



# Legislative UPDATE

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Number 25

## Governor's Vetoes Include City-Related Bills

Governor Greg Abbott has vetoed 56 bills passed by the legislature during the regular session. Eighteen of the 56 were city-related bills described in the League's ["Wrap-Up" Legislative Update](#) on June 7. (Both the PDF and online version of that edition have been updated to reflect vetoed bills and other minor corrections.) Those 18 vetoes are detailed below:

1. **H.B. 51 (Canales/Zaffirini) – Municipal Court:** would have provided that: (1) the Office of Court Administration must create, promulgate, and update standard forms for use in criminal actions for: (a) waiving a jury trial and entering a plea guilty or nolo contendere in a misdemeanor case; (b) a trial court to admonish a defendant; and (c) a defendant who receives admonitions in writing to acknowledge that the defendant understands the admonitions and is aware of the consequences of the defendant's plea; and (2) provide that the Texas Supreme Court by rule shall set the date by which all courts must adopt and use the forms.

According to the governor's veto message, "House Bill 51 would require the creation and use of standardized forms for certain actions in criminal cases. The Office of Court Administration can already create forms for courts to use, so House Bill 51 is unnecessary for that purpose. But in going further and mandating that judges use these standardized forms, the bill as drafted could create larger problems. The author's good intentions are appreciated, but the bill may end up discouraging judges from giving individualized attention to the important matters being waived or otherwise addressed by the forms, and it risks creating loopholes for criminal defendants to exploit whenever the forms are not used. It also could preclude judges from handling these matters orally on the record, which unduly restricts the ability of judges to run their courtrooms."

2. **H.B. 93 (Canales/Hinojosa) – Magistrates:** would have provided that any signed order pertaining to criminal matters under various statutes that is issued by a magistrate must include, with the magistrate’s signature, the magistrate’s name in legible handwriting, legible typewritten form, or legible stamp print.

According to the governor’s veto statement, “House Bill 93 would mandate that all orders by magistrate judges not only be signed, but also include the magistrate’s name in legible print or writing. Yet it does not address what the consequences would be if the magistrate’s name is not printed in the form prescribed, which could create loopholes for opportunistic litigants and prompt needless challenges to court orders. The author may have intended to address the integrity of court orders against possible forgery, but the bill as drafted is not the right answer.”

3. **H.B. 448 (Turner/Zaffirini) – Child Passenger Safety Seat System:** would have provided that: (1) a person commits an offense if the person operates a passenger vehicle, transports a child who is younger than two years of age, and does not keep the child secured during the operation of the vehicle in a rear-facing child passenger safety seat system unless the child: (a) is taller than three feet, four inches, or (b) weighs more than 40 pounds; (2) a peace officer may not: (a) stop motor vehicle or detain the operator of a motor vehicle solely to enforce (1) above; or (b) issue a citation under (1), above, unless the officer determines that the person has previously been issued a warning or citation for or convicted of this offense; and (3) a defense to prosecution under (1), above, is available if the child has a medical condition, as evidenced by a written statement from a licensed physician, that prevents the child from being secured in a rear-facing child passenger safety seat system.

According to the governor’s veto message, “House Bill 448 is an unnecessary invasion of parental rights and an unfortunate example of over-criminalization. Texas already compels drivers to use a car seat for a child under eight years of age. *See* Tex. Transp. Code § 545.412. House Bill 448 would get even more prescriptive, dictating which way the car seat must be facing for a child under two years of age. It is not necessary to micromanage the parenting process to such a great extent, much less to criminalize different parenting decisions by Texans.”

4. **H.B. 929 (Anchia/Watson) – Magistrates:** would have provided that a magistrate must inform the person arrested that a plea of guilty or nolo contendere for the offense charged may affect the person’s eligibility for enlistment or reenlistment in the United States armed forces or may result in the person’s discharge from the United States armed forces if the person is a member of the armed forces.

According to the governor’s veto message, “Under current law, a magistrate must inform an arrested person of important constitutional protections, such as the right to counsel. House Bill 929 would have added yet more recitations about non-constitutional matters, making these magistrations warnings less helpful to arrestees. Magistrations

should focus arrestees on exercising their constitutional rights at the beginning of the criminal-justice process.”

