



# Legislative UPDATE

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## **Big Government Index: Austin Politicians Decide For You**

When it comes to legislative advocacy in Austin, cities' advocacy efforts stem from one, overarching principle: Leave cities alone to do the state's local work. Property tax caps, preemption legislation, or any other limit on municipal authority undermines the general proposition that local officials know best how to govern their cities.

Put another way, how could a legislator from the Panhandle possibly know what's best for a city on the Gulf Coast? How could a person who grew up in the deserts of far West Texas know what's best for the Piney Woods of Deep East Texas? They can't, and city officials who do know best for their own cities are beginning to speak up, and speak up loudly.

To assist those city officials who have had enough of efforts to consolidate big government in Austin, the League has prepared the "Big Government Index." The index is a list of every bill that would increase state government's control over your city. A surprisingly large number of overreaching bills have been filed: 72 at last count. Click [here](#) to see all the ways Austin wants to decide for you.

City officials should be angry that some state legislators are questioning their ability to govern. Legislators need to hear from city officials early and often that city officials are elected from the same group of engaged and informed citizens that elected those state officials.

Some legislators are busy defending a sound bite called the "patchwork quilt of city regulations." They refer to that "quilt" as a negative. To the contrary, local variation is what makes our state – and our cities – unique. Other legislators frame their assault on local control as "protection of liberty." Government's responsibility is to protect liberty, and that responsibility is best kept local. The efforts of some legislators to control city councils sound more like centralizing power in Austin if you ask us.

## **Oil and Gas Preemption Bill Improved by House Committee**

A much improved committee substitute to the House version of the oil and gas drilling bill, H.B. 40 by Rep. Drew Darby, was agreed to by both the League and the oil and gas industry this week. The substitute bill differs from the original bill in three significant ways. The substitute version:

1. explicitly names areas that cities have the authority to regulate, including fire and emergency response, traffic, lights, noise, notice, and reasonable setbacks. The inclusion of setbacks is a key component because the original version of the bill likely prevented them.
2. permits cities to regulate aboveground activity that is “related” to oil and gas operations, as opposed to activities that are “incident” to operations, as in the original version of the bill. The “incident” to language was likely prohibitively restrictive.
3. includes a much better definition of “commercially reasonable,” one of the tests an ordinance must meet to be valid under the bill. The substitute provides that commercially reasonable is based on an objective standard instead of the subjective assessment of a particular oil and gas operator.
4. creates a “prima facie” presumption of commercial reasonableness for certain ordinances that have allowed activity for at least five years. This “safe harbor” is a rolling five-year time period that would permit recent or future ordinances to qualify so long as they haven’t prevented operations for a five-year period.

While the League believes the bill is unnecessary – cities are not obstacles to responsible urban drilling across the state – the substitute is better than the original version and preferable to its Senate companion, S.B. 1165 by Sen. Troy Fraser, which was voted from the Senate Natural Resources and Economic Development Committee last week without any beneficial amendments (Senator Fraser has said he’s open to Senate floor amendments to his bill).

The condition of the agreement by all parties was that no amendments or alterations would be permitted by Chairman Darby unless all parties concur. This stipulation protects the agreement from any negative backsliding towards the originally-filed version, or worse. Many city attorneys and city officials were active in the negotiation process. In the end, however, both cities and industry were given a short timeline to sign on to the substitute as written, with no amendments or alterations made in favor of either party. The League’s legislative and legal teams decided that supporting Chairman Darby’s improved bill, which was based on extensive city input during the committee hearing process, was the prudent course.

The League is now officially neutral on the substitute to H.B. 40, provided the bill receives no harmful amendments as it works its way through the process. The committee substitute to H.B. 40 can be viewed [here](#).

## **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.

- Anita Burgess, City Attorney, Denton
- Ben Gorzell, Chief Financial Officer, San Antonio
- Brian England, Assistant City Attorney, City of Garland
- Chris Watts, Mayor, Denton
- Christopher Mosely, Sr. Assistant City Attorney, Fort Worth
- Clayton Chandler, City Manager, Mansfield
- Donald Postell, City Attorney, Grand Prairie
- Ernest White, Police Officer, Houston
- Gregory Morgan, Director of Utilities and Public Works, Tyler
- James Parajon, Deputy City Manager, Arlington
- Jim Jeffers, City Manager, Nacogdoches
- John Nix, Councilmember, Tyler
- Julee LaMure, Councilmember, South Padre Island
- Jungus Jordan, Councilmember, Fort Worth
- Katarina Gonzalez, Assistant City Attorney, Buda
- Keith McMullin, Mayor, Port Aransas
- Kent Baker, Planning and Development, Southlake
- Larry Casto, Legislative Director, Dallas
- Louis Rigsby, Mayor, LaPorte,
- Michel Bechtel, Mayor, Morgan's Point
- Mike Ahrens, City Manager, Mount Pleasant
- Norman Gordon, Attorney, El Paso
- Phillip T. Kingston, Councilmember, Dallas
- Ray Lopez, Councilmember, San Antonio
- Sarah Fullenwider, City Attorney, Fort Worth
- Scott Swigert, Parks and Recreation Director, Deer Park
- Sean Mannix, Police Chief, Cedar Park
- Stephen Lindsey, Councilmember, Mansfield
- Tom Tagliabue, Intergovernmental Relations Director, Corpus Christi

## **Significant Floor Actions**

**H.B. 80 (Craddick)**, relating to portable wireless communication device while operating a motor vehicle. Passed the House. As passed, the bill would prohibit most aspects of texting while driving. In addition, it would preempt all local ordinances, rules, or other regulations adopted by

a political subdivision relating to the use of a portable wireless communication device by the operator of a motor vehicle to read, write, or send a text-based communication. However, a city could still impose a “talking while driving ban.”

