

# TML LEGISLATIVE UPDATE



April 7, 2023  
Number 14

## **House Committee Approves Modified City Preemption Bill**

H.B. 2127 seeks to prevent cities and counties from adopting or enforcing local ordinances or orders related to any activity contained in several state codes unless expressly allowed to do so by state law. The committee favorably voted out a committee substitute for H.B. 2127, the text of which can be read [here](#).

### **Committee Substitute Language**

The committee substitute for H.B. 2127 varies significantly from the as-filed version. The bill now contains the following provisions, among others:

- A prohibition on a city ordinance “regulating conduct in a field of regulation that is occupied by a provision” of certain state codes, unless expressly authorized by another statute. The following codes contain a field preemption clause: (1) Agriculture Code; (2) Business and Commerce Code; (3) Finance Code; (4) Insurance Code; (5) Labor Code; (6) Natural Resources Code; (7) Occupations Code; and (8) Property Code.

- The Finance Code preemption language would seemingly preserve existing payday lending ordinances (pending existing litigation outcomes), but preempt cities from adopting new payday lending ordinances, or amending existing payday lending ordinances, moving forward.
- The Labor Code preemption language specifically provides that a field occupied by the Labor Code includes “employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than a municipality or county.”
- Creation of a cause of action for a person or trade association to sue a city for an ordinance that violates a “field preemption” clause above. Further, the bill would waive governmental immunity to suit and entitle a claimant to recover both court costs and reasonable attorney’s fees. The committee substitute adds a provision that would entitle a city to three months’ notice of a claim before a claimant may file suit.
- Language adding Sec. 51.002 of the Local Government Code stating that a city council may “adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state.”
- Specific preemption of a city ordinance that restricts or impedes a business “involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business’s transactions if the person operating that business holds a license for the business that is issued the federal government or a state.”
- Uncodified language in the bill stating, among other things, that the bill does not prohibit: (1) a city or county from building or maintaining a road, imposing a tax, or carrying out any authority expressly authorized by statute; or (2) a home-rule city from providing the same services and imposing the same regulations that a general-law city is authorized to provide or impose.

### **Many Questions Remain**

H.B. 2127’s lack of specificity on exactly when a city is considered to be preempted has only created more questions about the impact of the bill. At best, the bill would abdicate the legislature’s traditional role in setting specific limitations on city regulation to the courts. At worst, the bill attempts to dramatically scale back 110 years of Texas home rule city authority by running an end around of Article XI, Sec. 5 of the Texas Constitution. If the bill passes in something resembling its current form, city officials and residents will have to wait for years for the courts to resolve countless lawsuits authorized by the bill to determine the scope of the proposed preemption.

For decades, Texas courts have explained that for the state legislature to preempt city authority, it must do so with unmistakable clarity. Courts have relied on this standard to evaluate specific state statutes’ impact on city ordinances and invalidate conflicting city regulations like local plastic bag bans. H.B. 2127, instead of clearly and unambiguously spelling out exactly which city ordinances

are preempted, cryptically states that city ordinances are preempted if they regulate conduct in a field of regulation occupied by one of the impacted state codes.

This begs the question – when does the state occupy a field of regulation? The bill doesn't answer that question, and instead punts it to the courts. Is a field occupied if a state code merely mentions a particular topic? What if state statute authorizes some governmental entities to act but not cities? Could a field be occupied if the legislature chooses not to regulate certain conduct? We simply don't know the answer to these questions right now.

H.B. 2127 provides that a city may continue to regulate if expressly authorized by statute. This language is helpful for cities in light of the rest of the bill, but still may not preserve home rule authority in certain areas. For instance, some state laws provide that a statute “shall not be construed” to limit a city's authority to act, or that state law does not affect a local ordinance. These provisions probably would not be construed as “expressly authorizing” city regulation. Under current law, a home rule city would clearly be authorized to regulate with that language in place due to home rule authority in the Texas Constitution. But the bill's preservation of only regulations “expressly authorized by statute” potentially preempts any city regulation that is expressly not prohibited by state statute.

