only a handful of grandfathered cable franchises remain in existence.

## **NEW ROUND OF COMMENTS ON FEDERAL STREET SIGN REGULATIONS**

In the wake of outcry regarding street sign font and reflectivity requirements, among others, U.S. Secretary of Transportation Ray LaHood has called for additional public input on compliance dates for a number of federal traffic control regulations.

Of particular interest to cities, the Federal Highway Administration (FHA) is seeking input from the public on changes to the *Manual on Uniform Traffic Control Devices* (MUTCD), including compliance dates. Comments are solicited from the general public, state and local highway agencies, the insurance industry, law enforcement agencies, incident management and maintenance personnel, academic institutions, planning, construction and engineering organizations, and other stakeholders.

“Given the difficult economic conditions states currently face, asking for additional input on compliance dates is the right thing to do,” said Secretary LaHood. “We want to be sure these safety requirements are reasonable, fair, and cost-effective.”

The public will have until January 14, 2011, to submit comments to the Federal Register. The notice is not a rulemaking action. It merely solicits comments on the issues to help FHA analyze the issues and consider what actions, if any, might be advisable in the future.

To review the Federal Register notice and to post comments, please go to [www.regulations.gov](http://www.regulations.gov) and enter the docket number “FHWA-2010-0159” in the box labeled “Enter Key Word or ID.”

## **WHAT'S YOUR AREA OF EXPERTISE OR INTEREST?** **JOIN YOUR FAVORITE E-LIST**

The TML staff is gathering e-mail addresses from city officials (elected or appointed) who are willing to provide testimony during the 2011 legislative session, want to be kept “in the loop” on certain subject matters, or are willing to simply provide their perspective on a particular legislative matter.

If you would like to participate in this E-List project, simply [click here](#) and fill out the online form. If you have any questions, please contact Katie Fleming at [Katie@tml.org](mailto:Katie@tml.org) or 512-231-7400.

## **CITY-RELATED BILLS FILED**

**H.B. 32 (Creighton) – Health Insurance:** would provide that, with limited exceptions, no resident of this state, regardless of whether he has or is eligible for health insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the state or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage except as required by a court or a governmental agency or department where an individual is named a party in a judicial or administrative proceeding.

**H.B. 209 (Alonzo) – Library Computers:** would require that a public library provide computers with high-speed Internet access for public use if the public library: (1) has a service area of more than 50,000 residents; (2) receives state or federal funding to provide high-speed Internet access; and (3) seeks accreditation as part of a major resource system or a regional library system. (Note: This summary has been slightly revised from that published in the previous edition of the *Legislative Update*.)

**H.B. 351 (Veasey) – Expunction:** would expand the circumstances under which a person may request expunction of all records of an arrest.

**H.B. 279 (Geren) – Eminent Domain:** would do the following:

1. provide that a governmental or private entity may not take private property through the use of eminent domain if the taking is not for a “public use.”
2. require a record vote with specific procedures and wording to take each parcel of land through the use of eminent domain.
3. require that any entity authorized to exercise the power of eminent domain must submit to the state comptroller, by December 31, 2012, a letter stating that the entity is authorized to exercise the power of eminent domain and identifying the provision or provisions of law that grant the entity that authority, and would provide that the entity’s authority to use eminent domain will expire if the letter is not sent by the deadline.
4. provide, among other things, that an entity with eminent domain authority that wants to acquire real property shall disclose to the property owner any and all appraisal reports produced or acquired by the entity relating specifically to the owner’s property and prepared in the 10 years preceding the offer.
5. provide that: (1) an entity seeking to acquire property may not include a confidentiality provision in an offer or agreement to acquire the property; and (2) the entity shall inform the owner of the property that the owner has the right to: (a) discuss any offer or agreement regarding the entity’s acquisition of the property with others; or (b) keep the offer or agreement confidential (subject to the requirements of the Texas Public Information Act).

