



Legislative UPDATE

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Number 36

Senate Property Tax Roadshow Continues

Next Wednesday, November 28, the Senate Select Committee on Property Tax Reform will [meet in Conroe](#) to hold a hearing on three interim charges. Of most interest to city officials is the following:

Evaluate the effective tax rate and rollback tax rate calculations and identify modifications that would yield a rollback process that is meaningful for local governments and for citizens. Evaluate whether the current rollback election trigger serves modern objectives.

If past hearings of this committee are any indication, the committee will focus on property tax revenue caps on cities and counties only, but not on schools. This is likely due to the state's increasing over-reliance on local property taxes for education funding as reported [here](#).

The League has submitted [written comments](#) to the committee, and will attend to report back on the proceedings. Cities will be able to testify at the hearing if they wish, but past experience shows that the committee's mind was made up long ago in favor of city and county-only caps.

Court of Appeals Strikes Down Austin's Paid Sick Leave Ordinance

Last week, the Austin Court of Appeals [struck down](#) the City of Austin's paid sick leave ordinance. The court determined that paid sick leave equates to "wages" under the Texas Minimum Wage Act. As a result, the court concluded that the ordinance is preempted by the Act and also violates the Texas Constitution.

The court remanded the case back to the trial court for issuance of a temporary injunction and further proceedings in accordance with the opinion. Although the implementation of the ordinance has been halted, it is possible that the case may be appealed to the Texas Supreme Court.

The League will continue to monitor and report on the progress of the case.

League Coalition Files with FCC to Protect Cable Franchise Fees

Last week, the League joined a coalition of associations and cities to file [comments](#) with the Federal Communications Commission. The comments were filed in response to an [FCC proposal](#) that would allow cable companies to deduct the fair market value of a wide range of franchise obligations, including PEG channel capacity and other PEG-related franchise requirements, from their existing franchise fee payments.

If the FCC's proposed new rules are adopted, cities that operate PEG channels will see reductions in franchise fee payments from cable operators. Individual cities with PEG channels should consider filing their own comments (initial comments were due by November 14, 2018, but reply comments may be filed until December 14, 2018) with the FCC.

The National Association of Telecommunications Officers and Advisors has prepared a [summary](#) of the proposal and an [example comment template](#). To file comments, go to the FCC's [electronic filing page](#) and use Proceeding No. 05-311.

City-Related Bills Filed

Property Tax

H.B. 322 (Geren) – Property Tax Limitation: would establish a mandatory property tax freeze for all taxing units on the residence homesteads of individuals who are disabled or over 65 and their surviving spouses. (See **H.J.R. 26**, below.)

H.B. 380 (Geren) – Property Tax Appeals: would: (1) authorize a property owner to appeal an order of the appraisal review board determining that the appraisal review board lacks jurisdiction to finally determine a protest by the property owner because the property owner failed to comply with a statutory requirement; (2) provide that a property owner who establishes that the appraisal review board had jurisdiction to issue a final determination of the protest is entitled to a final determination by the court of the protest on any ground, regardless of whether the property owner included the ground in the property owner’s notice of protest; and (3) provide that for certain appeals, if a plea to the jurisdiction is filed in the appeal on the basis that the property owner failed to exhaust the property owner’s administrative remedies, the court may, in lieu of dismissing the appeal for lack of jurisdiction, remand the action to the appraisal review board with instructions to allow the property owner an opportunity to cure the property owner’s failure to exhaust administrative remedies.

H.B. 383 (Bohac) – Appraisal Cap: would reduce the property tax appraisal cap on residence homesteads from ten to five percent. (See **H.J.R. 28**, below.)