New language in the committee substitute adds Section 51.002 of the Local Government Code to only allow a city to adopt an ordinance that is consistent with the laws of the state. This raises even more questions about the scope of the bill. If state law is silent in a certain area, can a home rule city regulate in that area? One might argue yes, since the Texas Constitution gives home rule cities the full power of self-government. But the bill certainly calls home rule authority in question in several areas. There's a real possibility that a court would determine that proposed Section 51.002 of the Local Government Code eliminates city regulatory authority in the absence of state regulation. Such an interpretation by the courts would effectively end home rule authority in Texas.

### **What's Next?**

H.B. 2127 was voted out of the House State Affairs Committee on April 3. The bill will likely be considered on the House floor within the next week or two. The Senate companion bill, S.B. 814, was considered in the Senate Business and Commerce Committee on April 4.

We urge city officials with concerns about the impact of H.B. 2127 and S.B. 814 to communicate their concerns to their state representatives and senators immediately. Because of the legal complexities involved in these bills, city officials may wish to consult with their city attorneys over the impact on their city and have the city attorney's opinion inform conversations with their elected officials in Austin.

## **Bills on the Move**

### **Significant Committee Action**

**H.B. 9** (Ashby), creating the Broadband, Equity, Access, and Deployment program and the Broadband Infrastructure Fund. Voted from House State Affairs.

**H.B. 187 (Landgraf)**, requiring all bond elections to be held on the November uniform election date. TML provided [written testimony](#). Left pending after a hearing in House Pensions, Investments, and Financial Services.

**H.B. 276 (Cortez)**, prohibiting cities from prohibiting the growing of fruits and vegetables and the raising of six chickens or six rabbits. Left pending after hearing in House Agriculture & Livestock.

**H.B. 586 (E. Thompson)**, allowing a city to annex a road right-of-way to bring a voluntarily requested area into city limits. Voted from House Land & Resource Management.

**H.B. 1204 (Martinez)**, authorizing an emergency service district (ESD) to object to the removal of annexed territory by a city if the removal would reduce the level of emergency services provided to the ESD territory or reduces ESD revenue. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 1279 (Tepper)**, limiting the extent of a city's ETJ based on city population. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 1307 (Toth)**, authorizing registered voters in a certain area to petition for disannexation of the area in the city limits and the ETJ. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 1489 (Tepper)**, limiting the usage of certificates of obligation to only during a public emergency, in response to a court order, or to comply with state or federal regulation. TML provided [written testimony](#).

**H.B. 1819 (Cook)**, repealing city juvenile curfew ordinance except for purposes of emergency management. Voted from House Select on Youth Health & Safety.

**H.B. 2127 (Burrows)**, preemption of city regulations in a field occupied by the Agriculture, Finance, Insurance, Labor, Natural Resources, and Occupations Code. Committee substitute adds Property and Finance Code and prohibits a city from regulating licensed animal businesses. Committee substitute voted from House State Affairs.

**H.B. 2224 (Hernandez)**, allowing a city to lower a residential speed limit to 25 mph without a traffic study. Committee substitute voted from House Transportation.

**H.B. 2350 (Cody Harris)**, prohibiting city occupational license if state issues an occupational license, with exceptions. Voted from House Licensing & Administrative Procedures.

**H.B. 2806 (Canales)**, allowing billboards to relocate in certain areas if the billboard use is discontinued due to a public construction project and require a city to provide for the relocation by a special exception to any applicable zoning ordinance. TML provided [written testimony](#). Committee substitute voted from House Transportation.

**H.B. 3053** (Dean), requiring an election to be held November 7, 2023, on the question of disannexation of any area that was annexed by a city between March 3, 2015, and December 1, 2017. The committee substitute applies to cities over 500,000 in population. TML provided [written testimony](#). Committee substitute voted from House Land & Resource Management.

