



Legislative UPDATE

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H.B. 157 and Local Economic Development Initiatives

A [previous issue](#) of the *Legislative Update* reported on the passage of H.B. 157 and how it provides greater flexibility in how a city allocates its sales tax revenue. The bill gives city officials more flexible economic development options.

A common misconception is that local economic development incentives can be offered only through a Type A or Type B economic development corporation (EDC). City officials often believe that the EDC is their primary tool, and that the city council plays no other role in recruiting new businesses to the city. In actuality, city councils have far greater flexibility to offer incentives to a prospective business than does an EDC.

State law limits EDC dedicated sales tax expenditures to projects that fall within a fairly narrow set of “authorized projects,” and only if approved by both the EDC board and the city council. EDC expenditures are limited to projects related to “primary jobs,” infrastructure projects that directly develop business enterprises, and a handful of other permissible expenditures. (Only Type B EDCs of a certain size can spend EDC revenue on retail development.)

City councils, on the other hand, may – among other things – take action to offer property tax abatements, adopt property tax exemptions for certain goods-in-transit, build necessary public infrastructure through tax increment financing, rebate local sales taxes to retail businesses, waive certain taxes and fees through the creation of neighborhood empowerment zones, and – most significantly – provide economic development grants and loans to business prospects under a program adopted pursuant to Chapter 380 of the Local Government Code.

How does H.B. 157 fit in with all of this? Prior to the passage of H.B. 157, cities could hold an election to adopt a one percent general revenue sales tax, no higher and no lower. Cities could also hold elections to adopt dedicated sales taxes, like the sales tax for street maintenance, sales tax for property tax relief, and EDC sales tax. Just as cities were limited to one percent for the general revenue sales tax, cities also had maximum rates for dedicated sales taxes. For instance, prior to H.B. 157, the maximum rate for a Type A or Type B EDC sales tax was one-half of one percent.

Now that H.B. 157 has been signed into law, cities may hold elections to adopt sales taxes (general revenue or dedicated) in any increment of one-eighth of one percent, so long as the total city sales tax does not exceed the maximum two-percent local sales tax cap. In other words, cities now have increased flexibility to reallocate city sales taxes in a way that makes sense to the city and its residents. With regard to economic development, the bill means that cities can now explore how to best use sales tax revenue for economic development purposes.

Take, for instance, a city that has a one percent general revenue sales tax, a half-percent sales tax for a Type A EDC, and a half-percent sales tax for a Type B EDC. That city council can now at least review whether it makes sense to dedicate half of its total sales tax revenue to the two EDCs when the city can instead hold an election to reclaim some or all of that sales tax revenue for general purposes. If the voters replaced some of the EDC sales tax with the general revenue sales tax, the city council would have the discretion to informally dedicate any portion of the new general sales tax revenue to an economic development program where the money can be used for Chapter 380 grants and loans, which is a much broader incentive tool than is an EDC.

Essentially, H.B. 157 allows cities the option of both broadening and streamlining their economic development programs. In contrast to the somewhat restrictive EDC model of economic development, a city council has broad authority to enter into 380 economic development agreements with a business prospect if it believes an incentive will promote economic development and stimulate business and commercial activity in the city. By potentially freeing up sales tax revenue that is currently dedicated for specified purposes, H.B. 157 could help cities reimagine more effective and efficient local economic development programs.

Texas Ethics Commission Proposes New Forms and Rules

The Texas Ethics Commission is seeking comments on: (1) revised forms (Form CIS and Form CIQ) to implement changes made to Local Government Code Chapter 176 by [H.B. 23](#); and (2) proposed rules to implement new requirements under [H.B. 1295](#).

Chapter 176 is an ethics law that requires some city officers to disclose certain relationships with vendors who conduct business with the city. The proposed forms are available here:

[FORM CIS](#): Local Government Officer Conflicts Disclosure Statement
[FORM CIQ](#): Conflict of Interest Questionnaire

House Bill 1295 imposes new vendor disclosure requirements on city contracts. The proposed rules are available at https://www.ethics.state.tx.us/rules/proposed_Oct_2015.html#Disclose.

Member cities are urged to: (1) file comments; and/or (2) communicate issues and concerns to Christy Drake-Adams, TML legal counsel, at Christy@tml.org so that she can coordinate efforts in this process.