6. require an entity with eminent domain authority that wants to acquire real property for a public use to make a bona fide offer to acquire the property from the property owner voluntarily, and list specific criteria that must be met to meet the bona fide offer requirement.
7. provide that a court that determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily must abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay costs and attorneys' and other professionals' fees.
8. provide that a condemnation petition must state with specificity the public use for which the entity intends to acquire the property and that the city made a bona fide offer to acquire the property voluntarily.
9. provide, among other things, that each party has a reasonable period to strike one of the three special commissioners appointed by the judge in the case, with the judge appointing a replacement.
10. provide that the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic.
11. require a city, as a cost of acquiring real property, to: (a) provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act; and (b) pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.
12. provide that an entity that is not subject to the Public Information Act, such a gas pipeline operator, must disclose certain information relating to its use of eminent domain upon request.
13. modify the current provisions that allow a property owner to repurchase the property if it isn't used by the condemnor within ten years of the date of acquisition.
14. provide that a city council may adopt a development plan for a public use project at a public hearing to toll the 10-year right to repurchase.
15. modify the standard for determination of the fair value of the state's interest in access rights to a highway right-of-way to be the same legal standard that is applied by the Texas Transportation Commission according to the Texas Transportation Code, which may include the

impairment of highway access to or from real property where the real property adjoins the highway.

(Companion bill is **S.B. 180** by **Estes**.)

**H.B. 283 (Lucio) – Parks**: would: (1) require newly constructed or renovated (where at least 50 percent of the equipment or facilities are renovated) land or water parks that are owned, operated, or maintained by a city to have: (a) a wheelchair-accessible surface wide enough for two wheelchairs to pass that connects the parking area to each playground in the park; and (b) at least one element of the available play equipment in a playground wheelchair accessible; and (2) authorize the Parks and Wildlife Commission, after consultation with the Department of Aging and Disability Service or another qualified person, to adopt guidelines to assist a city that develops or maintains a park in the purchase, design, construction, or installation of wheelchair-accessible surfaces and equipment.

**H.B. 287 (Lucio) – Cell Phone Ban**: would prohibit an operator from using a wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

**H.B. 288 (Lucio) – Cell Phone Ban**: would: (1) prohibit an operator of a passenger bus from using a wireless communication device while operating the bus unless the vehicle is stopped; (2) prohibit an operator of a vehicle used to transport clients of the business or public entity that owns or leases the vehicle from using a wireless communication device while operating the vehicle unless the vehicle is stopped; and (3) establish that a vehicle used to transport clients includes vehicles owned or leased by certain convalescent and nursing home institutions, continuing care facilities, assisted living facilities, and entities that provide special transportation services to elderly or disabled persons.

**H.B. 293 (Berman) – Immigration**: would make an individual whose presence in the United States is not authorized by federal law ineligible to: (1) be an employee for the state or a city; or (2) receive retirement payments or benefits as a former employee of the state or a city.

**H.B. 296 (Berman) – Immigration**: would: (1) require a peace officer to make a reasonable attempt to determine the immigration status of a person detained or arrested; (2) prohibit an officer from using immigration status as the grounds for a detention or arrest; (3) prohibit an officer from unlawfully prolonging the period during which an individual is detained or held in custody; (4) prohibit an officer from attempting to determine the immigration status of a person if it would hinder or obstruct a criminal investigation; (5) require an officer to receive judicial authorization before transferring an undocumented immigrant to a federal facility in another state; (6) require an officer to notify the federal immigration authorities when an undocumented immigrant is discharged from confinement or from a fine for violating state or city law; (7) prohibit a city from limiting or restricting the enforcement of federal immigration law; (8) require that a city or state agency be allowed to send, receive, and maintain information regarding a person's immigration status for use in determining an individual's eligibility for benefits and other listed uses; (9) allow a peace officer to use multiple forms of documentation to determine an individual's immigration status; (10) allow an officer to transport an undocumented