5. **H.B. 1059 (Lucio/Rodriguez) – Stormwater Infrastructure Reporting:** this bill would have: (1) defined “green stormwater infrastructure” and “low impact development” as systems and practices that: (a) use or mimic natural processes that result in the infiltration, evapotranspiration, treatment, or use of stormwater; (b) manage stormwater, protect water quality and associated habitat, or augment or replace conventional engineered stormwater systems; (c) meet local requirements for post-development stormwater retention and detention and erosion management; and (d) are considered best management practices; (2) created a Green Stormwater Infrastructure and Low Impact Development Report Group to be appointed by the Texas Commission on Environmental Quality, including one member from a city; and (3) required the Group to prepare a biennial report on the use of green stormwater infrastructure and low impact development in the state to be submitted to the members of TCEQ, the governor, the lieutenant governor, the speaker of the house, and each member of the legislature.

According to the governor’s veto message, “House Bill 1059 would mandate a series of reports that are redundant and unnecessary. Many cities and counties are already using adaptive strategies to manage stormwater runoff. Institutions of higher education, meanwhile, are providing sufficient information and support to local governments to promote even broader application of these stormwater-management tools.”

6. **H.B. 1099 (Guillen/Hinojosa) – Veterinary Commissioned Peace Officers:** this bill would have: (1) authorized the State Board of Veterinary Medical Examiners (Board) to employ and commission as a peace officer a person certified as a peace officer by the Texas Commission on Law Enforcement to enforce the laws under the Board’s jurisdiction; and (2) provided that if the Board commissions peace officers, the Board shall designate a peace officer as the chief investigator to supervise and direct the other peace officers commissioned by the Board, and such chief investigator must have appropriate training and experience in law enforcement, as determined by the Board.

According to the governor’s veto message, “House Bill 1099 would allow the Texas Board of Veterinary Medical Examiners to hire peace officers to investigate violations of the Veterinary Licensing Act. Legislation was passed last session to help the Board develop an effective way to inspect and monitor the potential diversion of controlled substances at veterinarians’ offices, and to consistently implement its enforcement procedures. The Board should use its existing tools instead of creating more state-commissioned peace officers and seeking out new tasks related to supervising those officers.”

7. **H.B. 1168 (Anchia/West) – Firearms in Airports:** would have provided that, in relation to the prohibition against carrying a firearm into the secured area of an airport: (1) “secured area” means an area: (a) of an airport terminal building or of an adjacent aircraft parking area used by common carriers in air transportation but not used by general aviation; and (b) to which access is controlled under federal law; and (2) it is a

defense to prosecution that the actor: (a) checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area; or (b) was authorized by a federal agency or the airport operator to possess a firearm in a secured area.

According to the governor's veto message, "House Bill 1168 would impose an unacceptable restraint on the Second Amendment rights of law-abiding travelers. The Legislature may have intended simply to keep firearms off the tarmac, but the bill as drafted would newly prohibit carrying in *any* part of the airport terminal building, even ahead of the TSA inspection checkpoint. By vetoing this bill, I am ensuring that Texans can travel without leaving their firearms at home. I look forward to working with the next Legislature on the good idea behind this bill."

8. **H.B. 1771 (Thierry/Huffman) – Juvenile Prostitution:** would have provided that: (1) offering or agreeing to receive a fee to engage in sexual conduct by a juvenile is not delinquent conduct and the offending juvenile may not be referred to juvenile court; (2) an officer taking possession of a child who is suspected of engaging in prostitution may not arrest the child or refer the child to juvenile court; (3) the officer in (2) shall use best efforts to deliver the child to the child's parent or to another person entitled to take possession of the child; and (4) if a parent or other person is not available to take possession of the child, the officer shall contact a local service provider or care coordinator who will facilitate the assignment of a case worker or to the Department of Family and Protective Services if a local service provider is not available.

According to the governor's veto message, "although House Bill 1771 is a well-intentioned tool to protect victims of human trafficking, it has unintended consequences. The bill takes away options that law enforcement and prosecutors can use to separate victims from their traffickers, and it may provide a perverse incentive for traffickers to use underage prostitutes, knowing they cannot be arrested for engaging in prostitution. Efforts to reduce trafficking are to be commended, and I have signed numerous laws this session cracking down on it. I look forward to working with the author on ways to separate victims from their traffickers, both physically and economically."

