

The logo for the Texas Municipal League, featuring a green square with a white star in the center. The words "Texas", "Municipal", and "League" are stacked vertically in white text within the square.

Legislative UPDATE

April 7, 2017
Number 14

Senate Budget Designed to Raise Property Taxes

Last week, the Senate passed its version of the budget. It would cut about \$1.8 billion in state funding for public education. How can our state leaders afford the political blowback from cutting funds for our struggling schools? They won't have to! In fact, total education spending will actually grow somewhat. That's almost entirely because school district property taxes are encouraged to increase enough to cover the state's funding retreat and then some.

Why should Texas cities care about this slight of hand? Because it's part-and-parcel of the plan to replace state school funding with local property taxes and to try and blame cities for the whole shameful charade. That's where S.B. 2, the revenue cap bill, comes into play. That bill cuts city and county property taxes only, and it does nothing to stop the growth of state/school property taxes outlined above.

Let's look at the numbers. The fiscal note on S.B. 2, the revenue cap, shows a two-year tax savings from city and county taxes of about \$529 million. The Senate Budget bill, however, anticipates somewhere around a \$5.7 billion increase in school taxes during a biennium.⁽¹⁾ So to put that in perspective, the *planned increase* in local school property taxes under S.B. 1 is over *ten times as large* as the possible tax cuts under S.B. 2. Taxes will go way up under the combination of the two bills, and the increase will be entirely due to state action.

So why bother with the minimal effect of trying to pass S.B. 2? It's a classic case of political diversion: "well, yeah, what we're doing here with school funding is pretty horrible...but, look over there at the big, bad cities!" It would be funny if it weren't so harmful to our state's cities, taxpayers, and schoolchildren.

(1) The biennial comparison is actually off by one year due to the effective date of S.B. 2, but the difference isn't significant to the point of this article.

House and Senate Committee Hearings: **The End of Annexation?**

Home rule cities that annex property should contact their legislators now in opposition to Senate Bill 715 (Campbell) and House Bills 299 (Larson), 424 (Huberty), and 2272 (Schofield). Each of the bills was heard in committee this week, one (S.B. 715) was voted out, but they all have one thing in common: they would end municipal annexation by requiring voters in an area to approve the annexation at an election.

League staff, along with several city officials, testified against the bills in the House Land and Resource Management and Senate Intergovernmental Relations Committees on April 5. In spite of that opposition testimony, Senate Bill 715 was immediately voted out of the senate committee. City testimony focused on the effect annexation restrictions would have on the state's economy:

1. Texas annexation laws have been fine tuned over the past 100 years to provide an efficient and orderly way to deal with population growth, which is now increasing more than ever.
2. And the proof that annexation is working well is in the results: Year after year, Texas cities are among the national leaders in attracting new businesses and new residents.
3. When cities are prevented from expanding their boundaries, as we've seen in other parts of the country, the city core declines and the region enters a slow economic death spiral.

At the League's request, an economic analysis firm, TXP, Inc. (www.txp.com), prepared a report titled "[*Annexation Policy's Impact on the Economy and Tax Revenue of Texas Cities.*](#)" which was presented to the House committee. The study compared several southern states' annexation policies. It found that states with "municipal determination" annexation policies (i.e., those where the city council, after input from citizens, decides whether to annex adjacent areas) had better personal income and economic growth and higher municipal bond ratings than states that limit annexation authority. Even more interesting, the study found that municipal determination cities grow physically more slowly than those in other states (presumably because city officials have to prudently deal with the political response to annexing).

If your city is concerned about this issue, either because you intend to annex or you appreciate the importance of annexation authority to the Texas economy, it is time to contact your state legislators in opposition to the bills mentioned above.

Open Meetings Act: **Court Declares Criminal Conspiracy Provision Unconstitutional**

This week, a Montgomery County judge declared the criminal conspiracy provision of the Texas Open Meetings Act (TOMA) unconstitutional. That provision provides that:

A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

The county judge and two commissioners were indicted for violating the provision when they allegedly engaged in a so-called “walking quorum.” The criminal punishment could include up to a \$500 fine and six months in jail.