immigrant to a federal facility or into federal custody; (11) allow an officer to stop and detain a driver if the officer has an objectively reasonable suspicion that the individual is involved in violating state or city law; (12) allow an officer to arrest without warrant an individual who the officer has probable cause to believe has committed an offense that would allow for removal from the United States under federal law; (13) prohibit a city or other governmental entity from giving economic development incentives to a business unless the business can prove that it uses e-verify; (14) require a city as employer to use e-verify and retain the records of verification; (15) prohibit a city as employer from employing or contracting with an undocumented immigrant; (16) prohibit a city as employer from contracting with anyone who employs or contracts with undocumented immigrants; (17) give the attorney general investigation and enforcement authority regarding these provisions; (18) give the county attorney and county courts the authorization to enforce these provisions against a city as employer; (19) allow a city police department to assist in investigating a violation of these provisions; (20) prohibit individuals from picking up individuals in their car to perform work at another site, if the car is blocking traffic; (21) prohibit individuals from seeking work from a driver of a car if such seeking blocks or impedes traffic; (22) prohibit undocumented immigrants from soliciting work; and (23) require a peace officer to impound a motor vehicle for 30 days if that the officer has probable cause to believe is being used to transport undocumented immigrants.

**H.B. 297 (Berman) – Health Care:** would: (1) declare the federal Patient Protection and Affordable Care Act unconstitutional and unenforceable; and (2) make it a crime to enforce the Act.

**H.B. 301 (Berman) – Official Language:** would: (1) establish English as the official language for acts of government; (2) prevent the state or a political subdivision of the state from making a policy that expresses a preference for any language other than English, subject to certain exceptions; (3) require elected and appointed officers of the state or a political subdivision of the state to take all reasonable steps to ensure the role of English as the official language is preserved and enhanced; and (4) prohibit the legislature or the governing body of a political subdivision from appropriating money to promote the use of or demonstrate a preference for any language other than English, except as expressly provided. (Note: please see **H.J.R. 38**, below.)

**H.B. 302 (Berman) – Immigration:** would: (1) prohibit a city from adopting a policy under which the city would not fully enforce state or federal laws, including laws relating to immigration; (2) prohibit a city from restricting a person employed by or under the direction or control of the city from: (a) sending information to or requesting information about the immigration status of an individual to the United States Citizenship and Immigration Service or United States Immigration and Customs Enforcement; (b) maintaining information about the immigration status of an individual; (c) exchanging information about the immigration status of an individual with another federal, state, or local government; (d) assisting or cooperating with a federal immigration officer; or (e) permitting a federal immigration officer to enter and conduct enforcement activities at a municipal jail; (3) penalize a city that violates (1) or (2), above, by taking away state grant funds; (4) allow a citizen residing in a city that violates (1) or (2), above, to file a petition in a district court to compel compliance with this law; and (5) make an elected city official who violates (1) or (2), above, liable to the state for a civil penalty of \$1,000-\$5,000.

**H.B. 304 (Pena) – Elections:** would provide that a person providing assistance to a voter: (1) must be a registered voter of the county in which the election is being held; (2) shall provide photo identification to an election officer at the polling place; (3) may not assist more than two voters in a day, which includes early voting and voting by mail; and (4) is liable to the state for a civil penalty up to \$10,000 if the person assists more than two voters in a day.

**H.B. 305 (Harless) – Burglary of a Vehicle:** would make burglary of a vehicle a state jail felony offense if it is shown at trial that the defendant was previously convicted of a burglary of a vehicle offense or if it is shown the vehicle or part of the vehicle broken into or entered is a rail car, otherwise an offense would be a Class A misdemeanor.

**H.B. 307 (Menendez) – Housing:** would require the Texas Department of Housing and Community Affairs to administer a homeless housing and services program in each city with a population of 285,500 or more to provide for the development of housing for homeless persons and provide local programs to prevent homelessness.

**H.B. 310 (T. King) – Water Supply Corporations:** would create election procedures and candidate eligibility requirements for directors of water and sewer supply corporations, including a requirement for an independent election auditor.

**H.B. 311 (Geren) – Immigration:** would require a peace officer to: (1) inquire into the immigration status of any arrestee; and (2) identify and report the individual to the federal immigration authorities if the person is an undocumented immigrant.

**H.B. 312 (Callegari) – Property Tax:** would reduce the property tax appraisal cap on homesteads from ten to five percent. (Companion bill is **S.B. 129** by **Patrick**.) (Note: Please see **H.J.R. 39**, below.)

