Summit Delegates

Texas Municipal League
Municipal Policy Summit

Chair:	Connie Schroeder, Mayor, Bastrop
Vice-Chair:	Rudy Metayer, Councilmember, Pflugerville
TML Board Representative:	Tito Rodriguez, Councilmember, North Richland Hills

Ryan Adams, Director of Customer Service and Public Affairs, Denton
Robin Alaniz, Councilmember, Goliad
Tennell Atkins, Councilmember, Dallas
Sally Bakko, Director of Policy and Governmental Relations, Galveston
Jeffrey A. Ballew, Fire Chief/EMC, Edgecliff Village
Cathy Bennett, Mayor, Ivanhoe
Jeffrey L. Boney, Mayor Pro Tem, Missouri City
Cheree Bontrager, Assistant Director of Human Resources, University Park; Texas Municipal Human Resources Association
Andy Brauninger, Mayor, Huntsville
Ben Brezina, Assistant City Manager, Frisco
Cindy Burchfield, Councilmember, Daisetta
Sara Bustilloz, Director of Communication, Round Rock, Texas Association of Municipal Information Officers
Wayne Carpenter, Mayor, Belton
Jesse Casey, Mayor, Hallsville
Pat Chesser, City Attorney, Brownwood
Crystal Chism, Councilmember, DeSoto
Kevin Clark, Councilmember, Sunnyvale
Dana Conklin, Councilmember, Melissa
Victor Conley, Fire Chief, Irving; Texas Fire Chiefs Association
Victor Contreras, Mayor, Marion
Chris Copple, Assistant City Manager, Cedar Park
Chad Cowan, City Attorney, Anson
Michael Crain, Councilmember, Fort Worth
Amanda Cummings, City Secretary, Shallowater
John Davis, Mayor, Balmorhea
Brandon Davis, City Attorney, Dayton
Christine DeLisle, Mayor, Leander
Mary Dennis, Mayor, Live Oak
Gene Ellis, Chief of Police; Assistant City Manager, Belton; Texas Police Chiefs Association
Tammy Embrey, Director, Intergovernmental Relations, Corpus Christi

Brian England, City Attorney, Garland
Habib H. Erkan, Assistant City Manager, Burnet
Victor Flores, City Attorney, Brownsville; Texas City Attorneys Association
Brie Franco, Intergovernmental Relations Officer, Austin
Dustin Mario Fraticelli, Commissioner, Vernon
Andrew Freeman, Assistant City Manager, Amarillo
George Fuller, Mayor, McKinney
Beverly Gaines, Mayor Pro-Tem, Webster
Pete A. Galvan, Commissioner, San Benito
Kimberly Garrett, Director, Parks and Recreation Department, Georgetown; Texas Recreation and Park Society
Jesus A. Garza, City Manager, Victoria
Lori An Gobert, Mayor, Columbus
Carrie Gordon, Mayor, Balch Springs
Holly Gray-Moore, Mayor Pro-Tem, Roanoke
Rick Grady, Councilmember, Plano
Dr. Christopher Harvey, Mayor, Manor
Mike Hayes, City Attorney, Kerrville
Stephen Haynes, Mayor, Brownwood
Lorraine Hehn, Councilmember, Manvel
Allison Heyward, Councilmember, Schertz
David Hill, Councilmember, Waxahachie
Gerald Hodges, Manager of Legislative Affairs, Grand Prairie
Merlyn Holmes, Councilmember, Kilgore
Michelle Howarth, Councilmember, Sachse
Sid Hudson, Chief Information Officer, McKinney; Texas Association of Government Information Technology Managers
Rebecca Huerta, City Secretary, Corpus Christi; Texas Municipal Clerks Association
Stanley M. Jaglowski, Deputy Mayor Pro-Tem, Lancaster
Jim Jarratt, Mayor, Granbury
Victoria Johnson, Councilmember, Burleson
Javier Joven, Mayor, Odessa
Latrelle Joy, Councilmember, Lubbock
Bill Kelly, Director of Government Relations, Houston
Steve Killen, Director of Development Services, Stephenville; Texas Association of Municipal Health Officials
Lindsey Koskiniemi, City Manager, Sweeny
Blu Kostelich, Chief Financial Officer, Lubbock; Government Finance Officers Association of Texas
Michael Kovacs, City Manager, Fate

Jack Ladd, Councilmember, Midland
Carolyn Lofton, Mayor, Marlin
Csilla Ludanyi, Finance Director, Nassau Bay
Dennis Maloney, Councilmember, College Station
Clay Mansell, Economic Development Manager, Duncanville
Erika Martinez, Assistant Director of Operations, Public Health, Laredo
Stephen Mason, Mayor, Cedar Hill; Texas Association of Black City Council Members
Selso Mata, Chief Building Official, Plano; Building Officials Association of Texas
Grace Matlock, Project Manager, Jarrell
James Mize, Mayor, Nacogdoches
Robin Mouton, Mayor, Beaumont
Debbie A. Nash-King, Mayor, Killeen
Shawn Oubre, City Manager, Woodway
Manny Pelaez, Councilmember, San Antonio
Erin Perez, Councilmember, Live Oak
Paula Portugal, Mayor, Paris
Guillermo Quintanilla, Mayor Pro-Tem, Addison; Texas Association of Mayors, Councilmembers and Commissioners
Maria Quintanilla, City Manager, Ransom Canyon
Rick Ramirez, Intergovernmental Relations Manager, Sugar Land
Natalie Raulston, Senior Management Analyst, Arlington
Regina Reed, Library Director, Leon Valley; Texas Municipal Library Directors Association
Thomas Reeves, Director of Public Affairs, Baytown
Doyle Robinson, Mayor, Panhandle
Claudia Rodriguez, Councilmember, El Paso
Nathan Rodriguez, Councilmember, Dilley
Rick Schroder, Chief Administrative Officer, Johnson City
Josh Schroeder, Mayor, Georgetown
Cathy Skurow, Mayor, Portland
Tim Slifka, Purchasing Manager, Southlake; Texas Public Purchasing Association
Geary Smith, Mayor, Mexia
Landra Solansky, Court Administrator, Seguin; Texas Court Clerks Association
D.E. Sosa, City Manager, Groves
Larry Spears Jr., Mayor, Orange
Cathy Stein, Councilmember, Dalworthington Gardens
Shane Stokes, City Manager, Pampa; Texas City Management Association
Mary Lynn Stratta, City Secretary/Legislative Director, Bryan
Michael Thane, Director of Utilities, Round Rock; Texas Municipal Utilities Association
Val Tizeno, City Attorney, Port Arthur
Robert Upton, Director of Engineering and Public Works, Pearland; Texas Chapter of American

Public Works Association
Ricardo Villarreal, Mayor, Palmview
Amy Waldorf, Councilmember, Quintana
Elizabeth Walker, Assistant City Manager, Brownsville
Jon Weist, Intergovernmental/Legislative Officer, Irving
Jeffrey Widmer, Chief Building Official, Rockwall
Suzette Williams, City Administrator, Idalou
Wade Willson, City Manager, Slaton
Lee Woodward, City Secretary, La Porte
Marissa Ximemez, Councilmember, Floresville; Association of Hispanic Municipal Officials

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Important:
Please Read Prior to Reviewing Materials

2022 Texas Municipal League Municipal Policy Summit
Delegate Instructions

The 2022 Municipal Policy Summit serves two very important goals: (1) receive input from a cross-section of League members to ensure that the 2023-2024 legislative program is representative of the membership's wishes; and (2) educate the summit delegates on the myriad legislative issues faced by cities. This year's format will allow us to accomplish those goals, but we will need delegates to review the following instructions to make that happen in an efficient and timely manner.

- The League now advocates pursuant to a "fixed" legislative program. The idea behind the TML board's decision to go to a fixed program is that a very large percentage of the positions remain constant each session. Thus, instead of spending so much time on briefing subjects and related positions that rarely – if ever – change, we provide written briefing materials on those subjects for delegates to review. Keep in mind that "fixed" doesn't mean the program can't be changed. It just means that we won't make you go through the motions of voting on positions with which you already understand and agree.

- The current fixed program is included as an appendix in the Municipal Policy Summit briefing materials. (Those same positions listed in the fixed program are also listed at the end of the briefing materials for each subject.)

- Your role as a delegate is to review the briefing materials and the fixed program positions. If you see a position that you would like to discuss modifying, you will be recognized during the meeting to make the necessary motions.

- In addition, if you would like to discuss an issue and/or add a position that is not included in the briefing materials, you are welcome to notify Monty Wynn, Director of Grassroots and Legislative Services, in advance so staff can be prepared to brief the item, though this is not required. Monty can be reached at monty@tml.org.

AGENDA

Texas Municipal League
Municipal Policy Summit
Hilton Austin
August 22-23, 2022

Monday, August 22

7:45-9:00 a.m.	**Registration and Breakfast**
9:00-9:20 a.m.	**Introduction, TML Policy Development Process, Staff Roles, and Agenda Process**
9:20-10:30 a.m.	**2023 Legislative Landscape**
10:30-10:45 a.m.	**Break**
10:45-11:15 a.m.	**Harmful Legislation in General/Preemption**
11:15-Noon	**Tax and Revenue**
Noon-1:00 p.m.	**Lunch**
1:00-1:45 p.m.	**Tax and Revenue (continued)**
1:45-3:15 p.m.	**Regulation of Development**
3:15-3:30 p.m.	**Break**
3:30-5:00 p.m.	**Utilities and Transportation**
5:00 p.m.	**Reception**

Tuesday, August 23

8:00-9:00 a.m.	**Breakfast**
9:00-9:30 a.m.	**Communications and Public Relations**
9:30-10:30 a.m.	**General Government**

- **Community Advocacy**
- **Public Safety**
- **Purchasing**
- **Personnel**
- **Elections**
- **Municipal Court**
- **Administration**

10:30-10:45 a.m.	**Break**
10:45 a.m.-Conclusion	**General Government (continued)**
Conclusion	**Adjourn**

The Texas Municipal League Grassroots Policy Development Process

Member City Input:

Annual Business Meeting Resolutions and/or Interim Municipal Policy Summit

The primary function of the Texas Municipal League is advocating on behalf of its member cities. That's the way it has been since the League's formation in 1913 because many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials. Now, just as they did over a century ago, newly elected mayors and councilmembers quickly realize the legislature can address virtually any aspect of city government.

This fact is vividly demonstrated during each legislative session. For example, during the 2021 session, nearly 7,000 bills or significant resolutions were introduced; more than 2,000 of them would have affected Texas cities in some substantial way. In the end, over 1,000 bills or resolutions passed and were signed into law; over 240 of them impacted cities in some way.

The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2021, that percentage has increased to 31 percent. In other words, almost a quarter of the legislature's work is directed at cities, and much of that work aims to limit municipal authority.

Based on a legislative program that is developed by member city officials, the League, through its grassroots, advocates for or against those efforts. To develop the program, city officials provide input in primarily two ways.

First, member city officials can participate in the League's Municipal Policy Summit during each interim. The report of the summit takes the form of a resolution that is submitted to the annual conference. The goal of the committee process is two-fold: (1) it allows input on the legislative program from a broad cross section of cities and city officials; and (2) it educates new city officials to the legislative issues faced by cities. The summit participants are appointed by the TML President based on volunteers and others chosen to balance the demographics of the TML membership at large.

The Summit is an intensive, two-day workshop during which League staff briefs the participants on the myriad legislative issues faced by cities. Most are issues that arise each session, but several consist of solicited or unsolicited issues brought by city officials. Even if no changes are recommended to the "fixed" program, which is an unlikely prospect, staff will fulfill its educational goal through continued briefing on the issues. After each subject-matter briefing, the participants make concise recommendations on the issues. Those recommendations are placed into resolution form and submitted to the League's annual business meeting, discussed next.

Second, a member city, TML region, or TML affiliate may submit a resolution for consideration at the League's annual conference. Each city is asked to provide one delegate to serve as its liaison at the meeting. The delegates are briefed on the content of the resolutions and given a chance to discuss and vote on whether they merit inclusion in the legislative program. The resolutions form the basis of a "fixed" legislative program, under which – each session – modifications to the program will be considered at a future Summit, business meeting, or TML Board meeting.

Detailed information relating to resolution submittal is provided to each member city, TML affiliate organization, and TML region well in advance of the due date.

The somewhat complex policy development process is necessary to ensure that the League advocates as directed by its members. The League is nothing without the involvement and expertise of its members, and participation in the process is an invaluable part of protecting municipal authority.

The TML Legislative Philosophy

The TML approach to the 2023 session will undoubtedly be guided by principles that spring from a deeply rooted TML legislative philosophy:

- The League will vigorously oppose any legislation that would erode the authority of Texas cities to govern their own local affairs.
- Cities represent the level of government closest to the people. They bear primary responsibility for the provision of capital infrastructure and for ensuring our citizens' health and safety. Thus, cities must be assured of a predictable and sufficient level of revenue and must resist efforts to diminish that revenue.
- The League will oppose the imposition of any state mandates that do not provide for a commensurate level of compensation.

TML Legislative Policy Process Schedule

The League's 2023-2024 legislative policy development schedule is roughly as follows:

> **October 2021** – the TML membership considered resolutions at the 2021 Annual Conference at the annual business meeting.
>
> **May 2022** – the chair, vice-chairs, board representative, and participants of the League's Municipal Policy Summit were appointed by the TML President.
>
> **July 2022** – Municipal Policy Summit materials are distributed to the membership.
>
> **August 2022** – the Municipal Policy Summit, a two-day policy briefing at which the members made recommendations for the League's 2023-2024 legislative program, meets.

October 2022 – the report of the Municipal Policy Summit, along with any other resolutions, will go forward to the annual business meeting at the 2022 Annual Conference.

December 2022 – the TML Board will finalize the League's 2023-2024 legislative program based on resolutions passed in both 2021 and 2022.

Suggestions for City Officials

City officials can significantly impact the outcome of the 2023 legislative session. When making recommendations for the League's Legislative Program, they should keep in mind the following:

1. **There is a practical limit to what the League – or any group, for that matter – can accomplish in any legislative session.** It is obvious that all resources – human, financial, and political – are limited, and no group can hope to achieve all its legislative objectives. The most powerful interest groups in the state sometimes come away from a legislative session bruised and battered. On occasion, the best that can be expected is that damage be mitigated.

2. **TML will expend the vast majority of its resources killing bad bills.** This has always been so and will probably always be the case. At one point during the 2021 regular session, the League was monitoring more than 2,000 bills or resolutions, many of which were bad for cities. The League's legislative philosophy has traditionally been, first and foremost, to defeat bad legislation and, secondarily, to seek passage of beneficial legislation as time, resources, and political realities permit.

3. **It is unlikely that any other interest group in the state monitors and opposes as many bills as does the Texas Municipal League.** During recent legislative sessions, the League took steps to oppose bad legislation dealing with everything from annexation to zoning and from autonomous vehicles to tree preservation. The breadth of the League's legislative focus becomes obvious each year when TML completes and submits its state-mandated lobbyist registration form. One schedule of the form asks which of 83 subject matters are of interest to the organization. All 83 fall within the League's areas of interest.

4. **Unfortunately, the number of bad city-related bills grows almost every year. (Please see the chart on the next page.)** As a result, the League has been forced to expend an ever-greater percentage of its resources simply fending off bad ideas.

5. **Given the League's finite resources, and because vast amounts of those resources are necessarily expended in defeating bad legislation, the League must very carefully select bills that it will support or for which it will attempt to seek passage.** A sharply focused legislative program is more likely to lead to success than is a very

large and wide-ranging program. In addition, supporting a bill that has a low probability of passage requires a large amount of time and political resources that can be used more productively in other ways. **Thus, it is important to advocate only those initiatives that are truly important and that have a realistic chance of passage.**

Year	Total Bills Introduced*	Total Bills Passed	City-Related Bills Introduced	City-Related Bills Passed
2003	5754	1621	1200+	110+
2005	5369	1397	1200+	105+
2007	6374	1495	1200+	120+
2009	7609	1468	1500+	120+
2011	6303	1410	1500+	160+
2013	6061	1437	1700+	220+
2015	6476	1329	1600+	220+
2017	6800	1220	2000+	290+
2019	7541	1437	2000+	330+
2021	6927	1073	2000+	240+

*Includes bills and proposed Constitutional amendments; regular sessions only.

6. How can summit participants identify initiatives that are truly significant and that merit a place in the TML legislative program? Committee members may wish to ask the following questions about each discussion item:

- **Does the initiative have wide applicability to a broad range of cities of various sizes (both large and small) and in various parts of the state?**
- **Does the initiative address a core municipal issue, such as erosion of local control and preservation or enhancement of municipal revenue?**
- **Will the initiative be vigorously opposed by strong interest groups and, if so, will member cities commit to contributing the time and effort necessary to overcome that opposition?**
- **Is this initiative, when compared to others, important enough to be part of TML's list of priorities?**
- **Is this initiative one that city officials, more than any other group, should and do care about?**

The foregoing suggestions are not meant to imply that TML can't pass good, solid legislation. It can, it has in the past, and it will again. The suggestions are meant merely to emphasize the fact that any group, to succeed, must use its resources and its political strength wisely and selectively.

Categories of Legislative Positions

Legislative positions should reflect one of four categories that will direct League staff. Keep in mind that there is a difference between "seek introduction and passage" and "support."

- **Seek Introduction and Passage** means that the League can attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as "TML bills." **These bills require an enormous amount of time and resources, and the committee should be very cautious about putting items in this category.**

- **Support** means the League will attempt to obtain passage of the initiative if it is introduced by some other entity.

With very few exceptions, any item that makes its way into the 2023-2024 TML Legislative Program should be categorized by the two terms above, or by a recommendation that TML "**oppose**" or "**take no position**."

League staff will, based upon the foregoing principles and its knowledge of current legislative realities, determine the amount of time and resources devoted to any item in the program. City officials serving throughout the process is an essential part of protecting municipal authority. The League is nothing without the involvement and expertise of its members.

Have questions or comments? Contact JJ Rocha, TML Grassroots and Legislative Services Manager, at JJ@tml.org.

How to Submit a Resolution

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 2022, 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 22, 2022**.

PREEMPTION/HARMFUL LEGISLATION IN GENERAL

When it comes to legislative advocacy in Austin, cities' advocacy efforts stem from an overarching principle: Empower Texas cities to do the state's local work.

There are a couple of concepts that are critical to supporting that principle. First, local officials know best how to govern their cities. Unlike state legislators, who are elected from districts that include portions of cities, or may include entire cities along with other disparate areas, city officials are tasked with representing only those within the city limits, who form unique and well-defined communities of interest. As such, city officials and city employees perform all of their work with the goal of bettering the city in a way that is aligned with the vision of city residents. As the government closest to those residents, there is a level of local accountability in city government that simply doesn't exist at higher levels of government.

Secondly, the principle recognizes the inherent value of the partnership between the state legislature and city governments. Because the state legislature isn't in an optimal position to tackle local issues, they should consider policies (or reject policies) with an eye towards preserving local officials' discretion in addressing issues in a way that makes sense for each unique community. Doing so ensures that cities are in the best position to help carry out the common vision shared with the state legislature on moving the state forward. Doing so also places value on a bottom-up regulatory scheme that reflects local priorities, instead of top-down uniform regulation that fails to account for different city-specific challenges.

Put a different way, how does a legislator from the Panhandle know what's best for a city on the Gulf Coast? How could a person who grew up in the deserts of far West Texas know what's best for the Piney Woods of deep East Texas? Is a state representative from a city under 1,000 population in the best position to make decisions for those living in some of the biggest cities in the country? Texas' size and diversity doesn't lend itself easily to broad-strokes regulation from Austin.

Some lawmakers disagree. It's been commonplace to hear legislators decry the proverbial "patchwork quilt" of regulation from city to city over the last decade or so. Some legislators frame their assault on local control as a "protection of liberty" or in furtherance of property rights. Texas cities have seen this justification for a number of proposals over the years and many are mentioned throughout these materials.

While legislation that is harmful to local governments is not new, whether it be unfunded mandates, local preemption, or otherwise, perhaps the nadir for the concept of local control occurred following the 2017 regular session and into the 2019 session. When the dust settled on the 2017 regular session, many anti-city measures failed to secure final passage. This prompted the governor to order a special session, and his agenda for the special session focused on concepts that had long garnered opposition from Texas cities. Of the 20 topics added to the special session call, several would have restricted or preempted Texas cities. The city-related topics added to the call included:

1. Property tax revenue caps
2. Spending caps for cities equal to population growth plus inflation (this bill was not filed during the regular session)
3. Annexation reform
4. Tree ordinance preemption
5. City permit vesting reform
6. City permit streamlining
7. Cell phone/texting preemption

Ultimately only annexation reform passed during the 2017 special session, but the anti-city rhetoric during the special session set the stage for a 2019 session that focused, in part, on harming local governments, by the express admission of some high-level state legislators. The 2019 session saw the passage of legislation effectively ending non-consent annexations in Texas, legislation that further limited the amount of property tax revenue cities could generate, legislation that preempted cities' ability to regulate building materials, and legislation that mandated a shot-clock on all subdivision plat and plan approvals. At the same time as the legislature passed these bills, there was a push for legislation that would prevent cities from using lobbyists or associations to engage in the state legislative process, including the ability to educate city officials on state legislation that impacts their cities.

Dozens of preemption bills have been filed over the last several legislative sessions, ranging from preemption of citizen-initiated oil and gas drilling ordinances, to preemption of ride-sharing regulations, to the prohibition of local regulations related to plastic bags and payday lending. Enough preemption bills have passed in recent years to markedly shift authority on many issues from city councils to a more centralized state government in Austin.

Attempts have been made in recent sessions to bypass piecemeal approaches to preemption and pass broadly-worded legislation that would seriously hinder—if not eliminate—home rule authority for cities in Texas. The first major attempt to do so was S.B. 1172 in 2017. The bill dealt, perhaps innocently enough, with preemption of local agricultural seed regulations. However, when the bill was being considered on the House floor, an amendment was added that would have authorized a person to file suit to enjoin the enforcement of a city ordinance if the person was required to obtain a license, permit, or registration issued by the state. Needless to say, the floor amendment went well beyond preemption of seed ordinances, and would have essentially prevented the application of most city ordinances to state-licensed businesses (and buried that broad preemption language in a little-known provision in the Texas Agriculture Code, no less). Fortunately, city opposition eventually led the House sponsor to remove the offending language before the bill finally passed.

Several similar "super-preemption" bills were filed in 2019, with S.B. 1209 by Senator Hancock getting voted out of the Senate before stalling in the House. In 2021, the concept was refiled as H.B. 610 by Representative Swanson. Despite overwhelming opposition to the bill in committee, the bill was reported out of committee before the clock running out on the bill in the House. Further attempts were made to sneak the super-preemption language to a less controversial bill in the form of a floor amendment, but cities were able to thwart that effort.

2021 saw a number of issue-specific preemption bills pass. Two that received the most publicity were H.B. 1900 by Representative Goldman and H.B. 1925 by Representative Capriglione. H.B. 1900 prohibits cities with populations over 250,000 from adopting budgets that reduce the appropriation to local police departments. If a city is found by the governor's office to have lowered the police appropriation in the budget, the city is subject to numerous penalties, including among others, a property tax revenue cap, possible disannexation of territory from the city, and withholding of sales tax revenue.

H.B. 1925 effectively prohibits a city from allowing homeless individuals to camp on public property in the city limits. The bill generally makes it a Class C misdemeanor for a person to camp on public city property, and preempts any local ordinances that are not as stringent as state law. H.B. 1925 passed in direct response to the City of Austin's repeal of a homeless camping ban within the city.

Other less-controversial preemption bills passed, as well. For instance, S.B. 398 by Senator Menendez prohibits cities from prohibiting or restricting the installation of a solar energy device by a residential or small commercial customer, with certain exceptions. H.B. 17 by Representative Deshotel prohibits a city from adopting or enforcing an ordinance, resolution, regulation, code, order, policy, or other measure that has the purpose, intent, or effect of directly or indirectly banning, limiting, restricting, discriminating against, or prohibiting natural gas connection for residential or commercial properties. This preemption bill passed even though there was no evidence of any Texas city seeking to pass such an ordinance.

Preemption attempts are so prolific that it often doesn't make sense to have individual topic defensive positions (e.g., paid sick leave, payday and auto title lending, etc.). A comprehensive position better serves League staff in their lobbying efforts.

The TML Legislative Program provides that the League oppose legislation that would: (1) erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities; and/or (2) provide for state preemption of municipal authority in general.

REVENUE AND FINANCE

REVENUE CAPS

Finally, after more than a decade of failed attempts to adopt a revenue cap on city and county tax rates, the legislature adopted Senate Bill 2 in 2019. Rooted in the so-called Taxpayer Bill of Rights, versions of which have been enacted in other states, a revenue cap prevents a city from raising more property tax revenue than it raised in the previous year without first conducting a popular election, with some allowances made for population growth and/or inflation. S.B. 2, also known as the Texas Property Tax Reform and Transparency Act of 2019, reforms the system of property taxation in three primary ways: (1) lowering the tax rate a taxing unit can adopt without voter approval and requiring a mandatory election to go above the lowered rate; (2) making numerous changes to the procedure by which a city adopts a tax rate; and (3) making several changes to the property tax appraisal process.

Generally speaking, S.B. 2 lowered the rollback tax rate from 8 percent to 3.5 percent, in addition to renaming the rate the "voter-approval" tax rate and providing for a slightly different rate calculation methodology. Cities with populations of 30,000 or more must hold an automatic election on the November uniform election date if they adopt a tax rate exceeding the voter-approval tax rate. Cities under 30,000 population are given some additional tax rate calculation flexibility regarding the revenue cap. These cities calculate what is known as the "de minimis" tax rate, which essentially is the rate necessary to bring in the same amount of maintenance and operations revenue as last year, plus the rate necessary to generate an additional $500,000 in property tax revenue. If the de minimis rate exceeds the voter-approval rate, a city under 30,000 population needs to hold an automatic election in November only if it adopts a tax rate exceeding the de minimis tax rate. Still, there are circumstances where a city under 30,000 population would be subject to a petition for an election on the May uniform election date even if the city's rate does not exceed the de-minimis rate.

Making matters more complicated following the bill's passage in 2019 was the fact that the bill contained an exception to calculating the voter-approval rate using a 3.5 percent multiplier if any part of a taxing unit is located in an area declared a disaster by the president or governor. Every county in Texas was included in the governor and president's disaster declarations for the coronavirus issued on March 13, 2020. As a result, the Tax Code gave city councils the discretion to direct the designated officer or employee to calculate the voter-approval tax rate at up to 8 percent, instead of 3.5 percent. Some city councils have opted to calculate an 8 percent voter-approval rate, whether to keep options open or in early acknowledgement the toll the coronavirus took on those cities' revenue streams. Others have considered resolutions to use an 8 percent voter-approval rate, only to have those resolutions rejected by council. Others simply did not consider any resolution, thus leaving the voter-approval tax rate at 3.5 percent.

In response to local action on this disaster exemption within S.B. 2, the legislature passed S.B. 1438 in 2021, which was signed into law. The primary goal of S.B. 1438 was to eliminate the

ability of a taxing unit, including a city, to opt into greater flexibility in calculating and adopting a tax rate during a pandemic. S.B. 1438 clarifies that in order for a taxing unit to calculate the voter-approval tax rate at eight percent due to a disaster declaration, there needs to be physical damage to property within the taxing unit's jurisdiction. The way the legislature decided to measure whether or not there is physical damage to property is to authorize the ability of a taxing unit to opt into the higher rate calculation only if a person within the taxing unit is granted a temporary property tax exemption for property that is physically damaged in a disaster. This means that, moving forward, a city may not use the higher eight percent calculation due to a pandemic disaster, among certain other types of disasters that don't cause physical damage to property.

In addition to S.B. 1438's modifications to existing statutory provisions governing tax rate setting following a pandemic, the bill also added a couple of new provisions that could impact cities in a more general sense. First, the bill creates a new negative adjustment to a city's voter-approval tax rate if the city does opt-in to an eight percent voter-approval rate during a disaster. Under S.B. 1438, if a city decides to calculate an eight percent voter-approval rate due to a disaster, in the first year following last year for calculating voter-approval rate in manner provided for special taxing unit, voter-approval rate is reduced by the "emergency revenue rate". The emergency revenue rate is essentially the difference between the previous year's adopted rate and the voter-approval rate calculated as if the taxing unit adopted the 3.5 percent voter-approval rate at each opportunity during the disaster.

What this all means is that while cities may continue to opt-into the eight percent voter-approval rate calculation during a disaster in which property is damaged, doing so is almost like taking out a loan to recover from the disaster that a city will "pay back" later in the form of a voter-approval rate reduction once the impact of the disaster has passed. As a result, cities should consider the future impact to property tax revenue prior to deciding to opt into a higher voter-approval rate calculation due to a disaster.

Entering the 2023 session, cities will have operated under S.B. 2's new tax rate calculation and election requirements for only three years, and the process revised by S.B. 1438 for only two, making it somewhat difficult to determine if any changes will be deemed necessary so soon after the legislation's enactment. Other than S.B. 1438, only a small handful of bills were filed in 2021 that would have significantly modified the new S.B. 2 framework. One bill, H.B. 1391 by Middleton, would have provided that if voters reject a proposed tax rate at an election, the rate defaults to the no-new- revenue rate, instead of the voter approval as allowed under current law. H.B. 2966 by Tinderholt, would have eliminated the flexibility for a city with a population of less than 30,000 from adopting a tax rate higher than the voter-approval rate but lower than the de-minimis tax rate. Neither of these bills made it out of committee.

With rising property valuations across the state, there has been renewed scrutiny of the property tax system over the interim. Though a proposal to further lower the voter-approval tax rate or make any other significant change to the property tax rate adoption framework has not been studied or

discussed by House or Senate committees leading into the 2023 session, and increased inflation would likely make further limiting the voter-approval rate less likely, the possibility certainly exists that bills will be filed and pursued that further lower the voter-approval tax rate.

The TML Legislative Program provides that the League oppose legislation that would impose a revenue and/or tax cap of any type.

APPRAISAL CAPS

Property taxes must, by law, reflect the market value of the property being taxed. When residential home values rise, property taxes rise unless the tax rate is reduced. This situation offends some homeowners, however, and has led to a call for caps on the appraised value of residential homesteads (more accurately, caps on the *assessed value*, as appraisal districts would continue to render theoretically accurate appraisals). One of the first states to experiment seriously with such proposals was California under the infamous Proposition 13. Texas jumped on board in 1997 by limiting assessed value increases to 10 percent annually for residential homesteads, despite the opposition of TML.

The effect of artificially limiting appraisals on certain properties is to shift the tax burden to properties that aren't increasing in value and to non-residential properties. Further, this shifting has been shown to be regressive in practice—the poor and seniors living in aging neighborhoods are harmed by the shift that results from caps on assessed values.

Another negative consequence of assessed value caps is that they favor some residents over their next door neighbors based simply on the purchase dates of the two homes. A key element of assessment caps is that capped values are permitted to "catch up" upon the sale of a home. This results in situations where identically appraised homes are assessed at very different levels. These negative effects of appraisal caps have been highlighted over the last several sessions in response to appraisal cap legislation by groups such as the Texas Association of Realtors, the Texas Taxpayers and Research Association, and business groups, in addition to cities, counties, school administrators, and others.

Generally, appraisal cap legislation entails reducing the amount by which the assessed value of a home can increase from ten percent to a lower figure, like five percent. Many appraisal cap bills also apply the lowered appraisal cap to all property, instead of just residence homesteads. Though this is the standard appraisal cap framework that gets introduced every session, there are a number of variations on this basic formula that have been filed every session for the last two decades. Others include appraisal caps that have some local-option component (more on that below), bills that would limit the frequency of re-appraisals to every two or three years,

During the 2005 special session, 2 S.J.R. 4 would have amended the Texas Constitution (if approved by Texas voters) to give local governing bodies (cities, counties, and schools) *the option*

of lowering the residential appraisal cap from ten percent to any amount between three and ten percent. The legislation provided that, once lowered, a local option appraisal cap could not be changed for five years. The bill did not pass.

The TML membership knew that the idea of a local-option appraisal cap, such as 2 S.J.R. 4 proposed, needed to be examined closely heading into future regular sessions. Clearly, such a concept is what TML traditionally seeks: local control. How can cities oppose something that is a local option, supporters of such a concept will ask? After much debate, the membership voted to take no position on legislation that would authorize a council-option appraisal cap, a position that carried over through 2021. The "council-option" requirement is, however, critical: legislation filed in 2009, H.B. 46 by Riddle, would have permitted the county commissioners court to call a county-wide election on an appraisal cap that would apply to all taxing units, including cities. TML opposed the bill because it did not provide for a city council option.

One of the bills filed in 2011—S.B. 175 by Nichols—introduced yet another variation of an appraisal cap. S.B. 175 would have: (1) reduced the property tax appraisal cap on homesteads from ten percent to five percent; (2) authorized a county commissioners court to call an election to increase the homestead appraisal cap for all taxing jurisdictions in the county back to some percentage between six and ten; and (3) prohibited a subsequent election from occurring for ten years after such an election is held. This bill represented a sort of "reverse county-option" to call an election to raise the cap on appraisals after it would be lowered by law to five percent. Not only would there be no council-option, but the concept behind the bill almost guarantees that the cap on appraised values would remain at five percent across the state, as citizens in a given county would almost certainly not vote to increase the appraisal cap back to ten percent.

The sizeable state fiscal note routinely attached to these bills plays a major role in their demise each legislative session. Take, for example, H.B. 2041 in 2015. H.B. 2041 would have lowered the appraisal cap to five percent and applied the five percent cap to all property. The bill would have cost the state roughly $5 billion over five years while costing cities $3 billion over the same period. Needless to say, any bill with that kind of fiscal note stands virtually no chance of passage without a very coordinated effort for appraisal cap reform from the outset of the legislative session.

H.B. 2311 in 2021 would have reduced the appraisal cap on residence homesteads from ten to five percent; and imposed a ten percent appraisal cap on the appraised value of a single-family residence other than a residence homestead. It would have cost the state and cities roughly $800 million over five years.

Although many appraisal cap bills were filed in 2019 and 2021, no appraisal cap proposal had a realistic chance of passage. None of the bills were reported from committee, and the ones that were came with significant costs to state and local governments in the fiscal notes. A couple of those bills included some new approaches to appraisal caps. One of which was S.B. 657 by Senator Creighton in 2019 (refiled as S.B. 1096 in 2021). S.B. 657 would have created a two-tiered

appraisal cap for residence homesteads – three percent if the value of the homestead was $1 million or less, and five percent if the value of the homestead was over $1 million.

The other newer concept relating to appraisal caps is the appraisal cap that is targeted toward benefiting certain taxpayers. S.B. 1791 by Senator Zaffirini in 2019 would have established a council-option appraisal cap applicable in certain low-income areas within the city. H.B. 1577 by Rep. Yvonne Davis in 2021 would have allowed for a local-option appraisal cap in parts of Dallas, Lubbock, and Harris Counties where major economic development projects have led to gentrification of low-income neighborhoods. Finally, H.B. 3694 by Rep. Shaheen in 2021 would have imposed an appraisal cap on "rapidly appreciating residence homesteads" that had seen their values increase by at least 250 percent since the 2017 tax year by allowing the property to keep the 2017 appraised value for tax purposes.

There is no doubt that appraisal cap bills, of both the mandatory and council-option varieties, and others, will emerge next session and perhaps every session thereafter for the foreseeable future. Increased appraised values across the state in 2022 will, in all likelihood, lead to a resurgence in appraisal cap legislation filed in 2023.

The TML Legislative Program provides that the League oppose legislation that would negatively expand appraisal caps, but take no position on legislation that would authorize a council-option reduction in the current ten-percent cap on annual appraisal growth.

PROPERTY TAX EXEMPTIONS

In 2000, the TML Legislative Policy Committee on Municipal Revenue and Taxation recommended a change to the League's traditional approach to proposed property tax exemptions. Rather than opposing all property tax exemptions, the committee recommended (and the TML membership agreed) that the League should oppose only those exemptions that substantially erode the property tax base. Accordingly, TML has since taken no position on new exemptions that would be relatively low in cost and would serve some social benefit.

The rationale behind the new approach was that the effective tax rate and rollback tax rate mechanisms provide dollar-for-dollar relief for small amounts of lost property tax base. The lost property tax base is simply shifted from exempt to non-exempt properties. Cities are still able to raise the same level of revenue without facing negative property tax consequences.

The downside of new property tax exemptions is that residential property tends to disproportionately bear the shifted burden. While this is a valid concern, it is not a uniquely city concern. In response to most proposed exemptions, legislators are confronted by taxpayer groups who feel that property taxes are high enough already without raising them more to finance subsidies for privileged groups. Further, cities and counties share the property tax base with school

districts, most of which are much closer to their maximum gross tax rates than are cities and counties.

In other words, small, socially beneficial tax exemptions must run the full gauntlet of political examination, inquiry, and potential opposition. Because such exemptions must survive that exposure, and because municipal revenue is not harmed since the tax burden is simply shifted, TML committees recommended that the League take no position on minor property tax exemptions in the eleven regular legislative sessions spanning from 2001 – 2021. Those eleven sessions resulted in the enactment of only a few new property tax exemptions that affected cities (other than the senior tax freeze and Super Freeport), and many of those contained local option provisions.

In order to determine whether a property tax exemption "substantially erodes" the tax base, League staff have typically looked at two primary factors. First, what is the bill's overall cost to cities as reflected in the fiscal note prepared for the bill by the Legislative Budget Board? Although there is not necessarily a threshold cost above which any property tax exemption legislation would be considered to "substantially erode" the tax base, an exemption bill that would cost Texas cities tens of millions of dollars in revenue would almost certainly be opposed by the League under the standard position.

Secondly, the League looks at whether the exemption has wide applicability to a broad range of cities of various sizes and in various parts of the state. Taking both of these criteria together, League staff elected not to oppose S.B. 163 and H.J.R. 62 in 2013, the constitutional amendment that would exempt the residence homestead of the surviving spouse of a member of the armed forces who was killed in action. The fiscal note showed a fiscal impact to roughly 1,200 Texas cities at approximately $90,000 per year in the aggregate. The low cost to cities, coupled with the fact that residence homesteads eligible for an exemption under the new legislation are relatively rare was enough to satisfy League staff that the exemption did not "substantially erode" the property tax base. On the other hand, proposals like the one talked about on the campaign trail in 2014 to exempt senior citizens from paying any increase in property taxes would likely cost cities across the state millions of dollars, and would be opposed by the League because it would substantially erode the tax base.

In 2015, most of the attention regarding tax exemptions was focused on increasing the mandatory school district homestead exemption. With the passage of S.B. 1 and S.J.R. 1 (both authored by Senator Nelson), and the subsequent voter approval of an increased $25,000 school homestead exemption, the legislature largely accomplished its property tax relief goal in 2015 without a major impact on city revenue. Nevertheless, there were a couple of other exemptions that passed that have some impact on cities.

While numerous property tax exemption bills were once again filed in 2019, the only significant one to pass was H.B. 492. As filed, the bill was a temporary, local-option property tax exemption for property damaged in a disaster. Due largely to the fact that the bill was discretionary for the

city to adopt, in addition to the temporary nature of the exemption, the League was supportive of the bill. In the final days of session, the local-option provision was largely eliminated from the bill, unless the disaster was declared after a city adopted its tax rate. The bill passed, was signed by the governor, and the constitutional amendment approved by the voters in November 2019.

