



# Legislative UPDATE

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Number 13

## **Detrimental Bills (and Their Companions) on the Move**

Activity is increasing at the Texas Capitol. That includes the movement of a number of bills that would harm cities. Here are four of the worst at this point, along with their companion bills, and suggested action items for concerned city officials.

### **Revenue caps**

Senate Bill 2 by Bettencourt would lower the property tax rollback rate from eight to 2.5 percent and require a mandatory election to exceed the 2.5 percent cap. The Senate version initially applied only to cities with combined property and sales tax revenues over \$15 million annually. As amended in committee, however, all cities would surely follow soon because of a mandatory opt-in election for citizens in May 2020. (Remember that cities are prohibited by law from advocating against an election measure.) The bill has passed its Senate committee and is waiting to be heard on the Senate floor.

The bill's companion, H.B. 2 by Burrows, was voted from the House Ways and Means Committee early Thursday morning. It also contains a 2.5 percent cap. The committee substitute version also appears to have a complicated phase-in regarding its application to smaller cities (an official copy of the substitute bill is not available at the time of this article, so details are not confirmed). In addition, it likely includes a requirement that certificates of obligation count against a city's effective and rollback rates.

City officials concerned about these bills should continue visiting with their senators and representatives. Meaningful tax relief can come only from the lowering of school district property taxes, something both chambers claim to be supportive of. But if school taxes are not fixed by the end of the session, the pressure on legislators to just cap cities and counties and try to claim some kind of victory on property taxes will be tremendous.

### **Video/Phone Right-of-Way Rental Fees**

House Bill 3535 by Phelan has been [set for a hearing](#) on Monday, April 1, 2019, at 10:30 a.m. in the House Committee on State Affairs in Room E2.028 of the Capitol Extension. The bill would allow the state to rob cities of their existing right-of-way rental fees (still sometimes referred to as “franchise fees”). It would allow any company that provides telephone and video services to stop paying the lesser of its statewide telephone access line fees or state cable franchise fees.

The industry's buzzwords for the bill say that they are being “double-taxed.” That's untrue for two reasons:

1. The money they pay isn't a “tax.” It's a rental for the use of taxpayer-owned property. It's nothing more than any other cost of doing business. The only difference is the companies are renting public, as opposed to private, property. Cable and phone companies are asked to pay for the right-of-way they occupy in the same manner as a commercial retail lease. They pay a percentage of the revenue from operating their business as rent for the use of taxpayer-owned property. The more revenue they get, the more the property is worth to them, and the more rent they pay. Whether part of the business is called “phone service” and part called “cable service” makes no difference in determining its value.
2. The Texas Constitution prohibits the legislature from forcing a city to give away publicly-owned property for less than fair market value. The bills are unconstitutional because they eliminate value-based compensation. In other words, the compensation would no longer be based on the value of the right-of-way to the companies.

The bills are not about double-taxation, or taxation of any kind. Rather, they would force city taxpayers to subsidize the cost of doing business for the companies. The bills amount to corporate welfare for some of the largest and most profitable companies in the world. With no guarantee that the companies will pass this taxpayer subsidy on to their customers, the bills are a massive taxpayer-paid windfall to corporations.

The Senate companion to H.B. 3535 (S.B. 1152 by Hancock) has already been voted out of its Senate committee.

These two bills have momentum, and only the efforts of city officials can potentially stop them. City officials should visit with their senators and representative now about how these bills would impact their budgets. Officials may also want to testify at the hearing Monday and speak with

their local cable and phone company representatives about why they are supporting the unconstitutional legislation.

### **Annexation**

House Bill 347 by King would essentially eliminate most unilateral annexations by any city, regardless of population or location. Specifically, the bill would: (1) eliminate the distinction between Tier 1 and Tier 2 cities and counties created by S.B. 6 (2017); (2) eliminate existing annexation authority that applied to Tier 1 cities and make most annexations subject to the three consent annexation procedures created by S.B. 6 (2017), which allow for annexation: (a) on request of the each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, petition of landowners; and (3) authorize certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, etc.) to continue using a service plan, notice, and hearing annexation procedure.

The bill has been voted from the House Land and Resource Management Committee. Concerned city officials in the smaller counties affected by the bill should visit with their House Representative now prior to the bill moving to the House floor for debate.

### **Firefighter Discipline**

House Bill 1895 by Nevarez would require non-civil service cities (most Texas cities) to comply with civil service laws relating to the investigation and discipline of firefighters accused of misconduct. These civil service laws are complex and designed for larger cities with more established administrative structures in their fire departments (only cities over 10,000 population can be subject to a civil service election, but this bill applies to all cities). A full summary of the bill is available [here](#).

Concerned city officials in non-civil service cities should visit now with their fire chiefs to determine if the city has the resources to implement the provisions of the bill. If not, city officials and their fire chiefs should visit with their House representative.

Please email [legislative@tml.org](mailto:legislative@tml.org) with questions about any of these bills.