H.B. 384 (Bohac) – Property Tax Exemption: would, among other things: (1) provide that an individual is entitled to an exemption from taxation of the total appraised value of the individual’s residence homestead if: (a) the individual is 80 years of age or older; and (b) the individual has received the residence homestead exemption for at least the preceding ten years; and (2) provide that the surviving spouse of an individual who qualified for an exemption under (1) is entitled to an exemption from taxation of the total appraised value of the same property to which the deceased spouse’s exemption applied if: (a) the deceased spouse died in a year in which the deceased spouse qualified for the exemption; (b) the surviving spouse was 55 years of age or older when the deceased spouse died; and (c) the property was the residence homestead of the surviving spouse when the deceased spouse died and remains the residence homestead of the surviving spouse. (See **H.J.R. 29**, below.)

H.B. 388 (Murphy) – Property Tax Exemption: would exempt from property taxation the portion of real property owned by a person that is leased to an open-enrollment charter school if: (1) the real property is used exclusively by the school for education functions; (2) the real property is reasonably necessary for the operation of the school; (3) the property owner certifies by affidavit to the school that the rent for the lease of the real property will be reduced by a commensurate amount; (4) the property owner provides the school with a disclosure document stating the amount by which the taxes on the real property are reduced due to the exemption and the method to be implemented to ensure that the rent charged reflects the reduction; and (5) the rent charged for the lease of the real property reflects the reduction in the amount of property taxes due to the exemption through a monthly or annual credit against the rent. (See **H.J.R. 31**, below.)

H.J.R. 26 (Geren) – Property Tax Limitation: would amend the Texas Constitution to establish a mandatory property tax freeze for all taxing units on the residence homesteads of individuals who are disabled or over 65 and their surviving spouses. (See **H.B. 322**, above.)

H.J.R. 28 (Bohac) – Appraisal Cap: would amend the Texas Constitution to authorize the legislature to reduce the property tax appraisal cap on residence homesteads from ten to five percent. (See **H.B. 383**, above.)

H.J.R. 29 (Bohac) – Property Tax Exemption: would amend the Texas Constitution to provide that a person, or the person’s surviving spouse under certain circumstances, is entitled to an exemption from property taxation of the total market value of the person’s residence homestead if the person is 80 years of age or older and the person has received the residence homestead exemption for at least the preceding ten years (See **H.B. 384**, above.)

H.J.R. 31 (Murphy) – Property Tax Exemption: would amend the Texas Constitution to authorize the legislature to exempt from property taxation any real property that is leased for use as an open-enrollment charter school for educational purposes. (See **H.B. 388**, above.)

S.B. 196 (Campbell) – Property Tax Exemption: would exempt from property taxes the residence homestead of the surviving spouse of a member of the armed services who is fatally injured in the line of duty. (Companion bill is **H.B. 325** by **Miller**.)

S.B. 202 (Huffman) – Property Tax Appraisal: would, among other things: (1) provide that the chief appraiser of an appraisal district that appraises property for a taxing unit that is located partly or entirely inside an area declared to be a disaster area by the governor shall reappraise all property that the Federal Emergency Management Agency or its successor agency estimates to have sustained five percent or greater damage as a result of the disaster at its market value immediately after the disaster; (2) allow a property owner to refuse to have the owner’s property reappraised under (1), above; and (3) require the chief appraiser to complete the reappraisal not later than the 45th day after the date the governor declares the area to be a disaster area, or as soon as practicable after the damage estimates are completed.

Sales Tax

H.B. 311 (Howard) – Sales Tax Exemption: would exempt feminine hygiene products from the sales tax.

H.B. 313 (Howard) – Sales Tax Exemption: would exempt child and adult diapers from the sales tax.

H.B. 315 (Howard) – Sales Tax Exemption: would exempt condoms from the sales tax.

H.B. 385 (Bohac) – Sales Tax Exemption: would: (1) exempt from sales taxes the sale of an article of clothing, footwear, school supply, or school backpack that costs less than \$200 and is sold during certain timeframes (current law sets exemption amount at an item less than \$100); and (2) exempt the sale or storage, use, or other consumption of an e-reader, gaming console, personal computer, smartphone, or tablet computer from sales taxes if the device: (a) is purchased during a specified weekend preceding the beginning of the school year; (b) has a sales price of less than \$750; and (c) is not purchased over the Internet.

