

# TML LEGISLATIVE UPDATE



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Number 33

## **New Proposed Treasury Guidance on SLFRF Eligible Uses**

The U.S. Department of Treasury recently issued the [2023 Interim Final Rule on the State and Local Fiscal Recovery Funds](#) (SLFRF). In December 2022, Congress passed the Consolidated Appropriations Act which amended the eligible uses of SLFRF funds to include emergency relief from natural disasters, build critical Infrastructure, and support community development. The existing eligible uses provided in the 2022 final rule are still intact. The new proposed rule provides additional flexibility to cities.

The Interim Final Rule is awaiting to be published in the Federal Register and is open to comments. Interested city officials can submit comments through the [Federal eRulemaking portal](#) or by mailing comments to Office of Recovery Programs, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. All comments should be captioned with “Coronavirus State and Local Fiscal Recovery Funds 2023 Interim Final Rule Comments”. More information on how to submit comments can be found [here](#).

Treasury has provided an [Overview of the 2023 Interim Final Rule](#) which includes a summary of the changes and a non-exhaustive list of eligible uses. In addition, Treasury has also produced a [one-pager](#) on the changes.

## **Resolutions Due Monday for 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](mailto:jj@tml.org).

## **Governor Issues Disaster Declaration for 191 Counties**

On Monday, Governor Abbott issued a [disaster declaration](#) for 191 counties in response to widespread wildfire activity. The governor has directed the deployment of the following resources:

- Texas A&M Forest Service: Firefighting personnel and heavy equipment such as bulldozers; 30 all hazard incident management team personnel; 31 aircraft; 13 Texas Intrastate Fire Mutual Aid System strike teams comprised of over 230 personnel and over 70 fire engines;
- Texas Department of State Health Services (Texas Emergency Medical Task Force): Wildland Fire Support Packages including paramedics and ambulances;
- Texas Division of Emergency Management: emergency response personnel to support local requests for assistance;
- Texas Department of Transportation: Fuel and water tenders for firefighting support; and
- Texas National Guard: Blackhawks with fire-suppression capability

Texas remains at a [Wildfire Preparedness Level 4](#) according to the Texas A&M Forest Service due to current and expected wildfire activity and fuel and weather conditions.

## **Post-Session Update: Annexation Along and Across Rights-of-Way**

The Texas Legislature recently adopted [H.B. 586](#) which allows cities to annex roadways, in certain instances, without the requirement for actual consent of the right-of-way owner. The bill enhances cities' and landowners' options regarding expanding or joining a community and is currently in effect.

### **Annexation of Adjacent Roadways**

H.B. 586 codifies two pivotal changes to city annexation authority. First, it simplifies the process of annexing roadways by removing the need for explicit consent from right-of-way owners; as long as there is no objection, the city and landowner can proceed. Previously, the lack of a response from such owners often hindered or terminated annexations. Second, the bill permits the use of roadways to bridge connections between a city and properties in its extraterritorial jurisdiction (ETJ), broadening annexation possibilities for ETJ landowners.

### **Key Provisions of H.B. 586**

1. **Conditions for Annexation:** A city may annex a road right-of-way if:

- The right-of-way is adjacent to the city’s boundary or an area that is being simultaneously annexed by the city;
  - The right-of-way either runs parallel to the city’s boundary or an area that is being simultaneously annexed by the city or it connects the city’s boundary to another annexed area or another point on the city’s boundary; and
  - The annexation must not lead to the city’s boundaries encompassing an area not already under its extraterritorial jurisdiction before the annexation.
2. **Requirements for Annexation:** A city can only annex a road right-of-way described above if:
- The owner of the right-of-way or the governing body of the political subdivision that maintains the right-of-way submits a written request for annexation; or
  - The city notifies the right-of-way’s owner or the maintaining political subdivision in writing at least 61 days before the proposed annexation date, and no written objections are received before the proposed annexation date.
3. **Special Provisions for Government-Owned Roads:** If a governmental body owns or maintains the right-of-way intended for annexation, the city must adhere to the location specified by that governmental body for delivering the notice.
4. **Exclusions:**
- The width requirements applicable to annexed areas in certain circumstances do not pertain to annexations made under this new bill.
  - Annexing a road right-of-way as described in the bill does not expand the annexing city’s ETJ.

