TML
TEXAS
MUNICIPAL LEAGUE

2024 Municipal Policy Summit

TEXAS MUNICIPAL LEAGUE

1821 Rutherford Lane, Suite 400, Austin, Texas 78754

About the Texas Municipal League

In the summer of 1913, Professor Herman G. James, director of the Bureau of Municipal Research and Reference at the University of Texas at Austin, and A.P. Woolridge, then the mayor of Austin, formed the League of Texas Municipalities.

The two men invited representatives from all Texas cities to come to Austin on November 4, 1913, for an organizational meeting. Fourteen cities sent representatives to Austin. At that first meeting, a modest membership fee was approved along with a constitution to govern the association.

Since that time, the League has grown into one of the largest and most respected organizations of its kind in the nation. From the original 14 members, TML's membership has grown to over 1,170 cities. Membership is voluntary and open to any city in Texas. More than 16,000 mayors, councilmembers, city managers, city attorneys, and department heads are member officials of the League by virtue of their cities' participation. Guided by its purpose statement – *Empowering Texas cities to serve their citizens* – TML exists to provide support and services to city governments in Texas.

League services to its member cities include legal information on municipal legal matters, legislative representation on the state and federal levels, information and research, publication of a monthly magazine, conferences and training seminars on municipal issues, and professional development of member city officials.


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SUMMIT DELEGATES

Texas Municipal League
Municipal Policy Summit

Christine DeLisle, *Mayor*, City of Leander
Chair
Andrea Barefield, *Councilmember*, City of Waco
Vice-Chair

Tony Aaron *City Administrator*
City of Early

Robin Alaniz Councilmember
City of Goliad

Natalie Alvara *Library Director*
City of Temple
Texas Municipal Library Directors Association

Megan Antrim *City Manager*
City of Alpine

Mike Arismendez *City Manager*
City of Kermit

Sally Bakko *Director of Policy and Governmental Relations*
City of Galveston

Jeffrey A. Ballew *Fire Chief*
Town of Edgecliff Village

Marie Balthrop *City Clerk*
City of Wichita Falls

Dan Barrios *Councilmember*
City of Richardson

Stacey Bauer *Councilmember*
Town of Trophy Club

Lynn Beard *Councilmember*
City of Abilene
TML Region 6

Ben Brezina
Assistant City Manager
City of Frisco

David Bristol *Mayor*
City of Prosper

Rodger Brown *Mayor*
City of Clyde

Cindy Burchfield *Mayor Pro Tem*
City of Daisetta

Scott Cain *Mayor*
City of Cleburn

Jennifer Calvert *City Administrator/Finance Director*
City of Blue Mound

Sonny Campbell *City Manager*
City of Anson

Kevin Carruth *City Manager*
City of Groves

Jesse Casey *Mayor*
City of Hallsville

Martha Castex-Tatum *Mayor Pro Tem*
City of Houston

Rogelio Chanes *Intergovernmental Relations Manager*
City of Brownsville

Crystal Chism *Councilmember*
City of DeSoto

Robin Collins *Mayor*
City of Kemah

Dana Conklin *Councilmember*
City of Melissa

Kerri Craig *Legislative Services Director*
City of Horseshoe Bay

Michael Crain *Councilmember*
City of Fort Worth

Emily Crawford *City Manager*
City of Brownwood

John Davis *Mayor*
City of Balmorhea

Brandon Davis *City Attorney*
City of Ames

James Decker *Mayor*
City of Stamford

Mary Dennis *Mayor*
City of Live Oak

Jennifer W. DeCurtis *Senior Attorney*
City of Irving

Lou Ann Everett *Mayor*
City of Canton

Jesse Falcon *Mayor Pro Tem*
City of Odem

James Fisher *City Manager*
City of Levelland

Robert Fite *Fire Chief*
City of Grand Prairie
Texas Fire Chiefs Association

Kristi Fogle *Chief of Staff, Office of the City Manager*
City of Denton

Dustin Fraticelli *Commissioner*
City of Vernon
TML Region 5

Andrew Freeman *Assistant City Manager*
City of Amarillo

George Fuller *Mayor*
City of McKinney
TML Region 13

Beverly Gaines *Mayor Pro Tem*
City of Webster

Eric Garrety *City Manager*
City of Graham

Cynthia Garza Reyes *Director of External Affairs*
City of Pharr

Ramiro Garza, Jr. *Mayor*
City of Edinburg

Holly Gray-Moore *Mayor Pro Tem*
City of Roanoke

Victor "Seby" Haddad *Commissioner*
City of McAllen
TML Region 12

Clint Hardeman *City Manager*
City of Pittsburg

Linda K. Harnist *Mayor Pro Tem*
City of Weston Lakes

Dr. Christopher Harvey *Mayor*
City of Manor

Stacey Hawkins *Director of Performance Excellence*
City of Temple

Mike Hayes *City Attorney*
City of Kerrville

Geoff Heinicke *Environmental Health Manager*
City of Allen
Texas Association of Municipal Health Officials

Mary Hemenes *Recreation Manager*
City of Round Rock
Texas Recreation and Park Society

Teresa Herrera *City Manager*
City of Palestine

Michelle Hicks *City Secretary*
City of Waco
Texas Municipal Clerks Association

Joel Hicks *Mayor Pro Tem*
City of Cibolo
TML Region 7

Gerald Hodges *Assistant to the City Manager*
City of Grand Prairie

Julie Holmer *Councilmember*
City of Plano

Dean A. Huard *City Manager*
Village of The Hills

Reginald Hughes *Mayor*
City of Paris

Greg Hutson *City Manager*
City of Gilmer

Stanley Jaglowski *Councilmember*
City of Lancaster
Texas Association of Mayors Councilmembers and Commissioners

Jim Jarratt *Mayor*
City of Granbury

Jimmy Jenkins *Councilmember*
City of Smithville

Patty Jones *City Secretary*
City of McCamey

Scott Joyce *Director of Information Services*
City of Euless
Texas Association of Governmental Information Technology Managers

Steve Kana *Director of Water and Sewer*
City of Killeen
Texas Municipal Utilities Association

Jon Keeney *Mayor*
City of Taylor Lake Village

Tim Kirwin *City Attorney*
City of Kennefick

Linda Klepper *Public Affairs Director*
City of Schertz

Linda Knox *Councilmember*
City of Hunters Creek Village

Blu Kostelich *Chief Financial Officer*
City of Lubbock

Jack Ladd *Councilmember*
City of Midland
TML Region 4

Jeremy Leonard *Court Services Director*
City of Lewisville
Texas Court Clerks Association

Joshua Mair *Director of Public Works*
City of Commerce
Texas Chapter of American Public Works Association

Mario Martinez *Councilmember*
City of Hale Center

Mark McBrayer *Councilmember*
City of Lubbock
TML Region 3

Erika McComis *Town Administrator*
City of Argyle

John McKenzie *Councilmember*
City of Hurst
TML Region 8

Cara Mendelsohn *Councilmember*
City of Dallas

Rudy Metayer *Councilmember*
City of Pflugerville

Susan L. Morgan *Chief Financial Officer*
City of Round Rock
Government Finance Officers Association of Texas

Ron Nirenberg *Mayor*
City of San Antonio

Lisa Norris *Managing Director*
City of Grand Prairie
Texas Municipal Human Resources Association

Kristin Peeples *Finance Officer*
City of Texarkana

Lori Klein Quinn *Mayor*
City of Tomball

Elena Quintanilla *City Administrator*
City of Ransom Canyon

Rick Ramirez *Intergovernmental Relations Manager*
City of Austin

Thomas Reeves *Director of Public Affairs*
City of Baytown

Victor Reta *Director of Recreation, Communications, Historic Preservation, Emergency Management, Special Events, and Member of the Legislative Affairs Committee*
City of Socorro

Kathie Reyer *City Administrator*
City of Shenandoah

Alicia Richardson *City Secretary*
City of North Richland Hills

Jennifer Richie *City Attorney*
City of Waco
Texas City Attorneys Association

Mayra A. Rios *City Secretary*
City of Wilmer

Rudi Rosengarten *Councilmember*
City of Sunset Valley

Jim Ross *Mayor*
City of Arlington

Rolandrea Russell *Senior Planner*
City of Frisco
American Planning Association Texas Chapter

Linda Ruth *Town Administrator/Town Secretary*
City of Lakewood Village

David Rutledge *Mayor*
City of Bridge City

Rick A. Schroder *Chief Administrative Officer*
City of Johnson City

Josh Schroeder *Mayor*
City of Georgetown

Susan Schwartz *Mayor Pro Tem*
City of Bunker Hill Village

Tara Senkevech *Mayor*
City of Poetry

James E. Shepherd *City Attorney*
City of Alvord

Tobe Shields *Mayor*
City of Spearman
TML Region 2

Debra Shinder *Mayor Pro Tem*
City of Rowlett

Noah Simon *City Manager*
City of Aledo

Ryan Skrobarczyk *Director Intergovernmental Relations*
City of Corpus Christi

Cathy Skurow *Mayor*
City of Portland
TML Region 11

Timothy Slifka *Purchasing Manager*
City of Southlake
Texas Public Purchasing Association

Geary Smith *Mayor*
City of Mexia
TML Region 9

Jeffrey Snyder *City Manager*
City of Plainview

Greg Sowell *Director of Communications*
City of Richardson
Texas Association of Municipal Information Officers

Larry Spears, Jr. *Mayor*
City of Orange

Mary Lynne Stratta *City Secretary/Legislative Director*
City of Bryan

Roxanne Stryker *Mayor Pro Tem*
City of Morgan's Point Resort

Kevin Sullivan *Mayor*
City of Lago Vista

Scott Swigert *City Manager*
City of Cleveland

Mary Tate *Director of Development Services*
City of Denison

Priscilla Vargas *Mayor*
City of Premont

Stephen I. Voglewede *Intergovernmental Relations Director*
City of El Paso

Jon Weist *Intergovernmental/Legislative Officer*
City of Irving

Jeffrey Widmer *Director/Building Official*
City of Rockwall
Building Officials Association of Texas

Steve Williams *City Manager*
City of Schertz
Texas City Managers Association

Pamela Williams *Director of Human Resources*
City of Abilene

Kenneth Williams *City Manager*
City of Beaumont

CD Woodrome *City Secretary*
City of Ivanhoe

Marissa Ximenez *Councilmember*
City of Floresville
Association of Hispanic Municipal Officials

Joe Zimmerman *Mayor*
City of Sugar Land
TML Region 14

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Important:
Please Read Prior to Reviewing Materials

2024 Texas Municipal League Municipal Policy Summit
Delegate Instructions

The 2024 Municipal Policy Summit serves two very important goals: (1) receive input from a cross-section of League members to ensure that the 2025-2026 legislative program is representative of the membership's wishes; and (2) educate the summit delegates on the myriad legislative issues faced by cities. This year's format will allow us to accomplish those goals, but we will need delegates to review the following instructions to make that happen in an efficient and timely manner.

- The League now advocates pursuant to a fixed legislative program. The idea behind the TML board's decision to go to a fixed program is that a very large percentage of the positions remain constant each session. Thus, instead of spending so much time on briefing subjects and related positions that rarely – if ever – change, we provide written briefing materials on those subjects for delegates to review. Keep in mind that fixed doesn't mean the program can't be changed. It just means that we won't make you go through the motions of voting on positions with which you already understand and agree.

- The current fixed program is included as an appendix in the Municipal Policy Summit briefing materials. (Those same positions listed in the fixed program are also listed at the end of the briefing materials for each subject.)

Your role as a delegate is to review the briefing materials and the fixed program positions. If you see a position that you would like to discuss modifying, we request that you notify Monty Wynn, Director of Grassroots and Legislative Services, at monty@tml.org by August 2, 2024.

- In addition, if you would like to discuss an issue and/or add a position that is not included in the briefing materials, we request that you notify Monty Wynn as well.

AGENDA

Texas Municipal League
Municipal Policy Summit
Hilton Austin
August 12-13, 2024

Monday, August 12

7:45-9:00 a.m.	**Registration and Breakfast**
9:00-9:20 a.m.	**Introduction, TML Policy Development Process, Staff Roles, and Agenda Process**
9:20-10:30 a.m.	**2025 Legislative Landscape**
10:30-10:45 a.m.	**Break**
10:45-11:15a.m.	**Harmful Legislation in General/Preemption**
11:15-Noon	**Tax and Revenue**
Noon-1:00 p.m.	**Lunch**
1:00-1:45 p.m.	**Tax and Revenue (continued)**
1:45-3:15 p.m.	**Regulation of Development**
3:15-3:30 p.m.	**Break**
3:30-5:00 p.m.	**Utilities and Transportation**
5:00 p.m.	**Reception**

Tuesday, August 13

8:00-9:00 a.m.	**Breakfast**
9:00-9:30 a.m.	**Communications and Public Relations**
9:30-10:30 a.m.	**General Government**
10:30 a.m.-10:45 a.m.	**Break**
10:45 a.m.-Conclusion	**General Government (continued)**
Conclusion	**Adjourn**

The Texas Municipal League
Grassroots Policy Development Process

The primary function of the Texas Municipal League is advocating on behalf of its member cities. That's the way it has been since the League's formation in 1913 because many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials. Now, just as they did over a century ago, newly elected mayors and councilmembers quickly realize the legislature can address virtually any aspect of city government.

This fact is vividly demonstrated during each legislative session. For example, during the 2023 session, more than 8,000 bills or significant resolutions were introduced; more than 1,800 of them would have affected Texas cities in some substantial way. In the end, over 1,200 bills or resolutions passed and were signed into law; 230 of them impacted cities in some way.

The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2023, that percentage has increased to 23 percent. In other words, almost a quarter of the legislature's work is directed at cities, and much of that work aims to limit municipal authority.

Based on a legislative program that is developed by member city officials, the League, through its grassroots, advocates for or against those efforts. To develop the program, city officials provide input in primarily two ways.

First, member city officials can participate in the League's Municipal Policy Summit during each interim. The report of the summit takes the form of a resolution that is submitted to the annual conference. The goal of the committee process is two-fold: (1) it allows input on the legislative program from a broad cross section of cities and city officials; and (2) it educates new city officials to the legislative issues faced by cities. The summit participants are appointed by the TML President based on volunteers and others chosen to balance the demographics of the TML membership at large.

The Summit is an intensive, two-day workshop during which League staff briefs the participants on the myriad legislative issues faced by cities. Most are issues that arise each session, but several consist of solicited or unsolicited issues brought by city officials. Even if no changes are recommended to the fixed program, which is an unlikely prospect, staff will fulfill its educational goal through continued briefing on the issues. After each subject-matter briefing, the participants make concise recommendations on the issues. Those recommendations are placed into resolution form and submitted to the League's annual business meeting, discussed next.

Second, a member city, TML region, or TML affiliate may submit a resolution for consideration at the League's annual conference. Each city is asked to provide one delegate to serve as its liaison at the meeting. The delegates are briefed on the content of the resolutions and given a chance to discuss and vote on whether they merit inclusion in the legislative program. The resolutions form the basis of a fixed legislative program, under which – each session – modifications to the program will be considered at a future Summit, business meeting, or TML Board meeting.

Detailed information relating to resolution submittal is provided to each member city, TML affiliate organization, and TML region well in advance of the due date.

The somewhat complex policy development process is necessary to ensure that the League advocates as directed by its members. The League is nothing without the involvement and expertise of its members, and participation in the process is an invaluable part of protecting municipal authority.

The TML Legislative Philosophy

The TML approach to the 2025 session will undoubtedly be guided by principles that spring from a deeply rooted TML legislative philosophy:

- The League will vigorously oppose any legislation that would erode the authority of Texas cities to govern their own local affairs.

- Cities represent the level of government closest to the people. They bear primary responsibility for the provision of capital infrastructure and for ensuring our citizens' health and safety. Thus, cities must be assured of a predictable and sufficient level of revenue and must resist efforts to diminish that revenue.

- The League will oppose the imposition of any state mandates that do not provide for a commensurate level of compensation.

TML Legislative Policy Process Schedule

The League's 2025-2026 legislative policy development schedule is roughly as follows:

October 2023 – the TML membership considered resolutions at the 2023 Annual Conference at the annual business meeting.

May 2024 – the chair, vice-chairs, board representative, and participants of the League's Municipal Policy Summit are appointed by the TML President.

July 2024 – Municipal Policy Summit materials are distributed to the membership.

August 2024 – the Municipal Policy Summit, a two-day policy briefing at which the members made recommendations for the League's 2025-2026 legislative program, meets.

October 2024 – the report of the Municipal Policy Summit, along with any other resolutions, will go forward to the annual business meeting at the 2024 Annual Conference.

December 2024 – the TML Board will finalize the League's 2025-2026 legislative program based on resolutions passed in both 2023 and 2024.

Suggestions for City Officials

City officials can significantly impact the outcome of the 2025 legislative session. When making recommendations for the League's Legislative Program, they should keep in mind the following:

1. **There is a practical limit to what the League – or any group, for that matter – can accomplish in any legislative session.** It is obvious that all resources – human, financial, and political – are limited, and no group can hope to achieve all its legislative objectives. The most powerful interest groups in

the state sometimes come away from a legislative session bruised and battered. On occasion, the best that can be expected is that damage be mitigated.

2. **TML will expend the vast majority of its resources killing bad bills.** This has always been so and will probably always be the case. At one point during the 2023 regular session, the League was monitoring more than 2,000 bills or resolutions, many of which were bad for cities. The League's legislative philosophy has traditionally been, first and foremost, to defeat bad legislation and, secondarily, to seek passage of beneficial legislation as time, resources, and political realities permit.

3. **It is unlikely that any other interest group in the state monitors and opposes as many bills as does the Texas Municipal League.** During recent legislative sessions, the League took steps to oppose bad legislation dealing with everything from annexation to zoning and from autonomous vehicles to tree preservation. The breadth of the League's legislative focus becomes obvious each year when TML completes and submits its state-mandated lobbyist registration form. One schedule of the form asks which of 83 subject matters are of interest to the organization. All 83 fall within the League's areas of interest.

4. **Unfortunately, the number of bad city-related bills grows almost every year. (Please see the chart on the next page.)** As a result, the League has been forced to expend an ever-greater percentage of its resources simply fending off bad ideas.

5. **Given the League's finite resources, and because vast amounts of those resources are necessarily expended in defeating bad legislation, the League must very carefully select bills that it will support or for which it will attempt to seek passage.** A sharply focused legislative program is more likely to lead to success than is a very large and wide-ranging program. In addition, supporting a bill that has a low probability of passage requires a large amount of time and political resources that can be used more productively in other ways. **Thus, it is important to advocate only those initiatives that are truly important and that have a realistic chance of passage.**

Year	Total Bills Introduced*	Total Bills Passed	City-Related Bills Introduced	City-Related Bills Passed
2003	5754	1621	1200+	110+
2005	5369	1397	1200+	105+
2007	6374	1495	1200+	120+
2009	7609	1468	1500+	120+
2011	6303	1410	1500+	160+
2013	6061	1437	1700+	220+
2015	6476	1329	1600+	220+
2017	6800	1220	2000+	290+
2019	7541	1437	2000+	330+
2021	6927	1073	2000+	240+
2023	8344	1258	1800+	230

*Includes bills and proposed Constitutional amendments; regular sessions only.

6. How can summit participants identify initiatives that are truly significant and that merit a place in the TML legislative program? Committee members may wish to ask the following questions about each discussion item:

    - **Does the initiative have wide applicability to a broad range of cities of various sizes (both large and small) and in various parts of the state?**
    - **Does the initiative address a core municipal issue, such as erosion of local control and preservation or enhancement of municipal revenue?**
    - **Will the initiative be vigorously opposed by strong interest groups and, if so, will member cities commit to contributing the time and effort necessary to overcome that opposition?**
    - **Is this initiative, when compared to others, important enough to be part of TML's list of priorities?**
    - **Is this initiative one that city officials, more than any other group, should and do care about?**

The foregoing suggestions are not meant to imply that TML can't pass good, solid legislation. It can, it has in the past, and it will again. The suggestions are meant merely to emphasize the fact that any group, to succeed, must use its resources and its political strength wisely and selectively.

Categories of Legislative Positions

Legislative positions should reflect one of four categories that will direct League staff. Keep in mind that there is a difference between "seek introduction and passage" and "support."

- **Seek Introduction and Passage** means that the League can attempt to find a sponsor, will provide testimony, and will otherwise actively pursue passage. Bills in this category are known as "TML bills." **These bills require an enormous amount of time and resources, and the committee should be very cautious about putting items in this category.**

- **Support** means the League will attempt to obtain passage of the initiative if it is introduced by some other entity.

With very few exceptions, any item that makes its way into the 2025-2026 TML Legislative Program should be categorized by the two terms above, or by a recommendation that TML "**oppose**" or "**take no position**."

League staff will, based upon the foregoing principles and its knowledge of current legislative realities, determine the amount of time and resources devoted to any item in the program. City officials serving throughout the process is an essential part of protecting municipal authority. The League is nothing without the involvement and expertise of its members.

Have questions or comments? Contact JJ Rocha, TML Grassroots and Legislative Services Manager, at JJ@tml.org.

How to Submit a Resolution

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 2024, 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 26, 2024**.

PREEMPTION/HARMFUL LEGISLATION IN GENERAL

When it comes to legislative advocacy in Austin, cities' advocacy efforts stem from an overarching principle: Empower Texas cities to do the state's local work.

There are a couple of concepts that are critical to supporting that principle. First, local officials know best how to govern their cities. Unlike state legislators, who are elected from districts that include portions of cities or may include entire cities along with other disparate areas, city officials are tasked with representing only those within the city limits, who form unique and well-defined communities of interest. As such, city officials and city employees perform all of their work with the goal of bettering the city in a way that is aligned with the vision of city residents. As the government closest to those residents, there is a level of local accountability in city government that simply doesn't exist at higher levels of government.

Secondly, the principle recognizes the inherent value of the partnership between the state legislature and city governments. Because the state legislature isn't in an optimal position to tackle local issues, they should consider policies (or reject policies) with an eye towards preserving local officials' discretion in addressing issues in a way that makes sense for each unique community. Doing so ensures that cities are in the best position to help carry out the common vision shared with the state legislature on moving the state forward. Doing so also places value on a bottom-up regulatory scheme that reflects local priorities, instead of top-down uniform regulation that fails to account for different city-specific challenges.

Put a different way, how does a legislator from the Panhandle 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? Is a state representative from a city under 1,000 population in the best position to make decisions for those living in some of the biggest cities in the country? Texas' size and diversity doesn't lend itself easily to broad-strokes regulation from Austin.

Some lawmakers disagree. It's been commonplace to hear legislators decry the proverbial "patchwork quilt" of regulation from city to city over the last decade or so. Some legislators frame their assault on local control as a "protection of liberty" or in furtherance of property rights. Texas cities have seen this justification for a number of proposals over the years and many are mentioned throughout these materials.

While legislation that is harmful to local governments is not new, whether it be unfunded mandates, local preemption, or otherwise, perhaps the nadir for the concept of local control occurred following the 2017 regular session and into the 2019 session. When the dust settled on the 2017 regular session, many anti-city measures failed to secure final passage. This prompted the governor to order a special session, and his agenda for the special session focused on concepts that had long garnered opposition from Texas cities. Of the 20 topics added to the special session call, several would have restricted or preempted Texas cities. The city-related topics added to the call included:

- Property tax revenue caps
- Spending caps for cities equal to population growth plus inflation (this bill was not filed during the regular session)
- Annexation reform
- Tree ordinance preemption
- City permit vesting reform
- City permit streamlining
- Cell phone/texting preemption

Ultimately only annexation reform passed during the 2017 special session, but the anti-city rhetoric during the special session set the stage for a 2019 session that focused, in part, on harming local governments, by the express admission of some high-level state legislators. The 2019 session saw the passage of legislation effectively ending non-consent annexations in Texas, legislation that further limited the amount of property tax revenue cities could generate, legislation that preempted cities' ability to regulate building materials, and legislation that mandated a shot-clock on all subdivision plat and plan approvals. At the same time as the legislature passed these bills, there was a push for legislation that would prevent cities from using lobbyists or associations to engage in the state legislative process, including the ability to educate city officials on state legislation that impacts their cities.

Single-Issue Preemption

Dozens of preemption bills have been filed over the last several legislative sessions, ranging from preemption of citizen-initiated oil and gas drilling ordinances, to preemption of ride-sharing regulations, to the prohibition of local regulations related to plastic bags and payday lending. Enough preemption bills have passed in recent years to markedly shift authority on many issues from city councils to a more centralized state government in Austin.

2021 saw a number of issue-specific preemption bills pass. Two that received the most publicity were H.B. 1900 by Representative Goldman and H.B. 1925 by Representative Capriglione. H.B. 1900 prohibited cities with populations over 250,000 from adopting budgets that reduce the appropriation to local police departments. If a city is found by the governor's office to have lowered the police appropriation in the budget, the city is subject to numerous penalties, including among others, a property tax revenue cap, possible disannexation of territory from the city, and withholding of sales tax revenue.

H.B. 1925 effectively prohibits a city from allowing homeless individuals to camp on public property in the city limits. The bill generally makes it a Class C misdemeanor for a person to camp on public city property, and preempts any local ordinances that are not as stringent as state law. H.B. 1925 passed in direct response to the City of Austin's repeal of a homeless camping ban within the city.