S.B. 184 (Miles) – Sales Tax Exemption: would exempt certain school supplies from sales taxes if the school supply is purchased by a teacher employed by a public school district or open-enrollment charter school for use in the teacher’s classroom during a particular weekend in July.

S.B. 203 (Huffman) – Sales Tax Exemption: would exempt firearm safety equipment from sales taxes.

Purchasing

No city-related purchasing bills were filed this week.

Elections

H.B. 325 (Ortega) – Early Voting by Mail: would, among many other things, authorize early voting by mail for any qualified voter and provide for implementing procedures. (Companion bill is **S.B. 164** by **Rodriguez**.)

H.B. 358 (Lang) – Uniform Election Date: would, among other things: (1) eliminate the May uniform election date; (2) establish a uniform election date on the first Tuesday in March in an even-numbered year, which is the primary election date; (3) require an election for the issuance of bonds by a political subdivision to be held on a uniform election date; and (4) require the governing body of a political subdivision that currently holds its general election for officers on the May uniform election date to change the date on which it holds its general election for officers to the November uniform election date not later than December 31, 2019.

H.B. 362 (Israel) – Voting System Fund: would: (1) create a voting system fund as an account in the general revenue fund; (2) provide that a city may apply to the Secretary of State for a grant to replace voting system equipment with the grant being equal to not more than 50 percent of the total cost of voting equipment; and (3) provide that the Secretary of State shall develop criteria for the fair and proportional distribution of grants.

H.B. 365 (Cain) – Uniform Election Date: would, among other things: (1) eliminate the May uniform election date; (2) establish one uniform election date on the first Tuesday after the first Monday in November in an even-numbered year only; (3) require an election for the issuance of bonds by a political subdivision to be held on a uniform election date; and (4) require the governing body of a political subdivision that currently holds its general election for officers on the May uniform election date to change the date on which it holds its general election for officers to the November uniform election date in an even-numbered year not later than December 31, 2019, so long as the governing body does so in a manner that does not cause an officer’s term to exceed any applicable constitutional limits.

Open Government

No city-related open government bill were filed this week.

Other Finance and Administration

H.J.R. 30 (Burns) – Unfunded Mandates: would amend the Texas Constitution to provide that a law enacted by the legislature on or after January 1, 2020, that requires a city or county to establish, expand, or modify a duty or activity that requires the expenditure of revenue is not effective unless the legislature appropriates or otherwise provides, from a source other than the city or county revenue, for the payment or reimbursement of the costs incurred for the biennium in complying with the requirement. (Companion bill is **S.J.R. 10** by Buckingham.)

Municipal Courts

H.B. 344 (Dutton) – Juveniles: would, among other things and with certain exceptions, change the age of a child for criminal responsibility purposes from 17 years of age to 18 years of age.

S.B. 171 (Perry) – Fees: would increase, from \$50 to \$75, the fee paid by a defendant for a peace officer's services in executing or processing an arrest warrant, capias, or capias pro fine.

Community and Economic Development

H.B. 360 (Murphy) – Tax Abatements: would extend the expiration date of the Property Redevelopment and Tax Abatement Act from September 1, 2019, to September 1, 2029. (Companion bill is **S.B. 118** by West.)

H.B. 347 (P. King) – Annexation: would essentially eliminate most unilateral annexations by any city, regardless of population or location. Specifically, the bill would: (1) eliminate the distinction between Tier 1 and Tier 2 cities and counties created by S.B. 6 (2017); (2) eliminate existing annexation authority that applied to Tier 1 cities and make most annexations subject to the three consent annexation procedures created by S.B. 6 (2017), which allow for annexation: (a) on request of the each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, petition of landowners; and (3) authorize certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, etc.) to continue using a service plan, notice, and hearing annexation procedure.

H.B. 390 (Blanco) – Defense Communities: would make various changes relating to defense economic readjustment zones.