**H.B. 3490** (Rogers), requiring a city to provide written notice containing certain information regarding any proposed zoning change that could result in the creation of a nonconforming use. If a nonconforming use is required by a city to cease operation, the owner or lessee of the property is entitled to receive either payment for costs associated with closing the operation or additional time to engage in the nonconforming use. TML provided [written testimony](#). Committee substitute voted from House Land Resource & Management.

**H.B. 3921** (Goldman), prohibiting a city from requiring a residential lot to be larger than 1,400 square feet, wider than 20 feet, or deeper than 60 feet, and from adopting certain other requirements on small lots. The bill applies to cities in counties with a population of 300,000 or more. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 4082** (Goldman), allowing for use of certificates of obligation for “public works” but prohibits their usage for stadiums, convention centers, civic centers, hotels, and arenas.

**H.B. 4175** (Cody Harris), requiring a city to provide full municipal services to certain areas in the ETJ. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 4215** (K. Bell), limiting the city size of a city’s ETJ to an amount not to exceed 50 percent of the gross acreage of the city. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 4275** (Rogers), authorizing an ESD board to determine whether a city’s service plan is sufficient to ensure that the city services for an annexed area will meet or exceed the ESD’s level of service. TML provided [written testimony](#). Left pending after hearing in House Land & Resource Management.

**H.B. 4285** (Rogers), prohibiting a city from enforcing its outdoor sign ordinance in its ETJ. Left pending after hearing in House Land & Resource Management.

**S.B. 558** (Hughes), limiting parkland dedication and fees in lieu of dedication for cities over 800,000 in population. TML provided [written testimony](#). Committee substitute voted from Senate Natural Resources and Economic Development.

**S.B. 814** (Creighton), preemption of city regulations in a field occupied by the Agriculture, Finance, Insurance, Labor, Natural Resources, and Occupations Code. Committee substitute adds Property and Finance Code and prohibits a city from regulating licensed animal businesses. TML provided [written testimony](#). Left pending after hearing in Senate Business and Commerce.

**S.B. 946 (Sparks)**, requiring an election for bonds or a tax increase to be held on the November uniform election date. TML provided [written testimony](#). Voted from Senate State Affairs.

**S.B. 990 (Hall)**, eliminating the countywide polling place program. Committee substitute voted from Senate State Affairs.

**S.B. 1053 (Hughes)**, excluding the definition of “marketplace seller” an affiliate of the marketplace provider. Voted from Senate Finance.

**S.B. 1117 (Hancock)**, defining video services to not include streaming for franchise fee purposes. Voted from Senate Business and Commerce.

**S.B. 1412 (Hughes)**, allowing an accessory dwelling unit (ADU) in a single-family zoning or un-zoned areas by right, and prohibit much of a city’s ability to regulate an ADU. TML provided [written testimony](#). Left pending after hearing in Senate Local Government.

**S.B. 1419 (Birdwell)**, prohibiting cities from making a loan or grant of public money under a Chapter 380 economic development agreement from the proceeds of property taxes or other city obligations payable from property taxes and adding transparency measures. TML [testified](#) in committee. Left pending after hearing in Senate Natural Resources & Economic Development.

**S.B. 1786 (Bettencourt)**, modifying approval procedures for property development application review and inspection for cities including allowing for third-party reviews and inspectors. TML [testified](#) in committee. Left pending after hearing in Senate Local Government.

**S.B. 1787 (Bettencourt)**, prohibiting a city from requiring a residential lot to be larger than 1,400 square feet, wider than 20 feet, or deeper than 60 feet, and from adopting certain other requirements on small lots. Applies to cities in counties with a population of 300,000 or more. Left pending after hearing in Senate Local Government.

**S.B. 2018 (Flores)**, requiring a city to create a public camping complaint system and investigate every complaint. TML provided [written testimony](#). Committee substitute voted from Senate Local Government.

**S.B. 2037 (Bettencourt)**, prohibits cities from applying subdivision regulations and certain road and groundwater regulations in the ETJ. TML [testified](#) in committee. Left pending after hearing in Senate Local Government.