The new exemption serves an alternative to the previous system of disaster reappraisal in which taxing units had the discretion to authorize property reappraisal following a disaster, which was repealed by H.B. 492. Because the exemption only applies in disaster areas, the Legislative Budget Board was unable to estimate the cost to cities in the fiscal note. Further, while the temporary exemption could apply in any city during a disaster, it doesn't generally apply across the board. Even though the bill was amended in a less-favorable way very late in the legislative process, it likely did not make the exemption something that would substantially erode the city property tax base. A recent attorney general opinion confirms that the bill does not impact property allegedly damaged by pandemics. The attorney general's opinion was codified with the passage of S.B. 1427 in 2021.

Other legislation in 2021, S.B. 1438, made further modifications to the temporary property tax exemption for property damaged in a disaster. S.B. 1438, among other things, eliminated the ability of a local taxing unit to adopt the temporary exemption for qualified property damaged by a disaster following the date the taxing unit adopts a tax rate, making the property tax exemption mandatory regardless of when the disaster occurs. This provision making the exemption mandatory was never vetted in committee and tacked on the bill as a last-minute floor amendment.

A few other minor property tax exemptions passed in 2021 that impact city revenue. S.B. 1449 provided that a person is entitled to a property tax exemption for tangible personal property with a taxable value of less than $2,500 and that is held or used for the production of income (up from $500). The cost to cities is a relatively modest $1 million per year. S.B. 611 exempted from property taxes the residence homestead of the surviving spouse of a member of the armed services who is fatally injured in the line of duty, at a cost of roughly $300,000 per year to cities in the aggregate. Finally, H.B. 3610 exempted open-enrollment charter school property from property taxes, with a price tag of an estimated $4 million per year to cities.

Like in 2015, legislation passed in 2021 to increase the amount of the school homestead property tax exemption, this time from $25,000 to $40,000. The constitutional amendment was approved by the voters in May 2022 and will go into effect for the 2022 tax year.

The TML Legislative Program provides that the League oppose legislation that would impose new property tax or sales tax exemptions that substantially erode the tax base.

EQUITY APPRAISALS

One issue relating to property appraisal that has become problematic for Texas cities in recent years is the shift from appraisals based on a market approach to appraisals based on an equity approach. County appraisal districts have typically relied on a market approach to appraisals, which is primarily based on actual sales prices. However, commercial property owners are becoming increasingly inclined to file lawsuits challenging local appraisals, arguing that their properties should instead be appraised based on how similar properties are valued.

Commercial property owners' argument for equity appraisals stems from a change in state law in 1997. S.B. 841 was adopted that year, which in addition to many other changes, required a district court to grant relief to a property owner on the grounds that a property is appraised unequally if the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties.

The problem is that now a large number commercial property owners are filing lawsuits against appraisal districts, which are typically settled due to cost, on the grounds that the appraised value of their property exceeds the appraised value of similar properties. If and when a commercial property owner's appraisal is lowered through a settlement, other property owners sue attempting to use the initial commercial property owners' lowered value as a comparable property for the purpose of lowering their appraisal. According to a May 2022 article in the *Fort Worth Star Telegram*, the state loses $26 billion of taxable property per year due to legal challenges associated with the equity appraisal statute.

Both Senator Wendy Davis and Representative Sylvester Turner filed bills in 2013 that would have largely fixed the equity appraisal issue for cities and other local governments by requiring clearly defined criteria to be met in order for a property to be considered "comparable" if it is to be used to demonstrate an unequal appraisal. Senator Davis's bill, S.B. 1342, was heard in the Senate Finance Committee's Subcommittee on Fiscal Matters, but was left pending in the subcommittee.

Several good bills were filed in 2015 that would have addressed issues related to equity appraisals to varying degrees. Some bills, like S.B. 280 (Watson), would have addressed the equity appraisal problem in a significant way. S.B. 280 would have: (1) provided that, in a property tax protest based on unequal appraisal, the appraised value of the property in question in comparison to other properties is to be determined: (a) using comparable properties located in the same appraisal district; (b) based on the similarity of the properties with regard to specified statutory characteristics, like square footage, property age, and property condition, among other things; (c) by calculating adjustments in accordance with generally accepted appraisal standards; and (d) based on the calculation of the appraised value of each comparable property as shown in the appraisal records submitted to the appraisal review board by the chief appraiser; and (2) required a district court to grant relief on the ground that a property is appraised unequally if the appraised

value of the property exceeds by ten percent the median appraised value of a reasonable number of comparable properties in the appraisal district based on the standards in (1), above.

Unfortunately, S.B. 280 and other bills like it didn't receive so much as a committee hearing in 2015. Instead, the legislature's response to the equity appraisal problem was to pass H.B. 2083 by Darby, which requires the selection of comparable properties and the application of appropriate adjustments for the determination of an appraised value of property to be based upon the application of generally accepted methods and techniques. The League supported H.B. 2083, though tax experts believe additional legislation may be necessary to have a meaningful impact on the equity appraisal issue.

In August 2015, the City of Austin sued the State of Texas, the Travis County Appraisal District, and certain property owners within Travis County, seeking to have the current tax appraisal system declared unconstitutional and to request permanent injunctions to ensure compliance. The city's argument was essentially that the statutes authorizing equity appraisals open the door for the unequal (and therefore unconstitutional) appraisal of commercial property. The city estimated that commercial and vacant property values in Austin have been historically undervalued by 47 percent due to equity appeals, which has the effect of shifting a disproportionate share of the property tax burden to residential homeowners. A district judge dismissed the city's suit in November 2015.

Surprisingly, no legislation containing beneficial amendments to the equity appraisal issue was filed in 2017. However, in response to the lawsuit filed by the City of Austin, legislation was filed to prohibit taxing units from challenging the level of appraisals of any category of property in the district or in any territory in the district. This change was included in some of the major tax reform legislation – S.B. 2 and S.B. 669 during the regular session and S.B. 1 during the special session. One additional consideration regarding this issue is that such a challenge can potentially delay the delivery of certified rolls to other taxing units (including cities) in the same appraisal district, potentially making tax-rate setting and adoption of the budget more difficult. The provision prohibiting a taxing unit from challenging appraisals ultimately passed in 2019 as part of S.B. 2.

Both Senator Nathan Johnson and Representative Michelle Beckley filed legislation in 2019 and 2021 that would have made beneficial amendments to the equity appraisal statute. Neither bill received a committee hearing in either session.

The reliance of commercial property owners on equity appraisals has created a "race to the bottom" in terms of appraised values that is costing cities and other local governments a significant amount of property tax revenue.

The TML Legislative Program provides that the League support legislation that would make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

SALES PRICE DISCLOSURE

Even though property tax appraisals must, by law, be based on market value, and even though sales prices are arguably the best evidence of market price, appraisal districts are prevented by current law from having easy access to sales price data.

Various bills considered in the last several legislative sessions would have mandated sales price disclosure by the buyer and/or the seller to appraisal districts for taxing purposes. In 2011, S.B. 299 by Wentworth would have required the purchaser of property to include the sales price in any instrument filed with the county clerk that conveys real property under a contract for sale. The bill did not receive a committee hearing. Even a bill that would only have required the comptroller to conduct a study to examine the impact of required sales price disclosure upon the property tax system (H.B. 666 by Villarreal) failed to receive a committee hearing.

The only bill filed in 2013 relating to sales price disclosure was H.B. 1830 by Naomi Gonzalez. H.B. 1830 would have created a pilot program in El Paso county that would allow the chief appraiser to file a request with the appraisal review board to compel a property owner to disclose to the chief appraiser information relating to the sales price, rate of occupancy, lease or rental income, or production capacity and income of a commercial or industrial property that was the subject of the protest. The bill was not heard in committee.

No sales price disclosure legislation was filed in 2015. Interestingly, in its suit to challenge the equity appraisal process in late 2015, the City of Austin sought to have the district court declare that mandatory sales price disclosure is necessary for appraisal districts to comply with the statutory and constitutional "equal and uniform" taxation requirements. Though the suit was dismissed, this highlights how closely related sales price disclosure efforts are with the equity appraisal issue.

Sales price disclosure legislation is generally defeated because sales price disclosure is frequently opposed by real estate interests on various grounds. One argument against using sales price disclosure for appraisal purposes is that actual sales prices often reflect ancillary financial deals between buyer and seller—furniture costs for example—that shouldn't have an effect on property's market value.

Another commonly-used argument against sales price disclosure is that disclosure is simply a precursor to the state enacting a real estate transfer tax. However, when the voters approved Proposition 1 in November 2015 to increase the residence homestead exemption for schools, tucked away in the same amendment was a statement that prohibits the adoption of a transfer tax: "After January 1, 2016, no law may be enacted that imposes a transfer tax on a transaction that conveys fee simple title to real property." In other words, the passage of Proposition 1 takes away one of the main arguments against sales price disclosure.

In 2017, Rep. Diego Bernal filed two bills related to sales price disclosure. The first, H.B. 182 would have simply required the legislature to study the impact of sales price disclosure on the property tax system. The other, H.B. 379, would have actually mandated sales price disclosure. Neither bill received a committee hearing.

Rep. Bernal re-filed his study legislation in 2019 (H.B. 185). Two other bills filed in 2019 — H.B. 1036 by Beckley and H.B. 3493 by Talarico — would have expressly required sales price disclosure. Only H.B. 1036 received a committee hearing. Several witnesses testified in favor of the bill, including three chief appraisers, a mayor, and a school superintendent, with the Texas Association of Realtors testifying against it. The bill was not reported from committee.

One further development has occurred since the 2019 session that might re-ignite the sales price disclosure debate in 2023. In early 2020, the Austin Board of Realtors sent a cease and desist order to the Travis County Appraisal District to prevent the district from using multiple listing service (MLS) data provided through a third party. Without the MLS data on sales prices, the Travis County Appraisal District determined that it could not accurately appraise properties in 2020. Consequently, the district decided to use 2019 appraised values again in 2020. Although the impact on cities will be limited, as a city's no-new-revenue tax rate calculation is designed to bring in the same amount of tax revenue as the previous year no matter what happens to the values, there could very well be a substantial school funding hit to Travis county school districts.

This event didn't have any noticeable impact on the prospects for sales price disclosure in 2021. The same disclosure bills were filed, including H.B. 203 by Bernal, H.B. 1101 by Beckley, and H.B. 3939 by Talarico. Only H.B. 1101 was heard in committee, but it was not voted out.

Mandated sales price disclosure might be beneficial to cities if it made appraisals more accurate, thus taking some ammunition away from property tax critics who claim that the entire property taxing system is flawed. The committee should discuss whether to recommend a position on this subject, especially in light of the advantage some commercial property owners may enjoy due to equity appraisals.

The TML Legislative Program provides that the League support legislation that would make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

DARK STORE APPRAISAL

In recent years, big box retailers across the country have attracted attention for arguing that their stores should be appraised based on the "dark store" theory of property valuation. Essentially the retailers argue that their commercial properties should be appraised and valued as if they were closed. In other words, the properties should be appraised as if they were "dark" or shuttered, as

the properties will be difficult to sell because the big box store design likely wouldn't appeal to prospective purchasers.

The problem for cities and other local governments, including the state due to its reliance on property taxes to fund schools, is that these retailers are often arguing that their appraised values should be cut in half or more based on the dark store theory of valuation. If successful, the retailers would pay far less in property taxes than would otherwise be required based upon the current market value of their property, thus shifting the tax burden to residential taxpayers.

Big box retailers have already brought legal challenges against appraisal districts in Texas based on this theory. In a recent case, a three-member arbitration panel upheld Bexar County Appraisal District's methodology and appraisals of Lowe's stores in Bexar County, effectively rejecting the dark store theory of property valuation. A case between Lowe's and the Harris County Appraisal District was settled based on the arbitration outcome in Bexar County.

In 2017, Rep. Drew Springer filed H.B. 27, which would have eliminated the dark store appraisal loophole by requiring property to be appraised at its "highest and best use." The fiscal note estimated savings to local governments reaching into the hundreds of millions of dollars per year, though in fairness the fiscal note estimate made several assumptions inflating the prevalence of the dark store loophole under existing law. Nothing similar was filed in 2019 or 2021.

The TML Legislative Program provides that the League support legislation that would make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

HOMESTEAD PROPERTY TAX EXEMPTION

Various legislative proposals over the last several legislative sessions would have increased the amount of mandatory and optional homestead exemptions, some quite dramatically. Some bills, for example, would have increased from $5,000 to $30,000 the minimum application of any optional city homestead exemption.

For city officials who are opposed to appraisal caps, homestead exemption increases can be a tricky proposition. On the one hand, they relieve pressure on homeowners in markets characterized by increasing values. On the other hand, large increases in a homestead exemption have the effect of creating a "split roll" by shifting the property tax burden from residential to commercial property. (A split roll is one of the negative features of appraisal caps as well.)

In 2015 the legislature passed, and the voters approved, an increase in the mandatory school homestead exemption from $15,000 to $25,000 in the form of S.B. 1 and S.J.R. 1 by Nelson. Though the focus of the bill was on the mandatory school homestead property tax exemption and not city homestead exemptions, the legislation did impact cities in one important respect. S.B. 1

and S.J.R. 1 contained language prohibiting the governing body of a city, school district, or county that adopted an optional homestead exemption for the 2014 tax year from voting to reduce or repeal that exemption until December 31, 2019.

That prohibition has now lapsed, and when the legislature increased the mandatory school homestead exemption from $25,000 to $40,000 in the third special session in 2021, a similar provision prohibiting cities from reducing or repealing a city exemption was not included.

A proposal in 2013 would have provided more flexibility to cities when approving an optional city homestead exemption. H.B. 3348 by Eddie Rodriguez would have authorized a city council to adopt the local option residence homestead exemption of either a percentage of the appraised value of an individual's residence homestead (as authorized under current law) or a portion, expressed as a dollar amount, of the appraised value of an individual's residence homestead, but not both. In other words, the bill would give city councils additional authority to adopt a flat dollar amount homestead exemption, in addition to the current ability to adopt a percentage exemption. In theory, providing a dollar-amount exemption would allow a city council that has been hesitant to offer a percentage-based homestead exemption due to the budgetary impact associated with rising property values a viable alternative that both provides tax relief and allows the city's budget to be more predictable.

A modified version of the flat dollar amount city homestead exemption was filed in 2015. S.B. 279 by Watson would have: (1) authorized any city council to take action to adopt a flat-dollar amount residence homestead property tax exemption of at least $5,000, unless a larger amount is specified by the council, before July 1st of any given year; (2) provided that a $5,000 residence homestead property tax exemption automatically goes into effect in any city that: (a) does not take official action to opt-out of the flat-dollar amount exemption prior to July 1st of any given year; and (b) has not already adopted a percentage-based residence homestead property tax exemption under current law; and (3) provided that in any city where the city council has ceased to offer a percentage-based residence homestead property tax exemption and instead adopted a flat-dollar amount property tax exemption, an individual may elect to rescind entitlement to the new flat-dollar amount exemption to continue to receive the percentage exemption that was previously available by filing written notice with the chief appraiser before July 15. S.B. 279 passed the Senate and was reported from the House Ways and Means Committee, but did not receive a vote on the House floor.

Senator Watson filed very similar legislation in 2017 (S.B.418 and S.J.R. 29), with much less success. S.B. 419 did not receive a committee hearing, likely as a consequence of so much attention being paid to revenue cap legislation.

Just before the beginning of the 2019 legislative session, the attorney general issued an opinion regarding the ability of cities to adopt homestead exemptions with a minimum application greater than the $5,000 mentioned in state law. In April of that year, the Cedar Park city council adopted

a city homestead property tax exemption equal to one percent of the appraised value of any residential homestead property, but not less than $10,000. State law provides that a city may adopt an exemption of up to 20%, but the actual dollar amount of the exemption cannot be less than $5,000. In KP-215, the attorney general opined that a court would likely conclude that a city lacks authority to increase the floor above $5,000, and that cities desiring to increase the homestead exemption must do so by raising the tax exemption percentage, up to twenty percent, as authorized in the Texas Constitution.

A few bills were filed in 2019 that would have increased cities' discretion over their homestead exemptions. S.B. 1072 would have authorized cities to set the homestead exemption floor in an amount up to $25,000, essentially overruling the attorney general's opinion. Similarly, other proposals (H.B. 4139 by Capriglione and S.B. 2362 by West) would have authorized cities to adopt homestead exemptions in a dollar amount not to exceed $25,000, in addition to increasing the permissible homestead exemption percentage from 20 percent to 30 percent. Other bills – H.B. 3127 by Middleton and S.B. 2468 by Creighton – would have authorized a city to adopt a homestead exemption up to 100 percent of the appraised value of the home. None of the proposals so much as made it out of committee.

It was a new session with a similar story in 2021. H.B. 1858 by Representative Rodriguez was a refile of S.B. 1072 from the previous year. Rodriguez also filed H.B. 3359, which would have authorized a city to adopt a flat-dollar amount homestead exemption. Senator Eckhart filed similar legislation in the form of S.B. 887. Representative Middleton's H.B. 1393 was a refile of his optional 100 percent homestead exemption from the previous year. None of these bills received a committee hearing.

The TML Legislative Program provides that the League support legislation that would authorize a council-option city homestead exemption expressed as a percentage or flat-dollar amount.

PROPERTY TAX ADJUSTMENT FOR PAY-AS-YOU-GO

The city manager for the City of Melissa submitted the following request for consideration to the 2020 TML Policy Summit:

It can be hard enough to identify funding for Capital Improvement Project implementation, and even more difficult to find new funding sources when those CIP systems are in need of major repair, up to total replacement. As such, there are arguments on both sides as to issuing debt to fund capital projects. Issuing bonds, utilizing established restrictive funds, setting aside cash—all these have issues in both the practical implementation and the philosophical world of policy implementation. The reality is that local governments need to use a combination of all resources for capital reinvestment in their respective communities. Texas cities should be incentivized to allocating a portion of today's tax revenue to defray future costs of these CIP systems; however,

current Texas law does not support this concept because those set-asides are calculated in the M&O rate, which is the measuring stick for rollback and/or automatic election provisions. The solution seems straightforward -- Texas law currently breaks down the property tax rate into two components: Maintenance and Operation ("M&O") rate and Interests and Sinking ("I&S") rate. The law should be amended to authorize a subset of the Maintenance and Operation ("M&O") rate to be a Renewal and Replacement ("R&R") rate, such R&R rate would build cash over time for Pay As You Go ("PayGo") utilization and would be treated similar to the I&S rate and not calculated towards rollback.

The obligation that comes with any capital investment is for local governments to provide sufficient amount of money for maintenance and repair from their annual revenues. In fact, a better argument is to not only cover those recurring costs but also to set aside as many funds as possible to tackle some larger rehab projects for these capital investments without having to issue debt to do so. Local government officials take no issue with the PayGo concept as a part of their overall responsible funding plan. The problem is that there is a penalty to go the PayGo route versus the debt issuance path. Current Texas law allows there to be full coverage of debt in the Truth-In-Taxation ("TnT") formula. Not so with PayGo. TnT actually encourages less than optimal management practices by not advocating for implementing funding strategies today to defray tomorrow's increased cost and flies in the face of the very thing many legislators abhor: the reliance on issuing debt.

The Solution

Local governments should be able to claim the same benefit as the I&S fund when it comes to TnT calculations if they designate M&O funds for R&R purposes. This tax rate diversification would incentivize cities to build more PayGo funding today to protect the future taxpayers. But today's tax rate structure does not provide such an incentivization. If an R&R rate was implemented and such funds not counted towards the rollback rate, cities would have the appropriate incentive to dedicate and save funds for defraying future replacement cost of capital improvements.

State law should incentivize cities to use more PayGo and less debt. The rationale is balance and fiscal responsibility. The law can be constructed to make R&R funding a one-way path. A cap of no more than 10% of a City's M&O tax rate can formally be adopted annually by a City Council for the R&R rate as part of the tax rate adoption process. Such funds can be used only for the legally authorized purpose to extend the life of existing infrastructure. No salaries or routine maintenance and only for documented contracts and tangible work that results in infrastructure spending.

Funds from the R&R rate can be used if they meet the following criteria:

1. the project is used on infrastructure that is greater than 50% of its useful life (ensures that the initial maintenance on infrastructure, how small, is not neglected by cities in the early years); ***or***

2. the project is greater than 10% of the replacement cost (in today's dollars) for the infrastructure in question (the 10% may be low and would like your feedback on this threshold); ***and***

3. improvements will extend the useful life of the infrastructure by 20%.

PayGo will never replace the need for debt financing for many large and expensive capital projects. However, the legislature can raise the prominence of PayGo by authorizing an R&R rate and allowing it to be classified the same as debt financing when it comes to TnT calculations.

The 2020 Summit looked favorably at this idea and it was added to the fixed program. Nothing on the matter was filed during the 2021 legislative session.

The TML Legislative Program provides that the League support legislation that promotes pay-as-you-go financing for capital projects by authorizing a dedicated property tax rate that is classified similarly to the debt service tax rate in property tax rate calculations.

SALES TAXES EXEMPTIONS

For many years, organized interest groups have descended upon the legislature attempting to obtain exemptions from sales taxation, just as many groups have attempted to obtain property tax exemptions. That effort intensified after 1987 when the legislature adopted a massive tax bill that increased the state tax rate and broadened the sales tax base to include custom computer software, local telephone service, data processing, garbage collection, janitorial and cleaning services, non-residential repairs and remodeling, landscaping, lawn services, surveying, exterminating, security services, and a variety of additional services.

At the urging of the Texas Municipal League, lawmakers ensured that the broadened base was subject to the local-option sales tax as well as the state sales tax. As a result, the bill generated millions of dollars for Texas cities.

As soon as the sales tax base was broadened, those who were included in the broadening began to seek exemptions. In the first special session in 1991, the legislature once again broadened the sales tax base. Since then, more exemptions have been sought. During each session, some exemptions are passed while many more fail.

A number of sales tax exemption bills were filed in 2011, although none of them passed. The proposals included a sales tax exemption for personal property used at a "data center" (H.B. 3479 by Christian), an exemption for precious metal coins (H.B. 3104 by Simpson), an exemption for textbooks purchased by college students during a ten-day period prior to each semester (S.B. 52 by Zaffirini), and an exemption for guns and ammunition (H.B. 181 by S. Miller).

One bill, H.B. 2237 by Representative Lyne, would have reclassified all-terrain vehicles, off-road motorcycles, and golf-carts as "motor vehicles," thus subjecting them to the motor vehicle sales tax, which does not include a local component. Although this bill was not a sales tax exemption in the traditional sense, it would have greatly reduced sales tax receipts in those cities where these particular off-road vehicles sold. H.B. 2237 was reported from the House, but luckily did not get voted out of committee in the Senate. TML strongly opposed the idea.

A handful of small sales tax exemptions passed in 2013, including exemptions for the sale of various types of coins, food products sold by an elementary or secondary school, and certain snack items. H.B. 800 by Murphy was a more substantial sales tax exemption bill that passed, which exempts certain personal property used in research and development activities. The fiscal note for

H.B. 800 estimated a cost of roughly $24 million per year to cities, while costing the state approximately $150 million per year.

In 2015, a total of six sales tax exemption bills passed. The bill with the most significant cost to cities was S.B. 1356 by Hinojosa, which exempts the sale of a water-conserving or WaterSense product from sales and use taxes if the sale taxes place on Memorial Day weekend. According to the bill's fiscal note, the bill will cost cities a total of roughly $800,000 per year for the first five years.

No sales tax exemption bills of any significance passed in 2017. One minor exemption that did pass, H.B. 4054 by Murphy, highlights exactly how specific some sales tax exemptions get. H.B. 4054 exempts from sales taxes certain baked goods regardless of whether the items are heated by the consumer or seller and sold at certain locations without plates or other eating utensils. The fiscal note showed no significant impact to local governments.

In 2019, many sales tax exemptions were filed, but few passed. Of those that did, including bills exempting certain sales at county fairs and sales in connection with certain touring theatrical productions, none showed a significant cost to the state or to cities.

In 2021, the only sales tax exemption with a measurable impact on city sales tax collections that passed was S.B. 313 by Huffman. S.B. 313 exempts certain firearm safety equipment from sales taxes, and the estimated cost to cities per year is under $200,000 per year statewide.

Since 2007, the TML approach to sales tax exemptions has been similar to the flexible approach taken with property tax exemptions: the League opposes only those sales tax exemptions that substantially eroded the sales tax base. Smaller, socially beneficial exemptions such as children's school backpacks and school supplies were largely ignored under the theory that if the state can tolerate the minuscule loss of tax base, so can local governments. The committee should discuss continuing to follow such a policy.

The TML Legislative Program provides that the League oppose legislation that would impose new property tax or sales tax exemptions that substantially erode the tax base.

SALES TAXES SOURCING

In June 2018, the United States Supreme Court in *Wayfair v. South Dakota* held that a South Dakota state law requiring certain remote sellers to collect sales taxes on goods shipped to customers living in South Dakota is constitutional. In doing so, the Court overturned decades of legal precedent and set the stage for a significant sales tax debate during the 2019 session of the Texas Legislature.

For over 25 years, the 1992 United States Supreme Court decision in *Quill. v. North Dakota* represented the law of the land regarding collection of state and local sales taxes on remote sales. *Quill* provided that a business could not be required to collect and remit sales taxes to a state if it had not established a physical presence there. State sales tax laws, Texas's included, were modified years ago to account for the *Quill's* physical presence test.

Writing for the five-four majority in *Wayfair* Justice Kennedy rejected the previous holdings of the Supreme Court as outdated and incompatible with the technological realities of a twenty-first century economy. According to Kennedy, simply relying on physical presence to determine whether or not a company can be required to collect sales taxes ignores the fact that companies now have websites accessible in every state. Those company websites might save cookies to customers' hard drives, have apps that can be downloaded anywhere, and may store data that is located in any number of states. In short, South Dakota's law was upheld because it established a clear connection between out-of-state retailers and the state based on both economic and virtual contacts.

In order to fully implement the new authority under *Wayfair*, the state legislature passed two bills during the 2019 legislative session – H.B. 1525 and H.B. 2153.

H.B. 1525 required online marketplaces (like Ebay, Amazon, or Etsy) to collect sales taxes on marketplace sales, instead of potentially requiring each individual seller on that marketplace to bear the burden of collecting the sales tax. Additionally, it required the sales taxes associated with marketplace sales to be sourced to the destination to which the marketplace goods are shipped.

H.B. 2153 gave remote sellers the option to either collect and remit the actual sales taxes owed based upon the rate at the shipping destination, or instead collect a simplified "single local use tax rate" of roughly 1.75 percent on all sales. Remote sellers who collect the single local use tax rate send the money collected to the comptroller, who remits the revenue to local taxing entities based upon their existing proportion of the local sales tax base.

The League was neutral on both bills during the 2019 legislative session because of the following provision in the TML legislative program at that time:

Take no position on Wayfair-related legislation that impacts local sourcing of sales and use taxes, but seek the guidance of the TML executive committee to address any unforeseen issues concerning the statewide implementation of the Wayfair decision.

Additionally, in early 2020 the comptroller proposed amendments to the administrative rules pertaining to local sales and use tax collection in order to harmonize the rules and the statute following the passage of H.B. 1525 and H.B. 2153. Under the proposed rules, sales taxes on intrastate internet orders wouldn't automatically be sourced to the community where the place of business receiving the order is located. Instead, the rules provided that an internet order would not be received at a place of business of the seller, meaning that sales taxes on those orders instead were sourced either to the location where the order was fulfilled, or the location where the purchased items were delivered to the consumer.

The changes made to sourcing of internet orders caused what could be described as a flood of opinions from city officials and state legislators alike, on both sides of the issue. Many city officials expressed their strong opposition to the rule changes, both in written comments and during public hearings on the proposal. Those cities objected primarily on the grounds that the change would deprive them of sales tax revenue that they rely on under the existing sourcing scheme. Other city officials supported the rule changes. Those cities viewed the existing framework as unfairly re-routing sales tax dollars as e-commerce continues to proliferate. The League, acting on guidance from the TML Executive Committee remained neutral on the rule change, as member cities weighed-in on both sides of the debate.

The rules were adopted in May of 2020. The adopted rule provides that orders received via a shopping website or software application are received at a location that is not a place of business in the state. The ultimate impact of this change is that, under the provisions governing where a sale is consummated, certain internet purchases may change from being sourced to the location where the order was deemed to have been received. The new rule provides that orders are sourced to the location where the order is fulfilled or the location where the order is received by the purchaser, depending on the exact circumstances. By comparison, nothing in the rule changes the sourcing of orders placed in person in Texas; in-person orders at a place of business in Texas are consummated at the place of business, regardless of where the order is fulfilled.

In addition to the new provision on "orders not received by sales personnel," the rule adds a new paragraph dealing with "orders received by sales personnel…including orders received by mail, telephone, including voice over internet protocol and cellular phone calls, facsimile, and email." This section provides some clarification for cities with concerns about traveling salespersons and the treatment of orders received via email or voice over internet protocol, but not using an internet shopping website. The location where a salesperson operates will be considered a "place of

business" of the seller, for sales tax allocation purposes, only if the location meets the definition of that term on its own, without regard to the orders imputed to that location under this new paragraph.

Significantly, the adopted rules relating to orders not received by sales personnel were not effective until October 1, 2021. The comptroller, according to the description published in the *Texas Register*, delayed the implementation of this provision in order to give "interested parties an opportunity to seek a legislative change." City officials expected this to be a major issue during the 2021 legislative session.

While multiple bills were filed in 2021 to address the comptroller's rule change on internet order sourcing—both to codify the comptroller's rule and to expressly preempt it—nothing ultimately passed related to local sales tax sourcing. This allowed the internet sourcing rule to go into effect, though now litigation has stalled its implementation (more on that below). Interestingly, the one bill on local sales tax sourcing to progress through the legislative process at all was H.B. 4072 by House Ways and Means Chairman Morgan Meyer. H.B. 4072 would take local sales tax sourcing well beyond the rules implemented by the comptroller and provide for a wholesale switch to destination sourcing to the location where the item is shipped or delivered or where the purchaser takes possession.

Not surprisingly, when H.B. 4072 was heard in the House Ways and Means Committee, city officials again lined up on both sides of the issue. Ultimately the bill was approved by the committee but never received a vote on the House floor. The committee once again considered a shift to destination sourcing at an interim committee hearing in April 2022. At that hearing, city testimony was again mixed on the concept, but this time there was a significant amount of opposition from business owners and business interest groups on the grounds that such a monumental policy shift would come with an administrative burden on local businesses to keep track of the local sales tax rate in jurisdictions where the taxable item is shipped. At this point it is unclear what recommendation the committee will put forth on destination sourcing in the 2023 legislative session, but if the opposition at the hearing is any indication, there are some political headwinds that may make such a wholesale shift difficult to accomplish in the short term.

As for the status of the comptroller's sourcing rule, a handful Texas cities have filed suit against the comptroller to prevent the rule changes from going into effect. The comptroller and city plaintiffs in two lawsuits have agreed to a temporary injunction delaying the effective date of the rule impacting the sourcing of local sales taxes on orders not received by sales personnel, including orders received by a shopping website or shopping software application. Instead of going into effect on October 1, 2021, as originally planned, the effective date of the rule has been delayed until there is a final hearing on the merits of the cases or further order from the court. The trial dates have been set for the fall of 2022. Whichever way the city lawsuits are resolved, the possibility exists that legislation will be introduced in 2023 to either reverse the court's decision,

or otherwise codify the decision of the court. Equally as possible is that the legal process continues beyond the 2023 session, and the legislature waits to consider action until the lawsuits are resolved.

Sales tax sourcing issues have always presented scenarios where some cities win and other cities lose. Because of this dynamic, the League has traditionally remained neutral on sourcing issues, which is reflected in the current legislative position.

Summit members may wish to discuss expanding the League's neutral position to any sourcing change—not just internet—in light of H.B. 4072, above.

The TML Legislative Program provides that the League take no position on legislation that would impact local sourcing of sales and use taxes for internet orders.

SALES TAX REFUNDS AND REALLOCATION

For years, Texas cities have grown accustomed to receiving notification from the comptroller that sales taxes have been wrongly allocated and remittances will be modified to correct the misallocation. Until 2011, Texas cities were not afforded any semblance of a "seat at the table" for decisions made by the state comptroller to reallocate sales tax revenue between cities due to reporting errors. These reallocation decisions by the comptroller can be made up to four years after the error occurred under the current "look back" provision in the Tax Code.

Legislation passed in 2011 that, although not perfect, provides some limited authority for a city to receive information used by the comptroller in making a reallocation determination. In its adopted form, H.B. 590 (Thompson) allows a city to receive from the comptroller sales tax returns and reports filed by not more than five individual taxpayers in the city if the amount of the reallocation exceeds: (a) $200,000; (b) ten percent of the revenue received by the city during the previous calendar year; or (c) an amount that increases or decreases the amount of revenue the city receives during a calendar month by more than 15 percent as compared to the same month in a previous year. The city must request the information within 90 days of discovering the reallocation or refund.

The filed version of H.B. 590 would have allowed a city to request an independent audit review by the comptroller regarding sales tax reallocation decisions. However, the comptroller testified in the House Ways and Means Committee that compliance with the audit requirement would require the addition of 31 full-time employees within the comptroller's office, which meant the bill would cost the state roughly $10 million over the next five years. A bill with that kind of fiscal note stood little chance of passing in 2011, and the end result was the modified process that gives cities access to information, but still doesn't provide a formal process to appeal or contest a reallocation decision.

Similarly, when H.B. 1923 by Thompson—a bill that would authorize a city to request and receive information from the comptroller's office regarding a sales tax sourcing determination—received a hearing in the House Ways and Means Committee in 2013, the comptroller reported a cost of over $12 million per year to the office. Needless to say, the bill did not progress any further than that initial committee hearing. H.B. 1660 by Thompson would have imposed delinquent penalties and interest against a business that erroneously sourced its sales taxes to a city other than the one where the sale was consummated. The fiscal note for H.B. 1660 showed no fiscal impact to the state, but that bill still was halted in committee.

Representative Greg Bonnen filed H.B. 1871 in 2015 to require the comptroller's office to share more information with cities concerning local sales tax collections, administration, and compliance. The bill also would toll the four-year "look-back" provision in the case of nonpayment by a business. The fiscal note showed a cost of over $8 million per year and the need for 98 full time employees to implement the requirements in the bill. However, unlike past sessions, the bill was unanimously approved by the House and received a hearing in Senate Finance Committee before time ran out in the session.

H.B. 1871 was the first bill since 2009 that would impact the time frame in which the comptroller can go back and collect sales taxes. Bills filed in sessions past, including S.B. 1294 in 2009, would have reduced from four years to two years the statute of limitations (also known as the "look back" provision) for administrative reallocation of city sales taxes to correct allocation errors.

In 2021, Senator Hinojosa filed S.B. 778 and Representative Herrero filed the companion legislation, H.B. 4032. Those bills would have allowed for cities to request the audit working papers form the comptroller that showed how sales tax refunds or reallocations were calculated. Despite the fiscal note reflecting no significant cost to the state, neither bill was reported from committee.

The TML Legislative Program provides that the League support legislation that would convert the sales tax reallocation process from a ministerial process into a more formalized administrative process.

ECONOMIC DEVELOPMENT INCENTIVES

For decades, cities have maintained the authority to offer economic development incentives in order to attract and retain business development. The ability for city councils to use these incentives plays an important role to the development of sustainable local economies, especially when used to complement the provision of vital services and strategic planning to promote a strong quality of life for city residents. City efforts on this front have helped drive the recent influx of people and jobs that make several Texas regions amongst the fastest growing in the nation.

In recent legislative sessions, there have been some signs that legislators' support for economic development incentives in general may be waning. In 2019, local property tax abatement authority was set to expire, as the statute was drafted to include a "sunset" clause for every ten years. Unless the legislature passed a bill to extend the life of the statute authorizing local property tax abatement authority, the authority would terminate.

A bill did pass to extend property tax abatement authority in Chapter 312 of the Tax Code in 2019. H.B. 3143 by Representative Jim Murphy extended the ability to enter into tax abatement agreements until 2029. The bill had the backing of several business associations, chambers of commerce, economic development corporations, and many local governments. However, due to some of the common concerns with economic development incentives—mainly limited transparency and governments not holding businesses accountable for meeting goals on things like job creation—the bill couldn't pass as just a stand-alone extension of the sunset date. Instead, a few additional reforms needed to be added to the bill.

In addition to the expiration date extension, H.B. 3143 also: (1) requires the governing body of a taxing unit, before it adopts, amends, repeals, or reauthorizes property tax abatement guidelines and criteria, to hold a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization at which members of the public are given the opportunity to be heard; (2) requires a taxing unit that maintains an Internet website to post the current version of the guidelines and criteria governing tax abatement agreements on the website; (3) provides that, for the first three years following the expiration of a tax abatement agreement, the chief appraiser shall deliver to the comptroller a report containing the appraised value of the property that was the subject of the agreement; (4) provides that the public notice of a meeting at which the governing body of a taxing unit will consider the approval of a tax abatement agreement with a property owner must contain: (a)the name of the property owner and the name of the applicant for the tax abatement agreement; (b) the name and location of the reinvestment zone in which the property subject to the agreement is located; (c) a general description of the nature of the improvements or repairs included in the agreement; and (d) the estimated cost of the improvements or repairs; and (5) requires the notice required under (4), above, must be provided at least 30 days before the scheduled time of the meeting.

Following the extension of property tax abatement authority in Chapter 312 of the Tax Code in 2019, attention shifted in 2021 to the extension of Chapter 313 of the Tax Code, a chapter that authorizes property value limitations for purposes of limiting the burden of school district maintenance and operations property tax on businesses. Because of the sheer size of the program, Chapter 313 has been much more controversial than city and county property tax abatements over the years. Still, most observers probably expected Chapter 313 to be renewed just as Chapter 312 had been the previous legislative session.

To the surprise of many, Chapter 313 was not renewed in 2021. This wasn't for a lack of trying. Extension of the program was the top priority of many influential businesses groups during the

2021 session. The failure to extend Chapter 313 represents one of the first major indications that growing populism in Texas politics has risen to the level necessary to prevail over business priorities in the Texas Legislature. Both the Democratic and Republican party platforms called for the elimination of Chapter 313, and two influential interest groups on the political right and left joined forces to oppose the extension of the program.

Chapter 313 also fell victim to the unique structural concept of an expiration provision in the statute. The program's demise was aided by the fact that it would disappear unless the legislature could actually pass a bill extending it. This affirms the political truism that it is exponentially more difficult to thread the needle and pass legislation than it is to kill it. Efforts are already underway to try to garner support for passage a reincarnated Chapter 313 program in 2023, albeit under a different name and with some significant modifications.

How might the Chapter 313 failure of 2021 impact city economic development incentive legislation in 2023? One area for possible reforms is Chapter 380 of the Local Government Code – a broad program giving cities the ability to offer grants or loans to business prospects, often in the form of a property tax or sales tax rebate.

On November 18, 2021, the *Houston Chronicle* published an article entitled "Unchecked" with a subheading of "A pair of obscure Texas laws let local officials hand out millions in taxpayer funds to companies with no limits, little transparency." The article chronicles allegedly objectionable uses of Chapter 380 agreements by cities and Chapter 381 agreements by counties.

It's worth noting that H.B. 2404 passed in 2021, which requires cities to report 380 agreements to the comptroller's office to be included in a statewide database. The League supported H.B. 2404.

The TML Legislative Program provides that the League should oppose legislation that limits the type of incentives available to the city or that would limit any use of incentives by a city.