Other less-controversial preemption bills passed in 2021, as well. For instance, S.B. 398 by Senator Menendez prohibited cities from prohibiting or restricting the installation of a solar energy device by a residential or small commercial customer, with certain exceptions. H.B. 17 by Representative Deshotel prohibited a city from adopting or enforcing an ordinance, resolution, regulation, code, order, policy, or other measure that has the purpose, intent, or effect of directly or indirectly banning, limiting, restricting, discriminating against, or prohibiting natural gas connection for residential or commercial properties. This preemption bill passed even though there was no evidence of any Texas city seeking to pass such an ordinance. A preemptive preemption bill, of sorts.

Most of the legislature's preemption bandwidth was dedicated to H.B. 2127 in 2023, discussed in more detail below. That said, the legislature still found the time to pick off city regulatory authority regarding a few topics.

S.B. 784 by Senator Birdwell preempted a city from enacting or enforcing an ordinance or other measure that directly or indirectly regulates greenhouse gas emissions. S.B. 1017, also by Senator Birdwell, would prohibit a city from adopting regulations that limit access to an energy source along with regulations that directly restrict the use of an engine based on its fuel source. Finally, S.B. 1860 by Senator Hughes prevents a

city from holding an election for voter approval of a charter provision establishing a comprehensive rule or policy statement addressing climate change or the city's environmental impact unless the legislature adopts a resolution approving the proposed provision or amendment. This concept of cities asking the legislature for permission to take certain charter provisions to the city's voters is an altogether novel form of legislative paternalism for Texas cities.

Preemption attempts are so prolific that it often doesn't make sense to have individual topic defensive positions (e.g., paid sick leave, payday and auto title lending, etc.). A comprehensive position better serves League staff in their advocacy efforts.

Super Preemption

Attempts have been made in recent sessions to bypass piecemeal approaches to preemption and pass broadly-worded legislation that would seriously hinder home rule authority for cities in Texas. This could be viewed as a "super preemption" of sorts. Those efforts culminated with the passage of H.B. 2127 by Representative Burrows in 2023.

Before getting to H.B. 2127, it's worth pointing out that super preemption legislation is not new. The first major attempt at super preemption in recent legislative history was S.B. 1172 in 2017. The bill dealt, innocently enough, with preemption of local agricultural seed regulations. However, when the bill was being considered on the House floor, an amendment was added that would have authorized a person to file suit to enjoin the enforcement of a city ordinance if the person was required to obtain a license, permit, or registration issued by the state. Needless to say, the floor amendment went well beyond preemption of seed ordinances and would have essentially prevented the application of most city ordinances to state-licensed businesses (and buried that broad preemption language in a little-known provision in the Texas Agriculture Code, no less). Fortunately, city opposition eventually led the House sponsor to remove the offending language before the bill finally passed.

Several similar "super-preemption" bills were filed in 2019, with S.B. 1209 by Senator Hancock getting voted out of the Senate before stalling in the House. In 2021, the concept was refiled as H.B. 610 by Representative Swanson. Despite overwhelming opposition to the bill in committee, the bill was reported out of committee before the clock ran out on the bill in the House. Further attempts were made to sneak the super-preemption language to a less controversial bill in the form of a floor amendment, but cities were able to thwart that effort. The bill was filed once again in 2023 (H.B. 2266 by Representative Leach) and passed the House before stalling in the Senate, this after H.B. 2127 passed.

With H.B. 2127, the legislature took a very different approach to the topic of super preemption, blending some specific express preemption provisions with a new field preemption concept that largely delegates preemption determinations to the courts. The end result, at least on the field preemption provision, is that cities and city residents have no real direction from the Texas legislature on what is and isn't preempted, just a new framework to open cities up to legal challenge based on undefined concepts in the bill.

The origins of H.B. 2127 begin with the failure of S.B. 14 by Senator Creighton during the 2021 regular session. That bill would have specifically preempted the local regulation of employment benefits and policies, targeted primarily at paid sick leave ordinances adopted by three Texas cities. The bill passed both chambers in different forms and was ultimately derailed in the final days of session before the conference committee report could be adopted by the House.

The failure S.B. 14 led a collective of statewide business associations—the Alliance for Securing and Strengthening the Economy in Texas (ASSET)—to mobilize in support of the passage of similar legislation in 2023 focused on preempting cities' on local employment regulations. The ASSET bill in 2023 ended up being H.B. 2127, which went far beyond the basic employment regulation preemption from S.B. 14 the session prior.

As mentioned above, H.B. 2127 combined express preemption and field preemption. On the express preemption side, the bill would preempt cities from adopting or enforcing five types of regulations: (1) regulations of employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than the city; (2) new or amended predatory lending regulations; (3) regulations impeding a business involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business's transactions if the person operating the business holds a state or federal license to perform such actions or services; (4) new or amended regulations relating to the retail sale of dogs or cats; and (5) regulations involving evictions.

If the bill were limited to those five specific preemption provisions, the bill would still be objectionable for many cities, but also somewhat in line with past specific-issue preemption legislation. It's the new field preemption provisions, usually reserved for state-federal regulation interactions, that takes the bill in the uncharted territory from both a policy and a legal perspective.

H.B. 2127 applies the field preemption concept to city and state regulatory interactions by providing that "unless expressly authorized by another statute, a [city] may not adopt, enforce, or maintain an ordinance or rule that regulates conduct in a field of regulation that is occupied by a provision of this code." Any ordinance or rule that violates this provision would be void and unenforceable.

Many questions about the extent of field preemption remain, even a year after the bill's passage. When does the state occupy a field of regulation? Is a field occupied if a state code merely mentions a particular topic? What if state statute authorizes some governmental entities to act but not cities? Could a field be occupied if the legislature chooses not to regulate certain conduct?

The bill doesn't answer these questions, and it isn't designed to do so. Instead, the bill sets up a system by which a person or a trade association representing a person may sue a city for an actual or threatened injury caused by a city adopting or enforcing an ordinance in any of the codes or statutes preempted under H.B. 2127. But before a plaintiff can file a suit, it must first provide the city with at least three months' notice of their claim, including reasonably describing the injury claimed and the ordinance or rule that is the cause of the injury. In short, the bill delegates the preemption question for untold issues (now and in the future) to the courts to figure out.

In July 2023, The City of Houston (later joined by the cities of San Antonio and El Paso as intervenors) filed a lawsuit in Travis County to have H.B. 2127 declared unconstitutional. Among other things, the cities argue that H.B. 2127 violates the home rule amendment of the Texas Constitution, is unconstitutionally vague, and impermissibly delegates the Texas Legislature's policy-making authority to the courts.

In August, after a two-hour hearing and arguments from both sides, Travis County District Court Judge Maya Guerra Gamble granted Houston's Motion for Summary Judgment and denied the State's Motion to Dismiss. Further, the court declared H.B. 2127 to be unconstitutional in its entirety. The attorney general appealed to the

Austin Court of Appeals, where the case currently sits.

Despite the good ruling for cities, H.B. 2127 still technically went into effect on September 1, 2023. The litigation will very likely continue into the 2025 legislative session and beyond, as the losing party at the appellate level will likely appeal the decision to the Texas Supreme Court. How exactly the legislature approaches the super preemption issue in 2025, especially given the ongoing litigation, will be one of the most consequential issues for Texas cities in the 2025 legislative session.

The TML Legislative Program provides that the League oppose legislation that would: (1) erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities; and/or (2) provide for state preemption of municipal authority in general.

REVENUE AND FINANCE

Revenue Caps

Finally, after more than a decade of failed attempts to adopt a revenue cap on city and county tax rates, the legislature adopted Senate Bill 2 in 2019. Rooted in the so-called Taxpayer Bill of Rights, versions of which have been enacted in other states, a revenue cap prevents a city from raising more property tax revenue than it raised in the previous year without first conducting a popular election, with some allowances made for population growth and/or inflation. S.B. 2, also known as the Texas Property Tax Reform and Transparency Act of 2019, reformed the system of property taxation in three primary ways: (1) lowering the tax rate a taxing unit can adopt without voter approval and requiring a mandatory election to go above the lowered rate; (2) making numerous changes to the procedure by which a city adopts a tax rate; and (3) making several changes to the property tax appraisal process.

Generally speaking, S.B. 2 lowered the rollback tax rate from 8 percent to 3.5 percent, in addition to renaming the rate the "voter-approval" tax rate and providing for a slightly different rate calculation methodology. Cities with populations of 30,000 or more must hold an automatic election on the November uniform election date if they adopt a tax rate exceeding the voter- approval tax rate. Cities under 30,000 population are given some additional tax rate calculation flexibility regarding the revenue cap. These cities calculate what is known as the "de minimis" tax rate, which essentially is the rate necessary to bring in the same amount of maintenance and operations revenue as last year, plus the rate necessary to generate an additional $500,000 in property tax revenue. If the de minimis rate exceeds the voter-approval rate, a city under 30,000 population needs to hold an automatic election in November only if it adopts a tax rate exceeding the de minimis tax rate. Still, there are circumstances where a city under 30,000 population would be subject to a petition for an election on the May uniform election date even if the city's rate does not exceed the de-minimis rate.

Making matters more complicated following the bill's passage in 2019 was the fact that the bill contained an exception to calculating the voter-approval rate using a 3.5 percent multiplier if any part of a taxing unit is located in an area declared a disaster by the president or governor. Every county in Texas was included in the governor and president's disaster declarations for the coronavirus issued on March 13, 2020. As a result, the Tax Code gave city councils the discretion to direct the designated officer or employee to calculate the voter-approval tax rate at up to 8 percent, instead of 3.5 percent. Some city councils opted to calculate an 8 percent voter- approval rate, whether to keep options open or in early acknowledgement the toll the coronavirus took on those cities' revenue

streams. Others considered resolutions to use an 8 percent voter- approval rate, only to have those resolutions rejected by council. Others simply did not consider any resolution, thus leaving the voter-approval tax rate at 3.5 percent.

In response to local action on this disaster exemption within S.B. 2, the legislature passed S.B. 1438 in 2021, which was signed into law. The primary goal of S.B. 1438 was to eliminate the ability of a taxing unit, including a city, to opt into greater flexibility in calculating and adopting a tax rate during a pandemic. S.B. 1438 clarified that in order for a taxing unit to calculate the voter-approval tax rate at eight percent due to a disaster declaration, there needs to be physical damage to property within the taxing unit's jurisdiction. The way the legislature decided to measure whether or not there is physical damage to property was to authorize the ability of a taxing unit to opt into the higher rate calculation only if a person within the taxing unit is granted a temporary property tax exemption for property that is physically damaged in a disaster. This means that, moving forward, a city may not use the higher eight percent calculation due to a disaster that does not cause physical damage to property.

In addition to S.B. 1438's modifications to existing statutory provisions governing tax rate setting following a pandemic, the bill also added a couple of new provisions that could impact cities in a more general sense. First, the bill created a new negative adjustment to a city's voter-approval tax rate if the city does opt-in to an eight percent voter-approval rate during a disaster. Under S.B. 1438, if a city decides to calculate an eight percent voter-approval rate due to a disaster, in the first year following last year for calculating voter-approval rate in manner provided for special taxing unit, voter-approval rate is reduced by the "emergency revenue rate". The emergency revenue rate is essentially the difference between the previous year's adopted rate and the voter-approval rate calculated as if the taxing unit adopted the 3.5 percent voter-approval rate at each opportunity during the disaster.

What this all means is that while cities may continue to opt-into the eight percent voter-approval rate calculation during a disaster in which property is damaged, doing so is almost like taking out a loan to recover from the disaster that a city will "pay back" later in the form of a voter-approval rate reduction once the impact of the disaster has passed. As a result, cities should consider the future impact to property tax revenue prior to deciding to opt into a higher voter-approval rate calculation due to a disaster.

Other than S.B. 1438, only a small handful of bills were filed in 2021 that would have significantly modified the new S.B. 2 framework. One bill, H.B. 1391 by Middleton, would have provided that if voters reject a proposed tax rate at an election, the rate defaults to the no-new-revenue rate, instead of the voter approval as allowed under current law. H.B. 2966 by Tinderholt, would have eliminated the flexibility for a city with a population of less than 30,000 from adopting a tax rate higher than the voter-approval rate but lower than the de-minimis tax rate. Neither of these bills made it out of committee.

New versions of these bills were back in 2023 (S.B. 1324 by Middleton, H.B. 2220 by Harrison, and S.B. 978 by Bettencourt). S.B. 978 received a hearing in the Senate Local Government Committee but was not voted out. The bill would have repealed provisions providing for the calculation and application of the de minimis rate. From a city perspective, the de minimis rate is designed to provide a small degree of flexibility to cities under 30,000 population. S.B. 978 would have eliminated that flexibility, making it more difficult for small communities to finance necessary services and infrastructure.

When the concept of the de minimis rate was adopted as part of S.B. 2 in 2019, many referred to

it as the "fire truck" provision. The de minimis rate is the amount necessary to generate an additional $500,000. In smaller taxing jurisdictions, the 3.5 multiplier in the voter-approval rate calculation may only increase the property tax revenue for the city by a few hundred or a few thousand dollars. This means that if a city needed to buy a new fire truck, for instance, and wished to do so with maintenance and operation property tax revenue, it wouldn't be able to do so without holding an election. (It should be pointed out, however, that the cost for a ladder truck in 2024 exceeds the de minimis amount of $500,000 by a healthy margin.) In some cases, the cost of holding the election may exceed the amount of money generated by the proposed tax rate in a small town.

Representative Harrison filed a bill, H.B. 2221, that would have required 60 percent of voters to approve a higher tax rate at a tax rate election in order for the higher rate to be adopted. The bill did not receive a committee hearing.

Since S.B. 2 went into effect in 2020, the legislature has given very little real consideration to legislation that would upend the voter approval framework set in place by S.B. 2. Entering the 2025 session, cities will have operated under S.B. 2's new tax rate calculation and election requirements for five years, making it somewhat difficult to determine if any changes will be deemed necessary so soon after the legislation's enactment. With rising property valuations across the state, there has been continued scrutiny of the property tax system. This led to the passage of significant property tax reform legislation again during the 2023 special session that mainly impacted school district property tax rates.

Given the passage of school property tax relief, the legislature could once again turn its attention to city, county, and special purpose district tax rates in 2025. In April 2024, Lt. Governor Patrick issued an interim charge to the Senate Local Government Committee to "[m]ake recommendations for further property tax relief and reform, including methods to improve voter control over tax rate setting and debt authorization."

The TML Legislative Program provides that the League oppose legislation that would impose further revenue and/or tax caps of any type.

Appraisal Caps

Since 1997, Texas has operated under an appraisal cap that limits assessed value increases to 10 percent annually for residential homesteads. Legislators have filed bills to expand this appraisal cap in every session since, either by reducing the amount by which the assessed value of a home increases from ten percent to a lower figure, like five percent, or by applying the lowered appraisal cap to all property instead of just residence homesteads. Every one of those attempts met a similar fate, for reasons discussed below, until S.B. 2 passed during the second special session of 2023.

Due to a historic budget surplus, the 88th Texas Legislature entered 2023 with virtually everyone on board with a significant property tax relief bill. Ironing out the details of the bill proved a more difficult task. The Senate focused on school property tax compression and an increase in the school district residence homestead exemption. As the regular session wore on, however, it was clear that the House preferred an expansion of an appraisal cap as the best means for providing property tax relief. The difference in opinion led to a standoff between the two chambers at the end of the regular session, and the first special session. The two sides finally agreed on S.B. 2 during the second special session, which contained both the Senate's homestead exemption increase along with a limited appraisal cap that was included at the behest of House leadership. (Note: this S.B. 2 should not be confused with S.B. 2 from 2019, which imposed a revenue cap on Texas cities.)

It should be noted that neither the authors and sponsors of S.B. 2, nor the bill text itself, refer to an appraisal cap. Instead, and likely as part of the compromise between the two sides, the limitation on valuation increases is called a "circuit breaker" instead of an "appraisal cap." Whatever the name, the appraisal cap component of S.B. 2 is significantly pared down from the sweeping appraisal caps filed in previous sessions. Essentially, the S.B. 2 circuit breaker imposes a 20 percent cap on appraised values for non-homesteaded properties that are valued at $5 million and under as a three-year pilot project.

Before discussing the legislative history in Texas on appraisal caps, it makes sense to look at some of the bigger picture arguments for and against them. Property taxes must, by law, reflect the market value of the property being taxed. When residential home values rise, property taxes rise unless the tax rate is reduced. This situation offends some homeowners, however, and has led to a call for caps on the appraised value of residential homesteads (more accurately, caps on the *assessed value*, as appraisal districts would continue to render theoretically accurate appraisals). One of the first states to experiment seriously with such proposals was California under the infamous Proposition 13.

The effect of artificially limiting appraisals on certain properties is to shift the tax burden to properties that aren't increasing in value and to non-residential properties. Further, this shifting has been shown to be regressive in practice—the poor and seniors living in aging neighborhoods are harmed by the shift that results from caps on assessed values.

Another negative consequence of assessed value caps is that they favor some residents over their next-door neighbors based simply on the purchase dates of the two homes. A key element of assessment caps is that capped values are permitted to "catch up" upon the sale of a home. This results in situations where identically appraised homes are assessed at very different levels. These negative effects of appraisal caps have been highlighted over the last several sessions in response to appraisal cap legislation by groups such as the Texas Association of Realtors, the Texas Taxpayers and Research Association, and business groups, in addition to cities, counties, school administrators, and others.

Though there is a standard appraisal cap framework that gets introduced every session (lowered amount by which assessed value can increase each year, often application to other properties other than homesteads), there are a number of variations on this basic formula that have been filed over the last two decades. These include appraisal caps that have some local-option component, bills that would limit the frequency of re-appraisals to every two or three years, and more recently, bills that would impose revenue caps on specific types of properties, like low-income housing.

During the 2005 special session, S.J.R. 4 would have amended the Texas Constitution (if approved by Texas voters) to give local governing bodies (cities, counties, and schools) *the option* of lowering the residential appraisal cap from ten percent to any amount between three and ten percent. The legislation provided that, once lowered, a local option appraisal cap could not be changed for five years. The bill did not pass.

The TML membership knew that the idea of a local-option appraisal cap, such as S.J.R. 4 proposed, needed to be examined closely heading into future regular sessions. Clearly, such a concept is what TML traditionally seeks: local control. How can cities oppose something that is a local option, supporters of such a concept will ask? After much debate, the membership voted to take no position on legislation that would authorize a council-option appraisal cap, a position that carried over through 2021. The "council-option" requirement

is, however, critical: legislation filed in 2009, H.B. 46 by Riddle, would have permitted the county commissioners court to call a county-wide election on an appraisal cap that would apply to all taxing units, including cities. TML opposed the bill because it did not provide for a city council option.

One of the bills filed in 2011—S.B. 175 by Nichols—introduced yet another variation of an appraisal cap. S.B. 175 would have: (1) reduced the property tax appraisal cap on homesteads from ten percent to five percent; (2) authorized a county commissioners court to call an election to increase the homestead appraisal cap for all taxing jurisdictions in the county back to some percentage between six and ten; and (3) prohibited a subsequent election from occurring for ten years after such an election is held. This bill represented a sort of "reverse county-option" to call an election to raise the cap on appraisals after it would be lowered by law to five percent. Not only would there be no council-option, but the concept behind the bill almost guarantees that the cap on appraised values would remain at five percent across the state, as citizens in a given county would almost certainly not vote to increase the appraisal cap back to ten percent.

The sizeable state fiscal note routinely attached to these bills plays a major role in their demise each legislative session. Take, for example, H.B. 2311 by Representative Krause in 2021. H.B. 2311 would have reduced the appraisal cap on residence homesteads from ten to five percent; and imposed a ten percent appraisal cap on the appraised value of a single-family residence other than a residence homestead. It would have cost the state and cities roughly $800 million over five years. Needless to say, any bill with that kind of fiscal note stands little chance of passage without a very coordinated effort for appraisal cap reform from the outset of the legislative session.

Although many appraisal cap bills were filed in 2019 and 2021, no appraisal cap proposal had a realistic chance of passage. None of the bills were reported from committee, and the ones that were came with significant costs to state and local governments in the fiscal notes. A couple of those bills included some new approaches to appraisal caps. One of which was S.B. 657 by Senator Creighton in 2019 (refiled as S.B. 1096 in 2021). S.B. 657 would have created a two-tiered appraisal cap for residence homesteads – three percent if the value of the homestead was $1 million or less, and five percent if the value of the homestead was over $1 million.

The other newer concept relating to appraisal caps is the appraisal cap that is targeted toward benefiting certain taxpayers. S.B. 1791 by Senator Zaffirini in 2019 would have established a council-option appraisal cap applicable in certain low-income areas within the city. H.B. 1577 by Rep. Yvonne Davis in 2021 would have allowed for a local-option appraisal cap in parts of Dallas, Lubbock, and Harris Counties where major economic development projects have led to gentrification of low-income neighborhoods. Finally, H.B. 3694 by Rep. Shaheen in 2021 would have imposed an appraisal cap on "rapidly appreciating residence homesteads" that had seen their values increase by at least 250 percent since the 2017 tax year by allowing the property to keep the 2017 appraised value for tax purposes. Similar targeted appraisal cap bills were filed in 2023.

Given recent legislative action on caps, albeit as a somewhat limited pilot project, in addition to the Senate's overall reluctance to embrace appraisal caps as a solution to high property taxes, it's probably fair to assume that appraisal caps will not be a priority in 2025.

The TML Legislative Program provides that the League oppose legislation that would negatively expand appraisal caps but take no position on legislation that would authorize a

council-option reduction in the current ten-percent cap on annual appraisal growth.

Property Tax Exemptions

In 2000, the TML Legislative Policy Committee on Municipal Revenue and Taxation recommended a change to the League's traditional approach to proposed property tax exemptions. Rather than opposing all property tax exemptions, the committee recommended (and the TML membership agreed) that the League should oppose only those exemptions that substantially erode the property tax base. Accordingly, TML has since taken no position on new exemptions that would be relatively low in cost and would serve some social benefit.

The rationale behind the new approach was that the effective tax rate and rollback tax rate mechanisms (now called the no-new-revenue rate and voter-approval rate, respectively) provide dollar-for-dollar relief for small amounts of lost property tax base. The lost property tax base is simply shifted from exempt to non-exempt properties. Cities are still able to raise the same level of revenue without facing negative property tax consequences. In fact, beginning in 2023 the Legislative Budget Board, the state agency tasked with estimating the fiscal impact of legislation through the issuance of fiscal notes assigned to each bill, included something approximating this language in its fiscal notes to cover the local fiscal impact of a property tax exemption bill in lieu of an actual estimate of impact: "However, the no-new-revenue and voter-approval tax rates as provided by Section 26.04, Tax Code could be higher as a consequence of the additional exemption proposed by the bill."

The downside of new property tax exemptions is that residential property tends to disproportionately bear the shifted burden. While this is a valid concern, it is not a uniquely city concern. In response to most proposed exemptions, legislators are confronted by taxpayer groups who feel that property taxes are high enough already without raising them more to finance subsidies for privileged groups. Further, cities and counties share the property tax base with school districts, most of which are much closer to their maximum gross tax rates than are cities and counties.

In other words, small, socially beneficial tax exemptions must run the full gauntlet of political examination, inquiry, and potential opposition. Because such exemptions must survive that exposure, and because municipal revenue is not harmed since the tax burden is simply shifted, TML committees recommended that the League take no position on minor property tax exemptions in the twelve regular legislative sessions spanning from 2001 – 2023. Those twelve sessions resulted in the enactment of only a few new property tax exemptions that affected cities (other than the senior tax freeze and Super Freeport), and many of those contained local option provisions.

In order to determine whether a property tax exemption "substantially erodes" the tax base, League staff have typically looked at two primary factors. First, what is the bill's overall cost to cities as reflected in the fiscal note prepared for the bill by the Legislative Budget Board? Although there is not necessarily a threshold cost above which any property tax exemption legislation would be considered to "substantially erode" the tax base, an exemption bill that would cost Texas cities tens of millions of dollars in revenue would almost certainly be opposed by the League under the standard position.

Secondly, the League looks at whether the exemption has wide applicability to a broad range of cities of various sizes and in various parts of the state. Taking both of these criteria together, League staff elected not to oppose S.B. 163 and H.J.R. 62 in 2013, the constitutional amendment that would exempt the residence homestead of the surviving spouse of a member of the armed forces who was killed in action. The fiscal note showed

a fiscal impact to roughly 1,200 Texas cities at approximately $90,000 per year in the aggregate. The low cost to cities, coupled with the fact that residence homesteads eligible for an exemption under the new legislation are relatively rare was enough to satisfy League staff that the exemption did not "substantially erode" the property tax base. On the other hand, proposals to exempt senior citizens from paying any increase in property taxes would likely cost cities across the state millions of dollars, and would be opposed by the League because it would substantially erode the tax base.