This bill addresses two major challenges previously impeding city annexation. First, the bill permits annexation of areas anywhere within a city’s ETJ, provided a connecting roadway to the city exists. Moreover, the newly established 60-day period for roadway owners to voice any annexation objections provides cities and landowners with enhanced clarity and assurance when roadways are involved in annexation.

Please consult with your city attorney regarding these updated provisions as your city strategizes its future annexation initiatives.

## **Post-Session Update: Truth in Taxation**

During the regular legislative session, the legislature passed the following significant bills regarding property taxes.

## **Electronic Communications with Tax Officials**

[H.B. 1228](#), which takes effect January 1, 2024, will require taxing units, including cities, to establish a procedure that allows a property owner to elect to exchange communications with the taxing unit electronically. This change makes electronic communications available at the unilateral election of the property owner rather than by agreement between the property owner and city. “Communication” is broadly defined to include a notice, rendition, application, report, filing, statement, order, bill, or any other item of information required or permitted by law. The bill requires the comptroller to prescribe a form on which the election may be made, to prescribe acceptable media, formats, content, and methods for electronic communications, and to adopt guidelines for a city follow in implementing the delivery of electronic communications.

Additionally, a city will be required to prominently display the information necessary for proper electronic delivery of communications on the city’s website, if the city maintains a website, and on each communication sent to the property owner.

For a city located wholly or primarily in an appraisal district for a county with a population of 120,000 or more, the electronic communications requirements of the bill apply for the 2024 tax year. A city located wholly or primarily in an appraisal district for a county with a population of less than 120,000, the electronic communications requirements apply starting with the 2025 tax year.

## **Notice of Property Tax Amount**

[H.B. 3273](#), which takes effect January 1, 2024, will require a city to post on its website a notice informing each owner of property that the estimated amount of taxes to be imposed on the owner’s property may be found in the appraisal district’s property tax database. If the city does not maintain a website, the city can use a generally accessible website such as Facebook.

## **Calculation of Unused Increment Tax Rate**

[S.B. 1999](#), which takes effect January 1, 2024, makes changes to the way a city calculates the unused increment component of its voter-approval tax rate (VATR). The unused increment rate (UIR) is the difference between the adopted rate and the VATR for the three preceding years. The UIR is added in the calculation of the VATR, thereby allowing the city to adopt a higher rate without triggering an election if the city has adopted rates lower than its voter-approval rate in any or all of the preceding years.

The UIR calculation *before this bill* was as follows:

$$\text{UNUSED INCREMENT RATE} = (\text{YEAR 1 VOTER-APPROVAL TAX RATE} - \text{YEAR 1 ACTUAL TAX RATE}) + (\text{YEAR 2 VOTER-APPROVAL TAX RATE} - \text{YEAR 2 ACTUAL TAX RATE}) + (\text{YEAR 3 VOTER-APPROVAL TAX RATE} - \text{YEAR 3 ACTUAL TAX RATE})$$

S.B. 1999 changes the calculation to:

*UNUSED INCREMENT RATE = (YEAR 1 FOREGONE REVENUE AMOUNT + YEAR 2 FOREGONE REVENUE AMOUNT + YEAR 3 FOREGONE REVENUE AMOUNT) / CURRENT TOTAL VALUE*

For the S.B. 1999 calculation, “foregone revenue amount” means the preceding year’s total value multiplied by the preceding year’s VATR minus the preceding year’s actual tax rate.

This change produces two results. First, the UIR is now tied to the preceding years’ revenue and the current year’s taxable value in the city rather than to the preceding years’ rates. The unused increment is now a dollar amount yield that a city may carry forward. Tying the rate to revenue and taxable value is consistent with the way the voter-approval and no-new-revenue tax rates are calculated.

Second, the new calculation eliminates the possibility of a city’s UIR being reduced because the city adopts a rate higher than the VATR in one of the three preceding years. Under a strict interpretation of the pre-S.B. 1999 calculation, if a city adopted a tax rate that exceeded the VATR, a negative number would be produced. If a city had unused increment in either of the other two of the three preceding years, that unused increment would be reduced by the amount of that negative number produced in the one year the VATR was exceeded. S.B. 1999’s change to the calculation eliminates that possibility.

