

TML LEGISLATIVE UPDATE



August 11, 2023
Number 32

TWDB Releases FAQ on State Water Fund

The Texas Water Development Board (TWDB) recently released “[Senate Bill 28 and Texas Water Fund Frequently Asked Questions](#).” The FAQ provides information on [S.B. 28](#) and [S.J.R. 75](#), which provide up to \$1 billion in funding for water infrastructure and water supply projects through the establishment of the Texas Water Fund contingent upon voter approval in November.

The document outlines which funds or accounts will be supported by S.B. 28 and S.J.R. 75, priorities of the water fund, and information on the new programs created including the New Water Supply Fund, the Rural Water Assistance Fund, and the water loss audit technical assistance program.

Post-Session Update: Funding to Improve Broadband Access Across the State

The legislature has dedicated almost \$10 billion in state and federal funding to improve broadband access across the state. [H.J.R. 125](#) and [H.B. 9](#) create the state’s Broadband Infrastructure Fund (BIF) as a repository for all state and federal broadband funding. [S.B. 1238](#) and [S.B. 2119](#) provide

guidelines for the state's Bringing Online Opportunities to Texas (BOOT) and Broadband Equity, Access, and Deployment (BEAD) broadband funding programs. The comptroller's office will control the BIF and administer the BOOT and BEAD programs.

Broadband Infrastructure Funding

H.J.R. 125 is a constitutional amendment that will be on the ballot in November. If approved, the amendment will establish the state's Broadband Infrastructure Fund (BIF). The BIF will serve as the central repository for all state and federal funds earmarked to improve broadband access, and support continued and expanded 9-1-1 service across the state.

If the voters approve H.J.R. 125, H.B. 9 will become effective on January 1, 2024. H.B. 9 will appropriate \$1.5 billion in state funds and transfer over \$3.3 billion in federal funding into the BIF. The BIF funds will support the state's BOOT program and federal BEAD programs.

The comptroller's office, through the Texas Broadband Development Office, has been tasked with administering the BOOT and BEAD programs.

Meanwhile, S.B. 1238, among other things, establishes the state's guidelines for the BEAD funding program.

Specifically, S.B. 1238 does four main things:

1. S.B. 1238 establishes new minimum broadband bandwidth speeds and technical specifications to be considered as receiving broadband service. The current FCC minimum standard is 25 Mbps for downloads and 3 Mbps for uploads. S.B. 1238 increases the state minimum standard to 100 Mbps for downloads and 20 Mbps for uploads.
2. S.B. 1238 establishes three eligibility categories based on the available broadband bandwidth speed and technical specifications at a location. The eligibility categories are unserved (less than 25/3 Mbps), underserved (at least 25/3 Mbps but under 100/20 Mbps), and served (at least 100/20 Mbps). The BDO will categorize each location in the state based on the best available broadband-related information from internet service providers (ISPs) and the public. The BDO must also create a state broadband map depicting its eligibility category determinations.
3. S.B. 1238 establishes a preference for fiber optic cable-based projects and infrastructure. However, the bill does allow for alternative broadband technologies if such technologies can meet the same technical specifications and are as cost-effective as fiber optic technology.
4. S.B. 1238 directs the comptroller's office, through the BDO, to develop the state's BEAD funding program, subject to a few specific guidelines. First, the BDO must create a process to allow ISPs and the public to challenge the BDO's eligibility determinations. And second, funding should be prioritized to provide service for the largest number of unserved and unserved locations.

How should cities proceed? The BDO is currently drafting the state’s BEAD funding plan. The state’s plan must be submitted to the U.S. Department of Commerce’s National Telecommunications and Information Administration for review and approval by the end of the year.

The BDO is actively seeking public input to help with this effort. Cities who wish to provide comments about the state’s broadband plan can do so through the BDO’s broadband service-related surveys, at one of the BDO’s public broadband meetings being held across the state this summer, or by contacting the BDO directly.

City officials can find more information about the BDO’s efforts and the BEAD and BOOT programs on the [BDO’s website](#).

Statewide Broadband Access Map

S.B. 2119 is effective on September 1, 2023. The bill directs the Public Utility Commission of Texas (PUC) to publish and annually update the BDO’s statewide broadband map on its website. S.B. 2119 also requires the PUC to submit a report to the governor, lieutenant governor, and legislature about broadband access across the state by no later than December 1st each year.

Post-Session Update: Paid Line of Duty Injury and Illness Leave for First Responders

[H.B. 471](#), which is currently in effect, creates a mandatory paid leave scheme for certain city employees who suffer an illness or injury while on duty.

Who is entitled to line of duty injury or illness leave under the bill?

The bill applies to the following paid employees of a city: permanent firefighters, emergency medical services personnel, and full-time licensed police officers who regularly serve in a professional law enforcement capacity in the city’s police department (collectively referred to as “first responders”). Fire chiefs and police chiefs also qualify for injury or illness leave, but volunteer firefighters do not.

When is a first responder entitled to line of duty injury or illness leave?

A city is required to provide a first responder with a leave of absence for an illness or injury related to the first responder’s line of duty.

How much line of duty injury or illness leave is a first responder entitled to?

A first responder is entitled to a leave of absence with full pay for a period commensurate with the nature of the line of duty illness or injury, and if necessary, the leave of absence shall continue for at least one year. At the end of the leave of absence, a city may extend the leave at full or reduced pay.

