

TML LEGISLATIVE UPDATE



June 30, 2023
Number 26

First Called Special Session Ends; Second Underway

On Tuesday, the first-called special session ended after a month-long stalemate between the Senate and House on property tax relief. The same day, Governor Abbott [announced](#) a second-called special session. It began on Tuesday, June 27 at 3:00 p.m. In the governor's [press release](#), Abbott stated, "Unless and until the House and Senate agree on a different proposal to provide property tax cuts, I will continue to call for lasting property tax cuts through rate reductions and working toward eliminating the school property tax in Texas. Special sessions will continue to focus on only property tax cuts until property tax cut legislation reaches my desk."

The following items are on the call:

1. Legislation to cut property-tax rates solely by reducing the school district maximum compressed tax rate in order to provide lasting property-tax relief for Texas taxpayers.
2. Legislation to put Texas on a pathway to eliminating school district maintenance and operations property taxes.

The Senate then passed [2S.B. 1](#) and [2S.J.R. 1](#) by Bettencourt. The bills would allow for a \$100,000 homestead exemption by a school district, add more state funding to buy down school district property tax rates, exempt some small businesses from the state franchise tax, and impose a stricter revenue cap on school districts. The bills are very similar to what the Senate had previously passed during the first-called special session with two changes. First, 2S.B. 1 prohibits the governing body of a city, county, or school district that has adopted a homestead exemption for the 2022 tax year from reducing or repealing the exemption until December 31, 2027. The second provision would provide supplement payments to public school teachers.

The House Ways and Means Committee approved two bills, [2H.B. 1](#) and [2H.J.R. 1](#) by Meyer, on Wednesday. The bills would allow for school district tax rate compression. The House will stand at ease until Friday at 10:00 a.m. at which point they will adjourn until Wednesday, July 5.

Resolutions for the 2023 TML Annual Conference

Resolutions for consideration at the Annual Conference are due no later than **5:00 p.m. on August 21, 2023**. The TML Constitution provides that resolutions must be submitted by any member city, TML region, or TML affiliate to the TML headquarters 45 calendar days prior to the first day of the Annual Conference.

The TML Board of Directors has adopted several procedures governing the resolutions process. Please review the following items carefully and thoroughly.

1. No resolution may be considered at the annual TML business meeting unless it has prior approval of: (a) the governing body of a TML member city; (b) the governing body or membership of a TML affiliate, or (c) the membership of a TML region at a regional meeting.
2. TML member cities, regions, and affiliates that wish to submit a resolution **must** complete a resolution cover sheet. The cover sheet is available [here](#).
3. It is recommended that any resolution state one of four categories to better direct League staff. Those categories are:
 - **Seek Introduction and Passage** means that 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 bills.”
 - **Support** means the League will attempt to obtain passage of the initiative if it is introduced by a city or some other entity.
 - **Oppose.**
 - **Take No Position.**

4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. Each city is asked to provide one delegate to serve as its liaison at the annual business meeting at which resolutions will be considered. The delegate isn't required to have any special expertise, and an elected official representative is encouraged but not required. The delegate must sign up electronically [here](#) prior to the meeting or can sign up in person at a table outside of the meeting room. Cities are encouraged to sign up their delegate early.
5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the business meeting to explain the resolution. The business meeting will meet at 3:30 p.m. on Thursday, October 5, 2023, at the Kay Bailey Hutchison Convention Center in Dallas.

If your city is interested in submitting a resolution, details can be found [here](#). Resolutions can be emailed to JJ Rocha, TML Grassroots and Legislative Services Manager at jj@tml.org.

Interested city officials can learn how the resolutions process fits within the League's Legislative Policy Process [here](#).

Post-Session Update: City Regulation of Agricultural Operations

H.B. 1750

[H.B. 1750](#) makes potentially significant changes to cities' ability to regulate agricultural operations within the city limits. In essence, H.B. 1750 does four main things. First, it expands the definition of an agricultural operation for purposes of the imposition of any governmental requirement by a city. Second, it requires a city to comply with heightened standards when imposing any governmental requirement on an agricultural operation located within city limits. Third, it prohibits a city from imposing a governmental requirement that directly or indirectly prohibits certain specific agricultural practices. And fourth, it tasks the Texas A&M AgriLife Extension Service with developing a manual of generally accepted agricultural practices and identifying which do not threaten public health.

Background

Since 1981, Section 251.005 of the Agriculture Code has prohibited a city from enforcing city codes and ordinances on agricultural operations in the city's extraterritorial jurisdiction. However, the city could enforce specific regulations on agricultural annexed into the city as an agricultural operation.

But before the city could enforce such codes or ordinances:

- (1) The city's code official or a consultant had to prepare a written report identifying the hazard posed by the agricultural operation and explain why the applicable city code or ordinance is necessary to protect the public; and

- (2) The city council was required to adopt a resolution finding that enforcing the specific city code or ordinance is necessary to protect public health.

Except for agricultural operations annexed into the city as agricultural operations, Section 251.005 did not apply to agricultural operations located within city limits.

H.B. 1750 now applies this heightened regulatory standard to any government requirement applied to an agricultural operation within the city limits through new Section 251.0055 of the Agriculture Code.