**S.B. 2038 (Bettencourt)**, requiring a city to release an area from the ETJ if the population of an area is less than 200 and upon petition from more than 50 percent of qualified voters. Requires release of an area with a population of 200 or more from the ETJ after a petition and election. TML [testified](#) in committee. Left pending after hearing in Senate Local Government.

### **Significant Floor Action**

[H.B. 471](#) (**Patterson**), creating a paid injury and sick leave for first responders and expands workers compensation disease presumption. Passed the House.

[H.B. 2468](#) (**Burrows**), expanding workers compensation lifetime benefits for certain injuries sustained in the course of employment. Passed the House.

[S.B. 28](#) (**Perry**), creating the Texas water fund. Passed the Senate.

[S.B. 130](#) (**Campbell**), prohibiting a city from regulating private wages or benefits. Passed the Senate.

[S.B. 175](#) (**Middleton**), prohibiting cities and other political subdivisions from spending public funds to hire lobbyists or join nonprofit associations (like TML) that represent political subdivisions and contract with individuals who are required to register as lobbyists. TML provided [written testimony](#). Passed the Senate.

[S.B. 224](#) (**Alvarado**), increasing penalties and punishment for theft of a catalytic converter. Passed the Senate.

[S.B. 1015](#) (**King**), removing regulatory authorities, include cities, from the electricity rate-making process. Passed the Senate.

[S.B. 1421](#) (**Perry**), limits city regulation of agricultural operations and vegetation height restrictions within city limits and the extraterritorial jurisdiction. TML provided [written testimony](#). Passed the Senate.

[S.B. 1601](#) (**Hughes**), prohibiting a city library from receiving state funds if it hosts an event at which a person being dressed as the opposite gender reads a book or story to a minor for entertainment purposes. Passed the Senate.

## **2023 City Tax and Budget Deadline Memos Now Available**

Every year, TML posts a memo containing the annual calendar deadlines for the budget adoption and tax rate setting process. Following the passage of Senate Bill 2 in 2019, the process for adopting a tax rate changed significantly. Because the tax rate adoption process differs significantly based on whether the city's tax rate will exceed the voter-approval tax rate, there is [one memo for deadlines when the rate exceeds the voter-approval rate](#) and [one memo for deadlines when the rate does not exceed the voter approval rate](#). (Note that this is a departure from previous year's practices, when we separated the memos based on city population.) Whatever the case may be, the deadlines in the document represent the last possible dates for a city to take certain actions related to the budget or tax rate in 2023. Cities should act well in advance of the deadlines in the calendar, if possible.

For more detailed information about S.B. 2, city officials are encouraged to read the [S.B. 2 Explanatory Q&A](#) posted on the TML website.

## **SLFRF Project and Expenditure Report Due April 30**

The State and Local Fiscal Recovery Funds (SLFRF) Project and Expenditure Report is due for SLFRF receipts on April 30, 2023. The U.S. Treasury portal is now open and accepting reports. Recipients with questions about reporting, technical issues, eligible uses of funds, or other items can find information [here](#). The Compliance and Reporting Guidance can be found [here](#) and the project and expenditure user guide [here](#).

Cities may reach out to the help center by email at [SLFRF@treasury.gov](mailto:SLFRF@treasury.gov) or by phone at (844) 529-9527. When reaching out to the help center, it is encouraged to include the following information in your communications: name, city, state, unique entity identifier (UEI) number, and federal tax identification number.

## **BDO Now Accepting Applications for Broadband Infrastructure Grant Program**

On April 3, Comptroller Hegar [announced](#) that the Broadband Development Office (BDO) has begun accepting applications for its \$360 million Bringing Online Opportunities to Texas (BOOT) grant program. The BOOT program will provide funding to political subdivisions and broadband providers to carry out broadband infrastructure projects across the state. Eligible projects must be designed to provide broadband speeds of 100 Mbps or faster.