## **Department of Labor Proposes New Overtime Salary Rules**

On March 22, 2019, the United States Department of Labor published a [proposed rule](#) that could make overtime pay mandatory for more city employees. Under current law, employees whose salary is below \$455 per week (or \$23,660 annually) must be paid overtime if they work more than 40 hours in a week, regardless of whether their job duties primarily involve executive, administrative, or professional duties. The proposed rule would increase the salary requirement to \$679 per week (or \$35,308 per year). As such, under the proposed rule, any employee who makes less than the new salary requirement would be entitled to overtime pay.

Additional information about the proposed rule is available [here](#). The Department of Labor will be accepting comments on this rulemaking until May 21, 2019.

## **Significant Floor Actions**

**Eminent Domain:** [S.B. 553](#), relating to the acquisition of certain real property in conjunction with the acquisition of real property for a public use through eminent domain. Passed the Senate. As passed, the bill would provide that a city that makes an initial offer that includes real property the city does not seek to acquire by condemnation shall, in the initial offer: (1) separately identify the real property that the city does not seek to acquire by condemnation; and (2) make an offer for the real property that the city does not seek to acquire by condemnation separate from the offer made for the real property sought to be acquired by condemnation.

**Lobby Expenditure Reporting:** [S.B. 702](#), relating to the authorization and reporting of expenditures for lobbying activities by certain political subdivisions and other public entities. Passed the Senate. As passed, the bill would require a city to take a separate vote on any lobby expenditure or TML dues payment, and it would mandate posting of that information on the city's website and with the Texas Ethics Commission.

*\*Editor's Note: The links above lead to the bill's landing page on the Texas Legislature Online website. To read the latest version, click on the "text" tab and click on the lowest version on the screen.*

## **Significant Committee Actions**

**Revenue Cap:** [H.B. 2](#), relating to ad valorem taxation. Voted from the House Committee on Weights and Means.

**Lobbying Restrictions:** [H.B. 281](#), relating to the use by a political subdivision of public money for lobbying activities. Voted from the House Committee on State Affairs. As reported, the bill would prohibit a city from hiring a lobbyist and prohibit TML from lobbying on behalf of its members.

**Annexation Restrictions:** [H.B. 347](#), relating to eliminating distinctions in the application of consent annexation requirements. Reported from the House Committee on Land and Resource Management. As reported, the bill would essentially eliminate non-consent annexations by every city in the state.

**County Polling Places:** [H.B. 1048](#), relating to the use of a county early voting polling place by a political subdivision. Reported from the House Committee on Elections. As reported, the bill would require cities holding May elections to use county polling places located in the city limits that were used the previous November.

**Firefighter Discipline:** [H.B. 1895](#), relating to the investigation of fire fighters employed by certain municipalities and districts. Voted from the House Committee on Urban Affairs.

**Remote Sales Taxes:** [H.B. 2153](#), relating to a single local use tax rate as an alternative to combined local use tax rates for computing the amount of local use taxes remote sellers are required to collect and to the allocation of tax revenue collected at that rate. Reported from the House Committee on Ways and Means.

**Eminent Domain:** [S.B. 421](#), relating to the acquisition of real property by an entity with eminent domain authority. Reported from the Senate State Affairs Committee. As reported, the bill would require a city to offer 45 percent more than the market value when acquiring property by eminent domain.

**Drainage Fee Exemptions:** [S.B. 674](#), relating to authorizing an exemption for open-enrollment charter schools from certain municipal drainage requirements.

**Video/Telephone Franchise Fee Elimination:** [S.B. 1152](#), relating to the payment of certain fees to municipalities by entities that provide telecommunications and cable or video service. Reported from the Senate Business and Commerce Committee. As reported, the bill would allow a telecommunications company to elect to stop paying state cable franchise fees or access line fees, whichever it pays less of statewide.

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## **City Officials Testify**

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take the time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during this session. If we missed your testimony let us know by an email to [ford@tml.org](mailto:ford@tml.org), and we'll recognize you in next week's edition.

The following officials testified in committee hearings held March 19 through March 25, plus late reports from March 18 hearings:

- Jimmy Taylot, City of Houston Police Department
- Mark Bird, City Arborist, City of San Antonio
- Chris Herrington, Environmental Officer, City of Austin
- Ginger Faught, Deputy City Administrator, City of Dripping Springs
- YuShan Chang, Sr. Assistant City Attorney, City of Houston
- Russell Huff, Assistant Finance Director, City of San Antonio
- Don Knight, Assistant City Attorney, City of Dallas
- David Robinson, Councilmember, City of Houston

