Texas Municipal League

Legislative UPDATE

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Number 25

Governor's Vetoes Include City-Related Bills

Governor Greg Abbott has vetoed 42 bills passed by the legislature during the regular session. Ten of the 42 were city-related bills described in the League's "wrap-up" *Legislative Update* on June 5. (Both the PDF and online version of that edition have been updated to reflect vetoed bills and other minor corrections.) Those 10 vetoes are detailed below:

- **H.B. 2282 (Guillen/Uresti) – Property Tax Protests**: provides, among other things, that an appraisal review board and chief appraiser must review the evidence or arguments provided by a property owner before a hearing on a protest.

  According to the governor's veto message, "[t]he Texas Tax Code allows all property owners in Texas to bring an appeal in district court to challenge an appraisal district decision regarding their property. These appeals are important matters for property owners, who deserve a fair and predictable process by which to challenge the actions of appraisal districts. House Bill 2282 departs from the uniform, statewide rules governing appraisal appeals by allowing property owners in just one of the state's 254 counties to file their appeals with a justice of the peace instead of a district court. Unlike district courts, justices of the peace generally do not serve an entire county; instead they serve a particular geographic district within the county. Yet House Bill 2282 would allow property owners to choose any justice of the peace in the county to hear their appeal. This would invite forum shopping and would allow a justice of the peace to make rulings about property in a part of the county he or she does not represent."

- **H.B. 2775 (E. Rodriguez/Zaffirini) – Candidate Applications**: provides that: (1) a single notarized affidavit by any person who obtains signatures for a candidate petition is valid for all signatures gathered by the person, if the date of notarization is after the date of the last signature obtained by the person; and (2) a candidate petition may be corrected and additional signatures presented after the petition has been initially filed, but not after the deadline for filing the petition.

  According to the governor's veto message, "[t]he Election Code requires those seeking a place on the ballot for certain races to submit to the Secretary of State a petition containing signatures of registered voters who support the candidacy. House Bill 2775 would allow candidates who submit deficient petitions to update their petitions in a piecemeal fashion, rather than requiring the submission of a single, legally compliant petition. This could increase the risk of erroneous or fraudulent petitions. To the extent there are concerns about the Secretary of State's current policies on candidate petitions, the Legislature should work with the Secretary of State's office to address this issue in the next session."

- **H.B. 2788 (Springer/Perry) – Conservation Measures**: allows a retail public utility, which includes a municipally owned utility, to require the operator of a correctional facility that receives water or sewer service from the utility to comply with water conservation measures adopted by the utility.

  According to the governor's veto message, "Texas' prison system and the many county-level correctional facilities across the state should seek to conserve water whenever doing so is consistent with their core purpose – the secure and lawful incarceration of inmates. While water conservation is a worthy goal, House Bill 2788 goes too far by subjecting prisons and jails to the conservation mandates of local water utilities that do not share the correctional facilities' penological mission. Ceding control of the state's correctional facilities' water use to local water utilities creates the potential for interference with a core function of government. If the legislature wishes to require prisons and jails to use less water, it should do so directly rather than outsourcing the decision to local water utilities. Moreover, this bill would mandate unfunded costs on state and local correctional facilities. Any savings touted through reduced water consumption can, and should, be realized today through prudent water conservation measures that are not driven by regulation."

- **H.B. 3060 (Anchia/West) – Building and Standards Commission**: provides that, in addition to the authority in current law, a panel of a building and standards commission may order action to be taken as necessary to remedy, alleviate, remove, or abate, violations of ordinances relating to animal care/control or water conservation measures (including water restrictions).

  According to the governor's veto message, "[l]ocal governments generally should have flexibility to respond to local concerns, including the need to conserve water. House Bill

3060 goes too far, however, by granting broad authority to local enforcement commissions to interfere with private property rights. Lawn-watering restrictions can already be enforced by fines. The additional enforcement authority provided by this bill would allow the government to insert itself too deeply into what a private property owner chooses to do on his or her own land. Local governments already have sufficient tools at their disposal to encourage their residents to use less water.

- **H.B. 3184 (McClendon/Menendez) – Victim-Offender Mediation Program**: authorizes a city council: (1) to establish a pretrial victim-offender mediation program for persons charged with a misdemeanor or state jail felony offense against property; (2) to adopt administrative and local rules of procedure for the program; and (3) to collect from a participant a $500 fee for the program and $15 court cost paid to the municipal treasury for the purpose of funding the program.