While numerous property tax exemption bills were filed in 2019, the only significant one to pass was H.B. 492. As filed, the bill was a temporary, local-option property tax exemption for property damaged in a disaster. Due largely to the fact that the bill was discretionary for the city to adopt, in addition to the temporary nature of the exemption, the League was supportive of the bill. In the final days of session, the local-option provision was largely eliminated from the bill, unless the disaster was declared after a city adopted its tax rate. The bill passed, was signed by the governor, and the constitutional amendment approved by the voters in November 2019.

This exemption serves an alternative to the previous system of disaster reappraisal in which taxing units had the discretion to authorize property reappraisal following a disaster, which was repealed by H.B. 492. Because the exemption only applies in disaster areas, the Legislative Budget Board was unable to estimate the cost to cities in the fiscal note. Further, while the temporary exemption could apply in any city during a disaster, it doesn't generally apply across the board. Even though the bill was amended in a less-favorable way very late in the legislative process, it likely did not make the exemption something that would substantially erode the city property tax base. A recent attorney general opinion confirms that the bill does not impact property allegedly damaged by pandemics. The attorney general's opinion was codified with the passage of S.B. 1427 in 2021.

In 2021, S.B. 1438 made further modifications to the temporary property tax exemption for property damaged in a disaster. S.B. 1438, among other things, eliminated the ability of a local taxing unit to adopt the temporary exemption for qualified property damaged by a disaster following the date the taxing unit adopts a tax rate, making the property tax exemption mandatory regardless of when the disaster occurs. This provision making the exemption mandatory was never vetted in committee and tacked on the bill as a last-minute floor amendment.

A few other minor property tax exemptions passed in 2021 that impact city revenue. S.B. 1449 provided that a person is entitled to a property tax exemption for tangible personal property with a taxable value of less than $2,500 and that is held or used for the production of income (up from $500). The cost to cities was a relatively modest $1 million per year. S.B. 611 exempted from property taxes the residence homestead of the surviving spouse of a member of the armed services who is fatally injured in the line of duty, at a cost of roughly $300,000 per year to cities in the aggregate. Finally, H.B. 3610 exempted open-enrollment charter school property from property taxes, with a price tag of an estimated $4 million per year to cities.

2023 saw the passage of a couple of notable property tax exemptions. The first, S.B. 1145 and the accompanying constitutional amendment in S.J.R. 64, began as a generally-applicable property tax exemption for certain child care facilities. Due to the fiscal impact of an absolute property tax exemption, the bill was modified during session to become a pure local-option property tax exemption. The constitutional amendment was approved by the voters in November 2023 by a vote of 65 percent to 35 percent. The new law gives the city council the discretion to adopt

a property tax exemption of all or part of the appraised value of the real property a person owns and operates as a qualifying child-care facility or the portion of the real property that a person owns and leases to a person who uses the property to operate a qualifying child-care facility. The city council may adopt the exemption as a percentage of the appraised value of the property, and the percentage specified by the city council may not be less than 50 percent.

The other significant property tax exemption to pass in 2023 was S.B. 2289 and its constitutional amendment S.J.R. 87, which exempts certain tangible personal property used or produced by medical and biomedical manufacturers from property taxation. As mentioned above, fiscal notes on property tax exemption legislation in 2023 did not reflect the full cost of the exemption to Texas cities, but instead just referenced that tax rates may float up to make up for the cost of the exemption. The impact of S.B. 2289 to schools remained in the fiscal note, and showed a roughly $45 million dollar hit to school districts that escalates over the next five years. That's not necessarily an apples to apples comparison that can be applied to city impact, but it does signify that there would be a tax burden shift in some cities back onto properties that do not benefit from the exemption.

It's also worth mentioning one bill that did not pass but is likely to be back in 2025. S.B. 5 in 2023 would have provided an increase to the business personal property exemption from a $2,500 de minimis exemption to a $25,000 exemption. The estimated cost to cities was $75 million. Due to the broad and significant impact of S.B. 5, the League opposed the bill. Although S.B. 5 didn't end up passing, the concept of increasing the business personal property tax exemption is not a new one. Some variation of the proposal will likely receive consideration in 2025, and once again the legislature's receptiveness to the idea may depend on whether the state has a healthy budget surplus that can withstand such a significant fiscal impact.

Just like in 2015 and 2021, legislation (S.B. 2 during second special session) passed in 2023 to increase the amount of the school homestead property tax exemption, this time from $40,000 to $100,000. The constitutional amendment was approved by the voters in November 2023 and will go into effect for the 2024 tax year. Of specific interest to cities, the property tax relief bill that included the increased school homestead exemption also provided that the governing body of a city, school district, or county with a local option homestead exemption may not reduce the amount of or repeal the exemption through the 2027 tax year.

The TML Legislative Program provides that the League oppose legislation that would impose new property tax or sales tax exemptions that substantially erode the tax base.

Equity Appraisals

One issue relating to property appraisal that has become problematic for Texas cities in recent years is the shift from appraisals based on a market approach to appraisals based on an equity approach. County appraisal districts have typically relied on a market approach to appraisals, which is primarily based on actual sales prices. However, commercial property owners are becoming increasingly inclined to file lawsuits challenging local appraisals, arguing that their properties should instead be appraised based on how similar properties are valued.

Commercial property owners' argument for equity appraisals stems from a change in state law in 1997. S.B. 841 was adopted that year, which in addition to many other changes, required a district court to grant relief to a property owner on the grounds that a property is appraised unequally if the appraised value of the property exceeds the

median appraised value of a reasonable number of comparable properties.

The problem is that a large number commercial property owners are filing lawsuits against appraisal districts, which are typically settled due to cost, on the grounds that the appraised value of their property exceeds the appraised value of similar properties. If and when a commercial property owner's appraisal is lowered through a settlement, other property owners sue attempting to use the initial commercial property owners' lowered value as a comparable property for the purpose of lowering their appraisal. According to a May 2022 article in the *Fort Worth Star Telegram*, the state loses $26 billion of taxable property per year due to legal challenges associated with the equity appraisal statute.

Both Senator Wendy Davis and Representative Sylvester Turner filed bills in 2013 that would have largely fixed the equity appraisal issue for cities and other local governments by requiring clearly defined criteria to be met in order for a property to be considered "comparable" if it is to be used to demonstrate an unequal appraisal. Senator Davis's bill, S.B. 1342, was heard in the Senate Finance Committee's Subcommittee on Fiscal Matters but was left pending in the subcommittee.

Several good bills were filed in 2015 that would have addressed issues related to equity appraisals to varying degrees. Some bills, like S.B. 280 by Senator Watson, would have addressed the equity appraisal problem in a significant way. S.B. 280 would have provided that, in a property tax protest based on unequal appraisal, the appraised value of the property in question in comparison to other properties is to be determined: (1) using comparable properties located in the same appraisal district; (2) based on the similarity of the properties with regard to specified statutory characteristics, like square footage, property age, and property condition, among other things; (3) by calculating adjustments in accordance with generally accepted appraisal standards; and (4) based on the calculation of the appraised value of each comparable property as shown in the appraisal records submitted to the appraisal review board by the chief appraiser.

Unfortunately, S.B. 280 and other bills like it didn't receive so much as a committee hearing in 2015. Instead, the legislature's response to the equity appraisal problem was to pass H.B. 2083 by Representative Darby, which required the selection of comparable properties and the application of appropriate adjustments for the determination of an appraised value of property to be based upon the application of generally accepted methods and techniques. The League supported H.B. 2083, though tax experts believe additional legislation may be necessary to have a meaningful impact on the equity appraisal issue.

In August 2015, the City of Austin sued the State of Texas, the Travis County Appraisal District, and certain property owners within Travis County, seeking to have the current tax appraisal system declared unconstitutional and to request permanent injunctions to ensure compliance. The city's argument was essentially that the statutes authorizing equity appraisals open the door for the unequal (and therefore unconstitutional) appraisal of commercial property. The city estimated that commercial and vacant property values in Austin have been historically undervalued by 47 percent due to equity appeals, which has the effect of shifting a disproportionate share of the property tax burden to residential homeowners. A district judge dismissed the city's suit in November 2015.

Surprisingly, no legislation containing beneficial amendments to the equity appraisal issue was filed in 2017. However, in response to the lawsuit filed by the City of Austin, legislation was filed to prohibit taxing units from challenging the level of appraisals of any category of property in the district or in any territory in the district. This change was included in some of the major

tax reform legislation – S.B. 2 and S.B. 669 during the regular session and S.B. 1 during the special session. One additional consideration regarding this issue is that such a challenge can potentially delay the delivery of certified rolls to other taxing units (including cities) in the same appraisal district, potentially making tax-rate setting and adoption of the budget more difficult. The provision prohibiting a taxing unit from challenging appraisals ultimately passed in 2019 as part of S.B. 2.

Both Senator Johnson and Representative Beckley filed legislation in 2019 and 2021 that would have made beneficial amendments to the equity appraisal statute. Neither bill received a committee hearing in either session. Senator Johnson and Representative John Bryant filed similar bills in 2023 and once again the legislation was not heard in House or Senate committee.

The reliance of commercial property owners on equity appraisals has created a "race to the bottom" in terms of appraised values that is costing cities and other local governments a significant amount of property tax revenue.

The TML Legislative Program provides that the League support legislation that would make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

Sales Price Disclosure

Even though property tax appraisals must, by law, be based on market value, and even though sales prices are arguably the best evidence of market price, appraisal districts are prevented by current law from having easy access to sales price data.

Various bills considered in the last several legislative sessions would have mandated sales price disclosure by the buyer and/or the seller to appraisal districts for taxing purposes. In 2011, S.B. 299 by Senator Wentworth would have required the purchaser of property to include the sales price in any instrument filed with the county clerk that conveys real property under a contract for sale. The bill did not receive a committee hearing. Even a bill that would only have required the comptroller to conduct a study to examine the impact of required sales price disclosure upon the property tax system (H.B. 666 by Representative Villarreal) failed to receive a committee hearing.

No sales price disclosure legislation was filed in 2015. Interestingly, in its suit to challenge the equity appraisal process in late 2015, the City of Austin sought to have the district court declare that mandatory sales price disclosure is necessary for appraisal districts to comply with the statutory and constitutional "equal and uniform" taxation requirements. Though the suit was dismissed, this highlights how closely related sales price disclosure efforts are with the equity appraisal issue.

Sales price disclosure legislation is generally defeated because sales price disclosure is frequently opposed by real estate interests on various grounds. One argument against using sales price disclosure for appraisal purposes is that actual sales prices often reflect ancillary financial deals between buyer and seller—furniture costs for example—that shouldn't have an effect on property's market value.

Another commonly-used argument against sales price disclosure is that disclosure is simply a precursor to the state enacting a real estate transfer tax. However, when the voters approved Proposition 1 in November 2015 to increase the residence homestead exemption for schools, tucked away in the same amendment was a statement that prohibits the adoption of a transfer tax: "After January 1, 2016, no law may be enacted that imposes a transfer tax on a transaction that conveys fee simple title to real property." The

passage of Proposition 1 took away one of the main arguments against sales price disclosure.

In 2017, Representative Bernal filed two bills related to sales price disclosure. The first, H.B. 182 would have simply required the legislature to study the impact of sales price disclosure on the property tax system. The other, H.B. 379, would have actually mandated sales price disclosure. Neither bill received a committee hearing.

Rep. Bernal re-filed his study legislation in 2019 (H.B. 185). Two other bills filed in 2019 — H.B. 1036 by Beckley and H.B. 3493 by Talarico — would have expressly required sales price disclosure. Only H.B. 1036 received a committee hearing. Several witnesses testified in favor of the bill, including three chief appraisers, a mayor, and a school superintendent, with the Texas Association of Realtors testifying against it. The bill was not reported from committee.

In early 2020, the Austin Board of Realtors sent a cease and desist order to the Travis County Appraisal District to prevent the district from using multiple listing service (MLS) data provided through a third party. Without the MLS data on sales prices, the Travis County Appraisal District determined that it could not accurately appraise properties in 2020. Consequently, the district decided to use 2019 appraised values again in 2020. The impact on cities was limited, since a city's no-new-revenue tax rate calculation is designed to bring in the same amount of tax revenue as the previous year no matter what happens to the values.

This event didn't have any noticeable impact on the prospects for sales price disclosure in 2021. The same disclosure bills were filed, including H.B. 203 by Bernal, H.B. 1101 by Beckley, and H.B. 3939 by Talarico. Only H.B. 1101 was heard in committee, but it was not voted out. It was more of the same in 2023, with Representative Bernal filing H.B. 234 and the bill never receiving a hearing.

Mandated sales price disclosure might be beneficial to cities if it made appraisals more accurate, thus taking some ammunition away from property tax critics who claim that the entire property taxing system is flawed. The committee should discuss whether to recommend a position on this subject, especially in light of the advantage some commercial property owners may enjoy due to equity appraisals.

The TML Legislative Program provides that the League support legislation that would make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

Dark Store Appraisal

In recent years, big box retailers across the country have attracted attention for arguing that their stores should be appraised based on the "dark store" theory of property valuation. Essentially the retailers argue that their commercial properties should be appraised and valued as if they were closed. In other words, the properties should be appraised as if they were "dark" or shuttered, as the properties will be difficult to sell because the big box store design likely wouldn't appeal to prospective purchasers.

The problem for cities and other local governments, including the state due to its reliance on property taxes to fund schools, is that these retailers are often arguing that their appraised values should be cut in half or more based on the dark store theory of valuation. If successful, the retailers would pay far less in property taxes than would otherwise be required based upon the current market value of their property, thus shifting the tax burden to residential taxpayers.

Big box retailers have already brought legal challenges against appraisal districts in Texas based on this theory. In a recent case, a three-member arbitration panel upheld Bexar County Appraisal District's methodology and appraisals of Lowe's stores in Bexar County, effectively rejecting the dark store theory of property valuation. A case between Lowe's and the Harris County Appraisal District was settled based on the arbitration outcome in Bexar County.

In 2017, Representative Springer filed H.B. 27, which would have eliminated the dark store appraisal loophole by requiring property to be appraised at its "highest and best use." The fiscal note estimated savings to local governments reaching into the hundreds of millions of dollars per year, though in fairness the fiscal note estimate made several assumptions inflating the prevalence of the dark store loophole under existing law. Nothing similar has been filed since.

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Appraisal District Board Voting

During the 2022 TML Policy Summit, the City of Dalworthington Gardens raised concerns about the city's inability to vote on appraisal district board members. Tax Code Sec. 6.03 provides that members of an appraisal district board of directors are appointed by a vote of the governing bodies of the cities, school districts, junior college districts, and sometimes other taxing units located within the appraisal district.

Each taxing unit receives a voting entitlement for the election of appraisal district board members. The entitlement is determined by dividing the total dollar amount of property taxes imposed in the appraisal district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, multiplying by 1,000, and rounding the product to the nearest whole number.

Due to the operation of the formula, some small cities located in appraisal districts with a high amount of property taxes imposed do not receive a vote entitlement in the appraisal board election, even though it would appear as though the legislature intended for each city to have some voice in the process. The formula could result in a city rounding down to a voting entitlement of zero, instead of up to one. To protect against this possibility, the Summit recommended and the TML membership approved, a position that the League support legislation that ensures every city gets at least one vote on appraisal district board members.

No legislation was filed in 2023 that would have safeguarded against a city getting shut out of the voting process for appraisal district boards. S.B. 2, the major property tax relief legislation that passed during the second special session, did bifurcate the appraisal board election process between appraisal districts in counties under 75,000 population, and those at 75,000 or more in order to put into place a popular election for three directors in the larger counties, but this change did not modify the vote entitlement formula for taxing units.

The TML Legislative Program provides that the League support legislation that would ensure that each city gets at least one vote on appraisal district board members.

Homestead Property Tax Exemption

Various legislative proposals over the last several legislative sessions would have increased the amount of mandatory and optional homestead

exemptions, some quite dramatically. For city officials who are opposed to appraisal caps, homestead exemption increases can be a tricky proposition. On the one hand, they relieve pressure on homeowners in markets characterized by increasing values. On the other hand, large increases in a homestead exemption have the effect of creating a "split roll" by shifting the property tax burden from residential to commercial property. (A split roll is one of the negative features of appraisal caps as well.)

In 2015 the legislature passed, and the voters approved, an increase in the mandatory school homestead exemption from $15,000 to $25,000 in the form of S.B. 1 and S.J.R. 1 by Nelson. Though the focus of the bill was on the mandatory school homestead property tax exemption and not city homestead exemptions, the legislation did impact cities in one important respect. S.B. 1 and S.J.R. 1 contained language prohibiting the governing body of a city, school district, or county that adopted an optional homestead exemption for the 2014 tax year from voting to reduce or repeal that exemption until December 31, 2019.

When the legislature increased the mandatory school homestead exemption from $25,000 to $40,000 in the third special session in 2021, a similar provision prohibiting cities from reducing or repealing a city exemption was not included. However, when the legislature increased the school homestead exemption from $40,000 to $100,000 in the second special session in 2023, they once again added a provision prohibiting a city, school district, or county from voting to reduce or repeal a local option homestead exemption until December 31, 2027.

A proposal in 2013 would have provided more flexibility to cities when approving an optional city homestead exemption. H.B. 3348 by Eddie Rodriguez would have authorized a city council to adopt the local option residence homestead exemption of either a percentage of the appraised value of an individual's residence homestead (as authorized under current law) or a portion, expressed as a dollar amount, of the appraised value of an individual's residence homestead, but not both. In other words, the bill would give city councils additional authority to adopt a flat dollar amount homestead exemption, in addition to the current ability to adopt a percentage exemption. In theory, providing a dollar-amount exemption would allow a city council that has been hesitant to offer a percentage-based homestead exemption due to the budgetary impact associated with rising property values a viable alternative that both provides tax relief and allows the city's budget to be more predictable.

Some variation of H.B. 3348 has been filed in every session since 2013. In 2015, S.B. 279 by Watson would have: (1) authorized any city council to take action to adopt a flat-dollar amount residence homestead property tax exemption of at least $5,000, unless a larger amount is specified by the council, before July 1st of any given year; (2) provided that a $5,000 residence homestead property tax exemption automatically goes into effect in any city that: (a) does not take official action to opt-out of the flat-dollar amount exemption prior to July 1st of any given year; and (b) has not already adopted a percentage-based residence homestead property tax exemption under current law; and (3) provided that in any city where the city council has ceased to offer a percentage-based residence homestead property tax exemption and instead adopted a flat-dollar amount property tax exemption, an individual may elect to rescind entitlement to the new flat-dollar amount exemption to continue to receive the percentage exemption that was previously available by filing written notice with the chief appraiser before July 15. S.B. 279 passed the Senate and was reported from the House Ways and Means Committee, but did not receive a vote on the House floor.

Senator Watson filed very similar legislation in 2017 (S.B. 418 and S.J.R. 29), with much less success. S.B. 419 did not receive a committee hearing, likely as a consequence of so much attention being paid to revenue cap legislation.

Just before the beginning of the 2019 legislative session, the attorney general issued an opinion regarding the ability of cities to adopt homestead exemptions with a minimum application greater than the $5,000 mentioned in state law. In April of that year, the Cedar Park city council adopted a city homestead property tax exemption equal to one percent of the appraised value of any residential homestead property, but not less than $10,000. State law provides that a city may adopt an exemption of up to 20 percent, but the actual dollar amount of the exemption cannot be less than $5,000. In KP-215, the attorney general opined that a court would likely conclude that a city lacks authority to increase the floor above $5,000, and that cities desiring to increase the homestead exemption must do so by raising the tax exemption percentage, up to twenty percent, as authorized in the Texas Constitution.

A few bills were filed in 2019 that would have increased cities' discretion over their homestead exemptions. S.B. 1072 would have authorized cities to set the homestead exemption floor in an amount up to $25,000, essentially overruling the attorney general's opinion. Similarly, other proposals (H.B. 4139 by Capriglione and S.B. 2362 by West) would have authorized cities to adopt homestead exemptions in a dollar amount not to exceed $25,000, in addition to increasing the permissible homestead exemption percentage from 20 percent to 30 percent. Other bills – H.B. 3127 by Middleton and S.B. 2468 by Creighton – would have authorized a city to adopt a homestead exemption up to 100 percent of the appraised value of the home. None of the proposals so much as made it out of committee.

It was a similar story in 2021 and 2023. In 2021, H.B. 1858 by Representative Rodriguez was a refile of S.B. 1072 from the previous year. Rodriguez also filed H.B. 3359, which would have authorized a city to adopt a flat-dollar amount homestead exemption. Senator Eckhart filed similar legislation in the form of S.B. 887. Representative Middleton's H.B. 1393 was a refile of his optional 100 percent homestead exemption from the previous year. None of these bills received a committee hearing.

In 2023 the League supported S.B. 196 by Senator Eckhart and S.B. 546 by Senator Blanco, both of which would give city councils the ability to adopt dollar amount homestead exemptions to varying degrees. Neither bill received a committee hearing in the Senate Local Government committee. Other bills were filed that would have expanded the residential homestead exemption, like H.B. 1566 by Representative Allison. H.B. 1566 would have provided an automatic total homestead exemption for a first home purchased by an individual that has an appraised value of less than $300,000 for the first tax year. H.B. 1566 and other similar expansions of the mandatory homestead exemption did not receive serious consideration amidst the legislature's negotiation on a major property tax relief package.

The TML Legislative Program provides that the League support legislation that would authorize a council-option city homestead exemption expressed as a percentage or flat-dollar amount.

Property Tax Adjustment for Pay-as-You-Go

Prior to the 2020 TML Policy Summit, the city manager for the City of Melissa submitted a request for the summit delegates to consider supporting legislation that would incentivize cities to use pay-as-you-go financing for capital projects by establishing a new dedicated portion of the property tax to fund it. The thinking was

that, in the wake of the passage of revenue caps through limitations on city tax rates in 2019, cities needed to find alternative ways of funding needed infrastructure projects other than through the issuance of debt.

Because debt operates outside of the 3.5 percent voter-approval rate multiplier, debt financing still exists as a way for cities to finance major projects. And rightfully so. However, a more restrictive voter-approval tax rate makes it nearly impossible for cities to attempt to finance capital projects out of existing revenue, especially with inflation increases and other budgetary cost drivers weighing so heavily on cities' general fund revenue. Pay-as-you-go financing for major projects, a long-standing hallmark of fiscal conservatism, has largely been taken off the table for Texas cities.

The 2020 Summit looked favorably at this idea, and it was added to the fixed program in the "support" category. However, no such legislation was filed. In 2022, the Summit and ultimately the TML membership decided to move the position up to the "seek introduction and passage" category of the TML program.

In 2023, Representative Spiller filed H.B. 3594 to address this issue. H.B. 3594 would have allowed certain "low debt" cities to opt into a positive tax rate adjustment to provide revenue that is set aside only for transportation infrastructure expenditures. Under the bill, a "low-debt municipality" means a city that:

1. Adopted a tax rate in the preceding year for which the debt component comprised no more than 20 percent of the adopted rate; or
2. For each of the past three years, adopted a tax rate for which the debt component comprised a lower percentage of the adopted rate than the percentage of the adopted rate the debt component comprised in the immediately preceding tax year.

The adjustment itself would be one percent of the previous year's maintenance and operations levy or $50,000, whichever is greater. For most small cities in Texas, the adjustment would equal $50,000 to be dedicated toward transportation projects, while larger cities would receive one percent of their total M&O levy as an adjustment.

The impact of the adjustment would be two-fold. First, the adjustment would provide some level of revenue a city could set aside for necessary transportation projects that promote quality of life and economic development within the state, at a time when many areas were being inundated with population growth and climbing costs. In addition, with a historic amount of infrastructure funding at the federal level under the 2021 Infrastructure Investment and Jobs Act being distributed at the state and local level, this dedicated funding will give Texas cities the ability to make local matches and prioritize infrastructure spending to compliment state-level projects. Second, and not insignificant, this proposal would have provided an incentive for cities to pay for ongoing infrastructure costs out of general revenue and not through increased debt obligations, which would come with additional costs to be paid by local taxpayers.

Unfortunately, H.B. 3594 was not heard in the House Ways and Means committee. Nevertheless, the filing of a bill to address this critical issue marks a step in the right direction and something to build upon in future legislative sessions.

The TML Legislative Program provides that the League seek introduction and passage legislation that would promote pay-as-you-go financing for capital projects by authorizing a dedicated property tax rate that is classified similarly to the debt service tax rate in property tax rate calculations.

Sales Taxes Exemptions

For many years, organized interest groups have descended upon the legislature attempting to obtain exemptions from sales taxation, just as many groups have attempted to obtain property tax exemptions. That effort intensified after 1987 when the legislature adopted a massive tax bill that increased the state tax rate and broadened the sales tax base to include custom computer software, local telephone service, data processing, garbage collection, janitorial and cleaning services, non-residential repairs and remodeling, landscaping, lawn services, surveying, exterminating, security services, and a variety of additional services.

At the urging of the Texas Municipal League, lawmakers ensured that the broadened base was subject to the local-option sales tax as well as the state sales tax. As a result, the bill generated millions of dollars for Texas cities.

As soon as the sales tax base was broadened, those who were included in the broadening began to seek exemptions. In the first special session in 1991, the legislature once again broadened the sales tax base. Since then, more exemptions have been sought. During each session, some exemptions are passed while many more fail.