What is an agricultural operation?

Section 251.002 of the Agriculture Code defines what constitutes an agricultural operation. Following the passage of H.B. 1750, the following activities are considered agricultural operations:

- Cultivating the soil;
- Producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber;
- Floriculture (flowers);
- Viticulture (grapes);
- Horticulture (plants);
- Silviculture (trees);
- Wildlife management;
- Raising or keeping livestock or poultry, including veterinary services; and
- Planting cover crops or leaving land idle for the purpose of participating in any government program or normal crop or livestock rotation procedure.

Under what circumstances may a city regulate an agricultural operation?

H.B. 1750 provides that a city may impose a “governmental requirement” on an agricultural operation located in the city limits only under certain circumstances. “Governmental requirement” is defined as a “rule, regulation, ordinance, zoning, license or permit requirement, or other requirement or restriction enacted or promulgated” by the city.

A city governmental requirement may be applied to an agricultural operation in the city limits only if there is clear and convincing evidence that: (1) the purpose of the requirement cannot be addressed through less restrictive means; and (2) the requirement is necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the imminent danger of specific harms. These harms include:

- Explosion;
- Flooding;
- An infestation of vermin or insects;
- Physical injury;

- The spread of an identified contagious disease that is directly attributable to the agricultural operation;
- The removal of lateral or subjacent support;
- An identified source of contamination of water supplies;
- Radiation;
- Improper storage of toxic materials;
- Crops planted or vegetation grown in a manner that will cause traffic hazards; or
- Discharge of firearms or other weapons, subject to restrictions in Local Government Code Sec. 229.002.

Further, for a city to be able to enforce a governmental requirement under H.B. 1750, it must first obtain and review a report prepared by the city health officer or a consultant that:

- Identifies evidence of the health hazards related to agricultural operations;
- Determines the necessity of regulation and the manner in which an agricultural operation should be regulated;
- States whether each necessary manner of regulation will restrict or prohibit a generally accepted agricultural practice listed in the Texas A&M AgriLife Extension Service's manual; and
- Where applicable, it explains why the report recommends imposing a regulation restricting the use of a generally accepted agricultural practice that the manual indicates does not threaten public health.

After receiving and reviewing the city health officer's or consultant's report, the city council must adopt a resolution finding that the proposed regulation is necessary to protect public health and is otherwise not prohibited by the statute.

What city requirements are prohibited by H.B. 1750?

The bill specifically prohibits a city from imposing a governmental requirement that directly or indirectly:

- Prohibits the use of a generally accepted agricultural practice listed in a manual drafted by the Texas A&M AgriLife Extension Service identifying generally accepted agricultural practices, unless the city complies with the procedures mentioned above;
- Prohibits or restricts the growing or harvesting of vegetation for animal feed, livestock forage, or forage for wildlife management, except that a city is allowed to impose a maximum vegetation height of at least 12 inches for portions of an agricultural operation that are within 10 feet from a property boundary that is: (1) adjacent to a public sidewalk, street, or highway; or (2) an inhabited structure on a neighbor's property;
- Prohibits the use of pesticides or other measures to control vermin and disease-bearing insects to the extent necessary to prevent infestation; or
- Requires an agricultural use also to be designated as an agricultural, farm, ranch, wildlife management, or timber production use under Article VIII of the Texas Constitution.

When should cities expect guidance from the Texas A&M AgriLife Extension Service?

As mentioned above, H.B. 1750 requires the Texas A&M AgriLife Extension Service to develop a manual that identifies generally accepted agricultural practices and indicates which of those practices do not pose a threat to public health. The bill requires the Texas A&M AgriLife Extension Service to develop the manual as soon as possible after the effective date of the bill.

The League will monitor the status of the manual and update our membership when the manual is published.

Guidance for cities

H.B. 1750 goes into effect on September 1, 2023. Perhaps the biggest questions about H.B. 1750 relate to the extent of its application within the city limits. For instance, an agricultural operation includes the raising or keeping of livestock or poultry. Does this mean that in order for a city to enforce any regulation relating to the keeping of livestock or chickens in residential neighborhoods it must first obtain a report from municipal health officer or consultant in support of the regulation? Further, may the city only impose a restriction on the keeping of livestock or roosters in a backyard if the city has clear and convincing evidence that the restriction is necessary due to the imminent dangers spelled out in the bill?

At this point, we don't have clear answers to these questions. But there are some avenues that may provide guidance to city officials and city attorneys. Cities may find guidance in the Texas A&M AgriLife Extension Service manual of generally accepted agricultural practices when it is released. Further, cities may find additional guidance from the courts. Past appellate court decisions have explained that the purpose behind Chapter 251 of the Agricultural Code is to protect farmers and ranchers who engage in activities that produce food. Such a reading may have the effect of limiting the scope of the bill to only applying to traditional farming and ranching operations that occur within the city limits.

Some city officials have asked about the impact of the bill on enforcement of high grass ordinances. The bill clearly places limits on a city's ability to enact or enforce vegetation height restrictions against an agricultural operation, as spelled out above. But these limitations would generally only apply to legitimate agricultural operations, not for the more common scenario where an absentee property owner fails to maintain his/her property.