  According to the governor's veto message, "[m]ediation is a process available in civil lawsuits by which parties can work out their disputes without using courts. House Bill 3184 imports the civil law process of mediation into criminal law, allowing for mediation between the victim of the crime and the criminal to take the place of prosecution by the State, even in some violent felony cases. This "victim-offender mediation" leaves out a key party in criminal litigation-the State of Texas. Criminal indictments in Texas allege that a crime has been committed "against the peace and dignity of the State." The State, not the victim of crime, brings criminal litigation against the defendant. And while prosecutors do seek justice for victims, their primary duty is to represent the broader public interest in deterring and punishing crime for the good of all Texans. Making amends with the victim of a crime does not absolve the criminal of his legal debt to the State. Mediation is not well-suited to the criminal context and should be reserved for civil cases."

- **H.B. 3511 (Davis/Huffman) – Financial Statements**: requires that financial statements filed by officials and candidates in cities with a population of 100,000 or greater contain information about certain community and separate property, and that the statements meet certain requirements if they are electronically filed.

  According to the governor's veto message, "Texans deserve accountability and transparency from their public officials. House Bill 3511 weakens the ethics laws governing officeholder financial disclosures. I cannot allow that."

- **H.B. 3579 (Alonzo/Rodriguez) – Expunction of Records**: provides that: (1) a person who is convicted of and has satisfied the judgment for, or who has received a dismissal after deferral of disposition for, a fine-only misdemeanor, other than an offense under the Transportation Code or municipal ordinance, may petition the court for an order of nondisclosure; (2) the court shall hold a hearing on whether the person is entitled to file the petition and whether issuance of the order is in the best interest of justice; and (3) the clerk of a court that collects a fee for the petition shall deposit the fee to the credit of the general fund of the city.

According to the governor's veto message, "I previously signed Senate Bill 1902, which increases the ability of those who have been convicted of misdemeanors to have their criminal records sealed from public disclosure. The purpose of that legislation is to expand the employment prospects of individuals whose minor criminal records may be unduly limiting their ability to pursue an honest living.

House Bill 3579 has a similar goal, but it goes too far by allowing courts to expunge dismissed criminal charges – including serious felony charges – even when the defendant was convicted of other, related charges. This would be problematic for two reasons. First, dismissal of a criminal charge is not necessarily an indicator of the defendant's innocence of that crime, particularly when a multi-charge arrest results in a plea agreement. Second, unlike orders of non-disclosure, which seal records from public view, expunction seals the records even from law enforcement. Under House Bill 3579, even those convicted of serious felonies could have parts of their criminal record expunged. This would deprive law enforcement of information about the offense history of habitual criminals, which may be useful in the investigation of future crimes."

- **H.B. 4103 (Guillen/Garcia) – Judges**: provides that a municipal judge who continues to serve because the city council failed to take action to remove or reappoint the judge as required by law may continue to perform the duties of the office without taking an additional oath of office.

  According to the governor's veto message, "[t]he Texas Constitution requires all elected or appointed officers to take the following oath: "I, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God." The oath is commonly re-taken when an existing officeholder begins a new term. House Bill 4103 would exempt municipal judges from the need to take the oath for a subsequent term of office. Judges, of all offices, should never be excused from the obligation to swear to preserve, protect, and defend the Constitution."

- **S.B. 1034 (Rodriguez/Miller) – Voting by Mail**: provides that: (1) when a voter cancels an application for a ballot by mail, the cancellation does not extend to a subsequent election; (2) a person eligible to submit an application for a ballot to be voted by mail on the grounds of age or disability may apply to receive all ballots in an even numbered year on the same application submitted for a ballot in the November general election of an odd year; and (3) the secretary of state by rule may redesign the official carrier envelope by moving all the textual material to a separate sheet and styling the signature box to insure that a voter is instructed to and must sign over the flap.

  According to the governor's veto message, "[t]he integrity of the vote-by-mail process must be strengthened, not called into question. Amendments added to Senate Bill 1034 late in the legislative process would create confusion as to how counties should

administer mail-in ballot applications. To ensure this important matter is addressed with the clarity it deserves, the Legislature should reconsider the issue and eliminate the uncertainty and ambiguity contained in this bill."

