

TML LEGISLATIVE UPDATE



October 27, 2023
Number 43

Special Session Update

The House passed four bills this week as time starts to run out on the third-called special session. The approved bills include legislation prohibiting a private employer from imposing COVID-19 vaccine mandates ([3S.B. 7](#)), legislation increasing criminal penalties related to the smuggling of persons and operation of stash houses ([3S.B. 4](#)), an appropriation of funds for border barrier infrastructure ([3H.B. 6](#)), and legislation creating a criminal offense for illegal entry into or illegal presence in the state ([3H.B. 4](#)).

Of specific interest to cities, **3H.B. 4** was amended on the House floor to modify the initially-proposed indemnification requirements for local governments. Specifically, the House approved an amendment that eliminates the requirement for a local government to indemnify an officer, employee, or contractor for damages arising from a cause of action resulting from a good faith ultra vires action by the person to enforce the new criminal offense of illegal entry or illegal presence. Even with this change, the bill requires local government indemnification of an official, employee, or contractor for damages arising from a cause of action, or for attorney's fees arising from a criminal prosecution, resulting from an action taken by the person to enforce the illegal entry or illegal presence during the course and scope of the person's office, employment, or contractual performance on behalf of the local government. The amount of local government

indemnification for damages arising from a cause of action against an officer, employee, or contractor are now capped at \$10,000 for a single occurrence of property damage, and \$100,000 to any one person or \$300,000 for any single occurrence of personal injury or death.

Except for **3S.B. 4**, which goes to the governor for his signature, the bills now head to the Senate for consideration and approval.

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

Comptroller Proposes Local Sales Tax Sourcing Rule Governing Order Receipt and Fulfillment; Public Hearing on November 8

On October 27, the comptroller published notice of changes to the office's administrative rules governing local sales tax sourcing. [The proposal](#) would add the following language to the existing sales tax sourcing rule governing the location where an order is received:

“The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.”

According to the [preamble to the rule](#), the changes are necessary to provide a clear articulation of the comptroller's interpretation of the term “received” that is applicable to all orders, including automated website orders and fulfillment warehouses.

The background materials go on to highlight the impact of the proposed change on local sales tax sourcing relating to distribution centers and warehouses, which is, in part, the subject of ongoing litigation involving six Texas cities and the comptroller. According to the comptroller, the new rule may “facilitate a more definitive decision from the courts” on the pending litigation.

The comptroller will hold a public hearing on November 8, 2023 to receive comments on the proposed rule change. The hearing will take place at 9:00 a.m. in Room 2.034 of the Barbara Jordan Building, 1601 Congress Avenue, Austin, Texas 78701. Interested city officials may sign up to testify starting at 8:30 a.m. and testimony will be heard on a first come, first served basis. Everyone wishing to testify will have ten minutes to present their testimony and are required to also provide their testimony in writing prior to their oral testimony.

Interested city officials may also submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. Comments must be received no later than 30 days from the date

of publication of the proposal in the Texas Register, which means the comment deadline falls on Sunday, November 26, 2023.

AG Issues Advisory Letter on Compliance with Certain Governmental Contract Restrictions

The Office of the Attorney General has issued an advisory letter to provide guidance to state and local governmental entities about how to comply with recent legislation restricting certain contracts with entities that: (1) boycott Israel; (2) discriminate against firearm and ammunition industries; and (3) boycott certain energy companies.

City officials can find the OAG Advisory Letter [here](#).

U.S. Access Board Releases New Federal ADA Public Right-of-Way Design Criteria and Standards

In August, the United States Access Board (Access Board) released new [public right-of-way guidelines \(PROWAG\)](#) under the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA). The Access Board is an independent federal agency tasked with developing, providing technical assistance about, maintaining, and enforcing ADA-compliant design criteria and standards for public rights-of-way.

The new PROWAG guidelines incorporate new technology and building methods to improve access to streets, sidewalks, curb ramps, crosswalks, parking, and pedestrian signals. The new guidelines include:

- Minimum scoping and technical requirements;
- Alternate access routes;
- Design standards for public right-of-way space elements (e.g., curb ramps, blended transitions, on-street parking, crosswalks, and shared-use paths); and
- New technology requirements for pedestrian signals and detectable warning surfaces.

PROWAG guidelines apply to new construction, alterations, and additions to pedestrian facilities covered under Title II of the ADA, ABA, and Section 504 of the Rehabilitation Act. Title II of the ADA and the ABA apply to all local government buildings and facilities designed, built, or altered with federal dollars after August 12, 1968. Section 504 of the Rehabilitation Act applies to any program or activity receiving federal funding. The new guidelines become mandatory once adopted for enforcement by the Department of Justice and Department of Transportation.

The Access Board has released several training videos about the new guidelines for local government officials. The training videos can be found [here](#).

The Access Board also provides free technical assistance on PROWAG guidelines and standards through its helpline at (202) 272-0080, extension 3, and by email at ta@access-board.gov and row@access-board.gov.

TWDB Opens Flood Mitigation Assistant Grant Applications

The Texas Water Development Board (TWDB) has opened applications for the 2023 [Flood Mitigation Assistance](#) (FMA) grants. Applications are due by **January 8, 2024**. Early submissions will receive more technical assistance from the TWDB.

The FMA grant program is administered by the TWDB on behalf of the Federal Emergency Management Agency (FEMA) and provides federal funding to pay for cost effective ways to reduce or eliminate the long-term risk of flood damage to repetitive loss and severe repetitive loss structures that are insured under the National Flood Insurance Program (NFIP). A total of \$800 million is available for funding nationwide. Applicants are encouraged to view the [Notice of Funding Opportunity](#) for the FMA grant prior to applying.

More information on how to apply can be found [here](#).

NLC Releases Fiscal Conditions Report

The National League of Cities (NLC) has released its [2023 City Fiscal Conditions Report](#). The report analyzes data from 820 cities nationwide to show that cities have maintained a positive outlook about their near-term fiscal future. NLC has determined the following key takeaways:

- **Cautious budgeting resulted in better preparation:** The cautious approach by many cities in 2023 yielded increased reserves and limited spending, demonstrating that local governments remain good stewards of public dollars.
- **Better able to weather inflation:** Despite the challenge of inflation, the average city experienced more than a six percent increase in general fund revenues. Inflation is more manageable and cities are reaping some benefits of lower inflation.
- **Federal aid had a positive impact on city budgets:** Direct federal aid through the American Rescue Plan Act (ARPA) and the bipartisan infrastructure law was among the factors that had a positive impact on cities' ability to balance their 2023 budgets.
- **Planning for uncertainties:** Making it through a strong 2022 fiscal year, the survey analysis reveals that many cities are still very cautious in their budgeting. They anticipate potential risks and uncertainties in the post-COVID era as they plan for the current and next fiscal year. Among the concerns for local leaders is the expected end of federal funding through ARPA.

The full report can be downloaded [here](#).

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.