The Commission will consider comments (both written and oral) on these forms and rules at its November 30, 2015, public meeting. Comments can be emailed to public_comment@ethics.state.tx.us.

Court Stays “Waters of the U.S.” Rule

Last week, the U.S. Court of Appeals for the Sixth Circuit issued a nationwide stay against the enforcement of the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) “[Waters of the U.S.](#)” rule.

Eighteen states are participating in the case: Ohio, Michigan, Tennessee, Oklahoma, Texas, Louisiana, Mississippi, Georgia, West Virginia, Alabama, Florida, Indiana, Kansas, Kentucky, North Carolina, South Carolina, Utah, and Wisconsin.

The states contend that the definitional changes in the rule expand the EPA’s and Corps’ regulatory jurisdiction and they requested the stay from the court. Interestingly, the petitioners also raised a question on whether the court of appeals has jurisdiction to consider the challenge to the rule under the Clean Water Act. The court issued the stay pending determination of the court’s jurisdiction over the case, noting that a stay will allow for a more deliberate determination of whether the exercise of power by these agencies is proper under federal law.

Numerous challenges against the rule are pending in courts around the country, including the stay issued by a North Dakota court last month that applied to a number of states. The League will continue to monitor and report on the cases.

Lieutenant Governor Releases Senate Interim Charges: Numerous City-Related Issues

Lt. Governor Dan Patrick has released interim charges to the committees of the Texas Senate to study prior to the 2017 legislative session. The descriptions of city-related charges are re-printed below. Many of them are based on legislation that cities defeated during the last legislative session. The League will continue to monitor the charges and report on the progress of each study.

Agriculture, Water, and Rural Affairs

- **Surface Water/Groundwater:** Study and make recommendations regarding the ownership, production, and transfer of surface water and groundwater in the State of Texas.
- **State Water Plan:** Study and make recommendations on improving the process of developing and executing the State Water Plan.
- **Water Litter:** Study and make recommendations on the effects of windblown and waterborne litter. The study should include an analysis of the economic effects of litter, any necessary methods to prevent and remediate litter, and an assessment of state and local programs to reduce litter.

- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Committee on Agriculture, Water and Rural Affairs during the 84th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically monitor the Texas Water Development Board's process in the identification and designation of brackish groundwater zones.

Business and Commerce

- **Hail Storm:** Monitor the number of lawsuits related to property claims filed as a result of multiple hail storms and weather related events across Texas. Examine negative consumer trends that may result in market disruption such as higher premiums and deductibles, less coverage, non-renewals, and inability to secure coverage due to insurance carrier withdrawal from the state and make recommendations on legislative action needed.
- **Property Tax Liens:** Examine and make recommendations for necessary changes regarding the collection process of delinquent ad valorem property taxes, including an inquiry into the role that tax lien transfers play in forestalling foreclosure.
- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Committee on Business and Commerce during the 84th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the changes made to the operation of the Texas Windstorm Insurance Association.

Criminal Justice

- **Police Safety and Community Engagement:** Review law enforcement efforts to engage community leaders and increase their involvement in communities. Assess dangers to law enforcement officers and the collection and distribution of threat assessment data. Make recommendations to reduce the number of injuries and deaths to or by law enforcement officers.
- **Jail Safety Standards in Texas:** Evaluate the current guidelines and practices in county and municipal jails relating to the health, welfare, and safety of those in custody. Review law enforcement and correctional officer training, with emphasis on mental health and de-escalation. Study the effectiveness of existing oversight mechanisms to enforce jail standards; making recommendations for policies and procedures if needed. Examine the current mental health and substance use treatment services and medical resources offered in county, municipal, and state correctional facilities.
- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Committee on Criminal Justice and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the progress and success of the governor's grant program for law enforcement body cameras

Finance

- **Property Tax Process:** Study the property tax process, including the appraisal system, and recommend ways to promote transparency, simplicity, and accountability by all taxing entities. (Charge to a select subcommittee on Property Tax Reform and Relief.)
- **Reduce Tax Burden:** Examine and develop options to further reduce the tax burden on property owners. (Charge to a select subcommittee on Property Tax Reform and Relief.)
- **Franchise Tax:** Study the benefits, including the dynamic effects, of continuing to phase out the franchise tax. Consider alternate approaches to funding the Property Tax Relief Fund.
- **Sales Tax Holiday:** Review the state's current sales tax holiday structure and determine its economic benefit to the state. Evaluate and consider the merits of any potential expansion of the tax holiday either in the application of the sales tax exemption or the timing of the holiday.
- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Finance Committee during the 84th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor tax relief provided to property owners.