### **Calculation of Voter-Approval Tax Rate for Unused Increment Rate**

[S.B. 2350](#), which took immediate effect, purports to require a city to use only the VATR as entered on the truth-in-taxation forms from the previous year when calculating the UIR, regardless of whether there was an error in the calculation of the VATR.

However, there is a patent ambiguity in the bill. The bill refers to the VATR “as adopted” by a governing body in the preceding tax year. The VATR is calculated by the governing body and entered on the truth-in-taxation forms, but it is not adopted by the governing body. Usually “adopted” is used in the context of the rate that the city adopts and uses to levy taxes, not the VATR.

It’s a possibility that the use of “adopted” as opposed to “calculated” was a simple drafting error. The most conservative approach to implementing this bill would be for the city to assume that after it has adopted its tax rate for a certain year, it is locked in to the VATR as calculated and entered on the truth-in-taxation forms regardless of whether there was an error in the calculation.

## **Post-Session Update: Certificates of Obligation and Anticipation**

### **Notes**

Though many bills were filed during the 88<sup>th</sup> Legislative Session that would impact cities’ ability to issue debt, only one bill passed and was signed into law that has a meaningful impact on the process. Cities have long been able to issue certificates of obligation (CO) or anticipation notes for the construction of a “public work.” However, the term “public work” was never defined in statute.

[H.B. 4082](#), effective on September 1, defines “public work” for purposes of issuing COs and anticipation notes. Under the new definition, the following are considered to be a “public work”:

1. A street, road, highway, bridge, sidewalk, or parking structure;
2. A landfill;
3. An airport;
4. A utility system, water supply project, water or wastewater treatment plant or conveyance facility;
5. A wharf or dock;
6. A flood control and drainage project;
7. A public safety facility, including a police station, fire station, emergency shelter, jail, or juvenile detention facility;
8. A judicial facility;
9. An administrative office building housing the governmental functions of the city;
10. An animal shelter;
11. A library;
12. A park or recreation facility that is generally accessible to the public and is part of the city park system; and
13. Rehabilitation, expansion, reconstruction, or maintenance of an existing stadium, arena, civic center, convention center, or coliseum that is owned and operated by the city or by an entity created to act on behalf of the city.

A CO or anticipation note may be issued for any of the above improvements, which likely encompasses the vast majority of purposes for which such debt is customarily issued. City officials should keep in mind, however, that legislation that passed in 2019 provides that in order to finance any non-voter approved debt issuance through the debt service portion of the property tax rate, the debt must meet certain requirements in Tax Code Sec. 26.012(7), including being issued for existing buildings or facilities, for vehicles or equipment, or for “designated infrastructure,” as that term is defined in the statute. In other words, the improvements being funded with a CO or anticipation note should meet the definition of “public work” in H.B. 4082 and also the definition of “debt” in the Tax Code for a city to be able to dedicate property tax revenue towards paying off the debt.

Perhaps of equal interest to city officials are the facilities *excluded* from the new definition of “public work” in H.B. 4082. Those facilities are:

1. A facility for which more than 50 percent of the average annual usage is, or is intended to be, for professional or semi-professional sports;
2. A new stadium, arena, civic center, convention center, or coliseum that is or is intended to be leased by a single for-profit tenant for more than 180 days in a single calendar year; and
3. A hotel.

H.B. 4082 did not modify existing statutory authority for a city to issue a CO or anticipation note for certain other purposes besides the construction of a “public work” including, among other things, the purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs or purposes or the payment of contractual obligations for certain professional services.

Cities considering issuing COs or anticipation notes after September 1 are encouraged to discuss the impact of H.B. 4082 with their bond counsel and financial advisor.

## **BDO to Host Virtual Meetings on Local Broadband Needs**

The Texas Broadband Development Office (BDO) will hold two virtual statewide public meetings for residents to provide comments to help develop the state’s broadband plan to provide all Texans with reliable and affordable internet service. The BDO virtual meetings are open to all but are geared toward those who could not attend one of the BDO’s in-person broadband meetings this summer. Public attendance and participation are encouraged.