Rather than mount a substantive defense, attorneys for the county officials challenged the underlying statute as an unconstitutional restriction on the officials’ First Amendment right to freedom of speech. In a hearing on the question, municipal attorneys testified as to the criminal conspiracy provision’s vagueness, and city officials testified as to their confusion about who they can talk to and when. The judge agreed with the witnesses and declared the statute unconstitutional.

Longtime city officials may remember a similar legal challenge that began in 2005 and concluded in 2013. That lawsuit, commonly referred to as “TOMA II,” was the second challenge brought by several city councilmembers who claimed – with amicus support from the League – that the criminal closed meeting provision of the Texas Open Meetings Act unconstitutionally infringed on their right to freedom of speech.

In 2013, the U.S. Supreme Court denied the petition for writ of *certiorari* (i.e., request to hear the case) in the case, which was styled *Asgeirsson v. Abbott*. The court’s denial meant that a previous Fifth Circuit Court of Appeals opinion upholding the illegal closed meeting provision is the law of the land in Texas.

The judge’s order in Montgomery County will likely be appealed by the state. The League will monitor and participate as appropriate. In the meantime, city officials should continue to use caution when communicating outside of an open meeting to avoid possible criminal prosecution.

FCC Seeks More Right-of-Way Preemption

The Federal Communications Commission (FCC) has released proposed rules that, if finalized, could dramatically preempt city authority. The two proposed rules, which are intended by the FCC to “streamline and promote broadband deployment,” suggest a series of changes that could severely hamper a city’s authority to manage use of the rights-of-way.

The first proposed rule, “[Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment](#),” would reform utility pole attachment rules to mandate timelines and limit fees for applicants seeking to attach antennas or new wires to existing poles. The proposed rule also considers whether the FCC should further preempt any local ordinances or practices that “frustrate, delay, or inhibit” telecommunications providers – a statement that could open the door to broad preemption.

The second proposed rule, “[Wireless Infrastructure NPRM](#),” would revisit existing “shot clocks” for wireless site application review and potentially create a number of new categories with differing shot clock timelines. It would also revisit the FCC’s “deemed granted” proposal, which would require that – if a local government does not complete its application review within the shot clock time frame for *any* wireless facility – the facility’s application would be automatically granted. Moreover, the rule would go even further by: (1) suggesting that any city that failed to meet a shot clock requirement would have “defaulted its authority” to review wireless applications at all; and (2) limiting aesthetic requirements for wireless sites; and (3) limiting any regulations not relating directly to health and safety.

The FCC will vote on whether to advance these proposed rules through the formal public comment process at its April 20 open meeting. It is likely to do so, and the comment period would begin after publication in the Federal Register.

Make no mistake, these FCC proposals, along with administrative actions at the Public Utility Commission and legislative action at the Texas Capitol (see S.B. 1004 in the *Significant Floor Actions* section of this edition), are nothing less than a full preemptive strike at cities.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available at 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 the list of cities that have adopted regulations is expanding. An updated list is available on the webpage.

TML Names Legislator of the Month for March

Representative Jim Murphy (R – Houston) is the TML Legislator of the Month for March 2017. Representative Murphy represents House District 133, which includes a portion of Houston, Bunker Hill Village, Hedwig Village, and Hunters Creek Village.



Representative Murphy is currently serving in his fifth term and serves as the Chairman of the House Committee on Special Purpose Districts and is a member of the powerful House Ways and Means Committee. Chairman Murphy authored H.B. 387 which would clarify the authority of general law cities to enact sex offender residency restrictions.

We hope city leaders across Texas, and particularly those in Representative Murphy’s districts, will express their appreciation to these outstanding leaders.