A number of sales tax exemption bills were filed in 2011, although none of them passed. The proposals included a sales tax exemption for personal property used at a "data center" (H.B. 3479 by Christian), an exemption for precious metal coins (H.B. 3104 by Simpson), an exemption for textbooks purchased by college students during a ten-day period prior to each semester (S.B. 52 by Zaffirini), and an exemption for guns and ammunition (H.B. 181 by S. Miller).

One bill, H.B. 2237 by Representative Lyne, would have reclassified all-terrain vehicles, off-road motorcycles, and golf-carts as "motor vehicles," thus subjecting them to the motor vehicle sales tax, which does not include a local component. Although this bill was not a sales tax exemption in the traditional sense, it would have greatly reduced sales tax receipts in those cities where these particular off-road vehicles sold. H.B. 2237 was reported from the House, but luckily did not get voted out of committee in the Senate. TML strongly opposed the idea.

A handful of small sales tax exemptions passed in 2013, including exemptions for the sale of various types of coins, food products sold by an elementary or secondary school, and certain snack items. H.B. 800 by Murphy was a more substantial sales tax exemption bill that passed, which exempts certain personal property used in research and development activities. The fiscal note for H.B. 800 estimated a cost of roughly $24 million per year to cities, while costing the state approximately $150 million per year.

In 2015, a total of six sales tax exemption bills passed. The bill with the most significant cost to cities was S.B. 1356 by Hinojosa, which exempts the sale of a water-conserving or WaterSense product from sales and use taxes if the sale taxes place on Memorial Day weekend. According to the bill's fiscal note, the bill will cost cities a total of roughly $800,000 per year for the first five years.

No sales tax exemption bills of any significance passed in 2017. One minor exemption that did pass, H.B. 4054 by Murphy, highlights exactly how specific some sales tax exemptions get. H.B. 4054 exempts from sales taxes certain baked goods regardless of whether the items are heated by the consumer or seller and sold at certain locations without plates or other eating utensils. The fiscal note showed no significant impact to local governments.

In 2019, many sales tax exemptions were filed, but few passed. Of those that did, including bills exempting certain sales at county fairs and sales

in connection with certain touring theatrical productions, none showed a significant cost to the state or to cities.

In 2021, the only sales tax exemption with a measurable impact on city sales tax collections that passed was S.B. 313 by Huffman. S.B. 313 exempts certain firearm safety equipment from sales taxes, and the estimated cost to cities per year is under $200,000 per year statewide.

With a large state budget surplus in hand, the legislature was finally able to push across the finish line in 2023 a sales tax exemption for feminine hygiene products, along with other family care items like diapers, baby wipes, wound care dressings, maternity clothing, baby bottles, and breast milk pumping products. The legislation was a top priority of Speaker Phelan, and also supported by Governor Abbott, Comptroller Hegar, and Senator Huffman, who chaired the Senate Finance Committee and authored the version of the bill that ultimately passed. The bill also received the support of some Texas cities. Public sentiment and state leadership was aligned in support of the bill, which passed the House and the Senate overwhelmingly. The fiscal note shows a cost revenue loss of roughly $130 million per year to the state, and an estimated loss of roughly $25 million per year to cities.

Since 2007, the TML approach to sales tax exemptions has been similar to the flexible approach taken with property tax exemptions: the League opposes only those sales tax exemptions that substantially eroded the sales tax base. Smaller, socially beneficial exemptions such as children's school backpacks and school supplies were largely ignored under the theory that if the state can tolerate the minuscule loss of tax base, so can local governments.

The TML Legislative Program provides that the League oppose legislation that would impose new property tax or sales tax exemptions that substantially erode the tax base.

Local Sales Tax Sourcing

In June 2018, the United States Supreme Court in *Wayfair v. South Dakota* held that a South Dakota state law requiring certain remote sellers to collect sales taxes on goods shipped to customers living in South Dakota is constitutional. In doing so, the Court overturned decades of legal precedent and set the stage for a significant sales tax debate during the 2019 session of the Texas Legislature and beyond.

For over 25 years, the 1992 United States Supreme Court decision in *Quill. v. North Dakota* represented the law of the land regarding collection of state and local sales taxes on remote sales. *Quill* provided that a business could not be required to collect and remit sales taxes to a state if it had not established a physical presence there. State sales tax laws, Texas's included, were modified years ago to account for the *Quill's* physical presence test.

Writing for the five-four majority in *Wayfair* Justice Kennedy rejected the previous holdings of the Supreme Court as outdated and incompatible with the technological realities of a twenty-first century economy. According to Kennedy, simply relying on physical presence to determine whether or not a company can be required to collect sales taxes ignores the fact that companies now have websites accessible in every state. Those company websites might save cookies to customers' hard drives, have apps that can be downloaded anywhere, and may store data that is located in any number of states. In short, South Dakota's law was upheld because it established a clear connection between out-of-state retailers and the state based on both economic and virtual contacts.

In order to fully implement the new authority under *Wayfair*, the state legislature passed two

bills during the 2019 legislative session – H.B. 1525 and H.B. 2153.

H.B. 1525 required online marketplaces (like Ebay, Amazon, or Etsy) to collect sales taxes on marketplace sales, instead of potentially requiring each individual seller on that marketplace to bear the burden of collecting the sales tax. Additionally, it required the sales taxes associated with marketplace sales to be sourced to the destination to which the marketplace goods are shipped.

H.B. 2153 gave remote sellers the option to either collect and remit the actual sales taxes owed based upon the rate at the shipping destination, or instead collect a simplified "single local use tax rate" of roughly 1.75 percent on all sales. Remote sellers who collect the single local use tax rate send the money collected to the comptroller, who remits the revenue to local taxing entities based upon their existing proportion of the local sales tax base.

The League was neutral on both bills during the 2019 legislative session because of the following provision in the TML legislative program at that time:

> Take no position on Wayfair-related legislation that impacts local sourcing of sales and use taxes, but seek the guidance of the TML executive committee to address any unforeseen issues concerning the statewide implementation of the Wayfair decision.

Additionally, in early 2020 the comptroller proposed amendments to the administrative rules pertaining to local sales and use tax collection in order to harmonize the rules and the statute following the passage of H.B. 1525 and H.B. 2153. Under the proposed rules, sales taxes on intrastate internet orders wouldn't automatically be sourced to the community where the place of business receiving the order is located. Instead, the rules provided that an internet order would not be received at a place of business of the seller, meaning that sales taxes on those orders instead were sourced either to the location where the order was fulfilled, or the location where the purchased items were delivered to the consumer.

The changes made to sourcing of internet orders caused what could be described as a flood of opinions from city officials and state legislators alike, on both sides of the issue. Many city officials expressed their strong opposition to the rule changes, both in written comments and during public hearings on the proposal. Those cities objected primarily on the grounds that the change would deprive them of sales tax revenue that they rely on under the existing sourcing scheme. Other city officials supported the rule changes. Those cities viewed the existing framework as unfairly re-routing sales tax dollars as e-commerce continues to proliferate. The League, acting on guidance from the TML Executive Committee remained neutral on the rule change, as member cities weighed-in on both sides of the debate.

The rule changes were adopted in May of 2020. At that time, the new rule provided that orders received via a shopping website or software application are received at a location that is not a place of business in the state. The ultimate impact of this change is that, under the provisions governing where a sale is consummated, certain internet purchases may change from being sourced to the location where the order was deemed to have been received. The new rule provides that orders are sourced to the location where the order is fulfilled or the location where the order is received by the purchaser, depending on the exact circumstances. By comparison, nothing in the rule changes the sourcing of orders placed in person in Texas; in-person orders at a place of business in Texas are consummated at the place of business, regardless of where the order is fulfilled.

In addition to the new provision on "orders not received by sales personnel," the rule added a new paragraph dealing with "orders received by sales personnel…including orders received by mail, telephone, including voice over internet protocol and cellular phone calls, facsimile, and email." This section provides some clarification for cities with concerns about traveling salespersons and the treatment of orders received via email or voice over internet protocol, but not using an internet shopping website. The location where a salesperson operates will be considered a "place of business" of the seller, for sales tax allocation purposes, only if the location meets the definition of that term on its own, without regard to the orders imputed to that location under this new paragraph.

The adopted rules relating to orders not received by sales personnel were not effective until October 1, 2021. The comptroller, according to the description published in the *Texas Register*, delayed the implementation of this provision in order to give "interested parties an opportunity to seek a legislative change." City officials expected this to be a major issue during the 2021 legislative session.

While multiple bills were filed in 2021 to address the comptroller's rule change on internet order sourcing—both to codify the comptroller's rule and to expressly preempt it—nothing ultimately passed related to local sales tax sourcing. This allowed the internet sourcing rule to go into effect, though now litigation has stalled its implementation (more on that below). Interestingly, the one bill on local sales tax sourcing to progress through the legislative process at all was H.B. 4072 by House Ways and Means Chairman Morgan Meyer. H.B. 4072 would take local sales tax sourcing well beyond the rules implemented by the comptroller and provide for a wholesale switch to destination sourcing to the location where the item is shipped or delivered or where the purchaser takes possession.

Not surprisingly, when H.B. 4072 was heard in the House Ways and Means Committee, city officials again lined up on both sides of the issue. Ultimately the bill was approved by the committee but never received a vote on the House floor.

Later in 2021, six Texas cities sued the comptroller to prevent the rule changes from going into effect. The comptroller and city plaintiffs in two lawsuits agreed to a temporary injunction delaying the effective date of the rule impacting the sourcing of local sales taxes on orders not received by sales personnel, including orders received by a shopping website or shopping software application. Instead of going into effect on October 1, 2021, as originally planned, the effective date of the rule was delayed until there is a final hearing on the merits of the cases or further order from the court.

In August 2022, a district court judge preliminarily sided with the six cities finding, among other things, that in adopting the rule on internet orders, the comptroller's office failed to comply with proper administrative procedure. The judge remanded the internet order provision to the comptroller's office for revision and readoption through established procedures. In January 2023, the comptroller readopted the sourcing rules with slightly modified language from the previous adoption on the internet sourcing question. According to the new language, a facility without sales personnel is not a place of business of the seller, nor is a computer that operates an automated shopping cart software. Though the rule was readopted, the internet sourcing provision still remains ineffective due to the pending litigation. As of the writing of this material, the trial date has been set for May 2024.

The House Ways and Means committee considered a shift to destination sourcing at an interim committee hearing in April 2022. At that hearing, city testimony was again mixed on the concept, but this time there was a significant amount of opposition from business owners and

business interest groups on the grounds that such a monumental policy shift would come with an administrative burden on local businesses to keep track of the local sales tax rate in jurisdictions where the taxable item is shipped.

In 2023 Chairman Meyer once again filed his bill to shift local sales tax sourcing to a destination system, this time with changes from the previous session's version likely to address some of the criticism of the concept during the interim hearing. H.B. 5089 would have exempted small businesses—those with fewer than 20 employees and total combined gross receipts of less than $500,000 in the preceding twelve months—from the destination sourcing requirement. It also would have provided that a retailer with an active economic development agreement with a city that has a single place of business in the state could continue to source local sales taxes to the single place of business until December 31, 2028, effectively preserving existing sales tax incentive agreements for five years. The bill was reported from the House Ways and Means committee, despite numerous cities and businesses testifying against it. H.B. 5089 was not considered on the House floor.

In January 2024, the comptroller adopted yet another rule change, this time to address sourcing when an order is received by a fulfillment warehouse. In adopting the rule, the comptroller acknowledged the ongoing litigation involving the six city plaintiffs in which the cities claim that the location where an order is received should be the location where the vendor forwards the order for fulfilment, rather than the location where the order is received from the customer. According to the comptroller, "the legislative history indicates that the legislature did not intend a fulfillment warehouse to be the location where the order was received unless the fulfillment warehouse received the order directly from the customer."

Sales tax sourcing issues have always presented scenarios where some cities win and other cities lose. Because of this dynamic, the League has traditionally remained neutral on sourcing issues, which is reflected in the current legislative position.

The TML Legislative Program provides that the League take no position on legislation that would impact local sourcing of sales and use taxes.

Sales Tax Refunds and Reallocation

For years, Texas cities have grown accustomed to receiving notification from the comptroller that sales taxes have been wrongly allocated and remittances will be modified to correct the misallocation. Until 2011, Texas cities were not afforded any semblance of a "seat at the table" for decisions made by the state comptroller to reallocate sales tax revenue between cities due to reporting errors. These reallocation decisions by the comptroller can be made up to four years after the error occurred under the current "look back" provision in the Tax Code.

Legislation passed in 2011 that, although not perfect, provides some limited authority for a city to receive information used by the comptroller in making a reallocation determination. In its adopted form, H.B. 590 by Thompson allows a city to receive from the comptroller sales tax returns and reports filed by not more than five individual taxpayers in the city if the amount of the reallocation exceeds: (a) $200,000; (b) ten percent of the revenue received by the city during the previous calendar year; or (c) an amount that increases or decreases the amount of revenue the city receives during a calendar month by more than 15 percent as compared to the same month in a previous year. The city must request the information within 90 days of discovering the reallocation or refund.

The filed version of H.B. 590 would have allowed a city to request an independent audit review by the comptroller regarding sales tax reallocation decisions. However, the comptroller testified in the House Ways and Means Committee that compliance with the audit requirement would require the addition of 31 full-time employees within the comptroller's office, which meant the bill would cost the state roughly $10 million over the next five years. A bill with that kind of fiscal note stood little chance of passing in 2011, and the end result was the modified process that gives cities access to information, but still doesn't provide a formal process to appeal or contest a reallocation decision.

Similarly, when H.B. 1923 by Representative Senfronia Thompson—a bill that would authorize a city to request and receive information from the comptroller's office regarding a sales tax sourcing determination—received a hearing in the House Ways and Means Committee in 2013, the comptroller reported a cost of over $12 million per year to the office. Needless to say, the bill did not progress any further than that initial committee hearing. H.B. 1660 by Thompson would have imposed delinquent penalties and interest against a business that erroneously sourced its sales taxes to a city other than the one where the sale was consummated. The fiscal note for H.B. 1660 showed no fiscal impact to the state, but that bill still was halted in committee.

Representative Greg Bonnen filed H.B. 1871 in 2015 to require the comptroller's office to share more information with cities concerning local sales tax collections, administration, and compliance. The bill also would toll the four-year "look-back" provision in the case of nonpayment by a business. The fiscal note showed a cost of over $8 million per year and the need for 98 full-time employees to implement the requirements in the bill. However, unlike past sessions, the bill was unanimously approved by the House and received a hearing in Senate Finance Committee before time ran out in the session.

H.B. 1871 was the first bill since 2009 that would impact the time frame in which the comptroller can go back and collect sales taxes. Bills filed in sessions past, including S.B. 1294 in 2009, would have reduced from four years to two years the statute of limitations (also known as the "look back" provision) for administrative reallocation of city sales taxes to correct allocation errors.

In 2021, Senator Hinojosa filed S.B. 778 and Representative Herrero filed the companion legislation, H.B. 4032. Those bills would have allowed cities to request the audit working papers form the comptroller that showed how sales tax refunds or reallocations were calculated. Despite the fiscal note reflecting no significant cost to the state, neither bill was reported from committee. No similar legislation was filed in 2023.

The TML Legislative Program provides that the League support legislation that would convert the sales tax reallocation process from a ministerial process into a more formalized and transparent administrative process.

Economic Development Incentives

For decades, cities have maintained the authority to offer economic development incentives in order to attract and retain business development. The ability for city councils to use these incentives plays an important role to the development of sustainable local economies, especially when used to complement the provision of vital services and strategic planning to promote a strong quality of life for city residents. City efforts on this front have helped drive the recent influx of people and jobs that make several Texas regions amongst the fastest growing in the nation.

In recent legislative sessions, there have been some signs that legislators' support for economic

development incentives in general may be waning. In 2019, local property tax abatement authority was set to expire, as the statute was drafted to include a "sunset" clause for every ten years. Unless the legislature passed a bill to extend the life of the statute authorizing local property tax abatement authority, the authority would terminate.

A bill did pass to extend property tax abatement authority in Chapter 312 of the Tax Code in 2019. H.B. 3143 by Representative Jim Murphy extended the ability to enter into tax abatement agreements until 2029. The bill had the backing of several business associations, chambers of commerce, economic development corporations, and many local governments. However, due to some of the common concerns with economic development incentives—mainly limited transparency and governments not holding businesses accountable for meeting goals on things like job creation—the bill couldn't pass as just a stand-alone extension of the sunset date. Instead, a few additional reforms needed to be added to the bill.

In addition to the expiration date extension, H.B. 3143 also: (1) required the governing body of a taxing unit to hold a public hearing before it adopts, amends, repeals, or reauthorizes property tax abatement guidelines and criteria; (2) required a taxing unit that maintains an Internet website to post the current version of the guidelines and criteria governing tax abatement agreements on the website; (3) provided that the public notice of a meeting at which the governing body of a taxing unit will consider the approval of a tax abatement agreement with a property owner must contain: (a) the name of the property owner and the name of the applicant for the tax abatement agreement; (b) the name and location of the reinvestment zone in which the property subject to the agreement is located; (c) a general description of the nature of the improvements or repairs included in the agreement; and (d) the estimated cost of the improvements or repairs; and (5) required the public notice of the meeting to be provided at least 30 days before the scheduled time of the meeting.

Following the extension of property tax abatement authority in Chapter 312 of the Tax Code in 2019, attention shifted in 2021 to the extension of Chapter 313 of the Tax Code, a chapter that authorizes property value limitations for purposes of limiting the burden of school district maintenance and operations property tax on businesses. Because of the sheer size of the program, Chapter 313 has been much more controversial than city and county property tax abatements over the years. Still, most observers probably expected Chapter 313 to be renewed just as Chapter 312 had been the previous legislative session.

To the surprise of many, Chapter 313 was not renewed in 2021. This was not for a lack of trying. Extension of the program was the top priority of many influential business groups during the 2021 session. The failure to extend Chapter 313 represented one of the first major indications that growing populism in Texas politics has risen to the level necessary to prevail over business priorities in the Texas Legislature. Both the Democratic and Republican party platforms called for the elimination of Chapter 313, and two influential interest groups on the political right and left joined forces to oppose the extension of the program.

Chapter 313 also fell victim to the unique structural concept of an expiration provision in the statute. The program's demise was aided by the fact that it would disappear unless the legislature could actually pass a bill extending it. This affirms the political truism that it is exponentially more difficult to thread the needle and pass legislation than it is to kill it.

It's worth noting that H.B. 2404 by Representative Meyer passed in 2021, which requires cities to report 380 agreements to the comptroller's office to be included in a statewide database. The League supported H.B. 2404.

The business community didn't have to wait long to see Chapter 313 reincarnated. In 2023, the legislature passed H.B. 5 as a successor program to Chapter 313 incentives, this time codified in Chapter 403 of the Texas Government Code. H.B. 5 establishes a ten-year, 50 percent limitation on school district maintenance and operations taxable values. The limitation only applies to large-scale manufacturing, utility, natural resource development, research and development, and critical infrastructure projects. Conspicuously absent from the list of qualifying business projects was anything relating to renewable energy. Renewable energy projects were excluded from eligibility as a political concession to get the bill passed. Under this latest incentive program, school districts have far less discretion over the terms of the deal, as the comptroller and governor's economic development office maintain the responsibility to structure the deal.

Going into the 2023 session, all signs pointed to the legislature considering amendments to Local Government Code Chapter 380 to address perceived city abuses of the incentive program under that chapter. These signs included a high-profile newspaper article critical of the lack of transparency and limitations for Chapter 380 incentives, as well as an interim report from the Senate Committee on Natural Resources and Economic Development on the topic. The report included recommendations: (1) to require public notice prior to an agreement being granted under Chapter 380, similar to the new provisions governing approval of property tax abatement agreements, (2) to limit the number of years a Chapter 380 agreement can last; and (3) to prevent property taxes from being rebated under a Chapter 380 agreement.

Senator Birdwell, chair of the Senate Committee on Natural Resources and Economic Development, filed S.B. 1419 in 2023 to implement the recommendations from the committee's interim report. The bill was approved by the full Senate on a 27-4 vote but was never heard in House committee. As it was engrossed by the Senate, the bill would have prohibited a city from granting a property tax abatement through a 380 agreement, added transparency requirements to 380 agreements like public hearings, notice requirements, and website posting mandates, required certain performance metrics in any 380 agreement, and placed a ten year duration on any 380 incentive with the ability to renew for up to 25 years. Some variation of the bill will likely be back in 2025.

Two other important economic development bills passed in 2023. S.B. 543 by Senator Blanco gives cities the flexibility to transfer real property to a business prospect for economic development purposes when the city has entered into a 380 agreement with the business prospect, with certain transparency and safeguards on the authority. S.B. 1340 by Senator Zaffirini adds property tax abatement agreements to the comptroller's pre-existing 380 reporting database, beginning with any agreements entered into after January 1, 2024.

The TML Legislative Program provides that the League should oppose legislation that would limit the type of incentives available to the city or that would limit any use of incentives by a city.

Type A/Type B Economic Development Sales Tax

The Texas Legislature created economic development corporations (EDCs) in 1979. At the time, the concept of economic development as a legitimate governmental function was in its infancy. In fact, city expenditures to attract business activity were arguably unconstitutional under Article III, Section 52, until a 1987 amendment established economic development pursuits as a public purpose. As a result, early EDCs relied on donations and were largely ineffective.

Legislation passed in 1989 and 1991 gave teeth to EDCs by authorizing the Type A and Type B

sales taxes, respectively. (Note: These two types of sales taxes were formerly referred to as "4A" and "4B" due to the section of Vernon's Civil Statutes that authorized the taxes. The relevant statutes are now codified in the Local Government Code.) These sales taxes were initially envisioned by the legislators who created them as vehicles for fostering manufacturing and industrial jobs. After their initial involvement in creating the tax, many of these legislators turned to other matters for the next decade. Meanwhile, each legislative session thereafter brought a gradual expansion of the permissible uses of Type A and Type B taxes. First, Type B EDCs were given general authority to attract commercial and retail businesses. Next, Type B EDCs (and, to a lesser extent, Type A EDCs) were given authority to fund certain municipal improvements, such as parks and city buildings. Finally, Type A EDCs were given the same broad commercial and retail business authority that their Type B cousins possessed.

Prior to the 2003 regular session, some of the legislators who had a hand in the initial EDC sales taxes began to revisit the issue, their focus being alleged "abuses" of the tax. In reality, it is more likely that these legislators were simply shocked by the broad, but legal expansion of the two taxes over the previous decade. Some of these legislators warned that the very existence of the tax was in jeopardy. In a sort of preemptive strike, professional economic development organizations took the lead in drafting legislation designed to placate the irate legislators. The result was H.B. 2912, a revolutionary rewrite of Type A and Type B EDC laws.

The primary feature of H.B. 2912 was that it effectively canceled the authority of both Type A and Type B corporations to engage in direct commercial and retail economic development. For Type A EDCs, the cancellation was straightforward: the phrase "to promote new and expanded business development" was struck from an introductory section of the law that defined eligible projects. It was this section that had essentially granted commercial and retail authority to Type A EDCs in the late 1990s. For Type B EDCs, H.B. 2912 retained language that permits expenditures to "promote or develop new or expanded business enterprises." However, H.B. 2912 limited such expenditures for both Type A and Type B corporations to projects that create "primary jobs." "Primary jobs" was a new concept and was defined in a way that includes jobs mostly related to "blue collar" and financial-type industries. Examples include crop production, animal production, forestry and logging, commercial fishing, support activities for agriculture and forestry, mining, utilities, manufacturing, wholesale trade, transportation and warehousing, information, securities, commodity contracts, certain financial investments and related activities, insurance carriers and related activities, scientific research and development services, and management of companies and enterprises. Conspicuously absent from this list are jobs related to basic commercial, retail, and services industries. Unless a Type A or Type B project created a "primary job," as defined above, the project was likely improper. In summary, Type A and Type B EDCs were no longer permitted to engage in attracting commercial, retail, or service businesses. Fortunately, existing projects were grandfathered.

H.B. 2912 also repealed the authority of Type B corporations to spend sales tax proceeds on learning centers or city buildings. The bill also restricted the ability of any EDC to provide a direct financial incentive to a business prospect (as opposed to preparing land or infrastructure for use by the business), unless done pursuant to performance agreements.

Going into the 2005 session, the TML legislative program was largely silent on the issue of rolling back the effects of H.B. 2912, with one exception. TML supported legislation that would restore commercial and retail authority to corporations in "land-locked" cities. The League's overall

neutrality was a function of the fact that some cities without Type A/Type B corporations dislike the broad retail incentive authority possessed by some of their neighbors. This is especially true in urban areas where some cities' entire sales tax discretion is taken up by the sales tax for transit. Such cities feel that neighboring cities with Type A/Type B corporations are able to poach existing retail business by using economic development incentives.

Some cities made a push on their own to roll back the effects of H.B. 2912. Through a combination of several bills that were enacted, commercial and retail incentive authority was restored for Type B Corporations only in either of the following two cases: (1) cities under 20,000 population; or (2) cities with less than $50,000 per year in Type B sales tax revenues. (More narrow changes were enacted for land-locked cities and certain border cities.) The statute has remained relatively unchanged since that time.

