

TML LEGISLATIVE UPDATE



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Number 46

Fourth-Called Special Session Update

On Tuesday, the House approved legislation on border security funding, [4S.B. 3](#) (Huffman/Jetton), and [4S.B. 4](#) (Perry/Spiller) creating a criminal offense for illegal entry into or illegal presence in the state. No changes were made to [4S.B. 4](#) and it now heads to the governor for his signature.

[4S.B. 3](#) 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. A House floor amendment would allow for those funds to also be used as grants to local governments and local law enforcement agencies to alleviate costs associated with an increased demand on local prosecutorial, judicial, and correctional resources. Before the bill can head to the governor, the Senate will need to approve the House changes.

The House is scheduled to take up [4H.B. 1](#) on Friday – the House’s legislation on school funding and school choice. The Senate’s bills on school funding and school choice ([4S.B.1](#) and [4S.B. 2](#)) have not received a committee hearing in the House. The outcome of Friday’s debate will help determine the fate of any future special session(s).

SLFRF Obligation Rule and Approaching Deadline

The American Rescue Plan Act, passed by Congress in 2021, provided State and Local Fiscal Recovery Funds (SLFRF) to cities in response to the COVID-19 pandemic. SLFRF funds must be obligated by **December 31, 2024**. If not obligated, those funds will have to be returned to the U.S. Department of Treasury (Treasury). While those funds must be obligated by the end of 2024, they can still be spent through 2026.

This month, Treasury issued an [Obligation Interim Final Rule](#) and a [Quick Reference Guide](#) to address recipients' questions regarding the definition of "obligation" and provide related guidance. The [2022 Final Rule](#) and [2023 Interim Final Rule](#) outlines eligible uses of the SLFRF funds. A simplified guide to the 2022 and 2023 rules can be found [here](#) and [here](#).

Voters Approve Proposition 2 Authorizing Local Option Property Tax Exemption for Certain Child-Care Facilities

Last week, Texas voters approved Proposition No. 2 by a vote of 65 to 35. As a result, cities and counties are now authorized to adopt a property tax exemption for a qualifying child-care facility. This new law was added by [S.B. 1145](#) and [S.J.R. 64](#), both passed during the 88th regular session and signed into law by Governor Abbott.

S.B. 1145 defines a qualified child-care facility as a facility: (1) that participates in the Texas Workforce Commission's Texas Rising Star Program; and (2) at which at least 20 percent of the total number of children enrolled at the facility receive subsidized child-care services provided through the child-care services program administered by the Texas Workforce Commission. Further, the property must be reasonably necessary for the operation of the qualifying facility and used exclusively to provide developmental and educational services for children attending the child-care facility.

The new law gives the city council the discretion to adopt a property tax exemption of all or part of the appraised value of the real property a person owns and operates as a qualifying child-care facility or the portion of the real property that a person owns and leases to a person who uses the property to operate a qualifying child-care facility. The city council may adopt the exemption as a percentage of the appraised value of the property, and the percentage specified by the city council may not be less than 50 percent.

With the passage of Proposition 2 last week, the law will take effect on January 1, 2024.

Important PFAS Litigation Settlement Deadlines Approaching

Some important deadlines for the 3M and DuPont PFAS litigation settlements are rapidly approaching. Missing these deadlines could result in your city's inability to pursue certain PFAS-related claims in court. Please consult with your city attorney to determine how best to proceed.

The League has [previously reported](#) on the PFAS litigation and more information can be found on the [PFAS Settlement Claims Administrator website](#).

Background

Cities nationwide 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.

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.

A city must file a 3M and/or DuPont claim form to participate in the settlement. A city may also opt out of the settlements by filing an opt out form for each settlement with the PFAS Claims Administrator.

If a city does not file a claim or opt out of the settlements, its PFAS claims will be resolved without compensation.

Opting Out of Settlement Deadline

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 can be found under FAQ Question #8 on the [PFAS website](#).

Claim Deadlines

PFAS 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.

If the court approves the DuPont settlement agreement at the fairness hearing on **December 14, 2023**, 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 on **February 2, 2024**, 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**.

Frequently Asked Questions

If a city misses the opt out deadline, can it request to opt out later?

No. A city must file an opt out form by the deadline. If a city misses the opt out deadline, its claims will be resolved as part of the settlement.

Can a city opt out of the settlements, then later choose to get back in?

- **3M Settlement:** A city may withdraw its opt out form for the 3M settlement up through final approval of the settlement.
- **DuPont Settlement:** A city cannot withdraw its opt out form once it is filed.

Is there a chance that the court may extend the opt out deadlines?

It is unlikely that the court will extend the opt out deadlines. If the court rejects the proposed settlements at the fairness hearings, the parties will restart the litigations.

Do the 3M and DuPont settlements include a city's water and soil contamination claims?

No. The 3M and DuPont settlements only involve water contamination claims.

Must a city submit its PFAS testing in parts per trillion? Will the Claims Administrator accept testing in parts per billion or other measurements?

Cities must submit PFAS testing to the Claims Administrator. TML has contacted the Claims Administrator on this question and will update members when we learn more.

Will a city be able to recover costs for negative PFAS testing results?

Likely. The 3M and DuPont settlements contain provisions to reimburse participants for negative testing results. The Claims Administrator can provide specific information about the reimbursement procedures, requirements, and amounts.

TWDB to Host Webinar on Scoring Criteria

The Texas Water Development Board (TWDB) will host a webinar about the rating and scoring criteria of the Drinking Water State Revolving Fund (DWSRF) and the Clean Water State Revolving Fund (CWSRF). The revolving funds are federal programs administered by TWDB which provides low-cost financing for water, wastewater, stormwater, and reuse infrastructure projects. Rating and scoring criteria are part of the program requirements.

The webinar will be on Tuesday, November 28 from 10:00 a.m. to 11:00 a.m. Interested city officials can register [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.

United States Department of Defense (USDOD)

The USDOD's 1122 Program allows local governments in states with a certified State Point of Contact to purchase vehicles and equipment from federal suppliers to support local counter-drug, homeland security, and emergency response efforts. Purchases made under the 1122 Program are subject to local, state, and federal procurement requirements and other specific ordering procedures.

City officials can find more information about the 1122 Program [here](#).

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