9. **H.B. 2348 (King/Zaffirini) – Volunteer Emergency Responders:** this bill would have: (1) provided that an employer, including a city, that employs 20 or more employees may not terminate, suspend, or terminate an employee who is a volunteer emergency responder and who is absent from or late to work because the employee is responding to a declared disaster in the employee's capacity as a volunteer emergency responder; (2) provided that such employee shall not be absent from work for more than 14 days in a calendar year unless the absence is approved by the employer; (3) required an employee described in Item (1), above, to make a reasonable effort to notify his or her employer that the employee may be absent or late; (4) authorized an employer to reduce the wages otherwise owed to the employee for any pay period because the employee took time off during that pay period to respond to an emergency, or require, unless otherwise provided by a collective bargaining agreement, the employee to use existing leave time for an

absence; (5) provided that an employee who is suspended or terminated in violation of the provisions of this bill is entitled to: (a) reinstatement to the employee's former position or a comparable position; (b) compensation for lost wages; and (c) reinstatement of any fringe benefits and seniority rights lost because of the suspension or termination; and (6) created a civil cause of action against an employer who violates the provisions of the bill.

According to the governor's veto message, "first responders play a vital role in disaster recovery, so I appreciate the good intentions of the author. But this does not mean we need to create a new civil cause of action so that employees who volunteer in disasters can sue their employers. House Bill 2348 would open the door to such lawsuits against both public and private employers. Employers have every incentive to accommodate their brave employees who serve as first responders, but they deserve the flexibility to develop their own leave policies for their employees, instead of having the State dictate the terms.

10. **H.B. 2475 (Guillen/Zaffirini) – Driver Responsibility Program:** would have provided that a person may provide information to the court to establish indigent status to reduce or waive surcharges under the driver responsibility program at any time during a period the person is enrolled in an installment plan to pay these surcharges.

According to the governor's veto message, "because I have signed House Bill 2048 into law, which repeals the Driver Responsibility Program, the changes made in House Bill 2475 are no longer necessary.

11. **H.B. 2856 (Morrison/Kolkhorst) – Disaster Remediation Contracts:** would have modified current law to provide that: (1) a disaster remediation contractor, for purposes of the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of existing improvements to real property performed because of damage or destruction to that property caused by a natural disaster, does not include a tax exempt entity; (2) the following conduct by a disaster remediation contractor constitutes a criminal penalty: (a) requiring a person to make a full or partial payment under a contract before the contractor begins work; (b) requiring that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered; and (3) it is an affirmative defense to prosecution for the offenses described in Item (2), above, if the disaster remediation contractor refunds any payment made in violation of Item (2), above, not later than the 15<sup>th</sup> day following the receipt of a written demand alleging a violation.

According to the governor's veto message, "House Bill 2856 attempts to address the very real problem of disaster-remediation contractors who take advantage of disaster victims. But it does so with a stiff criminal penalty in an area where civil remedies already exist, which could discourage well-intentioned, quality tradespeople from seeking work in Texas following a disaster. This could inadvertently harm victims and impede recovery. We must take a more measured approach to this issue—as was done in House

Bill 2320, which I have signed into law this session. I look forward to working with the author next session.”

12. **H.B. 3022** (Miller/Kolkhorst) – **Local Emergency Warning System**: this bill would have provided that: (1) a person who applies for an original or renewal drivers’ license may consent to disclosure of the person’s contact information to the city or county, or both, in which the person resides for the purpose of participating in an emergency warning system operated by the city or county; (2) for purposes of operating an emergency warning system for residents of a political subdivision, the political subdivision may contract with the Texas Department of Public Safety for disclosure by the department of the contact information of a resident of the political subdivision who consents to the disclosure for purposes of participating in the system; (3) the contact information obtained by a city or county as described in (2) may not be used or disclosed for any purpose other than enrolling a person in an emergency warning system and issuing warnings to the person through such a system; and (4) a participant in a local emergency warning system may request removal from the system.

According to the governor’s veto message, “House Bill 3022 would require the Texas Department of Public Safety to capture the contact information of driver’s license applicants who consent to being part of local emergency warning systems, and to work with local governments on creating those local warning systems. I appreciate the author’s good intentions, and I have signed important legislation this session that will help Texans prepare for disasters. But to ensure that the local emergency warning systems use data that is accurate, updated, and used appropriately, local governments—not the State—should be in charge of gathering and managing this type of data.”