For 2013, the membership and TML Board determined, after extensive discussion, that the League would: (1) stay neutral on legislation that would expand EDC authority; and (2) oppose legislation that would limit EDC authority on a statewide level, provided that the League would take no position on legislation that was regional in scope and that was supported by some cities in the region. In other words, attempts to limit EDC authority in certain regions of the state that received support from cities in those regions would not be actively opposed by the League. This position was crafted with an eye on keeping the League out of city vs. city fights concerning EDCs.

Despite the new nuanced position by TML during the 2013 session, very few EDC bills were filed, and even fewer passed. Two bracketed bills passed giving the Port Arthur EDC additional spending authority. Another bill, H.B. 2473 by Deshotel, was signed into law after narrowly being approved by the House on a 70-69 vote. H.B. 2753 broadened the authority of all EDCs to use EDC sales tax revenue for housing facilities at public state colleges.

Only two bills directly affecting EDCs passed in 2015. One was H.B. 157 by Representative Larson, which provided that a city may hold an election to adopt an EDC sales tax in any increment of one-eighth of one percent (among many other things). The other, H.B. 2772 by Representative Martinez, authorized certain EDCs located near the border to spend EDC funds on specified transportation facilities.

In 2017, TML priority legislation passed in the form of H.B. 3045 by Representative Dale that authorized a city to hold an election to reduce or increase the rates of various city sales taxes. Few other bills of any significance were filed that would have affected EDCs, and no other EDC bill was passed into law.

The only bill relating to EDCs that passed in 2019, S.B. 450 by Senator Powell, simply moved the deadline for submitting EDC annual reports to the comptroller from February 1st of each year to April 1st.

One bill that did not pass, but is worth mentioning, was H.B. 1221 by Representative Patterson. H.B. 1221 would have authorized a city to hold an election to spend Type A and Type B EDC revenue on public safety and infrastructure expenses. When the bill was heard in committee, it was opposed by several EDC officials. Meanwhile, the bill author, Representative Patterson provided the following prescient quote at the committee hearing: "This is a new day…. We've heard from a number of cities who have claimed that they will…maybe not be able to hire police and fire as a result of [revenue cap legislation]. This does provide another option for our local communities to use those funds… should they need to."

Representative Patterson refiled his bill in 2021 in the form of H.B. 539, but it did not advance out of committee. One EDC bill that did pass in 2021 was S.B. 1465 by Hinojosa. S.B. 1465 establishes the Texas small and rural community success fund to make loans to EDCs for eligible EDC projects.

In 2023, Representative Patterson once again filed his bill allowing EDC funds to be used for public safety and infrastructure projects. The bill was not heard in committee. Two other EDC-related bills were filed in 2023, though neither passed. H.B. 398 by Representative Shine would have expressly exempted property owned by a Type A or a Type B corporation from property taxation if the property was used for a public purpose. The other, H.B. 4749 by Representative Janie Lopez, would have allowed certain rural cities to use EDC funds for certain water, sewer, and drainage infrastructure projects.

The TML Legislative Program provides that the League: (1) take no position on legislation that would broaden the authority of Type A or Type B sales tax corporations; and (2) oppose legislation that would limit the authority of Type A or Type B sales tax corporations statewide but take no position on legislation that is regional in scope and that is supported by some cities in that region.

Issuing City Debt

Outside of property tax reform, perhaps no issue relating to municipal revenue and finance has generated more attention over the past several sessions than local debt. Although numerous bills had been filed prior to the 2013 session that would have made it more difficult for cities to issue certain debt obligations, the outcry against the perceived endemic growth of local debt reached a fevered pitch starting with the 2013 legislative session. All of this in spite of the fact that state-collected data showed that local government debt (and city debt, in particular) was increasing at a significantly lower rate than was state debt.

Nevertheless, heading into the 2013 legislative session, Comptroller Susan Combs sharpened her focus on the issue by publishing a report on the problems associated with the issuance of local debt. On January 2013, Combs authored an article that ran in the *Wall Street Journal* entitled "Debt Excess Even Lives in Texas" in which she claimed that local elected officials choose to deliberately hide-the-ball from the citizens they represent with regard to debt: "Unchecked and invisible debt and out-of-control spending are putting the nation in real jeopardy, and too many public officials seem happy to keep you in the dark. It's up to you to demand that the lights be turned on—before it's too late."

In 2013, the comptroller had two comprehensive local debt bills filed by the chairman of the Senate Finance Committee and chairman of the House Appropriations Committee—S.B. 14 and H.B. 14. As filed, the bills would have impacted cities in three major ways: (1) required cities to include various types of financial information on the actual ballot proposition for a bond election, including the total and per-capita amounts principal and interest required to pay all outstanding debt (including non-tax-supported debt), the principal and interest of the bonds to be authorized, as well as other estimations of interest rates and maturity dates for the bonds to be authorized, among other things; (2) required the preparation of an annual financial report that contains information on each city fund as well as information on the city's debt obligations, and required every city to post the report on its website or Facebook page; and (3) imposed limitations on the issuance of certificates of obligation (COs), such as expanded notice when issuing COs, limitations on how often COs could be issued, and lessening the threshold number of voters needed to petition to force an election on the issuance of a CO from five percent of the qualified voters of the city to five percent of

the total number of voters that voted in the most recent gubernatorial general election in the city.

The League testified against the bills in committee, but also worked to make beneficial changes to the bills with the sponsors and other interested groups as the bills progressed through the process. By the end of the session, the above provisions of the bills had been modified significantly, and the League no longer actively opposed the legislation. Both bills were ultimately killed on points of order in the Texas House.

A number of other city-debt related bills were filed in 2013, many of them containing individual components of the omnibus local debt bills, H.B. 14 and S.B. 14. The only bill regarding city debt issuance that passed, S.B. 637 by Senator Ken Paxton, contained some similar provisions regarding bond election notice as the two more comprehensive bills. As passed, S.B. 637 required cities to include various types of information in the election order for a debt election, including information on the debt being issued, total outstanding tax-supported debt, tax rates resulting from the debt issuance, and more. In addition, the election order must be posted in each polling place, on the city's website, and in three other public places in the city.

Not surprisingly, several bills were filed in 2015 that would address local debt. Momentum coalesced around H.B. 1378 by Flynn, a debt reporting bill that was ultimately passed and was signed into law. In addition to requiring every city to complete an annual report containing information about issued and outstanding debt, H.B. 1378 also prohibited a city from issuing a CO for a project that was rejected by the voters at a bond election during the preceding three years.

Several bills were filed that would have required varying degrees of additional financial information to be included in any proposition language at a bond election. S.B. 1041 by Bettencourt was the ballot language bill that gained the most traction, getting approved by the Senate and the House Elections Committee before stalling in the House Calendars Committee. One other troubling bill, H.B. 1283 by Simmons, would have only allowed city debt elections to take place on the November uniform election date. The bill was reported from House Elections Committee but did not advance further. Various iterations of the same bill have been filed in the sessions since.

One new approach in 2017 to combat local debt issuances was legislation that provided a debt election was not valid unless a certain percentage of registered voters showed up to vote. The only such bill to receive a committee hearing was S.B. 702 by Huffines. As filed, S.B. 702 would have required turnout of 33 percent of the registered voters of a political subdivision in order for a bond election to take effect. The threshold was amended to 15 percent after the committee hearing. The bill was voted from committee but moved no further. The irony of this idea is that it comes from legislators who appeared to be very concerned with local government spending, yet they were willing to author legislation that could waste taxpayer dollars on invalid elections.

The 2019 session was an active one for local debt bills. H.B. 440 by Representative Murphy passed and was signed into law. Though H.B. 440 affected school districts more than cities, the bill contained one generally-applicable provision requiring a political subdivision that maintains a website to include a sample ballot for their debt election on the website for the 21 days before the election. It also provided that a political subdivision may not issue general obligation bonds if the weighted average maturity of the bonds exceeds 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of the bonds.

Another bill that passed, S.B. 30 by Senator Birdwell, requires that each single specific purpose

for which bonds requiring voter approval are to be issued must be printed on the ballot as a separate proposition. The stated goal of the legislation was to prevent a local government from including an unpopular expenditure with a popular expenditure in the same proposition in order to facilitate the passage of the more unpopular one.

The most city-significant local debt bill that passed in 2019 was H.B. 477 by Representative Murphy. Among other things, H.B. 477 required a political subdivision with a population of at least 250 to create a voter information document for each debt proposition to be voted on at an election. The voter information document must include the ballot language, a table that contains information about the principal and interest (both of the debt to be issued and of all outstanding debt), the estimated maximum annual increase in the amount of taxes imposed on a homestead with a $100,000 value, and any other information the political subdivision considers necessary to explain the information in the voter information document. This language could be seen as a compromise of sorts – more transparency for the voter in a debt election without putting all of the information on the ballot itself to potentially confuse the voter in the voting booth.

H.B. 477 also contained some language related to COs. The bill added contextual information to the notice of intention to issue a CO, extended the timeframe to publish newspaper notice of the intention to issue a CO from 30 days to 45 days before passage of the ordinance, and required the notice to be placed on a city's website for at least 45 days before the passage of the ordinance, as well.

In 2021, the most serious threat to city debt authority was H.B. 1869 by Representative Burrows. As filed, H.B. 1869 would have modified the definition of "debt" for purposes of the debt service property tax rate calculation to only include debt approved at an election. This change would mean that all non-voter approved debt, such as certificates of obligation and tax notes, would have to be financed from a city's maintenance and operations property tax rate instead of the debt service tax rate. This change was deemed necessary by proponents because of perceived abuses by local governments, who were argued to rely heavily on COs because they are not subject to the 3.5 percent voter-approval rate calculation and aren't subject to an upfront election for approval.

Due in large part to the work of city officials and other interested stakeholders, H.B. 1869 was significantly modified as it went through the legislative process. As filed the bill would have essentially taken away COs and other debt instruments as financing options for critical infrastructure, even though they often represent the most cost-efficient form of local debt. The bill would have also effectively eliminated the ability of cities and other local governments from issuing refunding bonds to refinance existing debt. The bill's author showed a willingness to address city concerns in subsequent versions of the bill, making it largely acceptable to most stakeholders by the end of the legislative process.

As it passed, H.B. 1869 did modify the definition of "debt" for purposes of the debt service property tax rate calculation, but the new definition still retained the ability to use certain non- voter approved debt instruments for critical projects, like transportation infrastructure improvements, water, sewer, and telecommunications infrastructure, public safety-related infrastructure projects, updating existing buildings and facilities, vehicles and equipment, and refunding bonds, among other things. Under the new definition, cities are limited in using COs or other non-voter approved debt to finance new non-public safety city facilities, like libraries, and other types of miscellaneous expenditures like public art projects.

In 2023, multiple bills were filed that would have either reversed the authority to use non-voter approved debt for things like designated infrastructure projects, or further built upon the limitations in H.B. 1869. S.B. 976 by Senator Middleton and S.B. 977 by Senator Bettencourt would have once again revamped the definition of "debt" in the Tax Code to only include voter-approved debt, thus reversing many of the permissible uses of debt from H.B. 1869 only a session before. Those bills were heard in the Senate Local Government Committee, but not voted out.

Cities' ability to issue COs was once again targeted in 2023. One bill that didn't pass—H.B. 1489 by Representative Tepper, would have effectively prohibited the use of COs by cities by only allowing for their use during an emergency or when the city receives official notification that it is out of compliance with a state or federal law. Another, H.B. 3002 by Representative Goldman, would have *actually* repealed the authority to issue a certificate of obligation. It also didn't pass, or even receive a committee hearing.

One CO-related bill did pass in 2023 and was signed into law. H.B. 4082 by Representative Goldman defined "public work" for purposes of issuing both COs and anticipation notes. Things like streets, utilities, parks, libraries, public safety facilities, administrative office buildings all fit the new definition of "public work" in the bill. A CO or anticipation note may be issued for any of improvements included in the new definition, which likely encompasses the vast majority of purposes for which such debt is customarily issued. However, due to the passage of H.B. 1869 in 2021, the improvements being funded with a CO or anticipation note must meet the definition of "public work" in H.B. 4082 and also the definition of "debt" in the Tax Code for a city to be able to dedicate property tax revenue towards paying off the debt. Also of note, H.B. 4082 excluded hotels, professional sports facilities, and certain other structures like arenas, civic centers, and convention centers from the definition of "public work."

The Senate Committee on Local Government included in its interim report prior to the 2023 legislative session recommendations to curtail the usage of anticipation notes following testimony in committee about one city's issuance of anticipation notes for a project for which the voters rejected general obligation bonds at an election. In response, the legislature passed S.B. 2035 by Senator Bettencourt in 2023. S.B. 2035 provided, among other things, that a city may not authorize an anticipation note to pay a contractual obligation if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding five years and rejected by the voters. The bill also imposed the same five-year moratorium on COs (currently subject to a three-year moratorium). Governor Abbott ultimately vetoed S.B. 2035 as part of his negotiation of property tax relief legislation during the special session, and city officials can fully expect the bill to be filed and pushed again in 2025.

One final debt issue bears mentioning. In early 2022, Governor Abbott released his plan for a "Taxpayer Bill of Rights" as a way of providing property tax relief. Included within that plan was the following proposal: "Require local government debt be passed by a two-thirds supermajority of the local governing body, and local bond issues not included on the November ballot to pass by a two-thirds supermajority of voters."

Senator Middleton filed S.B. 2337 in 2023, which mirrored the concept from the governor's plan. The bill was not heard in committee. S.B. 2337 would have effectively forced all local bond elections to the November uniform election date under the rationale that there's greater voter participation in November elections as compared to May elections, and that local governments

"cherry pick" voters that will approve the bond issuance by holding elections in May instead of November. However, data from the Texas Bond Review Board shows that over the past ten years the passage rate for city bond propositions in May as compared to November is nearly identical, and cities have actually held more bond elections in November than on the May election date over the same time period.

The TML Legislative Program provides that the League oppose legislation that would erode the ability of a city to issue debt.

City Hotel Occupancy Tax: Revenue Use for Parks

As dedicated revenue, city hotel occupancy tax may only be spent on certain, statutorily-defined purposes. Very generally speaking, all expenditures of city hotel tax revenue must promote tourism within the city. This general rule can be further broken down into two parts (often referred to as the "two-part test"):

1. all expenditures must promote tourism and the convention and hotel industry; and
2. all expenditures must further fall into one of nine statutory categories: (a) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities and visitor information centers; (b) expenses associated with registration of convention delegates; (c) advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity; (d) promotion of the arts; (e) historical restoration or preservation projects; (f) sporting events that promote tourism in counties of less than one million population; (g) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (h) transportation systems that transport tourists from hotels to the commercial center of the city, a convention center, other hotels, or tourist attractions, provided the system doesn't serve the general public; and (i) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.

In 2020, the cities of Fredericksburg, Dripping Springs, and Yorktown submitted a resolution for consideration at the TML Business Meeting that would add an additional category of expenditure to the list above: the expenditure of municipal hotel occupancy tax revenue for construction of improvements in municipal parks and trails/sidewalks that connect parks, lodging establishments, and other tourist attractions, and related public facilities. The resolution was approved by the TML membership and the position added to the 2021 TML Legislative Program. Following the inclusion of the position in the program, the League received communication from several other cities expressing their enthusiasm about the measure.

The driving force behind the resolution was the idea of expanding the revenue sources that are available to fund parks projects, and to do so in a way that highlights the use of parks in ways that benefit tourists to the city. Perhaps underlying the push for this additional revenue source is the fact that some cities view the property tax reforms from 2019 as limiting their ability to adequately fund city parks. According to the resolution:

> [C]ity parks are in need of additional improvements and amenities and connectivity to lodging establishments and tourist attractions, as the current demand for certain park facilities and amenities frequently exceeds the operating capacity of said improvements and amenities, due

> to the large attendance at annual festivals, events, and related tourist activities held on city parks and would benefit from connectivity and additional public facilities.

Three bills were filed in 2021 that would have authorized the use of local hotel occupancy tax revenue for public park improvements – H.B. 3223 by Representative Zwiener, H.B. 3091 by Representative Vasut, and S.B. 696 by Senator Buckingham. H.B. 3223 and S.B. 696 were nearly identical, and as filed, both would have authorized HOT revenue expenditures for public parks in cities under 200,000 population (and Lubbock) under certain circumstances. H.B. 3091, meanwhile, would have authorized any city to use its hotel occupancy tax revenue on "qualified infrastructure" and public parks if the facility was located within one mile of a hotel.

The only one of these three bills to move through the process was H.B. 3223, which was reported from the House Ways and Means Committee only after it was amended to only apply to four specific cities. The committee substitute for H.B. 3223 also provided that the amount of city hotel occupancy tax revenue a city could use to enhance and maintain parks in a fiscal year could not exceed ten percent of the amount of revenue the city collected from the tax during the preceding fiscal year, and also couldn't exceed the amount of area hotel revenue that was directly attributable to tourists who attended events at that park or visited the park in the preceding fiscal year.

H.B. 3223 was recommended to be "fast-tracked" on the House Local and Consent Calendar but was a casualty of the late session time crunch. An attempt was made to tack on the revised language from H.B. 3223 on an unrelated Senate bill moving through the House late in the session. The language was added in a House floor amendment, but eventually came out of the bill in conference committee.

Representative Vasut refiled his bill in 2023, this time as H.B. 550. The bill was referred to the House Ways and Means Committee, but never heard.

The TML Legislative Program provides that the League support legislation that would allow for the expenditure of municipal hotel occupancy tax revenue for construction of improvements in municipal parks and trails/sidewalks that connect parks, lodging establishments, and other tourist attractions, and related public facilities.

Major Events Reimbursement Program

Before undergoing a name change and having administration duties shift to the governor's office in 2015, the Major Events Trust Fund was a program administered by the comptroller to offer incentive funding that helps Texas cities and counties host major sporting events and conventions. Eligible events still include, among other things, NCAA Final Four basketball games, the Super Bowl, Academy of Country Music Awards, and national political conventions of the Republican or Democratic National Committees. After a site selection organization receives an application from a city or county and chooses to bring an event to Texas instead of another state, the city or county can apply for funding from the Major Events Trust Fund to offer as an incentive to the organization. The money spent from the Major Events Trust Fund is repaid into the fund in part by cities and counties through incremental sales tax, mixed beverage tax, and/or hotel occupancy tax gains that result from the major event that takes place.

In 2012, the administration of the Major Events Trust Fund by the comptroller garnered some political attention. Specifically, some politicians and other groups had called into question the comptroller's ability to use the fund to pay for certain events, like the Cotton Bowl, that have

traditionally been held in Texas. The criticism concerning the use of the fund led Texas Land Commissioner Jerry Patterson to request an attorney general's opinion regarding the comptroller's authority to spend Major Event Trust Fund dollars to attract the Formula 1 race to the Austin area after it appeared that the organization sponsoring the event had already settled on bringing the event to central Texas.

Up until that point, the existence and use of the Major Events Trust Fund had been relatively non-controversial. In fact, the legislature adopted a number of bills over the last several legislative sessions that would add events to the list of proper uses of the Major Events Trust Fund without any apparent opposition.

As expected, legislation was filed in 2013 to place some limitations on how the Major Events Trust Fund, as well as the closely-related Events Trust fund, could be utilized. S.B. 1678 by Deuell made several changes to the way the Major Events Trust Fund and Events Trust Fund operate, including adding eligibility, reporting, and disbursement requirements for both funds. S.B. 1678 passed both houses by a significant margin and was signed into law.

In 2015, legislation passed changing the name of the Major Events Trust Fund to the Major Events Reimbursement Fund. In addition S.B. 633 passed, which transferred administration of the Major Events Reimbursement Program and Events Trust Fund (among other funds) to the office of the governor. In addition, S.B. 633 added several events to the list of eligible events for funding from the Major Events Reimbursement Program.

While a small handful of bills were filed in 2017 that would have abolished the Major Events Reimbursement Program, along with the other similar state incentive funding programs, none of them were seriously considered and none received a committee hearing. Nothing was filed in 2019 that would have abolished the Major Events Reimbursement Program. The only bill to pass impacting the program was a bill that codifies the events reimbursement program statutes in Government Code Chapters 475 to 480.

In both 2021 and 2023, bills passed that would add certain events to the list of eligible events for funding. For now at least, it would appear as though the controversy surrounding the program a decade earlier has subsided.

The TML Legislative Program provides that the League oppose legislation that would limit or eliminate the current flexibility of the Major Events Reimbursement Program as a tool for cities to attract or host major events and conventions.

Housing Finance Corporations

A housing finance corporation (HFC) is a tax-exempt public non-profit corporation that can provide financial housing assistance to low to moderate-income households on behalf of a city or county. According to the authorizing statute for HFCs – Chapter 394 of the Local Government Code – the purpose of an HFC is to "provide a means to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable prices for residents of local governments."

Recent news coverage has highlighted the actions of a Cameron County-based HFC using the property tax exempt status of HFC-owned property to exempt properties located in several North Texas cities from paying property taxes. This particular HFC bought an existing apartment complex in the City of Euless, which is located more than 500 miles away from Cameron County, leading to a property tax exemption for the complex and a loss to the city of roughly two percent of its annual revenue.

This concept of a special district operating outside its original boundaries under the auspices of promoting affordable housing may be familiar to some city officials. For years, the Texas Legislature has tried to rein in public facility corporations (PFCs) on the exact same issue relating to the ability of a "foreign" PFC to come into a city and purchase properties to pull them off the local tax rolls without consent.

The legislature finally revised the PFC program in 2023, including a prohibition on a PFC owning or operating a development outside the boundaries of the sponsoring entity. H.B. 2071 by Representative Jetton, among other things, provided that a PFC: (1) may only finance, own, or operate multifamily residential developments within the sponsoring entity's jurisdictional boundaries; (2) must meet certain minimum affordable housing metrics, obtain city consent when required, and provide feasibility and other financial analyses to obtain beneficial tax treatment; and (3) provide publicly available annual reports to the Texas Department of Housing and Community Affairs and chief county appraiser.

Much like PFCs, the legislature likely envisioned HFCs to be created by and located within their sponsoring cities and counties. Nevertheless, in 2021, the Dallas Court of Appeals upheld the tax-exempt status of a Dallas County-based HFC's purchase of a property in Collin County. With the subsequent developments relating to the Cameron County HFC, the League has learned that several cities will be seeking legislation to limit the ability of a housing finance corporation to exempt property from property taxation if the property is located outside the boundaries of the local government creating the corporation.

REGULATION OF DEVELOPMENT

Annexation

Up until 2017, Texas granted broad annexation power to all home rule cities. That year, S.B. 6 by Senator Campbell passed. With that, municipal annexation as it existed for over a century was over. S.B. 6 required landowner or voter approval of annexations in the state's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process. The bill became effective on December 1, 2017. On final passage in the House, Representative Huberty proclaimed that, "Citizens have rights, cities don't."

In 2019, H.B. 347 by Representative Phil King completely closed the book on unilateral annexations in every county. The bill ended most unilateral annexations by any city, regardless of population or location. Specifically, the bill made most annexations subject to three consent annexation procedures that only allow for annexation: (1) on request of the each owner of the land; (2) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (3) of an area with a population of at least 200 by election of voters and, if required, petition of landowners. However, H.B. 347 did allow for certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure.

With the population in the state's largest counties expanding exponentially, the loss of planning and financial control will potentially bring significant challenges to transportation, utilities, and land use planning, as well as financial problems for cities.

One new issue relating to the authority of a city to voluntarily annex property bears mentioning. The reforms in 2017 and 2019 made annexing across a road impossible in some instances, even when the property owner requested annexation.

For property to be eligible to be annexed it must be in a city's extraterritorial jurisdiction and touch the existing city limits. Most agree that a city may not annex "islands" of municipal territory. However, it is very common that a petitioner's property is across a road or a short distance from the existing city limits. For over a century, this was never a problem. Home rule cities could include the road pursuant to its unilateral annexation authority granted by its charter, and Local Government Code Sec. 43.103 allowed general law cities to include the road as part of an annexation. H.B. 347 took both away.

Heading into the 2021 session, the Texas Department of Transportation indicated that it would not petition a city to include a state highway, except in very limited circumstances. Whether county commissioners courts across the state would do so was unclear.

In 2021, the legislature passed TML priority legislation aimed at fixing this issue by authorizing a city to annex across a state or county highway to reach an otherwise eligible property owner requesting annexation. Specifically, S.B. 374 by Senator Seliger provided that, for voluntary annexations, a city may also annex with the area the right-of-way of a street, highway, alley or other public way or of a railway line spur, or roadbed that is: (1) contiguous and runs parallel to the city's boundaries; and (2) contiguous to the area being annexed. But a city may only annex such a right-of-way if the city provides written notice of the annexation to the right-of-way owner of the right-of-way within 61 days before the date of the proposed annexation, and the owner does not submit a written objection before the date of the proposed annexation. S.B. 374 passed with very little controversy, perhaps giving some hope that the legislature is willing to consider common-sense reforms to the annexation statute, so long as such reforms don't backtrack on the consent requirement that is now a fixture of the process.

