



TEXAS MUNICIPAL LEAGUE
Empowering Texas cities to serve their citizens

President **David Rutledge**, Mayor, Bridge City
Executive Director **Bennett Sandlin**

March 21, 2023

The Honorable Charles Schwertner
Chairman, Business and Commerce Committee
Texas State Senate
PO Box 12068
Austin, Texas 78711-2068

Dear Chairman Schwertner:

The purpose of this letter is to inform you of the Texas Municipal League's opposition to **Senate Bill 1110** in its current form. As filed, the bill would prevent transfers from any city utility to the general fund if the transfer would result in a rate increase or financial deficit for the utility. We are told that the committee substitute will only apply to municipally-owned electric utilities. While that change does help many cities across the state, we still believe the standard in the bill lacks clarity, and potentially disrupts long-standing legal precedent from the Texas Supreme Court.

In 1976, the Texas Supreme Court recognized that cities may make a reasonable profit from operation of their utility system. *San Antonio Independent School District v. City of San Antonio*, 550 S.W.2d 262, 264 (Tex. 1976). A city can transfer the reasonable profit to the city's general fund, provided the amount complies with the provisions of any debt instrument that is paid by the utility proceeds. A court may grant relief to utility customers who can prove that a city's profit or return is unreasonable and excessive.

We believe the existing standard from the *San Antonio ISD* decision has served cities well over the last nearly fifty years. Using this Texas Supreme Court decision as a guide, Texas cities have adopted policies that establish standards of reasonability that are subject to judicial review. Though what's reasonable in one city may differ from another city, the measured flexibility approved by the Court allows for budgeting predictability while retaining necessary safeguards to the ratepayers. Many cities transfer funds based upon a reimbursement to the general fund, possibly tied to the number of full-time employees working for the utility that are funded through the general fund or administrative expenses funded by the general fund. Additionally, some cities treat the city utility like a private utility and tie the transfer to the amount the city utility would have otherwise paid in franchise fees as a percentage of gross revenue.

These methods of ensuring reasonableness could very well be called into question with the passage of S.B. 1110. At the very least, we'd ask that any legislation support the common law standard that already exists. Existing law balances the need for accountability for any transfers to the general fund with an acknowledgment of the reality that cities and their utilities often work in concert to provide the best possible service to city ratepayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Wynn". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Monty Wynn
Director, Grassroots and Legislative Services
Texas Municipal League