S.B. 182 (Miles) – Payday Lending: would provide that a credit services organization or a representative of a credit services organization may not, unless the credit services organization or

representative of the credit services organization has extrinsic evidence sufficient prove that the consumer has committed theft or issued a bad check: (1) file a criminal complaint or threaten to file a criminal complaint related to an extension of consumer credit against the consumer; or (2) refer or threaten to refer a consumer to a prosecutor for the collection and processing of a check or similar sight order that was issued in relation to an extension of consumer credit.

Personnel

H.B. 328 (Ortega) – Local Minimum Wage: would, among other things, allow: (1) a city to adopt a minimum wage that exceeds the federal minimum wage to be paid by an employer to each of its employees for services performed in the city; and (2) a county to adopt a minimum wage that exceeds the federal minimum wage to be paid by an employer to each of its employees for services performed in the unincorporated areas of the county, including areas located within the extraterritorial jurisdiction of a city.

H.B. 354 (Herrero) – Jury Service: would allow the following individuals to be exempted from jury service: (1) a firefighter employed by a city, county, or special district; and (2) a police officer employed by a police department of a city or county.

H.B. 359 (Moody) – Workers’ Compensation: would, among other things: (1) prohibit a non-civil service city from discharging, indefinitely suspending or terminating, from employment, a peace officer, detention officer, or firefighter who is unable to perform his or her duties due to a compensable injury before such person has reached maximum medical improvement (unless a designated doctor indicates that the employee is unable to return to work); (2) entitle an employee who is discharged, indefinitely suspended or terminated as described in (1) to reinstatement in the employee’s former position of employment and damages not to exceed \$100,000; and (3) waive immunity for a city that violates the provision described in (1).

H.B. 393 (Blanco) – Wage History: would, among other things: (1) provide that the following actions constitute an unlawful employment practice: (a) including a question regarding an applicant’s wage history information on an employment form; (b) inquiring into an applicant’s wage history information; (c) considering an applicant’s wage history in determining whether to hire the applicant or the wages or fringe benefits to provide to the applicant; (d) obtaining an applicant’s wage history information from a previous employer or other source, unless such wages are disclosable under the Texas Public Information Act; (2) prohibit an employer from taking an adverse action or discriminating against a person that opposes, seeks to enforce, or testifies against an unlawful employment action; and (3) require an employer to provide to an applicant a pay scale for the employment position for which the applicant is applying.

H.B. 381 (Holland) – Peace Officers: would provide that a training officer who is killed in the line of duty is eligible to have his or her name added to the Texas Peace Officers’ Memorial Monument.

Public Safety

H.B. 319 (K. King) – Fire Department Grants: would provide that: (1) the Texas Commission on Fire Protection shall establish and administer a grant program to provide financial assistance to a fire department or volunteer fire department seeking to purchase fire-fighting equipment or a machine to clean fire-fighting equipment; (2) a fire department or volunteer fire department receiving a grant under the bill must, as soon as practicable after receiving the grant, provide to the commission proof of purchase of fire-fighting equipment or a machine to clean fire-fighting equipment, including the price of each piece of equipment or machine and the number of items purchased; and (3) not later than December 1 of each year, the commission shall submit a report to the Legislative Budget Board reporting the following information for the preceding state fiscal year: (a) the name of each fire department and volunteer fire department that applied for a grant under this section, (b) the amount of money distributed to each department that received a grant under this section, and (c) the number and a description of items purchased by each department.

H.B. 335 (Dutton) – Marihuana Possession: would reduce the penalty for the possession of marijuana to a Class C misdemeanor if the amount of marihuana possessed is one ounce or less, with some exceptions.

H.B. 351 (Blanco) – Cyber Attacks: would expand the definition of a disaster that is subject to emergency management to include a cyber attack.

