

# TML LEGISLATIVE UPDATE



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Number 45

## **Third Special Session Ends; Fourth Begins**

As the Legislature adjourned the third-called special session on Tuesday, Governor Abbott immediately [announced](#) the fourth to start at 5:00 p.m. the same day. The following items are included on the call:

- 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 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.
- 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 the removal of illegal immigrants from Texas; and providing indemnification and immunity for public officials,

employees, or contractors in connection with the foregoing.

- Legislation to impede illegal entry into Texas by providing more funding for the construction, operation, and maintenance of border barrier infrastructure, and additional funding for the Department of Public Safety for border security operations, including additional overtime expenses and costs due to an increased law enforcement presence to preserve public safety and security in the Colony Ridge development in Liberty County, Texas.

The authors of the border security legislation, [4H.B. 4](#) (Spiller) and [4S.B. 4](#) (Perry), announced that the two chambers have come to an agreement. [4H.B. 4](#) and [4S.B. 4](#) create a criminal offense for illegal entry into or illegal presence in the state.

The indemnification provisions in the bill differ from those in [3H.B. 4](#) filed during the previous special session. Specifically, the bill would require local government indemnification of an official, employee, or contractor of a local government for damages arising from a cause of action under federal law resulting from an action taken to enforce the new criminal provision up to certain caps, but only for an action taken during the course and scope of the individual's office, employment, or contractual performance and only if the individual did not act in bad faith, with conscious indifference, or with recklessness. A local government official, employee, or contractor would generally be immune from liability for damages arising from a cause of action under state law resulting from an action taken to enforce the new criminal provision. The bill retains the requirement for a local government to indemnify an official, employee, or contractor for reasonable attorney's fees incurred in the defense of a criminal prosecution of the individual for actions to enforce the new criminal provision during the course and scope of the office, employment, or contractual performance. On Thursday, the Senate approved [4S.B. 4](#) and [4H.B. 4](#) was voted out of the House State Affairs Committee.

The authors of border security funding legislation, [4S.B. 3](#) (Huffman) and [4H.B. 3](#) (Jetton) filed identical bills that would provide \$1.5 billion in funding for border security operations and the construction of a border wall and \$40 million to the Department of Public Safety for border security operations and to ensure public safety and security in the Colony Ridge development in Liberty County. The Senate approved [4S.B. 3](#) on Thursday. The House Appropriations Committee is set to meet Friday morning to consider its companion, [4H.B. 3](#).

Today marks the 233<sup>rd</sup> day that the Legislature has been in session in 2023 resulting in only 81 days of non-session days (this does not account for the impeachment trial of the attorney general). This will mark the most special sessions in the same year as regular session in Texas' history. There have been ten fourth special sessions and only four of those occurred in November. Those were in 1932 (Gov. Sterling), 1957 (Gov. Price Daniel), 1989 (Gov. Clements), and 1992 (Gov. Richards).

Even more rare is a December special session. Texas has experienced only one in December 1973. A December special session is not expected, as Governor Abbott previously stated that the fourth would be the last called special session for the 88<sup>th</sup> Legislature.

With any special session, legislators may file bills related to any subject whether or not they are included on the governor's call. However, legislation that is not germane to the governor's call generally cannot be considered. For this reason, the League will monitor all bills filed but will not be summarizing city-related bills that are not included in the governor's call for this special session.

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

## **Constitutional Amendment Election Results**

Over 2.5 million Texans voted on Tuesday – a 14.4% turnout, the highest in a constitutional amendment election since 2005. A proposed amendment to increase the retirement age for state justices and judges was the only one not to pass. The full election results can be found [here](#).

## **Major State Broadband Program Updates**

### **NTIA Grants New Funding Waiver to Enhance Pool of Federal Broadband Funding Applicants**

The comptroller recently [announced](#) that the National Telecommunications and Information Administration (NTIA) waived the Broadband Equity, Access, and Deployment (BEAD) program requirement that applicants must provide a bank letter of credit (LOC) to show that they have at least 25% of the grant dollar amount in the bank.

NTIA [explained](#) that applicants may use a credit union or performance bonds instead of providing a bank LOC. NTIA also stated that in some cases, NTIA may reduce an applicant's LOC or performance bond requirement to as low as ten percent of the grant amount.

City officials can find more information about NTIA's LOC requirements and the recent waiver [here](#).

### **Broadband Development Office Releases Initial Broadband Proposal for Public Comment**

Texas was awarded over \$3.3 billion in federal Broadband Equity, Access, and Deployment (BEAD) Program funds in June 2023. States must submit a Five-Year Action Plan and Initial Proposal to the NTIA for review and approval to receive the BEAD funds. NTIA requires all BEAD-fund states and territories to submit a Five-Year Action Plan outlining the state's broadband program's goals, objectives, and priorities. The Broadband Development Office (BDO) submitted its Five-Year Action Plan to NTIA in August.

NTIA also requires all BEAD-fund states and territories to submit an initial BEAD program proposal (Initial Proposal) outlining the state's program protocols, challenge process, subgrantee selection process, and subgrantee requirements. The BDO must submit its Initial Proposal to the NTIA by December 27, 2023.

The BDO recently published its draft Initial Proposal for public review and comment. Individuals may submit public comments to the BDO until 5:00 p.m. on **Monday, December 4, 2023**. The proposal, which includes a Volume I and Volume II, along with the comment portal, can be found [here](#).