**H.B. 313 (Pickett) – Property Tax:** would provide a complete residence homestead property tax exemption for the surviving spouse of a totally disabled veteran that has not remarried since the death of the disabled veteran. (This bill is identical to **H.B. 95** by **Fletcher**.) (Note: please see **H.J.R. 40**, below.)

**H.B. 317 (Cook) – County Land Use Authority:** would: (1) authorize the commissioners court of a county, if authorized by an election in the county, to regulate, by order, land use in the unincorporated area of the county by requiring a buffer zone between the land used for residential and certain other uses; and (2) provide for an exemption for gas pipelines or drilling or operating an oil or gas well.

**H.B. 320 (Alonzo) – Law Enforcement:** would: (1) authorize a city's police department to equip each vehicle used in a K-9 law enforcement program, except open-air vehicles, with a heat alarm system that would activate when the vehicle stops running or the temperature in the vehicle become dangerous to a police dog; (2) require the heat alarm system, when activated, to have an audible alarm, to lower the vehicle's rear windows, and to page the K-9 officer; and (3) exempt a vehicle with a heat alarm system in place on September 11, 2011, from the requirements in (2) above until January 1, 2013.

**H.B. 327 (Guillen) – Specialty License Plates:** would provide for the issuance of specialty license plates for municipal judges.

**H.B. 331 (Guillen) – Municipal Court Fees:** would authorize a city to: (1) create a municipal court equal justice and education fund; (2) require a defendant convicted of a misdemeanor offense to pay a \$1 equal justice and education fee for deposit into the fund; and (3) use such funds for various expenditures to be authorized by the municipal judge, including the appointment of an attorney for an indigent defendant, the education of judges and personnel, or the purchase of services, materials, or equipment for the court to provide equal justice.

**H.B. 339 (Aycock) – Elections:** would provide that a political subdivision with a population of less than 1,500, other than a county, is exempt from certain electronic voting machine requirements, provided reasonable accommodations are made for persons with disabilities. The exemption would not apply during a joint election where a federal office appears on the ballot.

**H.B. 340 (Gallego) – Net Electric Metering:** would mandate that the Public Utility Commission adopt rules and standards under which a retail electric provider, electric cooperative, municipally-owned electric utility, or transmission and distribution utility shall offer net metering service its customers. (Note: net metering allows a customer with in-home renewable energy technology, such as solar panels or a wind turbine, to sell excess energy back to the utility.)

**H.B. 342 (Fletcher) – Police/Fire Civil Service:** would amend Chapter 143 of the Local Government Code to provide that: (1) if a civil service commission finds that a period of disciplinary suspension should be reduced, the commission may order a reduction in the period of suspension; and (2) if the commission or a hearing examiner orders that a suspended firefighter or police officer be restored to the position or class of service from which the person was suspended, the firefighter or police officer is entitled to immediate reinstatement to the position or class of service from which the person was suspended, notwithstanding any action filed in a court by the city or department head challenging the commission's decision.

**H.B. 343 (Fletcher) – Law Enforcement:** would: (1) provide that the record of a license holder who is a peace officer, fire fighter, or emergency medical services employee of a city may not include information relating to a traffic accident that occurs while the employee is driving an official vehicle in the course and scope of the employee's official duties if the traffic accident results in damages to property of less than \$1,000 or an investigation by a peace officer not involved in the accident determines that the employee was not at fault (Current law provides that the record may not include information relating to a traffic accident that occurs during an emergency while the person is driving an official vehicle in the course and scope of official duties.); and (2) require that an accident form prepared by the Texas Department of Transportation: (a) include a way to designate and identify a peace officer, firefighter or emergency medical services employee who is involved in an accident while driving a vehicle in the performance of the employee's duties; and (b) require a statement by the employee as to the nature of the accident.

**H.B. 345 (Kleinschmidt) – Litigation:** would expand the liability of a city in a contract dispute by allowing parties prevailing against a city to be awarded interest on disputed payments.

**H.B. 348 (Walle) – Police Training:** would require a peace officer who is a school resource officer to complete: (1) a twenty-hour education and training program developed by the Texas Education Agency before being allowed to work as a school resource officer or school security personnel; and (2) eight hours of continuing education developed by the Texas Education Agency.