TYPE A/TYPE B ECONOMIC DEVELOPMENT SALES TAX

The Texas Legislature created economic development corporations (EDCs) in 1979. At the time, the concept of economic development as a legitimate governmental function was in its infancy. In fact, city expenditures to attract business activity were arguably unconstitutional under Article III, Section 52, until a 1987 amendment established economic development pursuits as a public purpose. As a result, early EDCs relied on donations and were largely ineffective.

Legislation passed in 1989 and 1991 gave teeth to EDCs by authorizing the Type A and Type B sales taxes, respectively. (Note: These two types of sales taxes were formerly referred to as "4A" and "4B" due to the section of Vernon's Civil Statutes that authorized the taxes. The relevant statutes are now codified in the Local Government Code.) These sales taxes were initially envisioned by the legislators who created them as vehicles for fostering manufacturing and

industrial jobs. After their initial involvement in creating the tax, many of these legislators turned to other matters for the next decade. Meanwhile, each legislative session thereafter brought a gradual expansion of the permissible uses of Type A and Type B taxes. First, Type B EDCs were given general authority to attract commercial and retail businesses. Next, Type B EDCs (and, to a lesser extent, Type A EDCs) were given authority to fund certain municipal improvements, such as parks and city buildings. Finally, Type A EDCs were given the same broad commercial and retail business authority that their Type B cousins possessed.

Prior to the 2003 regular session, some of the legislators who had a hand in the initial EDC sales taxes began to revisit the issue, their focus being alleged "abuses" of the tax. In reality, it is more likely that these legislators were simply shocked by the broad, but legal expansion of the two taxes over the previous decade. Some of these legislators warned that the very existence of the tax was in jeopardy. In a sort of preemptive strike, professional economic development organizations took the lead in drafting legislation designed to placate the irate legislators. The result was H.B. 2912, a revolutionary rewrite of Type A and Type B EDC laws.

The primary feature of H.B. 2912 was that it effectively canceled the authority of both Type A and Type B corporations to engage in direct commercial and retail economic development. For Type A EDCs, the cancellation was straightforward: the phrase “to promote new and expanded business development” was struck from an introductory section of the law that defined eligible projects. It was this section that had essentially granted commercial and retail authority to Type A EDCs in the late 1990s. For Type B EDCs, H.B. 2912 retained language that permits expenditures to “promote or develop new or expanded business enterprises.” However, H.B. 2912 limited such expenditures for both Type A and Type B corporations to projects that create “primary jobs.” “Primary jobs” was a new concept and was defined in a way that includes jobs mostly related to “blue collar” and financial-type industries. Examples include crop production, animal production, forestry and logging, commercial fishing, support activities for agriculture and forestry, mining, utilities, manufacturing, wholesale trade, transportation and warehousing, information, securities, commodity contracts, certain financial investments and related activities, insurance carriers and related activities, scientific research and development services, and management of companies and enterprises. Conspicuously absent from this list are jobs related to basic commercial, retail, and services industries. Unless a Type A or Type B project created a “primary job,” as defined above, the project was likely improper. In summary, Type A and Type B EDCs were no longer permitted to engage in attracting commercial, retail, or service businesses. Fortunately, existing projects were grandfathered.

H.B. 2912 also repealed the authority of Type B corporations to spend sales tax proceeds on learning centers or city buildings. The bill also restricted the ability of any EDC to provide a direct financial incentive to a business prospect (as opposed to preparing land or infrastructure for use by the business), unless done pursuant to performance agreements.

Going into the 2005 session, the TML legislative program was largely silent on the issue of rolling back the effects of H.B. 2912, with one exception. TML supported legislation that would restore commercial and retail authority to corporations in "land-locked" cities. The League's overall neutrality was a function of the fact that some cities without Type A/Type B corporations dislike the broad retail incentive authority possessed by some of their neighbors. This is especially true in urban areas where some cities' entire sales tax discretion is taken up by the sales tax for transit. Such cities feel that neighboring cities with Type A/Type B corporations are able to poach existing retail business by using economic development incentives.

Some cities made a push on their own to roll back the effects of H.B. 2912. Through a combination of several bills that were enacted, commercial and retail incentive authority was restored for Type B Corporations only in either of the following two cases: (1) cities under 20,000 population; or (2) cities with less than $50,000 per year in Type B sales tax revenues. (More narrow changes were enacted for land-locked cities and certain border cities.) The statute has remained relatively unchanged since that time.

For 2013, the membership and TML Board determined, after extensive discussion, that the League would: (1) stay neutral on legislation that would expand EDC authority; and (2) oppose legislation that would limit EDC authority on a statewide level, provided that the League would take no position on legislation that was regional in scope and that was supported by some cities in the region. In other words, attempts to limit EDC authority in certain regions of the state that received support from cities in those regions would not be actively opposed by the League. This position was crafted with an eye on keeping the League out of city vs. city fights concerning EDCs.

Despite the new nuanced position by TML during the 2013 session, very few EDC bills were filed, and even fewer passed. Two bracketed bills passed giving the Port Arthur EDC additional spending authority. Another bill, H.B. 2473 by Deshotel, was signed into law after narrowly being approved by the House on a 70-69 vote. H.B. 2753 would broaden the authority of all EDCs to use EDC sales tax revenue for housing facilities at public state colleges.

Only two bills directly affecting EDCs passed in 2015. One was H.B. 157 by Larson, which provides that a city may hold an election to adopt an EDC sales tax in any increment of one-eighth of one percent (among many other things). The other, H.B. 2772 by Martinez, authorizes certain EDCs located near the border to spend EDC funds on specified transportation facilities.

In 2017, TML priority legislation passed in the form of H.B. 3045 by Dale that authorizes a city to hold an election to reduce or increase the rates of various city sales taxes. Few other bills of any significance were filed that would have affected EDCs, and no other EDC bill was passed into law.

The only bill relating to EDCs that passed in 2019, S.B. 450 by Powell, simply moved the deadline for submitting EDC annual reports to the comptroller from February 1st of each year to April 1st.

One bill that did not pass, but is worth mentioning, was H.B. 1221 by Patterson. H.B. 1221 would have authorized a city to hold an election to spend Type A and Type B EDC revenue on public safety and infrastructure expenses. When the bill was heard in committee, it was opposed by several EDC officials. Meanwhile, the bill author, Representative Jared Patterson (R-Frisco) provided the following prescient quote at the committee hearing: "This is a new day…. We've heard from a number of cities who have claimed that they will…maybe not be able to hire police and fire as a result of [revenue cap legislation]. This does provide another option for our local communities to use those funds…should they need to."

Representative Patterson refiled his bill in 2021 in the form of H.B. 539, but it did not advance out of committee. One EDC bill that did pass in 2021 was S.B. 1465 by Hinojosa. S.B. 1465 establishes the Texas small and rural community success fund to make loans to economic development corporations (EDCs) for eligible EDC projects.

The TML Legislative Program provides that the League: (1) take no position on legislation that would broaden the authority of Type A or Type B sales tax corporations; and (2) oppose legislation that would limit the authority of Type A or Type B sales tax corporations statewide, but take no position on legislation that is regional in scope and that is supported by some cities in that region.

ISSUING CITY DEBT

Outside of property tax reform, perhaps no issue relating to municipal revenue and finance has generated more attention over the past several sessions than local debt. Although numerous bills had been filed prior to the 2013 session that would have made it more difficult for cities to issue certain debt obligations, the outcry against the perceived endemic growth of local debt reached a fevered pitch starting with the 2013 legislative session. All of this in spite of the fact that state-collected data showed that local government debt (and city debt, in particular) is increasing a significantly lower rate than was state debt.

Nevertheless, heading into the 2013 legislative session, Comptroller Susan Combs sharpened her focus on the issue by publishing a report on the problems associated with the issuance of local debt. On January 2013, Combs authored an article that ran in the Wall Street Journal entitled *Debt Excess Even Lives in Texas* in which she claimed that local elected officials choose to deliberately hide-the-ball from the citizens they represent with regard to debt: "Unchecked and invisible debt and out-of-control spending are putting the nation in real jeopardy, and too many public officials seem happy to keep you in the dark. It's up to you to demand that the lights be turned on—before it's too late."

Even more problematic than the then comptroller's articles, however, were the comprehensive local debt bills she had filed by the chairman of the Senate Finance Committee and chairman of the House Appropriations Committee in 2013—S.B. 14 and H.B. 14. As filed, the bills would have

impacted cities in three major ways: (1) required cities to include various types of financial information on the actual ballot proposition for a bond election, including the total and per-capita amounts principal and interest required to pay all outstanding debt (including non-tax-supported debt), the principal and interest of the bonds to be authorized, as well as other estimations of interest rates and maturity dates for the bonds to be authorized, among other things; (2) required the preparation of an annual financial report that contains information on each city fund as well as information on the city's debt obligations, and required every city to post the report on its website or Facebook page; and (3) imposed limitations on the issuance of certificates of obligation (COs), such as expanded notice when issuing COs, limitations on how often COs could be issued, and lessening the threshold number of voters needed to petition to force an election on the issuance of a CO from five percent of the qualified voters of the city to five percent of the total number of voters that voted in the most recent gubernatorial general election in the city.

Conventional wisdom dictated that comprehensive bills on local debt sponsored by arguably the two most powerful committee chairmen in the House and Senate, and being pushed as a number one priority by the comptroller stood a pretty good chance of passing. The League testified against the bills in committee, but also worked to make beneficial changes to the bills with the sponsors and other interested groups as the bills progressed through the process. By the end of the session, the above provisions of the bills had been modified significantly: A more appropriate amount of financial information would be included in the bond election order only (not on the actual ballot), annual reporting requirements were lessened, and many of the limitations on issuance of COs were lifted. By the time H.B. 14 by Chairman Pitts arrived on the House floor, the League no longer actively opposed the legislation, although the League was also not supportive of it.

Just as debate began on H.B. 14 on the House floor, a point of order was raised against the bill and sustained, effectively killing the bill. The focus then shifted to S.B. 14, Chairman Williams' companion bill to H.B. 14. The bill was overwhelmingly approved by the Senate on a 29-1 vote. S.B. 14 made it all the way to the House floor with only a few days left in the regular session, where it met the same fate as H.B. 14 and was killed on a point of order.

A number of other city-debt related bills were filed in 2013, many of them containing individual components of the omnibus local debt bills, H.B. 14 and S.B. 14. The only bill regarding city debt issuance that passed, S.B. 637 by Paxton, contained some similar provisions regarding bond election notice as the two more comprehensive bills. As passed, S.B. 637 requires cities to include various types of information in the election order for a debt election, including information on the debt being issued, total outstanding tax-supported debt, tax rates resulting from the debt issuance, and more. In addition, the election order must be posted in each polling place, on the city's website, and in three other public places in the city. The League did not oppose S.B. 637, as it represented a preferable alternative to the initial proposal in H.B. and S.B. 14 that would put misleading information in the actual ballot proposition.

H.B. 2176 by Kolkhorst would have placed the same restrictions on city issuance of COs as provided by H.B. and S.B. 14. This bill received a hearing in House Urban Affairs, and despite the League's opposition, was reported favorably from the committee. Fortunately the bill did not make it to the House floor. However, with the passage of S.B. 637, which addressed many of the perceived deficiencies in election notices for debt elections, it seemed relatively likely that some legislators would turn their focus to limiting city's ability to issue COs. The primary concern of the former comptroller and some legislators has been that COs do not require an upfront election, but only require an election if the citizens petition for one within 30 days of receiving notice of the issuance. This has led to a focus on COs in recent years, even though the annual city issuance of COs hasn't increased over 2008 levels, and issuing COs actually can save cities millions in interest costs as compared to other debt obligations, like revenue bonds.

Not surprisingly, several bills were filed in 2015 that would address local debt. Momentum coalesced around H.B. 1378 by Flynn, a debt reporting bill that was ultimately passed and was signed into law. In addition to requiring every city to complete an annual report containing information about issued and outstanding debt, H.B. 1378 also prohibits a city from issuing a CO for a project that was rejected by the voters at a bond election during the preceding three years. S.B. 310 by Campbell would have added notice requirements and reduced the petition threshold to call elections on COs. The bill was approved by the Senate late in the session but never made it to the floor of the House.

Several bills were filed that would have required varying degrees of additional financial information to be included in any proposition language at a bond election. S.B. 1041 by Bettencourt was the ballot language bill that gained the most traction, getting approved by the Senate and the House Elections Committee before stalling in the House Calendars Committee. One other troubling bill, H.B. 1283 by Simmons, would have only allowed city debt elections to take place on the November uniform election date. The bill was reported from House Elections Committee but did not advance further. Various iterations of the same bill have been filed in the sessions since.

One new approach in 2017 to combat local debt issuances was legislation that provided a debt election was not valid unless a certain percentage of registered voters showed up to vote. The only such bill to receive a committee hearing was S.B. 702 by Huffines. As filed, S.B. 702 would have required turnout of 33 percent of the registered voters of a political subdivision in order for a bond election to take effect. The threshold was amended to 15 percent after the committee hearing. The bill was voted from committee but moved no further. The irony of this new idea is that it comes from legislators who appear to be very concerned with local government spending, yet they are willing to author legislation that could waste taxpayer dollars on invalid elections.

The 2019 session was an active one for local debt bills. H.B. 440 by Murphy passed and was signed into law. Though H.B. 440 affected school districts more than cities, the bill contained one generally-applicable provision requiring a political subdivision that maintains a website to include

a sample ballot for their debt election on the website for the 21 days before the election. It also provided that a political subdivision may not issue general obligation bonds if the weighted average maturity of the bonds exceeds 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of the bonds.

Another bill that passed, S.B. 30 by Birdwell, requires that each single specific purpose for which bonds requiring voter approval are to be issued must be printed on the ballot as a separate proposition. The stated goal of the legislation was to prevent a local government from including an unpopular expenditure with a popular expenditure in the same proposition in order to facilitate the passage of the more unpopular one.

The most city-significant local debt bill that passed in 2019 was H.B. 477 by Murphy. Among other things, H.B. 477 requires a political subdivision with a population of at least 250 to create a voter information document for each debt proposition to be voted on at an election. The voter information document must include the ballot language, a table that contains information about the principal and interest (both of the debt to be issued and of all outstanding debt), the estimated maximum annual increase in the amount of taxes imposed on a homestead with a $100,000 value, and any other information the political subdivision considers necessary to explain the information in the voter information document. This language could be seen as a compromise of sorts – more transparency for the voter in a debt election without putting all of the information on the ballot itself to potentially confuse the voter in the voting booth.

H.B. 477 also contained some language related to COs. The bill adds contextual information to the notice of intention to issue a CO, extends the timeframe to publish newspaper notice of the intention to issue a CO from 30 days to 45 days before passage of the ordinance, and requires the notice to be placed on a city's website for at least 45 days before the passage of the ordinance, as well.

In 2021, the most serious threat to city debt authority was H.B. 1869 by Representative Burrows. As filed, H.B. 1869 would have modified the definition of "debt" for purposes of the debt service property tax rate calculation to only include debt approved at an election. This change would mean that all non-voter approved debt, such as certificates of obligation and tax notes, would have to be financed from a city's maintenance and operations property tax rate instead of the debt service tax rate. This change was deemed necessary by proponents because of perceived abuses by local governments, who were argued to rely heavily on COs because they are not subject to the 3.5 percent voter-approval rate calculation and aren't subject to an upfront election for approval.

Due in large part to the work of city officials and other interested stakeholders, H.B. 1869 was significantly modified as it went through the legislative process. As filed the bill would have essentially taken away COs and other debt instruments as financing options for critical infrastructure, even though they often represent the most cost-efficient form of local debt. The bill would have also effectively eliminated the ability of cities and other local governments from

issuing refunding bonds to refinance existing debt. The bill's author showed a willingness to address city concerns in subsequent versions of the bill, making it largely acceptable to most stakeholders by the end of the legislative process.

As it passed, H.B. 1869 did modify the definition of "debt" for purposes of the debt service property tax rate calculation, but the new definition still retained the ability to use certain non-voter approved debt instruments for critical projects, like transportation infrastructure improvements, water, sewer, and telecommunications infrastructure, public safety-related infrastructure projects, updating existing buildings and facilities, vehicles and equipment, and refunding bonds, among other things. Under the new definition, cities are limited in using COs or other non-voter approved debt to finance new non-public safety city facilities, like libraries, and other types of miscellaneous expenditures like public art projects. In 2023, city leaders should expect to see attempts to eliminate permissible uses of debt from the new framework established by H.B. 1869.

Cities can also expect to again see legislation in 2023 that would either eliminate or discourage the use of the May uniform election date for debt elections. In early 2022, Governor Abbott released his plan for a "Taxpayer Bill of Rights" as a way of providing property tax relief. Included within that plan was the following proposal: "Require local government debt be passed by a two-thirds supermajority of the local governing body, and local bond issues not included on the November ballot to pass by a two-thirds supermajority of voters."

This concept is not a new one, as discussed above. S.B. 1224 by Bettencourt in 2019 was one of several proposals along the same lines. It would have forced all local bond elections to the November uniform election date under the rationale that there's greater voter participation in November elections as compared to May elections, and that local governments "cherry pick" voters that will approve the bond issuance by holding elections in may instead of November. However, data from the Texas Bond Review Board shows that over the past ten years the passage rate for city bond propositions in May as compared to November is nearly identical, and cities have actually held more bond elections in November than on the May election date over the same time period. Given the extra promotion from the governor during the interim, cities can expect to see momentum behind similar legislation in 2023.

The TML Legislative Program provides that the League oppose legislation that would erode the ability of a city to issue debt.

CITY HOTEL OCCUPANCY TAX: REVENUE USE FOR PARKS

As dedicated revenue, city hotel occupancy tax may only be spent on certain, statutorily-defined purposes. Very generally speaking, all expenditures of city hotel tax revenue must promote tourism within the city. This general rule can be further broken down into two parts (often referred to as the "two-part test"):

(a) all expenditures must promote tourism and the convention and hotel industry; and

(b) all expenditures must further fall into one of nine statutory categories: (1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities and visitor information centers; (2) expenses associated with registration of convention delegates; (3) advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity; (4) promotion of the arts; (5) historical restoration or preservation projects; (6) sporting events that promote tourism in counties of less than one million population; (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (8) transportation systems that transport tourists from hotels to the commercial center of the city, a convention center, other hotels, or tourist attractions, provided the system doesn't serve the general public; and (9) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.

In 2020, the cities of Fredericksburg, Dripping Springs, and Yorktown submitted a resolution for consideration at the TML Business Meeting that would add an additional category of expenditure to the list above: the expenditure of municipal hotel occupancy tax revenue for construction of improvements in municipal parks and trails/sidewalks that connect parks, lodging establishments, and other tourist attractions, and related public facilities. The resolution was approved by the TML membership and the position added to the 2021 TML Legislative Program. Following the inclusion of the position in the program, the League received communication from several other cities expressing their enthusiasm about the measure.

The driving force behind the resolution was the idea of expanding the revenue sources that are available to fund parks projects, and to do so in a way that highlights the use of parks in ways that benefit tourists to the city. Perhaps underlying the push for this additional revenue source is the fact that some cities view the property tax reforms from 2019 as limiting their ability to adequately fund city parks. According to the resolution: "city parks are in need of additional improvements and amenities and connectivity to lodging establishments and tourist attractions, as the current demand for certain park facilities and amenities frequently exceeds the operating capacity of said improvements and amenities, due to the large attendance at annual festivals, events, and related tourist activities held on city parks and would benefit from connectivity and additional public facilities."

Three bills were filed in 2021 that would have authorized the use of local hotel occupancy tax revenue for public park improvements – H.B. 3223 by Representative Zwiener, H.B. 3091 by Representative Vasut, and S.B. 696 by Senator Buckingham. H.B. 3223 and S.B. 696 were nearly identical, and as filed, both would have authorized HOT revenue expenditures for public parks in cities under 200,000 population (and Lubbock) under certain circumstances. H.B. 3091, meanwhile, would have authorized any city to use its hotel occupancy tax revenue on "qualified

infrastructure" and public parks if the facility was located within one mile of a hotel. The only one of these three bills to move through the process was H.B. 3223, which was reported from the House Ways and Means Committee only after it was amended to only apply to four specific cities. The committee substitute for H.B. 3223 also provided that the amount of city hotel occupancy tax revenue a city could use to enhance and maintain parks in a fiscal year could not exceed ten percent of the amount of revenue the city collected from the tax during the preceding fiscal year, and also couldn't exceed the amount of area hotel revenue that was directly attributable to tourists who attended events at that park or visited the park in the preceding fiscal year.

H.B. 3223 was recommended to be "fast-tracked" on the House Local and Consent Calendar, but was a casualty of the late session time crunch. An attempt was made to tack on the revised language from H.B. 3223 on an unrelated Senate bill moving through the House late in the session. The language was added in a House floor amendment, but eventually came out of the bill in conference committee.

The TML Legislative Program provides that the League support legislation that allows for the expenditure of municipal hotel occupancy for construction of improvements in municipal parks and trails/sidewalks that connect parks, lodging establishments, and other tourist attractions, and related public facilities.

MAJOR EVENTS REIMBURSEMENT PROGRAM

Before undergoing a name change and having administration duties shift to the governor's office in 2015, the Major Events Trust Fund was a program administered by the comptroller to offer incentive funding that helps Texas cities and counties host major sporting events and conventions. Eligible events still include, among other things, NCAA Final Four basketball games, the Super Bowl, Academy of Country Music Awards, and national political conventions of the Republican or Democratic National Committees. After a site selection organization receives an application from a city or county and chooses to bring an event to Texas instead of another state, the city or county can apply for funding from the Major Events Trust Fund to offer as an incentive to the organization. The money spent from the Major Events Trust Fund is repaid into the fund in part by cities and counties through incremental sales tax, mixed beverage tax, and/or hotel occupancy tax gains that result from the major event that takes place.

In 2012, the administration of the Major Events Trust Fund by the comptroller garnered some political attention. Specifically, some politicians and other groups had called into question the comptroller's ability to use the fund to pay for certain events, like the Cotton Bowl, that have traditionally been held in Texas. The criticism concerning the use of the fund led Texas Land Commissioner Jerry Patterson to request an attorney general's opinion regarding the comptroller's authority to spend Major Event Trust Fund dollars to attract the Formula 1 race to the Austin area

after it appeared that the organization sponsoring the event had already settled on bringing the event to central Texas.

Up until that point, the existence and use of the Major Events Trust Fund had been relatively non-controversial. In fact, the legislature adopted a number of bills over the last several legislative sessions that would add events to the list of proper uses of the Major Events Trust Fund without any apparent opposition.

As expected, legislation was filed in 2013 to place some limitations on how the Major Events Trust Fund, as well as the closely-related Events Trust fund, could be utilized. S.B. 1678 by Deuell made several changes to the way the Major Events Trust Fund and Events Trust Fund operate, including adding eligibility, reporting, and disbursement requirements for both funds. S.B. 1678 passed both houses by a significant margin and was signed into law.

In 2015, legislation passed changing the name of the Major Events Trust Fund to the Major Events Reimbursement Fund. In addition S.B. 633 passed, which transferred administration of the Major Events Reimbursement Program and Events Trust Fund (among other funds) to the office of the governor. In addition, S.B. 633 added several events to the list of eligible events for funding from the Major Events Reimbursement Program.

While a small handful of bills were filed in 2017 that would have abolished the Major Events Reimbursement Program, along with the other similar state incentive funding programs, none of them were seriously considered and none received a committee hearing. Nothing was filed in 2019 that would have abolished the Major Events Reimbursement Program. The only bill to pass impacting the program was a bill that codifies the events reimbursement program statutes in Government Code Chapters 475 to 480. In 2021, a small handful of bills passed that would add certain events to the list of eligible events for funding.

The TML Legislative Program provides that the League oppose legislation that would limit or eliminate the current flexibility of the Major Events Reimbursement Program as a tool for cities to attract or host major events and conventions.

REGULATION OF DEVELOPMENT

ANNEXATION

Up until 2017, Texas granted broad annexation power to all of its home rule cities. That year, S.B. 6 (Campbell/Huberty) passed and became effective on December 1, 2017. On final passage in the House, Representative Huberty proclaimed that, "Citizens have rights, cities don't."

With that, municipal annexation as it existed for over a century was over. The bill required landowner or voter approval of annexations in the state's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process.

In 2019, H.B. 347 by Rep. Phil King completely closed the book on unilateral annexations in every county. The bill ended most unilateral annexations by any city, regardless of population or location. Specifically, the bill made most annexations subject to the three consent annexation procedures that 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. The bill authorized certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure.

With the population in the state's largest counties expanding exponentially, the loss of planning and financial control may bring significant challenges to transportation, utilities, and land use planning, as well as financial problems for cities.

One new issue relating to the authority of a city to annex property on the request of a property owner bears mention. The reforms in 2017 and 2019 made annexing across a road impossible in some instances, even when the property owner requested annexation.

Property to be annexed must be in a city's extraterritorial jurisdiction and must touch the existing city limits. Most agree that a city may not annex "islands" of municipal territory. It is very common that a petitioner's property is across a road or a short distance from the existing city limits. For over a century, that was never a problem. A home rule city could have included the road pursuant to the unilateral annexation authority granted by its charter, and a general law city had a statute (Local Government Code Sec. 43.103) allowing it to include the road. However, H.B. 347 in 2019 took both away.

Heading into the 2021 session, the Texas Department of Transportation indicated that it would not petition a city to include a state highway, except perhaps in limited circumstances. Whether county commissioners courts across the state would do so was unclear.

In 2021, the legislature passed TML priority legislation aimed at fixing this issue and authorizing the annexation across a state or county highway to a property owner requesting voluntary annexation. Specifically, S.B. 374 (Seliger/Shine) provided that: (1) a city annexing an area on

request of the owners, an area with less than 200 population by petition, an area with at least 200 population by election, or certain special districts may also annex with the area the right-of-way of a street, highway, alley or other public way or of a railway line spur, or roadbed that is: (a) contiguous and runs parallel to the city's boundaries; and (b) contiguous to the area being annexed; and (2) a city may annex a right-of-way described under (1), above, only if: (a) the city provides written notice of the annexation to the owner of the right-of-way not later than the 61st day before the date of the proposed annexation; and (b) the owner of the right-of-way does not submit a written objection to the city before the date of the proposed annexation. S.B. 374 passed with very little controversy, perhaps giving some hope that the legislature is willing to consider common-sense reforms to the annexation statute, so long as the reforms don't backtrack on the consent requirement that is now a fixture of the process.

With the passage of S.B. 374 in 2021, the Summit members should discuss the removal of the related position from the TML program.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings, (5) building codes, (6) tree preservation, and (7) short-term rentals.

The TML Legislative Program provides that the League should seek introduction and passage of legislation that would authorize a city to annex across a road to bring a voluntarily-requested area into the city limits.

EXTRATERRITORIAL JURISDICTION (ETJ)

With the severe curtailment of city unilateral annexation authority over the past few legislative sessions, questions have arisen about what becomes of city regulatory authority in the ETJ.

ETJ is defined by statute as "the unincorporated area that is contiguous to the corporate boundaries of the municipality," and the geographical extent of any city's ETJ is contingent upon the number of inhabitants of the city, ranging from half a mile (fewer than 5,000 in habitants) to five miles (100,000 or more inhabitants). An area to be annexed must be located within the city's ETJ under state law.

In addition to regulating annexation authority and procedures, the Municipal Annexation Act created the concept of ETJ in 1963. The policy purpose underlying the concept of the ETJ is described in Section 42.001 of the Texas Local Government Code:

> "The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities."

Under current law, cities have limited authority to enforce city regulations and engage in economic development efforts in the ETJ. The following are examples of state laws that authorize cities to regulate in the ETJ:

- Health & Safety Code § 713.009 – Cemeteries
- Local Government Code Chapter 43 – Annexation
- Local Government Code § 212.003(a) – Subdivision and Platting Regulations
- Local Government Code §§ 216.003, 216.902 – Signs
- Local Government Code § 217.042 – Nuisances within 5,000 feet (home rule city only)
- Local Government Code § 341.903 – Policing City-Owned Property (home rule city only)
- Local Government Code § 552.001 – Utility System
- Water Code § 26.177 – Pollution Control and Abatement

Some believe that the only policy justification for city regulation in the ETJ was the fact that the property being regulated would one day become part of the city through annexation. Because the future inclusion of the territory in the city limits is less of a sure thing than it was four years ago due to annexation reforms, the same people argue that cities should no longer be able to extend enforcement of any regulation into the ETJ. To bolster their point, proponents of limiting city authority in the ETJ point to the fact that ETJ residents, since they don't live in the city, have no ability to vote in city elections, and therefore should not be subject to city regulations.

There are, of course, many reasons why it still makes sense for cities to have some regulatory authority in the ETJ. For one, annexation can still take place with property owner consent. Additionally, after years of annexation in many cities, the ETJ isn't just territory located miles away from the city center. In many cases now, there are areas located in the ETJ that are surrounded by the city limits, and distinguishing between what is and isn't in the ETJ is a task that can only truly be accomplished by a land surveyor. This underscores the state legislature's policy justification mentioned above – those living in the ETJ often are in close proximity to those that live in the city limits and there are valid health and safety reasons why some limited degree of regulation should apply in the ETJ for the protection of both parties. Further, in many cases cities provide vital services to ETJ residents because of their proximity to the city.

In 2021, several bills were filed that would have altered the city's relationship with its ETJ. One of the more notable examples was H.B. 1885 by Representative Cody Harris. As filed, H.B. 1885 would have, with certain exceptions, prohibited a city from regulating an activity or structure in an area in which the residents are ineligible or have only limited eligibility to vote in municipal elections. The bill was revised as it moved through the process, and it became clear that the bill was being pushed by billboard interests, who wanted to eliminate city sign regulations in the ETJ. Instead of the bill simply stating that city sign regulations could not apply in the ETJ, the committee substitute for H.B. 1885 took a different approach. The bill continued to state that a city couldn't regulate in the ETJ, but expanded the list of exceptions to virtually every possible thing a city could currently regulate in the ETJ, except for signs. The bill passed the House once sign

regulations were added to the list of exceptions, along with some other safeguards, but stalled out in the Senate.

S.B. 1992 by Senator Bettencourt and the companion bill, H.B. 3519 by Representative Deshotel, would have gone far beyond limiting certain types of city regulation in the ETJ and all but eliminated the concept of ETJ in many cases. The bills would have required the release of property from the ETJ if a city received a valid petition from residents living the ETJ asking for it. Both bills were heard in committee, but received significant city opposition and neither advanced further.

One bill that did pass in 2021 related to the ETJ was S.B. 1168 by Senator Campbell. S.B. 1168 provides that, in an area in a city's ETJ that has been disannexed under certain law or for which the city has attempted and failed to obtain consent for annexation under certain law, this bill: (1) prohibits a city from imposing a fine or fee on a person on the basis of an activity that occurs wholly in the area, or the management or ownership of property located wholly in the area; and (2) provides that the prohibition in (1), above, does not apply to a fine or fee for water, sewer, drainage, or other related utility services. The bill is somewhat narrow in scope, but does open the door to preventing city regulation in certain areas in the ETJ.

In December 2021, the Texas Public Policy Foundation (TPPF), a conservative interest group, published a memo on ETJ authority arguing for the abolition of the ETJ as a concept. According to the memo: "Many Texans decide to live in an unincorporated land to avoid municipal regulation and taxation. As such, municipalities should not be expected to 'promote and protect the general health, safety, and welfare of persons' who reside outside of their city limits. Unincorporated residents must not be subject to regulation or taxation without representation. The concept of extraterritorial jurisdiction no longer serves its intended purpose and should be abolished."

In April 2022, Lieutenant Governor Patrick charged the Senate Local Government Committee with looking at ETJ issues prior to the 2023 legislative session: "Study issues related to municipal extraterritorial jurisdictions and annexation powers, including examining possible disannexation authority. Determine whether extraterritorial jurisdictions continue to provide value to their residents and make recommendations on equitable methods for disannexation." At the time of this printing, no hearing has been held on the charge.

The new attack on city ETJ authority took another turn in May 2022 when attorneys at TPPF filed a lawsuit against the City of College Station in *Elliot v. City of College Station*. In the original petition, TPPF argues that because College Station enforces city regulations in the ETJ, but doesn't provide voting rights to residents of the ETJ in city elections, that the city is acting in violation art. I, sec. 2 of the Texas Constitution, which pledges the preservation of a republican form of government. It's not exactly clear why TPPF decided to recruit plaintiffs in College Station in furtherance of their mission to abolish the ETJ.

Given the recent changes to annexation authority and subsequent attacks on city authority in the ETJ, the Summit may wish to directly address ETJ issues in the TML Program.

EMINENT DOMAIN

Background

Cities and other governmental entities must acquire land for a variety of reasons. If a city is unable to negotiate with a property owner for property acquisition, the city may condemn the property through the process of eminent domain. The city must strictly follow legal procedures. The city must make a determination of public use (but, see discussion of limitations on eminent domain for economic development purposes, below), and it must engage in good faith negotiations with the property owner to acquire the property. If negotiations fail, the city must file, in court, a petition for condemnation. The court then appoints three special commissioners.

The commissioners hold a hearing, during which the city and other parties appear and present evidence as to the compensation to be paid. The commissioners make a written determination of the compensation to be paid. If the award is less than what was offered by the city, the property owner pays all costs. If the award is more than what was offered by the city, the city pays all costs. The commissioners must determine the market value of the property at the time of the hearing. If only a portion of the tract is being condemned, the effect on the remaining property is included in the compensation. If a party is dissatisfied with the award, objections must be filed with the court. If objections are filed, the award is appealed and a new trial is conducted by a court in a judicial proceeding.

Modern eminent domain reform came after a handful of highly-publicized condemnations, followed later by the U.S. Supreme Court's opinion in *Kelo v. New London* in 2005, grabbed the attention of the legislature. In these condemnations, cities condemned property to sell to private businesses for economic development.

Under current law, before a city condemns property, the city council must determine that the condemnation serves a public use. The council's decision has always been subject to judicial review, and local officials have always maintained that deciding what constitutes a public use should be done by the city council, the elected officials closest to the people, rather than by the state. TML knew that condemnations for economic development would eventually result in legislation designed to curtail that authority. Nothing of interest happened during the 2005 regular session, but the following special sessions – and nearly every session since – led to a firestorm of controversy regarding the issue. The following sections discuss different parts of eminent domain reform.

Kelo: Eminent Domain for "Economic Development Purposes"

In 2005, the United States Supreme Court issued its opinion in *Kelo v. City of New London, Connecticut.* Under that opinion, the decision to use eminent domain authority for economic development was left to local officials, and those officials were authorized to determine whether using that authority serves a "public use."

Many newspaper reports led readers to believe that cities would use this "new" authority to "seize" property, "bulldoze" homes, and "grab" everything that stands in the way of increased tax revenue. In reality, the *Kelo* case was about community leaders trying to save the economic viability of their city and its residents.

But in no time at all, numerous Texas legislators spoke out in favor of amending the Texas Constitution to prohibit condemnation for "economic development" purposes. Several lawmakers filed proposed constitutional amendments to do just that. Some of this legislation was dangerously broad and would have applied to political subdivisions, but not to the state.

In the end, a 2005 compromise bill (S.B. 7) became the first vehicle for restricting eminent domain for economic development. That bill, which passed during the second special session, restricted the use of eminent domain authority as follows:

1. Provides that neither a governmental nor private entity may take private property through the use of eminent domain if the taking: (a) confers a private benefit on a particular private party; (b) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or (c) is for economic development purposes, unless the economic development is a secondary purpose resulting from community development or municipal urban renewal activities to eliminate an existing affirmative harm to society from slum or blighted areas.

2. Establishes numerous exceptions to the prohibitions listed in number 1 above, including: (a) transportation projects, including but not limited to railroads, airports, or public roads or highways; (b) ports, navigation districts, and certain conservation and reclamation districts; (c) water supply, wastewater, flood control, and drainage projects; (d) public buildings, hospitals, and parks; (e) the provision of utility services; (f) certain sports and community venue projects; (g) the operations of certain common carriers and energy transporters; (h) waste disposal projects; or (i) libraries, museums, and related infrastructure.

Process Reform

A 2006 interim legislative committee ultimately concluded that "Senate Bill 7 provided a good beginning for eminent domain reform in Texas. The diligent work of interim committee members and other parties has provided a solid foundation for comprehensive eminent domain legislation in the 80th Legislature."

Based on that conclusion, more than twenty bills and joint resolutions (proposing constitutional amendments) were filed that would have made numerous changes to eminent domain were filed. The bill that ultimately became the omnibus eminent domain bill for the 2007 session was H.B. 2006. That bill, which was vetoed by the governor, would have made numerous changes to eminent domain laws.

Governor Perry vetoed H.B. 2006 because he claimed it would have cost the state and certain counties up to $1 billion for future highway projects. The governor's veto message stated that "[i]t is important to balance the rights of Texas landowners whose land is acquired through eminent domain against the needs of the greater taxpaying public. In essence, the state and local government would be over-paying to acquire land through eminent domain in order to enrich a finite number of condemnation lawyers at the expense of Texas taxpayers."

In 2009, the legislature passed a constitutional amendment that attempted to define "public use." In a strange political compromise, the law essentially combined language from House and Senate versions to come up with an odd amalgamation of a definition. As approved by the voters in November of 2009, H.J.R. 14 provides that no person's property shall be taken, damaged, or destroyed for or applied to a "public use" without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is necessary for: (1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by the state, a political subdivision of the state, or the public at large or an entity granted the power of eminent domain under law; or (2) the elimination of urban blight on a particular parcel of property. The resolution also provides that a "public use" does not include the taking of property for transfer to a private entity for the primary purpose of economic development or the enhancement of tax revenues, and that on or after January 1, 2010, the legislature may enact a law granting the power of eminent domain to an entity only with a two- thirds vote of all members elected to each house.

In 2011, the legislature ultimately passed a significant "process reform" bill in the form of S.B.18. Many thought process reform was done at this point. Not true.

In 2015, and continuing into the 2016 interim, legislators seemed to be most focused on the amount of money a property owner receives when the government, a pipeline company, a railroad, or a utility acquires property. One idea received the most attention. It came in the form of H.B. 3339 (Burkett), H.B. 3065 (Fallon), and S.B. 474 (Kolkhorst), which would have provided that, if the amount of damages awarded by the special commissioners is at least 10 percent greater than the amount the condemnor offered to pay before the proceedings began or if the commissioners' award is appealed and a court awards damages in an amount that is at least 10 percent greater than the amount the condemnor offered to pay before the proceedings began, the condemnor shall pay: (1) all costs; and (2) any reasonable attorney's fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.

Those bills did not pass, but the Senate State Affairs Committee was charged to study the issue during the 2016 interim. At a March hearing, the committee considered the following charge:

> *Gather and review data on the compensation provided to private property owners for property purchased or taken by entities with eminent domain authority. Examine the variance, if any, between the offers and the fair market values of properties taken through eminent domain. Make recommendations to ensure property owners are fairly compensated.*

Invited witnesses included representatives from the Texas Department of Transportation, Texas Farm Bureau, electric utilities, gas pipelines, and various landowner groups. Testimony focused on the amount landowners receive when their land is taken using eminent domain. As one would expect, landowners testified that awards should be higher, and condemning entities testified that the process is working as it should.

The main idea discussed by reformers is that a condemnor, including a city, should pay the landowner's attorney fees and costs if the final award is some percentage greater than the initial offer. (This is what the 2015 proposed bills mentioned above would have required.)

Those familiar with eminent domain practice know that to be a difficult change for cities. A city's initial offer is – by law – based upon an appraisal obtained by the city. The fair market value and final award are then determined by negotiating or submitting the issue to a special commissioners hearing. The fact that a city "negotiates up" to avoid litigation doesn't necessarily mean that its initial offer was "lowballed."

