First Interim Report Released: Senate State Affairs

The Senate Committee on State Affairs released its interim report this week.

Several of the recommendations of the committee, which considers most bills related to various general government issues, are relevant to cities. Most of them are essentially good for cities, with a few outliers.

- **Charge (Religious Liberty):** Examine measures to affirm 1st Amendment religious liberty protections in Texas, along with the relationship between local ordinances and state and federal law. Make recommendations to ensure that the government does not force individuals, organizations or businesses to violate their sincerely held religious beliefs.

**Recommendation:** The legislature must continue to ensure that the government does not force individuals, organizations, or businesses to violate their sincerely held religious beliefs. The First Amendment rights of all Texans must be protected. In order to avoid lengthy and costly litigation, the legislature should enact targeted religious liberty protections designed to address specific violations of an individual, business, or organization’s sincerely held religious belief.
• **Charge (Union Dues):** Examine the practice of using public funds and employees for the payment processing of union dues. Make recommendations on whether Texas should end this practice.

**Recommendations:** Texas has led the nation in economic growth by protecting employer and employee rights to communicate directly and create mutually beneficial arrangements. Because Texas is a right-to-work state, employers in the public and private sectors have had more flexibility to innovate, generate better levels of production, and pay productive employees more. The legislature should continue to ensure that businesses across the state are given the freedom to sustain economic and income growth.

As more states act to curtail union special privileges and protect the freedom to work, Texas cannot afford to remain complacent. Texans must do everything they can to hold union officials accountable under the same laws as other citizens and end all labor-relations policies that set up barriers to the efficient and effective provision of public services. Therefore, the legislature should enact legislation similar to Senate Bill 1968 from the 84th Legislative Session. (Note: That bill would have prohibited union dues withholding for public employees.)

• **Charge (Chief Law Enforcement Officers):** Examine whether there are chief law enforcement officers within the state who deny National Firearms Act (NFA) applications (e.g., those for possession of automatic weapons or silencers) without any cause. Examine the application and certification process and recommend ways to eliminate no-cause denials.

**Recommendation:** The committee took no action relating to this charge.

• **Eminent Domain:** Gather and review data on the compensation provided to private property owners for property purchased or taken by entities with eminent domain authority. Examine the variance, if any, between the offers and the fair market values of properties taken through eminent domain. Make recommendations to ensure property owners are fairly compensated.

**Discussion:** This charge focused largely on Senate Bill 474 from the 84th Legislative Session. That bill would have required condemnors to reimburse property owners for attorney’s fees and other professional fees in eminent domain proceedings where it was determined that the condemnor’s final offer for the property was at least 20 percent lower than the amount of damages assessed by the special commissioners or other court. The cost of attorney’s fees and other professional services needed to successfully navigate a condemnation case can make litigation unaffordable for many property owners or greatly diminish any final award. Additionally, Senate Bill 474 sought to provide an incentive for condemnors to offer property owners a more substantial initial offer in hopes to avoid contentious and costly condemnation proceedings. While Senate Bill 474 ultimately did not pass to become law, the intent was clearly to provide further protections to property owners. The report discusses in detail the policy behind such a proposal. Ultimately, the
The report seemed to recognize that, if Texas enacted a similar law, it would actually increase litigation in condemnation proceedings across the state.

**Recommendations:** As Texas continues to grow and expand its infrastructure, this growth must be balanced with the rights of private property owners. The legislature must continue to ensure that private property owners are fairly compensated for any property purchased or taken by entities with eminent domain authority. Too often property owners receive unfair and below-market value offers from condemnors. Thus, property owners must have legal recourse to recover all, or at least a portion, of any attorney’s and professional fees incurred challenging the offer when a court rewards damages well above the condemnor’s offer.

Furthermore, the legislature should ensure that property owners clearly understand a condemnor’s legal restrictions. To protect the interests of property owners, the Landowner’s Bill of Rights should be amended to advise property owners that an offer may include additional property that is not necessary for the condemnation and that the condemnor may not have legal authority to condemn under state law. An alternative method to ensure property owners are protected is to require the condemnor to make two separate offers to the property owner: (1) for property reasonably necessary to complete the proposed project, which the condemnor has the legal authority to condemn; and (2) for any additional property the condemnor seeks to purchase.