**S.B. 1 (Nelson)**, relating to certain restrictions on the imposition of ad valorem taxes and to the duty of the state to reimburse certain political subdivisions for certain revenue loss. Passed the Senate.

**S.J.R. 1 (Nelson)**, proposing a constitutional amendment providing for an exemption from ad valorem taxation for public school purposes of a portion of the market value of a residence homestead based on the median market value. Passed the Senate.

**S.J.R. 22 (Creighton)**, relating to the right to hunt, fish and harvest wildlife. Passed the Senate. As passed, this bill would amend the Texas Constitution to provide that the people have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing. A Senate floor amendment protects the authority of cities to regulate the discharge of weapons.

### **Significant Committee Actions**

**H.B. 497 (Wu)**, relating to the applicability of the law governing saltwater pipeline facilities located in the vicinity of public roads. Reported from the House Committee on Energy Resources.

**H.B. 590 (Elkins)**, relating to the creation of research technology corporations by institutions of higher education. Reported from the House Committee on Government Transparency and Operations.

**H.B. 593 (Collier)**, relating to animal encounter training for peace officers. Reported from the House Committee on Homeland Security and Public Safety.

**H.B. 786 (Walle)**, relating to the right of a public employee to express breast milk in the workplace. Reported from the House Committee on Business and Industry.

**H.B. 910 (Phillips)**, relating to the authority of a person who is licensed to carry a handgun to openly carry a holstered handgun. Reported from the House Committee on Homeland Security.

**H.B. 1088 (Marquez)**, relating to the establishment of the Texas Technical Center for Innovative Desalination at The University of Texas at El Paso in partnership with The University of Texas at San Antonio. Reported from the House Committee on Natural Resources.

**H.J.R. 64 (Elkins)**, proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of certain property owned by research technology

corporations created by public or private institutions. Reported from the House Committee on Government Transparency and Operations.

**S.B. 3 (Birdwell)**, relating to the powers and duties of the Texas Department of Public Safety and the investigation, prosecution, punishment, and prevention of certain offenses. Reported from the Senate Veterans Affairs/Military Installations Committee.

**S.B. 474 (Kolkhorst)**, relating to the recovery of costs and fees in connection with certain eminent domain proceedings. Reported from the Senate State Affairs Committee. As reported, the bill would provide that, if the amount of damages awarded by the special commissioners is at least 20 percent greater than the amount the condemnor offered to pay before the proceedings began or if the commissioners' award is appealed and a court awards damages in an amount that is at least 20 percent greater than the amount the condemnor offered to pay before the proceedings began, the condemnor shall pay: (1) all court costs; and (2) any reasonable attorney's fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.

**S.B. 521 (Fraser)**, relating to the period for which the Texas Commission on Environmental Quality may grant or renew an emergency authorization relating to the use of state water. Reported from the Senate Agriculture, Water, and Rural Affairs Committee.

**S.B. 582 (Kolkhorst)**, relating to education and training programs for food handlers. Reported from the Senate Health and Human Services Committee.

**S.B. 776 (Fraser)**, relating to the authority of the Public Utility Commission of Texas to approve certain transmission facilities constructed by a municipally owned utility. Reported from the Senate Natural Resources and Economic Development Committee.

**S.B. 1703 (Huffman)**, relating to the deadlines for certain processes and procedures involving an election. Reported from the Senate State Affairs Committee.

## **City-Related Bills Filed This Week**

Each week, League staff summarizes in this section the city-related bills filed during the previous week. For a cumulative list of all city-related bills filed to date, click [here](#).

### **Other Finance and Administration**

**H.B. 4039 (Wray) – Mixed Beverage Tax:** would: (1) repeal the mixed beverage gross receipts tax; and (2) implement in its place a 14 percent sales tax on the sale of mixed beverages. The bill might reduce cities' share of the tax. (Companion bill is **S.B. 1076** by **Eltife**.)

**S.B. 1366 (Kolkhorst) – Sporting Goods Sales Tax:** would: (1) remove the current 74 percent cap on the sporting goods sales tax that is transferred to the State Parks Account; (2) limit the transfer to an amount not to exceed what is appropriated by the legislature during the biennium; (3) limit the amount of money transferred to the Texas Parks and Wildlife Conservation and Capital Account to an amount not to exceed the amount appropriated by the legislature during the biennium; (4) remove the current 15 percent cap on the amount of sporting goods sales tax that is transferred to the Texas Recreation and Parks Account, (5) limit the transfer to an amount not to exceed what is appropriated by the legislature during the biennium; (6) remove the current 10 percent cap on the sporting goods sales tax that is transferred to the Large County and Municipality Recreation and Parks Account, and (7) limit the transfer to an amount not to exceed what is appropriated by the legislature during the biennium. (Companion bill is **H.B. 300** by **L. Gonzales**.)

### **Public Safety**

**H.B. 3731 (Leach) – Inmate Release:** would require the Pardons and Paroles Division to: (1) provide notice to a police chief and prosecuting attorney in a county in which an inmate is convicted of the inmate’s parole (or parole recommendation) that includes the inmate’s age, sex, race, photo, residence address, parole supervisor or halfway house director, and rules or conditions of release; and (2) provide notice of certain warrants to each law enforcement agency whose jurisdiction includes the residence of a parolee.

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