League staff was also asked to testify, and pointed out that – according to recent U.S. Census numbers – the more than 1,000 people per day added to the Texas population in 2014-2015 didn't move to rural areas. They moved to cities. And that movement means that cities will need to judiciously use eminent domain for streets, utilities, and other vital public infrastructure.

City officials absolutely want the process to be fair, but they also can't allow it to become so expensive as to be useless.

A coalition of reformers (including the Farm Bureau and the Texas and Southwestern Cattle Raisers Association) continued to press hard for more compensation to landowners. A number of bills that would further reform the use of eminent domain were filed in 2017, and both the House Committee on Land and Resource Management and the Senate State Affairs Committee held hearings on most of the bills, but nothing passed. In 2019, the legislation was back. Except for one random amendment making the reform apply to cities, the legislation was focused almost exclusively on alleged abuses by gas pipeline operators. Again, though, no legislation passed.

In December 2019, Speaker Bonnen issued interim charges to House standing committees. The House Committee on Land and Resource Management received two eminent domain related

charges. The first directed the committee to review, in conjunction with the attorney general, the "landowner's bill of rights" that has to be provided to a property owner prior to a city attempting to acquire property and whether any changes should be made to "enhance the landowner's understanding of the condemnation process" and render the bill of rights more "user friendly." The committee was also charged with studying property owners' rights regarding repurchase of property acquired by eminent domain in which actual progress has not been made.

Legislation on both of those subjects was introduced and passed in 2021. Most significantly, H.B. 2730 by Land and Resource Management Chairman Joe Deshotel passed. The bill was a negotiated bill between landowner groups and a coalition of entities with eminent domain authority called the Coalition for Critical Infrastructure (CCI), of which TML is a member.

H.B. 2730 makes several transparency reforms to the eminent domain process, including clearer statement of rights in the existing landowner bill of rights document, procedural reforms to appointment of special commissioners, and a clarification of the written documents needed in an initial offer to a property owner in order to make it a bona fide offer. The League supported the bill in its adopted form.

With regard to the right to repurchase, S.B. 726 passed in 2021. S.B. 726 makes it more difficult for a condemning entity to demonstrate that it is making "actual progress" toward the public use for which the property was originally condemned, increasing the likelihood that the original property owner will have the right to repurchase the property.

Given the fairly significant eminent domain reforms that passed in 2021, it is possible that there is less of a pressing need for process reforms in 2023. For the first time in several sessions, the topic of eminent domain was not included in the list of committee interim charges in the House or Senate.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings, (5) building codes, (6) tree preservation, and (7) short-term rentals.

ZONING/RELIGIOUS LAND USE/REGULATORY TAKINGS

Zoning

Zoning is the division of a city into districts that permit specific land uses, such as residential, commercial, industrial, or agricultural. Zoning authority empowers a city to protect residential neighborhoods, promote economic development, and restrict hazardous land uses to appropriate areas of the city. It is designed to lessen street congestion; promote safety from fires and other dangers; promote health; provide adequate light and air; prevent overcrowding of land; and

facilitate the provision of adequate transportation, utilities, schools, parks, and other public facilities.

Chapter 211 of the Texas Local Government Code contains many procedural requirements that must be followed when a city zones property, including strict notice and hearing provisions. The requirements ensure that city and neighborhood residents have a strong voice anytime a zoning change is considered. In addition, Chapter 211 provides for the creation of a planning and zoning commission to make recommendations on the adoption of the original regulations, as well as to hear proposed amendments. Also, a board of adjustment may be appointed to hear requests for variances from the regulations.

Zoning authority is often demanded by the residents of cities. Citizens, acting through neighborhood and preservation groups, generally support it. In essence, zoning grants a city the authority to prohibit detrimental uses and to promote beneficial uses. For example, zoning authority allows a city to prohibit lead-smelting plants or junkyards from being located in or near residential areas, thereby protecting quality of life and property values for residents. In modern times, zoning has changed to include mixed-use developments designed to lessen traffic congestion and increase quality of life.

As with all issues that affect the residents of a city, the power to zone is best exercised by the level of government that is closest to the people. For example, most would agree that a person from a small town in the Panhandle cannot possibly know what type of zoning is best for a large coastal city. Despite this fact, the legislature has considered bills in the past that would have overturned the zoning decisions of individual cities.

In recent years, a handful of cities – in response to "tear-down" development in established neighborhoods – have enacted ordinances to restrict the size and shape of new homes in certain areas of the city. The ordinances are enacted to preserve the character of existing communities. These ordinances are commonly referred to as "McMansion ordinances." In response to the ordinances, lawmakers in 2007 debated two bills that would have essentially overruled the ordinances. H.B. 1732 and H.B. 1736 would have limited the ability of a city to preserve the character of existing communities through McMansion ordinances. Neither bill passed, but each was designed to undermine local planning.

In another situation in 2007, a state representative from the Houston area filed a bill to force a central Texas city to rezone a specific parcel of property. The city had rejected the rezoning application of a prominent developer. The bill was left pending in committee. Similar bills (e.g., H.B. 3397 in 2009) were filed in subsequent sessions, but nothing passed. Another detrimental bill, considered in 2009 (H.B. 4144), would have provided, among many other things, that a landowner may petition the *county commissioners court* to overturn a city's zoning decisions. A similar bill, H.B. 3513, was introduced in 2013. And the issue was back in 2015 with H.B. 3701, but didn't make it out of committee.

One zoning bill that passed in 2019 was H.B. 2496 by Rep. Cyrier. That bill dealt with the process by which a city designates local historic landmarks. The bill prohibits a city that has established a process for designating places or areas of historical, culture, or architectural significance through zoning regulations from designating a property as a local historic landmark unless: (a) the owner of the property consents to the designation; or (b) the designation is approved by three-fourths vote of the city council and the zoning, planning, or historical commission, if any; (2) allows a city to designate a property owned by a qualified religious organization as a local historic landmark only if the organization consents to the designation; (3) requires a city to provide a property owner a statement describing certain impacts that a local historic landmark designation may have on the owner and the owner's property no later than the 15th day before the date of the initial hearing on the designation; and (4) requires a city to allow the owner of a property to withdraw consent at any time during the local historic landmark designation process.

The framework put into place by H.B. 2496 in 2019 was amended by S.B. 1585 by Senator Hughes in 2021. S.B. 1585 extended the supermajority vote requirement to apply to the decision to include property within the boundaries of a local historic district. It also provides that a city that has more than one zoning, planning, or historical commission shall designate one of those commissions as the entity with the exclusive authority to approve the designations of properties as local historic landmarks.

In 2021, H.B. 1475 by Representative Cyrier passed and was signed into law. H.B. 1475 codified certain factors that a board of adjustment may consider in determining when a variance may be warranted because literal enforcement of a zoning ordinance would cause "undue hardship" to a property owner. These factors can now include certain purely financial considerations, whether compliance would result in the structure not being in compliance with another city ordinance, and whether the structure is considered a nonconforming use. While the bill adds some structure to the variance-granting process, it's yet to be seen the full impact of the change. Because the "undue hardship" considerations are discretionary for a board of adjustment, there was little city opposition to H.B. 1475.

H.B. 4005 by Rep. Romero would have required the notice of a public hearing associated with a city-initiated zoning classification change to: (1) be mailed to each owner of real property within 500 feet of the properties for which the change in classification is proposed (up from 200 feet under current law); and (2) be delivered by telephone call, text message, e-mail, or mail. The bill was approved by the House Land and Resource Committee over city objections, but did not make it to the House floor.

Another bill worth mentioning that did not pass in 2021 was H.B. 2989 by Rep. Cyrier (companion bill was S.B. 1120 by Senator Johnson). H.B. 2989 would have done a couple of different things as it relates to the zoning process. First, it would have required newspaper notice and a public hearing when a city adopts an initial zoning regulation and zoning district boundaries, a comprehensive revision of the regulations or boundaries, or an amendment of a regulation that

applies uniformly across boundaries or areas of a city. The bills also would provide that citizens' right to protest a zoning change only applies to an individual lot or a limited area of contiguous properties.

The changes in H.B. 2989 stem from a lawsuit involving the City of Austin's rewrite of its land development code, where the city argued that a wholesale rewrite of a zoning ordinance was not subject to the same notice and public hearing requirement as something like a rezoning of a particular parcel. In March 2022, an appellate court rejected the city's argument, holding that the city violated property owners' procedural rights by failing to notify property owners of their right to protest and failing to hold public hearings on the changes.

H.B. 2989 was heard in House Land and Resource Management committee last session, and received a great deal of homeowner testimony against the bill. On the other side, homebuilders and affordable housing groups testified in favor of the bill, arguing that changes to the zoning protest provisions were necessary to increase housing supply in a rapidly growing areas across the state. Some cities have expressed interest in having the summit discuss TML's taking a position on legislation that would modify and/or clarify the zoning protest provisions in Chapter 211 of the Local Government Code.

The impact of zoning regulations on housing supply was singled out as an issue worthy of study by the House Land and Resource Management Committee leading up to the 2023 session with the following charge: "Study the effect of governmental land-use regulations and controls on the availability and affordability of residential housing in Texas, including land use and zoning restrictions and related factors that slow or hinder housing development and improvement. Identify viable, free market solutions in lieu of governmental regulation to help Texas meet the current and future housing demands of a growing statewide population."

At the same time that the Texas House is set to study zoning laws' impact on housing availability in Texas, the Biden Administration published a housing report that proposes to incentivize loosening of zoning regulations by tying certain federal grant funding to cities that have proposed to update zoning regulations to allow for more uses. According to the report, "[o]ne of the most significant issues constraining housing supply and production is the lack of available and affordable land, which is in large part driven by state and local zoning and land use laws and regulations that limit housing density. Exclusionary land use and zoning policies constrain land use, artificially inflate prices, perpetuate historical patterns of segregation, keep workers in lower productivity regions, and limit economic growth. Reducing regulatory barriers to housing production has been a bipartisan cause in a number of states throughout the country. It's time for the same to be true in Congress, as well as in more states and local jurisdictions throughout the country."

If nothing else, zoning reform has become a bipartisan rallying cry as a method of ensuring affordable housing options in cities, both in Texas and across the country.

One additional zoning issue bears mentioning. In 2021, a handful of bills were filed that would provide that a city or other political subdivision must treat an open-enrollment charter school the same as a school district for purposes of zoning, permitting, licensing, and other regulations. These bills were filed following a June 2021 attorney general's opinion, KP-373, in which the attorney general opined that a court would likely conclude that the zoning authority of a city is subservient to the reasonable exercise of an open-enrollment charter school in choosing a building location, just as city zoning authority is currently limited when it comes to independent school districts. In that sense, the legislation putting open-enrollment charter schools on equal footing with independent school districts could be viewed as a clarifying change to essentially codify the opinion in KP-373. Both S.B. 28 by Senator Bettencourt and S.B. 487 by Senator Hughes were approved by the full Senate only to stall in the House. One House bill, H.B. 1378 by Representative Deshotel made it to the floor of the House only to be voted down by a vote of 66 to 72.

Religious Land Use

One other component of the zoning issue relates to religious land uses. Most cities allow churches in most, if not all, zoning districts. If a city does not, it is usually for safety reasons. For example, it might be inappropriate to site a church in a heavy industrial district. In addition, most cities impose the same reasonable health and safety restrictions on churches that they impose on other property owners. For example, cities require churches to comply with subdivision ordinances and building codes.

In recent years, some religious organizations have claimed that cities are discriminating against them by enforcing zoning, subdivision, and building code requirements, even though these requirements are applied uniformly to all property owners.

The Texas Religious Freedom Act and the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) provide that a governmental entity may not substantially burden a person's free exercise of religion through any exercise of governmental authority (the Texas Act) or implementation of a land use regulation (RLUIPA) unless the government demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest. These Acts provide a method of redress for religious organizations that claim discrimination. For example, in the case of *Castle Hills First Baptist Church v. City of Castle Hills,* a federal trial judge ruled that the city is authorized to prohibit the major expansion of a church's parking lot. However, in the same decision, the judge ruled that the city's denial of the church's request for a specific use permit to use a fourth- floor storage area for a classroom is an impermissible burden on the free exercise of religion.

In 2011-2017, the legislature considered several bills that would have amended the Texas Constitution to provide that the right to act or refuse to act in a manner that is motivated by a sincerely held religious belief may not be burdened unless the government proves it has a compelling governmental interest in infringing on the specific act or refusal to act and has used

the least restrictive means in furthering that interest. None were successful. The resolutions seemed deceptively simple, but would overturn decades of judicial precedent relating to the right to practice religion. How? By removing one word: "substantially." The current-law judicial test for determining whether a government practice relating to religion is unconstitutional requires a "substantial burden" on a person's ability to practice his or her religion. Under that test, uniform and generally-applicable regulations won't usually be found unconstitutional. For example, a municipal requirement that a place of worship obtain a building permit and comply with uniform building codes won't be unconstitutional, because it is not a substantial burden on a person's ability to build a worship facility. By removing "substantially," the resolutions would have struck down any ordinance that "burdens" religion by even a small amount.

In 2019, a lesser version of an extended religious freedom bill passed. S.B. 1978 generally prohibited a governmental entity (including a city) from taking any adverse action against a person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

Against the backdrop of the COVID-19 pandemic, a handful of bills passed in 2021 that would declare religious organizations and places of worship to be "essential" and therefore prohibit state and local government to close down those religious entities. But the legislation that passed goes beyond operation of places of worship and religious organizations during a pandemic. For instance, H.B. 1239 by Sanford prohibits a government agency or public official from issuing an order that closes or has the effect of closing a place of worship. H.B. 525 by Shaheen provides that "at any time, including during a state of disaster, a governmental entity may not prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization's foundational faith-based mission and purpose."

Additionally, S.J.R. 27 by Hancock passed and was approved by the voters in November 2021.

S.J.R. 27 amended the Texas Constitution to provide that the state or a political subdivision of the state may not enact a regulation that prohibits or limits religious services in the state by a religious organization established to support and serve the propagation of a sincerely held religious belief. Though S.J.R. 27 and the other bills mentioned above were framed as necessary to respond to shut downs of religious institutions during the pandemic, the legislation clearly will impact the applicability of other non-pandemic-related regulations to religious organizations. The practical extent of these changes is not yet known, but cities can expect some degree of uncertainty on the limits of city regulations as applied to religious entities as the contours likely get litigated over the next several years.

Regulatory Takings

The regulatory takings issue was first debated in 1995, and returned in 2005 when the legislature debated two bills that would have been problematic for most cities. H.B. 2833 and its companion,

S.B. 1647, were known as the "takings" bills, and they would have subjected cities to the Texas Private Real Property Rights Preservation Act (Act).

The Act, first adopted in 1995, ensures that the state and certain political subdivisions (excluding cities) consider whether a proposed regulation might be a "taking" of private real property. The Act is designed to protect rural property owners from unnecessary governmental actions.

The Act defines a "taking" as an action that would reduce the value of a property by more than 25 percent. That definition is different from both the Texas and United States Supreme Courts' definition of a "taking" as applied to cities. Those courts apply a balancing test to weigh regulatory benefits between the public and property owner.

Put simply, the Act is known as a "pay or waive" law. That means that a city would have three choices when presented with a claim of reduced value from a landowner: (1) pay the alleged damages; (2) waive the regulations; or (3) litigate the claim. Disastrous experiments in other states with similar laws have shown that cities can't afford to litigate or pay the sometimes bogus claims, and thus waive their regulations.

Cities are exempt from the law as a matter of public policy. People move to cities with the expectation that their property will be protected for the good of the city as a whole. Because of that expectation, cities regulate private real property in many ways, such as by zoning and platting; by regulating nuisances, sexually oriented businesses, setbacks, and landscaping requirements; and by adopting building codes.

Nevertheless, bills have been filed in many sessions since 2005 to subject cities to the Act, though interestingly there has not been legislation to do so since 2015. Over the years, certain groups tried to frame these bill as protecting rural residents. Quite the contrary, these proposals strike at the very reason cities are incorporated in the first place: to protect the property values and the health and safety of those living in close proximity to one another.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings, (5) building codes, (6) tree preservation, and (7) short-term rentals.

BUILDING CODES/PERMIT FEES

Uniform building codes can make construction and inspection easier and more cost-effective. However, because Texas is a vast state with many different climates and topographical features, the TML membership usually insists that each city be allowed to amend any mandatory codes to meet that city's needs.

Prior to 2001, Texas had no statewide standard for any residential or commercial buildings. Each city chose which, if any, building codes to apply within the city, and each city amended its code to meet local concerns. The most common codes were the Uniform Building Code and the Southern Standard Building Code.

In 2001, at the behest of homebuilders, the Texas Legislature adopted S.B. 365, now codified as Section 214.211 *et seq.* of the Texas Local Government Code. S.B. 365 adopted the International Residential Code (IRC) and the National Electrical Code as the standard building codes for residential construction in Texas cities starting January 1, 2002. Under the statutes, cities are authorized to make amendments to these codes to meet local concerns.

Also in 2001, the legislature adopted S.B. 5, which is now codified as Section 388.003 of the Texas Health and Safety Code. S.B. 5 adopted the Energy Efficiency Chapter of the IRC for single-family residential construction and the International Energy Conservation Code (IECC) for all other residential, commercial, and industrial construction. The bill became effective on September 1, 2001, and cities were required to establish procedures for the administration and enforcement of the codes by September 1, 2001. Here again, cities are authorized to make amendments to the codes to meet local concerns in most cases, even after comprehensive amendments in 2015.

S.B. 283, passed in 2003, required any city that adopts a building code other than the International Residential Code to adopt and enforce either prescriptive provisions for the rehabilitation of buildings or the rehabilitation code that accompanies the city's building code. The bill is codified as Section 214.215 et seq. of the Local Government Code.

Prior to 2005, no standard building code existed for new commercial construction, other than the applicable IECC provisions. Many cities still used the Uniform Building Code or the International Building Code for commercial construction, while others had adopted the newly- developed International Building Code.

In 2005 the legislature passed S.B. 1458, which provides that: (1) the International Building Code is adopted as the municipal building code in Texas for commercial and multi-family construction; (2) a city may establish procedures to adopt local amendments to the International Building Code and for the administration and enforcement of the code; (3) a city that has adopted a more stringent commercial building code before January 1, 2006, is not required to repeal that code and may adopt future editions of that code; and (4) the National Electrical Code applies to all commercial buildings in a city for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

The 2009 session brought a bill that, as filed, would have been detrimental to all cities. The bill, S.B. 820, ultimately became a negotiated compromise that all parties could live with. It applied only to a city with a population of more than 100,000, and it provided that on or before the 21st day before the date the governing body takes action to consider, review, and recommend the adoption of or amendment to a national model code governing the construction, renovation, use,

or maintenance of buildings and building systems, the governing body: (1) shall publish notice of the proposed action conspicuously on the city's Internet website; (2) shall make a reasonable effort to encourage public comment from persons affected by the proposed adoption or amendment; and (3) on the written request of five or more persons, shall hold a public hearing open to public comment on the proposed adoption or amendment on or before the 14th day before the date the governing body adopts the ordinance. The bill also provides that if the governing body has established an advisory board or substantially similar entity for the purpose of obtaining public comment on the proposed adoption of or amendment to a national model code, the requirements described above do not apply. In addition, the bill provides that the governing body of a city with a population of more than 100,000 that adopts an ordinance or national model code provision that is intended to govern the construction, renovation, use, or maintenance of buildings and building systems in the city shall delay implementing and enforcing the ordinance for at least 30 days after final adoption, unless a delay in implementing or enforcing the ordinance would cause imminent harm to the health or safety of the public.

S.B. 1410 was a bill that passed in 2009 despite strong municipal opposition. The bill makes various changes to the requirements to obtain a state plumbing license. Of interest to cities, the bill provides, among other things, that: (1) notwithstanding any other provision of state law, after January 1, 2009, a city may not require the installation of a fire sprinkler system in a new or existing one- or two-family dwelling; (2) a city may allow a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one- or two-family dwelling; and (3) a multipurpose residential fire protection sprinkler specialist may install a sprinkler system in a new or existing one- or two-family dwelling. The City of Tomball requested that the League support changing the prohibition against residential fire sprinklers in 2017 (one bill was filed – H.B. 2814 (Oliverson) – to implement that plan, but did not pass), and has again done so for 2019. Nothing passed in 2019 or 2021, although in 2021 H.B. 738 by Representative Paul expanded the prohibition to counties and emergency services districts.

The larger issue of legislative adoption of the International Building Codes appears to be fairly well-settled. Building fees, however, are another story. In 2015, S.B. 1679 (Huffines) was proposed, and would have provided that, when a city adopts procedures to adopt amendments to the International Building Code or any other building code, those procedures must include: (1) the preparation of a cost-benefit analysis of each amendment; and (2) two public hearings on each amendment. The bill would also have provided that (1) and (2) must be completed prior to any building code or building code amendment being adopted. The bill passed the Senate but died in the House.

During the 2017 session and 2018 interim, building code restrictions came back aggressively. The regular session saw S.B. 636 (Huffines). That bill, which did not pass, would have: (1) lowered the population threshold in current law from 100,000 to 40,000 to invoke certain notice and hearing procedures for changes in a city’s building code; and (2) imposed new requirements: (a) that a city

publish a detailed cost-benefit analysis of a building code or code amendments; and (b) that would mandate, for an amendment that addresses existing or potential harm to health and safety: (i) scientific evidence supporting the probability or likelihood that the harm has occurred or will occur; and (ii) scientific evidence supporting the probability or likelihood that the amendment will prevent or address the harm. Essentially the same bill was filed during the special session in the form of 1H.B. 88. That bill also did not pass.

A city is not limited by statute as to the amount the city may charge for building and related permits. Fees vary widely based on several factors, including the number and type of inspections and the sophistication of the city's permitting process.

The Texas Association of Builders continues to claim that out-of-control city fees are responsible for the rising costs of housing in Texas. In fact, a survey commissioned by TML shows that building and inspection fees constitute only a tiny fraction of a homebuyer's mortgage payment.

Further, while there is no state statute that limits the amount a city may charge for building fees, court cases have held that cities are prohibited from making a large profit from building permit fees. Under the common-law interpretation of a city's police powers, which include the power to adopt building codes and related fees, a city cannot charge more than is reasonably related or necessary to administer such powers. If a city does so, the fee may be deemed an unconstitutional tax.

In 2019, H.B. 852 prohibited cities from basing their building permit fees on the cost of a proposed structure or improvement. Specifically, the bill provides that: (1) in determining the amount of a building permit or inspection fee required in connection with the construction or improvement of a residential dwelling, a city may not consider: (a) the value of the dwelling; or (b) the cost of constructing or improving the dwelling; and (2) a city may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling as a condition of obtaining a building permit except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program. Affected cities should have changed their system as soon as possible. Options include square footage-based fees, a flat fee schedule, or any other non-cost- based and reasonable calculation.

A significant piece of building code legislation passed in 2021 – H.B. 738 by Representative Paul. Of primary interest to cities, H.B. 738 updates the statutory editions of the International Residential and Building Codes to their 2012 versions. For more than two decades, state law referenced the older, 2001 and 2003 edition of those codes. This change means that cities must use at least the 2012 version of the IRC and IBC. The bill also confirms that a city can establish procedures to adopt local amendments "that may add, modify, or remove requirements" set by the codes, but only if the city holds a public hearing on the local amendment and adopts it by ordinance.

Also of note, the legislature passed S.B. 1210 in 2021. S.B. 1210 provides that a building code or other requirement applicable to commercial or residential buildings or construction may not

prohibit the use of certain substitutes for hydrofluorocarbon refrigerants authorized under federal law. The bill goes into effect on January 1, 2023.

One bill of interest that was filed in 2021 but did not pass was S.B. 1947 by Springer. This bill would have: (1) repealed the statute giving a city the ability to reach a written agreement with a building permit applicant providing for an alternative deadline for granting or denying the permit; and (2) prohibited a city from: (a) denying a building permit solely because the city is unable to comply with the 45-day time period for granting or denying a building permit; and (b) requiring a building permit applicant to waive the 45-day time period for granting or denying a building permit. The bill was approved by the Senate, but never heard in a House committee.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings, (5) building codes, (6) tree preservation, and (7) short-term rentals.

The TML Legislative Program provides that the League should support legislation that authorizes a city council to opt-in to requiring residential fire sprinklers in newly constructed single-family dwellings.

TREE PRESERVATION

Many Texas cities have enacted tree preservation ordinances. In fact, the City of San Antonio was sued regarding its requirements in the extraterritorial jurisdiction and ultimately won its case in 2009. Since, numerous bills have been filed that would limit cities' authority to enact tree preservation ordinances, culminating in a compromise bill passing in 2017.

Recent history on tree preservation authority shows the extent of the attack on local control. In 2011, H.B. 1388 and its companion S.B. 732 were filed. The bills would have prohibited a city from regulating the planting, clearing, or harvesting of trees or vegetation or other uses of trees or vegetation on a particular tract of land in the city's extraterritorial jurisdiction.

In addition, S.B. 1741 was filed and would have provided: (1) that, if a city requires as a condition for the approval of a permit that the applicant pay to the city or to a third party a tree mitigation fee, the amount of the tree mitigation fee shall be roughly proportionate to the impacts of the activity on the public; and (2) for procedures to appeal the amount of the fee.

In 2013, H.B. 1858 (Workman) would have allowed a property owner to cut down a tree on his property if he believed it poses a fire risk, even if a municipal ordinance prohibited the cutting.

House Bill 1377 (Kolkhorst) was another bill aimed at limiting how cities enforce tree preservation ordinances. It stated that a "*landowner owns all trees and timber located on the landowner's land*

as real property until cut or otherwise removed from the land, unless otherwise provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document."

At first glance, the tree ownership language seems innocuous: all landowners do in fact own their trees. From a legal perspective, though, the language of the bill would radically change common law relating to trees and property value. When H.B. 1377 was heard in the House Committee on March 27, the author explained it as simply codifying the current common (i.e., court cases) law in Texas, but it actually does the opposite.

For constitutional "regulatory takings" purposes (requiring a city to compensate a landowner, like it does when it uses eminent domain, if a regulation makes property valueless), trees are a factor that can be used to determine the value of land, but value is decided based on the *total market value* of the land. A tree preservation ordinance that prohibits a person from cutting down one or even several trees will not usually rise to the level of a regulatory taking that requires compensation, because it doesn't render property valueless or unreasonably interfere with the use of property.

H.B.1377 would have radically changed that. The "ownership provision" would make *each individual tree* subject to a regulatory takings analysis. If the bill passed, it would mean that a prohibition on cutting down a tree works a taking on each tree on the property. This means that a city would either have to pay an owner for the value of each tree affected by the ordinance, or else waive its regulation. Cities can't afford to make those cash payments, of course, and would thus be forced to waive their tree regulations.

The Georgia Supreme Court considered a similar argument from the Greater Atlanta Homebuilders several years ago. The homebuilders lost, and the court sensibly explained why:

> *[T]he Tree Ordinance does not destroy [a developer's] ability to develop its land; it only regulates the way in which new and existing trees must be managed during the development process. [Developers] have failed to show that the Tree Ordinance destroys its ability to develop land…While the Tree Ordinance may impose some additional costs and thus diminish the ultimate value of [developers'] land, "[m]any regulations restrict the use of property, diminish its value or cut off certain property rights, but no compensation for the property owner is required."*

League staff and a number of city officials testified in opposition to H.B. 1377 at the committee hearing.

Ultimately neither bill filed in 2013 passed, but the issue was back in 2015. H.B. 1442 (Workman) would have provided that a city, county, or other political subdivision may not enact or enforce any ordinance, rule, or other regulation that restricts the ability of a property owner to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure

on the property or adjacent property, with certain exceptions. The bill was heard in committee, but never voted out.

In 2017, the issue came back. The regular session of the legislature saw a number of bills designed to preempt city tree preservation ordinances. None of those passed, but the governor added the issue to his special session agenda. In the meantime, Senator Donna Campbell requested an attorney general opinion about whether current law prohibits cities from protecting trees.

One way the League sought to counter the preemption trend, especially with regard to tree preservation ordinances, was by enlisting the help of a nationally-recognized law professor to submit comments on Senator Campbell's tree opinion request. Professor John Echeverria of Vermont Law School stated in a letter to the Texas attorney general that his "legal research has revealed that courts across the country have so far been unanimous in their judgment that municipal tree preservation ordinances do NOT result in a taking or otherwise unconstitutionally impair private property rights."

The attorney general released an opinion—KP-155—roughly a month after the request was submitted. KP-155 summarized the relevant law, but because of the complexity of the regulatory takings analysis and application of that analysis to different fact patterns, the opinion mostly stated the obvious:

If a municipal tree preservation ordinance operates to deny a property owner all economically beneficial or productive use of land, the ordinance will result in a taking that requires just compensation under article I, section 17 of the Texas Constitution.

Ultimately, S.B. 744 by then Representative Dade Phelan (now speaker) – a compromise between home builders, cities, environmentalists, and others – passed. The bill was vetoed by the governor: "I applaud the bill authors for their efforts, but I believe we can do better for private property owners in the upcoming special session," the governor said in his veto statement.

Representative Phelan stuck with the version he and stakeholders had worked so hard on during the regular session. The exact same bill passed in the special session, and the governor did not veto it this time around. House Bill 7 (Phelan/Kolkhorst) provided that

1. "Tree mitigation fee" means a fee or charge imposed by a city in connection with the removal of a tree from private property.

2. A city may not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that: (a) is diseased or dead; or (b) poses an imminent or immediate threat to persons or property.

3. A city may not require a person to pay a tree mitigation fee for the removed tree if the tree: (a) is located on a property that is an existing one-family or two-family dwelling that is the

person's residence; and (b) is less than 10 inches in diameter at the point on the trunk 4.5 feet above the ground.

4. "Residential structure" means: (a) a manufactured home as that term is defined by the Texas Manufactured Housing Standards Act; (b) a detached one-family or two-family dwelling, including the accessory structures of the dwelling; (c) a multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or (d) any other multifamily structure.

5. A city that imposes a tree mitigation fee for tree removal on a person's property must allow that person to apply for a credit for tree planting to offset the amount of the fee.

6. An application for a credit under (5), above, must be in the form and manner prescribed by the city.

7. To qualify for a credit, a tree must be: (a) planted on property: (i) for which the tree mitigation fee was assessed; or (ii) mutually agreed upon by the city and the person; and (b) at least two inches in diameter at the point on the trunk 4.5 feet above ground.

8. For purposes of determining where an off-site tree must be planted, the city and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the city.

9. The amount of a credit provided to a person must be applied in the same manner as the tree mitigation fee assessed against the person and: (a) equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person 's residence; (b) at least 50 percent of the amount of the tree mitigation fee assessed against the person if: (i) the property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and (ii) the person is developing, constructing or renovating the property not for use as the person's residence; or (c) at least 40 percent of the amount of the tree mitigation fee assessed against the person if: (i) the property is not a residential structure; or (ii) the person is constructing or intends to construct a structure on the property that is not a residential structure.

10. As long as the city meets the requirement to provide a person a credit under (8), above, the bill does not affect the ability of or require a city to determine: (a) the type of trees that must be planted to receive a credit, except as provided by (7), above; (b) the requirements for tree removal and corresponding tree mitigation fees, if applicable; (c) the requirements for tree-planting methods and best management practices to ensure that the tree grows to the anticipated height at maturity; or (d) the amount of a tree mitigation fee.

11. The bill does not apply to property within five miles of a federal military base in active use as of December 1, 2017.

Interestingly, no bill was filed in 2019 or 2021 that would directly address city authority to adopt a tree preservation ordinance under the new statutory framework adopted in 2017. Still, it is possible that bills to completely preempt municipal tree authority will be filed in 2023.

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SHORT-TERM RENTALS

Many cities have experienced issues with short-term home rentals, largely due to the proliferation of websites such as AirBNB and VRBO. Those problems range from uncollected hotel taxes to short term rental guests that disrupt the neighborhood environment that adjacent residents have come to expect. Some cities have enacted ordinances in an attempt to address these problems.

While beneficial legislation in the form of H.B. 1792 (Anderson) was filed in 2015, some short-term rental companies sought preemption legislation beginning in 2017 to prohibit any city regulation of short-term rental properties. In particular, S.B. 451 (Hancock) would have preempted a city's authority to regulate. The Senate hearing on the bill showed the level of passion on both sides of the issue ("property rights" proponents [STR owners] v. neighborhood groups).

The City of Austin, in particular, has been at the forefront of short term rental regulations. After revamping its STR ordinance in February 2016, a number of short term rental owners, represented by attorneys from the Texas Public Policy Foundation (TPPF), sued the City of Austin. According to the petition filed by TPPF:

The City's STR Ordnance violates a host of rights arising under the Texas Constitution — including property owners' rights under the equal protection and due course of law clauses of the Texas Constitution, as well as tenants' rights to the freedom of movement, privacy, and assembly. In addition, the STR Ordinance exceeds the City's zoning powers. The STR Ordinance prohibits short-term rentals in previously-permitted residential areas, phases out existing, lawfully operating short-term rental properties, restricts the number of people allowed to step foot on any short-term rental property, dictates the movement and association of "assemblies" in short-term rentals, and sets a bedtime for tenants. The City cannot carpet bomb the constitutional rights of short-term rental owners and lessees under the auspices of zoning or code enforcement. Such regulations violate the Texas Constitution and must be struck down.

In 2019, H.B. 3773 by Representative Button was filed. While the industry referred to the bill as "guardrails" for city regulation, and the bill had numerous provisions (some of which even

expressly granted authority to cities), the key feature of the bill was this preemption clause providing that a city may not: (a) adopt or enforce an ordinance, rule, or other measure that: (i) prohibits or limits the use of property as a short-term rental unit; or (ii) is applicable solely to short-term rental units, or short-term rental unit providers, short-term rental unit tenants, or other persons associated with short-term rental units; or (b) apply a municipal law, including a noise restriction, parking requirement, or building code requirement, or other law to short-term rental units or short-term rental unit providers, short-term rental unit tenants, or other persons associated with short-term rental units in a manner that is more restrictive or otherwise inconsistent with the application of the law to other similarly situated property or persons…"

That provision essentially meant a city wouldn't be able to regulate STRs. After much negotiation and a long hearing, the bill died. After the 2019 session, the Third Court of Appeals in Austin held that certain portions of the City of Austin's short-term rental (STR) ordinance are unconstitutional. The court's opinion has potentially far-reaching ramifications for Texas cities that have adopted, or are considering adopting, STR ordinances.

Austin adopted its current STR ordinance in 2016 after multiple studies and hours of public testimony on the impact of STRs on individual neighborhoods and the community in general. Among other things, the city's ordinance imposes licensing requirements, advertising requirements, limits on distance between STRs, and includes provisions related to inspections and noise. More controversially, the ordinance provided for the eventual elimination of certain STRs in residential neighborhoods and prohibited certain types of gatherings. It was those last provisions that were subject to the legal challenge.

The Court specifically struck down the following parts of Austin's ordinance:

- A provision terminating all "type-2" rentals in residential areas by 2022. (Under the Austin ordinance, a "type-2" rental is a single family residence that is not owner-occupied and is not associated with an owner-occupied principal residential unit.)
- Provisions limiting certain conduct and assembly at STR properties, including prohibiting any assemblies between the hours of 10:00 p.m. and 7:00 a.m., prohibiting outdoor assemblies of more than six adults between 7:00 a.m. and 10:00 p.m., and prohibiting more than six unrelated adults or ten related adults from being present on the property at any time.

In striking down the city's type-2 STR ban, the court held that the ban is unconstitutionally retroactive because it would significantly impact property owners' well-settled right to lease their property and the city's ban on type-2 STRs did not serve a compelling public interest. Further, the court relied on a 2018 Texas Supreme Court opinion relating to homeowner association limits on STRs to hold that short-term rentals are residential, rather than commercial, in nature.

The most troubling part of the opinion is an analysis relating to the number of people that can use or gather at an STR. The court held that the right to assemble under the Texas Constitution is a fundamental right. That means the city's ordinance must survive "strict scrutiny" and be narrowly tailored to serve a compelling governmental interest. The city did not, according to the opinion, provide sufficient evidence of a serious burden on neighboring properties sufficient to justify the assembly-related restrictions in the ordinance.

What does this opinion mean for Texas cities? It certainly calls into question a city regulation that either: (1) bans STRs to any degree, in particular those existing at the time the regulation is adopted; or (2) limits the ability of people to assemble at STR properties. More recent litigation involving the cities of Arlington and Grapevine may also shape the STR policy debate in 2023.

An STR ordinance is a perfect example of a local decision that is best made at the local level. Not every city has an issue with STRs. But in high-tourist areas and neighborhoods, city councils are the first ones to hear from residents about any potential problem. City councils don't adopt STR ordinances on a whim. They so after numerous complaints and after hours of deliberation and testimony from STR owners, renters, and neighbors alike. This includes testimony from citizens about de-facto hotels in the form of STRs locating in otherwise quiet family neighborhoods. The ordinances that are ultimately adopted represent tailored responses to a uniquely local issue.

The same STR legislation was refiled in 2021 in the form of H.B. 1960 and H.B. 1961, both by Rep. Beckley. According to the bill author, those bills were refiled as placeholders for city- friendly STR legislation that would be substituted for the original language in committee. However, because the bills never received a committee hearing, that plan never came to fruition.

The only STR bill to receive a hearing in 2021 was H.B. 2515 by Rep. Shaheen and had support from a number of cities. H.B. 2515 would have, among other things: (1) provided that on the receipt of notice of a third violation of a municipal ordinance within a one-year period involving a short-term rental unit that is listed by a short-term rental unit listing service, the listing service shall remove the unit from the listing service's Internet website, application, or other online platform for at least 30 days; (2) provided that certain individuals may bring an action for appropriate injunctive relief against the owner of a short-term rental unit that is the subject of three or more violations of city ordinances and the person may seek to recover reasonable attorney's fees and court costs; and (3) required a city to provide written notice to a short-term rental unit listing service for a violation of a city ordinance involving a short-term rental unit listed on the listing service.

The bill was not reported from committee, but the fact that this beneficial legislation was the only STR bill to move at all in 2021 is promising. In their written comments to the committee opposing H.B. 2515, a representative of Expedia (who owns VRBO and HomeAway) wrote: "Local governments currently have the ability to regulate short-term rentals in a manner that meets their unique needs. Expedia Group is proud to partner with municipalities throughout Texas to support

sustainable regulations that meet community needs and protect the integrity of neighborhoods, while providing a consistent source of vital revenue for Texans, municipalities, and the state."

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SUBDIVISION PLATTING

House Bill 3167 by Rep. Tom Oliverson (R – Houston) is legislation that passed in 2019. The bill made numerous changes to the site plan and subdivision platting approval process, and it required most cities to make changes to their subdivision ordinance, zoning ordinance, and/or unified development code approval processes.

Why was the bill needed? The bill analysis for H.B. 3167 stated that:

"Concerns have been raised regarding the process for plat and land development application approval by political subdivisions. It has been suggested that some political subdivisions circumvent statutory timelines for approving an application by simply denying the application with generic comments that do not fully address specific deficiencies with the application. C.S.H.B. 3167 seeks to provide greater certainty and clarity for the process by setting out provisions relating to county and municipal approval procedures for land development applications."

In other words, the bill was meant to force cities to speed up the site plan/subdivision plat approval process, and to provide more information when a plan or plat isn't approved. In reality, the bill in some cases has created red tape that slows the process down and/or results in substandard planning.

