

# TML LEGISLATIVE UPDATE



November 3, 2023  
Number 4

## **Special Session Update: Education Items Added to Call and Senate Moves Ahead on Other Legislation**

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

- Legislation relating to primary and secondary education, including the establishment of an education savings account program, the certification, compensation, and health coverage of certain public school employees, the public school finance system, special education in public schools, measures to support the education of public school students that include certain educational grant programs, reading instruction and early childhood education, the provision of virtual education, and public school accountability.
- Legislation related to school safety measures and related state funding mechanisms.

This week, the Senate passed legislation relating to an appropriation of funds for border barrier infrastructure including a portion of funds dedicated to law enforcement presence and security in the Colony Ridge development in Liberty County ([3S.B. 6](#)). The Senate concurred with House amendments to [3S.B. 7](#), prohibiting a private employer from imposing COVID-19 vaccine mandates. The bill now heads to the governor for his signature.

The Senate Committee on Border Security approved [3H.B. 4](#) on Wednesday. The committee substitute amended the bill to mirror [3S.B. 11](#), previously passed by the Senate, but kept the House language that 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 new criminal provisions related to improper entry from a foreign nation. In its current form, the amount of local government indemnification for damages arising from a cause of action against an officer, employee, or contractor is 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.

The third-called special session is set to end on Tuesday, November 7.

## **City of Grand Prairie Files Lawsuit to Declare ETJ Removal Legislation Unconstitutional**

On October 25, the City of Grand Prairie [filed a lawsuit](#) in Travis County to have S.B. 2038 declared unconstitutional. S.B. 2038, which went into effect on September 1, 2023, generally authorizes residents of a city’s extraterritorial jurisdiction (“ETJ”) to petition for removal from the city’s ETJ under certain circumstances. The League’s post-session summary of S.B. 2038 can be read [here](#).

Among other things, the City of Grand Prairie argues that S.B. 2038 violates the “separation of powers” doctrine in the Texas Constitution by delegating legislative decisions to private property owners, violates due course of law for being unconstitutionally vague and for lack of notice and an opportunity for property owners to be heard, and conflicts with existing state law requiring city council consent for the reduction in size of a city’s ETJ.

If joining this litigation might make sense for your community, please contact Bradford Bullock, partner with the Messer Fort law firm, at [brad@txmunicipallaw.com](mailto:brad@txmunicipallaw.com).

The League will monitor the litigation closely and provide updates as they become available.

## **Reminder: 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](mailto: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.

## **Update to Comptroller’s List of Companies that Boycott the Energy Sector**

On November 1, Comptroller Glenn Hegar added five new companies to his office’s [list of companies](#) boycotting the oil and gas industry bringing the total to fifteen companies. Companies on this list are subject to divestment provisions under [Chapter 809 of the Texas Government Code](#). Chapter 809 requires state entities, including major retirement systems and the Permanent School Fund, to adhere to the investment prohibitions and divestment requirements under that chapter. These entities must notify the comptroller of their holdings in listed financial companies within 30 days and submit an annual report detailing compliance with Chapter 809.

The list, initially provided in August 2022, includes enhanced answers to [frequently asked questions](#) about the listing process and research conducted by the comptroller’s staff. No other changes were made to the list of almost 350 investment funds subject to the same provisions.

While cities are not subject to Chapter 809 divestment rules, cities are prohibited under [Chapter 2274 of the Government Code](#) from entering certain contracts with energy-boycotting companies. This list can be a useful tool to determine whether a potential city vendor could create issues under Chapter 2274.

## **Texas Demographic Center to Release New Population Estimates**

The Texas Demographic Center (TDC) is set to release the final estimates of the total population of cities and counties for July 1, 2022 and January 1, 2023 on November 6. The estimates will be available [here](#).

To accompany this release, the TDC will host a free webinar on November 7<sup>th</sup> at 10:00 a.m. (CST). The webinar will provide an overview of the methodology and process and allows for user and stakeholder feedback. Interested city officials can register for the webinar [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 (USDOT)**

USDOT is accepting applications for its Accelerated Innovation Deployment (AID) grant program to provide funding to help support the deployment of innovative transportation or practices as part of a highway transportation project. Recipients may use AID grants for any project phase from planning through delivery, including planning, financing, operation, structures, materials, pavements, environment, and construction.

Eligible projects must be pilot deployments or proven innovative practices or technologies previously used by other transportation agencies and seek to address the USDOT's Technology and Innovation Deployment Program's (TIDP's) goals to:

- Significantly accelerate the adoption of innovative technologies by the surface transportation community;

- Provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion caused by construction, and improved quality and user satisfaction;
- Construct longer-lasting highways through the use of innovative technologies and practices that lead to faster construction of efficient and safe highways and bridges;
- Improve highway efficiency, safety, mobility, reliability, service life, environmental protection, and sustainability;
- Develop and deploy new tools, techniques, and practices to accelerate the adoption of innovation in all aspects of highway transportation; and
- Disseminate and evaluate information from accelerated market readiness efforts, including non-market-ready technologies, to public and private entities.

USDOT will prioritize eligible projects that address equity, climate change and sustainability, workforce development, and the use of innovations not previously funded through the AID program.

Please note that cities cannot apply through the AID program on their own. The Texas Department of Transportation (TxDOT) must apply on a city's behalf. TxDOT may submit up to two applications per city.

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

If cities have any questions about the AID program or how to submit their project ideas to TxDOT, please contact Robin Ayers, TxDOT Senior Federal Legislative Affairs Liaison at [robin.ayers@txdot.gov](mailto:robin.ayers@txdot.gov) or (512) 463-8435.

Cities interested in submitting an AID program application for TxDOT's consideration must submit their project ideas to TxDOT by **November 15, 2023**.

### **U.S. Environmental Protection Agency (EPA)**

The EPA is accepting applications for its \$20 million Innovative Water Infrastructure Workforce Development Grant program (WIWDG) to help cities and local public works departments develop a pipeline of skilled, diverse water and wastewater utility workers. The WIWDG program seeks to help build partnerships between federal, state, and local governments, educational institutions, labor organizations, apprentice groups, and other community-based organizations to provide access to water sector workforce and career opportunities.

Eligible projects include:

- **Project Area 1:** Internships and apprenticeships for skilled water utility trades;
- **Project Area 2:** Elementary, secondary, and higher education programs;
- **Project Area 3:** Regional industry and workforce development collaborative hiring programs;

- **Project Area 4:** Leadership development, occupational training, mentoring, or cross-training programs;
- **Project Area 5:** Education and training programs designed for decentralized (septic) water workers to support public health for communities that rely on private wells or septic systems; and
- **Project Area 6:** Workforce Training and development programs to reduce greenhouse gas emissions and other air pollutants to benefit disadvantaged communities.

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

Interested city officials must submit their WIWDG program application by **November 17, 2023**.

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