13. **H.B. 3082** (Murphy/Birdwell) – **Unmanned Aircraft**: this bill would have: (1) provided that a person commits the criminal offense of operating an unmanned aircraft over or near a correctional facility, detention facility, or critical infrastructure facility if the person acts with criminal negligence (current law provides that a person must act intentionally or knowingly); (2) required a peace officer who investigates an offense described in (1) to notify the Department of Public Safety of the investigation, and provide other information as the department determines necessary; and (3) added a military installation owned or operated by or for the federal government, the state, or another governmental entity to the definition of “critical infrastructure facility” for purposes of the offense described in (1).

According to the governor’s veto message, “current law already imposes criminal penalties for the conduct addressed in House Bill 3082. This proposed legislation would expose too many Texans to criminal liability for unintentional conduct. Negligently flying a drone over a railroad switching yard should not result in jail time.”

14. **S.B. 746** (Cortes/Campbell) – **Annexation**: would have provided that: (1) if a city does not obtain the number of signatures on a petition required to annex an area, it may not annex any part of the area and may not adopt another resolution to annex any part of the area until the fifth anniversary of the date the petition period ended; and (2) if a majority

of qualified voters do not approve a proposed annexation at an election called for that purpose, it may not annex any part of the area and may not adopt another resolution to annex any part of the area until the fifth anniversary of the date of the adoption of the resolution.

According to the governor's veto message, "I have signed House Bill 347, which reforms municipal annexation procedures to provide property owners in all counties, regardless of population size, protection against forced annexation. Provisions in Senate Bill 746 are based on the tiered county system that was overhauled by House Bill 347. Disapproving Senate Bill 746 will allow the protections in House Bill 347 to work statewide without creating confusion."

15. **S.B. 1575** (Alvarado/Krause) – **Disaster Contracts Liability**: provides that a city performs a governmental function if, after a declaration of a state disaster, Government Code, the city enters into a contract for a purpose related to disaster recovery or takes an action under that contract.

According to the governor's veto message, "disaster-recovery tools are critically important in Texas, and this session I have signed into law important legislation that will help Texans rebuild from prior disasters and prepare for future ones. But Senate Bill 1575 goes too far in shielding municipalities from being sued for all sorts of contracts they may enter into for an unspecified period after a disaster declaration. I look forward to working with the Legislature on a more tailored approach to this issue next session."

16. **S.B. 1793** (Zaffirini/Longoria) – **State Travel Services**: would have applied to a governmental entity that has entered into one or more compacts, interagency agreements, or cooperative purchasing agreements with the Texas Facilities Commission, and would have provided that: (1) an officer or employee of a governmental entity who is engaged in official business of the governmental entity may participate in the comptroller's contract for travel services; (2) the comptroller may charge a participating governmental entity a fee not to exceed the costs incurred by the comptroller in providing services; and (3) the comptroller shall periodically review the fees and adjust the fees as necessary to ensure recovery of costs incurred in providing services to governmental entities.

According to the governor's veto message, "Senate Bill 1793 would have given government lawyers a pass on filling out a nepotism disclosure form prescribed by the State Auditor's Office. For procurement contracts worth at least \$1 million, this form compels agency employees to disclose relationships with, and direct or indirect pecuniary interests in, any party to the proposed contract with the state agency. Uncovering such ties to a potential vendor is important even if the procurement employee happens to be a member in good standing of the Texas Bar. Government lawyers should fill out the same nepotism disclosure form as everyone else at the agency."

17. **S.B. 1804** (Kolkhorst/Nevarez) – **Notification of Bond Conditions**: would have provided that: (1) as soon as possible, but not later than the next business day, after the date the magistrate issues an order imposing a condition of bond or modifying or

removing a condition, the magistrate must send a copy of the order to the appropriate attorney representing the state and to the chief of police in the city where the victim of the offense resides; (2) the clerk of the court must send a copy of the order to the victim at the victim's last known address as soon as possible, but not later than the next business day, after the date the order is issued; (3) a magistrate or court clerk may delay sending a copy of the order only if the magistrate or clerk lacks information necessary to ensure service and enforcement; (4) if the victim of the offense is not present when an order is issued, the magistrate must order a peace officer to make a good faith effort to provide notice of the order to the victim within 24 hours by calling the victim's last known phone number; (5) not later than the third business day after the date of receipt of the copy of the order, a law enforcement agency must enter into the Department of Public Safety's statewide law enforcement information system the following: (a) information required when entering protective orders or emergency protection order; (b) the date the order releasing the defendant on bond was issued; and (c) the court that issued the order releasing the defendant on bond; (6) a law enforcement agency must enter the information under (5), above, into the DPS's statewide law enforcement information system in the same manner that the agency enters the information for protective orders and emergency protection orders, regardless of whether the protective order's or emergency protection order's information is already in the system, or the same person is being protected.

