



Legislative UPDATE

August 21, 2020
Number 33

Big Three Unveil Police Budget Proposal

On Tuesday, Governor Greg Abbott, Lieutenant Dan Patrick, and Speaker Dennis Bonnen held a press conference in Fort Worth unveiling their proposal on police funding. The Governor indicated that the proposal will be introduced during the 87th Legislative Session in 2021. The plan states that “any city that defunds police will have their property tax revenue capped at current levels.” At the time of publication, there was no other information on what the legislation will look like other than the short statement.

Some cities have asked the League if the proposed law, if enacted, would mean they can’t make very modest reductions in public safety spending either next year or in some future year (the proposal was purportedly in response to a city that was said to be cutting their police budgets by one-third). For instance, could a city suffering the financial effects of Coronavirus that makes an across-the-board budget cut of three percent find themselves penalized under such a law for having “defunded” law enforcement? While we don’t know the answer until we see the details, there is some evidence from state leaders’ actions on their own budgets that suggests the answer should be no. The state budget that was passed during the 2017 legislative session, for example, cut general revenue spending on the state’s law enforcement agency—the Department of Public Safety—by five percent (almost \$100 million) from fiscal year 2016/17 to 2018/19.

To read the Governor’s press release, click here: <https://gov.texas.gov/news/post/governor-abbott-lt-governor-patrick-speaker-bonnen-announce-legislative-proposal-on-police-funding>.

The League will continue to monitor this issue.

Federal Appeals Court Issues Opinion: Upholds FCC Cap on Small Cell Right-of-Way Fees

On August 12, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *City of Portland v. the United States of America/Federal Communications Commission*. The opinion is in response to several consolidated lawsuits relating to FCC orders preempting municipal authority over small cells and related equipment. The League is participating in the City of Portland-led national coalition.

The opinion was a mixed bag for cities, with most issues decided in favor of the cellular industry. Most of those issues are important, but very technical. They won't be covered here. The most important issue involves a cap on right-of-way rental (a.k.a., "franchise") fees for small cell deployment. The panel upheld the provision in the FCC's "small cell order" that limits a city's right-of-way fees to "an amount needed to recover administrative costs."

The FCC ordered a presumptively reasonable recurring fee to be \$270 per site, per year. Cities are expressly prohibited from recovering any cost not directly related to rights-of-way maintenance, charging fees above cost recovery, or recovering "unreasonable" costs, such as excessive contractor or consultant fees.

The federal court challenge is part-and-parcel with a separate state court lawsuit brought by a coalition of Texas cities. That lawsuit claims that 2017 Texas legislation capping small cell rental fees at \$250 annually per node, and 2019 legislation eliminating a portion of video franchise fees or telephone access line fees, violates the Texas Constitution's "donations" provisions.

The FCC order and the Texas legislation, if left unchecked, could lead the way to either substantial erosion or the complete elimination of all franchise fees in the future. Some estimates show future revenue losses to cities rising into the hundreds of millions of dollars annually. That's why the lawsuits, and the League's support of them, are so important to Texas cities.

Legislative Budget Board Releases Budget Instructions for State Agencies

The Legislative Budget Board (LBB), along with the Governor's budget office, issued instructions to state agencies this week directing them to submit their Legislative Appropriations Request (LAR) with a base funding amount equal to their adjusted 2020-2021 base.

Last month, Comptroller Glenn Hegar estimated that the Legislature will have \$4.6 billion less to spend than originally projected for the 87th Legislature. Despite revenue uncertainty leading up to the legislative session, state agencies will not be required to request less money for 2022-2023 than what is currently budgeted for in the 2020-2021 biennium.

Earlier this year, leadership asked state agencies to make a 5 percent reduction in expenditures for the current biennium. Any requests for more money, including the restoration of the 5 percent cut, must be submitted as an exceptional item.

You can read the letter in full here:

https://www.lbb.state.tx.us/Documents/Instructions/LAR/LAR_Policy_Letter.pdf).

City-Related News from Other Organizations

Focused Advocacy has released an updated list of Requests for Information (RFIs):

New RFIs: House Public Education, Human Services, Transportation Committees

Normal legislative processes, including public hearings on interim charges, have been interrupted due to COVID-19 public health protocols. The Texas Capitol remains closed to the general public, and most legislative offices are working remotely. In response, House committees began issuing "Formal Requests for Information" as a way to gather public testimony on the committees' interim charges and other special subjects.

Focused Advocacy remains ready to help you formulate, edit and file your community's responses to these RFIs. To learn more about the RFI process and the ways we can help, please [contact us](#).

Please be aware that responses to the RFI issued by the House Select Committee on Mass Violence Prevention & Community Safety regarding Duty 4 are due Friday, Aug. 21 by 5 p.m.