Finally, Section 21.0111 of the Property Code requires a condemnor to disclose all appraisals produced or acquired the preceding ten years at the time an initial offer is made to the property owners. However, there is no current penalty in law for noncompliance. Thus, the legislature should ensure condemnors abide by this law by crafting a penalty for noncompliance.

These additional protections will further inform property owners of their legal rights and ensure they are fairly compensated for any property purchased or taken by entities with eminent domain authority.

- **Charge (Ethics):** Review current ethics laws governing public officials and employees and recommend changes necessary to inspire the public’s confidence in a transparent and ethically principled government. Review public officials’ reporting requirements to the Texas Ethics Commission. Examine the categorization of ethics reporting violations and make recommendations to encourage accurate reporting and timely correction to inadvertent clerical errors.

**Discussion:** This charge focused on state-level lobbying and officer reporting issues. However, it did mention two bills from last session that apply directly to cities:

Another ethics reform included House Bill 1295, a transparency bill that prohibits a governmental entity or state agency from entering into certain contracts unless the business entity submits a disclosure of interested parties form at the time the business entity submits the contract to the governmental
body. Specifically, House Bill 1295 sough to increase government transparency by requiring all contracts with government entities, including municipalities, counties, school districts, or special purpose districts, to include a Certificate of Interested Parties, which is to be filed with the Commission. As required, the Commission adopted rules and a form to be used by business entities to disclose interested parties. Additionally, the Commission created an electronic filing application and a rule requiring that the disclosure of interested parties’ forms be filed electronically. The disclosures are now available and searchable on the Commission’s website. Approximately 67,000 disclosure forms have been filed thus far.

Another reform was from House Bill 23. House Bill 23 related to the disclosure of certain relationships with local government officers and vendors. Although current law requires disclosure of information concerning certain local government officers and vendors when engaged in procurement activities, House Bill 23 went further to require more detailed disclosure to ensure local government officers and vendors are completely transparent in these types of dealings.

**Recommendation:** Due to strongly held values, divergent public and individual interests, and a sometimes ruthless political environment, crafting and enacting workable solutions in ethics matters has been a struggle. Furthermore, many areas of ethics laws are subjective, making them difficult to understand, much less fix. Even amongst the top ethics lawyers in the state, there is disagreement among interpretations. Despite the obstacles, the legislature must continue to look closely at the state’s ethics laws in an open, deliberative, and transparent way, so that all voices are heard and all proposals are thoroughly discussed. The state’s ethics laws governing public officials and employees must inspire the public’s confidence in a transparent and ethically principled government.

- **Charge (Monitor Open and Campus Carry Laws):** As part of its charge to review new laws passed last session, the report made some recommendations related to licensed carry. Of particular interest to cities are discussions of carrying in courts and court offices and premises owned by a governmental entity but leased or licensed to a private party, though there were no specific recommendations related to these topics.

**Recommendations:** The legislature should continue to monitor the campus carry rules and regulations set forth by institutions of higher education to ensure each institution complies with the spirit and intent of the law. Additionally, the legislature should monitor license to carry holders that wish to lawfully carry concealed handguns on campus to ensure that they are not ostracized or treated differently for merely exercising their legal and constitutional right.

Thus far, the passage of open carry legislation has not created major problems for law enforcement. As citizens and law enforcement continue to learn more about the recent changes in law, and further understand their rights and legal restrictions, the legislature is hopeful that open carry will continue to be a non-issue in Texas. Accordingly, the
legislature should continue to monitor open carry laws to ensure the average citizen, business, and public entity understands when, where, and under what circumstances it is lawful to carry a firearm openly.