- **S.B. 1408 (Lucio/T. King) – Community Development Grant Program**: provides that: (1) the Texas Department of Agriculture, subject to the availability of funds, must create a community development matching grant program to assist in financing various activities, including trade-related initiatives, renewable energy projects, water or wastewater infrastructure projects, and economic development projects; and (2) a city is eligible for a matching grant if the city is in a nonentitlement area as defined under the federal community development block grant nonentitlement program and in good standing with the department and the U.S. Department of Housing and Urban Development.

  According to the governor's veto message, "Senate Bill 1408 creates new authorities to issue state funds to local units of governments similar to, and in some cases identical to, grants already made under the federal Community Development Block Grant program. The stated intent of the new programs is to offset reductions in federal funding with new state funding. Our federal government's addiction to spending Texas taxpayer dollars must be brought under control, and when it is, the State of Texas should not find ways to tax our citizens to continue funding services our federal elected officials have deemed worthy of curtailing."

U.S. Supreme Court Further Restricts Municipal Sign Regulations

On June 18, the U.S. Supreme Court issued its opinion in *Reed v. Town of Gilbert*. The opinion follows a continuing judicial trend of limiting municipal regulations governing signs and billboards. The opinion concludes that ordinance provisions containing content-based restrictions are likely unconstitutional.

The Town of Gilbert, Arizona, enacted a sign ordinance that defined various types of signs and restricted the different types of signs in different ways. For example, the ordinance included definitions for temporary directional signs, ideological signs, and political signs. Based on the type of sign, it then limited how long the sign could be posted. (Temporary directional signs could be posted no sooner than 12 hours before an event and for one hour after the event, but ideological or political signs could be posted for much longer.)

A church in the town regularly changed the location of its services. Each week, the church used temporary directional signs to guide parishioners to the appropriate location. The signs were in place longer than allowed by the town's ordinance, and the town cited the church for the violations.

The church sued the town, arguing that the shortened time frame for temporary directional signs versus the longer time frame for ideological and other signs was a "content-based" restriction on speech that is prohibited by the First Amendment to the U.S. Constitution. The town countered that the shorter time frame for temporary directional signs was not content-based because anyone's temporary directional sign had to follow the same restrictions, not just churches.

The Court held that the ordinance's varying durations for posting based on the type of sign was based on the content of the sign because a city employee had to read the sign to enforce the ordinance. When a restriction on speech is content-based (as opposed to a reasonable time, place, or manner restriction,) it will be upheld only if a city can show that the restriction is "narrowly-tailored to meet a compelling governmental interest." That test is referred to by the courts as "strict scrutiny." A law or ordinance that is subject to strict scrutiny rarely survives a first amendment analysis.

The Court invalidated the ordinance because the town did not prove that the content-based distinction was narrowly tailored to achieve the town's interests of aesthetics and traffic safety. As support for its position, the court noted that the ordinance allowed a great number of signs to be placed for long periods of time. That fact, in-and-of-itself, refuted the town's stated interests of aesthetics and traffic safety. Moreover, the court concluded that the various exceptions in the ordinance for certain signs made the restriction of other signs insupportable.

As a practical matter, the opinion means that any provision in a sign ordinance requiring a city employee to read a sign before deciding whether it is in compliance subjects the ordinance to the strict scrutiny test. That heightened review affects every city's ability to restrict political signs and could even affect a city's ability to restrict offsite signs, like billboards, differently than onsite signs. More troubling is that restrictions based on the commercial versus non-commercial messages on a sign could be affected.

An ordinance can arguably still prohibit all signs on city property, including city rights-of-way, and can limit the size, building materials, and other aesthetic aspects of a sign. For example, a city could still ban all billboard-sized signs, but it would have a harder time allowing some billboards and not others if a differentiation is based on the content of the billboard.

Each city should review its sign ordinance in light of this opinion. If the ordinance contains any content-based restrictions, the city should ensure that they are narrowly tailored to meet the city's compelling governmental interests. More information about the effects of *Reed* will be forthcoming as attorneys further analyze the holding. Please contact Laura Mueller in the TML legal department at laura@tml.org or 512-231-7400 with questions.

