



Legislative UPDATE

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Appellate Court Reinstates Portion of “Sanctuary City” Bill

Last Monday, a three-judge panel of the Fifth Circuit Court of Appeals reinstated some key provisions of [S.B. 4](#) (the so-called “sanctuary city” bill) that were [temporarily blocked](#) by a federal district judge earlier this month.

Most notably, the panel [determined](#) that the provision in S.B. 4 requiring law enforcement agencies to “comply with, honor, and fulfill” any federal immigration detainer request can go into effect. However, the court interpreted the provision as not requiring detention pursuant to every federal detainer request.

Instead, the panel read the language to require local law enforcement agencies to cooperate according to existing federal immigration detainer practice and law. In other words, the court’s decision seemingly “leaves the door open” for a law enforcement agency to refuse to honor a detainer request.

The panel upheld parts of the district judge’s temporary injunction, as well. One of the primary sections of the S.B. 4 provides that “a local entity or campus police department may not... adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws.” The panel determined that, while a local entity may not adopt or enforce such a policy pursuant to the language of the bill, sufficient confusion exists regarding a local entity “endorsing” this type of policy that the term “endorse” is effectively removed from the bill language for now.

Finally, the panel agreed with the district judge that the term “materially limits” used in the provision quoted above and elsewhere is too expansive, and held that interpreting that term is best left for a later court’s decision on the merits of the case.

Post Session Update: Annexation

On December 1, 2017, Senate Bill 6 becomes effective. The bill will require landowner or voter approval of annexations in the state's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process. If your home rule city has plans to annex, you may wish to expedite that process and finalize the annexation prior to December 1.

Cities not subject to S.B. 6 (i.e., those in counties with a population of less than 500,000 that are not annexing into such a county and those in a county that has not held an election to become subject to the bill) may continue to annex under laws not affected by S.B. 6.

League staff has prepared an [updated paper](#) explaining the entire annexation process.

Post Session Update: Purchasing Bills Require Contract Changes and Reporting

During the 2017 regular session, the legislature passed three bills that require additional steps when a city enters into a contract. None of the bills are particularly clear as to implementation, but city officials with purchasing responsibility should be aware of them. The following are brief summaries of their requirements:

- **H.B. 89 (King/Creighton)** is a bill relating to government contracts with and investments in companies that boycott Israel. It provides that a governmental entity, including a city, may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

The written verification could be as simple as a contract term providing that:

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

The signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

The bill does not define "contract." Questions have arisen as to whether the bill applies to oral contracts or basic purchase orders and similar purchasing documents.

Texas law does not require that a contract be in writing. In fact, just about every purchase of a good or service, regardless of whether paper is involved, forms a contract.

That being said, it would appear that the only reasonable interpretation would be that the bill applies only to written contracts. However, each city official who makes purchases should consult with their city attorney to decide how to interpret the bill.

- **S.B. 252 (V. Taylor/S. Davis)** is a bill relating to government contracts with terrorists. The bill provides that: (1) a governmental entity, including a city, may not enter into a governmental contract with a company that is identified on a list prepared and maintained by the comptroller and that does business with Iran, Sudan, or a foreign terrorist organization; and (2) a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition under the bill.

The bill requires that the comptroller prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization. The list is available on the [comptroller's website](#).

- **S.B. 253 (V. Taylor/S. Davis)** is a long and complex bill relating to government investments.

Of particular interest to cities, the bill does two things: (1) on page 6, it changes the definition of “investing entity” in current law to mean any entity subject to Government Code Chapter 2256 (the “Public Funds Investment Act”), which includes a city; and (2) on pages 28-29, it requires an investing entity, not later than December 31 of each year, to: (a) file a publicly-available report with the presiding officer of each house of the legislature and the attorney general that: (i) identifies all investments sold, redeemed, divested, or withdrawn in compliance with the bill; (ii) identifies all prohibited investments under the bill; and (iii) summarizes any changes made to actively managed or private equity funds; and (b) file a report with the United States presidential special envoy to Sudan that identifies investments in Sudan identified in the report as required by (a) and (b), above.

What action should a city actually take in response to S.B. 253? That is still very unclear. In accordance with the Public Funds Investment Act, most cities invest only in certificates of deposit, government obligations, an investment pool such as TexPool, and certain mutual funds. With regard to investment pools, it would appear more logical for the investment pool to file any required report based on its investments, although the bill clearly seems to impose that requirement on the city. With regard to mutual funds, the bill seems to provide an exception for “actively managed funds.” Thus, if the mutual fund is actively managed, a city may not be required to file a report in relation to it, but would have to notify the fund manager and request that prohibited companies be divested.

League staff will be coordinating with other local government associations and state offices to determine the correct course of action under the bill. Further reports will appear in future editions of the *Legislative Update*.

Some question remains as to the effect of federal law on the bills above. The United States Code, 50 U.S.C.A. § 4607, governs foreign boycotts. Some argue that the preemption language in that provision overrides state laws on the same subject. Even if that's the case, a city should arguably comply with the state law unless a court directs otherwise.

Payday Lending Clearinghouse Updates

The League's "Payday Lending Clearinghouse" webpage, available at <https://www.tml.org/payday-updates>, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. On September 21, a Travis County Court issued two opinions reversing two City of Austin municipal court orders. The orders concluded that Austin's payday and auto-title lending ordinance was preempted by state statute. The court held that the city's ordinance is not preempted by state law because there is a reasonable construction by which the ordinance and state statute governing credit access businesses can both be given effect.

The two opinions can be read [here](#) and [here](#).

Extension of Budget and Tax Deadlines Possible

Recently Governor Abbott honored a [request](#) by the City of Corpus Christi to extend its tax rate setting deadline from September 30, 2017, to October 27, 2017. TML has [requested](#) that the Governor extend the deadline for all cities affected by Hurricane Harvey. However, we have not received a response to that request at this time.

If your city has been affected by the recent storm and you need additional time to set your tax rate, we urge you to make a similar request to the Governor on behalf of your individual city.

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