During the 2023 session, the legislature broadened the right-of-way annexation authority by allowing cities, under certain circumstances, to annex part of a roadway connecting an annexed property to the city limits. H.B. 586 by Representative Ed Thompson, which passed the legislature and was signed into law, allows a city to annex a roadway if the roadway: (1) is contiguous to the city limits or the area being annexed; (2) connects the boundary of the city to an area being simultaneously annexed by the city or to another point on the boundary of the city; and (3) does not result in the city's boundaries surrounding any area that was not already in the city's extraterritorial jurisdiction immediately before the annexation of the roadway.

Due to the passage of H.B. 586, Summit members should consider removing the position in the League's legislative program to take no position on legislation that would authorize a city to annex out a roadway to bring a voluntarily requested area into the city limits.

The legislature also briefly allowed a city to annex across a railroad track under certain circumstances. H.B. 2956 by Representative Shine allowed a city to annex a property across a railroad track if the railroad track was: (1) contiguous and ran parallel to the city limits, and (2) connected the annexed area to the city limits. Unfortunately, this authority was very short-lived. Gov. Abbott vetoed H.B. 2956 as part of his veto of over seventy bills to encourage the legislature to pass a property tax relief bill.

While the legislature granted cities some additional small-scale, common-sense authority to annex, members also introduced several bills that would have both: (1) automatically disannexed

areas within the city limits if the city failed to provide full municipal services to the area; and (2) required mandatory disannexation elections for any property annexed between March 2015 and May 2019.

Under Local Government Code Sec. 43.141, a majority of qualified voters of an annexed area can petition a city to be disannexed if the city fails or refuses to provide full municipal services. Similarly, under Local Government Code Sec. 43.056, a property owner can request disannexation if a city fails to fulfill its obligations under an annexation service plan. S.B. 369 by Senator Campbell would have automatically disannexed any area, lot, or tract within the city limits if the city did not provide full municipal services to the area by December 31, 2023.

Under S.B. 369 as filed, the term "full municipal services" was defined to include: (1) police protection; (2) fire protection, including fire hydrants; (3) emergency medical services; (4) certain solid waste collection services; (5) water and wastewater facilities; (6) street lighting; and (7) street and road maintenance. The only exceptions were areas where the city was not required to provide such services under a service plan or had entered into an agreement waiving or extending the time for the city to provide such services.

Despite strong city and county opposition, S.B. 369 passed the Senate on an 18-13 vote. In passing, a floor amendment was adopted to eliminate the automatic disannexation provision and replace it with a process by which a property owner could file a complaint that the city was not providing full municipal services, and require cities to respond to the complaint within 60 days with a statement that services are being provided or an action plan to provide the services within a year (or three years for a major infrastructure project). The amendment also would have allowed a property owner submitting a complaint to bring an action against the city to enforce the new complaint framework. In response to such a lawsuit, the court would be required to order the city to hold an election on the question of disannexing the area if the court found that the area was not receiving full municipal services or if the city failed to provide a plan of action or implement a plan of action. On top of all of that, the bill would have waived governmental immunity and allowed a property owner to recover attorney's fees and court costs resulting from bringing the lawsuit.

Floor amendments were adopted to exempt areas from the disannexation provision that are: (1) served by a holder of a certificate of convenience and necessity that was not the city; (2) served by a private septic system or individual water well; or (3) located in certain areas in or around an airport.

After it passed the Senate, S.B. 369 was quickly taken up by the House Land and Resource Management committee. Once again, cities and counties opposed S.B. 369. The bill was still voted out of committee on a 6 to 1 vote. It was placed on the House calendar, but the House was not able to consider the bill before a key calendar deadline effectively killed the bill for the session.

As filed, H.B. 3053 by Representative Dean would have required mandatory disannexation elections for any area annexed by a city between March 3, 2015 and December 1, 2017. According to the bill analysis for H.B. 3053, the bill was needed because of concerns that cities rushed to annex areas between the time that annexation reform bills were proposed in the legislature and when the reforms went into effect. H.B. 3053 was eventually bracketed to only apply to certain areas annexed by the City of Austin during the 2015 to 2017 timeframe. The bill passed in that form, and the City of Austin held the mandatory election in May 2024.

In April 2024, Lt. Gov. Patrick issued an interim charge to the Senate Local Government Committee

to "study issues related to the implementation of . . . House Bill 3053 and make recommendations to secure and enhance the protection of landowners' property rights."

Texas cities should be prepared for disannexation legislation similar to S.B. 369 and H.B. 3053 to return in 2025.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation; (2) eminent domain; (3) zoning; (4) regulatory takings; (5) building codes; (6) tree preservation; (7) short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

The TML Legislative Program provides that the League should take no position on legislation that would authorize a city to annex out a roadway to bring a voluntarily-requested area into the city limits.

Extraterritorial Jurisdiction (ETJ)

With the severe curtailment of city unilateral annexation authority over the past few legislative sessions, questions have arisen about what becomes of city regulatory authority in the ETJ.

ETJ is defined by statute as "the unincorporated area that is contiguous to the corporate boundaries of the municipality." The geographical extent of any city's ETJ is contingent upon the number of a city's inhabitants, ranging from half a mile (fewer than 5,000 inhabitants) to five miles (100,000 or more inhabitants). Under state law, a property must be located within the city's ETJ to be eligible to be annexed.

In addition to regulating annexation authority and procedures, the Municipal Annexation Act created the concept of ETJ in 1963. The policy purpose underlying the concept of the ETJ is described in Section 42.001 of the Texas Local Government Code:

> The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.

Cities have very limited authority to enforce city regulations and engage in economic development efforts in the ETJ. The following are examples of state laws that authorize cities to regulate in the ETJ:

- Health & Safety Code § 713.009 – Cemeteries
- Local Government Code Chapter 43 – Annexation
- Local Government Code § 212.003(a) – Subdivision and Platting Regulations
- Local Government Code §§ 216.003, 216.902 – Signs
- Local Government Code § 217.042 – Nuisances within 5,000 feet (home rule city only)
- Local Government Code § 341.903 – Policing City-Owned Property (home rule city only)
- Local Government Code § 552.001 – Utility System
- Water Code § 26.177 – Pollution Control and Abatement

Some believe that the only policy justification for city regulation in the ETJ was that property in the ETJ would one day be annexed into the city. Because the future inclusion of the territory in the city limits is less of a sure thing now following annexation reforms, the same people argue that cities should no longer be able to

extend enforcement of any regulation into the ETJ. To bolster their point, proponents of limiting city authority in the ETJ claim that because ETJ residents do not live within city limits and therefore cannot vote in city elections, they should not be subject to city regulations.

There are many reasons why it still makes sense for cities to have some regulatory authority in the ETJ. For one, annexation can still take place with property owner consent. Additionally, after years of annexation across the state, a city's ETJ is not just territory located miles away from the city center. In many cases now, there are areas located in the ETJ that are surrounded by the city limits, and distinguishing between what is and isn't in the ETJ is a task that can only truly be accomplished by a land surveyor. This underscores the state legislature's policy justification mentioned above – those living in the ETJ often are in close proximity to those that live in the city limits and there are valid health and safety reasons why some limited degree of regulation should apply in the ETJ for the protection of both parties. Further, in many cases cities provide vital services to ETJ residents because of their proximity to the city.

In 2021, several bills were filed that would have altered the city's relationship with its ETJ. One of the more notable examples was H.B. 1885 by Representative Cody Harris. As filed, H.B. 1885 would have, with certain exceptions, prohibited a city from regulating an activity or structure in an area in which the residents are ineligible or have only limited eligibility to vote in municipal elections. As the bill was revised during the legislative process, it became clear that the bill was being pushed by the billboard industry who wanted to eliminate city sign regulations in the ETJ. But instead of simply stating that city sign regulations could not apply in the ETJ, the committee substitute for H.B. 1885 took a different approach. The bill continued to state that a city couldn't regulate in the ETJ, but expanded the list of exceptions to include virtually every possible thing a city could currently regulate in the ETJ, except for signs. H.B. 1885 eventually passed the House, but only after sign regulations were added to the list of exceptions, along with some other safeguards. The bill stalled in the Senate.

S.B. 1992 by Senator Bettencourt and the companion bill, H.B. 3519 by Representative Deshotel, would have gone far beyond limiting certain types of city regulation in the ETJ and all but eliminated the concept of ETJ in many cases. The bills would have required the release of property from the ETJ if a city received a valid petition from residents living the ETJ asking for it. Both bills were heard in committee but received significant city opposition and neither advanced further.

One bill that did pass in 2021 related to the ETJ was S.B. 1168 by Senator Campbell. S.B. 1168 provided that, in an area in a city's ETJ that had been disannexed under certain law or for which the city has attempted and failed to obtain consent for annexation, a city could not impose a fine or fee on a person on the basis of an activity that occurs wholly in that area or the management or ownership of property located wholly in that area. However, the new prohibition did not apply to water, sewer, drainage, or other related utility services. While S.B. 1168 was somewhat narrow in scope, it opened the door to further erosion of city authority in the ETJ.

In December 2021, the Texas Public Policy Foundation (TPPF), a conservative interest group, published a memo arguing for the abolition of the ETJ entirely. According to the memo:

> Many Texans decide to live in an unincorporated land to avoid municipal regulation and taxation. As such, municipalities should not be expected to 'promote and protect the general health, safety, and welfare of persons' who

> reside outside of their city limits. Unincorporated residents must not be subject to regulation or taxation without representation. The concept of extraterritorial jurisdiction no longer serves its intended purpose and should be abolished.

In April 2022, Lieutenant Governor Patrick charged the Senate Local Government Committee to: "Study issues related to municipal extraterritorial jurisdictions and annexation powers, including examining possible disannexation authority… [and] determine whether extraterritorial jurisdictions continue to provide value to their residents and make recommendations on equitable methods for disannexation." After hearing testimony, the committee issued a report recommending that the legislature explore a way to reconcile conflicting city and county land development regulations in the ETJ and consider adopting a statewide city disannexation process.

The attack on city ETJ authority took another turn in May 2022 when attorneys at TPPF filed a lawsuit against the City of College Station in *Elliot v. City of College Station*. In the original petition, TPPF argues that College Station violated, and continues to violate, art. I, Sec. 2 of the Texas Constitution which pledges to preserve a republican form of government, by enforcing city regulations in the ETJ, but not allowing ETJ residents to vote in city elections. The trial court quickly dismissed the case. TPPF appealed. The Sixth Court of Appeals in Texarkana affirmed the trial court's dismissal in August 2023. TPPF has asked the Texas Supreme Court to review the appellate court's ruling. The Texas Supreme Court requested full briefing from the parties in early 2024. TPPF filed its briefing on April 8, 2024. College Station's briefing will be due in early May. The League will be filing an amicus brief supporting College Station's position.

The legislature ramped up attacks on cities' ETJ authority during the 2023 session. Several bills were filed but did not pass that would erode cities' ETJ authority. H.B. 1279 by Representative Tepper would have significantly reduced the size of the ETJ down to 250 feet in some cases. H.B. 4175 by Representative Cody Harris, which passed the House, would have required that the city provide full municipal services for any property for which the city had denied a permit application or prohibited an activity on that property. S.B. 2037 by Senator Bettencourt, which passed the Senate, would have prohibited a city from regulating a component of lot density on a tract of land in the ETJ, including minimum size of a lot, minimum width of lot frontage, and minimum distance a lot must be set back from the road or property line. H.B. 2232 by Representative Spiller, which passed the House, would allow a county to cancel existing city platting upon a property owner's request.

While these bills, if passed, would have significantly eroded a city's authority in its ETJ, the legislature's most significant attack on the ETJ concept was successful. S.B. 2038 by Senator Bettencourt provides that a city must release an area from its ETJ if it receives a valid petition from more than 50 percent of the registered voters or a majority in value of the titleholders of land in the area. Several cities across the state have received dozens, if not hundreds, of property owner petitions requesting to be released from the ETJ. S.B. 2038 has resulted in the unplanned, piecemeal removal of small lots within many cities' ETJs.

S.B. 2038's ETJ release provisions do not apply to the following five areas: (1) an area within five miles of a military base boundary where active training occurs; (2) an area within 15 miles of an active military base in San Antonio's or Houston's ETJ; (3) certain areas that were voluntarily annexed into cities' ETJ in Hays County; (4) property located in an industrial district; and

(5) property subject to a strategic partnership agreement as defined in Chapter 43 of the Texas Local Government Code.

When negotiating the bill, the League submitted language to exempt several additional areas from the petitioned-removal requirements of the bill. These included: (1) areas in which a city is required to provide water or wastewater services pursuant to a certificate of convenience and necessity; (2) areas subject to a development agreement under Local Government Code Sec. 212.172; (3) areas located in a fire control, prevention, and emergency medical services district under Local Government Code Chapter 344; (4) areas located in a public improvement district under Local Government Code Chapter 372; and (5) areas located in a municipal development district under Local Government Code Chapter 377.

Unfortunately, none of these exemptions were added to the bill. Nevertheless, these may serve as starting points for beneficial legislation in 2025 to make the new petition framework more reasonable.

Questions still exist about exactly how S.B. 2038 should be interpreted. Although the bill author's intent was likely to require removal of an area any time a valid petition is submitted to the city, the way in which the bill interacts with existing state statute on the reduction of a city's ETJ is unclear. Local Government Code Sec. 42.023 provides that "the extraterritorial jurisdiction of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution… ." Harmonizing this provision with the new law in S.B. 2038 has led some city attorneys to the conclusion that even if a valid petition is submitted, the city council must approve an ordinance or resolution to reduce the size of the ETJ. Some in the legislature attempted to rectify what may have been a drafting oversight by filing bills during the 2023 special sessions (H.B. 90 during the third special session; H.B. 11 during the fourth special session) to provide that the ETJ would be reduced without city council approval if a valid petition were received under the framework created by S.B. 2038. Nothing passed during the special sessions to address this discrepancy.

Several cities have filed suit challenging the constitutionality of S.B. 2038 on several grounds. The cities make three principal arguments: (1) that S.B. 2038 violates a property owner's due process rights by allowing their property to be released from the ETJ without their knowledge or participation; (2) that S.B. 2038 directly conflicts with Local Government Code Sec. 42.023 which requires a formal city council ordinance or resolution to reduce the size of a city's ETJ; and (3) that S.B. 2038 unconstitutionally delegates the city council's legislative authority by allowing a property owner or owners to reduce the size of a city's ETJ.

The plaintiffs in the S.B. 2038 litigation are seeking declaratory judgment, so S.B. 2038 remains in effect. As of the time of this writing, the lawsuit is pending in Travis County District Court.

Given the vast impact of S.B. 2038, Lt. Gov. Patrick issued an interim charge to the Senate Local Government Committee to "study issues related to the implementation of Senate Bill 2038 . . . and make recommendations to secure and enhance the protection of landowners' property rights." Summit delegates may wish to consider recommending a position on legislation that would make beneficial amendments to S.B. 2038.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation; (2) eminent domain; (3) zoning; (4) regulatory takings; (5) building codes; (6) tree preservation; (7)

short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

The TML Legislative Program provides that the League should oppose legislation that would abolish the concept of the ETJ.

Eminent Domain

Background

Cities and other governmental entities must acquire land for a variety of reasons. If a city is unable to negotiate with a property owner for property acquisition, the city may condemn the property through the process of eminent domain. The city must strictly follow legal procedures. The city must make a determination of public use (see discussion of limitations on eminent domain for economic development purposes, below), and it must engage in good faith negotiations with the property owner to acquire the property. If negotiations fail, the city must file, in court, a petition for condemnation. The court then appoints three special commissioners.

The commissioners hold a hearing, during which the city and other parties appear and present evidence as to the compensation to be paid. The commissioners make a written determination of the compensation to be paid. If the award is less than what was offered by the city, the property owner pays all costs. If the award is more than what was offered by the city, the city pays all costs. The commissioners must determine the market value of the property at the time of the hearing. If only a portion of the tract is being condemned, the effect on the remaining property is included in the compensation. If either party is dissatisfied with the award, objections must be filed with the court. If objections are filed, the award is appealed, and a new trial is conducted by a court in a judicial proceeding.

Modern eminent domain reform came after a handful of highly-publicized condemnations, followed later by the U.S. Supreme Court's opinion in *Kelo v. New London* in 2005, grabbed the attention of the legislature. In these condemnations, cities condemned property to sell to private businesses for economic development.

Under current law, before a city can condemn property, the city council must determine that the condemnation serves a public use. The council's decision has always been subject to judicial review, and local officials have always maintained that deciding what constitutes a public use should be done by the city council, the elected officials closest to the people, rather than by the state. TML knew that condemnations for economic development would eventually result in legislation designed to curtail that authority. Nothing of interest happened during the 2005 regular session, but the following special sessions – and nearly every session since – led to a firestorm of controversy regarding the issue. The following sections discuss different parts of eminent domain reform.

Kelo: Eminent Domain for "Economic Development Purposes"

In 2005, the United States Supreme Court issued its opinion in *Kelo v. City of New London, Connecticut.* Under that opinion, the decision to use eminent domain authority for economic development was left to local officials, and those officials were authorized to determine whether using that authority serves a "public use."

Many newspaper reports led readers to believe that cities would use this "new" authority to "seize" property, "bulldoze" homes, and "grab" everything that stands in the way of increased tax revenue. In reality, the *Kelo* case was about community leaders trying to save the economic viability of their city and its residents.

In 2005, S.B. 7 became the first vehicle for restricting eminent domain for economic development. That bill, which passed during a special session, restricted the use of eminent domain authority to provide that neither a governmental nor private entity may take private property through the use of eminent domain if the taking: (a) confers a private benefit on a particular private party; (b) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or (c) is for economic development purposes, unless the economic development is a secondary purpose resulting from community development or municipal urban renewal activities to eliminate an existing affirmative harm to society from slum or blighted areas.

However, S.B. 7 also established numerous exceptions to the prohibitions listed above, including: (a) transportation projects, including but not limited to railroads, airports, or public roads or highways; (b) ports, navigation districts, and certain conservation and reclamation districts; (c) water supply, wastewater, flood control, and drainage projects; (d) public buildings, hospitals, and parks; (e) the provision of utility services; (f) certain sports and community venue projects; (g) the operations of certain common carriers and energy transporters; (h) waste disposal projects; or (i) libraries, museums, and related infrastructure.

Eminent Domain Process Reform

In 2006, an interim legislative committee studying the eminent domain process concluded that "Senate Bill 7 provided a good beginning for eminent domain reform in Texas. The diligent work of interim committee members and other parties has provided a solid foundation for comprehensive eminent domain legislation in the 80th Legislature."

Following the interim committee report, legislators filed more than twenty eminent domain-related bills and joint resolutions (proposing constitutional amendments) during the 2007 session. Many of these bills were combined into an omnibus eminent domain bill – H.B. 2006. That bill, which was vetoed by the governor, would have made numerous changes to eminent domain laws.

Governor Perry vetoed H.B. 2006 because he claimed it would have cost the state and certain counties up to $1 billion for future highway projects. The governor's veto message stated:

> It is important to balance the rights of Texas landowners whose land is acquired through eminent domain against the needs of the greater taxpaying public. In essence, the state and local government would be over-paying to acquire land through eminent domain in order to enrich a finite number of condemnation lawyers at the expense of Texas taxpayers.

In 2009, the legislature passed a constitutional amendment that attempted to define "public use." H.J.R. 14, approved by the voters in November 2009, provided that no person's property shall be taken, damaged, or destroyed for or applied to a "public use" without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is necessary for: (1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by the state, a political subdivision of the state, or the public at large or an entity granted the power of eminent domain under law; or (2) the elimination of urban blight on a particular parcel of property. H.J.R. 14 also provided that a "public use" does not include the taking of property for transfer to a private entity for the primary purpose of economic development or the enhancement of tax revenues, and that on or after January 1, 2010, the legislature may enact a law granting the power of eminent domain to an entity only with a two-thirds vote of all members elected to each house.

In 2011, the legislature passed a significant eminent domain "process reform" bill. S.B. 18, among other things, established the Truth Condemnation Procedures Act which clarified the process that a city or other governmental authority must follow when condemning a property using eminent domain. The bill also outlined specifics regarding the bona fide offer process, the petition process, the special commissioners' process, and a property owner's right to repurchase the property if the condemning entity does not make "actual progress" on the project for which the property was condemned.

In 2015 and 2016, legislators began focusing on the amount of money a property owner receives when the government, a pipeline company, a railroad, or a utility acquires property. One idea received the most attention. It came in the form of H.B. 3339 (Burkett), H.B. 3065 (Fallon), and S.B. 474 (Kolkhorst), which would have provided that, if the amount of damages awarded by the special commissioners is at least 10 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 10 percent greater than the amount the condemnor offered to pay before the proceedings began, the condemnor shall pay: (1) all costs; and (2) any reasonable attorney's fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.

Those bills did not pass, but the Senate State Affairs Committee was charged with studying the issue of property owner compensation during the 2016 interim.

Invited witnesses included representatives from the Texas Department of Transportation, Texas Farm Bureau, electric utilities, gas pipelines, and various landowner groups. Testimony focused on the amount landowners receive when their land is taken using eminent domain. As one would expect, landowners testified that awards should be higher, and condemning entities testified that the process is working as it should.

League staff was also asked to testify and pointed out that – according to U.S. Census numbers – the more than 1,000 people per day added to the Texas population in 2014-2015 didn't move to rural areas. They moved to cities. And that this movement means that cities will need to judiciously use eminent domain for streets, utilities, and other vital public infrastructure.

City officials absolutely want the process to be fair, but they also can't allow it to become so expensive as to be useless.

Reformers argue that a condemnor, including a city, should pay the landowner's attorney fees and costs if the final award is some percentage greater than the initial offer. (This is what the 2015 proposed bills mentioned above would have required.)

Those familiar with eminent domain practice know that to be a difficult change for cities. A city's initial offer is – by law – based upon an appraisal obtained by the city. The fair market value and final award are then determined by negotiating or submitting the issue to a special commissioners hearing. The fact that a city "negotiates up" to avoid litigation doesn't necessarily mean that its initial offer was "lowballed."

A coalition of reformers (including the Farm Bureau and the Texas and Southwestern Cattle Raisers Association) continued to press hard for more compensation to landowners. But no substantive bills were passed during the 2017 or 2019 legislative sessions.

In December 2019, Speaker Bonnen issued two eminent domain-related interim charges to the House Land and Resource Management Committee. The first directed the committee, in

conjunction with the attorney general, to review the "landowner's bill of rights to determine whether any changes should be made to "enhance the landowner's understanding of the condemnation process" and make the bill of rights "user friendly." The second directed the committee to study property owners' rights regarding repurchase of property acquired by eminent domain which has remained unused by the condemnor.

Legislation on both of those subjects was introduced and passed in 2021. Most significantly, H.B. 2730 by Land and Resource Management Chairman Joe Deshotel passed. The bill was a negotiated bill between landowner groups and a coalition of entities with eminent domain authority called the Coalition for Critical Infrastructure (CCI), of which TML is a member.

H.B. 2730 made several transparency reforms to the eminent domain process, including clearer statement of rights in the existing landowner bill of rights document, procedural reforms to appointment of special commissioners, and a clarification of the written documents needed in an initial offer to a property owner in order to make it a bona fide offer. The League supported the bill in its adopted form.

With regard to the right to repurchase, S.B. 726 by Senator Schwertner passed in 2021. S.B. 726 makes it more difficult for a condemning entity to demonstrate that it is making "actual progress" toward the public use for which the property was originally condemned, increasing the likelihood that the original property owner will have the right to repurchase the property.

The legislature considered two eminent domain-related bills in 2023 – S.B. 1512 and S.B. 1513 by Senator Schwertner. S.B. 1512 would have made the condemning entity liable for a property owner's reasonable attorney fees related to the condemnation if the entity did not disclose all required appraisal reports for the property. S.B. 1513 would have, among other things, amended the "Landowner's Bill of Rights" to include additional information about the condemnation process, the property owner's rights and options in the process, and the parties' rights regarding surveying the property. While both bills made it out of the Senate, they did not receive a hearing in the House.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation; (2) eminent domain; (3) zoning; (4) regulatory takings; (5) building codes; (6) tree preservation; (7) short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

Zoning

Zoning is the division of a city into districts that permit specific land uses, such as residential, commercial, industrial, or agricultural. Zoning authority empowers a city to protect residential neighborhoods, promote economic development, and restrict hazardous land uses to appropriate areas of the city. It is designed to lessen street congestion; promote safety from fires and other dangers; promote health; provide adequate light and air; prevent overcrowding of land; and facilitate the provision of adequate transportation, utilities, schools, parks, and other public facilities.

Chapter 211 of the Texas Local Government Code contains many procedural requirements that must be followed when a city zones property, including strict notice and hearing provisions. The requirements ensure that city and neighborhood residents have a strong voice anytime a zoning change is considered. In addition, Chapter 211 provides for the creation of a planning and zoning commission to make recommendations on the adoption of the original regulations, as well as to hear proposed amendments. Also, a board of

adjustment may be appointed to hear requests for variances from the regulations.

Zoning authority is often demanded by the residents of cities. Citizens, acting through neighborhood and preservation groups, generally support it. In essence, zoning grants a city the authority to prohibit detrimental uses and to promote beneficial uses. For example, zoning authority allows a city to prohibit lead-smelting plants or junkyards from being located in or near residential areas, thereby protecting quality of life and property values for residents. In modern times, zoning has changed to include mixed-use developments designed to lessen traffic congestion and increase quality of life.