- **Charge (Monitor Overseas Military Voting):** Two legislative session ago, legislation was enacted that required the secretary of state to implement a pilot program to allow voters who were members of the armed forces of the United States to return a ballot via electronic mail if the voter was on active duty overseas and eligible for hostile fire pay. This was the first pilot program enacted by the Texas Legislature relating to the return of ballots via electronic mail.

  **Recommendation:** To ensure our active military serving overseas continue to be afforded every opportunity to vote, the legislature should authorize the pilot program beyond its current sunset date of September 1, 2017. Furthermore, the legislature should continue to work with the secretary of state to alleviate any additional obstacles military voters in combat zones may have when attempting to participate in the voting process. Every effort should be made to ensure military members have every opportunity to participate in the election process.

“Debtor’s Prisons:” Fines, Fees, Court Costs, and Indigence

The following prologue appeared in a special edition of the Texas Municipal Courts Education Center’s “Recorder” Newsletter:

August 9th marked the two-year anniversary of the tragic events in Ferguson, Missouri. In response to the shooting and subsequent unrest, the U.S. Department of Justice (DOJ) conducted an investigation and issued a 100-page report that detailed policing practices of the Ferguson Police Department and practices in the Ferguson Municipal Court that undermined the court, eroded community trust, and ultimately had devastating consequences for the City of Ferguson and its residents.

Critics subsequently contended that local courts throughout the nation are operating “debtors’ prisons.” The DOJ convened a group of stakeholders at the White House in December 2015 to discuss the challenges surrounding fines and fees. In March 2016, the DOJ Civil Rights Division and Office for Access to Justice issued a letter to state and local courts regarding their legal obligations with respect to the enforcement of fines and fees.

Civil rights attorneys began aggressively filing lawsuits and working to publicize them in the media. In addition to cities and counties in Louisiana, Tennessee, Mississippi, Washington, and Virginia, lawsuits were filed against three of the largest cities in Texas. As of now, federal courts have dismissed lawsuits against the City of Austin and the City of Amarillo, and a motion to dismiss is pending in a suit against the City of El Paso.
The legal issues are complicated. Perhaps that explains why the media has not fully explained them. How much does the public know about Texas law governing the imposition and enforcement of fines and costs? How much do your local and state elected leaders know? When poverty-related issues come to the courthouse, city hall, and Capitol building, where will the Texas public and their elected officials get their information? Will it be the internet, the media, or advocacy groups? TMCEC hopes this issue will prepare readers to talk about these issues.

In the two years since the events in Ferguson, it is not just notions of equal protection and due process that are in question; it is the use of police powers and the meaning of the 10th Amendment. Society regularly endeavors to strike a sound balance between individual and societal interests. The question in Texas is can we better serve the interest of the poor while maintaining public safety and order in our communities. Do we need more laws or do we need to do a better job of enforcing the ones we have?

Most of the legal contentions being bantered about are hardly new. They are settled law. Nevertheless, occasionally, it is necessary to revisit such legal issues and to examine them in the light of modern times. Now is such a time. It is not only healthy to engage in such critical inquiry, it is essential when the rule of law is called into question, when the law is not being followed, and when the law has been misrepresented. This is why TMCEC has prepared this special issue.

Several substantive articles of interest are available in the special edition, which delves deeply into the policy and legal considerations related to indigent defendants in municipal court. It is definitely a worthy read.

**National League of Cities Pilot Program:**
**Helping Low-Income Families Pay Their Utility Bills**

In collaboration with municipal leaders in a small group of cities, the National League of Cities (NLC) has launched an innovative, two-year pilot program called *Local Interventions for Financial Empowerment through Utility Payments* (LIFT-UP) that seeks to help low-income families pay their utility bills and achieve financial stability.

Through LIFT-UP, NLC’s Institute for Youth, Education and Families will test a new model in which cities identify families who are in debt to city-owned utilities and offer them a restructured payment plan, payment incentives, and a variety of financial empowerment services.

Cities participating in this pilot project include Houston, Texas; Newark, N.J.; Savannah, Ga.; and St. Petersburg, Fla.