Volume I outlines: (1) all BEAD program funding sources; (2) general information about unserved and underserved broadband service locations (BSLs); (3) community broadband anchor institutions (CAIs); and (4) eliminating duplicative funding awards.

Volume I also describes the proposed BEAD challenge process in detail, including:

- **What can be challenged** (CAI eligibility, BSL eligibility, enforceable commitments, and planned service projects);
- **Who can file a challenge** (local governments, interested non-profit organizations, and internet service providers);
- **General process** (4 phases, including challenges, rebuttals, and final determination);
- **General timeline** (120 calendar days from challenge to decision);
- **Challenge process and timeline** (28 calendar days);
- **Rebuttal process and timeline** (28 calendar days);
- **BDO Final Determination and NTIA review and approval** (78 calendar days); and
- **Examples of acceptable challenge and rebuttal evidence.**

Volume II details: (1) the BDO's BEAD program goals and objectives and key activities to achieve them. Volume II also describes the proposed broadband deployment and non-deployment subgrantee qualifications, selection process, and scoring matrixes.

The BDO proposes a nine (9) step subgrantee award process, which includes:

- **Public engagement** (10 calendar days);
- **Release of initial Notice of Funding Availability** (60 calendar days);
- **Round 1 gating criteria review** (21 calendar days);
- **Round 1 application review, scoring, and challenges** (60 calendar days);
- **Round 2 gating criteria review** (14 calendar days);
- **Round 2 application review, scoring, and challenges** (102 calendar days);
- **Geospatial deconfliction** (minimizing funding overlaps) (35 calendar days);
- **Award analysis** (24 calendar days); and
- **Final proposal public comment period** (40 calendar days).

City officials may email questions about the Initial Proposal to [plan4broadband@cpa.texas.gov](mailto:plan4broadband@cpa.texas.gov).

## **Governor Announces Over \$500 Million in Public Safety Grants**

This week, Governor Abbott [announced](#) that his Public Safety Office will administer over \$528 million in grant funding for public safety programs and services. The grants include, but are not limited to, the following:

- **Body-Worn Cameras:** 65 awards totaling \$4.8 million to equip peace officers with body-worn camera systems to document investigative activities.
- **Bullet Resistant Vests:** 134 awards totaling \$14.2 million to provide peace officers with rifle resistant body armor.
- **Homeland Security:** 383 awards totaling \$62 million to help prevent terrorism and prepare the threats and hazards that pose the greatest risk to the security of Texas and its citizens. These projects fund equipment, planning, training, exercises, and other activities for local, regional, and state-level agencies and strengthen core capabilities outlined in the National Preparedness Goal.
- **Project Safe Neighborhoods:** 21 awards totaling \$1.2 million for projects designed to create and foster safer neighborhoods through a sustained reduction in violent crime, including but limited to, addressing criminal gangs and felonious possession and use of firearms.

Interested cities can find a list of the grant opportunities and information on how to apply on the governor's eGrants [website](#).

## **GLO 2021 Winter Storms Action Plan Open for Public Comment**

On Monday, the Texas General Land Office (GLO) [revealed](#) its 2021 Winter Storms Action Plan. The plan includes over \$43 million in Community Development Block Grant Disaster Recovery funds. The funds were allocated to Texas by the U.S. Department of Housing and Urban Development (HUD) for disaster recovery areas affected the 2021 Winter Storm from February 11-21, 2021. A majority of the funds are allocated for specific projects in the HUD designated "most impacted and distressed (MID)" counties of Dallas, Harris, and Tarrant.

The second program which is opened to secondary MID counties including cities is the Fire Facilities and Protective Measures Program. The program allows for recovery of fire protection facilities for improvements and equipment, while also allowing for permanently affixed power generator public facility needs that are essential during winter storm events.

The full action plan can be found [here](#). The GLO will field public comments at a virtual public hearing on Thursday, Nov. 16 at 6:00 p.m. CT. Click [here](#) for the zoom meeting link. The deadline to submit public comments is Dec. 6, 2023, by 5 p.m. CT. Public comments may be emailed to [cdr@recovery.texas.gov](mailto:cdr@recovery.texas.gov) or mailed to P.O. Box 12873, Austin, TX 78711-2873.

## **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 FAA Contract Tower Competitive Grant Program (CTCG). The CTCG will provide up to \$20 million for small-town and municipal airports to upgrade or replace aging airport-owned traffic control towers.

Eligible projects include:

- Sustaining, constructing, repairing, improving, rehabilitating, modernizing, replacing, or relocating non-approach air control towers;
- Constructing remote towers certified by the funding agency; and
- Acquisition and installation of air traffic control, communications, or related equipment in support of such projects.

The CTCG program will prioritize projects that advance aviation safety, enhance air traffic efficiency, and meet all statutory and administrative award requirements by October 2024. USDOT favors projects specifically designed to help reduce pollution and greenhouse gases, promote energy efficiency, and support the use of sustainable aviation fuels and technologies. The agency also encourages applicants to consider incorporating addressing the challenges faced by individuals in underserved and rural communities and accessibility for persons with disabilities into their project planning and designs.

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

USDOT must receive all CTCG program applications by **4:00 PM (CST) on Friday, December 1, 2023**.

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