The power to zone is best exercised by the level of government that is closest to the people. For example, most would agree that a person from a small town in the Panhandle knows little about what type of zoning is best for a large coastal city. Despite this, over the past few sessions, the legislature has considered several bills in the past that would have overturned the zoning decisions of individual cities.

In recent years, a handful of cities – in response to "tear-down" development in established neighborhoods – have enacted ordinances to restrict the size and shape of new homes in certain areas of the city. The ordinances are enacted to preserve the character of existing communities. These ordinances are commonly referred to as "McMansion ordinances." In response to the ordinances, lawmakers in 2007 debated two bills that would have essentially overruled the ordinances. H.B. 1732 and H.B. 1736 would have limited the ability of a city to preserve the character of existing communities through McMansion ordinances. Neither bill passed, but each was designed to undermine local planning.

In another situation in 2007, a state representative from the Houston area filed a bill to force a central Texas city to rezone a specific parcel of property. The city had rejected the rezoning application of a prominent developer. The bill was left pending in committee. Similar bills (e.g., H.B. 3397 in 2009) were filed in subsequent sessions, but nothing passed. Another detrimental bill, considered in 2009 (H.B. 4144), would have provided, among many other things, that a landowner may petition the *county commissioners court* to overturn a city's zoning decisions. This concept reappeared in 2013 and 2015, but neither bill made it out of committee.

While these bills did not pass, they marked the start of the state wading into local zoning decisions.

In 2019, a local zoning-related bill regarding the process by which a city designates local historic landmarks did pass. H.B. 2496 by Representative Cyrier prohibited a city that has established a process for designating places or areas of historical, culture, or architectural significance through zoning regulations from designating a property as a local historic landmark unless: (a) the owner of the property consents to the designation; or (b) the designation is approved by three-fourths vote of the city council and the zoning, planning, or historical commission, if any. The bill also required a city to provide a property owner a statement describing certain impacts that a local historic landmark designation may have on the owner and the owner's property no later than the 15th day before the date of the initial hearing on the designation and allow the owner of a property to withdraw consent at any time during the local historic landmark designation process. Additionally, a city could only designate a property owned by a qualified religious organization as a local historic landmark if the organization consents to the designation.

The framework put into place by H.B. 2496 in 2019 was amended by S.B. 1585 by Senator Hughes in 2021. S.B. 1585 extended the supermajority vote requirement to apply to the

decision to include property within the boundaries of a local historic district. It also provides that a city that has more than one zoning, planning, or historical commission shall designate one of those commissions as the entity with the exclusive authority to approve the designations of properties as local historic landmarks.

In 2021, H.B. 1475 by Representative Cyrier passed and was signed into law. H.B. 1475 codified certain factors that a board of adjustment may consider in determining when a variance may be warranted because literal enforcement of a zoning ordinance would cause "undue hardship" to a property owner. These factors can now include certain purely financial considerations, whether compliance would result in the structure not being in compliance with another city ordinance, and whether the structure is considered a nonconforming use. While the bill adds some structure to the variance-granting process, it's yet to be seen the full impact of the change. Because the "undue hardship" considerations are discretionary for a board of adjustment, there was little city opposition to H.B. 1475.

In 2021, two bills dealing with city notice about zoning changes were also filed. H.B. 4005 by Representative Romero would have required the notice of a public hearing associated with a city-initiated zoning classification change to: (1) be mailed to each owner of real property within 500 feet of the properties for which the change in classification is proposed (up from 200 feet under current law); and (2) be delivered by telephone call, text message, e-mail, or mail. The bill was approved by the House Land and Resource Committee over city objections, but did not make it to the House floor.

H.B. 2989 by Rep. Cyrier (companion bill was S.B. 1120 by Senator Johnson) would have done a couple of different things as it relates to the zoning process. First, it would have required newspaper notice and a public hearing when a city adopts an initial zoning regulation and zoning district boundaries, a comprehensive revision of the regulations or boundaries, or an amendment of a regulation that applies uniformly across boundaries or areas of a city. It also would have provided that citizens' right to protest a zoning change only applies to an individual lot or a limited area of contiguous properties. Homebuilders and affordable housing groups testified in favor of the bill. However, many homeowners strongly opposed it.

H.B. 2989 stemmed from a lawsuit involving the City of Austin's rewrite of its land development code, where the city argued that a wholesale rewrite of a zoning ordinance was not subject to the same notice and public hearing requirement as something like a rezoning of a particular parcel. In March 2022, an appellate court rejected the city's argument, holding that the city violated property owners' procedural rights by failing to notify property owners of their right to protest and failing to hold public hearings on the changes.

Relatedly, in 2023, the legislature passed S.B. 929 by Senator Parker which now requires cities to provide written notice to certain nearby property owners about a public hearing for any proposed zoning text or map changes that could result in an existing property becoming a nonconforming use.

A nonconforming use is a property use that existed before the adoption or revision of a zoning ordinance governing the use of the property. Generally, a property owner may continue to use the property in the same manner so long as the owner does not change or expand the use. A city has generally been able to unilaterally terminate a nonconforming use. However, it was unclear what compensation the city must provide to a property owner for terminating the previous nonconforming use.

S.B. 929 clarifies that a property owner is entitled to compensation for the loss of a nonconforming use.

If a city unilaterally terminates a nonconforming use, a property owner is entitled to:

1. payment equal to the costs directly attributable to stopping the nonconforming use (including relocation, lease termination, mortgage discharge, or demolition costs) plus the greater of: (a) the property's current market value the day before the nonconforming use was terminated, or (b) the diminution in value of the property's current market value; or
2. continuing the nonconforming use until the property owner or lessee recovers the amount determined under (1) above as determined by generally accepted accounting principles.

The League and several cities opposed the bill. Specifically, the League opposed the bill's notice requirement because it did not provide any guidance about when a proposed zoning change could create a nonconforming use and thereby trigger the property owner notice requirement.

In 2021, the legislature considered a handful of bills that would provide that a city or other political subdivision must treat an open-enrollment charter school the same as a school district for purposes of zoning, permitting, licensing, and other regulations. These bills were filed following a June 2021 attorney general's opinion, KP-373, in which the attorney general opined that a court would likely conclude that the zoning authority of a city is subservient to the reasonable exercise of an open-enrollment charter school in choosing a building location, just as city zoning authority is currently limited when it comes to independent school districts.

In 2023, the legislature passed a bill that would allow an open-enrollment charter school to be treated the same as an independent school district for certain purposes. H.B. 1707 by Representative Klick mandated that an open-enrollment charter school may be considered the same as an independent school district if the charter school certifies in writing that no charter school administrator, officer, employee, or governing body member will derive any financial benefit for a school real estate transaction. If the charter school does so, then a city must treat it the same as an school district for the purposes of: (1) zoning; (2) permitting; (3) platting; (4) subdivision regulations; (5) construction and site development; (6) land development regulation; (7) application processing and timelines; (8) regulation of architectural features; (9) business licensing; (10) franchises; (11) utility services; (12) signage; (13) posting bonds or securities; (14) contracting; and (15) fees and assessments. A city must also treat a charter school the same as a school district for development agreements between a city and a school in an area annexed for limited purposes and may not take any action that would prohibit a charter school from operating a public school campus, educational support facility, athletic facility, or administrative office that it could not take against a school district. But a city may not consider a charter school the same as a school district for purposes of collecting impact fees.

Following the 2021 session, some cities expressed interest in having the summit discuss the League taking a position on modifying or clarifying the zoning protest provisions in the zoning statute. Under Local Government Code Section 211.006(d), a zoning change requires at least three-fourths vote of all members of the governing body if the owners of at least twenty percent of the impacted area protest the change. In 2022, the League adopted a resolution from the City of Fate to increase the protest threshold to trigger a super majority vote for a zoning change from 20 percent up to 50 percent.

Representatives Holland and Sherman each filed bills – H.B. 1514 and H.B. 4637 – which would

have increased that threshold to the owners of at least 50 percent of the impacted or nearby properties affected by the zoning change. Neither bill received a hearing.

National Trend Towards Increased Density

In 2022, the House Land and Resource Management Committee was charged with studying the impact of zoning regulations on housing supply. Specifically, the Committee was asked to:

> Study the effect of governmental land-use regulations and controls on the availability and affordability of residential housing in Texas, including land use and zoning restrictions and related factors that slow or hinder housing development and improvement. Identify viable, free market solutions in lieu of governmental regulation to help Texas meet the current and future housing demands of a growing statewide population.

At the same time that the legislature began studying the impact of zoning laws on housing availability in Texas, the Biden Administration published a housing report that proposed to incentivize cities to loosen zoning regulations by tying certain federal grant funding to cities that have proposed updating zoning regulations to allow for more uses. According to the report:

> One of the most significant issues constraining housing supply and production is the lack of available and affordable land, which is in large part driven by state and local zoning and land use laws and regulations that limit housing density. Exclusionary land use and zoning policies constrain land use, artificially inflate prices, perpetuate historical patterns of segregation, keep workers in lower productivity regions, and limit economic growth. Reducing regulatory barriers to housing production has been a bipartisan cause in a number of states throughout the country. It's time for the same to be true in Congress, as well as in more states and local jurisdictions throughout the country.

Zoning reform has become a bipartisan rallying cry to help ensure affordable housing options in cities, in Texas and across the country. Accordingly, in 2022, the League adopted a resolution from the City of Manor to support legislation and additional state appropriations for affordable and workforce housing across the state.

As housing prices continue to rise, legislators across the country have advocated for greater density and loosening zoning restrictions to increase available housing stock to create more affordable housing. Several states like California, Oregon, Montana, and Maine have outlawed single-family residential zoning. Other states have: (1) allowed certain multifamily structures in single-family zoning districts; (2) allowed the construction of alternative dwelling units (ADUs) by right; (3) eliminated or significantly reduced minimum lot size requirements; and (4) eliminated setbacks, building height restrictions, and off-street parking requirements.

While the legislature did not propose eliminating single-family zoning during the 2023 session, it did consider several density-related bills. H.B. 3921 by Representative Goldman and S.B.1787 by Senator Bettencourt would have prohibited cities from establishing minimum lot sizes greater than 1,400 square feet, significantly reduce setback requirements, limit building height restrictions,

and eliminate off-street parking requirements. S.B. 1412 would have allowed ADUs by right in any residential zoning district.

H.B. 3921 and S.B. 1787 were far-reaching bills that would have applied to any city located wholly or in part in counties with more than 300,000 people. Under these bills, a city could not establish or enforce minimum lot sizes that were: (1) greater than 1,400 feet; (2) wider than 20 feet or deeper than 60 feet; or (3) or set a ratio of fewer than 31.1 dwelling units per acre. The bills would also prohibit cities from adopting or enforcing front/back setback requirements greater than ten feet, side setback requirements greater than five feet, certain parking requirements and impervious cover regulations, and building height restrictions less than three stories, on any residential lots less than 4,000 square feet. The bills expressly would not affect city water and sewer requirements but would otherwise be mandatory for all included cities. However, the bills would not affect any homeowner association rules or deed restrictions.

The House Land and Resource Management Committee made several amendments to H.B. 3921. Specifically, the committee substitute would have: (1) limited the bill to cities with a population of 85,000 or more; (2) increased the minimum lot size from 1,400 square feet to 2,500 square feet; (3) allowed a property owner to seek an exception to the above requirements; and (4) allow a property owner to file suit against a city to enforce the bill.

The committee reported H.B. 3921 favorably on May 2, 2024, and it was set on the House calendar on May 11, 2024. However, the bill was never brought to the floor for a vote.

S.B. 1787, on the other hand, passed the Senate almost unchanged. It did not include any of the committee amendments to H.B. 3921. The Senate passed the bill on May 11, 2024. A week later, the House Land and Resource Management Committee reported S.B. 1787 favorably, and it was set on the House calendar for May 23, 2024. However, it also did not make it to the House floor.

Many legislators have also advocated for allowing property owners to build accessory dwelling units on their properties. S.B. 1412 by Senator Hughes would have allowed a property owner to build an ADU on a property on any lot zoned for single-family or duplex uses. It would also prohibit a city from requiring a minimum lot size or greater setback requirements for ADUs, regulating the design of ADUs, or applying any local growth or density restrictions to limit or restrict ADUs. However, a city could apply zoning regulations generally applicable to residential developments, as well as local historic preservation rules. S.B. 1412 passed the Senate almost unanimously but failed in the House by two votes (68-70).

While these bills were unsuccessful, each came very close to passing. The League anticipates similar bills being reintroduced next session.

In April 2024, Lt. Gov. Patrick issued an interim charge to the Senate Local Government Committee to:

> [s]tudy issues related to housing, including housing supply, homelessness, and methods of providing and financing affordable housing[ ] . . . [and] [m]ake recommendations to regulatory barriers, strengthen property rights, and improve transparency and accountability for public programs for housing.

There is a lack of consensus on how to best address the affordable housing issue. Some cities believe reducing density restrictions will help address a lack of available housing stock and encourage more affordable housing. Other cities disagree, stating that ample housing stock exists and local

infrastructure cannot adequately handle unfettered density. If nothing else, it has become clear zoning reform has become a bipartisan rallying cry as a method of ensuring affordable housing options in cities, both in Texas and across the country.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation; (2) eminent domain; (3) zoning; (4) regulatory takings; (5) building codes; (6) tree preservation; (7) short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

The TML Legislative Program provides that the League should support legislation that would: (1) allow for the expansion and preservation of diverse, affordable housing in cities, including additional appropriations; and (2) raise the threshold for the ¾ supermajority requirements triggered by the opposition of landowners close to proposed zoning changes from 20 percent of property ownership interest within the notification area, to 50 percent.

Religious Land Use

Another component of the zoning issue relates to religious land uses. Most cities allow churches in most, if not all, zoning districts. If a city does not, it is usually for safety reasons. For example, it might be inappropriate to site a church in a heavy industrial district.

But churches are also generally subject to the same reasonable health and safety restrictions on churches that they impose on other property owners. For example, cities require churches to comply with subdivision ordinances and building codes.

In recent years, some religious organizations have claimed that cities are discriminating against them by enforcing zoning, subdivision, and building code requirements, even though these requirements are applied uniformly to all property owners.

The Texas Religious Freedom Act and the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) collectively provide that a governmental entity may not substantially burden a person's free exercise of religion through any exercise of governmental authority or implementation of a land use regulation unless the government demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

These Acts provide a method of redress for religious organizations that claim discrimination. For example, in the case of *Castle Hills First Baptist Church v. City of Castle Hills,* a federal trial judge ruled that the city is authorized to prohibit the major expansion of a church's parking lot. However, in the same decision, the judge ruled that the city's denial of the church's request for a specific use permit to use a fourth-floor storage area for a classroom is an impermissible burden on the free exercise of religion.

Between 2011 and 2017, the legislature considered several bills that would have amended the Texas Constitution by prohibiting a governmental entity from burdening an individual's right to act or refuse to act based on sincerely held religious belief unless the government demonstrated that it had a compelling governmental interest to do so and had used the least restrictive means to further that interest. None were successful. The resolutions seemed deceptively simple, but would overturn decades of judicial precedent relating to the right to practice religion. How? By removing one word: "substantially." The current-law judicial test for determining whether a government practice relating to religion is unconstitutional requires a "substantial burden" on a person's ability to practice his or her religion. Under that

test, uniform and generally-applicable regulations won't usually be found unconstitutional. For example, a municipal requirement that a place of worship obtain a building permit and comply with uniform building codes won't be unconstitutional, because it is not a substantial burden on a person's ability to build a worship facility. By removing "substantially," the resolutions would have struck down any ordinance that burdens religion by even a small amount.

In 2019, the legislature did pass a less expansive religious freedom-related bill. S.B. 1978 by Senator Hughes generally prohibited a governmental entity (including a city) from taking any adverse action against a person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

In 2021, against the backdrop of the COVID-19 pandemic, the legislature passed a handful of bills that declared religious organizations and places of worship as "essential," and therefore prohibit state and local governments from being able close down places of religious facilities and places of worship. But the legislation's language was quite broad and goes beyond prohibiting a state or city government from closing down a place of worship and religious facility during a pandemic. For instance, H.B. 1239 by Representative Sanford prohibited a government agency or public official from issuing an order that closes or has the effect of closing a place of worship. H.B. 525 by Shaheen provided that "at any time, including during a state of disaster, a governmental entity may not prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization's foundational faith-based mission and purpose."

In addition, the legislature also passed, and the voters approved, S.J.R. 27 by Senator Hancock, a constitutional amendment that would prohibit the state or a political subdivision of the state from enacting a regulation that prohibits or limits religious services in the state by a religious organization established to support and serve the propagation of a sincerely held religious belief.

Though S.J.R. 27 and the other bills mentioned above were framed as necessary to respond to shutdowns of religious institutions during the pandemic, the legislation clearly impacts the applicability of other non-pandemic-related regulations to religious organizations. The practical extent of these changes is not fully known, but cities can expect some degree of uncertainty on the limits of city regulations as applied to religious entities as the contours likely get litigated over the next several years.

While the legislature did not substantively address any religious freedom-related bills during the 2023 legislative session, religious freedom remains a central issue in many states, including Texas. Because of this, additional legislation in this area is possible in 2025.

The TML Legislative Program provides that the League should oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation; (2) eminent domain; (3) zoning; (4) regulatory takings; (5) building codes; (6) tree preservation; (7) short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

Regulatory Takings

The regulatory takings issue was first debated in 1995 and returned in 2005 when the legislature debated two bills that would have been problematic for most cities. H.B. 2833 and its companion, S.B. 1647, were known as the "takings" bills, and they would have subjected cities to the Texas Private Real Property Rights Preservation Act (Act).

The Act, first adopted in 1995, was designed to protect rural property owners from unnecessary governmental actions, by requiring that the state and certain political subdivisions (excluding cities) consider whether a proposed regulation might be a "taking" of private real property. Under the Act, a "taking" is an action that would reduce the value of a property by more than 25 percent. The Act's definition of a "taking" is different from how both the Texas and United States Supreme Courts define a "regulatory taking" as applied to cities. With respect to cities, courts examine whether a regulation prohibits all use or value of a property to determine whether the regulation constitutes a "regulatory taking."

More simply, the Act is known as a "pay or waive" law. That means a governmental entity subject to the Act has three choices when presented with a claim of reduced value from a landowner: (1) pay the alleged damages; (2) waive the regulations; or (3) litigate the claim. Disastrous experiments in other states with similar laws have shown that cities can't afford to litigate or pay bogus claims, and thus waive their regulations.

Cities are exempt from the law as a matter of public policy. People move to cities with the expectation that their property will be protected for the good of the city as a whole. Because of that expectation, cities regulate private real property in many ways, such as by zoning and platting; by regulating nuisances, sexually oriented businesses, setbacks, and landscaping requirements; and by adopting building codes.

Nevertheless, the legislature considered several bills between 2005 and 2015 that would subject cities to the Act, though interestingly there has not been legislation to do so since 2015. Over the years, certain groups tried to frame these bills as protecting rural residents. But quite the contrary, these proposals strike at the very reason cities are incorporated in the first place: to protect the property values and the health and safety of those living near one another.

The legislature has not introduced any such bills since 2015.

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Building Codes/Building Permit Fees

Building Codes

Uniform building codes can make construction and inspection easier and more cost-effective. However, uniform codes often do not take into account the different needs and challenges faced by communities with different climates, topography, and other geological features. For example, soil properties and conditions in North Texas differ greatly from soil conditions in the Valley. The flat topography of the Panhandle poses different challenges than the Hill Country in Central Texas. Because of this, cities must be allowed to amend mandatory uniform building codes to best meet their individual needs and challenges.

Before 2001, Texas did not have any statewide standards for residential or commercial buildings. Each city chose which, if any, building codes to apply within the city. The most common building codes were the Uniform Building Code and the Southern Standard Building Code. And cities would often amend these codes to best meet their local needs.

In 2001, in response to a strong push by homebuilders, the legislature passed S.B. 365.

This bill adopted the International Residential Code (IRC) and the National Electrical Code as the standard building codes for all residential construction in the state, including all Texas cities, starting January 1, 2002. However, S.B. 365 also allowed cities to adopt local amendments to these codes to address local needs.

That same year, the legislature passed S.B. 5, which adopted the Energy Efficiency Chapter of the IRC for all single-family residential construction, and the International Energy Conservation Code (IECC) for all other residential, commercial, and industrial construction in the state. Cities were required to establish procedures for the administration and enforcement of these new codes by September 1, 2001. And similarly to S.B. 365, cities could adopt local amendments to these codes to address local needs.

During the 2003 session, the legislature passed S.B. 283, which required any city that adopts a building code other than the International Residential Code to adopt and enforce prescriptive provisions for the rehabilitation of buildings or the rehabilitation code that accompanies the city's building code.

Before 2005, other than certain IECC provisions, no standard building code existed for new commercial construction. Many cities still used the Uniform Building Code or the International Building Code for commercial construction, while others adopted the newly-developed International Building Code.

In 2005 the legislature passed S.B. 1458, which adopted the International Building Code as the municipal building code in Texas for commercial and multi-family construction. The bill also provided that a city that had adopted a more stringent commercial building code before January 1, 2006, did not have to repeal that code and could adopt future editions of that adopted code. And like similar bills, a city could adopt local amendments to the code.

S.B. 1458 also provided that the National Electrical Code applied to all commercial buildings that were built on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

In 2009 a bill was filed that would have mandated extensive public notice and hearing requirements before a city could consider amendments to any of the adopted national building codes. The League, and other parties, were able to get several amendments incorporated into the bill, resulting in a negotiated compromise that all parties could live with.

As amended, S.B. 820 required cities with more than 100,000 people, on or before 21 days before taking action to consider, review, adopt, or amend a national model building code to: (1) publish notice of the proposed action on the city's website; and (2) make a reasonable effort to encourage public comment by those affected by the proposed change. On the written request of five or more people, to hold a public hearing on the proposed action at least 14 days before the city takes such action.

S.B. 820 also provides that if a city adopts or amends a national model building code ordinance, it must delay implementing and enforcing it for at least 30 days after adoption, unless such a delay would cause imminent harm to public health or safety.

The bill did contain one exception to these requirements. If a city had established an advisory board or substantially similar entity to obtain public comment on the proposed adoption of, or amendments to a national model building code, the above requirements did not apply.

In 2009, despite strong city opposition, the legislature passed another building code-related bill regarding state plumbing license requirements. S.B. 1410 made various changes

to the requirements to obtain a state plumbing license. Of interest to cities, the bill prohibited cities, after January 1, 2009, from requiring fire sprinkler systems be installed in new or existing one- or two-family dwellings. However, the bill did allow multipurpose residential fire protection specialists to offer to install, and install, a fire sprinkler system in a new or existing one- or two-family dwelling.

Before the 2017 legislative session, the City of Tomball requested that the League support removing the prohibition against local residential fire sprinkler ordinances. During the 2017 session, Representative Oliverson introduced H.B. 2814, which would have removed this prohibition. Unfortunately, this bill did not pass.

In 2015, the legislature considered S.B. 1679 by Senator Huffines, which would have required cities to prepare a cost-benefit analysis and hold two public hearings before being able to adopt any proposed amendments to the International Building Code. S.B. 1679 passed the Senate, but died in the House.

During the 2017 session, the legislature again considered new building code restrictions. S.B. 636 would have reduced the population threshold for the building code amendment notice requirements in S.B. 820 in 2009 from 100,000 to 40,000 people. The bill would require cities prepare a cost-benefit analysis for any building code amendments and scientific evidence supporting the need for amendments addressing existing or potential harm to public health or safety. Essentially the same bill was filed during the 2017 special session. Neither bill passed.

A significant piece of building code legislation passed in 2021 – H.B. 738 by Representative Paul. For more than two decades, state law referenced the older, 2001 and 2003 edition of the International Residential Code and International Building Code. H.B. 738 updated the law to require cities to use at least the 2012 versions of these codes. A city can still establish procedures to adopt local amendments "that may add, modify, or remove requirements" set by the codes, but only if the city holds a public hearing on the local amendment and adopts it by ordinance.

During the 2021 session, the legislature also passed S.B. 1210 by Senator Johnson, which prohibits the adoption or enforcement of any commercial or residential building code or other building-related requirement that prohibits the use of certain substitutes for hydrofluorocarbon refrigerants authorized under federal law.

One bill of interest that was filed in 2021 but did not pass was S.B. 1947 by Senator Springer. S.B. 1947 would have prohibited cites from: (1) denying a building permit solely because the city is unable to comply with the 45-day time period for granting or denying a building permit; or (2) requiring that a building permit applicant waive the 45-day building permit time period. The bill would also have repealed the statute allowing a city and applicant to reach a written agreement to provide an alternative deadline. S.B. 1947 passed the Senate, but it was never heard in a House committee.

In 2023, the legislature passed H.B. 3526 by Representative Raymond, which prohibits cities from applying any local building code to the construction or renovation of a solar pergola.