**H.B. 350 (Walle) – Juvenile Defendants:** would authorize a justice to discharge all or part of the fine or costs assessed against a juvenile defendant for a class C misdemeanor committed at a primary or secondary school at which the defendant was enrolled by performing community service or attending a tutoring program.

**H.B. 360 (Jackson) – Elections:** would require that a ballot proposition allowing voters to approve a tax or the issuance of bonds must: (1) state the total dollar amount of bonds that will be issued or the amount of the tax or tax increase; and (2) describe any projects to be supported by the bonds.

**H.B. 363 (S. Turner) – Urban Renewal:** would, among other things, provide that abnormally high rates of crime are an additional criteria that defines a “blighted area” under the current urban renewal law.

**H.B. 364 (S. Turner) – Urban Renewal:** would permit eminent domain for the elimination of urban blight even in cases where economic development is a secondary purpose of the eminent domain.

**H.B. 369 (Hochberg) – Elections:** would require the secretary of state to create a process to verify a voter registration application if a minor correction to the applicant’s last name or date of birth would lead a reasonable person to conclude that the submitted application corresponds with the applicant.

**H.B. 378 (Guillen) – Tow Trucks:** would require a driver to reduce his speed or vacate the lane next to a stationary tow truck when its lights are flashing.

**H.B. 379 (Guillen) – Sales Tax:** would change the date of the sales tax holiday to the Friday before the eighth day preceding the earliest date on which a school district may begin instruction for the school year.

**H.B. 382 (Menendez) – Poker:** would: (1) legalize poker in Texas; (2) tax poker proceeds received by businesses; and (3) provide that part of the proceeds of the state tax on poker would be used for city projects to help the homeless.

**H.B. 387 (S. Turner) – Employee Leave:** would require a city to: (1) grant up to ten hours of unpaid leave to an employee who has worked for the city for at least a year for purposes of meeting with school officials; (2) grant paid leave if the employee has accrued vacation,

compensatory, personal, or other appropriate leave; and (3) post notice of employees' rights under this law.

**H.B. 395 (V. Gonzales) – Municipal Court Security Fee:** would increase the cap for the municipal court security fee from \$3 to \$8.

**H.B. 401 (T. Smith) – Voter Identification:** would make various changes to the documentation required to vote. Specifically, the bill would provide that:

1. On offering to vote, a voter must present one form of identification listed in the bill, including: (a) a driver's license or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than one year before the date of presentation; (b) a United States military identification card that contains the person's photograph; (c) a United States citizenship certificate issued to the person that contains the person's photograph; (d) a United States passport issued to the person; (e) a license to carry a concealed handgun issued to the person by the Department of Public Safety that contains the person's photograph; (f) a student identification card issued by a public or private institution of higher education that contains the person's photograph; (g) a valid identification card that contains the person's photograph and is issued by an agency or institution of the federal government or an agency, institution, or political subdivision of this state; or a tribal organization; or (h) a Texas voter identification card issued under the bill.
2. Each voter registrar shall: (a) issue Texas voter identification cards to registered voters to be used only for the purpose of meeting the identification requirements to vote; (b) provide at least one place in the county to accept applications for and issue Texas voter identification cards; and (c) not charge an application fee or a fee for the issuance of a Texas voter identification card.
3. A person who has a valid driver's license or personal identification card issued to the person by the Department of Public Safety is not eligible for a Texas voter identification card.
4. The Texas voter identification card issued to a person must: (a) be captioned "TEXAS VOTER IDENTIFICATION CARD"; (b) contain a prominent statement that under Texas law the card is valid only as identification for voting purposes; (c) be laminated; (d) contain a digital color photograph of the person; and (e) include the following information relating to the person: (A) full legal name; (B) residence address; (C) birth date; (D) date the identification card was issued; (E) sex; (F) height; (G) weight; (H) eye color; (I) the county where the identification card was issued, including a county number to be assigned for each county by the secretary of state; and (J) any other information or identification as required by rule of the secretary of state.
5. The application for a Texas voter identification card must be signed and sworn to by the applicant.