Intergovernmental Relations

- **Annexation:** Identify areas of concern in regards to statutory extraterritorial jurisdiction expansion and the processes used by municipalities for annexation, specifically reviewing whether existing statutes strike the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development. Make recommendations for legislative action, if necessary.
- **Local Ordinance Integrity:** Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law.
- **Disaster Preparedness Planning and Coordination:** Review natural disaster preparedness planning and coordination in the wake of a growing range of threats. Evaluate whether existing processes maximize regional cooperation to rebuild housing and infrastructure, and allow for the timely dissemination of funds to units of local governments for reconstruction following a federal declaration. Develop recommendations, if necessary, to improve the efficiency of disaster recovery efforts, incorporating best practices identified from other states, as well as lessons learned from past reconstruction efforts in Texas.

- **Municipal Management Districts:** Study the means by which the Texas Legislature reviews the creation of municipal management districts (MMDs) by special law to determine if different processes should be used to evaluate new MMDs created within populated or developed areas from those created over undeveloped areas. Identify ways to better assess how the services and improvements of a proposed MMD within populated or developed areas will supplement and enhance those provided by other local governments, as well as if the territory of the proposed MMD encompasses or overlaps area that is already within other assessment or taxing entities. Make recommendations, if necessary, to improve the notice provided to individuals and businesses within populated or developed areas proposed for inclusion in an MMD.
- **Supreme Court ICP Ruling:** Review existing statute and rules that govern the Texas Department of Housing and Community Affairs in light of the recent Supreme Court decision in *Inclusive Communities Project, Inc. vs. TDHCA, et al.* (relating to the location of affordable housing) and recommend if any modifications are necessary to conform to the decision.
- **Debt Transparency in the Voting Booth:** Examine ways to improve government accountability in elections regarding the issuance of public debt. Include a review of the information that is currently provided to individuals in the voting booth and provide statutory recommendations, if necessary, to improve transparency.

Natural Resources and Economic Development

- **Implementation of Federal Regulations:** Study the impact and identify challenges Texas faces implementing proposed federal Environmental Protection Agency regulations, including, but not limited to the Clean Power Plan, Reduction of Methane and Volatile Organic Compounds (VOCs) from oil and gas facilities, Ozone standards, Regional Haze, and Waters of the U.S. Make recommendations for legislative or constitutional action the committee considers necessary.
- **Texas Emission Reduction Plan (TERP):** Study and make recommendations regarding the use of Texas Emission Reduction Plan (TERP) funds, including reducing air emissions from mobile sources in response to changes in ozone standards.
- **Economic Development:** Evaluate the effectiveness and necessity of programs and resources currently used to support economic development in Texas. Make recommendations regarding continuation of effective strategies, modification of existing administrative or regulatory barriers, and the reduction or elimination of ineffective programs.
- **ERCOT/PUC Electricity Issues:** Conduct legislative oversight and monitoring of agencies and programs under the committee's jurisdiction. In this oversight and monitoring, the committee should: (1) identify and recommend opportunities to streamline programs or services and enhance grid safety while maintaining the mission of ERCOT and PUC and their programs; and (2) identify barriers ERCOT or PUC may have in their governance that may be appropriate to improve or eliminate.

- **Oil Field Theft:** Study and make recommendations for solving the oil field theft problems facing Texas, including identifying the proper mechanisms for increasing enforcement effectiveness.
- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Committee on Natural Resources and Economic Development during the 84th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the following: (1) legislation relating to Texas aerospace incentives; (2) expedited permitting; and (3) electric utility rate adjustments.