The following new RFIs were published since our last report:

House Public Education Committee (Multiple RFIs)

Interim Charge 1, Special HB 3 Questions

[Read the RFI](#)

Interim Charge 2, Special Technology Gap Questions

[Read the RFI](#)

Interim Charge 3

[Read the RFI](#)

Interim Charge 4

Read the RFI

Submission Deadline: Sept. 30

House Transportation Committee

Interim Charges 1-5, Special COVID-19 Questions

Read the RFI

Submission Deadline: Sept. 18

House Human Services Committee

Interim Charges 2.1, 3

Read the RFI

Submission Deadline: Oct. 2

RFIs posted by House Committees to date:

- **Due Aug. 21:** House Select Committee on Mass Violence Prevention & Community Safety Duty 4. Review RFI
- **Due Aug. 24:** House Select Committee Mass Violence Prevention & Community Safety Duty 1, Duty 2. Review RFI
- **Due Aug. 28:** House Appropriations Subcommittee on Article II Charges 1-7. Review RFI
- **Due Aug. 31:** House International Relations & Economic Development Charges 1-6. Review RFI
- **Due Sept. 1:** Higher Education Special Questions Re: Impact of COVID-19 (Review RFI), Charge 1 (Review RFI), Charge 2 (Review RFI), Charge 3 (Review RFI), Charge 4 (Review RFI), Charge 5 (Review RFI)
- **Due Sept. 8:** House Insurance Charges 1-3 and and special questions about COVID-19 and Hurricane Hanna. Review RFI
- **Due Sept. 14:** House Ways and Means Charges 1.3, 2, 3 and 4. Review RFI

Interim Charges Formal Requests for Information

- **Due Sept. 14:** House Culture Recreation and Tourism Charges 1-6. Review RFI
- **Due Sept. 18:** House Elections Charge 1-3. Review RFI
- **Due Sept. 18:** House Transportation Charge 1-5 and special COVID-19 questions. Review RFI
- **Due Sept. 25:** Natural Resources Charges 1-4, ground and surface water interactions, water markets in Texas. Review RFI
- **Due Sept. 25:** Human Services Charges 2.2-2.5, 4, and 5, Health Care Access and Medicaid, Impacts of COVID-19 on Long-Term Care Facilities. Review RFI
- **Due Sept. 30:** House Appropriations Charges 1-8. Review RFI
- **Due Sept. 30:** House Appropriations Subcommittee on Infrastructure, Resiliency, & Investments Charges 1-3. Review RFI
- **Due Sept. 30:** House Appropriations Subcommittee on Articles VI, VII, VIII - Charges 1-3. Review RFI
- **Due Sept. 30:** House Appropriations Subcommittee on Article III Charges 1-4. Review RFI
- **Due Sept. 30:** House Appropriations Subcommittee on Articles I, IV and V Charges 1-6. Review RFI
- **Due Sept. 30:** House Appropriations Subcommittee on Article II Charges 1-7. Review RFI
- **Due Sept. 30:** House Public Education Charge 1, Special questions on HB 3 (Review RFI), Interim Charge 2, Special question on Technology Gap (Review RFI), Interim Charge 3 (Read the RFI), Interim Charge 4 (Read the RFI)
- **Due Oct. 1:** Select House Committee on State Health Care Costs Charges 1-3. Review RFI
- **Due Oct. 2:** House Human Services Charges 2.1, 3. Review RFI
- **Due Oct. 30:** House Licensing & Administrative Procedures Charges 1-4. Review RFI
- **Due Nov. 13:** House Ways and Means Charge 1.1 (Senate Bill 2). Review RFI

Resolutions for the 2020 TML Annual Conference

The TML Constitution states that resolutions for consideration at the annual conference must be submitted to the TML headquarters 45 calendar days prior to the first day of the Annual Conference. For 2020, this provision means that resolutions from any member city, TML region, or TML affiliate must arrive at the TML headquarters no later than 5:00 p.m. on August 31, 2020.

For details on the submission process, go to:

https://www.tml.org/DocumentCenter/View/2020/Memo-for-Cities-2020-05312020_final_corrected-date

To learn more about how resolutions fit within the League's Legislative Policy Development Process, go to:

<https://www.tml.org/DocumentCenter/View/1859/2019-2020-Policy-Process-53120>.

Coronavirus (COVID-19) Updates

The Texas Municipal League is open for business. The building is closed to all but essential personnel and most staff is working remotely, but the League remains open for business and is fully ready to serve. Cities are encouraged to call or email for legal assistance, help with ordinances, or for general advice or assistance. Let us know how we can assist you and your city.

Call TML staff at 512-231-7400, or email Scott Houston for legal assistance at SHouston@tml.org; Rachael Pitts for membership support at RPitts@tml.org; and the training team for questions about conferences and workshops at training@tml.org.

The League has prepared a coronavirus clearinghouse [web page](#) to keep cities updated. In addition, everyone who receives the *Legislative Update* should receive a daily email update each afternoon with information on new developments. The daily email updates will be our primary means of communication during the pandemic. Those emails are being archived [chronologically](#) as well as by [subject matter](#).

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