H.B. 3167 requires the municipal authority responsible for approving plats to take the following action with regard to the initial approval of a plan or plat within 30 days after the date the plan or plat is filed: (1) approve, (2) approve with conditions, or (3) disapprove with explanation. If a plan or plat is approved, the municipal authority giving the approval shall endorse the plan or plat with a certificate indicating the approval. A plan or plat is approved by the municipal authority unless it is disapproved within the periods described above and in accordance with the bill's procedures. A municipal authority or governing body that conditionally approves or disapproves a plan or plat shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

After the conditional approval or disapproval with explanation of a plan or plat, the applicant may submit to the municipal authority or governing body a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided, and the municipal authority or governing body may not establish a deadline for an applicant to submit the response.

A municipal authority or governing body that receives a written response shall determine whether to approve or disapprove (with explanation) the applicant's previously conditionally-approved or disapproved plan or plat not later than the 15th day after the date the response was submitted. A municipal authority or governing body that receives a response shall approve a previously conditionally approved or disapproved plan or plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

Following the passage of H.B. 3167, the ability of cities to require an administrative completeness review prior to submission of a plat or plan started to get questioned. Because of the new 30-day shot clock, many cities found they could only comply with the shortened timeframe by requiring developers to comply with certain prerequisites prior to accepting a plan or plat application. This includes documents like traffic analyses, drainage studies, utility evaluations, and certain federal permits. In 2020, Senator Hughes requested an attorney general's opinion on whether these completeness reviews were permissible.

In January 2021, the attorney general released KP-349, which addresses a city's ability to require a developer to complete certain prerequisites before the city accepts an application. The attorney general opined that there's nothing within the statutory framework created by H.B. 3167 that prevents a city from requiring a developer to complete certain prerequisites prior to acceptance of a plan or plat application: "Subsections 212.009(a) and 232.0025(d) require the local authority responsible for approving plats to approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. A court is unlikely to construe the language of those provisions to prohibit local authorities from requiring reports or studies to be completed prior to the submission of a plan or plat."

In response to both KP-349, as well as to fix some of the unintended consequences of H.B. 3167 (including state-mandated red tape and an endless cycle of application denials and resubmissions) developer groups filed a handful of bills in 2021. H.B. 4447 by Oliverson would have, among other things, prohibited a city planning commission or the city council from requiring a person to submit or obtain approval of a required planning document or fulfill any other prerequisites or conditions before the person files a copy of the plan or plat with the entity. The bill was substituted before its committee hearing to go even further, and apply to all "land development applications" and not just plat or plan applications. There was a significant amount of city opposition to the bill, and though it was voted out of committee, the bill did not make it to the House floor.

In another attempt to pass legislation to address the conclusion reached in KP-349, the Senate added a floor amendment to S.B. 1947 which would have prohibited a city planning commission or city council from requiring a person to submit or obtain approval of any document or fulfill any other prerequisites or conditions before the person filed a copy of the plan or plat with the city planning commission or city council. The Senate version of the bill was never heard in House committee. Similar language was filed during 2021 special sessions as well, though the shot clock

issue was not on the governor's special session agenda, meaning the legislature couldn't legally consider the issue.

In addition to providing opposition testimony to some of the bills mentioned above last session, city officials also offered up numerous solutions to some of the issues that cities and developers jointly face due to the one-size-fits-all nature of H.B. 3167 from 2019. These compromises include authority for cities and developers to agree to extensions of time when necessary to consider plat or plan applications and other related documents. Additionally, cities proposed giving city councils the ability to delegate plat or plan approval to city staff, which would also help streamline a process made more rigid by H.B. 3167. Though there was no indication that those proposals were acceptable to the bill authors, these types of proposals (among others) represent some good-faith attempts to give cities the flexibility to work with the development community, and may serve as a jumping off point for negotiations heading into the 2023 session.

The TML Legislative Program provides that the League should support legislation that makes beneficial amendments to H.B. 3167, the subdivision platting shot clock bill.

BUILDING MATERIALS

H.B. 2439 by Representative Dade Phelan (R – Beaumont) passed in 2019. The bill garnered much negative attention from city officials and residents. It generally provides – with some exceptions – that a governmental entity, including a city, may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that: (1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or (2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. A rule, charter provision, ordinance, order, building code, or other regulation adopted by a city that conflicts with the bill is void.

According to the Texas House Business and Commerce Committee Report, the bill was necessary to help boost housing supply:

"There have been concerns raised regarding the elimination of consumer and builder choice in construction through overly restrictive local municipal zoning ordinances, building codes, design guidelines, and architectural standards. Critics argue that these restrictive ordinances, codes, guidelines, and standards create monopolies, increase the cost of construction, and ultimately price thousands of Texans out of the housing market. C.S.H.B. 2439 seeks to address these concerns

and eliminate the ability of a governmental entity to enact overly restrictive, vendor-driven building regulations."

The suggestion was that cities were enacting ordinances that required builders to use products available from only one or a few sources to benefit those vendors. Of course, the bill goes significantly further than prohibiting just that. Since the bill's passage, legislators have heard from city officials about the bill's detrimental effects.

A 2021 attorney general's opinion addressed the question of whether a whether a city was prohibited by Section 3000.002 of the Government Code (the ban on city regulation of building standard or aesthetic method that is more stringent than a standard in a model code) from adopting paint color and pattern requirements. In KP-370, the attorney general opined that a court could consider this to be an aesthetic method standard, but that the model codes' silence as to color palette and pattern could mean that the requirement is allowed. The attorney general determined that an "aesthetic method" concerns procedures or processes to satisfy considerations of beauty or appearance in building construction, renovation, maintenance, or other alterations. The attorney general ultimately concluded that whether such a requirement was prohibited was a fact question that could not be addressed in the opinion process.

While cities can continue to adopt amendments to their building codes that don't conflict with the prohibitions adopted by H.B. 2439, and can have limited control over building materials or construction methods if done pursuant to a written agreement, the reality is that cities now have much less authority over building materials and aesthetic methods than they did prior to 2019.

In 2021, the legislature passed S.B. 1090 by Senator Buckingham expanding certain exceptions to the restriction on city regulation of building materials. Specifically, the bill broadened and exception for Dark Sky Communities to allow those cities which have adopted a resolution stating the city's intent to become certified as a Dark Sky Community to regulate outdoor lighting in a manner required to become certified. In addition, the bill created an exemption for a city that implements a water conservation plan or program that requires a standard for a plumbing product, or if the Texas Water Development Board requires the use of a standard for a plumbing product as a condition for a TWDB program.

Legislation was also filed in 2021, in the form of H.B. 233 by Representative Murr, which would have exempted all cities under 25,000 population from the prohibition on city regulation of building materials and methods. H.B. 233 getting filed was a welcomed sight for many small cities in Texas. Unfortunately, the bill never received a committee hearing.

The lack of progress for any wholesale revisions to the restrictions on city regulation of building materials wasn't surprising given that the author of H.B. 2439 in 2019, Representative Phelan, ascended to Speaker of the House in 2021. Nevertheless, the passage of S.B. 1090 in 2021 indicates a willingness of the legislature to pass sensible exemptions to the prohibitions from H.B. 2439 when warranted.

When tornadoes swept through Central Texas in March 2022, an editorial in the Austin- American Statesman called for legislation authorizing local governments to reinstate certain building standards necessary to protect city residents against extreme weather events. Addressing H.B. 2439 directly, the article stated the following: "State and local lawmakers should ask themselves if they are unnecessarily forsaking safety to appease developers who want to save money on construction costs. With a booming construction industry and strong economy, Texas should be able to produce affordable homes that don't skimp on safety."

The TML Legislative Program provides that the League should seek introduction and passage of legislation that would make beneficial amendments to H.B. 2439, the building materials bill.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY PERMITTING OF ROCK CRUSHING OPERATIONS

Section 382.05195, Texas Health and Safety Code, authorizes the Texas Commission on Environmental Quality (TCEQ) to issue a standard permit for certain activities, including rock crushing operations, cement crushing operations, and other projects with the corporate limits or extraterritorial jurisdiction (ETJ) of a municipality without the city's consent and without a contested case hearing.

Over the last few years, cities across the state have begun to see a proliferation of rock crushing operations permitted by TCEQ within a city's corporate limits and ETJ without the city's consent.

In 2021, Representative Terry Wilson (R- Marble Falls) filed H.B. 1912 that would have required TCEQ to notify a city of a TCEQ hearing if they are considering a permit for a rock crushing or concrete crushing plant within a city's corporate limits or ETJ. The bill would have also prevented TCEQ from issuing or renewing a permit for a facility if the requirements of that notice had not been met.

H.B. 1912, and other similar bills, did not pass.

The TML Legislative Program provides that the League should support legislation that would: (1) require city consent before TCEQ is authorized to issue a standard permit for a rock crushing operation, cement crushing operation, or any similar activity that may be authorized under a standard air permit from TCEQ within the corporate limits or ETJ of a city.

Alternatively, or in addition, such legislation may: (a) authorize a city to restrict, prevent, or regulate the location of such activities in the city's corporate limits or ETJ in other manners, such as imposing minimum distance from such operations and schools, hospitals, churches, and residences; (b) require TCEQ to provide notice of applications for standard permits to

cities for activities proposed in the city's corporate limits or ETJ and require TCEQ to address any and all comments received from the City as required by Sec. 382.112 of the Texas Health and Safety Code; or (c) prohibit TCEQ from issuing a standard permit for activity is authorized under the city's zoning ordinance or comprehensive plan to locate at the proposed location.

UTILITIES AND TRANSPORTATION

MUNICIPAL RIGHT-OF-WAY AUTHORITY/COMPENSATION

Telecommunications: Access Line Fees

Chapter 283 of the Texas Local Government Code, enacted in 1999, significantly altered the procedures under which cities collect compensation from telecommunications providers that use city rights-of-way (ROWs). Chapter 283 replaced individual telecommunications franchise agreements with a new system of compensation based on "access lines." Essentially, a telecommunications provider pays compensation for the use of the ROWs based on how many lines it operates in a city. The system represented a relatively successful compromise in 1999. However, new technologies have placed a strain on the language and led to many disagreements about which providers and what types of lines are subject to the compensation requirements. In addition, the continuing migration to cell phones has reduced the number of land lines on which the fee can be collected.

Some groups refer to access line fees as a "tax" and recommend that they be eliminated. The municipal position is that the fees are a rental for the use of city rights-of-way, and that any revenue stream that is "eliminated" should be replaced by alternate funding sources. This did not happen when S.B. 1152 passed in 2019, limiting the amount of franchise fee revenue remitted from providers with bundled phone and cable services - more on that legislation is below.

Cable/Video: State Issued Certificate of Franchise Authority

For many years, cable companies were the sole provider of wire-based video programming to city residents. Until 2005, a cable company that wanted to serve customers within a Texas city did so by obtaining a franchise agreement from that city. Federal law requires a local authority (e.g., a state or local government) to issue a franchise agreement, and Texas law provides that compensation for the use of a city's rights-of-way is required.

Because of ever-growing technological capabilities, telecommunications companies now also have the ability to provide video programming. Therefore, these companies wanted the local franchise system reformed so that they would not have to obtain hundreds of franchises, which they felt would be an impediment to installing the infrastructure necessary to implement their new technology.

Cities were interested in reaching an agreement on a new compensation system that would provide cities with stable and predictable compensation for use of the public rights-of-way. Cities also wanted to ensure that all technologies and services, including cable and newer technologies, that use the public rights-of-way would pay a fair and equitable fee for use of the public's land. In addition, cities wanted to ensure that they retained police power authority over their rights-of-way and were still able to provide public, educational, and governmental (PEG) programming to their citizens.

In 2005, the legislature asked cities, cable providers, and telecommunications companies to reach a compromise on issues related to the right-of-way compensation system for companies that provide video services to city residents. The end result, after several failed bills, much negotiation, one regular session, and two special sessions, was Senate Bill 5, which created a new Chapter 66 of the Texas Utilities Code. It represented a compromise that was acceptable to cities.

The bill made numerous changes to telecommunications, cable, and broadband laws. For cities, the most important elements of Chapter 66 are that it creates a state issued certificate of franchise authority (SICFA) to be administered by the Public Utility Commission (PUC). It also provides the following:

1. provides that a state-issued certificate of franchise shall contain a grant of authority to use a city's ROWs, subject to the police powers of a city.

2. requires a SICFA holder to make a quarterly payment to each city in which it provides service and that the payment be equal to five percent of gross revenues, as that term is defined in the bill, earned by the franchise holder in that city.

3. requires a SICFA holder to: (a) provide a city, upon request, with PEG channels to be operated by the city for noncommercial programming, with certain limitations and restrictions; (b) provide to a city without a PEG channel a certain number of them, based on population; and (c) make a quarterly payment to every city (regardless of whether it has a PEG channel) in the amount of one percent of gross revenues – the payment may be used solely for capital costs related to PEG channels.

Many providers applied for, and received, a SICFA. Some telecommunications providers have used the bill's provisions to "roll out" video services through new technology using fiber optic lines.

In 2019, S.B. 1152 (Hancock/Phelan) passed. The bill 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. 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 were being "double-taxed." Of course, this isn't how most cities view the issue. The money they pay isn't a "tax." Instead, it's a rental for the use of taxpayer-owned property. Whether part of the business is called "phone service" and part called "cable service" ultimately makes no difference in determining its value.

The Texas Constitution prohibits the legislature from forcing a city to give away publicly-owned property for less than fair market value. The bill is arguably unconstitutional because it eliminates value-based compensation. In other words, the compensation would no longer be based on the

value of the right-of-way to the companies. Read on to learn about litigation related to "small cell" legislation and S.B. 1152's unconstitutional mandate being added to that litigation.

On a related note, over the last two years several Texas cities have joined a lawsuit seeking franchise fees from Netflix, Hulu, and Disney+. The theory of recovery in these suits is that the streaming services aren't paying their required 5% of gross revenue fee to use public rights of way to deliver streaming video programming. It is unclear at this time if there will be any proposed legislation to address how streaming services fit into the current cable/video franchise fee structure in Texas.

Small Cell Nodes

Senate Bill 1004, passed during the 2017 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. Negotiations during the legislative session led to concessions giving some city authority over placement. That may make the bill's access provisions palatable to many cities, but local preparation is key to dealing with the installations. The League has obtained example documents for city officials to use when developing their ordinance, design criteria manual, and attachment agreements.

Small cell nodes are not a replacement for the large "macro towers" that dot our landscape. Rather, the nodes are meant to expand network bandwidth in densely populated areas. S.B. 1004 allows cell companies and others to place the nodes in city rights-of-way, but cities in rural areas may not be affected immediately – if at all.

The bill grants some control to cities by allowing them to, among other things:

1. Adopt a "design manual," which can include things like aesthetics, insurance, and recommended placement locations;
2. Create an "attachment agreement" governing how nodes are attached to city facilities; and
3. Create "design districts" that can have more stringent aesthetic requirements.

Most cities have reviewed their right-of-way management ordinance and created or modified permit application forms for right-of-way access. The documents can be very simple or very complex, depending on the needs of each city.

Following the bill's passage, the City of McAllen is leading a coalition of around twenty cities that filed a lawsuit to challenge the unconstitutionally low right-of-way rental fees in it. The bill caps a city's right-of-way rental fee at around $250 per small cell node. The price per node in the current bill is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The lawsuit also claims that S.B. 1004 unconstitutionally

delegates a city's legislative authority to control its rights-of-way to private businesses. The City of Austin has also filed a lawsuit challenging S.B. 1004. Both lawsuits are pending.

During the 2018 interim, it became time to clear up what appears to be some confusion about the relationship between cities, TML, and cell providers, which are all focused on small cell technology. In May, the Senate Business and Commerce Committee held an interim hearing on the following charge: "the Committee will receive an update on the implementation of S.B. 1004, relating to the deployment of network nodes in public right-of-way."

The witnesses at the hearing consisted of the representatives of the major cell phone providers, city representatives from four large cities, and various others. One overarching principle is clear after the hearing: cities and businesses want better cellular/broadband service. We all want the best technology for educational and businesses opportunities. That's why the tone of some parts of the hearing was disconcerting.

Some committee members, and some witnesses, characterized the lawsuit as being only about cities wanting more money. And it's certainly not true, as many committee members alleged, that "TML is leading charge to organize these cities to get more money."

The lawsuit isn't about a "money grab." It is about a mandate in the Texas Constitution that prohibits the legislature from doing what it did with S.B. 1004: giving away taxpayer-owned property to private business without just compensation. The relevant part of the Constitution is very simple:

"[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State…to grant… [any] thing of value in aid of, or to any individual, association or corporation whatsoever…"

The legislature mandating the use of city property for less than fair market value clearly violates the above provision, and the victims are city taxpayers who are forced to subsidize private industry.

In 2020, the pleadings in the existing "small cell" lawsuit were amended to include S.B. 1152. The small cell bill caps a city's right-of-way rental fee at around $250 per small cell node. The fee elimination in S.B. 1152 is, like price per node in the small cell bill, a taxpayer subsidy to the telecommunications industry because it allows discounted use of taxpayer-owned rights-of-way and facilities.

In July 2022, the 53rd State District Court in Travis County ruled in favor of a coalition of cities, challenging the constitutionality of S.B. 1152. The court declared that S.B. 1152 violates the Texas Constitution Article III, Section 52 prohibition on "public gifting" of things of value to corporations or private entities. However, the court ruled in favor of the State of Texas and denied summary judgment as it related to S.B. 1004. It should be noted that the issues related to S.B. 1004 small cell wireless deployment are currently being considered before the Federal Communications

Commission (FCC). The FCC will likely play a deciding role in resolving the issues such as allowable fees and land use authority by political subdivisions over small cell deployment. The ruling declaring S.B. 1152 unconstitutional is expected to be appealed by the State of Texas to the 3rd Court of Appeals. It is anticipated that the city coalition will likely consider appealing the denial of the summary judgment as it relates to S.B. 1004.

Because S.B. 1004 and S.B. 1152, if left unchecked, could lead the way to further erosion or even elimination of some franchise fees in future sessions, the lawsuit to prove that they are unconstitutional remains extremely important to Texas cities.

The FCC and Congress

State challenges aren't the only thing cities need to be concerned with. Over the last decade, the FCC has issued numerous orders preempting city right-of-way and other authority, and it is continuing to ramp up its efforts.

The issues may seem technical to some, but they are among the most important that cities face. FCC efforts could ultimately eliminate a city's ability to direct what goes where in its rights-of-way. Just as important, they could collectively cost Texas cities hundreds of millions of dollars in right-of-way compensation. In addition to FCC action, Congress is moving into the fray as well. These issues are so important that League officers and staff have travelled to Washington, D.C., to visit with key members of the Texas Congressional delegation about the federal efforts mentioned above. The goal of the visit was to show that Texas has enacted legislation (for telecommunications, cable/video, and small cell deployment) to address industry concerns and that further preemption – especially in the area of right-of-way compensation – would create a subsidy for telecommunications companies on the backs of taxpayers.

Electric Franchise Fees

S.B. 7, passed in 1999, deregulated the Texas electric power market. The legislation, which went into full effect in 2002, made changes that not only deregulated most electric utilities in Texas, but also changed the way in which municipal electric franchise fees are charged and collected.

Traditionally, cities and electric utilities operated under a franchise agreement that governed the amount the utility paid for use of the city's rights-of-way, typically stated as a percentage of the utility's gross receipts for service provided within the city limits.

Prior to its amendment by S.B. 7 in 1999, Section 182.025 of the Texas Tax Code provided that a city could unilaterally charge and collect a fee equal to two percent of gross receipts from an electric utility. Section 182.026 then provided that Section 182.025 would not impair or alter a provision of a contract, agreement, or franchise made between a city and an electric utility company relating to a payment made to the city. In other words, cities and electric utilities were free to enter into franchises that provided for a fee of greater than two percent, and it was on that

basis that many cities negotiated for and received franchise fees of three or four percent of gross receipts.

Since January 1, 2002 (the date deregulation was implemented), a city's electric franchise fee has been – with some exceptions – based on the number of kilowatt-hours (kwh) that a utility delivered to customers located within the city's boundaries in 1998. The total franchise fees for 1998 were divided by the total KWHs for that year to arrive at a "per kwh rate." That rate is multiplied by the current kilowatt hours used by all customers within the city to arrive at the franchise fee amount due to the city.

The TML Legislative Program provides that the League should oppose legislation that would erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.

SOLID WASTE FRANCHISE FEES

In recent legislative sessions, efforts have been made to limit the amount of franchise fees cities can collect from exclusive providers of solid waste services. Cities have broad authority under the Texas Health and Safety Code to contract with solid waste services providers to furnish solid waste collection, transportation, handling, storage, or disposal, require the use of the service by city residents, and charge fees for the service. The statutory framework granting authority to cities to collect fee pursuant to agreements for exclusive solid waste franchise has led to different methodologies and rates for collection of franchise fees on solid waste providers, based on local needs in each community, and the variation of the amount of fees across the state has drawn the ire of some in the Texas Legislature.

In 2019, Representative Stephenson filed H.B. 4344, which would have provided that: (1) a city may not charge a person granted a franchise to provide solid waste management services in the city franchise fees of more than two percent of the gross receipts of the franchisee for the sale of services in the city; and (2) a city may not restrict the right of an entity to contract with a person other than the city or an exclusive franchisee of the city for solid waste management services for commercial or industrial waste. The bill was heard in the House Environmental Regulation Committee, but did not advance after testimony against the bill from cities and solid waste providers.

The bill was refiled in 2021, this time as H.B. 738 by Representative Cain. Once again, the bill was heard by the House Environmental Regulation Committee, and there were several witnesses opposed to the bill. No witnesses testified in favor of the bill, and it was not reported out of committee. In 2021, the committee heard a committee substitute of the bill that took out the component allowing for a person to contract with anyone for solid waste management services other than the city or exclusive franchisee, only leaving the provision of the bill limiting the

franchise fee to two percent of gross receipts of the franchisee for the sale of solid waste services in the city. Consequently, two major solid waste service providers dropped their opposition to the bill, indicating that the providers were neutral on a bill that would only limit the amount they pay in franchise fees for the right to be exclusive provider of solid waste services.

On May 20, 2022, the Texas Supreme Court issued its opinion in *Builder Recovery Servs., LLC v. The Town of Westlake,* finding that the Town of Westlake as a general law city exceeded its authority when it assessed a percentage-of-revenue license fee on construction-site waste hauling businesses. Notably, the Court expressly stated that its opinion was not intended to address the ability of general law cities to impose solid waste franchise fees.

In the case, the Town of Westlake passed an ordinance, which required third-party construction trash haulers to obtain a license in order to provide temporary construction waste services, imposed certain regulations on the licensee, and assessed a licensing fee based on 15 percent of the licensee's gross revenue. Builder Recovery Services, LLC (BRS) sued the Town asserting, among other things, that the Town as a general law city lacks authority to require BRS to obtain a license to haul construction waste, and lacks the authority to impose a licensing fee based on a percentage of BRS's revenue. Ultimately, the Texas Supreme Court held that a general law city's express power to regulate construction trash hauling does not include the implied authority to charge a license fee based on a percentage of revenue, and such fees would have to be tethered to the cost of providing services. The Court opined that because a percentage-of-revenue fee "fluctuates based on market forces having nothing to do with the Town's regulatory expenses, and because it resembles a business tax in its calculation method, a percentage-of-revenue fee is different in kind from cost-recovery fees a general-law city might validly charge incident to its power to regulate trash hauling." The Court provided that a "more conventional, volume-based fee under which the Town charged fixed amounts per license application or per construction site, for instance, could be calibrated to offset staffing or paperwork expenses incurred by the Town because of the regulation."

Although the Court determined that a general law city cannot charge the kind of percentage-of-revenue fee assessed by the Town to a licensee who hauls construction waste, the Court clearly noted that its decision does not apply to exclusive franchise agreements between a general law city and its residential and commercial solid waste providers adopted pursuant to Section 364.034 of the Health and Safety Code. Specifically, the Court stated:

> "Turning to the merits of [the authority to impose a percentage-of-revenue fee] claim, an initial distinction should be drawn between the licensing fee imposed on BRS and the franchise fee imposed on Republic. Republic is the Town's conventional residential and commercial trash-hauling franchisee. The Town's relationship with Republic is governed by an exclusive franchise agreement as described in section 364.034 of the Health and Safety Code. Republic is not a party to this case, and nothing in our decision should be construed to comment on the rights of the Town, of Republic, or of similarly situated parties operating

> under section 364.034 or under franchise agreements. Instead, we address the Town's authority under section 363.111 of the Health and Safety Code, the primary statutory provision on which the Town relies for its authority to charge licensing fees to companies like BRS."

Following the Court's decision, some solid waste providers appeared to question whether they could be required to pay a general law city's franchise fee if that fee was based on a percentage of the provider's revenue. The fallout from the *Builder Recovery Servs., LLC v. The Town of Westlake* decision could add a new dynamic to the policy debate over local solid waste franchise fees in 2023.

BROADBAND ACCESS AND EXPANSION

Lack of broadband access has been a problem with major ramifications for Texas cities and their residents. According to a 2019 comptroller report, more than two million Texas households don't have high-speed internet, and 31 percent of rural Texans lacked access to basic broadband services. Additionally, many urban areas of the state have areas with poor access to broadband, and rank amongst the worst connected large cities in the country. The problem is both one of access and affordability.

So what exactly is broadband? According to the Federal Communications Commission (FCC), broadband refers to high-speed Internet access that is always on and faster than the traditional dial-up access. Broadband includes high-speed transmission technologies such as: (1) digital subscriber line (DSL); (2) cable modem; (3) fiber; (4) wireless; (5) satellite; and (6) broadband over power lines (BPL). To meet the FCC's definition of broadband, internet speed must reach at least 25 Mbps for downloads and 3 Mbps for uploads.

The COVID-19 pandemic prompted Texans, and state leaders, to view the problem in a whole new light. For Texas cities, the importance of widely accessible broadband is hard to overstate. Not only is fast and reliable internet imperative to our ever-evolving system of commerce, but it's also critical for the full functioning of societal institutions. And for rural communities, many of which have seen their prosperity drop in lockstep with their populations in recent years, broadband access provides hope for new jobs and economic development in a rapidly changing society. The prospect of increased connectivity makes physical location less important for employment purposes, giving people more flexibility to live and raise families outside of urban and suburban hubs.

This confluence of factors virtually guaranteed that the legislature would seriously consider legislation in 2021 that moved the ball forward on broadband connectivity in the state. In September 2020, a bipartisan group of 88 state legislators sent a letter to Governor Abbott calling for the adoption of a statewide broadband plan. At the time, Texas was one of six states in the country without a statewide broadband plan.

In November 2020, the newly-created governor's broadband council issued a report highlighting the connection between the COVID-19 impact and limited broadband access in Texas. According to the report, the digital divide in Texas "is particularly problematic for those who need to attend school virtually, visit a doctor online, or work remotely, either due to the COVID-19 pandemic or other factors." The first recommendation of the governor's broadband council is the adoption of a broadband plan. The report highlights the need for a plan to facilitate local and regional coordination: "Local and regional planning efforts can help communities identify their needs and goals, start conversations with providers, evaluate options, and move toward implementing infrastructure projects."

The second recommendation of the governor's council was the establishment of a state broadband office. According to the report, "[t]he absence of both cohesive, statewide development plans as well as a statewide broadband office with dedicated staff to coordinate efforts in Texas have contributed to the previous broadband initiatives failing to reach the potential they could have with greater policy and funding coordination." In 2019, H.B. 2423 would have done exactly that, in addition to establishing a broadband grant program for private providers. The bill passed the House, but never made it through a Senate committee.

In 2021, the high degree of consensus on both a broadband plan and a state broadband office on the heels of the COVID pandemic finally came to fruition with the passage, supported by TML, of H.B. 5 by Representative Trent Ashby. H.B. 5 established a state broadband development office within the comptroller's office and required the office to develop a statewide broadband plan. In doing so, the bill required the office to consult with political subdivisions, including cities, in order to develop both the broadband plan and a broadband map that characterizes areas in the state as eligible for broadband expansion and funding.

Following a statewide listening tour and gathering of survey data, the comptroller's Broadband Development Office released the Texas Broadband Plan in June 2022. According to the report, 5.6 million Texas households lack access to quality internet, and the digital divide prevents Texans from accessing services necessary to health, education, employment and safety. The Plan also calls for additional state funding. Of note: the 87th Legislature appropriated $5 million to the comptroller to administer the program. In addition, the American Rescue Plan Act has allocated $500.5 million to Texas for broadband expansion while the Infrastructure Investment and Jobs Act will allocate at least $100 million. By early 2023, the BDO plans to publish a broadband availability map and establish a broadband-focused, federally-complaint grant program.

In 2021, the legislature also attempted to enact some market reforms designed to shore up revenue in the Texas Universal Service Fund, with the goal of incentivizing deployment of broadband in underserved areas. The legislature passed H.B. 2667, which would have would address funding shortages of the Texas Universal Service Fund by requiring providers of Voice over Internet Protocol service operating in high cost rural areas to pay the uniform charge. The bill unanimously passed both chambers, but was vetoed by the governor. In his veto message, Governor Abbott

stated the following "Coming into the 87th Legislative Session, everyone knew the Legislature needed to consider significant reforms on broadband and the Texas Universal Service Fund. Transformational broadband reform was achieved through multiple bills that have been signed into law, which significantly expand broadband access in Texas, especially in rural areas. Yet the only meaningful change made to the Texas Universal Fund was, in House Bill 2667, to expand the number of people paying fees. It would have imposed a new fee on millions of Texas."

Any new broadband market reform legislation in 2023 has the potential to negatively impact city right of way oversight. A 2019 FCC report highlighted local permitting processes and fees as a barrier to broadband deployment: "Regulatory delay can slow entry, and local regulatory fees can represent sunk costs that can deter or diminish entry. Thus, regulatory fees and regulatory delays can be a significant barrier to entry. Siting fees such as excessive one-time application fees, annual recurring fees, unreasonable or discriminatory gross revenue fees, and franchise or use fees may be especially burdensome to smaller providers and may prevent or discourage investment."

Limitations on city regulatory authority regarding broadband have been suggested in Texas, as well. The governor's broadband council's report cites "local permitting processes" as a regulatory barrier to broadband deployment. In addition, the 2022 State Broadband Plan contained this recommendation for legislative action:

"Areas of focus may include clarifying which entities can provide broadband (e.g., municipal/locally owned networks) and how entities may access the infrastructure or right-of-way needed to deploy broadband services. Feedback during outreach efforts covered dig-once regulation, streamlining state and local permitting requirements, reducing application and infrastructure use fees, and increasing coordination with TxDOT and other state agencies."

If recent history is any indication, the state legislature will not shy away from limiting city oversight over their rights of way, and franchise fee revenue, in favor of general authority to expand broadband infrastructure.

City officials have a strong interest in seeing broadband access expanded for all Texans. Local economies depend on that expansion, and on a more basic level, Texans need access to high speed internet. Cities will play a critical role in this process, as they have access to local rights of way and are uniquely positioned to facilitate the expansion.

The TML Legislative Program provides that the League should support legislation that: (1) treats broadband service similar to other critical utility infrastructure to ensure statewide availability and affordability for citizens and businesses; and (2) modernizes the Texas Universal Fund through revenue sources that ensure long-term sustainability for the provision of broadband services.

UTILITY RELIABILITY

Heading into the 2021 legislative session, one issue that was not on many radars was electric utility reliability during or following an extreme weather event. Then Winter Storm Uri happened during the session in February 2021. The ensuing grid and utility failure prompted the Texas Legislature to shift much of its focus to respond to the electricity and water issues Texans experienced during the storm.

In response, the TML Board of Directors, at a March 2021 board meeting, approved three new policy positions to support legislation that would:

1. harden the state's electric grid against blackouts, especially those caused by extreme weather events;
2. provide additional tools for municipally-owned electric utilities to harden their systems against blackouts, especially those caused by extreme weather events; and
3. mitigate the cost and liabilities of the outage event caused by Winter Storm Uri from being passed on to cities and city residents.

With the new positions in the TML program as a guide, the League and city officials played an active role in monitoring the myriad of legislative proposals filed to address utility failures during the winter storm, and helping shape the bills that ultimately passed.

When the dust settled, the legislature passed several bills in response to the winter storm, perhaps most notably S.B. 2, S.B. 3, and H.B. 4492.

S.B. 2 requires the presiding officer of the Public Utility Commission (PUC) and all members of the Electric Reliability Council of Texas (ERCOT) board to be residents of Texas. It replaces the ERCOT board with political appointees and involves the PUC more closely in ERCOT's regulations. It also changes the members of the ERCOT board from mostly electric industry members to members with executive-level experience in areas such as finance, business, engineering, trading, risk management, law, or electric market design.

S.B. 3 was the omnibus utility weatherization bill for certain electric, gas, and water utilities. The bill requires electric generation facilities, electric transmission and distribution facilities, and certain natural gas pipeline facilities and wells to implement measures to operate during a weather emergency. The bill also: (1) creates an alert system to be activated when the power supply in Texas may be inadequate to meet demand; (2) requires the Railroad Commission and the PUC to designate certain natural gas facilities as critical infrastructure during energy emergencies so the electricity generators can still get fuel to produce power; and (3) establishes the Texas Energy Reliability Council to: (a) ensure that the energy and electric industries in Texas meet high priority

human needs and address critical infrastructure concerns; and (b) enhance coordination and communication in the energy and electric industries in Texas.

The bill contained a significant provision for cities that operate their own water utilities. Except in Harris or Fort Bend counties, who already have similar requirements in place, the bill requires municipally owned water utilities to: (1) ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by the Texas Commission on Environmental Quality (TCEQ), as soon as safe and practicable following the occurrence of a natural disaster; and (2) by March 1, 2022, adopt and submit to TCEQ for its approval: (a) an emergency preparedness plan that demonstrates the utility's ability to provide the emergency operations described by (2); and (b) a timeline for implementing the plan. As originally filed, this provision would have required water pressure of 35 PSI, but city input helped bring that number down to a more reasonable standard, among other changes.

H.B. 4492 provides two financing mechanisms to address extraordinary costs incurred by ERCOT and market participants because of Winter Storm Uri. The first mechanism utilizes an $800 million dollar loan from the state's rainy day fund to address the non-payments of market participants. This allows ERCOT to "clear the market" by using these funds to pay the market participants that ERCOT owes. The loan to ERCOT will be paid by the assessment of a charge to remaining market participants which will eventually be paid by their customers over a period of time not to exceed 30 years. The second financing mechanism addresses the ancillary charges that were assessed to certain market participants during the storm. It allows market participants who choose to participate to utilize securitization financing to spread their cost over a period of time not to exceed 30 years in order to lessen the immediate impact on customers. This mechanism is also backed by a customer charge and it includes a provision that benefits received by a provider will be passed along to any customer who has paid for the assessment. This fund is capped at $2.1 billion.

One other disaster-response bill that passed in 2021 and is worth mentioning is S.B. 968 by Senator Lois Kolkhorst. S.B. 968 provides that, in the event of a disaster or other event that causes an extended electricity, water, or gas outage, the Texas Division of Emergency Management (TDEM) shall collaborate with first responders, local governments, and local health departments, to conduct wellness checks on medically fragile individuals (as defined by TDEM) within 24 hours of such events. The wellness checks must include an automated phone call, a personalized call, and if the person is unresponsive to calls, an in-person check. The bill requires each city to adopt procedures to conduct wellness checks in compliance with minimum standards adopted by TDEM. At this time, TDEM has not published its minimum standards.

The TML Legislative Program provides that the League should support legislation that: (1) hardens the state's electric grid against blackouts, especially those caused by extreme weather events; (2) provides additional tools for municipally-owned electric utilities to harden their systems against blackouts, especially those caused by extreme weather events;

and (3) mitigates the cost and liabilities of the outage event caused by Winter Storm Uri from being passed on to cities and city residents.

OIL AND GAS PIPELINE ROUTING

In 2019, the cities of Woodcreek, Wimberley, and Kyle submitted a resolution for consideration at the TML Business Meeting that would require oil and gas pipeline companies to work with cities regarding pipeline routes, establish bonds for performance, and require environmental studies for intrastate projects. After much discussion, the TML membership ultimately adopted the resolution, putting the support provisions in the TML program beginning in the 2021 legislative session.

In 2021, Representative Erin Zwiener filed H.B. 37, which would have, among other things: (1) provided that, with certain exceptions, a person may not begin construction of a pipeline before the person obtains a permit from the Public Utility Commission (PUC) that authorizes the route of the pipeline; (2) provided that the PUC may only approve an application and grant a permit if the PUC determines that the route of the pipeline moderates negative effects on the affected community and landowners after the consideration of: (a) community values; (b) recreational and park areas; (c) historical and aesthetic values; (d) environmental integrity; (e) public safety; and (f) economic development; (3) required the PUC to grant or deny a permit not later than the first anniversary of the date the application for the permit is filed; (4) provided that the PUC and the attorney general may enforce the routing permit requirements through judicial review and by imposing administrative penalties; and (5) authorized a procedure for a person to complain to the PUC of a claimed violation of the pipeline routing process.

H.B. 37 did not receive a committee hearing.

The TML Legislative Program provides that the League should support legislation that requires the State of Texas to create a state regulatory process for oil and gas pipeline routing that: (1) enables affected communities and landowners to provide input prior to establishment and publication of routes; (2) provides for negotiation on routes when municipalities believe that substantial threats to economic development, natural resources, or standard of living are potential outcomes; (3) provides that intrastate pipelines will comply with environmental and economic impact study standards, including the participation of local governmental entities and public participation; and (4) requires pipeline operators to have in place performance bonds like those the state has in its own contracts.

LOCAL TRANSPORTATION FUNDING

For several decades, TML has attempted to obtain access to new revenue sources so that the backlog of spending on infrastructure (and streets in particular) can be addressed, and so that some pressure can be taken off the property tax. For example, in the late 1970's the League pushed for legislation that would have raised the local option sales tax from one cent to two cents, under the theory that the additional revenue would be used for street projects. This TML initiative failed.

In 1981, TML pressed for legislation that would have raised the state automobile registration fee in order to create a City Street Improvement Fund. The effort failed.

In 1983, the League pushed for a "Pothole Bill." Here is how the January 1983 edition of *Texas Town & City* magazine explained the effort:

> *A TML survey of Texas cities indicated that the current backlog of municipal street repair needs exceeds $1 billion – a sum that will grow each year, as cities fall further and further behind.*
>
> *Upwards of 20 percent of all municipal streets – 12,000 miles – need major repairs, and the magnitude of the problem is steadily growing. Texas cities are spending an estimated $180 million per year on street repairs, 58 percent more than three years ago. But they are falling even further behind, because the street repair backlog is snowballing at rates that exceed local spending increases. The cities will never be able to bring their streets and bridges up to standard without state financial assistance.*

Note that the backlog was estimated to be $1 billion in 1983. It is now much higher. Here is the solution that was proposed in 1983:

> *…city residents, who comprise 80% of Texas' population, pay a major proportion of all motor vehicle-related taxes collected by the state. But none of these revenues are remitted back to the cities to help deal with the problems created by the millions of vehicles which generated the funds and the potholes in the first place. The TML City Street Improvement Fund would provide a remedy by tying the problem (motor vehicle wear on city streets) to the solution (repair funding provided from motor vehicle-related taxes).*

Again, the League's efforts failed.

During the late 1980's and in 1991, TML urged the Texas Legislature to raise the state gasoline tax by five cents and remit the revenue back to cities for street improvements. The League came very close during a special session in 1991, when the House approved the five-cent increase, but the Senate narrowly rejected it.