Significant Committee Actions

H.B. 100 (Paddie), relating to the regulation of transportation network companies. Reported from the House Committee on Transportation.

H.B. 435 (K. King), relating to the application of certain weapons laws to and liability for certain actions of volunteer emergency services personnel licensed to carry a handgun. Reported from the House Committee on Homeland Security and Public Safety.

H.B. 478 (Israel), relating to civil liability for removing certain individuals or animals from a motor vehicle. Reported from the House Committee on Homeland Security and Public Safety.

H.B. 1251 (Sanford), relating to Internet broadcasts of open meetings held by the board of directors of a development corporation. Reported from the House Committee on Government Transparency and Operations.

S.B. 63 (Zaffirini), relating to the electronic filing of reports of political contributions and expenditures and of personal financial statements by certain officeholders and candidates and the content of those statements. Reported from the Senate Criminal Justice Committee.

S.B. 451 (Hancock), relating to regulation of short-term rentals by municipalities and counties. Reported from the Senate Business and Commerce Committee.

S.B. 461 (Lucio), relating to the notice required before the issuance of certain debt obligations by political subdivisions. Reported from the Senate Intergovernmental Relations Committee.

S.B. 626 (Schwertner), relating to the acquisition of certain real property in conjunction with the acquisition of real property for a public use through eminent domain procedures. Reported from the Senate State Affairs Committee.

S.B. 627 (Schwertner), relating to notice of a property owner's rights relating to the examination or survey of property by an entity with eminent domain authority. Reported from the Senate State Affairs Committee.

S.B. 628 (Schwertner), relating to establishing actual progress for the purposes of determining the right to repurchase real property from a condemning entity. Reported from the Senate State Affairs Committee.

S.B. 1089 (Perry), relating to the certification of food service workers. Reported from the Senate Committee on Agriculture, Water, and Rural Affairs.

Significant Floor Actions

S.B. 488 (Bettencourt), relating to requirements for certain petitions requesting an election and ballot propositions. Passed the Senate. As passed, this bill would mandate a state process for local ballot initiatives, including charter amendment and referendums under a home rule charter.

S.B. 601 (Campbell), relating to authorizing an exemption for open-enrollment charter schools from certain municipal drainage requirements. Reported from the Senate Intergovernmental Relations Committee.

S.B. 622 (Burton), relating to itemizing certain public notice expenditures in political subdivision budgets. Passed the Senate.

S.B. 737 (Hancock), relating to requirements for new or increased municipal fees. Passed the Senate. As passed, this bill would provide that, in addition to mandating the use of a fee change email notification system by a city in a county with a population of more than 30,000, a city may not adopt a new fee or increase an existing fee unless the governing body holds a public hearing 30 days before at which members of the public are given the opportunity to be heard.

S.B. 744 (Kolkhorst), relating to a tree planting credit to offset tree mitigation fees imposed by a municipality. Passed the Senate. As passed, this bill would provide that: (1) a city that imposes a tree mitigation fee for tree removal that is necessary for development or construction on a person's property must allow that person to apply for a credit for tree planting under this section to offset the amount of the fee; (2) an application for a credit under (1) must be in the form and manner prescribed by the city; (3) to qualify for a credit under the bill, a tree must be planted on property for which the tree mitigation fee was assessed or mutually agreed upon by the city and the person and at least two inches in diameter at the point on the trunk 4.5 feet above ground; (4) For purposes of where to plant an offsite tree under (3), the city and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the city; (5) the amount of a credit provided to a person under the bill must be: (a) applied in the same manner as the tree mitigation fee assessed against the person; and (b) at least 50 percent of the amount of the tree mitigation fee assessed against the person; (6) as long as the city meets the requirement to provide a person a credit under (5), the bill does not affect the ability of or require a city to determine: (a) the size, number, and type of trees that must be planted to receive a credit under the bill, except as provided by (3); (b) the requirements for tree removal and corresponding tree mitigation fees, if applicable; or (c) the requirements for tree planting methods and best management practices to ensure that the tree grows to the anticipated height at maturity; and (7). The bill does not apply to property within five miles of a federal military base in active use as of September 1, 2017.