What happens if a first responder is unable to return to work after the leave of absence?

If the leave of absence and any extension granted by the city has expired, a first responder who requires additional leave shall be placed on temporary leave. The bill does not provide for how long an employee may be placed on temporary leave.

A first responder who is temporarily disabled by a line of duty injury or illness and who has exhausted his or her leave of absence and any extension thereof may use accumulated sick leave, vacation time, and other accrued benefits before being placed on temporary leave.

May a first responder be placed on light duty while recovering from a line of duty injury or illness?

If able, a first responder may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year.

Does a first responder have job restoration rights after returning from temporary leave?

A first responder who has recovered from a temporary disability shall be reinstated to the same rank and with the same seniority he or she had before going on temporary leave. Also, another first responder may voluntarily perform the injured first responder's work until the first responder returns to work.

How does line of duty illness or injury leave under H.B. 471 comport with labor agreements?

A collective bargaining agreement, meet and confer agreement, or other similar labor agreement that provides a benefit for an ill or injured first responder must provide a benefit that, at a minimum, complies with the provisions of H.B. 471.

How does line of duty illness or injury leave under H.B. 471 comport with the Workers' Compensation Act?

H.B. 471 provides that any benefits provided under the Workers' Compensation Act shall be offset, to the extent applicable, by any amount for incapacity received under the provisions of the bill. This means that any benefits a first responder is entitled to under workers' compensation will be diminished by any benefits an employee receives under the provisions of H.B. 471.

Post-Session Update: Public Safety

Among the many public safety bills the legislature passed this session, the following bills are helpful to city police and fire departments.

Catalytic Converter Theft

The Legislature passed [S.B. 224](#), effective immediately, to address the rise in catalytic converter thefts in Texas. The bill increases penalties for catalytic converter thefts and establishes a new felony offense for unauthorized possession of a catalytic converter. The bill also creates a presumption that a person in possession of two or more catalytic converters unlawfully obtained the catalytic converters unless the person can prove he or she is the owner or possesses them as part of his or her ordinary course of business.

Under the bill, cities may not: (1) adopt rules or ordinances that restrict the purchase, acquisition, sale, transfer, or possession of catalytic converters by metal recycling entities, automotive wrecking and salvage yards, automotive repair shops, automotive parts recyclers, law enforcement, among others; or (2) alter or impose additional recordkeeping requirements on metal recycling entities. However, the bill requires metal recycling entities to allow city representatives and peace officers to inspect the entity's records on request during its usual business hours and specifically preserves city authority to impose permit and licensing requirements for metal recycling entities.

Street Takeovers

[H.B. 2899](#), effective immediately, authorizes peace officers to impound vehicles used in the commission of drag or street racing or while obstructing a highway, street, sidewalk, or other passageway in certain instances. The bill requires a peace officer to take the vehicle to the nearest licensed vehicle storage facility unless the vehicle is seized as evidence, in which case the vehicle can be taken to a law enforcement storage facility. Prior to the passage of H.B. 2899, peace officers could only impound a vehicle used in the commission of these crimes if the offense resulted in an accident with property damage or personal injury.

Removal of Personal Property

Effective immediately, [S.B. 1413](#) authorizes a city fire department to remove personal property from a roadway or right-of-way if the property blocks a roadway or endangers public safety. Prior to the passage of this bill, only law enforcement officials and transit authorities were permitted to remove personal property in these instances.

The bill requires a city's governing body to develop and implement a policy regarding how the fire department will consult with law enforcement agencies to remove the property. In addition, the bill obligates the owner or carrier of the personal property that is removed to reimburse the city fire department for reasonable costs associated with the removal and disposal. The bill also protects fire departments from liability for any damage the property sustains as a result of removing the property, unless the removal is carried out recklessly or in a grossly negligent manner.

Elimination of Paper Tags

[H.B. 718](#) eliminates the use of: (1) temporary paper vehicle buyer tags issued by car dealerships; and (2) temporary paper one-trip and 30-day permits issued by the Texas Department of Motor Vehicles and local county tax offices. The bill now requires that these entities issue metal license plates instead of paper tags. The bill also creates a criminal offense for illegally displaying, selling, or distributing a metal license plate issued in these instances. H.B. 718 is effective on July 1, 2025.

Last Call: Resolutions for the 2023 TML Annual Conference **Due August 21**

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](#).

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 Commerce (USDOC)

The USDOC is accepting applications for its Economic Development Administration's Planning and Local Technical Assistance Program (PLTAP). The PLTAP provides grant funding and training resources to help build capacity and guide local and regional economic prosperity and resiliency.

The Planning program provides short and long-term investments to create and retain high-quality jobs for unemployed and underemployed people in economically distressed areas. This includes helping recipients develop, implement, revise, or replace local Comprehensive Economic Development Strategies to articulate and prioritize strategic local and regional economic goals.

The Local Technical Assistance program provides training to strengthen local and regional capacity to undertake and promote effective economic development projects, including feasibility studies and impact analyses.

Eligible PLTAP recipients include state and local governmental entities, including special district units and economic development-focused organizations.

Please see the [PLTAP Notice of Funding Opportunity](#) for more information. City officials can also find more information about the [Planning](#) and [Local Technical Assistance](#) programs on the USDOC's Economic Development Administration's website.

USDOC is accepting PLTAP applications on a rolling basis.

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.