6. The following information must be presented to, and verified by, the voter registrar before the voter registrar issues a Texas voter identification card to a person: (a) a photo identification document, or an identification document that includes both the person's full legal name and date of birth; (b) documentation showing the person's date of birth; (c) evidence that the person is registered to vote in this state; and (d) documentation showing the person's name and address of principal residence.
7. A Texas voter identification card remains valid if the person to whom it was issued resides at the same address and remains qualified to vote.
8. A person who changes residence within the state must surrender the card to the voter registrar of the new county of residence and may apply for and receive a Texas voter identification card issued by the new county of residence if the person is otherwise eligible under this section.
9. The secretary of state shall provide each voter registrar with the necessary equipment, forms, supplies, and training for the production of the Texas voter identification cards and shall maintain the equipment and adopt rules for the administration of the bill.
10. On presentation of the documentation required by section (1), above: (a) an election officer shall determine whether the voter's name on the documentation is on the list of registered voters for the precinct; (b) if the voter's name is on the precinct list of registered voters and the voter's identity can be verified from the documentation presented, the voter shall be accepted for voting; and (c) after determining whether to accept a voter, an election officer shall return the voter's documentation to the voter.
11. A voter shall be accepted for provisional voting only if the requirement for identification is not met.
12. A voter who is accepted for provisional voting because the voter does not present proof of identification may, not later than the seventh business day after the date of the election, present proof of identification to the voter registrar for examination by the early voting ballot board.
13. The Texas Department of Public Safety may not collect a fee for a personal identification certificate issued to a person who executes an affidavit stating that the person is obtaining the personal identification certificate for the purpose of satisfying the voter identification requirements in the Election Code and does not have another form of identification acceptable under the Election Code if the person is a registered voter in this state and presents a valid voter registration certificate or submits a registration application to the department.

**H.B. 405 (Quintanilla) – Tire Disposal:** would: (1) enact provisions relating to the registration, storage, transportation, and disposal of scrap tires; (2) require a seller of new or used tires to collect certain fees upon the sale of tires; (3) mandate that the Texas Commission on

Environmental Quality adopt application forms and procedures for the processes authorized under the bill; and (4) provide that a political subdivision shall notify the commission when the political subdivision becomes aware of used or scrap tires disposed of at a location where the disposal is not authorized by permit.

**H.B. 406 (Quintanilla) – Alcohol:** would: (1) authorize a city council to enact regulations prohibiting the possession or consumption of alcohol at a location that was previously licensed or permitted to sell alcohol for on-premises consumption if the council determines the license or permit was canceled or not renewed because of ongoing criminal activity on the premises that threatened the public health, safety, or welfare; and (2) authorize a county commissioners court to do the same as described in (1), above, in areas in the county outside of an incorporated city.

**H.B. 408 (Walle) – Juvenile Case Managers:** would create new ethics and training requirements for juvenile case managers in municipal court, similar to those for juvenile probation officers.

**H.B. 409 (Walle) – Juvenile Case Managers:** would: (1) require the judge of a municipal court that has a juvenile case manager to either directly supervise the case manager or delegate the duty to another officer of the court who is authorized to conduct hearings under the Family Code, and (2) prohibit the judge from delegating the duty of supervising a juvenile case manager to the clerk of the court. (This bill is the same as **S.B. 209** by **Zaffirini.**)

**H.B. 416 (Anchia) – Elections:** would: (1) extend the time in which the early voting ballot board shall verify and count provisional ballots from within seven days after election day to within ten days after election day; (2) extend the time frame in which a local canvass must occur for a May election from no later than the eleventh day after election day to no later than the fourteenth day after election day; and (3) provide that an election officer serving at an early voting polling place is a deputy voter registrar and shall accept a voter who submits a voter registration application and photo identification at polling place, but specifies that this requirement does not apply to an authority holding an election that does not include a statewide or federal election.

**H.J.R. 38 (Berman) – Official Language:** would amend the Texas Constitution to: (1) establish English as the official language for acts of government; (2) prevent the state or a political subdivision of the state from making a policy that expresses a preference for any language other than English, subject to certain exceptions; (3) require elected and appointed officers of the state or a political subdivision of the state to take all reasonable steps to ensure the role of English as the official language is preserved and enhanced; and (4) prohibit the legislature or the governing body of a political subdivision from appropriating money to promote the use of or demonstrate a preference for any language other than English, except as expressly provided. (Note: please see **H.B. 301**, above.)