According to the governor's veto message, "Senate Bill 1804 was a laudable effort to address domestic violence, until someone slipped in an ill-considered giveaway to a radioactive waste disposal facility. Unfortunately, the bill author's good idea about domestic violence has been dragged down by a bad idea about radioactive waste.

18. **S.B. 1861 (Menendez/Flynn) – Public Facilities Corporations:** would have provided, among other things, that certain public facilities corporation sponsors may finance, own, and operate certain multifamily residential developments.

According to the governor's veto message, "public facility corporations are a way for government entities to get in the business of affordable housing and issue conduit debt. To the extent Senate Bill 1861 would encourage taxing entities, including school districts and community colleges, to engage in activities that are outside of their core missions, it would distract those entities from improving student outcomes. Schools and community colleges should focus on educating students, and House Bill 3 provides the necessary resources to accomplish that goal."

## **Post-Session Update:** **Franchise Fee Elimination Bill Lawsuit**

**S.B. 1152** (Hancock/Phelan) authorizes a cable or phone company to stop paying the lesser of its state cable franchise or telephone access line fees, whichever are less for the company statewide. As cities head into budget season, city officials should estimate their losses, which will begin on

January 1. The bill requires providers to file, not later than October 1 of each year, an annual written notification with each city of which fee will be eliminated.

The industry's reasoning for the bill is 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. 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 bill isn't about double-taxation, or taxation of any kind. Rather, it forces city taxpayers to subsidize the cost of doing business for the companies. The bill is simply 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, it is nothing more than a windfall to massive corporations on the backs of taxpayers.

Based on the above, the pleadings in the existing "small cell" lawsuit will be amended shortly to include S.B. 1152. The small cell lawsuit, brought in 2017 by a coalition of more than 40 cities led by the City of McAllen, challenges the unconstitutionally low right-of-way rental fees in SB. 1004. That bill, passed during the 2017 regular session, requires a city to allow access for cellular antennae and related equipment ("small cell nodes") in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, street signs, and other poles.

S.B. 1004 caps a city's right-of-way rental fee at around \$250 per small cell node. The price per node in the bill is, like the fee elimination in S.B. 1152, a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities.

Make no mistake. Senate Bill 1004 and S.B. 1152, if left unchecked, could lead the way to the complete elimination of all franchise fees in future sessions. That is why the lawsuit to prove that they are unconstitutional is so important to Texas cities.

Interested city officials who want to discuss joining the lawsuit against both S.B. 1004 (2017) and S.B. 1152 (2019) can get further details and join the coalition by [emailing Kevin Pagan](#), city attorney for McAllen, or calling him at 956-681-1090.

## **Post Session Update: State Budget**

League staff has completed an analysis of the state budget. The following chart shows the differences over the coming biennium in city-related items from the current budget:

<b>Budget Item</b>	<b>2018-2019 appropriated</b>	<b>2020-2021 appropriated (H.B. 1)</b>	<b>Change</b>
Mixed Beverage Tax	\$443 million	\$493 million	\$50 million
Library Resource Sharing	\$37.6 million	\$39.6 million	\$2 million
Local Library Aid	\$7.15 million	\$8.9 million	\$1.75 million
Local Parks Grants	\$28.7 million	\$36 million	\$7.3 million
LEOSE Training	\$12 million	\$12 million	\$0
Defense Community Grants	\$20 million	\$30 million	\$10 million
<b>Total:</b>	<b>\$548.45 million</b>	<b>\$619.5 million</b>	<b>\$71.05 million</b>

## **2019 City Tax and Budget Deadlines Memo Now Available**

Every year, TML posts a memo containing the annual calendar deadlines for the budget adoption and tax rate setting process. The 2019 document has recently been posted online and can be accessed [here](#). (Note: Because the changes made to the property tax rate adoption process under S.B. 2 are not effective until January 1, 2020, the memo does not incorporate those provisions.)

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