- Justin Newson, Assistant Chief of Police, City of Austin
- Adam Colby, Detective Sergeant, City of Tyler
- Dan Coleman, Grants Analyst, City of Houston
- Chuck Brawner, Mayor, City of Katy
- Chris Harris, Councilmember, City of Katy
- Danny Barton, Chief of Police, City of Coppell
- Thomas Berrettini, Detective, City of Grand Prairie
- Tanya Brooks, Assistant Director, City of Fort Worth
- John Bruce, Chief of Police, City of Frisco
- Towfiq Khan, Executive Manager, City of Dallas
- Suzanne de Leon, Mayor, City of Balcones Heights
- Michael Naughton, Fire Chief, City of Leon Valley
- Patrick Oborski, Detective, City of Austin
- Joseph Salvaggio, Chief of Police, City of Leon Valley
- Scott Schultz, Assistant Police Chief, City of Sugar Land
- David Shilson, Deputy Chief of Police, City of Frisco
- Darrell E. Volz, Chief of Police, City of Balcones Heights
- Jeff Williams, Captain, City of North Richland Hills Police Department
- James Dale, Commander, City of Houston Police Department
- Pat Hughes, Assistant Fire Chief, City of Sugar Land
- Rick Ramirez, Intergovernmental Relations Manager, City of Sugar Land
- Kit Marshall, Mayor, City of Aledo
- William A. DiLibero, City Manager, City of Port Lavaca
- Jimmy Kendrick, Mayor, Town of Fulton
- Patrick Rios, Mayor, City of Rockport
- Kay Roach, Mayor, Town of Woodsboro
- Veronica Ocañas, Assistant City Attorney, City of Austin
- Dana Burghdoff, Deputy Director of Planning and Development, City of Fort Worth
- Richard Derr, City Manager, City of Oak Ridge North
- Cassandra Gill, Building Official, City of Dayton
- Garrett Nelson, Fire Marshal, City of Lubbock
- Steve O'Neal, Chief Building Official, City of Lubbock
- Marcia Diamond, Assistant Director of Planning, City of Coppell
- Jim Pruitt, Mayor, City of Rockwall
- Dr. Karl Mooney, Mayor, City of College Station
- Don Egdorf, City of Houston Police Department
- Cheryl Southwell, City of Houston Police Department
- Mandy De Mayo, Community Development Administrator, City of Austin
- Ray Miller, Assistant Director of Multifamily and Public Facilities, City of Houston
- Rick Davis, City Manager, City of Baytown
- Gwendolyn Tillotson, Deputy Director of Economic Development, City of Houston
- Michael Gray, City Marshal, City of Galveston
- David Kocurek, City Manager, City of Palacios

## City-Related Bills Filed

### Property Tax

**S.B. 2468 (Creighton) – Homestead Exemption:** would increase the maximum percentage of a local option homestead exemption from 20 percent of the appraised value of an individual's residence homestead to 100 percent of an individual's residence homestead. (Companion bill is **H.B. 3127** by **Middleton**.)

### Personnel

**S.B. 2485 (Creighton) – Employment Benefits:** would provide that a political subdivision of this state may not adopt or enforce any ordinance, order, rule, regulation, or policy regulating a private employer's terms of employment relating to employment benefits, other than employment leave, including health, disability, retirement, profit-sharing, death, and group accidental death and dismemberment benefits.

**S.B. 2486 (Creighton) – Scheduling Practices:** would provide that a political subdivision of this state may not adopt or enforce any ordinance, order, rule, regulation, or policy regulating a private employer's terms of employment relating to scheduling practices.

**S.B. 2487 (Creighton) – Employment Leave:** would provide that a political subdivision of this state may not adopt or enforce any ordinance, order, rule, regulation, or policy regulating a private employer's terms of employment relating to any form of employment leave, including paid days off from work for holidays, sick leave, vacation, and personal necessity.

**S.B. 2488 (Creighton) – Criminal History Information:** would provide that a political subdivision of this state may not adopt or enforce any ordinance, order, rule, regulation, or policy that prohibits, limits, or otherwise regulates a private employer's ability to request, consider, or take employment action based on the criminal history record information of an applicant or employee.

### Utilities and Environment

**S.B. 2452 (Lucio) – Texas Water Development Board:** would: (1) add residential drainage services to the types of projects for which TWDB shall use the economically distressed areas account to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of certain projects intended to serve economically distressed areas; (2) provide that TWDB shall prioritize projects and give the highest consideration to projects that will have a substantial effect, including projects that will serve an area for which the Department of State Health Services has determined that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems; (3) provide that other considerations in prioritizing projects shall include, among other things, the local contribution to be made to

finance the project, including up-front capital to be provided by the applicant; (4) provide that TWDB may not provide funding for residential drainage works until the political subdivision has received: (a) a permit for construction and operation of the residential drainage works from the Texas Commission on Environmental Quality unless a permit is not required, and (b) approval from the plans from the applicable authorities; (5) provide that, in providing financial assistance under the bill, the TWDB may provide the repayable portion of financial assistance from any financial assistance program for which the applicant is eligible; and (6) require the TWDB to post a report on its website detailing certain information for each project for which the TWDB provided financial assistance under the bill.

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