S.B. 1004 (Perry), relating to the deployment of network nodes in public-rights-of-way. Passed the Senate. This bill is sought by wireless companies and industry vendors ("network providers") to quickly install small cellular equipment ("network nodes") and/or towers in a city's rights-of-way. It would make various findings related to the deployment of cellular network nodes in the

public rights-of-way and municipal authority over those rights-of-way and – substantively of most significant interest to city officials – would provide that:

1. Except as provided by the bill, a city may not prohibit, regulate, or charge for the installation or collocation of network nodes in a public right-of-way.
2. A 30-day “shot clock” is imposed on a city to notify a network provider that its application for a network node or node support pole is complete, and a 10-day “shot clock is imposed for a transport facility.
3. A 150-day shot clock is imposed on a city to approve or deny a completed application for a new node support pole and a 60-day shot clock is imposed a node to be placed on an existing pole.
4. Detailed procedures must be followed if a city denies a permit.
5. A network provider shall begin the installation for which a permit is granted not later than nine months after the date the permit is approved and shall diligently pursue completion.
6. A city may charge an application fee for a permit only if it requires the payment of the fee for similar types of commercial development inside the city’s territorial jurisdiction, and any fee must be cost-based and not contingent-based – the amount of the fee must be cost-based or \$100 or \$50 per application, depending on number, whichever is less.

Additionally, with regard to the use of and rental compensation for the use of a city’s rights-of-way, the bill would provide that:

1. A public right-of-way rate or fee for use of the public rights-of-way may not exceed an annual amount equal to \$250 multiplied by the number of nodes (the fee may be adjusted annually to reflect changes in inflation based on the consumer product index.)
2. At the city’s discretion, it may charge a network provider a lower rate or fee if the lower rate or fee is: (a) nondiscriminatory; (b) related to the use of the public rights-of-way; and (c) not a prohibited gift of public property.
3. A network provider that wants to connect a network node to the network located in a public right-of-way may: (a) install its own transport facilities if it: (i) has a permit to use the public right-of-way; and (ii) pays to the city a monthly public right-of-way rate for transport facilities in an amount equal to \$28 multiplied by the number of the network provider’s network nodes for which the installed transport facilities provide backhaul unless or until the time the network provider’s payment of municipal fees exceeds its monthly aggregate per-node compensation to the city; or (b) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month.
4. A city shall allow collocation of network nodes on service poles (e.g., non-MOU poles owned by a city, such as light poles, traffic poles, and poles specifically for network
5. Any contract between a city and a provider that is in place on the effective date of the bill will apply to existing equipment under that contact, but future equipment is subject to the limitations in the bill.

S.B. 1172 (Perry), relating to the regulation of seed by a political subdivision. Passed the Senate. As passed, this bill would: (1) preempt a city’s ability to regulate agricultural seed, vegetable

seed, weed seed, or any other seed in any manner, including planting seed or cultivating plants grown from seed; (2) a city may take any action needed to: (a) comply with any federal or state requirements; (b) avoid a federal or state penalty or fine; (c) attain or maintain compliance with federal or state environmental standards, including state water quality standards; or (d) implement a voluntary program as part of a conservation water management strategy included in the applicable regional water plan or state water plan; and (3) nothing in the bill preempts or otherwise limits the authority of any city to adopt and enforce zoning regulations, fire codes, building codes, nuisance regulations related to weedy lots, or waste disposal restrictions.

S.B. 1620 (Taylor), relating to the regulation of raising or keeping six or fewer chickens by a political subdivision. Passed the Senate.

Bill Summaries

(Editor’s Note: The following bills are “stragglers” that, for one reason or another, weren’t summarized in previous editions.)