State Affairs

- **Religious Liberty:** Examine measures to affirm First Amendment religious liberty protections in Texas, along with the relationship between local ordinances and state and federal law. Make recommendations to ensure that the government does not force individuals, organizations, or businesses to violate their sincerely held religious beliefs.
- **Union Dues:** Examine the practice of using public funds and employees for the payment processing of union dues. Make recommendations on whether Texas should end this practice.
- **Chief Law Enforcement Officers:** Examine whether there are chief law enforcement officers within the state who deny NFA applications (these are requests by federal license holders to obtain automatic weapons, silencers, etc.) without any cause. Examine the application and certification process and recommend ways to eliminate no-cause denials.
- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Committee on State Affairs during the 84th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the following: (1) implementation of open and campus carry legislation and determine if the current laws regulating the places that handguns can be carried are easily understood or if clarification is needed to ensure the average citizen understands when, where, and under what circumstances it is lawful to carry a weapon, versus when it is a criminal offense for which there may be a defense; (2) the electronic voting program for certain military members serving overseas; and (3) the establishment of a public integrity unit under the authority of Texas Rangers.

Subcommittee on Border Security

- **Sanctuary Cities:** Study the various sanctuary city policies statewide, the number and types of crimes committed by previously arrested illegal immigrants within the jurisdiction of a “sanctuary policy,” and possible solutions to discourage governmental entities from putting in place policies that conflict with immigration laws. Make recommendations to improve community safety.

- **Local Law Enforcement, PEP:** Study local government efforts to secure their border communities and identify areas where the state could invest to bolster local law enforcement infrastructure and activities. Review the challenges faced by state and local law enforcement when providing border security, including the federal Priority Enforcement Program (PEP).

Transportation

- **TxDOT Funding:** Monitor any new and anticipated revenue appropriated to the Texas Department of Transportation and make recommendations that address project prioritization and selection, effectiveness of staffing levels, and project delivery methods.
- **Regional Mobility Authorities:** Review State Highway Fund grants and loans to Regional Mobility Authorities (RMA) and make recommendations if additional oversight procedures are needed to ensure the RMA expenditures are a valid and accountable use of State Highway Funds.
- **Oversize/Overweight Vehicle Regulations, Penalties and Fines:** Review current state and federal regulations, penalties, and fines related to oversize and overweight vehicles and make recommendations to minimize impacts on the state’s roadways and bridges.
- **Monitoring Charge:** Monitor the implementation of legislation addressed by the Senate Committee on Transportation during the 84th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, monitor the following: (1) progress of the Texas Department of Transportation’s efforts to propose a plan to eliminate toll roads; (2) removing eminent domain authority from private toll corporations; (3) ending the issuing of any new debt from the Texas Mobility Fund (TMF) and prohibiting future use of the TMF on toll projects; and (4) the Sunset Advisory Commission's review of the Texas Department of Transportation.

Veteran Affairs and Military Installations

- **Defense Adjustment Authorities, Compatibility Use, and Encroachment:** Consider best practices for improving the military value at military installations in Texas. Determine cost-effective policies and make recommendations that would strengthen military value.

Texas Water Development Board Seeks Input: **Brackish Groundwater Production Zones**

The Texas Water Development Board (TWDB) is seeking public input to identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater.

The input relates to House Bill 30, passed in the 2015 session, which directed the Texas Water Development Board (TWDB) to identify and designate certain brackish groundwater production zones.

In designating a brackish groundwater production zone, the TWDB will determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality. The TWDB will also provide recommendations for reasonable monitoring to observe the effects of brackish groundwater production.

Public input may be provided on or before October 30, 2015: (1) at a public meeting scheduled for 10:00 a.m. on October 26, 2015, in Room 170 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, and/or (2) by written comments submitted to Dr. Sanjeev Kalaswad, Director of Conservation and Innovative Water Technologies, by email to sanjeev.kalaswad@twdb.texas.gov.

Interested city officials can sign up for future meeting notices and information concerning the implementation of House Bill 30 by emailing contact information to Dr. Kalaswad.

Webinar: Accommodating Nursing Mothers

The Texas Department of State Health Services and the [Mother-Friendly Worksite](#) are offering a free one-hour webinar at 1:00 p.m. on October 19 to provide information on a new state law, as well as existing federal law.

House Bill 786, passed in 2015, requires all public employers, including cities, to adopt a written policy accommodating nursing mothers who desire to express breast milk in the workplace. The bill also requires each city to provide: (1) reasonable break times; and (2) a place where an employee can express breast milk. Discrimination against nursing mothers is prohibited by the bill.

Go to <https://attendee.gotowebinar.com/register/60204128703684609> to register.

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