



Legislative UPDATE

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Texas Supreme Court: Cities Have Unlimited Liability on Certain Contracts Part II

A previous edition of the *Legislative Update* [summarized](#) a Texas Supreme Court decision that will affect certain city contracts. In [Wasson Interests v. City of Jacksonville](#), the Texas Supreme Court created a judicial, non-legislative waiver of governmental immunity where none had existed for decades. At issue was whether the governmental-proprietary distinction found in the Texas Tort Claims Act applies to contractual claims against a city. The Court held that it does, without any hint from the Texas Legislature that it ought to.

Last week, the Court issued another decision involving similar contractual issues. [Wheelabrator v. City of San Antonio](#) involved a dispute over a contract for the design and construction of a coal-fired power station owned and operated by CPS Energy, San Antonio's electric and gas utility. The dispute between the parties has a long procedural history, but the issue in the opinion was the award of attorney's fees.

CPS Energy claimed that it had governmental immunity, which would have insulated it from an award of attorney's fees regardless of the outcome of the lawsuit. Wheelabrator argued that CPS

Energy had no immunity from their claim for attorney's fees because CPS Energy was performing a proprietary function in its dealings with Wheelabrator.

The court reaffirmed its decision in the *Wasson* case: the governmental-proprietary distinction applies to breach of contract claims against cities. In determining whether Wheelabrator's suit for attorney's fees was barred by governmental immunity, the court looked at whether the subject matter of the suit stems from a proprietary or a governmental function of the city. If the action arose from a city's performance of a proprietary function, then the case proceeds as if the claim were asserted against a private person.

The Court cited to previous decisions, as well as the Texas Tort Claims Act, and concluded that a city's operation and maintenance of a public utility is a proprietary function. Because Wheelabrator's attorney fees claim stems directly from a proprietary function, CPS Energy does not enjoy governmental immunity. The Texas Supreme Court reversed the court of appeals' judgment and remanded the case to the trial court to decide whether attorney's fees should, in fact, be awarded in this case.

Senate Property Tax Committee Meetings Continue: **Next Stop is April 27 in Arlington**

The next meeting of the Senate Select Committee on Property Tax Reform and Relief will be at the University of Texas at Arlington on Wednesday, April 27, 2016, at 8:00 a.m. in the E.H. Hereford University Center, Rosebud Theatre, 300 West First Street, Arlington, Texas, 76019. Please note that invited testimony will be heard beginning at 8:00 a.m., and public testimony will begin at 10:00 a.m. The agenda is available [here](#).

The Committee will hear invited, resource, and public testimony on the following interim charges: (1) study the property tax process, including the appraisal system; (2) recommend ways to promote transparency, simplicity, and accountability by all taxing entities; and (3) examine and develop options to further reduce the tax burden on property owners. It is widely believed that one goal of these hearings is to begin the push for harmful revenue caps heading into the 2017 legislative session.

It is imperative that the Committee hear from city officials about the detrimental effects of revenue caps. Please plan to attend the hearing in Arlington, and note that remarks will be limited to three minutes. If you prepare written testimony, please bring 20 copies to the hearing. The League has prepared [talking points](#) to assist your preparation.

Please contact Monty Wynn, the League's Assistant Director of Legislative Services, at monty@tml.org if you plan to testify and/or have questions.

Federal Overtime Rules

Proposed federal overtime rules could make overtime pay mandatory for more city workers. The Department of Labor (DOL) has submitted the proposed regulations to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review.

The proposed modifications have generated significant interest with over 290,000 comment letters being filed in the proceeding. Because the proposed modifications to the Fair Labor Standards Act's overtime pay rules are expected to have an impact on local governments, the National League of Cities (NLC) and other local government associations have pressed for modifications. NLC submitted [comments](#) last September that outlined cities' concerns with the proposal.

If no changes are made in the regulations that were proposed last summer, the new rules would:

1. Set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers (\$921 per week, or \$47,892 annually). [Editor's note: Currently, an employee must meet certain "duties" tests *and* receive a salary of at least \$23,660 to be exempt from overtime. The proposed regulations will increase that minimum salary to \$47,892. This could mandate overtime pay to an employee who would otherwise be exempt under a "duties test," but makes less than \$47,892.]
2. Increase the total annual compensation requirement needed to exempt highly compensated employees to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$122,148 annually).
3. Establish a mechanism for automatically updating the salary and compensation levels going forward in an effort to ensure that they will continue to provide a useful and effective test for the exemption.

Yesterday, as a follow up to submitting the comments to the DOL, NLC met with OIRA, DOL, and White House Domestic Policy Council representatives to share its concerns with the proposed rules. They listened, but they gave no indication of the direction the final rules will take, or the timing of a release.

Concerned city officials are encouraged to share their comments with OIRA at OIRA_submission@omb.eop.gov. The name of the proposed DOL rule is "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees." For additional information on the proposal, go to [Partnership to Protect Workplace Opportunity \(PPWO\)](#).

In addition to lobbying the administration, NLC has made its [concerns](#) known to Congress. Members of Congress have introduced related legislation, the Protecting Workplace Advancement and Opportunity Act ([S. 2707](#) and [H.R. 4773](#)), which would nullify the proposed rules and require DOL to conduct a deeper economic analysis on the impact these changes would have on public entities before moving forward.

Regardless of any modifications that DOL may make, local governments need to prepare. The timeframe to implement the new regulations could be short – as few as 30 days.

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2015 Legislation Impacts City Property Tax Rate Setting Process for 2016 and Beyond

In 2015, the legislature passed H.B. 1953 and S.B. 1760. The bills, which became effective on January 1, 2016, modify certain aspects of the property tax adoption process. Of particular interest to cities, the legislation makes the following changes:

- **H.B. 1953**: allows a city or county to provide the required property tax rate notice not later than the later of September 1 or the 30th day after the first date the taxing unit receives each applicable certified appraisal roll. This beneficial change gives a city more flexibility if it receives the certified appraisal roll later than normal.
- **S.B. 1760**: this bill, among other things: (1) requires at least 60 percent of the members of the governing body of a city to vote in favor of an ordinance setting a property tax rate that exceeds the effective tax rate; (2) requires a city that proposes a tax rate that exceeds the lower of the effective tax rate or the rollback rate to include a sentence describing the proposed use of the additional revenue attributable to the tax rate increase; and (3) allows for the same tax rate notice flexibility as provided by H.B. 1953 (and described above).

The League recently posted the [2016 Budget and Taxation Deadlines](#) memo on the TML website. The changes made by H.B. 1953 and S.B. 1760 are highlighted in the memo.

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