The LIFT-UP initiative is supported by grants from the Center for Financial Services Innovation (CFSI) Financial Capability Innovation Fund II, the Ford Foundation, and the Annie E. Casey Foundation.
Proposed TCEQ Groundwater Quality Rules Incorporate Federal Requirements

The Texas Commission on Environmental Quality (TCEQ) has proposed rules amending the groundwater quality provisions in Chapter 290 of the Texas Administrative Code to: (1) make the chapter’s provisions consistent with the federal revised total coliform rules; (2) address Environmental Protection Agency (EPA) comments on federal groundwater rules, and (3) provide clarification on existing state rules.

The rulemaking proposes to update the following requirements:

- Lead and copper rules.
- Total organic carbon (TOC) rule and federal monitoring and reporting requirements concerning TOC;
- Public notice rule requirements;
- disinfection and analytical requirements for chlorine dioxide and chlorite.
- submission of laboratory analyses and reports to the TCEQ executive director.

The rulemaking also proposes to clarify and streamline existing state rules including:

- disinfection treatment and monitoring requirements for public water systems (PWS) that utilize a groundwater source.
- PWS ownership reporting requirements.
- boil water notice reporting requirements.
- nitrite monitoring requirements.
- disinfection operating reports.
- continuous turbidity monitoring and reporting.
- well record-keeping requirements.

Comments on the proposed rules are due by November 22, 2016. TCEQ will hold a public hearing on Nov. 7, 2016, at the TCEQ headquarters in Austin. The rules are scheduled for adoption on Mar. 8, 2017, and will be effective Mar. 30, 2017.

Contact Heather Lockhart, TML assistant general counsel, with questions at 512-231-7400 or heather@tml.org.

Draft Water Conservation Report Released

In 2007, the Texas Legislature directed the Texas Water Development Board (TWDB) to appoint members to the newly-created Water Conservation Advisory Council. The Council is made up of 23 members representing various entities and interest groups.
It is required to submit a biannual report with updates and recommendations to the governor, Lt. governor, and speaker of the house. The final version of the most recent biannual report is not due until December, but the Council released a draft at its October meeting. Recommendations in the draft that are of interest to cities include:

- **Required Training for Water Loss Auditors.** Section 18.0121 of the Texas Water Code requires a retail public utility providing potable water to perform a periodic audit of the utility’s system water loss. The report recommends requiring that a trained water loss auditor complete the audit and that TWBD adopt rules specifying training requirements.

- **Adoption of Enforceable Time-of-Day Limitations on Outdoor Watering.** The report recommends requiring a political subdivision that provides retail public water service and applies to the TWDB for financial assistance adopt enforceable time-of-day limitations on outdoor watering. The report also recommends exceptions for wholesale or nonprofit water providers and waivers for emergency need.

The full draft report is available [here](#).

**Federal Highway Administration Announces Local Funding Program**

The Texas Department of Transportation (TxDOT) has asked the League to share the following information with our members:

The Federal Highway Administration (FHWA) has asked TxDOT to distribute information to local governments regarding a federal pilot program. The goal of the pilot program is to determine whether local governments (LPAs) can deliver federal-aid projects more expeditiously and at a lower cost as a direct recipient.

Federal funds for this pilot (scheduled to last for 5 years) will come from TxDOT’s FHWA apportionment. FHWA will award funding for up to five projects throughout the nation.

Applications from local governments are due to FHWA by November 25th. For more information, read the [fact sheet](#) provided by FHWA.

**It’s that Time of Year Again: Mandatory Eminent Domain Reporting**

[Senate Bill 1812](#), passed during the 2015 legislative session, requires cities to annually fill out a [web-based form](#) with the comptroller relating to each city’s statutory eminent domain authority. (The failure to fill out the form could result in a $1,000 penalty against a city.)
The first annual entry was due last February. The next reporting period is open now and the second annual entry is due by February 1, 2017. The second entry is, for most cities, just an update of previously-filed information, including whether the city exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.

Of course, any city that never filled out the form as required should do so now. Detailed instructions on doing so are available in this previous article.