

TML LEGISLATIVE UPDATE



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Number 42

Special Session Update: Governor Expands Call

On Tuesday, Governor Abbott [expanded](#) the third-called special session to include:

- Legislation to do more to reduce illegal immigration by creating criminal offenses for illegal entry into this state from a foreign nation and illegal reentry or presence following denial of admission, exclusion, deportation, or removal; authorizing all licensed peace officers to remove illegal immigrants from Texas; and providing indemnification of public officials, employees, or contractors in connection with the foregoing.

The House State Affairs Committee considered [3H.B. 4](#) by Representative Spiller, which would create a criminal offense for illegal entry into the state from a foreign nation. Additionally, the bill requires local governments to indemnify an official, employee, or contractor for damages and costs associated with criminal prosecution arising from the enforcement of the new criminal penalty.

The committee also heard testimony on an item from the governor's original call related to legislation concerning public safety, security, environmental quality, and property ownership in areas like the Colony Ridge development in Liberty County, Texas. However, the committee did not take up any specific legislation regarding this topic.

The League will continue to keep the membership updated as the special session continues.

PFAS Litigation Settlement Deadlines and New EPA Regulations

Cities nationwide have filed suit against chemical companies Dupont and 3M for designing, manufacturing, marketing, selling, and supplying perfluoroalkyl and polyfluoroalkyl substances (PFAS) – a family of toxic chemicals, including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). PFAS is a key component of firefighting foam. PFAS is easily dissolved in water, which allows it to seep into the soil, groundwater, and aquifers.

PFAS is a “forever chemical” that does not naturally break down. The U.S. Environmental Protection Agency (EPA) has linked PFAS exposure to many health issues, including increased cancer risks, liver damage, compromised immune systems, low birth weights, and developmental delays. Comprehensive filtration and remediation efforts are the only way to reduce PFAS levels.

Thousands of lawsuits were consolidated into a Multi-District Litigation (MDL) class action in the United States District Court for the District of South Carolina (*See In Re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873 (D.S.C.)). City officials can find more information about the PFAS litigation [here](#).

The Settlement

In June 2023, the parties announced they had reached settlement agreements that would provide cities, towns, and other public water suppliers with up to \$14 billion over 13 years to test and treat for PFAS contamination.

The 3M settlement will pay plaintiffs between \$10 - \$12.5 billion. The DuPont settlement will pay plaintiffs between \$1 - \$2 billion. Payouts are likely to begin in mid-2024. 3M will stagger defendants’ payments over three or more payouts. DuPont will provide defendants with a one-time lump sum payment.

What Cities Are Covered?

Both settlements cover all public water suppliers, regardless of whether they are named plaintiffs. The 3M lawsuit covers all PFAS-related substances. The DuPont lawsuit does not cover PFOS-related substances. More succinctly, if you have any PFAS contamination, you are in both lawsuits. But if you only have PFOS contamination, you are only in the 3M lawsuit.

How to Participate in the Settlement

Cities must file a 3M and/or DuPont claim form to participate in the settlement. Claim forms must include information about the city’s water flow rates and PFAS percentage levels. Cities must also provide some documentation to support these findings. This information can be provided by an outside consultant or the city’s water department.

Settlement claims are divided into two groups: Phase 1 and Phase 2. Phase 1 claimants have performed PFAS testing and can provide detailed scientific findings. Phase 2 claimants have not yet performed or completed PFAS testing.

Phase 1 claimants must file their claims within 60 days of the settlement effective dates. The DuPont settlement fairness hearing will be held on **December 14, 2023**. The 3M settlement fairness hearing will be held on **February 2, 2024**. The settlement effective dates will likely be within 14 to 30 days of the court's approval of the agreements.

If the court approves the DuPont settlement agreement at the fairness hearing, Phase 1 claimants may need to file their claim as early as **December 28, 2023**.

If the court approves the 3M settlement agreement at the fairness hearing, Phase 1 claimants may need to file their claim as early as **February 16, 2024**.

All Phase 2 claimants must file their claims by **January 1, 2026**.

- [DuPont claim forms](#)
- [3M claim forms](#)

Opting Out of Settlement

If a city does not want to settle its claims, it may opt out of the settlement agreements. If a city opts out of the settlement, it will not be included. Opted-out claims must be pursued individually. A city must file an opt out form to be released from the settlement.

DuPont claimants must file their opt out form by **December 4, 2023**. 3M claimants must file their opt out form by **December 11, 2023**.

More information on how to opt out can be found under FAQ Question #8 on the [PFAS settlement website](#).

What Happens if a City Does Nothing?

A city must file a claim or opt out of the settlements to recover any PFAS-related damages.

If a city does not opt out of the settlement agreements, it **must** file a claim to be able to receive settlement funds. If a city does nothing, its claims will be resolved as part of the settlement without compensation.

Upcoming EPA Regulations

Meanwhile, the EPA has proposed two major PFAS-related regulations:

National Primary Drinking Water Regulation for PFAS (NPDWR-PFAS)

[NPDWR-PFAS](#) would set a PFOA and PFOS maximum contaminant level at four (4) parts per trillion. All local government water suppliers would be required to mitigate all PFAS contamination to meet this standard. The EPA is expected to adopt a final rule in **January 2024**.

PFAS as a Hazardous Substance

The EPA is also considering making PFAS chemicals a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under CERCLA, any person held liable for the presence of a hazardous substance can potentially be held responsible for all cleanup costs. The EPA is expected to make a final decision on this issue in **February 2024**.

City officials can find detailed information about the two PFAS cases and settlements [here](#). Please consult your city attorney to determine how best to proceed and comply with any future EPA regulations.