All efforts failed, probably because of the way in which the legislature views tax increases:

1. Lawmakers remain reluctant to raise state taxes *at all* but are more likely to allow city councils (or local voters) the authority to raise taxes. For example, lawmakers have given cities the authority to raise the local sales tax for: (a) economic development, (b) property tax relief, and (c) other specific purposes (see "The 2001 Legislation" below).

2. The legislature is even more reluctant to raise a state tax (like the gasoline tax) and give the increase in revenue to the cities, because the state may want to increase that tax for its own purpose sometime in the future. Indeed, virtually all the taxes listed above have been increased by the legislature *for state revenue* sometime after the League asked for an increase for local revenue.

The 2001 Legislation

The 2001 legislature passed H.B. 445, a bill that authorizes a city to hold an election to adopt a one-fourth-percent sales tax to repair and maintain city streets. Only those cities with room under the two-percent local sales tax cap are eligible to adopt the tax. If approved by the voters, the tax expires after four years, unless a new election is held to reauthorize the tax.

The 2003 Legislation

The 2003 legislature passed H.B. 164, a bill that authorizes a one-eighth-percent sales tax to repair and maintain city streets, in addition to the one-fourth-percent tax mentioned above.

The 2005 Legislation

In 2005, the legislature passed no bills that significantly improved municipal revenue, but did pass a bill (H.B. 3195) that gives cities more flexibility to switch between optional sales taxes by permitting a single ballot proposition to raise an optional sales tax while simultaneously reducing another. Numerous cities have taken advantage of this legislation.

The 2007 Legislation

The 2007 legislature passed a bill (H.B. 3084) that abolished the four-year expiration of the street maintenance sales tax. Unfortunately, the governor vetoed that bill.

The 2009 Legislation

By 2009, it had become painfully obvious that Texas was experiencing a severe shortage of federal and state transportation dollars. The burden of dealing with mobility issues was increasingly being pushed down to local governments. In an effort to provide those local governments with the tools to fund projects that are essential to the state's mobility and economy, legislators introduced the Texas Local Option Transportation Act (TLOTA). Senator John Carona and Representative Vicki Truitt filed TLOTA in the form of S.B. 855.

As filed, S.B. 855 would have allowed the voters in only Dallas and Tarrant Counties to choose from a menu of options for raising transportation funds through local fees and assessments. The menu included such revenue alternatives as: (1) a county motor fuels tax of up to ten cents per gallon that could be adjusted for inflation; (2) a mobility improvement fee not to exceed $60 annually; (3) a parking regulation and management fee of $1 per hour / per parking space; (4) a As passed by the Senate Transportation and Homeland Security Committee, the bill expanded TLOTA to include the twelve-county North Texas region (Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) as well as Bexar, Travis, and El Paso Counties.

When S.B. 855 was deliberated on second reading in the Senate, three additional regions were added to the bill (Corpus Christi, the Rio Grande Valley, and Waco). Another amendment adopted by the Senate provided that the bill would not take effect unless the legislature passed and the voters approved a constitutional amendment limiting diversions from the state highway fund. This provision linked the passage of S.B. 855 to the passage of S.J.R. 9 and S.J.R. 52. Senate Bill 855 finally passed the Senate by a vote of 21-9.

The House Committee on Transportation waited an entire month before voting 6-1 to approve the bill. As passed by the House committee, S.B. 855 would have applied to any county within a Metropolitan Planning Organization (MPO). (There are 25 federally-designated MPOs in Texas, affecting 55 counties and covering 85 percent of the state population.) Although broader in its applicability, the bill allowed for only one funding mechanism: a local option gas tax of 10 cents per gallon.

Opposition to S.B. 855 began to grow. The Texas Public Policy Foundation and other groups expressed concerns over increasing taxes during a recession, as well as the ability of some counties to raise taxes while others could not. Opponents argued that local governments already have the ability to pay for additional transportation infrastructure by redirecting existing sales tax revenue that, they said, was originally intended for mobility, or to cut “waste” and apply those savings to transportation.

By May 23, 2009, TLOTA was still on the House Calendar awaiting full consideration by the House. Unfortunately, S.B. 855 was a victim of the five-day “chubbing” that took place in the House to defeat the controversial “Voter ID” bill.

TLOTA’s provisions were also added to H.B. 300, the TxDOT Sunset Bill, but were stripped from the bill by the conference committee. (House Bill 300 also died.)

The 2011 Legislation

The 2011 legislature passed a bill (H.B. 2972) that would allow cities to reauthorize the street maintenance sales tax every eight years (instead of every four years) in certain situations. The bill

also authorized a city to spend street maintenance sales tax revenue on sidewalks. As with H.B. 3084 in 2007, the bill was vetoed by the governor.

The 2013 Legislation

No comprehensive TLOTA-type legislation was filed in 2013. However, H.B. 1511 by Larson would have, among other things, extended the requirement that a street maintenance sales tax be reauthorized by election by election every four years to every eight years. H.B. 1511 actually passed both the House and Senate overwhelmingly, but was vetoed by Governor Perry. According to the Governor's veto message, the bill was vetoed because he believes voters deserve the right to vote on whether to be taxed.

During 2013, it was hoped that the announcement of the TxDOT Turnback Program (through which TxDOT essentially offered to "give" state highways back to cities) would be a "springboard" for further discussions about how the state's transportation system is funded. Unfortunately, however, no legislation creating new city transportation funding sources passed in 2013.

Recent Issues

Because of the passage of that significant state funding in 2013 (see discussion below), the legislature was quiet on the local funding issue in every session since. In 2021, TML priority legislation was filed that would have, for a city in which a majority of the voters voting in each of the last two consecutive elections concerning the adoption or reauthorization of the street maintenance sales tax favored adoption or reauthorization, authorized the city may call an election to reauthorize the tax for a period of eight or ten years, instead of four years; and (2) authorized revenue from the street maintenance sales tax to be used to maintain and repair: (a) a city street or sidewalk; and (b) a city water, wastewater, or storm water system located in the width of a way of a city street. This bill, S.B. 402 by Senator Johnson, passed the Senate on a vote of 29 to 1, but did not receive a hearing in House committee.

The TML Legislative Program provides that the League should support legislation that would allow for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments are unable or unwilling to address.

The TML Legislative Program provides that the League should seek introduction and passage of legislation that eliminates reauthorization provisions for the collection and use of street maintenance sales and use tax and authorize cities to reimburse themselves from sales and use tax collections for actual election costs required for tax implementation.

STATE AND FEDERAL TRANSPORTATION FUNDING

State Funding

The legislature, in the 2013 regular session, considered dozens of state transportation funding bills that would have enacted new fees, changed the use of existing fees, and/or ended "diversions" of transportation-related revenues to other purposes. Just a few examples of such bills included the following: (1) ending or modifying the diversion of the state's gas tax revenues: (2) dedicating motor vehicle sales taxes to transportation purposes; and (3) creating new fees or taxes.

None of the bills above passed. However, legislators were finally able to address at least a portion of the state's transportation funding problems. In the 2013 third special session, two bills - S.J.R. 2 and H.B. 1 - passed and both chambers promptly adjourned *sine die*.

The general idea of those two bills was to amend the Texas Constitution to divert some of the state's oil and gas tax revenues from the rainy day fund for transportation purposes. However, legislators hadn't been able to agree on certain details, specifically whether the rainy day fund should retain a minimum balance before money can be diverted for transportation purposes. In the second special session, different versions of two bills passed the House and the Senate. The bills then went to a conference committee, but the conference committee version failed to pass either chamber.

The legislation that ultimately passed during the third special session provided for about $1.2 billion in new funding annually. That amount is far less than the $4 billion needed at the time, but it was a start. It also provides that the funding mechanism would end in 2025. However, legislation passed in 2019 (S.B. 962) extends the funding allocation until 2034.

It appeared that the governor and lawmakers were satisfied with the compromise reflected in 2013's two-bill package. But the lack of full funding meant that completely fixing the state's transportation funding problem continued to be on the table in the 2015 session.

The 2015 session saw dozens of bills (some of which would have needed constitutional amendments to be implemented) filed that would have enacted enact all sort of transportation funding schemes. The key piece of legislation that passed was S.J.R. 5 (Nichols/Pickett). The constitutional amendment was approved by the voters on November 3, 2015, and provides that the comptroller direct some of the state's motor vehicle sales tax to the State Highway Fund, but the funds can't be used for toll roads. Essentially, if the state sales and use tax revenue reaches $28 billion in a given year starting in 2017, the additional money – up to $2.5 billion – would go to the highway fund. In addition, starting in 2019, 35 percent of state motor vehicle sales and rental tax revenue that exceeds $5 billion would go to the fund.

The main news of the 2017 session was the passage of the TxDOT "sunset bill." That bill continued the agency until 2029 and made various administrative improvements to the agency. In 2019, the

main state funding bill was S.B. 69, which modified the allocation methods in the 2013 funding bills mentioned above. Little was even considered in 2021 on state infrastructure funding, and nothing of significance passed on the topic.

Federal Funding

Heading into 2015, the then-current federal transportation funding legislation – known as MAP-21 (Moving Ahead for Progress in the 21st Century Act) – was about to expire, and the fear was that federal transportation monies were about to dry up.

TML joined the National League of Cities (NLC) in advocating for a multi-year, multi-modal bill that allows local governments a greater say in spending decisions through their regional planning organization. With transportation so critical to job creation and economic output, it has remained the position of NLC that more of the funding decisions should be in the hands of local officials acting through their local planning organizations.

With remarkable bipartisan support, the House and Senate passed a multi-year transportation bill in December 2015 that was immediately signed by the President. The bill, dubbed the Fixing America's Surface Transportation (FAST) Act is paid for with gas tax revenue and a package of $70 billion in offsets from other areas of the federal budget. It called for spending approximately $205 billion on highways and $48 billion on transit projects over the following five years.

At the time of the FAST Act's passage, the last time Congress passed a bill that gave five or more years of certainty to our nation's local leaders was 1998's *Transportation Equity Act for the 21st Century* (TEA-21), which makes some consider the speedy passage of the FAST Act in both the House and Senate a small miracle. This monumental effort would not have been possible without the lobbying efforts by city officials.

To help make the final price tag of the 2015 FAST Act more palatable, lawmakers at the time included a $7.6 billion rescission in the bill's text, targeting individual states' unobligated balances. That rescission, which would have taken effect in mid-2020, would have allowed the federal government to take back nearly $8 billion in highway contract authority. In Texas alone, more than $960 million in contract authority was at stake, according to the Department of Transportation. Legislation removing the rescission passed in late 2019, and the FAST Act was extended to run through the end of 2021.

As the FAST Act expired, Congress took action to pass the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law, which was signed into law on November 15, 2021. The IIJA is altogether a $1.2 trillion bill that will invest in the nation's core infrastructure priorities including roads, bridges, rail, transit, airports, ports, energy transmission, water systems, and broadband. Of that amount, $550 billion is new spending, and will mostly take the form of formula grants to states and competitive grants over the next five years. The IIJA sets aside roughly

$35 billion for infrastructure projects in Texas alone, with the possibility of significantly more federal dollars flowing to the state. According to the White House, Texas can expect at a minimum:

- $26.9 billion for federal-aid highway apportioned programs;
- $3.3 billion to improve public transportation options;
- $2.9 billion to improve water infrastructure;
- $1.2 billion for airport infrastructure development;
- $537 million for bridge replacement and repairs;
- $408 million to support the expansion of an electric vehicle (EV) charging network;
- $100 million to help provide broadband coverage;
- $53 million to help protect against wildfires; and
- $42 million to protect against cyberattacks.

There is no doubt that the IIJA opens the door to significant and much-needed infrastructure funding for Texas cities. Since the IIJA was signed into law in late 2021, The League has monitored state and federal agencies and worked with the National League of Cities (NLC) to access the latest information relating to the IIJA, including providing regular updates in the *Legislative Update* on resources for Texas cities on how to access IIJA funding for local infrastructure projects.

In addition to the historic levels of transportation funding in the IIJA, pandemic-related federal grant programs also included the ability to fund certain infrastructure projects. The State and Local Fiscal Recovery Funds Program (SLFRF), which was part of the federal American Rescue Plan Act, authorized the use of local allotments on, among other things, transportation infrastructure spending under certain circumstances. More specifically, U.S. Treasury's final rule for the SLFRF program authorized cities to use SLFRF dollars to replace lost public sector revenue due to the pandemic, and use the revenue to pay for "government services." Included within Treasury's definition of "government services" is "road building, maintenance, and other infrastructure."

The TML Legislative Program provides that the League support legislation that would provide additional funding to the Texas Department of Transportation for transportation projects that would benefit cities and provide local, state, and federal transportation funding for rail as one component of transportation infrastructure.

PROTECTING TRANSIT IN COMMUNITIES AFFECTED BY A NATURAL DISASTER

Major natural disaster events such as hurricanes, tornadoes, floods, tsunamis, earthquakes and mudslides occur beyond human control. Local communities who experience these catastrophic events often have little recourse and often suffer a temporary population drop as a result of the disaster.

Under current law, local communities with a population of 50,000 or more qualify as urbanized areas based on Decennial Census data. Urbanized areas receive a greater share of funding from the U.S. Department of Transportation (DOT) for federal transit than areas with less than 50,000 people. Following a natural disaster, if a local community's population drops below this threshold but grows back within a few years, the community must wait until the next Decennial Census before it can be redesignated as an urbanized area. The City of Galveston experienced this problem in 2008, when Hurricane Ike resulted in a population drop beyond their control, leading to a loss of $750,000 in federal transit funds, although the population estimates show that the City of Galveston has again the 50,000 person requirement for urbanized areas.

This is just one of the many examples of how local communities suffer from a loss of transit funds after a drop in population following a natural disaster, even when recent estimates by the Census Bureau show their populations have been restored.

In 2017, Representative Randy Weber (R- TX14) filed H.R. 3452 and Senator John Cornyn (R-TX) filed S. 1664 which would amend current law to allow urbanized areas to retain their designation and preserve access to federal transit funding streams following a presidentially-declared major disaster until the next Decennial Census. This bill would ensure that America's communities are not penalized with a loss of federal transit funds due to a natural disaster beyond their control.

Specifically, these bills would:

- Clarify federal Congressional intent of federal transit law to protect cities across the United States from being penalized due to a population drop suffered as a direct result of a natural disaster, retroactive to 2000;
- Explicitly state that only Presidentially declared major disasters are covered in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- Protect federal transit streams for urbanized areas until the execution of the next Decennial Census.

These bills did not ultimately pass but were supported by TML, The City of Galveston, National League of Cities, U.S. Conference of Mayors, as well as other municipal leagues around the country.

In June 2020, during the 116th Congress, the House Transportation & Infrastructure Committee unanimously adopted an amendment to HR 2, INVEST in America Act by Representative Randy Weber (R- TX14). H.R. 2 addressed the unique transit funding gap for Galveston and ensured protection for all small, urbanized areas hit by disaster within a three-year period prior to a Decennial Census and were unable to recover the population due to that disaster. H.R. 2 passed the House with this amendment in early July 2020. The U.S. House of Representatives passed this bill again in 2021 during the 117th Congress. However, the Senate negotiated and passed the Infrastructure Investment and Jobs Act, but Senator Cornyn was unable to attach his language as an amendment that would have added protections for small urbanized areas hit by natural disaster.

The TML Legislative Program provides that the League support legislation in relation to federal transit funding that: (1) clarifies federal congressional intent of federal transit law to protect cities across the United States from being penalized due to a population drop suffered as a direct result of a natural disaster, retroactive to 2000; (2) explicitly states that only presidentially declared major disasters are covered, in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707); and (3) protects federal transit funding streams for urbanized areas until the execution of the next decennial census.

SPEED LIMITS

The membership of the 2018 TML Policy Summit recommended, and the TML membership ultimately approved, a policy position on lowering prima facie speed limits from 30 mph to 25 mph on city streets. While some cities wished to see the 30 mph prima facie speed limit lowered for all cities in the Transportation Code for public safety purposes, some cities objected to the lowered speed limit, and others voiced concerns about the unfunded mandate of having to replace all speed limit signs in the city if the prima facie speed limit was lowered. The end result that is now reflected in the TML program is a compromise between the two positions – support for legislation that gives city councils the authority to lower the prima facie speed limit to 25 mph without the need for a traffic study, which is currently required by state law.

During the 2019 legislative session, Representative Celia Israel filed H.B. 1287, which would have simply lowered the prima facie speed limit on a street in an urban district from 30 mph to 25 mph. While several cities and transportation safety groups supported the bill, the League did not due to the nuanced position adopted leading into the 2019 session. In order to garner the support necessary to be reported from the House Transportation Committee, H.B. 1287 was amended to only lower the speed limit to 25 mph if the street is located in a residence district and is not officially

designated or marked as part of the state highway system. That version of the bill was reported from committee but not taken up on the House floor.

In 2021, Representative Israel refiled the committee substitute from 2019 in the form of H.B. 442. H.B. 442 was heard in committee and substituted once again, this time to comport with the position in the TML program by giving cities discretion to lower the prima facie speed limit to 25 mph, and providing that "[a] municipality is not required to perform an engineering or traffic investigation to declare a lower speed limit under this subsection if the street is located in a residence district."

H.B. 442 was reported from committee and set on the House calendar for consideration, but fell victim to the clock running out on consideration of the bill under the House rules.

Along with H.B. 442, two other bills dealing with lowering speed limits were filed – H.B. 3877 by Representative Israel and S.B. 221 by Senator Judith Zaffirini. The identical bills would have had a similar effect to earlier versions of Representative Israel's speed limit bill lowering the speed limit from 30 mph to 25 mph in statute, but would have only applied in a city with a population greater than 250,000. Neither bill received a committee hearing.

The TML Legislative Program provides that the League support legislation that allows a city to lower the prima facie speed limit from 30 to 25 miles per hour without the need for a traffic study.

GENERAL GOVERNMENT

COMMUNITY ADVOCACY LIMITATIONS

Prior to the 2007 legislative session, interim legislative committees studied the question of so-called "taxpayer-funded lobbying." One reason for this research was that local government officials and their membership organizations (like TML) had been successful in previous legislative sessions in defeating numerous bad ideas that were being pushed by influential state officials and various interest groups.

In preparation for what the League knew would be an assault on its ability, and the ability of its membership, to lobby the legislature, a special TML Legislative Task Force on Intergovernmental Relations was convened to study this and other issues concerning the League's relationship with state government. The conclusions of that task force were ultimately embodied in the following positions taken by the League in 2007:

1. Oppose legislation that would limit or prohibit the authority of city officials to use municipal funds to communicate with legislators.

2. Oppose legislation that would limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.

Those positions were adopted none too soon, as 2007 did indeed bring about legislation that would have harmed the League and its members. H.B. 1753 by Rep. Frank Corte (and its companion bill, S.B. 1944 by Sen. Dan Patrick). Those bills had nothing to do with legislative communications undertaken by city officials, nor did they relate to the authority of cities to contract for the services of a legislative consultant – a "hired gun lobbyist." Rather, H.B. 1753 and S.B. 1944 would have prohibited a city from paying dues to an organization if that organization or an employee of that organization directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature. In other words, the bills were designed to force TML to stop lobbying on behalf of its member cities or force cities to stop paying dues to TML.

The introduction of bills like H.B. 1753 and S.B. 1944 raised an interesting question. Why does TML spend any resources, however derived, on attempting to influence legislation? The answer is simple: TML does so because legislative advocacy is the service that city officials most want from the League. Every membership survey conducted by the League has shown that advocacy is the League's most important activity.

It is also worth remembering that the legislative program that directs the TML advocacy efforts is developed and adopted by the League's membership-at-large and its Board of Directors, not by the TML staff.

It stands to reason, then, that future bills resembling H.B. 1753 and S.B. 1944 should be of the most concern to city officials, not to the TML staff. Such bills would prevent the League from speaking out against the dozens of unfunded state mandates that are proposed each legislative

session. They would also prohibit the League from speaking in opposition to legislation that increases the liability of city officials and endangers their personal resources. They would, most importantly, limit city officials' access to information on statewide policy, and therefore also limit the ability of local leaders to effectively participate in the legislative process.

In 2015, three bills were filed that would have prohibited cities from spending public money to attempt to influence the outcome of any legislation pending before the legislature, as well as expressly prohibiting cities from being members of a nonprofit association that attempts to influence the outcome of any pending legislation—H.B. 1257 (Shaheen), S.B. 711 (Burton), and S.B. 1862 (Burton). Of the three bills, both H.B. 1257 and S.B. 1862 were heard in committee, although neither was voted out. During those committee hearings, local government officials pointed out that the legislation in question would make it next to impossible for legislators to get all the facts they need to cast an informed vote on a bill that affects the cities in their districts. Additionally, cities hire lobbyists for the same reason many state agencies and state universities in Texas spend taxpayer money to employ dozens of lobbyists in Washington, D.C.

Though nothing passed in 2015, the issue was back in high gear in 2017. Two House bills that would have prohibited lobbying by cities were filed in 2017: H.B 1316 (Swanson/Hall) and H.B. 2553 (Shaheen). Those bills never received hearings. One bill, S.B. 445 (Burton) would have instituted transparency reforms related to local government lobby contracts. It passed the Senate but wasn't heard in the House.

The 2019 version of the "anti-TML" and "no city lobbyist bill" was S.B. 29. That bill passed the Senate and died on the House floor by a 58-85 vote. In fact, the bill became the center of a controversy that ended up with the Speaker of the Texas House resigning.

One reporting bill did pass. H.B. 1495 provides, among other things, that the proposed budget of a political subdivision must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in the state's lobby law.

Neither the bill nor current law defines what it means to "directly or indirectly influence or attempt to influence legislation." It's safe to say that money spent on a contract lobbyist should be included, but what about internal expenditures related to influencing legislation? Those internal expenditures might include staff travel time to Austin and related expenses to meet with a legislator or testify before a committee. What to include is ultimately up to each city to decide in good faith based on the advice of local legal counsel. (Note: TML member service fees are not spent to influence legislation. As such, they need not be included in the budget comparison.)

Prior to the 2019 session, then-League President Holly Gray-Moore appointed a special legislative committee to examine, among other issues, whether the League's primary focus on defeating

harmful bills was the correct one considering all the potential negatives that can flow from being a bill-defeating organization. The committee's recommendation was unanimous that defeating harmful legislation should continue to be the League's primary focus.

Following the 2019 session, TML President Eddie Daffern appointed another committee (with many of the same members) called the Legislative Policy Committee on Advocacy Strategy. The purpose of the 2020 committee was not to re-litigate the question of the League's broad strategic goal to defend against harmful legislation. Rather, it was to examine whether the League is on the right track in achieving that strategy. How might tactics change given a changing environment, in other words? Why has staff become the focal point of the League's efforts, and how has that helped or harmed our effectiveness? How can mayors and councilmembers reassert themselves as the primary spokespersons of what's best for Texas cities, using the League as a resource to do so? These and other questions are critical heading into a 2021 legislative session where it's imperative that the League stem the tide of harmful bills.

The relevant recommendations of the 2020 Advocacy Strategy Committee are reprinted here in full:

TML Legislative Policy Committee on Advocacy Strategy

Summary of Recommendations

February 10, 2020

The League should, as an additive to its existing advocacy efforts, adopt and carry out the following recommendations of the Legislative Policy Committee on Advocacy Strategy.

With regard to the education of city officials in relation to legislative advocacy:

1. The League should begin efforts to inform and educate city officials about the legislative process. Those efforts should include more concise written materials in the *Legislative Update*, a social media presence, and oral presentations at every TML or city event in the coming year where doing so is feasible, including every TML regional meeting and affiliate conference.
2. The League should redouble its efforts to educate and encourage all municipal elected officials through the following:
    a. Increased use of weekly conference call updates to officials so they are aware of bad legislation well in advance of needed engagement.
    b. Narrowed focus of written updates, such as the *Legislative Update* email, to a handful of the most important issues, perhaps ranked by significance.
    c. Increased use of old-fashioned "phone trees" when it is time to engage against a bill, with a goal of timely contact and avoiding the perception that talking points

are being invented by TML staff. This strategy was vital in the defeat of S.B. 29, the "no-taxpayer funded lobbying bill," in 2019.

   d. Significant improvement to the League's G.R.I.P. (Grassroots Intervention Program) database. Improvements could include more information about subject matter expertise of member city officials, professional affiliations (membership in groups such as Realtors, etc.), and more information about the willingness of city official to take certain types of advocacy actions during a session.
   e. Utilization of communications consultants and public information offices to help with advocacy messaging.
   f. Improved educational efforts about how to testify and advocate, perhaps including mock hearings and a "buddy system" to help with the logistics and substance of testimony.

3. The League should, when using the local clout of elected officials in advocacy efforts, and – through organizations like TCMA and other affiliates – educate city staff on how they can assist in that process by providing individualized advocacy points to their elected officials.

With regard to local and state advocacy efforts:

1. The League should encourage city officials to meet with the state leadership of other trade associations, such as the Texas Association of Realtors.
2. The League should encourage local officials to meet with local civic-minded groups about the importance of local decision making.
3. The League should encourage the development of regional advocacy efforts through re-designating the TML regional board representatives as the "regional board representative and grassroots advocacy coordinator."
4. The League President should appoint a task force or task forces of city officials, perhaps organized around subject matter expertise, to prepare for the top issues that will be back in 2021.
5. The League should help facilitate "topic-specific study groups" that can better discuss issues with legislators by asking at regional meetings which issues are important to that region.

With regard to the 2020 Municipal Policy Summit:

1. The League should invite friendly legislators to brief the delegates to the 2020 Municipal Policy Summit.
2. The League should designate a thorough discussion time for the issue of preemption issues at the 2020 Municipal Policy Summit.
3. The League should task the 2020 Municipal Policy Summit delegates with determining whether a more focused bill-defeating strategy is appropriate in the future.

With regard to the amendment of the 2019-2020 TML Legislative Program:

1. The committee recommended that the existing TML Legislative Program be amended to seek introduction and passage of legislation that would authorize a city to annex across a road to bring a voluntarily-requested area into the city limits.
2. The committee established a subcommittee to seek ideas for additional positive legislation to work on during this interim.

The stage was set for yet another showdown on community censorship in 2021. The Republican Party of Texas listed "banning taxpayer funded lobbying" as one of their eight legislative priorities in the 2021 legislative session. Lieutenant Governor Patrick counted the issue as one of his 31 legislative priorities, and assigned Senator Bettencourt to shepherd the bill through the process – S.B. 10.

As filed, S.B. 10 would have generally prevented a city from hiring staff, contracting with lobbyists or other professional advocates, or joining associations like TML that engage in advocacy at the state capitol. Specifically, the bill provided:

"*The governing body of a county or municipality may not spend public money or provide compensation in any manner to directly or indirectly influence or attempt to influence the outcome of any legislation pending before the legislature*."

The first thing that stands out is how broadly the language limits city and county authority regarding advocacy. A city council certainly has a firm grasp of whether or not it contracts with a lobbyist or hires an employee to engage in legislative advocacy. However, the language prohibits the city council from spending public money on directly or indirectly influencing legislation "in any way." This potentially puts a city in the impossible position of trying to track every dollar spent by the city, say in a contract with a vendor, to make sure that the money is not ultimately used for legislative advocacy.

More troubling was the use of the phrase "indirectly influencing or attempting to influence the outcome" of legislation. That phrase is not defined in the bill, nor is it defined in existing state law. While directly influencing the outcome of legislation would encompass traditional communications with members of the legislature and staff (which is problematic in and of itself), "indirectly influencing" would go far beyond any notion of lobbying to include other communications and activities. S.B. 10 would prohibit TML, for instance, from providing its members' information about a bill, since doing so could potentially influence the outcome of the legislation.

The bill contained three exceptions to the general prohibition on community advocacy listed above. Those exceptions were:

1. Allowing an elected official to advocate for or against or otherwise influence or attempt to influence the outcome of legislation pending before the legislature;

2. Allowing an officer or employee of a city to provide information to a member of the legislature or appear before a legislative committee, but only if requested by the member of the legislature or committee;

3. Allowing an employee to advocate for or against or otherwise influence or attempt to influence the outcome of legislation, but only if the employee engages in a minimal amount of lobbying activity so as not to be required to register as a lobbyist under state law.

Taken together, these exemptions granted very limited access to the state lawmaking process during the legislative session. Though a mayor or councilmember was given the ability to advocate on behalf of the city, they are simultaneously prohibited by the bill from receiving any extensive guidance on legislation by staff, professional advocates, or nonprofit associations. In other words, the bill allowed elected city leaders to participate, but only if they are able to independently monitor legislation and make time to advocate in addition to performing their jobs as public servants.

The original iteration of S.B. 10 did not have the full support of the Senate Local Government Committee. In order to garner sufficient votes to pass the bill out of committee, Senator Bettencourt was forced to amend the language of the bill to allow a city or county to provide compensation to a nonprofit state association or organization to advocate for or against or otherwise influence the outcome of legislation, so long as the association or organization does not contract with lobbyists or attempt to influence legislation related to property taxation. While this change was a bit more promising for associations like TML in theory, it made an already constitutionally dubious bill arguably even more unconstitutional by prohibiting advocacy on one particular issue. Further, all of other broad prohibitive language remained in the bill with intended goal of censoring local communities at the Capitol. Not surprisingly, the bill was reported from committee on a 5 to 4, party-line vote, and ultimately passed the Senate by a vote of 17-13.

In the House, the House State Affairs Committee heard H.B. 749 by Representative Middleton, which would have broadly prohibited political subdivisions from hiring lobbyists or paying statewide associations that contract with or hire lobbyists. The bill was heard in committee, but from the discussion in committee it was relatively clear that the bill lacked the necessary votes to be reported from committee. As H.B. 749 languished, the House State Affairs Committee received S.B. 10 as passed by the Senate, and took action to further amend the bill in the form of a House committee substitute. The House version of S.B. 10 replaced the strict community censorship provisions of the bill with transparency reforms related to the practice of community advocacy. The committee substitute would have applied to most political subdivisions and required a vote of the governing body to authorize a contract with a person required to register as a lobbyist. The bill required a political subdivision to post a copy of the lobby contract on its website, including other

information like the amount spent on contract lobbyists and membership fees or dues to nonprofit state associations or organizations. The bill also prohibited a city from reimbursing a lobbyist for expenditures on food, drink, and entertainment and prohibited lobbyists who contract with political subdivisions from advocating on property tax rates.

Many in the Texas House viewed the House committee substitute as a more reasonable measure than earlier iterations of S.B. 10. However, when it became clear that a consensus in the House could not be reached on the committee substitute to S.B. 10, the House sponsor postponed the bill until September 18, 2021 – a procedural move that effectively ended any chance of the bill passing in 2021.

Over the interim, the Lieutenant Governor has charged the Senate Local Government Committee to study the community censorship issue. The committee's interim charge reads: "Study how governmental entities use public funds for political lobbying purposes. Examine what types of governmental entities use public funds for lobbying purposes and what level of transparency is available to the public. Make recommendations to protect taxpayers from paying for lobbyists who may not represent the taxpayers' interests." No similar interim charge was issued in the Texas House. Additionally, the concept of banning taxpayer funded lobbyists did not make the list of the top eight legislative priorities of the Republican Party of Texas entering the 2023 legislative session.

The TML Legislative Program provides that the League should oppose legislation that would limit or prohibit the authority of city officials to use municipal funds to communicate with legislators; or limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.

ELECTIONS: BALLOT LANGUAGE/INITIATIVE AND REFERENDUM

Prior to the 2017 legislative session, the lieutenant governor charged the Senate Intergovernmental Relations Committee with studying the following topic:

> Local Ordinance Integrity: Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions, and the means by which they are put forth to voters, conform with existing state law.

When the committee met regarding the charge, it became clear that some want more state regulation of ballot language used in initiative, referendum, and home rule charter amendment

elections, which sometimes become highly contentious. Proponents argue that these reforms are necessary due recent case law striking ballot language proposed by cities.

The interim charge to the Senate Intergovernmental Relations Committee culminated with the filing of S.B. 488 by Bettencourt and H.B. 3332 by Kuempel in 2017. S.B. 488 made it furthest of the two companion bills. It was approved by the full Senate and House Elections Committee, but was never considered on the House floor. In short, S.B. 488 would have authorized the secretary of state to review home rule city ballot language and required cities to make changes to the ballot language based on that review. Even more troubling, the bill would have required cities to pay reasonable attorney's fees, expenses, and court costs to a prevailing plaintiff in a suit challenging the ballot language, even if the city were using language recommended by Secretary of State.

With highly charged political issues on a ballot, there is always a distinct possibility of a pro-forma legal challenge to the ballot language by the opponents of a given measure. As the only level of government in Texas that has initiative and referendum elections, home-rule cities are uniquely targeted by proposals like S.B. 488 just by virtue of having a process that allows for the citizens to vote on certain measures. The irony of S.B. 488 is that the Texas legislature—a body that has not come close to adopting direct democracy measures like initiative and referendum at the state level (like many other states)—is attempting to punish home-rule cities for improperly managing their voter-approved procedures for heightened accountability and transparency.

At a 2018 interim committee hearing, Senator Paul Bettencourt indicated his intent to re-file his ballot language legislation from 2017. According to Senator Bettencourt, city officials are drafting "purposely misleading" ballot language, presumably in an attempt to sway voters one way or the other.

Senator Bettencourt's renewed focus on city ballot propositions was based on three recent lawsuits, described here:

- The City of Austin received a petition to call an election on the implementation of a city land use plan. The petition required any new land use plan to include a waiting period and voter approval before it could go into effect. The city's ballot language provided that the waiting period could be "up to three years." The plaintiffs sued the city over this language, arguing that the city's ballot language should have excluded the length of the waiting period. The Texas Supreme Court rejected the plaintiffs' challenge. (Note: this proposition was ultimately rejected by the voters.)
- The City of Austin received a petition to mandate the city to conduct an annual "efficiency audit." The city's ballot language included the cost of each proposed efficiency audit, estimated at $1 - $5 million. The plaintiffs argued that the inclusion of the cost was misleading political commentary on the proposed requirement. The Supreme Court rejected the plaintiffs' challenge. (Note: this proposition was ultimately rejected by the voters.)

- The City of Houston hadn't even finalized its ballot language for an upcoming charter amendment election prior to being sued over the proposed language. The proposition was to establish a dedicated fund for street and drainage infrastructure spending. The lawsuit claimed that *proposed* ballot language didn't comply with the common-law ballot language standard requiring that the "key features" be included in the language. (The original language didn't state that the funding would come from fees on city residents.) The city ultimately adopted ballot language that referenced the drainage charges. The Supreme Court rejected plaintiffs' challenge. (Note: this proposition was passed by the voters.)

Senator Bettencourt mentioned the lawsuits above as justification for re-filing legislation like S.B. 488 in 2019. This in spite of the fact that the Supreme Court of Texas dismissed the lawsuits and determined that the language drafted by the cities was in accordance with current legal standards.

Nevertheless, Senator Bettencourt did refile a bill on the topic in 2019. S.B. 1225 was virtually a copy of S.B. 488 from the 2017 session. The League opposed the bill, but it still was reported from the Senate committee chaired by Senator Bettencourt, and passed by the full Senate on a 20-10 vote. That momentum did not carry over to the House, possibly because another bill had seemingly become the primary vehicle for ballot language changes.

S.B. 323 by Senator Huffman required a city, not later than the 123rd day before an election, to submit ballot language to the regional presiding judge, who then appointed a three-judge panel to consider and approve the language. As originally filed, the panel could disapprove the language without rewriting it. Given the strict election deadlines that would apply, a disapproval under S.B. 323 would often mean that the city would need to postpone certain initiative and referendum elections at least six months to the next uniform election date. The League voiced this concern at the committee hearing in the senate, and the bill was modified to require the panel of judges to rewrite the ballot language if disapproved. Still, the bill would have subjected the city to an election contest even when the city used the judicially-approved ballot language. S.B. 323 was approved by the Senate and reported from the House Elections committee before time running out in the session.

Although the three-judge panel didn't resurface in 2021, Senator Bettencourt's Secretary of State review bill did – S.B. 1430. However it was a nearly identical bill in the House – H.B. 782 by Representative Swanson – that was pushed. H.B. 782 was reported out of the House Elections Committee and heard on the House floor. There, a valid point of order was raised against the bill, and the bill was pronounced dead by procedural action. The fatal point of order occurred late enough in the session that it was too late for the Senate to mobilize behind S.B. 1430.

Following the 2021 session, the Texas Supreme Court reviewed ballot language used when the City of Austin placed a voter initiated ordinance on police funding before the voters. The city prepared its own ballot language instead of using the ballot language in the petition for the

ordinance. The organization responsible for the petition filed suit, claiming that the city was required by its charter to use petitioners' caption language in the proposition and could not add language addressing the ordinance's financial impact. The Supreme Court concluded that the city correctly added the financial impact language to the ballot proposition in accordance with past Texas Supreme Court precedent, but was otherwise required by its charter to use the caption from the petition in the proposition.

Once again, the issue was included as an interim charge to the Senate Local Government Committee. A hearing was held on the charge in April 2022. Ironically, most of the focus of the testimony on the ballot language charge focused on the state's drafting of ballot language for a constitutional amendment election held in May 2022 regarding property tax homestead exemptions, highlighting the inherent difficulties in drafting ballot language no matter which level of government is doing the drafting.

What should we make of the increased (and perhaps misplaced) scrutiny of city ballot language? If nothing else, it reflects the increased litigiousness of plaintiffs when political measures are on the ballot. When controversial political issues are put up to a vote, it's common for interests on either side of the issue to – as a matter of practice – file a lawsuit challenging the ballot language. This "sue first, ask questions later" approach is apparent in the recent legal challenges in Austin and Houston. In the Houston lawsuit, the city was actually sued *before it even adopted any ballot language in the first place*.

The other aspect of these challenges is that, when it comes to participatory democracy measures like initiative and referendum in Texas, cities are the only game in town. Home rule cities are the only level of government in Texas that actually gives voters the ability to directly shape public policy. State government provides no such mechanism. That begs the question of whether the state legislature should be involved at all.

Several other states allow for initiative and referendum at a statewide level. Some of those states have ballot language review boards and independent third parties that attempt to craft "neutral" ballot language. Even they receive legal challenges. For example, Colorado allows citizens to place initiatives on statewide ballots. Colorado law requires a "Initiatives and Title board," consisting of the secretary of state, attorney general, and director of legislative counsel, to determine that ballot language is fair and not misleading. Citizens can appeal the approved language directly to the Colorado Supreme Court. In spite of those procedures, over 50 legal challenges have been filed in the last two years.

In any case, the notion that Texas city officials are deliberately trying to mislead voters is misplaced. If recent litigation is any indication, Texas cities have made every effort to conform to current legal standards when drafting ballot language.

The TML Legislative Program provides that the League oppose legislation that would: (1) restrict city authority to draft ballot propositions in such a way that reflects the full fiscal

impact of the proposition; and (2) require preclearance of city ballot propositions by a state agency.

ELECTIONS: PARTISAN CITY ELECTIONS

2017 saw the beginnings of a new effort to politicize the successfully non-partisan nature of city government in Texas. One early-filed bill that didn't progress was H.B. 2919 by Sanford. H.B. 2919 would have required candidates for mayor and city council to declare party affiliation and run as partisans in their elections (Note: current Texas law authorizes a home rule city to hold partisan city elections by charter, but to the League's knowledge no city has opted into a partisan election scheme). Representative Sanford refiled his bill in 2019, but the bill (H.B. 3432) once again did not receive a committee hearing. In 2021, Rep. Sanford's bill—H.B. 2092—not only received a hearing in the House Elections Committee, but was actually voted out of committee by a vote of 5 to 4. However the bill went no further and Representative Sanford chose not to run for reelection.