H.B. 352 (Blanco) – Cell Site Information: would, among other things:

1. provide that a search warrant may be issued to search for and seize cell site information;
2. define “cell site information” as any information, including the content of a wire communication or electronic communication, that is obtained from a cellular telephone or other wireless communications device by operation of a cell site simulator device and that concerns the location of the telephone or device or reveals the identity of the subscriber or customer of a communication common carrier, an electronic communications service, or a remote computing service;
3. define “cell site simulator device” as an international mobile subscriber identity catcher or other device or equipment that mimics a cellular telephone tower by transmitting to cellular telephones or other wireless communications devices within range of the device a signal that causes those cellular telephones or other wireless communications devices to send cell site information to the device;
4. provide that a district judge may issue a warrant for the use of a cell site simulator device to obtain cell site information from a cellular telephone or other wireless communications device only on the application of an authorized peace officer with certain requirements for the peace officer’s affidavit;
5. provide location restrictions for where the warrant may be issued;
6. provide that the warrant expires after 90 days, but that a judge can be extend the duration of the warrant for an additional 90-day period for good cause shown;
7. require that the authorized peace officer who requested the warrant deliver a copy of the warrant to the owner or possessor of the cellular telephone or other wireless

- communications device not later than the seventh day after the date of the expiration of a warrant or the date of the expiration of any additional period;
8. provide certain exceptions to the requirement for a warrant for cell site information;
 9. provide that a peace officer may not obtain or use cell site information to assist with, participate in, provide material support or resources for, or enable or facilitate an investigation conducted by a law enforcement agency of the federal government or of another state: (a) without the effective consent of the owner or possessor of the cellular telephone or other wireless communications device, or a warrant; or (b) unless certain exceptions apply;
 10. provide that only the Department of Public Safety or a county or municipal law enforcement agency is authorized to own, possess, install, operate, or monitor a cell site simulator device;
 11. provide that state or local law enforcement agency that obtains or uses a cell site simulator device shall adopt a written policy for promptly deleting any cell site information collected by the device that: (a) is not relevant to a warrant issued under this subchapter authorizing the use of the device; or (b) does not provide the agency with a reasonable suspicion that other criminal activity has been, is being, or will be committed;
 12. provide that the state may not withhold from a criminal defendant any portion of a document, an item, or information that was obtained as a result of the execution of a warrant for cell site information and that is otherwise discoverable on a claim of confidentiality arising under a contract with any party, including under a nondisclosure agreement;
 13. modify the Public Information Act to provide that information regarding the purchase, sale, receipt, possession, or use of investigatory equipment by a state or local law enforcement agency or by a criminal justice agency of the state or of a political subdivision of the state is public information and not excepted from disclosure;
 14. provide that a person commits a criminal offense if the person knowingly: (a) installs or uses a cell site simulator device to obtain cell site information from a cellular telephone or other wireless communications device; or (b) obtains or uses cell site information to assist with, participate in, provide material support or resources for, or enable or facilitate an investigation conducted by a law enforcement agency of the federal government or of another state;
 15. provide that an affirmative defense to criminal prosecution in (14) if: (a) the owner or possessor of the cellular telephone or other wireless communications device gave effective consent to the actor's retrieval of cell site information from the telephone or device; (b) a warrant was obtained under (4); or (c) an exception to the warrant requirement applies.

H.B. 353 (Blanco) – Cell Site Information: would: (1) provide that a search warrant may be issued to search for and seize cell site information; and (2) define “cell site information” as information that reveals the location of a cellular telephone or other wireless communications device and that is derived from the device’s connections to radio antennas through which a provider of an electronic communications service or provider of a remote computing service provides wireless service to that device.

H.B. 357 (Stickland) – Handguns: would provide, among other things, that: (1) a person who is at least 21 years of age and not otherwise prohibited by law may, without a license, openly or concealed carry a handgun; (2) a city may not regulate the carrying of a firearm at a public park or parade, rally, or political meeting in the city; and (3) the mere possession or carrying of a handgun, openly or concealed, with or without a license, shall not constitute reasonable belief for a peace officer to disarm or detain an otherwise law-abiding person.