**H.J.R. 39 (Callegari) – Property Tax:** would amend the Texas Constitution to authorize the legislature to reduce the property tax appraisal cap on homesteads from ten to five percent. (Note: please see **H.B. 312**, above.)

**H.J.R. 40 (Pickett) – Property Tax:** would amend the Texas Constitution to permit the legislature to provide a complete residence homestead property tax exemption for the surviving spouse of a totally disabled veteran that has not remarried since the death of the disabled veteran. (Note: please see **H.B. 313**, above.)

**H.J.R. 41 (Raymond) – Eight Liners:** would propose a constitutional amendment giving the legislature the authority to: (1) allow a local option election by a city, county, or justice precinct on whether to allow eight liners; (2) impose a fee on eight liners; and (3) allow a city or other political subdivision to impose a fee on eight liners.

**S.B. 142 (West) – Property Owners’ Associations:** would limit the authority of property owners’ associations in various ways and make the associations subject to limited open government provisions.

**S.B. 204 (Zaffirini) – Mandatory Health Benefits:** would require that certain health benefit plans, including those offered by a governmental risk pool, provide coverage for devices that facilitate insulin therapy and enhance glucose control.

**S.B. 209 (Zaffirini) – Juvenile Case Managers:** would: (1) require the judge of a municipal court that has a juvenile case manager to either directly supervise the case manager or delegate the duty to another officer of the court who is authorized to conduct hearings under the Family Code; and (2) prohibit the judge from delegating the duty of supervising a juvenile case manager to the clerk of the court.

**S.B. 211 (Ellis) – Elections:** would: (1) provide that an election officer serving an early voting polling place is a deputy voter registrar and has the same authority as a regular deputy registrar; (2) allow for the registration of eligible voters during early voting upon the submission of certain documentation; and (3) prescribe registration procedures that must be followed by the voter registrar.

**S.B. 212 (Ellis) – Elections:** would provide that: (1) an election officer commits a state jail felony if the officer removes the name of an eligible voter from the list of registered voters or otherwise prevents an eligible person from voting; (2) an individual commits a class B misdemeanor if the individual knowingly deceives another person regarding the time, place, or manner of conducting an election or qualifications governing voter eligibility for an election in the state; (3) a person may report a suspected violation to the secretary of state; (4) the secretary of state must notify the attorney general of a violation if the secretary determines there is reasonable cause to suspect that an offense was committed; (5) the attorney general or a person harmed by a violation under this section may bring a civil action seeking a permanent or temporary injunction, restraining order, or other appropriate order; and (6) the secretary of state must submit all reported violations of this section to the legislature each year.

**S.B. 213 (Ellis) – Elections:** would: (1) require that two voter registrars be present at each polling place while the polls are open; and (2) provide that a person who would be eligible to vote in an election, but for the requirement to be a registered voter, shall be accepted for voting

in the precinct of the person's residence if on the day the person wishes to vote the person submits a voter registration application and presents proof of identification.

**S.B. 214 (Ellis) – Elections:** would provide that: (1) with the exception of a person who is certified for participation in the address confidentiality program administered by the attorney general that does not submit a registration application by personal delivery, any qualified person who will be absent from his/her county on election day is eligible for early voting by mail; and (2) a person who is in jail on a misdemeanor charge is eligible for early voting by mail in certain circumstances.

**S.B. 231 (Nelson) – Intoxication Offenses:** would require, with some exceptions, a court to order the Texas Department of Safety to permanently revoke the driver's license of a person convicted of certain intoxication offenses.

**S.B. 241 (Ellis) – Mandatory Health Benefits:** would generally require health benefit plans to provide coverage for HIV tests.

**S.B. 244 (Patrick) – Peace Officer Training:** would allow the Bill Blackwood Law Enforcement Institute of Texas (LEMIT) to establish and offer a continuing education program for second-in-command staff that would exempt the second in command staff from the continuing education standards in the Occupations Code.

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