As the partisanship in Washington continues to creep down to the state and local levels, supporters of the two major parties are now getting active in local city elections through endorsements and fundraising. The League's membership has traditionally held the belief that one of the primary reasons that city governments are able to efficiently respond to their citizens is because city leaders are able to avoid the partisan gridlock that plagues Washington D.C. and, on occasion, the state legislative process in Austin.

The TML Legislative Program provides that the League oppose legislation that would require candidates for city office to declare party affiliation in order to run for office.

ELECTIONS: UNIFORM ELECTION DATES

Prior to 2005, most city elections had to be held on one of four uniform election dates. In 2005, the legislature passed H.B. 57, which deleted the February and September election dates, leaving only two uniform election dates: (1) the second Saturday in May and (2) the first Tuesday after the first Monday in November.

H.B. 57 also gave cities the ability to change the date on which they held a general election to another authorized uniform election date, so long as the action was taken prior to December 31, 2005. Since then, numerous proposals have been filed, and some passed, that alter the deadline for a city to change the date of its general election. As an example, H.B. 3619 by Raymond passed in 2007 and would have extended the deadline for a city to change the date of its election to December 31, 2008. Governor Perry vetoed that bill on the grounds that voters needed to have some confidence in when city elections were to take place. In his veto message, the Governor stated that "[w]hile some of the deadline extensions were necessary in sessions in which the legislature cut

back the number of uniform election dates, we have now reached the point where the cities and other local subdivisions need to stop moving their election dates."

For whatever reason, the governor signed a bill (H.B. 401 by Raymond) extending the deadline for switching election dates in 2009, but with one slight change. H.B. 401 provided that a city that held its general election on the May uniform election date could change the date of the election to the November uniform election date no later than December 31, 2010. In other words, a city that held its general election in November had no statutory authority to move its elections to the May uniform election date.

A major elections bill in 2011 further impacted a city's ability to change the date of its general election. S.B. 100 by Van de Putte implemented the federal Military and Overseas Voter Empowerment (MOVE) Act of 2009. The MOVE Act, among other things, requires that ballots be transmitted to military and overseas voters 45 days prior to an election held in conjunction with a federal election to ensure that military and overseas voters would have ample time to return their ballots.

S.B. 100 implemented the federal legislation by leaving the current primary election date intact but moving the primary runoff date, which used to be held on the second Tuesday in April of even-numbered years, to the fourth Tuesday in May of even-numbered years. This was needed to be able to transmit ballots overseas 45 days in advance of a primary runoff election. The election calendar changes of S.B. 100 meant that the May uniform election date would fall between the primary and primary runoff dates in even-numbered years. Counties were concerned that they would not be able to both lend their machines to cities and school districts for local elections on the second Saturday in May of even-numbered years, and have the electronic voting machines ready for use in the primary runoff election held at the end of May of even-numbered years.

These concerns led to practical limitations on the availability of the May uniform election date in some locations. Following the passage of S.B. 100, a city could still hold an election on the second Saturday in May of an odd-numbered year or on the November uniform election date. However, counties might refuse to provide electronic voting machines to cities for use on the second Saturday in May of an even-numbered year due to the proximity of that election date to the primary runoff date in even-numbered years.

As a result, some cities received notice from the county that they can no longer use the county's electronic voting machines for this date, which forced those cities to take one of three actions: (1) move all elections to the November uniform election date; (2) unstagger terms of office for elected officials so that all officials are elected on the May uniform election date in odd-numbered years; or (3) purchase electronic voting machines so that May elections are not dependent upon the availability of machines from the county.

S.B. 100, along with a separate bill, H.B. 1545, both extended the deadline to December 31, 2012, for cities with May elections to switch to the November uniform election date. That statutory

deadline expired, but still remained in place until 2015, thus precluding a city from changing its election date for three years.

In 2015, H.B. 2354 passed which moved the May uniform election date to the first Saturday in May to avoid potential scheduling conflicts with state political party conventions. Additionally, S.B. 733 by Fraser was passed, which extended the deadline to switch from May to November elections to December 31, 2016. By the time the 2017 legislative session began, Texas cities once again had no statutory authority to move their general election to another uniform election date. This lack of flexibility has become problematic for many cities, primarily because counties still have the ability to refuse to provide electronic voting machines to cities conducting their elections in May of even-numbered years.

A number of bills were filed from 2017 to 2021 that would have eliminated the May uniform election date, though none of them gained much traction. In June 2022, the San Antonio court of appeals held that while the Texas Election Code does currently prohibit all cities from changing the date of their elections from May to November, home rule cities could change their elections from November to May, since they weren't prohibited from doing so by the Texas Election Code. Entering the 2023 session, cities still have two uniform election dates, though still face some limitations in switching the date of their elections.

Some theorize that certain legislators want all elections to be held on one date, such as the November uniform election date. Such a joint election would eliminate the need to procure the now-required electronic voting machines for a stand-alone municipal election. But many city officials are uncomfortable with that possibility. City officer elections and propositions, including important bond issues, could be shunted to the end of the ballot, and city issues could be drowned-out under huge national and state campaigns.

The TML Legislative Program provides that the League oppose legislation that would eliminate any of the current uniform election dates.

OPEN MEETINGS ACT: REMOTE MEETING FLEXIBILITY

Current law authorizes cities to use videoconference and teleconference to conduct meetings under certain circumstances. In order to conduct a meeting by videoconference, a quorum of the city council must be present at one physical location and the city must follow specific procedures under Government Code Sec. 551.127. A city may generally only conduct a meeting by telephone conference if: (1) an emergency or public necessity exists; and (2) it is impossible or difficult for a quorum of the city council to meet at one location.

On March 16, 2020, the governor suspended several provisions of the Texas Open Meetings Act (TOMA) in order "to maintain government transparency and continued government operations

while reducing face-to-face contact for government open meetings." The governor's TOMA suspensions terminated on September 1, 2021.

The result of the governor's TOMA suspensions was flexible options for holding meetings and receiving public testimony without gathering in-person. For videoconferencing, for instance, the following provisions were suspended:

1. A quorum of the city council need not be present at one physical location. TEX. GOV'T CODE § 551.127(b).

2. In light of (1), above, the meeting notice need not specify where the quorum of the city council will be physically present and the intent to have a quorum present. *Id*. § 551.127(e).

3. In light of (1) above, the meeting held by videoconference call is not required to be open to the public at a location where council is present. *Id*. § 551.127(f).

4. The audio and video are not required to meet minimum standards established by Texas Department of Information Resources (DIR) rules, the video doesn't have to be sufficient that a member of the public can observe the demeanor of the participants, the members faces don't have to be clearly visible at all times, and the meeting can continue even if a connection is lost, so long as a quorum is still present. *Id*. § 551.127(a-3); (h); (i); (j).

Additionally, the TOMA suspensions removed the requirement that an emergency exists to conduct a telephone conference call meeting. According to the attorney general, "a quorum still must participate in the telephonic meeting." Moreover, statutory provisions "that require the telephonic meeting to be audible to members of the public who are physically present at the specified location of the meeting are suspended; provided, however, that the dial-in number provided in the notice must make the meeting audible to members of the public and allow for their two-way communication; and further provided that a recording of the meeting must be made available to the public."

In the lead up to the 2021 legislative session, the League heard from many cities that saw public participation in meetings increase due to the added flexibility of citizens testifying remotely. The benefits of increased flexibility for local meetings were not lost on the Texas legislature in 2021. In total, eleven bills were filed that would have, to one degree or another, broadened remote meeting authority to at least approximate the flexibility cities received under the governor's TOMA suspension. Only one of those bills received a hearing – S.B. 861 by Senator Angela Paxton. Despite overwhelming support at the committee level from cities, counties, special purpose districts, the Texas Press Association, and others, the bill never made it to a vote on the Senate floor.

It's entirely possible that broadening the applicability of videoconferencing and teleconferencing authority in TOMA was lost in the shuffle of an extremely busy 2021 session where so many major

issues related to the pandemic, Winter Storm Uri, broadband expansion, election reform, public safety and firearms, and more were front and center. Also worth noting is that the governor's TOMA suspension was still in effect throughout the 2021 legislative session, possibly lessening the urgency of permanent statutory changes on remote meetings at the time. With the TOMA suspension now terminated, the need for legislation modifying TOMA on remote meetings to reestablish some degree of flexibility may come into focus a bit leading up to the 2023 session.

The TML Legislative Program provides that the League seek introduction and passage of legislation that promotes increased flexibility under the Texas Open Meetings Act, including flexibility for public participation, so long as the legislation doesn't mandate any new costs on local governments.

EMERGENCY SERVICE DISTRICTS (ESDs)

In recent years, a number of issues have cropped up involving ESDs and cities. Some of these issues involve the allocation of sales taxes between cities and ESDs. Others deal with more fundamental questions of ESD authority in the city limits and the city's extraterritorial jurisdiction.

Legislation passed in 2007, S.B. 1502 by Zaffirini, allows an ESD to "carve out" portions of the district that are already at the two-cent sales tax cap, thus permitting the district to impose a sales tax in non-capped portions of the ESD. As a result of this bill, cities have experienced an increased number of new ESD sales taxes in their ETJ (prior to the bill, an ESD couldn't pass a sales tax unless the entire district was eligible under the two-cent cap). Further, when a city annexes territory located in the ESD, the city is unable to collect sales taxes if they have already been claimed by the ESD.

In 2013, legislation was filed and passed that represents a step in the right direction for cities on this issue. H.B. 3159 by Isaac authorized a city that annexes territory served by an ESD (but does not provide emergency services in the newly-annexed area) to enter into an agreement with the ESD to divide the sales tax revenue in the newly-annexed area in an amount acceptable to both entities. The bill was not perfect, since an ESD could still refuse to negotiate such an agreement with the city and therefore limit the city sales taxes to be collected in the newly-annexed territory. However, some cities have utilized this authority to collect a higher percentage of sales taxes than they otherwise would have received without an agreement.

There are many other issues that can occur between cities and ESDs, including whether ESDs should be allowed to form outside the city limits or ETJ and then expand into the ETJ or city limits without the city's consent. In 2013, Representative Goldman filed H.B. 1798, which would have required city council approval for an ESD to expand into a city's corporate limits or ETJ. (Under current law, an ESD must receive city council approval when forming in the city limits or a city's ETJ, but only for the initial formation of the district.) Oftentimes a city is providing emergency services in the ETJ when an ESD holds an election for the district to expand into the area, yet the

city does not have the statutory authority to approve of such expansion. From the city perspective, if an ESD must receive city council approval when initially forming in the city limits or ETJ, why shouldn't the ESD receive council approval if it seeks to expand into the same area? Currently, there is litigation involving the City of Huntsville and an area ESD on this exact question.

Another problem for cities is that the statute governing ESDs—Chapter 775 of the Health and Safety Code—does not give a city the ability to remove itself from an ESD if it had previously agreed to be a part of the district. As a result, there are some cities in the state that are legally unable to remove themselves from an ESD, even if the city is capable of providing the same level of services to the area within the city. Ironically, the only ESD bill that passed in 2015 (H.B. 3666 by Workman) authorized ESDs to remove themselves from a metropolitan transit authority. Legislation was filed in 2021 to require an ESD board to remove territory from the ESD on request of a city if the city secured an alternative emergency services provider – H.B. 2323 by Representative Schofield and the companion bill, S.B. 1473 by Senator Miles. Neither bill received a hearing.

The committee should discuss whether the League should take a position on legislation that would further address sales tax allocation when a city annexes an area located in an ETJ, legislation that would require council approval when an ESD seeks to expand into a city or a city's ETJ, as well as legislation that would allow a city to remove itself from an ESD.

There currently are no positions on city relationships with ESDs in the TML Legislative Program. Many cities have voiced concerns over their interactions with ESDs and where state law may be lacking. Past positions in the TML Legislative Program on ESD-related issues include:

- Support legislation that would allow cities to remove themselves from an ESD if the city is capable of providing services to the area.
- Support legislation that would require city council approval for an ESD to expand into a city's corporate limits or ETJ.

COMMUNITY DEVELOPMENT BLOCK GRANT EXPENDITURES AS A GOVERNMENT FUNCTION

Cities are immune from suit and liability while performing government functions under the doctrine of governmental immunity unless that immunity is expressly waived by the Texas Legislature.

In recent years, the Texas Supreme Court has determined that certain contracts entered into by cities funded by the Community Development Block Grant (CDBG) program are proprietary functions for which there is no governmental immunity. CDBG funds are used for rehabilitation of residences after natural disasters such as hurricanes, floods, or tornadoes and by their very nature are governmental functions to protect public health and safety.

Ensuring local governmental immunity related to actions under disaster recovery-related contracts will help facilitate an orderly and efficient recovery for a community following a natural disaster.

In 2019, State Senator Carol Alvarado carried and passed S.B. 1575 that would have provided two important protections. First, the bill amended the Civil Practice and Remedies Code to grant a city governmental immunity to suit and from liability for a cause of action arising from the city entering into a contract for a purpose related to disaster recovery after a gubernatorial disaster declaration or taking an action under that contract. The bill also amended the Local Government Code to exempt certain disaster recovery contracts from provisions relating to the adjudication of claims arising under written contracts with local governmental entities.

Unfortunately, Governor Abbott vetoed the bill. The governor stated in his reason for the veto: "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."

The TML Legislative Program provides that the League support legislation that would establish that expenditures of Community Development Block Grant funds by cities are a governmental function.

PUBLIC SAFETY: POLICE REFORM

Following a national movement on police reform in the summer of 2020, there was a consensus that police reform would be a major focus in the 2021 legislative session. In fact, the Texas Legislative Black Caucus held a press conference late that summer to announced the George Floyd Act. The Act would address chokeholds, police intervention, and qualified immunity, among other things.

Before 2021, Texas passed significant police reform legislation. In 2015, Senator Royce West championed a comprehensive body camera law that created a grant program for local enforcement agencies to equip officer with body cameras:

> **S.B. 158 (West/Fletcher) - Body Cameras**: provides, among other things, that: (1) a law enforcement agency in this state may apply to the office of the governor for a grant to equip officers with body cameras if the agency employs officers who: (a) are engaged in traffic or highway patrol or otherwise regularly stop or detain motor vehicles; or (b) respond to calls for assistance from the public; (2) the office of the governor create and implement a matching grant program for body cameras; (3) a local law enforcement agency must match 25% of any grant money; (4) a law enforcement agency that receives a grant from the Department of Public Safety to provide body cameras to its officers or that otherwise

operates a body worn camera program must adopt a policy and training program for the use of body cameras; (5) a body camera policy must include when and why an officer may choose to activate or not activate a body worn camera; (6) it is a crime for a law enforcement officer to release a video from a body worn camera without receiving permission from the law enforcement agency; (6) a member of the public must provide certain information when requesting information recorded by a body camera; and (7) a law enforcement agency must follow certain procedures related to the release of information regarding body camera recordings to the public.

In the 2017 legislative session, the legislature passed the Sandra Bland Act, S.B. 1849 by Senator Whitmire. The as-filed bill largely focused on racial profiling during traffic stops, consent searches, and jail reforms. The bill faced large opposition and was transformed into a mental health bill which ultimately passed the legislature. The Act required training for police officers on limiting use of force and understanding implicit bias, increases training in general de-escalation and mental health de-escalations, and prohibits officers from conducting a search with a person's consent unless they first tell the person they can refuse and after that person signs off on the search or verbally consents to one.

After much discussion and debate, the 2020 TML Municipal Policy Summit declined to recommend a position for the League on police reform issues. Yet again, during the Business Meeting at the Annual Conference in 2020, the membership decided that the League should not take a position. Ultimately, the Texas Association of Black City Council Members (TABCCM) brought forth a resolution to the TML Board and the Board approved a position that focused on body worn camera legislation.

In 2021, hundreds of bills were filed on police reform. The large omnibus bill, the George Floyd Act did not gain traction and stalled in committee. Instead, multiple one-subject bills that addressed police de-escalation, the use of chokeholds, use of force, no-knock warrants, and body worn cameras moved through the legislative process. Many of bills below passed on a vote in one chamber but failed to gain traction in the other chamber. The following bills did not pass:

H.B. 492 (Wu) – No-Knock Entries: would prohibit a magistrate, including a municipal judge, from issuing an arrest or search warrant that authorizes a peace officer from entering, for the purpose of executing a warrant, into a building or other place without giving notice of the officer's authority or purpose before entering (a no-knock entry).

H.B. 829 (S. Thompson) – Progressive Disciplinary Matrix: would, with respect to disciplinary procedures for police officers in certain cities: (1) require a civil service commission to implement a progressive disciplinary matrix for infractions committed by police officers that consists of a range of progressive disciplinary actions applied in a standardized way based on the nature of the infraction and the officer's prior conduct record, and such matrix must include: (a) standards for disciplinary actions related to use

of force against another person, including the failure to de-escalate force incidents in accordance with departmental policy; (b) standards for evaluating the level of discipline appropriate for uncommon infractions; and (c) presumptive actions to be taken for each type of infraction and any adjustment to be made based on a police officer's previous disciplinary action; (2) make changes to the meet and confer provisions applicable to police officers to provide that certain cities that have adopted a meet and confer agreement but are not subject to civil service rules or collective bargaining shall implement a progressive disciplinary matrix as described in (1), above, for its police officers, and that such agreement may not conflict or supersede a rule concerning the disciplinary actions that may be imposed under the disciplinary matrix; (3) provide that a hearing examiner in a city subject to civil service rules must presume a disciplinary action applied to a police officer under a progressive disciplinary matrix is reasonable unless the facts indicate that the department inappropriately applied a category of offense to the particular violation; and (4) make changes to the collective bargaining statute to provide that a city that has adopted a collective bargaining agreement but is not subject to civil service rules shall implement a progressive disciplinary matrix as described in (1), above, for its police officers, and that such agreement may not conflict with an ordinance, order, statute, or rule related to disciplinary actions that may be imposed on its police officers under a disciplinary matrix implemented by the city.

H.B. 830 (S. Thompson) – Cite and Release: would, with respect to issuing citations in lieu of arrest for misdemeanor offenses, provide that: (1) the Texas Southern University, in consultation with other law enforcement organizations, shall publish a model policy related to the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only, that includes the procedure for a peace officer, upon a person's presentation of appropriate identification, to verify the person's identity and issue a citation to the person; (2) each law enforcement agency shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only, provided that such policy meets the requirements of the model policy described in (1), above; (3) a law enforcement agency may adopt the model policy developed under (1), above; (4) with the exception of certain assault offenses and for the offense of public intoxication, a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only or arrest a person who commits one or more offenses punishable by fine only; (5) a peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor punishable by fine only, other than an offense of public intoxication, shall, instead of taking the person before a magistrate, issue a citation to the person; (6) a peace officer who is charging a person, including a child, with committing certain assault offenses that are a misdemeanor, punishable by fine only, may, instead of taking the person before a magistrate, issue a citation to the person; and (7) a peace officer may not arrest, without warrant, a person found only committing one or more misdemeanors related to certain

traffic offenses that are punishable by fine only, and in such instances shall issue a written notice to appear to the person.

H.B. 831 (S. Thompson) – Prohibiting Chokeholds: would provide that the use of any force by any person, including a peace officer or person acting in and at the direction of an officer, in connection with the arrest of another person, is not a justified use of force if such force is used in a manner that impedes the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

H.B. 833 (S. Thompson) – Use of Force: would: (1) require each law enforcement agency to adopt a detailed written policy regarding the use of force by peace officers; (2) require the Texas Commission on Law Enforcement (TCOLE) to develop a model use of force policy and associated training, and allow a law enforcement agency to adopt the model policy developed by TCOLE; (3) make changes to the instances in which a peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another during a search or arrest; and (4) repeal the Penal Code provision that provides that a peace officer or a person other than a peace officer acting in the officer's presence and direction has no duty to retreat before using deadly force in connection with making an arrest or preventing escape after arrest.

H.B. 834 (S. Thompson) – Covert Law Enforcement Activity: would provide that a defendant may not be convicted for an offense under the Texas Controlled Substances Act on the testimony of a person who is acting covertly on behalf of a law enforcement agency, regardless of whether that person is a licensed peace officer or special investigator, unless the testimony is corroborated by other evidence.

The legislature did address pass some police reform legislation, including the following bills:

H.B. 54 (Talarico/Whitmire) – Police Reality TV Shows: prohibits a law enforcement agency from authorizing a person to accompany and film a peace officer acting in the line of duty for the purpose of producing a reality television program.

H.B. 929 (Sherman/West) – Body Worn Cameras: provides that: (1) a body worn camera policy must: (a) include provisions related to the collection of a body worn camera, including the applicable video and audio recorded by the camera, as evidence; (b) require a peace officer who is equipped with a body worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with such policy; and (2) a peace officer equipped with a body worn camera may choose not to activate a camera or may choose to discontinue a recording currently in progress for any encounter with a person that is not related to an investigation.

H.B. 3712 (E. Thompson/West) – Peace Officer Training: provides that: (1) the basic peace officer training course required as part of the peace officer training program may not be less than 720 hours; (2) the basic peace officer training course must include training on: (a) the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person; (b) the duty of the officer to intervene or stop or prevent another peace officer from using force against a person suspected of committing an offense in certain situations; and (c) the duty of a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and, while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment; (3) the Texas Commission on Law Enforcement (TCOLE) shall develop and maintain a model training curriculum and model policies for law enforcement agencies and peace officers that must include the items described in (2), above; and (4) before the first day of each 24-month training unit during which peace officers are required to complete 40 hours of continuing education programs, TCOLE shall specify the mandated topics to be covered in up to 16 of the required hours.

S.B. 69 (Miles/White) – Use of Force: provides that: (1) a peace officer has a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if: (a) the amount of force exceeds that which is reasonable under the circumstances; and (b) the officer knows or should know that the other officer's use of force: (i) violates state or federal law; (ii) puts a person at risk of bodily injury, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and (iii) is not required to apprehend the person suspected of committing an offense; (2) a peace officer who witnesses the use of excessive force by another peace officer shall promptly make a detailed report of the incident and deliver the report to the supervisor of the peace officer making the report; and (3) the use of any force, by any person, including a peace officer or person acting in and at the direction of an officer, in connection with the arrest of another person, is not a justified use of force if such force is used in a manner that impedes the normal breathing or circulation of the blood of the person by applying pressure to the person's throat, neck, or torso or by blocking the person's nose or mouth.

S.B. 2212 (West/S. Thompson) – Duty to Render and Request Aid: provides that a peace officer: (1) who encounters an injured person while discharging the officer's official duties

shall immediately and as necessary: (a) request emergency medical services personnel to provide the person with emergency medical services; and (b) while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training; and (2) is not required to request emergency medical services or provide first aid or treatment under (1), above, if: (a) making the request or providing the treatment would expose the officer or another person to a risk of bodily injury; or (b) the officer is injured and physically unable to make the request or provide the treatment.

The TML Legislative Program provides that the League should support legislation that increases existing or creates new grant program funding that provides financial assistance to local governmental law enforcement agencies for public safety resources, including legislation that support the use and the purchase of body cameras and associated data storage costs.

INCREASING THE MAXIMUM HIRING AGE OF FIREFIGHTERS

A firefighter in a civil service city is ineligible to begin a position if he/she is over 35 years of age. The civil service firefighter age hiring limit is set by Section 143.023(b) of the Local Government Code: "A person may not be certified as eligible for a beginning position in a fire department if the person is 36 years of age or older."

Each city in Texas that has adopted civil service standards for firefighters is subject to this age restriction, sometimes making firefighter recruitment very difficult in cities across the state. Raising the maximum hiring age for firefighters from 35 to 45 would allow for the recruitment and hiring of qualified individuals who have waited later in life to become a firefighter or those who have waited until after their military obligations were complete.

This issue was brought to TML by the City of Belton prior to the 2021 legislative session. However, as the session moved along the City of Belton decided against pursuing this idea due to a variety of legislative and political reasons.

The Texas Local Government Code currently allows for the hiring of temporary fire fighters and police officers under limited circumstances but does not allow them to become permanent civil service employees with benefits:

> Sec. 143.083. EMERGENCY APPOINTMENT OF TEMPORARY FIRE FIGHTERS AND POLICE OFFICERS. (a) If a municipality is unable to recruit qualified fire fighters or police officers because of the maximum age limit prescribed by Section 143.023 and the municipality's governing body finds that this inability creates an emergency, the commission shall recommend to the governing body additional rules governing the temporary employment of persons who are 36 years of age or older.

(b) A person employed under this section:

(1) is designated as a temporary employee;

(2) is not eligible for pension benefits;

(3) is not eligible for appointment or promotion if a permanent applicant or employee is available;

(4) is not eligible to become a full-fledged civil service employee; and

(5) must be dismissed before a permanent civil service employee may be dismissed under Section 143.085.

The TML Legislative Program provides that the League support legislation that would increase the maximum hiring age for firefighters in a civil service city from age 35 to 45, or to eliminate the maximum hiring age altogether.

DISEASE PRESUMPTION

Chapter 607 of the Texas Government Code states that a firefighter, peace officer, or emergency medical technician (EMT) who suffers from certain respiratory diseases or illnesses that result in death or disability is presumed to have contracted the disease or illness during the course and scope of employment.

Under Section 607.057, the presumption applies to a determination of whether a firefighter, peace officer, or EMT's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

Presumption Legislative History

After extensive negotiations between cities and firefighters, the legislature in 2005 passed a bill, S.B. 310 by Senator Deuell, which provided that certain diseases contracted by firefighters and EMTs are presumed to be work-related and thus included in workers' compensation coverage. Although several bills were filed in the next several sessions, additional presumption legislation did not pass until 2015, perhaps in recognition of the political capital expended reaching a compromise on S.B. 310 in 2005.

In 2015, H.B. 1388 by Representative Bohac passed. That bill required that: (1) a rebuttal made by a government employer regarding workers' compensation disease presumption include a detailed statement of the evidence used to determine that the disease in question was not caused by the individual's employment; and (2) a denial by a carrier include evidence reviewed in making the denial.

2019 saw two major presumption bills pass. S.B. 1582 by Senator Lucio added peace officers, for purposes of workers' compensation coverage, to the firefighters' disease presumption statute for certain illnesses broadening the types of illnesses police officers would be presumed to contract on the job.

Perhaps more significantly, S.B. 2551 by Senator Hinojosa made major changes to the cancer presumption provision affecting firefighters and EMTs. More specifically, the bill (among other things): (1) provided that certain fire fighters and EMTs who suffer from one or more of the following 11 cancers resulting in death or total or partial disability are presumed to have developed the cancer during the course and scope of employment as a firefighter or EMT: (a) cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain; (b) non-Hodgkin's lymphoma; (c) multiple myeloma; (d) malignant melanoma; and (e) renal cell carcinoma; (2) repealed the law that provided for a presumption to apply, the cancer must be known to be associated with firefighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen; (3) repealed the law that provided that the presumption could be rebutted by a showing, by a preponderance of evidence, that a risk factor, accident, hazard, or other cause not associated with the individual's service as firefighter or EMT caused the individual's disease or illness, and replaces that standard with a showing that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or EMT was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. The League and TML Intergovernmental Risk Pool worked closely on the bill all session and supported its passage.

With such significant reforms passing in the 2019 session, it'd be reasonable to think that presumption bills wouldn't gain much traction in the 2021 legislative session. However, the COVID-19 pandemic changed that calculus. S.B. 22 by Senator Springer became effective June 14, 2021 (and retroactively applied to a COVID-19 diagnosis on or after the date of the governor's disaster declaration on March 13, 2020), and provided a disease presumption for first responders diagnosed with COVID-19.

The new COVID-19 presumption, which expires September 1, 2023, applies to peace officers, firefighters, EMTs, and detention and custodial officers only if various conditions are met. It applies only when the first responder:

- is employed during a gubernatorially-declared disaster and contracts the disease during that time;
- is employed on a full-time basis and diagnosed with COVID-19 using a test authorized or approved by the U.S. Food and Drug Administration;
- had been on duty within 15 days before being diagnosed;

- if deceased, had been diagnosed using a U.S. Food and Drug Administration-approved test or by another means, including by a physician; and
- if deceased, had been on duty within 15 days before the diagnosis, began to show symptoms, or was hospitalized for such symptoms.

The bill has some retroactive effect. For example, a first responder who filed a claim between March 13, 2020 and June 14, 2021, and whose claim was denied, is entitled to request reprocessing of the claim under the new presumption. A request to reprocess a claim must be filed no later than June 14, 2022 (one year after the effective date of the bill). If a first responder contracted COVID-19 between March 13, 2020 and June 14, 2021, and never filed a claim, he is entitled to file a claim no later than December 14, 2021.

A city that decides to rebut a COVID-19 presumption can't do based solely on evidence relating to the risk of exposure to COVID-19 of a person with whom a first responder resides. However, there is no prohibition to using a rebuttal when the person with which the first responder resides tests positive for COVID-19.

The TML Legislative Program provides that the League oppose legislation that would substantively change or expand the scope of the current disease presumption law, unless doing so is supported by reputable, independent scientific research.

CATALYTIC CONVERTOR THEFT AND PREVENTION

Cities of all sizes have seen a proliferation of catalytic converter theft in their communities. Precious metals such as platinum, palladium and rhodium make catalytic convertors a target of thieves who can quickly remove them from vehicles and easily sell them to scrap metal dealers for cash. In Houston alone, data shows that catalytic convertor thefts have multiplied every year since 2019. In 2019, 375 people reported thefts to the Houston Police Department. By 2020, theft cases quadrupled to over 1,400 and in 2021 they had risen to 7,800 thefts reported. 2022 is on pace to see another exponential increase.

To address these rising thefts, Rep. Jeff Leach filed and passed H.B. 4110 during the 2021 legislative session that requires a person attempting to sell a catalytic convertor to a metal recycling entity to provide to the entity the year, make, model, and identification number for the vehicle in which the convertor was removed as well as a copy of the title certificate or other documentation that the person had an ownership in the vehicle. This legislation prohibits a metal recycling entity from purchasing a catalytic convertor from a seller who does not comply with those requirements.

H.B. 4110 enhanced certain criminal penalties for providing false information to metal recycling entities, knowingly purchasing stolen regulated material, and other related offenses from a Class

A misdemeanor to a state-jail felony. The bill also enhanced the penalty for repeat offenses from a state jail felony to a third-degree felony.

Some communities want to do more to prevent thefts and have begun to look at local ordinances to enhance prevention, detection, and reporting. The summit delegates may wish to take a position on strengthening current law as it pertains to catalytic convertor theft and prevention.

GREATER CITY AUTHORITY OVER RAILROAD CROSSING DELAYS

Many communities across Texas and around the country are experiencing extreme train delays that block railroad crossings on critical arteries in their cities. These delays pose concerns for public safety as they impede first responders who are unable to transport injured persons due to excessive train delays at railroad crossings.

Federal courts have found that local ordinances attempting to limit and manage train delays are preempted by the Interstate Commerce Commission Termination Act and the Federal Railroad Safety Act.

During the 117th Congress in 2021, the U.S. House of Representatives and U.S. Senate passed the Infrastructure Investment and Jobs Act (IIJA), which created a program that aids cities in addressing railroad crossing issues. The Railroad Crossing Elimination Grant Program was established in the IIJA to give local governments access to funds to mitigate or eliminate hazards at railway-highway crossings.

Up until the enactment of the IIJA, the primary resource for addressing railroad crossing issues was through the formula-driven Railway-Highway (RHCP) administered by the Federal Highway Administration that apportions funds to states. While the IIJA continues authorization of the RHCP, the Railroad Crossing Elimination Grant Program, administered by the Federal Railroad Administration provides funding opportunities for a direct local government role in addressing such issues.

The IIJA provides $3 billion to the Railroad Crossing Elimination Grant Program in advance appropriations and an additional $2.5 billion is authorized subject to appropriation, for a total program level of $5.5 billion over five years.

The TML Legislative Program provides that the League support federal legislation that would provide state greater authority over management of train delays in conjunction with affected cities.

PERSONNEL: PENSION REFORM

Although many of Texas' defined benefit (DB) plans seem to be in better shape than the rest of the country, the debate over shifting all government DB plans to defined contribution (DC) plans continues to build momentum. Organizations in Texas such as the Greater Houston Partnership, Texans for Public Pension Reform, the Texas Conservative Coalition, and the Texas Public Policy Foundation (TPPF) are all seeking reforms in public pensions, including advocating for a constitutional amendment against DB plans for public employees.

TPPF issued a report in 2011 calling for the following changes in public retirement systems:

- Freeze the current defined benefit pension plan for all new and unvested employees.
- Enroll newly-hired or unvested employees in a 401(k)-style defined contribution pension plan.
- Implement either a hard or soft freeze of the system for vested employees.

TPPF claimed that these changes would have saved the state and local governments considerable money over the long term. The report goes on to add:

> *With government workers now reaping more compensation than their private sector counterparts, taxpayers can no longer afford to subsidize generous retirements. During the past several years, state and municipal pension systems have implemented changes in the hopes of reigning in ballooning liabilities. Modifications like an increased minimum retirement age and readjusted benefit calculations have bought some time for the plans, but in no way have they gone far enough to keep long-term costs at bay.*
>
> *Public-sector defined-benefit pension plans - retirement packages that promise retirees a set monthly income based on an employee's salary history and years of service - are entitlements that transfer wealth from workers in the private sector to public sector retirees.*
>
> *When pension funds fall short of their expected return rates (the case for the past several years), governments must eventually fill the gap by either increasing taxes or reallocating existing revenue. With public workers now making more than workers in the private sector, poorer taxpayers end up subsidizing generally wealthier government retirees.*

The report concludes that the changes "would not only shield Texas from an inevitable public pension cost explosion, they would align public sector benefits with those in the private sector and create a more just retirement system."

To counter the efforts of TPPF and others, members of Texas employee pension systems, employee groups, unions, and other related groups benefiting firefighters, police, and municipal employees formed an organization called Texans for Secure Retirement (TSR). TSR's objectives include retaining DB plans as the primary retirement planning option for all current and future public employees in Texas; educating the business community about the advantage of DB plans for public sector employees, employee groups, and related institutions; and, enhancing public awareness about how DB plans for public employees are advantageous for the general public and the economy in Texas.

With so many coordinated efforts to address public pensions, League staff expected a healthy debate on pension reform during the 2013 legislative session. Many bills were filed and a few passed. The following bills passed and were largely related to reporting, auditing, and training:

H.B. 13 (Callegari/Duncan) – Pensions: this bill: (1) requires public pension systems to post the following documents on their Internet websites: (a) actuarial valuations; (b) annual financial reports; (c) member and retiree reports; (d) State Pension Review Board (Board) registration; and (e) reports of investment returns and assumptions; (2) imposes reporting requirements on the Board if a public retirement system does not post its required financial documents, including: (a) posting the names of the systems on its website; (b) notifying either the governor and Legislative Budget Board or the political subdivision of the failure, depending on the pension system; (3) requires the Board to create model ethical and conflict of interest rules for public pension systems to adopt voluntarily; (4) requires the Board to create an educational training program for public pension system administrators; (5) authorizes a public retirement system to provide its own educational training to trustees and system administrators if the Board determines that the system's training meets or exceed the minimum training requirements; (6) requires a public retirement system to post certain contact information on a publicly-available Internet website; and (7) requires a public retirement system to submit to the Board an investment returns and actuarial assumptions report before the 211th day after the last day of its fiscal year.

S.B. 200 (Patrick) – Pension Review Board: this is the Pension Review Board sunset bill. Of interest to cities, this bill: (1) continues the Pension Review Board until 2025; (2) authorizes the board to provide training to retirement trustees and administrators; (4) exempts some fire fighter pension plans from the certain state law requirements; (5) requires an audit for a public retirement system that is separate from a governmental entity's general audit; (6) requires that a public retirement system inform its participants within 31 days of any significant change in the ordinances or regulations of the system that could affect contributions, benefits, or eligibility; and (7) eliminates certain actuarial valuations for defined contribution plans.

S.B. 220 (Birdwell/Anchia) – Firefighters Pension Commissioner: among other things, transfers the responsibilities of the firefighters' pension commissioner to the Texas Emergency Services Retirement System and the local firefighters' retirement systems.

S.B. 366 (L. Taylor) –Retirement Benefits: authorizes a city to: (1) establish a Roth IRA program for its employees; and (2) develop procedures to allow retirement plan vendors to lend money to a participating employee.

In the 2015 legislative session, the focus turned on reforming the Texas employee pension systems. Only a few public pension bills were filed and none received a hearing.

In 2016, TPPF issued a policy brief, *Restoring Local Control of State-Governed Pension Plans*, which examined the fiscal health of the systems and gives recommendations. TPPF acknowledged the difficulty in making substantive changes that are needed to make systems viable when approval must come from the legislature. The brief recommended that the legislature give the localities the authority to govern their own pension systems. Notably, Senator Bettencourt has filed legislation supporting this concept in the 2017, 2019, and 2021 sessions.

In the 2017 legislative session, the legislature largely concentrated on reforming the pension systems of Houston and Dallas, and significant bills were passed affecting those two cities. A few oversight bills were filed but none passed.

In the 2019 legislative session, a few oversight bills passed, as well as an omnibus Texas Municipal Retirement System (TMRS) bill that overhauled the system's administrative procedures:

S.B. 322 (Huffman/Murphy) – Public Retirement Systems: provides that: (1) a public retirement system, including the Texas Municipal Retirement System, shall select an independent firm with substantial experience in evaluating institutional investment practices and performance to evaluate the appropriateness, adequacy, and effectiveness of the system's investment practices and performance and to make recommendations for improving the system's investment policies, procedures, and practices; (2) each evaluation must include: (a) an analysis of any investment policy or strategic investment plan adopted by the retirement system and the retirement system's compliance with that policy or plan; (b) a detailed review of the retirement system's investment asset allocation, including: (i) the process for determining target allocations; (ii) the expected risk and expected rate of return; (iii) the appropriateness of selection and valuations methodologies of alternative and illiquid assets; and (iv) future cash flow and liquidity needs; (3) a review of appropriateness of investment fees and commissions paid by the retirement system; (4) a review of the retirement system's governance process related to investment activities, including investment decision-making processes, delegation of investment authority, and

board investment expertise and education; and (5) a review of the retirement system's investment manager selection and monitoring process.

H.B. 2955 (Klick) – Pension Systems: would, among other things: (1) repeal various city fire, police, and employee pensions; and (2) require that each city affected by the repeal to renegotiate its pension system benefits, policies, and procedures with its employees and retirees.

S.B. 1337 (Huffman/Flynn) – Texas Municipal Retirement System: amends the Texas Municipal Retirement System (TMRS) statute to: (1) modify current board meeting requirements by: (a) removing month-specific meeting requirements; (b) allowing the Board to determine when to hold those meetings; (c) allowing Board members to participate via video or conference call; and (d) during meetings called in accordance with the Texas Open Meetings Act, permitting Board members to discuss specific matters in executive session; (2) incorporate common law liability protections for the Board, staff, and members of Board-appointed committees or the TMRS medical board; (3) expressly provide protection for acts or omissions made in good faith in the performance of duties for the retirement system; (4) remove the requirement that the Board-appointed attorney (i.e., the General Counsel) represent the System in all litigation; (5) clarify that the System may hire additional legal counsel to represent the System in litigation and provide advice on fiduciary and legal matters; (6) maintain existing confidentiality provisions for member and retiree personal information, but supplement them with provisions in the Texas Public Information Act; (7) add protection for audit working papers; (8) provide that final audit reports, unless otherwise protected, are open records; (9) update the definition of security to better reflect the diversification of TMRS' investment portfolio; (10) provide explicit authority to distribute member and retiree annual statements and other information electronically to members and retirees in addition to the current paper and mail formats; (11) specify that the maximum amortization period for a city's actuarial accrued liability is 30 years and clarifies the Board's authority to set amortization periods; (12) remove the ability of cities to request an amortization period up to 40 years; (13) establish statutory consistency with Pension Review Board (PRB) guidelines and other Texas statewide retirement systems; (14) amend prior service credit (PSC) to apply to cities that join TMRS to provide recognition of service performed before the city joins TMRS; (15) allow a city to choose a PSC rate of zero percent to comply with the Texas Constitution; (16) eliminate the excluded prior service credit from the calculation of updated service credit (USC); (17) allow for the recalculation of USC when a person buys-back service and retires in the same year; (18) remove statutory references to the obsolete disability retirement program; (19) modernize TMRS' occupational disability provisions; and (20) provide TMRS with the authority to request a subsequent medical determination to verify a retiree's occupational disability and removes the earnings test.