The BDO virtual meetings will be held:

- **Tuesday, August 22<sup>nd</sup> from 1:00 – 3:00 PM** (English) – register [here](#)
- **Thursday, August 24<sup>th</sup> from 4:00 – 6:00 PM** (Spanish) – register [here](#)

## **Reminder: BDO Accepting Survey Responses Until August 31**

The Texas Broadband Development Office (BDO) is accepting public surveys regarding broadband service levels around the state until **August 31, 2023**.

The BDO is in the process of developing the Texas Digital Opportunity Plan for achieving reliable and affordable broadband, device access, digital skills training, and cybersecurity awareness to expand digital opportunities for all Texans.



The BDO wants to hear from the public. The [Digital Opportunity Public Survey](#) (DOPS) seeks information from individual households about their experience with broadband internet accessibility, affordability, and adoption. The survey includes an optional speed test and is available in English, Spanish, Chinese, and Vietnamese. It is also audio-enabled to ensure that people with limited literacy, limited English proficiency, or visual impairments can head the survey questions and answers. The DOPS will take about 10 minutes to complete. Participants can email their surveys to: [plan4broadband@cpa.texas.gov](mailto:plan4broadband@cpa.texas.gov) or mail them to the BDO at:

Texas Comptroller's Broadband Development Office  
P.O. Box 13528  
Austin, TX 13528

The BDO welcomes all survey responses, but is specifically seeking responses from Brooks, Cottle, Crane, Crosby, Dimmit, Goliad, Hartley, Jim Hogg, Kenedy, Loving, Lynn, Martin, McMullen, Sterling, and Stonewall counties.

Interested city officials can find more information about the BDO and the state's broadband efforts [here](#).

All surveys must be submitted by **August 31, 2023**.

## **SECO Opens Applications for LED Lighting Funding**

The [State Energy Conservation Office](#) (SECO) in the comptroller's office partners with local governments to reduce utility costs and maximize efficiency by offering programs to assist cities in those efforts. SECO opened applications for the [Municipally Owned Interior and Exterior LED Lighting Retrofits RFA](#) which aims to provide reimbursable grants to assist cities to replace lighting fixtures/equipment in community, recreation and other similar facilities with high-efficiency LED lighting. While the RFA is open to all cities regardless of size, SECO encourages applications from smaller, underfunded cities across the state.

Applications must be submitted by September 22, 2023 at 2:00 p.m. CT. Information on other SECO programs can be found [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 IJA funding for local infrastructure projects.*

### **U.S. Department of Agriculture (USDA)**

The USDA is accepting applications for its Water and Waste Disposal Loan and Grant Program (WWDLG). The WWDLG provides low-interest loans to state and local governmental entities, non-profit organizations, and federally recognized tribes for clean and reliable drinking water systems, sanitary sewage disposal, sanitary solid waste disposal, and stormwater drainage projects in small rural areas and towns, rural Tribal lands, and colonias.

Eligible projects include buying, constructing, or improving the following types of facilities or operations:

- Drinking water sourcing, treatment, storage, and distribution;
- Sewer collection, transmission, treatment, and disposal;
- Solid waste collection, disposal, and closure; and
- Stormwater collection, transmission, and disposal.

Eligible expenditures may include:

- Legal and engineering fees;
- Land acquisition, water and land rights, permits and equipment;
- Start-up operations and maintenance;
- Construction-related interest;
- Purchasing backup service facilities; and
- Other necessary construction costs

The USDA is accepting WWDLG applications on a rolling basis. City officials can find more information about WWDLG eligibility, applications, and other terms and conditions [here](#).

### **National League of Cities Grant Application Bootcamps**

The National League of Cities (NLC), through its Local Infrastructure Hub, is currently accepting registrations for a series of no-cost federal grant application bootcamps to help cities and towns develop competitive IJA-related grant applications. NLC bootcamps will provide participants with access to subject-matter-experts, individual and group coaching sessions, grant application templates, example submissions, and other resources.

NLC bootcamps are open to mayors, city officials, and city staff. Each bootcamp will last between three and four months. Active participation is required.

The NLC is currently accepting registrations for the following bootcamps:

- [The Combined Railroad Crossing Elimination Program & CRISI](#)
- [The Bridge Investment Program](#)
- [The Drinking Water State Revolving Fund](#)
- [Broadband Opportunities](#)
- [Neighborhood Access and Equity Grant Program](#)

City officials can find more information about the NLC bootcamp program [here](#). Registration can be found [here](#).

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