City officials and employees are encouraged to consult with their city attorney to identify which city ordinances may be subject to H.B. 1750 and ensure that any enforcement actions or other city regulations comply with the bill's heightened process and burden of proof requirements, if necessary.

H.J.R. 126

[H.J.R. 126](#) is a constitutional amendment that will be on the November 7 ballot. Among other things, the amendment would:

- Expressly protect the right of individuals to farm, ranch, produce timber, and engage in wildlife practices on their property; and
- Limit cities' ability to regulate these activities to when it can show by clear and convincing evidence that regulation of such activities is necessary to protect against imminent danger to public health or safety.

Though the constitutional amendment covers a similar subject matter to H.B. 1750, the passage or failure of H.J.R. 126 has no impact on the effect of H.B. 1750. H.J.R. 126 just enshrines the ability to engage in farming, ranching, timber production, horticulture, and wildlife management in the Texas Constitution.

Texas to Receive Over \$3.3 Billion in Federal Broadband Funding

On June 26, the White House [announced](#) that Texas will receive \$3.3 billion in funding through the National Telecommunications and Information Administration's (NTIA's) Broadband Equity, Access, and Deployment (BEAD) program. The BEAD program will provide funding to all 50 states to deploy or upgrade broadband networks to ensure everyone has access to reliable, affordable high-speed internet service. NTIA will send out formal notices of allocation on June 30, 2023. States will have 180 days from receipt of their formal notice to submit initial proposals for their state-level grant programs. NTIA will begin releasing funding on a rolling basis following approval of the state's initial proposal. The state's BEAD funding will be deposited into the Broadband Infrastructure Fund (BIF) established by [H.B. 9](#), passed last month.

The comptroller's Broadband Development Office (BDO) will oversee the BIF. The BDO will also develop and administer the state's broadband grant program per general guidelines (e.g., minimum speed requirements, general funding eligibility, fiber optic preference) established by [S.B. 1238](#), passed in May.

The BDO has diligently worked with the state, the public, and stakeholders over the past two years to develop a comprehensive, robust, and equitable grant program. It encourages residents, businesses, and local governments to participate by completing the [Texas Digital Opportunity Survey](#) seeking information about broadband availability and needs across the state.

City officials can find more information about NTIA's BEAD program [here](#).

More information about the BDO and the state's broadband program can be found [here](#).

OSHA Urges Participation in Upcoming Workplace Heat Standard Discussion

On June 22, the U.S. Department of Labor (DOL) [urged](#) small business owners and local governmental entities to join the Occupational Safety and Health Administration (OSHA) and other federal governmental agencies for a series of discussions about the potential impacts of a workplace heat standard for small businesses.

OSHA is developing a potential workplace heat standard to prevent outdoor and indoor heat-related injury and illness in certain industries. In October 2021, OSHA published an [Advance Notice of Proposed Rulemaking for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings](#) to initiate the formal rulemaking process. This summer, the agency will hold a series of Small Business Advocacy Review Panel (SBARP) meetings to gather information about the potential effects of such a standard on small businesses.

The meetings will include representatives from OSHA, the U.S. Small Business Administration, and the U.S. Office of Management and Budget. While the SBARP welcomes input from all industries, it is particularly interested in hearing from representatives from industries most affected by a heat standard. These include the agriculture, construction, landscaping, manufacturing, maritime, oil and gas, utilities, warehousing, waste management, and food service (especially restaurant kitchens) industries.

Along with initiating the formal rulemaking process, OSHA has taken the following steps to address the dangers of excess heat in the workplace:

- Developing a [heat-related enforcement initiative](#)
- Launching a [National Emphasis Program](#) on heat inspections
- Creating the [National Advisory Committee on Occupational Safety and Health's Heat Injury and Illness Prevention Work Group](#)
- Launching a [Heat Illness Prevention Campaign](#)

The SBARP meetings will be held by teleconference and are open to the public.

Interested city officials can find more information about the SBARP meetings [here](#).

Federal Infrastructure Bill Update

In November 2021, the federal Infrastructure Investment and Jobs Act (IIJA) was signed into law. 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.

The League will monitor state and federal agencies and work with the National League of Cities (NLC) to access the latest information relating to the IIJA. We will provide periodic updates in the Legislative Update on resources for Texas cities on how to access IIJA funding for local infrastructure projects.

U.S. Department of Transportation (DOT)

Reminder for Upcoming Deadline

Applications for the Department of Transportation's (DOT's) Safe Streets and Roads for All Program (SS4A) are due by **4:00 PM CDT on July 10, 2023**. Over the next five years, the SS4A program will provide five billion dollars in funding for initiatives to prevent deaths and serious injuries on the nation's roadways. DOT will be awarding grants for both planning and implementation projects. Action plan grants assist communities that do not currently have a roadway safety plan in place. Implementation plan grants provide funding for communities to implement strategies and projects designed to reduce or eliminate transportation-related fatalities and serious injuries.

City officials can find more information about the SS4A program [here](#).

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