



June 12, 2015  
Number 24

### **TML's Legislative Wrap-Up: Don't Forget to Register!**

The League's one-day "legislative wrap-up" workshop will focus on the outcome of the major city-related bills from the recently concluded 84th Legislative Session. Hear about the deals reached, the measures that fell short, and the impact this legislation will have on cities. TML staff will brief you on key legislation, and explain what cities need to know to prepare for the laws' enactment.

The workshop will be held at the Doubletree by Hilton Hotel in Austin on Monday, June 29, 2015.

Please go to [www.tml.org](http://www.tml.org) and click "Training" for more information.

### **Resolutions for the 2015 TML Annual Conference**

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:

1821 Rutherford Lane, Suite 400  
Austin, Texas 78754  
Fax: 512-231-7490  
Email: [shouston@tml.org](mailto:shouston@tml.org)

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

## **Internet Tax Legislation Passes U.S. House**

Last Wednesday, the U.S. House of Representatives passed H.R. 235 (The Permanent Internet Tax Freedom Act) by a voice vote. The bill would permanently ban Internet taxing authority in a similar manner as the existing moratorium on Internet taxes, except in one key respect: the new bill would cancel a grandfathering provision that permits ten states, including Texas, to continue pre-existing taxes on Internet access. Texas and its cities currently apply sales taxes to Internet access charges in excess of \$25 per month.

The estimated net effect of the bill, if passed, on the State of Texas would be a \$280 million loss per year. For Texas cities, the loss would be \$51 million per year.

Concerned city officials should contact the offices of Senators [Cornyn](#) and [Cruz](#) now. The message is this: while Texas officials don't seek new taxing authority in this area, we do wish to maintain existing sales taxes. Accordingly, H.R. 235 must be amended to continue the grandfathering clause of the existing moratorium. Otherwise, cities will lose \$51 million in revenue that pays for streets, police, and fire protection, among other critical services.

## **EPA Releases Final “Waters of the U.S.” Rule**

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) have released the final “Waters of the U.S.” rule, which defines the scope of waters that fall under federal jurisdiction of the Clean Water Act (CWA). The final rule is the result of extensive feedback from stakeholders during the rulemaking process.

The final rule does not establish any regulatory requirements. Instead, it is a definitional rule that clarifies the scope of “waters of the United States.” Under the final rule, “waters of the United States” means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide (this definition is commonly referred to as “traditional navigable waters”).
2. All interstate waters, including interstate wetlands.
3. The territorial seas.
4. All impoundments of waters otherwise identified as waters of the United States.
5. All “tributaries” of waters identified in 1-3, above.
6. All waters “adjacent” to a water identified in 1-5 above, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
7. Prairie potholes, Carolina bays and Delmarva bays, Pocosins, western vernal pools, and Texas coastal prairie wetlands if they are determined, on a case-specific basis, to have a “significant nexus” to a water identified in 1-3 above.
8. All waters located within the 100-year floodplain of water identified in 1-3 above and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in 1-5, above, in which they are determined on a case-specific basis to have a significant nexus to a water in 1-3, above.

The final rule includes definitions of “tributary,” “adjacent,” and “significant nexus,” among others. This new definition of “waters of the U.S.” has the potential to expand the number of waterbodies that are federally regulated by the EPA.

The final rule includes an exclusion for “stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.” This exclusion ensures that water conveyances, including municipal separate sewer systems (MS4s), do not fall under the rule. However, while the rule language establishes a broad categorical exclusion, it does not apply to stormwater control features that were built on wet land or features that are part of traditionally navigable water, interstate water, or the territorial seas. For example, the exclusion may not apply to infrastructure in coastal or low-lying areas.

The final rule also includes an exclusion for wastewater management systems. The exclusion covers “wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.”

The final rule will be effective 60 days after publication in the Federal Register. The League will continue to monitor any associated rulemaking process at both the state and federal levels.

## **Payday Lending Clearinghouse Updates**

The League’s “Payday Lending Clearinghouse” webpage, available at [www.tml.org/payday-updates](http://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. Interested city officials should note that, on June 4, the Fort Worth Court of Appeals issued a memorandum opinion in the case of

*Ace Cash Express, Inc. v. City of Denton.* Ace Cash Express claimed that Denton’s ordinance (which is essentially the same as the example available on the clearinghouse page) overwhelmed customers, increased default rates, caused a significant decrease in revenue, and could lead to the closure of at least one of its two Denton locations. It sought an injunction and declaratory judgment that the ordinance exceeded Denton’s police power, violated due process, and exceeded the city’s constitutional authority. The court disagreed, holding for the city on all claims. The opinion is available under “Denton” on the [Lawsuit Pleadings](#) page of the clearinghouse.

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