Comptroller Proposes Rules for Broadband Development Program

The comptroller's office has proposed several new rules to implement changes to the state's broadband development program established by [S.B. 1238](#). The proposed rules would, among other things:

- Require the comptroller to create and annually update the state's broadband development map, depicting broadband service availability across the state;
- Establish a broadband development map location classification challenge process for internet service providers and political subdivisions;
- Provide the criteria that the Broadband Development Office (BDO) must consider when making a map challenge determination, including: (1) the availability of reliable broadband service; (2) actual internet speeds and reliability data; (3) whether an existing federal funding commitment covers the area; and (4) any other information the BDO believes may help make its determination;
- Establish new program definitions;
- Require the BDO to publish notice of funds availability;
- Allow the BDO to reject broadband funding applications that do not facially comply with program requirements and provide resubmission rules;
- Establish a process to resolve overlapping project area issues;
- Provide broadband funding eligibility and award criteria, including a fiber optic preference, and require the BDO to publish notice of eligibility and award criteria;

- Provide a funding application protest process and require the BDO to publish notice of funding criteria and protest and resubmission requirements;
- Clarify restrictions on eligible uses of BDO broadband infrastructure grants.

City officials can find more information about these proposed rules [here](#).

Cities wishing to submit written comments may submit their comments to Greg Conte, Director, Broadband Development Office, by email at broadband@cpa.texas.gov or by mail at P.O. Box 13528, Austin, Texas 78711-3528.

All comments must be received by **Sunday, November 12, 2023**.

TxDOT Proposes New Unified Transportation Plan Funding Allocation Rules

The Texas Department of Transportation (TxDOT) has proposed rules revising the state’s unified transportation plan funding allocation for transportation districts and metropolitan planning organizations (MPOs). TxDOT’s proposed rules would:

- Require that Category 2 Metropolitan and Urban Corridor projects must first be allocated on priority projects as determined by the MPOs;
- Require that TXDOT determine the final distribution of Category 5 Congestion Mitigation and Air Quality Improvement funds between a transportation district and an MPO, and that an MPO must obtain the transportation district’s concurrence on the project before such funds may be used; and
- Establish how much, and the process by which districts and MPOs may carry over unused funds to the next fiscal year.

City officials can find more information about these proposed rules [here](#).

TxDOT will hold an in-person public hearing on these proposed rules on **Friday, November 2, 2023**, at **9:00 a.m.** in the Ric Williamson Hearing Room at TxDOT headquarters at 125 East 11th Street, Austin, TX. Anyone wishing to make comments or presentations may register beginning at 8:00 a.m. that morning.

Cities wishing to submit written comments on these proposed rules may submit their comments by mail to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, TX 78701, or by email to rulecomments@txdot.gov with the subject line “UTP Formula Allocation Rule Changes.” All persons who submit written comments must comply with Texas Transportation Code §201.811(a)(5).

All written comments must be received by **5:00 p.m. on Monday, November 13, 2023.**

TCEQ Water Operator Resiliency Training Requirements

In response to Winter Storm Uri and [Senate Bill 3](#) from 87th Texas Legislature, Texas Commission on Environmental Quality (TCEQ) has implemented a resiliency training requirement to address preparing for, preventing, and responding to weather emergencies and power outages.

The new TCEQ resiliency training requirements will go into effect on **April 1, 2024** for all water operators.

For details, please refer to the [Guidance for Resiliency Training Requirements for Water Operators and Training Providers](#). Below is a summary of the resiliency requirements for water operators:

- For applications received on or after April 1, 2024, individuals obtaining or upgrading a water license must take the two-hour core course “Resiliency Overview” or the revised Basic Waterworks Operation core course, which includes the resiliency overview. The overview course may only be taken once for credit and will apply to all water licenses held by an individual.
- All current active water license holders, with licenses that expire on or after April 1, 2024, must complete a minimum of two hours of Resiliency Continuing Education (CE) training within each renewal cycle to renew their water license at any level. The Resiliency CEs will count towards the 30 CEs required to renew the license.
- All current active water license holders must take the two-hour core course “Resiliency Overview” once, within one of the first two renewal cycles. This will meet the resiliency requirement for the renewal cycle in which it was taken and will also count towards the 30 CE hours required to renew a water license.
- If an individual holds multiple water licenses, the Resiliency CE hours will be applied to all current water licenses, as long as they are obtained during each licenses' validity period.

Approved resiliency training can be found on the [TCEQ licensing website](#).

Reminder: City-Related Constitutional Amendment Propositions

Seven of the fourteen proposed amendments to the Texas Constitution on the November 7, 2023, ballot directly or indirectly affect Texas cities. The League previously outlined those propositions [here](#). Early voting begins on October 23.

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.

United States Department of Transportation (USDOT)

USDOT is accepting applications for its \$200 million competitive Rail Vehicle Replacement Grant (RVRG) program. The RVRG program is designed to modernize America's transit system and maintain the nation's fixed-guideway rail transit system by providing grant funding to state and local governmental entities to replace revenue service, passenger-carrying, or propulsion rail (collectively, "rail rolling stock vehicles").

Eligible recipients are state and local governmental entities in urbanized areas eligible for USDOT State of Good Repair Formula Funding. Federal grant funding may not exceed 80 percent of the net project cost.

Applicants should specifically identify how their proposed project addresses at least one of the following issues: (1) improving rail safety; (2) increasing service performance and reliability; (3) improving transit access and mobility for persons with disabilities; and (4) helps combat climate change by reducing harmful emissions.

Applicants must also demonstrate how their projects comply with local and regional planning documents, including long-range transportation plans and state and metropolitan transportation improvement programs.

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

RVRG applications must be received by **10:59 p.m. (CST) on Monday, December 18, 2023.**

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