Applications must be submitted through the Comptroller's Office Broadband Development Office application system by **Friday, May 5, 2023**.

You can find more information about the BOOT grant program, including the Notice of Funding Availability and application instructions and evaluation criteria, [here](#).

## **Get Involved at the Legislature: Grassroots Involvement Program**

During the 88<sup>th</sup> Legislative Session, Texas cities are facing many challenges and opportunities. TML will need to mobilize our membership at key points during session. The Grassroots Involvement Program (GRIP) is one way to do so. Our GRIP survey focuses on a variety of items including your areas of expertise and involvement with other professional organizations. Most importantly, the GRIP survey asks how well you know various state legislators and if you are willing to communicate with those legislators during the session. TML's grassroots approach is crucial to our efforts.

If you have a relationship with your legislator(s) or want to be more involved during session, please take the time to complete the [GRIP survey](#). Past efforts have proven that such participation is a highly effective tool.



We ask that you complete the survey as soon as possible.

## **City Officials Testify**

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

- Jeff Achée, Parks and Recreation Director, City of Harker Heights
- Juan Ayala, Director of Military Affairs, City of San Antonio
- Alexandra Anello, Councilmember, City of El Paso
- Sally Bakko, Director of Policy and Governmental Relations, City of Galveston
- Roland Barrera, Councilmember, City of Corpus Christi
- Adam Bazaldua, Councilmember, City of Dallas
- Kenneth Bennett, Assistant City Attorney, City of Arlington
- Richard Boyer, Mayor, City of The Colony
- Chris Canales, Councilmember, City of El Paso
- Rod Carroll, Chief of Police, City of Vidor
- Sean Creegan, Assistant City Attorney, City of Austin
- Rocky Duque De Estrada, Senior Management Analyst, Parks and Recreation, City of San Antonio
- James Edge, Mayor Pro Tem, City of Bryan
- Wayne Emerson, Director of Economic Development, City of Denton
- Andrew Espinoza, Director/Chief Building Official, City of El Paso
- Ginger Faught, Deputy City Administrator, City of Dripping Springs
- Jessica Galleshaw, Director of Office of Community Care, City of Dallas
- Mike Harmon, Chief of Police, City of Cedar Park
- Jeryl Hoover, Mayor, City of Fredericksburg
- Tom Kilgore, Mayor, City of Lakeway
- Leanne Kirby, Tourism Director, City of Wimberley
- Mike Knox, Councilmember, City of Houston
- Erika Lopez, Assistant City Attorney, City of Austin
- Joel McElhany, Assistant Director, Parks & Recreation, City of Fort Worth
- Trey Mendez, Mayor, City of Brownsville
- Robin Mouton, Mayor, City of Beaumont
- Ken Myers, Deputy Chief of Police, City of Allen
- Jennifer Ostlind, Assistant Director of Community and Regional Planning, City of Houston
- Collyn A. Peddie, Sr. Assistant City Attorney, City of Houston

- Helen Ramirez, City Manager, City of Brownsville
- Melissa Ramirez, Assistant Director of Land Development, City of San Antonio
- Scott Rubin, Chief of Police, City of Blanco
- Cynthia Garza-Reyes, Director of External Affairs, City of Pharr
- Priscilla Rosales-Pina, Planning Manager, City of San Antonio
- Thomas Rowlinson, Principal Planner, Parks & Recreation, City of Austin
- Bruno Rumbelow, City Manager, City of Grapevine
- Daniel Scesney, Chief of Police, City of Grand Prairie
- Connie Schroeder, Mayor, City of Bastrop
- Martin Scribner, Director of Planning & Development Services, City of Baytown
- Norma Sepulveda, Mayor, City of Harlingen
- Rob Severance, Chief of Police, City of Cleburne
- Steve Stanford, Chief of Police, City of Bridgeport
- Patrick Smith, Tourism Manager, City of Bay City
- Elizabeth Triggs, Director of Economic and International Development, City of El Paso
- Vernon Young, Assistant Director of Development Services, City of Dallas

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