Property Tax

S.B. 1745 (Hinojosa) – Property Tax Lien: would provide that, if the chief appraiser adds property or appraised value that was erroneously exempted in a prior year to the appraisal roll, a tax lien may not be enforced against the property to secure the payment of any taxes, penalties, or interest imposed for that year on the property as a result of the addition of the property or appraised value if at any time after January 1 of that year the property was sold in an arm’s length transaction to a person who was not related to the seller within the first degree by consanguinity or affinity. (See **S.J.R. 55**, below.)

S.J.R. 55 (Hinojosa) – Property Tax Lien: would amend the Texas Constitution to provide that, if the chief appraiser adds property or appraised value that was erroneously exempted in a prior year to the appraisal roll, a tax lien may not be enforced against the property to secure the payment of any taxes, penalties, or interest imposed for that year on the property as a result of the addition of the property or appraised value if at any time after January 1 of that year the property was sold in an arm’s length transaction to a person who was not related to the seller within the first degree by consanguinity or affinity. (See **S.B. 1745**, above.)

Other Finance and Administration

H.B. 2474 (S. Davis) – Political Contributions and Expenditures: would make certain changes regarding electronic filing of reports of political contributions and expenditures with the Texas Ethics Commission, including a new requirement that certain reports by a candidate or officer of a county office, precinct office, or a district office be filed electronically.

H.B. 3608 (Elkins) – Cybersecurity: would provide that: (1) the Commissions for Effective Resource Allocation is created to facilitate organization, operate, powers, regulation, and

management of state departments, agencies, and institutions; and (2) the comptroller and the commissioner of the effective resource allocation shall adopt rules to assure cooperation between the state and local government entities and between the scientific/technology community, private business, and institutions of higher education and for cybersecurity.

S.B. 2009 (V. Taylor) – Public Retirement Systems: would provide that each public retirement system, including TMRS, shall submit to the Pension Review Board a supplemental analysis prepared in conjunction with the system’s actual valuation that performs a 30-year forward-looking projection of system assets and liabilities.

Public Safety

S.B. 1184 (Hughes) – Survivor’s Benefits: would: (1) provide that the lump sum payment amount payable to an eligible survivor of certain law enforcement officers and firefighters of \$500,000 shall, effective September 1 of each year, be adjusted by an amount equal to the percentage change in the Consumer Prices Index; and (2) in addition to the lump sum in (1), eligible survivors are entitled to receive \$500,000 as a monthly annuity over 30 years, adjusted each year by an amount equal to the percentage change in the Consumer Price Index.

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take their time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during the legislative session.

- Adele Mooney, Mayor, City of Maypearl
- Ashley Lumpkin, Director of Development Services, City of Taylor
- Bo Kidd, Chief of Police, City of Buda
- Brad Alley, Fire Marshal, City of Harker Heights
- Brian Muecke, Mayor, City of Hedwig Village
- Charles Jessup, Mayor, City of Meadows Place
- Elicia Sanders, Mayor, City of Eustace
- Frank Salvato, Assistant City Manager, City of Midland
- George Altgelt, Council Member, City of Laredo
- Jeff Coyle, Director of Government and Public Affairs, City of San Antonio
- Jeff Honea, Police Chief, Wolfe City Police Department
- Jessica Anderson, Houston Police Department
- Jimmy Kendrick, Mayor, Town of Fulton
- Joseph Molis, Director of Planning and Development, City of Harker Heights
- Larry Slack, Mayor, City of Bowie
- Marsha Todd, Houston Police Department
- Michael Booth, City of Conroe

- Norm Archibald, Mayor, City of Abilene
- Ricardo Ramirez, Intergovernmental Relations Manager, City of Sugar Land
- Robert Hanna, City Manager, City of Abilene
- Robert Puente, San Antonio Water System
- Ron Souddress, Lieutenant, Plano Police Department
- Shannon Sims, Assistant Director of Animal Care Services, City of San Antonio

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