S.B. 2224 (Huffman/Murphy) – Public Retirement Systems: would provide that a governing body of a public retirement system shall: (1) adopt a written funding policy that details the governing body's plan for achieving a funded ratio of the system that is equal to or greater than 100 percent; (2) maintain for public review at its main office a copy of the policy; (3) file a copy of the policy and each change to the policy with the board not later than the 31st day after the date the policy or change, as applicable, is adopted; (4) submit a copy of the policy and each change to the policy to the system's associated governmental entity not later than the 31st day after the date the policy or change is adopted; and (5) each public retirement system shall adopt a funding policy no later than January 1, 2020.

In the 2021 legislative session, a large focus of the pension debate centered on overhauling the Employees Retirement System of Texas, the pension system for state employees. Another transparency bill passed as well as a bill that allowed retired TMRS members return to work after a one-year break in service without benefit payments suspended.

H.B. 3898 (Anchia/Huffman) – Public Retirement Systems Funding: provides, among other things, that: (1) an evaluation of the appropriateness, adequacy, and effectiveness of a public retirement system's investment practices and performance that is required to be conducted by an independent firm must include: (a) a summary of the firm's experience in evaluating institutional investment practices and performance and a statement that the firm's experience meets the required experience; (b) a statement indicating the nature of any existing relationship between the independent firm and the public retirement system and confirming that the firm and any related entity are not involved in directly or indirectly managing the investments of the system; (c) a list of the types of remuneration received by the independent firm from sources other than the public retirement system for services provided to the system; (d) a statement identifying any potential conflict of interest or any appearance of a conflict of interest that could impact the analysis included in the evaluation due to an existing relationship between the independent firm and: (i) the public retirement system; or (ii) any current or former member of the governing body of the system; and (e) an explanation of the firm's determination regarding whether to include a recommendation for specific evaluation matters; (2) a public retirement system shall conduct the evaluation described by (1): (a) once every three years, if the total assets of the retirement system as of the last day of the preceding fiscal year were at least $100 million; or (b) once every six years, if the total assets of the retirement system as of the last day of the preceding fiscal year were at least $30 million and less than $100 million; (3) a public retirement system is not required to conduct the evaluation described by (1) if the total assets of the retirement system as of the last day of the preceding fiscal year were less than $30 million; (4) a governmental entity that is the employer of active members of a public retirement system evaluated under (1) may pay all or part of the costs of the evaluation, and the public retirement system shall pay any remaining unpaid costs of the evaluation; (5) the governing

body of a public retirement system and, if the system is not a statewide retirement system, its associated governmental entity shall: (a) jointly, if applicable: (i) develop and adopt a written funding policy that details a plan for achieving a funded ratio of the system that is equal to or greater than 100 percent; and (ii) timely revise the policy to reflect any significant changes to the policy, including changes required as a result of formulating and implementing a funding soundness restoration plan; (b) post a copy of the most recent edition of the policy on a publicly available Internet website; (6) a public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years; and (7) instances in which the governing body of a public retirement system and the governing body of the associated governmental entity shall jointly formulate a funding soundness restoration plan, including a revised funding soundness restoration plan.

S.B. 1105 (Hughes/Anchia) – TMRS Return To Work: provides, among other things, that: (1) the retirement annuity of a person who is reemployed by a city in which the employee most recently performed creditable service before the person's retirement shall not be suspended, provided that the person does not become an employee of the person's reemploying city at any time during the 12 consecutive months after the effective date of the person's last retirement from the reemploying city; and (2) if the annuity payments of a person who resumed employment with the person's reemploying city before September 1, 2021, were discontinued and suspended and the person has not terminated their employment with the city, on the filing of a written application with the Texas Municipal Retirement System (TMRS), TMRS shall resume making the annuity payments to the person, provided: (a) the person's retirement that preceded the resumption of employment was based on a bona fide termination of employment; and (b) the person did not become an employee of the person's reemploying city at any time during the 12 consecutive months after the effective date of the person's retirement from the reemploying city.

The TML Legislative program provides the League should oppose legislation that would further erode local control as it pertains to retirement issues.

MUNICIPAL COURT: TEXAS COURT CLERKS ASSOCIATION (TCCA)

In 2018 TCCA, a TML affiliate, submitted three resolutions to the Resolutions Committee for inclusion in the TML Legislative Program. The committee approved all three resolutions.

Uniformity on Class C Misdemeanors Violation Compliance Dismissal

The first resolution dealt with bringing uniformity on Class C misdemeanors violation compliance dismissal regulation and fees. Several types of Class C violations that may be dismissed upon proof of compliance have different requirements. TCCA argues that municipal court clerks that work in

customer service windows often find it confusing to keep track of and/or consider all the various regulations regarding compliance dismissals. These fees vary from $10.00 to $20.00 depending on a number of different factors.

These compliance dismissals do not include completion of driving safety, deferred disposition, or teen court but deal with bringing defective equipment and expired registrations into compliance. More uniformity and consistency would make for more efficient court procedures and provide for more equal administration of justice among courts.

No legislation has been filed in recent sessions dealing with this issue.

The TML Legislative Program provides that the League should support legislation that would provide consistency and uniformity in the compliance deadlines and fees for compliance dismissals of Class "C" misdemeanors.

Access to TexasSure Vehicle Insurance Verification System

The TexasSure Vehicle Insurance Verification system was established by the 79th Legislature by the passage of S.B. 1670 by Representative Staples. The database allows authorized users to confirm whether a Texas registered passenger vehicle has a valid auto liability insurance policy. The database is available to all local law enforcement, tax assessor-collectors, and DPS Texas Highway Patrol.

In 2017, the passage of S.B. 1187 by Senator Creighton prohibited a police officer from issuing a citation for operating a motor vehicle in violation of the liability insurance requirement under Transportation Code, Sec. 601.191 unless the officer attempts to verify through the TexasSure database that financial responsibility has been established for the vehicle or the citation includes an affirmative indication that the officer was unable to verify financial responsibility.

TCCA argued that allowing municipal court clerks assess to the TexasSure database to verify whether financial responsibility exists on a vehicle will help expedite processes for a clerk validating proof of financial responsibility. Currently, clerks call insurance companies to receive the required information.

In 2019, H.B. 196 by Representative Stephenson would have provided that a justice or municipal court may access the verification program to verify financial responsibility for the purpose of court proceedings. The bill was set on the House calendar but died due to procedural reasons.

In 2021, H.B. 1693 by Representative Shaheen passed and was signed into law. H.B. 1693 allows for a justice or municipal court to access the financial responsibility program to verify financial responsibility for the purpose of court proceedings. The bill also required that costs associated with accessing the verification program to be paid out of the county treasury by order of the commissioners' court or the municipal treasury by order of the governing body of the municipality,

as applicable. The successful passage of H.B. 1693 in 2021 should allow for the removal of this position from the TML program.

The TML Legislative Program provides that the League should support legislation that would provide courts with access to TexasSure database to verify financial responsibility.

Municipal Court Building and Security Fund and the Municipal Court Technology Fund

When this position was added to the TML program prior to the 2019 legislative session, cities had the option to adopt both the municipal court building security fee and the municipal court technology fee. Those fees were set at $3 per conviction and up to $4 per conviction, respectively.

TCCA argued that bringing both of these two fees up to $5 each would help cover the costs associated with additional security measures and technological advanced that supports the needed security measures for municipal courts. The additional $2 for the building and security fund and

$1 for technological fund will help with the implementation process of security measures necessary to bring courthouses into a more secure environment and allow for technology dollars to implement cameras, monitors or servers to help support security measures.

In 2019, S.B. 346 by Senator Zaffirini was signed into law. The bill consolidated a handful of local option municipal court fees into one fee, including the municipal court building security fee and the municipal court technology fee. The resulting "local consolidated court fee" is a $14 fee assessed on a person convicted of a non-jailable misdemeanor. The city is responsible for collecting the fee and establishing four different accounts to which the fee revenue is assigned. The fee revenue is apportioned as follows: (1) 35.7143 percent ($5.00 of each fee) to the Local Truancy Prevention and Diversion Fund; (2) 35 percent ($4.90) to the Municipal Court Building Security Fund (3) 28.5714 percent ($4.00) to the Municipal Court Technology Fund; and (4) .7143 percent ($.10) to the Municipal Jury Fund.

Senate Bill 346 removed the "local option" component of the municipal court building security, municipal court technology, and juvenile case manager fee. Instead of adopting an ordinance to impose each of those fees, every city is now required to assign a portion of the local consolidated court fee revenue to building security, court technology, and juvenile case managers (through the local truancy prevention and diversion fund), without regard for whether or not the city formally adopted the fee. The impact of S.B. 346 was not only to change the structure of collecting municipal court fees, but also to increase funding to the Municipal Court Building Security Fund. Beyond that, the bill uniformly provides dedicated funding to certain municipal courts across the state by taking out the local option component of the previous framework.

In 2021, H.B. 1106 by Representative Dominguez would have imposed a $1 supplemental security fee as a cost of the court to support the municipal court building security fund. The bill was

reported from the House Committee on Judiciary and Civil Jurisprudence but did not make it to the House floor for a vote.

The TML Legislative Program provides that the League support legislation that would provide additional funding through the Municipal Court Building and Security Fund and the Municipal Technology Fund.

MUNICIPAL COURT REPORTING/ELECTION RECORDS

Municipal Court Reporting

Texas Government Code, Chapter 29.013, requires city secretaries to notify the Texas Judicial Council of the names of municipal court judges, mayors, and municipal court clerks. However, the Office of Court Administration and the Texas Judicial Council are only seeking the names of municipal court judges and alternate judges. It is unnecessary for city secretaries to report mayors and municipal court clerks.

Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL.

(a) The secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body shall notify the Texas Judicial Council of the name of:

(1) each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court; and

(2) each person who vacates an office described by Subdivision (1).

(b) The secretary or employee shall notify the judicial council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office.)

Election Records

The names of voters who apply to vote by mail are protected from release once the ballots are sent out under the Texas Election Code. However, they are not protected between the time they make an application and when the ballots are sent.

The TML Legislative Program provides that the League support legislation that rectifies the wording of Texas Government Code Section 29.013 to eliminate the requirement that a city secretary notify the Office of Court Administration of elected or appointed mayors or municipal court clerks.

The TML Legislative Program provides that the League support legislation that protects from disclosure the list of applicants for a mail in ballot up until the time ballots are sent for those applications, regardless of whether a request is made for the applications.

ADMINISTRATION: SUBMITTING ATTORNEY GENERAL LETTER REQUEST

In 2011, the 82nd Legislature passed H.B. 2866 by Representative Harper-Brown which allowed a city to submit an attorney general letter ruling under the Public Information Act by an electronic filing system. The law allowed the attorney general to adopt rules necessary to administer the system including an associated fee. The attorney general office adopted a $15 initial filing fee to submit documents online, with a $5 fee for subsequent submissions associated with the initial filing. Prior to H.B. 2866, cities could only submit such requests by first class United States mail, common carrier, or in person. The bill has allowed for greater efficiency, more flexibility while reducing or avoiding the associated administrative costs needed when submitting hard copies through postage.

In 2020, the TML Legislative Policy Committee on Advocacy Strategy Subcommittee studied positive legislation to work on ahead of the 2021 session. The subcommittee approved that the League should seek introduction and passage of legislation that would allow a request for an attorney general letter ruling under the Public Information Act by email at no charge.

Since the passage of the attorney general's electronic submission system and fee in 2011, no legislation has been filed on the issue.

The TML Legislative Program provides that the League should seek introduction and passage of legislation that would allow a city official to submit a request for an attorney general letter ruling under the Public Information Act by email at no charge.

ADMINISTRATION: CYBERSECURITY PROTECTION UNDER THE PUBLIC INFORMATION ACT

At the 2020 Municipal Policy Summit, the City of San Marcos submitted a resolution supporting legislation that would allow specific information about a city's cybersecurity technology to be considered not subject to public disclosure under the Texas Public Information Act. The summit members agreed and voted in the affirmative for inclusion into the TML Legislative Program.

Upon further research, the protection of cybersecurity technology already exists in two ways in the Texas Public Information Act found in Chapter 552 of the Texas Government Code.

First, Section 552.101 provides that information is excepted from public disclosure if the information is confidential by law, and Chapter 2059 of the Texas Government Code provides that network security information is confidential information that may be released only to officials responsible for the network, law enforcement, the state auditor's office, and state elected officials. The combination of Section 2059.055 and Section 552.101 make network security information confidential and not subject to disclosure.

Second, Section 552.139 specifically excepts from disclosure government information related to security or infrastructure issues for computers.

The TML Legislative Program provides that the League should support legislation that would make confidential and not subject to disclosure under the Public Information Act certain information related to a city's cybersecurity technology.

COVID RELATED ISSUES/DISASTER AUTHORITY

The Texas Disaster Act in Chapter 418 of the Government Code lays out the basic legal framework for cities' preparation for, and response to, disasters in the state of Texas. Not only does the law require cities to develop emergency management plans and engage in emergency management training, but also spells out the extent of local authority during a disaster.

For years, the local disaster authority provisions in Chapter 418 have gone relatively unquestioned, if not mostly unnoticed, by many state legislators - particularly for those representing areas that aren't regularly dealing with natural disasters. Beyond that, few have doubted the importance of local leaders having the legal flexibility to make important health and safety decisions for those they represent during a disaster.

The 2020 COVID-19 pandemic put the Texas Disaster Act under a microscope. At the outset of the pandemic in March, local governments across the state were engaging with the statute in unprecedented ways. Much of that was due to the fact that COVID-19 has a statewide impact, unlike more traditional disasters like floods, fires, or tornadoes that have a devastating, but geographically limited impact. Indeed, Governor Abbott declared a statewide disaster on March 19, 2020, and consistently renewed that declaration.

Until mid-April 2020, the governor had ceded a large amount of disaster authority to local governments to manage the pandemic in ways befitting each individual community. While this general approach was lauded by many and generated positive results in many areas of the state, it wasn't without controversy. Some interest groups and citizens decried the measures taken by local leaders to promote social distancing and mask wearing, and efforts made to enforce those measures. On April 17, 2020, Governor Abbott signed GA-16, which contained the following disaster preemption language that became more-or-less standard in subsequent proclamations:

> "This executive order shall supersede any conflicting order issued by local officials in response to the COVD-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order."

To a large extent, the language above shifted the responsibility for response to the COVID-19 disaster away from local governments and towards the governor. The result was heightened scrutiny of the governor's actions taken to quell the spread of COVID-19, and promises from legislators and interest groups to file legislation reining-in executive power during a disaster. Still, local disaster authority promises to be on the table during the 87th Texas Legislature, both directly and potentially as a collateral issue from any legislation addressing gubernatorial authority.

Using the pandemic response as a guide, here are some examples of current legal authority for cities in a disaster that the legislature looked at during the 2021 legislative session and might reexamine 2023:

- Under a local disaster declaration, the mayor may order the evacuation of all or part of the population from a stricken or threatened area within the city limits if the mayor believes it is necessary for the preservation of life or other disaster mitigation, response or recovery. TEX. GOV'T CODE § 418.108(f).
- Under a local disaster declaration, the mayor may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area. *Id*. §418.108(g).
- A mayor serves as the governor's designated agent in the administration and supervision of emergency management duties, and may exercise the powers granted to the governor on an appropriate local scale. *Id*. § 418.1015(b).
- A mayor may, under certain circumstances, commandeer or use any private property if the mayor finds it necessary to cope with a disaster, subject to compensation requirements. *Id*. § 418.017(c). (This was the subject of an attorney general's opinion in KP-304.)
- Separate and apart from a city's authority under Chapter 418 of the Government Code, both home rule and general law cities have broad authority to protect residents from communicable diseases under Chapter 122 of the Health and Safety Code. That authority includes, among other things, "any action necessary or expedient to promote health or suppress disease," and, in home rules cities, "quarantine rules to protect the residents against communicable disease."

The bill filed in 2021 that most embodied the push and pull between both state and local authority during a disaster, and legislative and executive authority, was H.B. 3 by Representative Burrows. H.B. 3 would have made numerous changes regarding how the state and local governments prevent, prepare for, respond to, and recover from a pandemic disaster.

Of primary importance to cities, the bill would have, among many other things: (1) provided that any local order or rule issued in response to a state or local state of pandemic disaster is superseded and void to the extent that it is inconsistent with orders, declarations, or proclamations issued by the governor or Department of State Health Services; (2) prohibited an election official of a political subdivision from seeking to alter, in response to a pandemic disaster, any voting standard practice, or procedure in a manner not otherwise expressly authorized by state law, unless the election official first obtains approval of the proposed alternation from the secretary of state by submitting a written request for approval to the secretary of state; and (3) provided that if the governor issues a written determination finding that the presiding officer of a city council has taken issued an order requiring the closure of a private business in response to a pandemic, the city council for that city may not adopt a property tax rate for the current tax year that exceeds the lesser of the city's no-new-revenue tax rate or voter-approval tax rate for that tax year.

H.B. 3 passed the House, but because of irreconcilable disagreement between the House and Senate, and even intra-party disagreement on the role of the governor as the executive versus the legislative branch, the bill collapsed under its own weight.

Although other bills were filed that would have many changes to Chapter 418, Texas Government Code, very few passed of any import to cities. However, the legislature did pass S.B. 968 by Sen. Lois Kolkhorst that became effective in June of 2021. The bill provides that a mayor may not issue an order during a declared state of disaster or local disaster to address a pandemic disaster that limits or prohibits: (1) housing and commercial construction activities, including related activities involving the sale, transportation, and installation of manufactured homes; (2) the provision of governmental services for title searches, notary services, and recording services in support of mortgages and real estate services and transactions; (3) residential and commercial real estate services, including settlement services; or (4) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts.

S.B. 968 also prohibits a city, other than for health care purposes, from: (1) issuing to a third party a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status; or (2) otherwise publishing or sharing any individual's COVID-19 immunization record or similar health information.

Additionally, the bill provides that, in the event of a disaster or other emergency as determined by the Texas Division of Emergency Management (TDEM), TDEM shall collaborate with first responders, local governments, and local health departments, to conduct wellness checks on

medically fragile individuals (as defined by TDEM) within 24 hours of such events. The wellness checks must include an automated phone call, a personalized call, and if the person is unresponsive to calls, an in-person check. The bill requires each city to adopt procedures to conduct wellness checks in compliance with minimum standards adopted by TDEM. At this time, TDEM has not published its minimum standards.

TML Legislative Program provides that the League support legislation that requires equitable treatment of local governments by preventing a state official or state agency from placing additional restrictions on a city's sue of federal funds from future stimulus legislation related to a health pandemic, in contravention of congressional intent.

The TML Legislative Program provides that the League support legislation that requires counties to share timely information on health emergencies with cities.

IMMIGRATION

Recent sessions have seen numerous bills filed that dealt with immigration issues, some of which spilled over to special sessions. Generally, these bills fell into two categories: (1) requirements concerning verification of immigration status of individuals applying for licenses and employment or otherwise contracting with the city; and (2) requirements concerning law enforcement policies and procedures.

Regarding the first category of immigration legislation, historically several bills have been filed that would have required Texas employers, including cities, to participate in the federal government's program for electronic verification of employee immigration status, also known as E-Verify. Other bills prohibited cities from offering economic development incentives or entering into contracts with businesses that did not use the E-Verify system, and prohibited cities from issuing licenses or permits to individuals without first verifying immigration status. The League opposed much of this legislation on the grounds that placing requirements on cities as employers constituted an unfunded mandate from state government, while other ideas like prohibiting cities from contracting with or offering economic development incentives to certain business prospects undermined the concept of "local control." Ultimately, none of these proposals gained much momentum.

Legislation placing requirements on law enforcement policies and procedures concerning immigration did receive a good amount of attention in 2011. Most notable was H.B. 12 by Rep. Solomons, which was aimed at stopping the proliferation of "sanctuary cities," or cities that have adopted policies that prevent law enforcement officers from inquiring into the immigration status of a person arrested or lawfully detained.

H.B. 12 would have done two things to punish cities that adopted policies prohibiting law enforcement from inquiring into an individual's immigration status: (1) it would have provided

that the city could not receive any state grant funds after a final judicial determination that the city had intentionally prohibited the enforcement of state or federal immigration laws; and (2) it would have allowed any citizen to file a complaint with the attorney general regarding a sanctuary city, and the attorney general could then file a civil lawsuit against the city to prevent the enforcement of the city's policy.

The League testified in committee regarding concerns raised by numerous cities. Most notable was that—because sanctuary cities arguably did not exist—any litigation brought by the state against a city was likely to be frivolous in nature. As a result, TML argued (to no avail) that a "loser pays" system should be applied to suits against suspected sanctuary cities that would require the state to pay the legal expenses of city if the lawsuit was unsuccessful. H.B. 12 was ultimately voted out of the House but was amended in Senate committee and never made it to a vote on the Senate floor. The proposal was re-filed as part of S.B. 9 during the special session, where the reverse of what happened to H.B. 12 during the regular session occurred—the bill received the approval of the full Senate but failed to be reported out of a House committee.

No bill addressing sanctuary cities was filed in 2013. The absence of a sanctuary cities bill was emblematic of a more "hands-off" approach by the legislature regarding immigration-related issues in 2013.

Legislation was filed and heard in the Senate on sanctuary cities in 2015. H.B. 185 by Perry closely resembled H.B. 12 from 2011 in that its aim was to prohibit cities and other local governments from adopting a policy that prohibits the enforcement of state and federal immigration laws. After a lengthy committee hearing, and despite a significant amount of opposition to the bill at the hearing, the Senate Subcommittee on Border Security approved the bill. However, the bill did not receive a vote on the floor of the Texas Senate.

Governor Abbott targeted sanctuary city legislation as a priority in 2017. The renewed focus on the issue stemmed largely from a policy change made by the Dallas County sheriff regarding federal immigration detention requests.

The other major immigration issue related to law enforcement procedures in 2011 was the attempt to require law enforcement agencies to verify the immigration status of any individual who was arrested and detained in a city jail within 48 hours by use of the federal Secure Communities program operated by the U.S. Immigration and Customs Enforcement. The vehicle for this idea during the regular session was S.B. 9 by Senator Williams. Due to the training and maintenance costs associated with the Secure Communities program, this proposal, by definition, was an unfunded mandate. The League contended that the more prudent approach would be to allow cities 48 hours to request immigration status information from any source, including another law enforcement agency or federal law enforcement agency that is authorized under federal law to verify immigration status. Because every county in the state already has adopted the Secure Communities program, it made little sense to require many cities to do the same. S.B. 9 ended up

passing through the Senate but stalling out in House committee. The issue was revived during the special session, and was included with the sanctuary city legislation in S.B. 9, which ultimately failed to pass. Similar legislation was filed in 2013 and 2015, but in neither session did the legislation receive a committee hearing.

Due to the push for immigration reform legislation during the previous three sessions, and due to the renewed attention to sanctuary cities, legislation ultimately passed in 2017. S.B. 4 by Senator Perry created several new provisions in law related to the enforcement of federal and state immigration laws. Specifically, the bill prohibited certain city actions by providing that:

1. a "local entity" is defined to include, among others, a city, its officers, its employees, and other bodies that are part of a city, including the city police department and city attorney (but would exempt schools and hospitals and hospital peace officers, the public health department of a local entity, and a peace officer employed or contracted by a religious organization during service to the religious organization);

2. a local entity shall not adopt, enforce, or endorse a policy that prohibits or discourages the enforcement of immigration laws;

3. a local entity may not by demonstrable pattern or practice prohibit the enforcement of immigration laws;

4. a local entity shall not prohibit or materially limit a peace officer from doing any of the following: (a) inquiring into the immigration status of a lawfully detained or n arrested person; (b) with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest: (i) sending the information to or requesting or receiving the information from Citizenship and Immigration Services or ICE, including information regarding a person's place of birth; (ii) maintaining the information; or (iii) exchanging the information with another local entity or a federal or state governmental entity; (c) assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance; or (d) permitting a federal immigration officer to enter and conduct enforcement activities at a municipal or county jail to enforce federal immigration laws;

5. a local entity or a person employed by or otherwise under the direction or control of the entity may not consider race, color, language, religion, or national origin while enforcing immigration laws except to the extent permitted by the United States or Texas Constitutions;

6. a local entity may prohibit persons who are employed by or otherwise under the direction or control of the entity or from assisting or cooperating with a federal immigration officer if the assistance or cooperation occurs at a place of worship;

7. a law enforcement agency is not required to perform a duty imposed by the bill with respect to a person who has provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification;

8. a police chief who violates (2), above, commits a Class A misdemeanor;

9. a person holding elective or appointive office who violates the bill forfeits his or her office;

10. the attorney general shall file a quo warranto proceeding against a person described by (7), above, if presented with evidence establishing probable grounds that the person violates the bill;

11. if the court in a proceeding described by (8), above, finds a person "guilty as charged," the court shall enter a judgment removing the person from office;

12. each law enforcement agency that is subject to the requirements above of the bill may adopt a written policy requiring the agency to perform community outreach activities to educate the public that a peace officer may not inquire into the immigration status of a victim of or witness to an alleged criminal offense unless the officer determines that the inquiry is necessary to investigate the offense or provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement;

13. a policy adopted under (12), above, must include outreach to victims of certain victims of family violence and sexual assault; and

14. the bill does not apply to: (a) a community center; (b) a local mental health authority; or (c) the public health department of a local entity; or (d) a federally qualified health center.

The bill also created a state-level complaint and enforcement process by providing that:

1. any citizen residing in the area of a local entity may file a complaint with the attorney general if the person offers a sworn affidavit to support an allegation that a local entity has adopted, enforced, or endorsed a policy under which the entity prohibits or discourages the enforcement of immigration laws or that the entity prohibits or discourages the enforcement of those laws;

2. if the attorney general determines that a complaint filed against a local entity is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief and the prevailing party may recover reasonable expenses incurred in bringing or defending an action under the bill, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs; and

3. a local entity that is found by a court of law to have intentionally violated s the requirements in the bill is subject to a civil penalty up to $1,500 for the first violation and up to $25,500

for each subsequent violation that shall be credited to the state's Crime Victims Compensation Fund.

Finally, the bill provided that:

1. the Department of Public Safety's criminal justice division shall establish and administer a competitive grant program to provide financial assistance to local entities to offset costs related to: (a) enforcing immigration laws; or (b) complying with, honoring, or fulfilling immigration detainer requests.

2. sovereign immunity of this state and governmental immunity of a county and city to suit is waived and abolished to the extent of liability created by the bill;

3. a law enforcement agency that has custody of a person subject to an immigration detainer issued by ICE shall: (a) comply with, honor, and fulfill the requests made in the detainer and inform the person that the person is being held pursuant to an immigration detainer request issued by ICE;

4. if a criminal defendant is in the U.S. illegally and is to be confined to jail by a court judgment, the judge shall issue an order requiring the correctional facility to require the defendant to serve in federal custody the final portion of the defendant's sentence, not to exceed a period of seven days, following the facility's or officer's determination that the change in the place of confinement will facilitate the seamless transfer of the defendant into federal custody;

5. the attorney general shall defend a local entity in any action in any court if: (a) the executive head or governing body, as applicable, of the local entity requests the attorney general's assistance in the defense; and (b) the attorney general determines that the cause of action arises out of a claim involving the local entity's good-faith compliance with an immigration detainer request required by the bill; and

6. the state is liable for expenses, costs, judgment, or settlement under (5), above.

Senate Bill 4, as described above, required local law enforcement to cooperate with Immigration and Customs Enforcement detainer requests, and it authorized officers to inquire about the immigration status of people they detain or arrest. In addition, the bill subjects elected and appointed officials to a fine, jail time, and possible removal from office for violating the bill.

Immediately upon its passage, a lawsuit was filed by the City of El Cenizo that challenged much of the law. Following the initial lawsuit, several other governmental entities, including the cities of El Paso, Austin and Houston, sued the state arguing the bill was unconstitutional. In August 2017, a federal district judge of the Western District of Texas, Judge Orlando Garcia, temporarily blocked most of the law from taking effect by issuing a preliminary injunction.

Soon after, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit reinstated portions of Senate Bill 4. In March 2018, the Fifth Circuit ruled that the bill did not violate the constitution and allowed the law to remain in effect and blocked one part of the bill.

The court ruled that the law's "endorsement provision" that punished local officials who endorsed policies that specifically prohibit, or limit enforcement of immigration laws violated the First Amendment.

Following the 2016 TML policy development process, the recommendation was that, should legislation be filed that relates to immigration and that would affect cities, League staff should seek the guidance of the TML Executive Committee regarding the League's position on such legislation. During the 2017 session, the TML Executive Committee met and approved the position currently in the TML Legislative Program.

The TML Legislative Program provides that the League should take no position on immigration-related legislation that does not impose new and substantial unfunded mandates or unavoidable liabilities on cites.

APPENDIX

THE TEXAS MUNICIPAL LEAGUE LEGISLATIVE PROGRAM (2021-2022)

Introduction

City officials across the state are well aware of the fact that many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials.

During the 2019 session, more than 7,500 bills or significant resolutions were introduced; more than 2,000 of them would have affected Texas cities in some substantial way. In the end, over 1,400 bills or resolutions passed and were signed into law; more than 300 of them impacted cities in some way.

The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2019, that percentage had increased to 25 percent. In other words, a quarter of the legislature's work is directed at cities, and much of that work aims to limit municipal authority.

There is no reason to believe that the workload of the 2021 session will be any lighter; it will probably be greater. And for better or worse, city officials will have to live with all the laws that may be approved by the legislature. Thus, the League must make every effort to assure that detrimental bills are defeated and beneficial bills are passed.

The TML approach to the 2021 session is guided by principles that spring from a deeply rooted TML legislative philosophy:

- The League will vigorously oppose any legislation that would erode the authority of Texas cities to govern their own local affairs.

- Cities represent the level of government closest to the people. They bear primary responsibility for provision of capital infrastructure and for ensuring our citizens' health and safety. Thus, cities must be assured of a predictable and sufficient level of revenue and must resist efforts to diminish their revenue.

- The League will oppose the imposition of any state mandates that do not provide for a commensurate level of compensation.

In setting the TML program, the Board recognizes that there is a practical limit to what the League can accomplish during the legislative session. Because the League (like all associations) has finite resources and because vast amounts of those resources are necessarily expended in defeating bad legislation, the Board recognizes that the League must very carefully select the bills for which it will attempt to find sponsors and seek passage.

Each initiative is subjected to several tests:

- Does the initiative have wide applicability to a broad range of cities of various sizes (both large and small) and in various parts of the state?

- Does the initiative address a central municipal value, or is it only indirectly related to municipal government?

- Is this initiative, when compared to others, important enough to be part of TML's list of priorities?

- Will the initiative be vigorously opposed by strong interest groups and, if so, will member cities commit to contributing the time and effort necessary to overcome that opposition?

- Is this initiative one that city officials, more than any other group, should and do care about?

The Board places each legislative issue into one of four categories of effort. Those four categories are:

- **Seek Introduction and Passage** – the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as "TML Priority bills."

- **Support** – the League will attempt to obtain passage of the initiative if it is introduced by some other entity.

- **Oppose** – the League will actively and vigorously attempt to defeat the initiative because it is detrimental to member cities.

- **No Position** – the League will take no action.

Our Highest Priority: Oppose Bad Bills

The Board determined that TML's highest priority goal is the defeat of legislation deemed detrimental to cities. As a practical matter, adoption of this position means that the beneficial bills will be sacrificed, as necessary, in order to kill detrimental bills.

The TML Priority Package

The TML Priority Package includes the following items in no particular order:

1. Defeat any legislation that would erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities, especially legislation that would:

    a. provide for state preemption of municipal authority in general.

b. impose further revenue and/or tax caps of any type.

c. erode the ability of a city to issue debt.

d. erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings, (5) building codes, (6) tree preservation, and (7) short-term rentals.

e. erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.

f. limit or prohibit the authority of city officials to use municipal funds to communicate with legislators; or limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.

2. Passage of any legislation that would:

a. eliminate reauthorization provisions for the collection and use of street maintenance sales and use tax and authorize cities to reimburse themselves from sales and use tax collections for actual election costs required for tax implementation.

b. allow cities the option of using either an official newspaper or a website for the publication of legal notices.

c. allow cities alternate methods for publications of legal notices.

d. authorize a city to annex across a road to bring a voluntarily-requested area into the city limits.

e. allow a city official to submit a request for an attorney general letter ruling under the Public Information Act by email at no charge.

f. increase the maximum hiring age for firefighters in a civil service city from age 35 to 45, or to eliminate the maximum hiring age altogether.

g. make beneficial amendments to H.B. 2439, the building materials bill.

h. promotes increased flexibility under the Texas Open Meetings Act, including flexibility for public participation, so long as the legislation doesn't mandate any new costs on local governments.

Support

The Board supports legislation that would:

1. make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

2. authorize a council-option city homestead exemption expressed as a percentage or flat-dollar amount.

3. convert the sales tax reallocation process from a ministerial process into a more formalized administrative process.

4. authorize a city council to opt-in to requiring residential fire sprinklers in newly constructed single-family dwellings.

5. make beneficial amendments to H.B. 3167, the subdivision platting shot clock bill.

6. allow for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments are unable or unwilling to address.

7. provide additional funding to the Texas Department of Transportation for transportation projects that would support regionally appropriate highway improvement and rail as components.

8. allow a city to lower the prima facie speed limit from 30 to 25 miles per hour without the need for a traffic study.

9. in relation to federal transit funding: (1) clarify federal congressional intent of federal transit law to protect cities across the United States from being penalized due a to a population drop suffered as a direct result of a natural disaster, retroactive to 2000; (2) explicitly state that only presidentially declared major disasters are covered, in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707); and (3) protect federal transit funding streams for urbanized areas until the execution of the next decennial census.

10. in relation to federal legislation, provide states greater authority over management of train delays in conjunction with affected cities.

11. establish that expenditures of Community Development Block Grant funds by cities are a governmental function.

12. require city consent before TCEQ is authorized to issue a standard permit for a rock crushing operation, cement crushing operation, or any similar activity that may be authorized under a standard air permit from TCEQ within the corporate limits or ETJ of a city. (Alternatively, or in addition, such legislation may: (a) authorize a city to restrict, prevent, or regulate the locating of such activities in the city's corporate limits or ETJ in other manners, such as imposing minimum distance from such operations and schools,

hospitals, churches, and residences; (b) require TCEQ to provide notice of applications for standard permits to cities for activities proposed in the city's corporate limits or ETJ and require TCEQ to address any and all comments received from the City as required by Sec. 382.112 of the Texas Health & Safety Code; or (c) prohibit TCEQ from issuing a standard permit for activities proposed in the city's corporate limits or ETJ unless the city verifies that the proposed in the city's corporate limits or ETJ unless the city verifies that the proposed activity is authorized under the city's zoning ordinance or comprehensive plan to locate at the proposed location.

13. provide consistency and uniformity in the compliance deadlines and fees for compliance dismissals of Class "C" misdemeanors.

14. provide courts with access to TexasSure database to verify financial responsibility.

15. provide additional funding through the Municipal Court Building and Security Fund and the Municipal Court Technology Fund.

16. rectify the wording of Texas Government Code Section 29.013 to eliminate the requirement that a city secretary notify the Office of Court Administration of elected or appointed mayors or municipal court clerks.

17. protect from disclosure the list of applicants for a mail in ballot up until the time ballots are sent for those applications, regardless of whether a request is made for the applications

18. promote pay-as-you-go financing for capital projects by authorizing a dedicated property tax rate that is classified similarly to the debt service tax rate in property tax rate calculations.

19. allow for the expenditure of municipal hotel occupancy for construction of improvements in municipal parks and trails/sidewalks that connect parks, lodging establishments, and other tourist attractions, and related public facilities.

20. requires equitable treatment of local governments by preventing a state official or state agency from placing additional restrictions on a city's use of federal funds from future stimulus legislation related to a health pandemic, in contravention of congressional intent.

21. requires counties to share timely information on health emergencies with cities.

22. treats broadband service similar to other critical utility infrastructure to ensure statewide availability and affordability for citizens and businesses.

23. modernizes the Texas Universal Fund through revenue sources that ensure long-term sustainability for the provision of broadband services.

24. require the State of Texas to create a state regulatory process for oil and gas pipeline routing that:

i. enables affected communities and landowners to provide input prior to establishment and publication of routes.
ii. provides for negotiation on routes when municipalities believe that substantial threats to economic development, natural resources, or standard of living are potential outcomes.
iii. intrastate pipelines will comply with environmental and economic impact study standards, including the participation of local governmental entities and public participation.
iv. pipeline operators shall have in place performance bonds like those the state has in its own contracts.

25. make confidential and not subject to disclosure under the Public Information act certain information related to a city's cybersecurity technology.

26. increases existing or creates new grant program funding that provides financial assistance to local governmental law enforcement agencies for public safety resources, including legislation that supports the use and the purchase of body cameras and associated data storage costs.

27. harden the state's electric grid against blackouts, especially those caused by extreme weather events.

28. provide additional tools for municipally owned electric utilities to harden their systems against blackouts, especially those caused by extreme weather events.

29. mitigate the cost and liabilities of the outage event caused by Winter Storm Uri from being passed on to cities and city residents.

Oppose

The Board opposes legislation that would:

1. negatively expand appraisal caps but take no position on legislation that would authorize a council-option reduction in the current ten-percent cap on annual appraisal growth.

2. impose new property tax or sales tax exemptions that substantially erode the tax base.

3. limit or eliminate the current flexibility of the Major Events Reimbursement Program as a tool for cities to attract or host major events and conventions.

4. limit the type of incentives available to the city or that would limit any use of incentives by a city.

5. further erode local control as it pertains to retirement issues.

6. substantively change or expand the scope of the current disease presumption law, unless doing so is supported by reputable, independent scientific research.

7. require candidates for city office to declare party affiliation in order to run for office.

8. eliminate any of the current uniform election dates.

9. impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state.

10. restrict city authority to draft ballot propositions in such a way that reflects the full fiscal impact of the proposition.

11. require preclearance of city ballot propositions by a state agency.

No Position

The Board takes no position on legislation that would relate to immigration matters, so long as it does not impose new and substantial unfunded mandates or unavoidable liabilities on cities.

Other

The Board takes the following additional actions:

1. take no position on legislation that would impact local sourcing of sales and use taxes for Internet orders.

2. with regard to economic development: (1) take no position on legislation that would broaden the authority of Type A or Type B economic development corporations; and (2) oppose legislation that would limit the authority of Type A or Type B economic development corporations statewide, but take no position on legislation that is regional in scope and that is supported by some cities in that region.