H.B. 363 (J. Johnson) – Ombudsman: would: (1) create the office of independent oversight ombudsman for the Texas Department of Criminal Justice; (2) allow the ombudsman access to local law enforcement agency information relating to any offender; and (3) require local law enforcement agency to fully cooperate and collaborate with the office of independent oversight ombudsman. (Companion bill is **S.B. 188** by Miles.)

S.B. 187 (Miles) – False Alarms or Reports (“Swatting”): would increase the criminal penalty for making a false alarm or report where it is found that the defendant: (1) causes a law enforcement agency to take action against another person; and (2) the person is intentionally targeted because of the defendant’s bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, sexual preference, or by status as a peace officer or judge.

S.B. 191 (Miles) – Driver Responsibility Program/Traffic Fines: would, among other things: (1) repeal the driver responsibility program; (2) increase the state traffic fine imposed on moving violations from: (a) \$30 to \$50, if a person enters a plea or is convicted of an offense before September 1, 2022; or (b) \$40, if a person enters a plea or is convicted of an offense after September 1, 2022; (3) reallocate the state traffic fine allocation to give: (a) before September 1, 2022, 50 percent to the state’s general fund and 50 percent to the state’s designated trauma facility and emergency services account; and (b) after September 1, 2022, 100 percent to the state’s designated trauma facility and emergency services account; and (4) provide that the formulas in the bill expire on September 1, 2025.

Transportation

H.B. 339 (Murr) – Work Zones: would require an entity that sets a lower speed limit on a road or highway for a construction or maintenance work zone to place a sign at the end of the zone indicating the speed limit after the zone ends.

Utilities and Environment

S.B. 180 (Miles) – Environmental Justice Reports: would:

1. define “affecting facility” as a facility required to obtain a permit from the Texas Commission on Environmental Quality for wastewater discharge, injection wells, and under the Solid Waste Disposal Act and Clean Air Act;

2. define “environmental justice community” as a United States census block group, as determined in accordance with the most recent United States census, for which: (a) 30 percent or more of the noninstitutionalized population consists of persons who have an income below 200 percent of the federal poverty level; or (b) 50 percent or more of the population consists of members of racial minority or ethnic minority groups;
3. require that a person applying for a permit for a new affecting facility or the expansion of an affecting facility submit to TCEQ an environmental justice report stating whether the facility or expansion is to be located in an environmental justice community and include demographic information to support the applicant’s conclusion as to whether the facility or expansion is to be located in an environmental justice community;
4. require that TCEQ review the environmental justice report and determine whether the affecting facility or expansion is to be located in an environmental justice community and publish its determination and findings in writing;
5. provide that if TCEQ determines that the affecting facility or expansion is to be located in an environmental justice community, the applicant must, before the commission may issue a permit: (a) file with TCEQ a public participation plan that meets the requirements of (6) and obtain TCEQ’s approval of the plan; (b) consult with the chief elected official of the city in which the facility or expansion is to be located (if it will be located in a city) to evaluate the need for a community environmental benefit agreement in accordance with (8); and (c) participate in a public hearing under (7);
6. provide that a public participation plan must: (a) contain measures to facilitate effective public participation in the regulatory process, including measures that allow residents of the environmental justice community to have an appropriate opportunity to participate in decisions about a proposed affecting facility or expansion that may adversely affect residents’ environment or health, and seek out and facilitate the participation of those who potentially would be affected by the facility or expansion; and (b) include a certification that the applicant will undertake the measures contained in the plan;
7. provide that, if TCEQ determines that an affecting facility or expansion is to be located in an environmental justice community, TCEQ shall provide notice and conduct a hearing to address issues of environmental justice posed by the construction or expansion of the facility;
8. provide that a city or county and the owner or developer of an affecting facility may enter into a community environmental benefit agreement under which the owner or developer agrees to mitigate adverse impacts reasonably related to the facility, including impacts on the environment, traffic, parking, and noise; and
9. provide that, before negotiating the terms of a community environmental benefit agreement, the city or county shall provide a reasonable and public opportunity for residents of the potentially affected environmental justice community to be heard concerning the need for, and terms of, an agreement.

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