TxDOT Unveils Local Project Toolkit

The Texas Department of Transportation (TxDOT) is currently working with more than 200 local governments on more than 900 active local government (LG) projects. Those projects include: (1) signal timing upgrades on urban streets; (2) hike and bike trails; (3) adding

sidewalks near elementary schools; (4) adding managed lanes to an urban freeway; and (5) performing access-management studies.

Developing those local transportation projects in conformance with the numerous laws and regulations applicable to the projects can be complex and time-consuming. In an effort to facilitate development processes for local governments that use state or federal funding for local transportation projects, TxDOT has created an online toolkit designed to simplify the required steps of project development.

The heart of the toolkit is a web portal that leads project personnel to the point in the development process where they are currently working. From this point, they can link directly to a new "LG Projects Policy Manual, the new LG Project Management Guide, and the new LG Project Workbook."

Each of those resources serves a unique purpose: (1) the policy manual includes laws, regulations, and policies that define why a local government must take a certain action; (2) the management guide includes procedures explaining what action each agency must perform; and (3) the workbook includes checklists, forms, and other tools representing best practices on how to successfully perform each action. Each of the documents has direct links to applicable federal and state laws and regulations, internal/external websites and online manuals, and internal/external forms and tools.

Rather than needing to know where to find applicable sections of the federal law, state law, TxDOT policy, and available tools and forms, this new online toolkit allows every person involved in an LG project to navigate directly to anything needed to those items.

Resolutions for the 2015 TML Annual Conference

The legislative efforts of TML are guided by its members. That guidance comes in the form of resolutions that are submitted by member cities, TML regions, TML affiliates, and TML committees. If your city has a legislative issue that it would like TML to consider, please submit it in accordance with the following instructions.

The TML Constitution states that resolutions for consideration at the Annual Conference must be submitted to the TML headquarters 45 calendar days prior to the first day of the Annual Conference. For 2015, this provision means that resolutions from any member city, TML region, or TML affiliate must arrive at the TML headquarters no later than 5:00 p.m. on **August 10, 2015**.

The TML Board of Directors has adopted several procedures governing the resolutions process. Please review the following items carefully and thoroughly.

1. No resolution may be considered by the TML Resolutions Committee unless it has prior approval of: (a) the governing body of a TML member

city; (b) the governing body or membership of a TML affiliate, or (c) the membership of a TML region at a regional meeting.

2. TML member cities, regions, and affiliates that wish to submit a resolution **must** complete a resolution cover sheet. The cover sheet is available here. Please feel free to make as many copies of this cover sheet as you desire. The cover sheet must be attached to the resolution throughout each step of the resolutions process.

3. It is recommended that any resolution state one of four categories to better direct League staff. Those categories are:

   - **Seek Introduction and Passage** means that the League will attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as "TML bills."

   - **Support** means the League will attempt to obtain passage of the initiative if it is introduced by a city or some other entity.

   - **Oppose**.

   - **Take No Position**.

   Please see the 2015-2016 TML Legislative Policy Development Process for more information.

4. Resolutions submitted will be thoroughly discussed at the TML Annual Conference. The Resolutions Committee is appointed by the TML President and is made up of city officials from TML member cities across the state.

5. The city, region, or affiliate that submits a resolution is encouraged to send a representative to the Resolutions Committee meeting to explain the resolution. The Resolutions Committee will meet at **2:00 p.m.** on **Tuesday, September 22, 2015**, at the **Henry B. Gonzalez Center** in **San Antonio**.

If the procedures described above are not followed for any given resolution, that resolution is likely to be referred to some other TML committee for further study. In that case, the resolution would not be adopted during the 2015 conference.

Under the TML Constitution, resolutions received after the deadline of August 10, 2015, must not only have the attached cover sheet, but also must "state the reason precluding timely submission." These late resolutions may be considered by the TML Resolutions Committee at

the Annual Conference only if two-thirds of the Committee members present and voting agree to suspend the submission rule and consider the resolution.

Resolutions may be submitted by mail, fax, or email to Scott Houston, Deputy Executive Director and General Counsel, at:

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Austin, Texas 78754
Fax: 512-231-7490
Email: shouston@tml.org

If you have any questions or would like any assistance, please call 512-231-7400 at any time.