Building Permit Fees

Building permit fees vary widely based on several factors, including the number and type of inspections and the sophistication of the city's permitting process. But while there are no statutory permit fee caps, court cases have held that cities are prohibited from making a large profit from building permit fees. Under the common-law interpretation of a city's police powers, which include the power to adopt building codes and

related fees, a city cannot charge more than is reasonably related or necessary to administer such powers. If a city does so, the fee may be deemed an unconstitutional tax.

In 2019, the legislature passed H.B. 852 by Representative Holland, which prohibited cities from basing their residential building permit fees on the cost of the proposed structure or improvement. A city may also not require an applicant disclose information related to the value of or cost of constructing or improving a residential dwelling as a condition to obtaining a building permit except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program. New residential building permit and inspection fee determination options include square footage-based fees, a flat fee schedule, or any other non-cost-based and reasonable calculation.

The legislature passed two substantive bills related to city building permit fees during the 2023 legislative session.

The first bill – H.B. 1922 by Representative Dutton – requires a city to reauthorize or adopt new building permit fees at least once every ten years. If a city fails to do so, the building permit fee is deemed abolished. While this bill may sound substantial, it is unlikely to have much of a practical effect. Many cities already renew most cities fees every year as part of their annual budget process. Presumably, if a city's building permit fees are abolished for failing to timely reauthorize or adopt them, a city can simply reestablish the abolished fees at a subsequent meeting.

The second bill, H.B. 3492 by Representative Stucky, limits the amount of city permit fees for public infrastructure projects included as part of a subdivision development. H.B. 3492 prohibits a city from asking about or basing a permit or inspection fee for a public infrastructure project on the value of the infrastructure project. Instead, a city may only base its permit or inspection fees on a good faith estimate of the city's costs to process the application or conduct the inspection. This could include internal city employee costs or the cost for the city to hire a third party to perform the review or inspection. If the city uses internal employees to do so, it must also publish the fee and hourly rates it used to determine the fees in the local newspaper at least once a year. H.B. 3492 also prohibits a city from asking the applicant about the value of a public infrastructure project as a condition for approving a permit or inspection.

It is important to note that H.B. 3492 does not affect how much a city may charge for a commercial building permit. H.B. 3492 is limited to what fees a city may charge for a public infrastructure project as part of a subdivision, lot, or related property development. Similar to H.B. 852 from 2019, which prohibited cities from basing a residential building permit fee on the cost of the proposed structure or improvement, public infrastructure building permit and inspection fee options could likely include square footage-based fees, a flat fee schedule, or any other non-cost-based and reasonable calculation.

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The TML Legislative Program provides that the League should support legislation that would authorize a city council to opt-in to requiring residential fire sprinklers in newly constructed single-family dwellings.

Tree Preservation

Many Texas cities have enacted tree preservation ordinances. In fact, the City of San Antonio was sued regarding its requirements in the extraterritorial jurisdiction and ultimately won its case in 2009. Since, numerous bills have been filed that would limit cities' authority to enact tree preservation ordinances, culminating in a compromise bill passing in 2017.

In 2011, the legislature considered two bills which would have limited a city's authority to regulate tree preservation and removal. H.B. 1388 and its companion S.B. 732 were filed. The bills would have prohibited a city from regulating the planting, clearing, or harvesting of trees or vegetation or other uses of trees or vegetation on a particular tract of land in the city's extraterritorial jurisdiction. S.B. 1741, meanwhile, would have provided that if a city requires a permit applicant to pay the city or a third party a tree mitigation fee, the tree mitigation fee must be roughly proportionate to the impact the permitted activity would have on the public. None of the bills passed.

In 2013, the legislature took another shot at limiting city tree preservation authority. H.B. 1858 by Representative Workman would have allowed a property owner to cut down a tree on their property if the property owner believed the tree posed a fire risk, even if a municipal ordinance prohibited the cutting.

H.B. 1377 by Representative Kolkhorst would have gone much further. H.B. 1377 stated that a "landowner owns all trees and timber located on the landowner's land as real property until cut or otherwise removed from the land, unless otherwise provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document."

At first glance, this language may seem innocuous: all landowners do, in fact, own the trees on their property. When the bill was considered by a House committee, the author claimed that the bill simply codified the current common law (i.e., court cases) in Texas. But from a legal standpoint, it actually did the opposite, and would have radically changed longstanding common law relating to trees and property value.

For constitutional "regulatory takings" purposes, trees can be one factor included when determining the value of land, but for compensation purposes, the value is decided based on the *total market value* of the land. A tree preservation ordinance that prohibits a person from cutting down one or even several trees will not usually rise to the level of a regulatory taking that requires compensation, because it doesn't render property valueless or unreasonably interfere with the use of property.

H.B. 1377 would have radically changed that. The "ownership provision" would make *each individual tree* subject to a regulatory takings analysis. So, a city could potentially have to pay an owner for the value of each tree affected by its tree preservation ordinance, or else waive its regulation. Because most cities cannot afford to make such payments, the bill would have forced most cities to waive their tree preservation regulations.

The Georgia Supreme Court considered a similar argument from the Greater Atlanta Homebuilders several years ago. The homebuilders lost, and the court sensibly explained why:

> [T]he Tree Ordinance does not destroy [a developer's] ability to develop its land; it only regulates the way in which new and existing trees must be managed during the development process. [Developers] have failed to show that the Tree Ordinance destroys its ability to develop land…While the Tree Ordinance may impose some

> additional costs and thus diminish the ultimate value of [developers'] land, "[m]any regulations restrict the use of property, diminish its value or cut off certain property rights, but no compensation for the property owner is required.

League staff and a number of city officials testified in opposition to H.B. 1377 at the committee hearing. Ultimately neither bill filed in 2013 passed, but the issue was back in 2015. H.B. 1442 by Representative Workman would have provided that a city, county, or other political subdivision may not enact or enforce any ordinance, rule, or other regulation that restricts the ability of a property owner to remove a tree or vegetation on the owner's property that the owner believes poses a risk of fire to a structure on the property or adjacent property, with certain exceptions. The bill was heard in committee, but never voted out.

In 2017, the legislature considered several bills designed to preempt city tree preservation ordinances. Senator Campbell also requested an attorney general's opinion about whether current law prohibits cities from protecting trees.

One way the League sought to counter this tree preservation ordinance preemption trend was to enlist the help of a nationally-recognized law professor to submit comments on Sen. Campbell's attorney general opinion request. In a letter to the attorney general, Professor John Echeverria of Vermont Law School stated that his "legal research has revealed that courts across the country have so far been unanimous in their judgment that municipal tree preservation ordinances do NOT result in a taking or otherwise unconstitutionally impair private property rights."

The attorney general released KP-155 roughly a month after the request was submitted. KP-155 summarized the relevant law, but because of the complexity of the regulatory takings analysis and application of that analysis to different fact patterns, the opinion mostly stated the obvious:

If a municipal tree preservation ordinance operates to deny a property owner all economically beneficial or productive use of land, the ordinance will result in a taking that requires just compensation under article I, section 17 of the Texas Constitution.

While most of the tree preservation bills died, the legislature did ultimately pass one bill. S.B. 744 by Senator Kolkhorst, shepherded by then Representative Dade Phelan (now Speaker of the House), was a compromise bill negotiated between home builders, cities, environmentalists, and others. Governor Abbott vetoed the bill stating: "I applaud the bill authors for their efforts, but I believe we can do better for private property owners in the upcoming special session." The governor added the issue to his special session agenda in the summer of 2017.

Representative Phelan stuck with the version he and stakeholders had worked so hard on during the regular session. The legislature passed the exact same bill in the special session, and the governor did not veto it this time around. H.B. 7 provided, among other things, that a city could generally impose a tree mitigation fee for tree removal on a person's property or allow a person to apply for a credit for tree planting to offset the amount of the fee. The bill provided that a city may not prohibit the removal of a tree or impose a tree mitigation fee for certain diseased, dead, or dangerous trees. And importantly, the bill did not outright preempt cities' tree preservation ordinances.

Interestingly, the legislature did not file any bills that directly addressed city authority to adopt a tree preservation ordinance in 2019 or 2021.

In 2023 Representative Troxclair filed H.B. 2239, which would have prohibited cities from preventing a property owner or resident from

removing an Ashe juniper tree (commonly known as a cedar tree) on a residential property that is less than five acres and contains an existing one or two-family residential dwelling. The bill passed the House and was reported favorably from the Senate Local Government Committee. However, the full Senate never considered the bill.

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Short-Term Rentals

Cities nationwide have experienced issues with short-term home rentals (STRs), largely due to the proliferation of websites such as Airbnb and VRBO. These problems range from uncollected hotel taxes to STR guests that disrupt the neighborhood environment. Many cities have adopted ordinances to try to address these problems.

The legislature first considered STR legislation in 2015 in the form of H.B. 1792 by then-Representative Springer, which would have treated STRs like commercial lodging establishments and expressly authorized more stringent city regulation. The next session, some STR companies began promoting legislation to prohibit or preempt any city regulation of STR properties. In particular, S.B. 451 by Senator Hancock would have preempted a city's authority to regulate STRs.

For a time, the City of Austin was at the forefront of local STR regulations. After revamping its STR ordinance in February 2016, several STR owners, represented by attorneys from the Texas Public Policy Foundation (TPPF), sued the City of Austin. TPPF's petition claimed that:

> [T]he City's STR Ordnance violates a host of rights arising under the Texas Constitution — including property owners' rights under the equal protection and due course of law clauses of the Texas Constitution, as well as tenants' rights to the freedom of movement, privacy, and assembly. In addition, the STR Ordinance exceeds the City's zoning powers. The STR Ordinance prohibits short-term rentals in previously-permitted residential areas, phases out existing, lawfully operating short-term rental properties, restricts the number of people allowed to step foot on any short-term rental property, dictates the movement and association of "assemblies" in short-term rentals, and sets a bedtime for tenants. The City cannot carpet bomb the constitutional rights of short-term rental owners and lessees under the auspices of zoning or code enforcement. Such regulations violate the Texas Constitution and must be struck down.

In 2019, the legislature considered H.B. 3773 by Representative Button, which the STR industry characterized as creating "guardrails" for city regulation. The bill included numerous provisions, some of which even expressly granted authority to cities. The key feature of H.B. 3773 was a preemption clause that provided that a city may not: (1) adopt or enforce an ordinance, rule, or other measure that: (a) prohibits or limits the use of property as a STR unit; or (b) is applicable solely to STR units, or STR unit providers, short-STR unit tenants, or other persons associated with

STR units; or (2) apply a municipal law, including a noise restriction, parking requirement, or building code requirement, or other law to STR units or STR unit providers, STR unit tenants, or other persons associated with STR units in a manner that is more restrictive or otherwise inconsistent with the application of the law to other similarly situated property or persons.

This provision essentially meant a city would be unable to regulate STRs. After much negotiation and a long committee hearing, the bill died.

After the 2019 session, the Third Court of Appeals in Austin held that certain portions of the City of Austin's STR ordinance were unconstitutional. The ordinance provided for the eventual elimination of certain STRs in residential neighborhoods and prohibited certain types of gatherings. It was these last provisions that were subject to legal challenge.

The Court specifically struck down a provision terminating all "type-2" rentals in residential areas by 2022. (Under the Austin ordinance, a "type-2" rental is a single-family residence that is not owner-occupied and is not associated with an owner-occupied principal residential unit.) The Court also struck down provisions limiting certain conduct and assembly at STR properties, including prohibiting any assemblies between the hours of 10:00 p.m. and 7:00 a.m., prohibiting outdoor assemblies of more than six adults between 7:00 a.m. and 10:00 p.m., and prohibiting more than six unrelated adults or ten related adults from being present on the property at any time.

What did this opinion mean for Texas cities? It certainly calls into question a city regulation that either: (1) bans STRs to any degree, in particular those existing at the time the regulation is adopted; or (2) limits the ability of people to assemble at STR properties.

An STR ordinance is a perfect example of a local decision that is best made at the local level. Not every city has an issue with STRs. But in high-tourist areas and neighborhoods, city councils are the first ones to hear from residents about any potential problem. City councils don't adopt STR ordinances on a whim. They so after numerous complaints and after hours of deliberation and testimony from STR owners, renters, and neighbors alike. This includes testimony from citizens about de-facto hotels in the form of STRs locating in otherwise quiet family neighborhoods. The ordinances that are ultimately adopted represent tailored responses to a uniquely local issue.

The same STR legislation was refiled in 2021 in the form of H.B. 1960 and H.B. 1961, both by Representative Beckley. According to the bill's author, these were refiled as placeholders for city-friendly STR legislation that would be substituted for the original language in committee. However, because the bills never received a committee hearing, that plan never came to fruition.

The only STR bill to receive a hearing in 2021 was H.B. 2515 by Representative Shaheen, which was supported by a number of cities. H.B. 2515 would have, among other things provided that: (1) upon receiving notice of a third violation of a municipal ordinance within a one-year period involving a STR unit that is listed by a STR unit listing service, the listing service shall remove the unit from the listing service's Internet website, application, or other online platform for at least 30 days; (2) certain individuals may bring an action for appropriate injunctive relief against the owner of a STR unit that is the subject of three or more violations of city ordinances and the person may seek to recover reasonable attorney's fees and court costs; and (3) a city must provide written notice to a STR unit listing service for a violation of a city ordinance involving a STR unit listed on the listing service.

H.B. 2515 did not make it out of committee, but the fact that this beneficial legislation was the only

STR bill to move at all in 2021 was promising. In their written comments to the committee opposing H.B. 2515, a representative of Expedia (who owns VRBO and HomeAway) wrote:

Local governments currently have the ability to regulate short-term rentals in a manner that meets their unique needs. Expedia Group is proud to partner with municipalities throughout Texas to support sustainable regulations that meet community needs and protect the integrity of neighborhoods while providing a consistent source of vital revenue for Texans, municipalities, and the state.

More recent litigation involving two Texas cities and the City of New Orleans has continued to shape the STR policy debate.

In 2021, the Texas Second Court of Appeals upheld the trial court's ruling that the City of Grapevine's STR ordinance which expressly prohibited STRs anywhere in the city may constitute a regulatory taking that would entitle property owners to compensation for the loss of being able to use their property as an STR. But that same year, the same court also upheld a trial court's ruling allowing the City of Arlington to prohibit STRs outside of a defined STR zone (which effectively prohibited STRs in most residential areas).

In 2022, the Fifth Circuit Court of Appeals struck down part of the City of New Orleans's STR ordinance which required that a person could only receive an STR license if the STR was located on the same lot as the STR owner's primary residence and homestead. The Court held that the residency requirement violated the dormant commerce of the U.S. Constitution by restricting interstate commerce by discriminating against out-of-state STR owners.

Following these cases, statewide STR preemption reared its head again in 2023. H.B. 2665 by Representative Gates would have prohibited cities from adopting or enforcing any local STR regulations that prohibit or limit the operation of an STR, regulate how long somebody may rent out an STR, or impose STR-specific occupancy limits. H.B. 2665 would also prohibit local STR regulations except for registration, tax, and responsible entity-related regulations.

H.B. 2665, as filed, did not make much progress. The bill faced strong opposition from cities and neighborhood-focused organizations. Because of this, the House committee made several changes to the bill, many of which were very city friendly. The bill eventually morphed into a study on statewide STR regulations. H.B. 2665 finally passed the House, but it was not heard in the Senate.

Another bill, H.B. 3169 by Representative Landgraf, was drafted to largely preempt STR regulations in a single small city outside of Austin. The bill made it out of committee but was killed by a point of order on the House floor.

The legislature also addressed an emerging form of short-term property-related rentals – renting out non-sleeping accommodations on a residential property or "residential amenities." Several companies facilitate property owners' temporary rental of their backyards, garages, and swimming pools, among other amenities. H.B. 2367 by Representative Lozano would have preempted cities from prohibiting or limiting property owners from renting out certain residential amenities for less than 15 hours. Strong opposition ultimately defeated H.B. 2367 as well.

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short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

Subdivision Platting

In 2019, the legislature passed H.B 3167 by Representative Oliverson, which made numerous changes to the city site plan and subdivision platting approval process. These changes required most cities to substantially amend their zoning and subdivision ordinances and unified development code approval processes.

Why was the bill needed? The bill analysis for H.B. 3167 stated that:

> Concerns have been raised regarding the process for plat and land development application approval by political subdivisions. It has been suggested that some political subdivisions circumvent statutory timelines for approving an application by simply denying the application with generic comments that do not fully address specific deficiencies with the application. C.S.H.B. 3167 seeks to provide greater certainty and clarity for the process by setting out provisions relating to county and municipal approval procedures for land development applications.

In other words, H.B. 3167 was meant to force cities to speed up the site plan/subdivision plat approval process by imposing a 30-day shot clock, and provide more information when it denies a plan or plat. In some cases, the bill's new framework created more red tape that slows the process down and/or results in substandard planning.

Following the passage of H.B. 3167, the ability of cities to require an administrative completeness review prior to submission of a plat or plan started to get questioned. Because of the new 30-day shot clock, many cities found they could only comply with the shortened timeframe by requiring developers to comply with certain prerequisites prior to accepting a plan or plat application. This includes documents like traffic analyses, drainage studies, utility evaluations, and certain federal permits. In 2020, Senator Hughes requested an attorney general's opinion on whether these completeness reviews were permissible.

In January 2021, the attorney general released KP-349, which addresses a city's ability to require a developer to complete certain prerequisites before the city accepts an application. The attorney general opined that there's nothing within the statutory framework created by H.B. 3167 that prevents a city from requiring a developer to complete certain prerequisites prior to acceptance of a plan or plat application:

> Subsections 212.009(a) and 232.0025(d) require the local authority responsible for approving plats to approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. A court is unlikely to construe the language of those provisions to prohibit local authorities from requiring reports or studies to be completed prior to the submission of a plan or plat.

In response to both KP-349, as well as to fix some of the unintended consequences of H.B. 3167 (including state-mandated red tape and an endless cycle of application denials and resubmissions) developer groups filed a handful of bills in 2021. H.B. 4447 by Rep. Oliverson would have, among other things, prohibited a city planning commission or the city council from requiring a person to submit or obtain approval of a required planning document or fulfill any other prerequisites or

conditions before the person files a copy of the plan or plat with the entity. The bill was substituted before its committee hearing to go even further and apply to all "land development applications" and not just plat or plan applications. There was a significant amount of city opposition to the bill, and though it was voted out of committee, the bill did not make it to the House floor.

The Senate also tried to address the conclusion reached in KP-349 by adding a floor amendment to another land-use related bill. S.B. 1947 by Senator Springer would have prohibited a city planning commission or city council from requiring a person to submit or obtain approval of any document or fulfill any other prerequisites or conditions before the person filed a copy of the plan or plat with the city planning commission or city council. The Senate version of the bill was never heard in House committee. Legislators attempted to file a similar bill during 2021 special sessions as well, but because the shot clock issue was not on the governor's special session agenda, the legislature could not legally consider the issue.

In addition to testifying against many of the above bills last session, city officials also proposed several solutions to address many of the issues that cities and developers jointly face due to the one-size-fits-all nature of H.B. 3167. These compromises included allowing cities and developers to jointly agree to extensions of time when necessary to consider a plat or plan application and other related documents. Cities also proposed allowing city councils to delegate plat or plan approval to city staff to help streamline the rigid process in H.B. 3167. While there was no indication that those proposals were acceptable to the bill authors, these types of proposals (among others) represented good faith attempts to give cities the flexibility to work with the development community and served as a jumping off point for legislation in 2023.

In response to complaints by cities and builders, the League and the Texas Association of Builders worked together to propose changes to the permitting and platting shot clock. These changes included: (1) removing plans from the shot clock requirement; (2) allowing cities to delegate plat approval to staff; and (3) authorizing a city and applicant to extend the shot clock by agreement for multiple 30-day periods. Representative Oliverson incorporated these proposed changes into H.B. 866 filed during the 2023 legislative session.

In the final days of session, the negotiated provisions in H.B. 866 were incorporated into H.B. 3699 by Representative Wilson, which ultimately passed and was signed into law. The final version of H.B. 3699 represents a bit of a mixed bag when it comes to improving the plat review process. H.B. 3699: (1) expressly removed plans from the thirty-day shot clock; (2) allowed cities to delegate plat approval to city staff; (3) authorized cities and applicants to agree to extend the shot clock for multiple 30-day periods; and (4) allowed cities to use application submission calendars to help align application review with city planning commission or city council meeting schedules.

On the other hand, H.B. 3699 also prohibits cities from requiring an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly allowed by state law. However, it is important to note, that the bill does not prohibit a city from requiring certain documents for approval, but only prohibits a city from requiring such documents before an applicant may file an application. A city still retains the authority to deny an application if it determines that the applicant failed to provide sufficient information to approve an application.

One additional bill to note that passed in 2023 was H.B. 14 by Representative Cody Harris, which

dealt with third party review of plan and plat applications. H.B. 14 provides that if a city fails to approve, disapprove, or conditionally approve a development document by the 15th day following a date prescribed by a provision of the Local Government Code for the approval, conditional approval, or disapproval of the document, the review may be completed by a qualified third party. What statutory deadlines are being referred to in the bill? The most well-known example is the 30-day shot clock for plat approvals under Local Government Code Section 212.009. Another 45-day shot clock exists for the issuance of city building permits in Sec. 214.904 of the Local Government Code. If a city misses either of these statutory deadlines, and still is unable to process the development document for another 15 days, then the applicant could engage a qualified third party to conduct the review.

It is unclear what, if any, effect H.B. 14 will have on plat application reviews because, under Local Government Code Sec. 212.009, an application is deemed approved by law if a city does not deny the application within 30 days of filing.

Additionally, the bill also creates a third-party inspection process for "development inspections" required as part of a project to develop land or construct improvements to land. Echoing the review process, if a city fails to conduct a required development inspection by the 15th day following a statutory deadline, the inspection may be conducted by a qualified third-party. One difference from the development document review process, however, is that the Local Government Code contains no statutory deadline for conducting a development inspection. This raises questions about how the third-party inspection process could be triggered under the bill. If there's no statutory shot clock or other deadline in the Local Government Code for conducting a city development inspection, then arguably a third-party inspection could never be initiated under the bill.

The TML Legislative Program provides that the League should support legislation that would make beneficial amendments to H.B. 3167 (2019), the subdivision platting shot clock bill.

Building Materials

H.B. 2439 by Representative Dade Phelan passed in 2019. The bill garnered much negative attention from city officials and residents. It generally provided – with some exceptions – that a governmental entity, including a city, may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that: (1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or (2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. A rule, charter provision, ordinance, order, building code, or other regulation adopted by a city that conflicts with the bill is void.

According to the Texas House Business and Commerce Committee Report, H.B. 2439 was necessary to help boost housing supply:

> There have been concerns raised regarding the elimination of consumer and builder choice in construction through overly

> restrictive local municipal zoning ordinances, building codes, design guidelines, and architectural standards. Critics argue that these restrictive ordinances, codes, guidelines, and standards create monopolies, increase the cost of construction, and ultimately price thousands of Texans out of the housing market. C.S.H.B. 2439 seeks to address these concerns and eliminate the ability of a governmental entity to enact overly restrictive, vendor-driven building regulations.

The suggestion was that cities were enacting ordinances that required builders to use products available from only one or a few sources to benefit those vendors. Of course, the bill goes significantly further than prohibiting just that. Since the bill's passage, legislators have heard from city officials about the bill's detrimental effects.

A 2021 attorney general's opinion addressed the question of whether a whether a city was prohibited by Section 3000.002 of the Government Code (the ban on city regulation of building standard or aesthetic method that is more stringent than a standard in a model code) from adopting paint color and pattern requirements. In KP-370, the attorney general opined that a court could consider this to be an aesthetic method standard, but that the model codes' silence as to color palette and pattern could mean that the requirement is allowed. The attorney general determined that an "aesthetic method" concerns procedures or processes to satisfy considerations of beauty or appearance in building construction, renovation, maintenance, or other alterations. The attorney general ultimately concluded that whether such a requirement was prohibited was a fact question that could not be addressed in the opinion process.

While cities can continue to adopt amendments to their building codes that don't conflict with the prohibitions adopted by H.B. 2439 and can have limited control over building materials or construction methods if done pursuant to a written agreement, the reality is that cities now have much less authority over building materials and aesthetic methods than they did prior to 2019.

In 2021, the legislature passed S.B. 1090 by Senator Buckingham expanding certain exceptions to the restriction on city regulation of building materials. Specifically, the bill broadened an exception for Dark Sky Communities to allow those cities that have adopted a resolution stating the city's intent to become certified as a Dark Sky Community to regulate outdoor lighting in a manner required to become certified. In addition, the bill created an exemption for a city that implements a water conservation plan or program that requires a standard for a plumbing product, or if the Texas Water Development Board (TWDB) requires the use of a standard for a plumbing product as a condition for a TWDB program.

In 2021 Representative Murr filed H.B. 233, which would have exempted all cities under 25,000 from the prohibition against city regulation of building materials and methods. H.B. 233 getting filed was a welcome sight for many small cities in Texas. Unfortunately, the bill never received a committee hearing.

The lack of progress for any wholesale revisions to the restrictions on city regulation of building materials wasn't surprising given that the author of H.B. 2439 in 2019, Representative Dade Phelan, ascended to Speaker of the House in 2021. Nevertheless, the passage of S.B. 1090 in 2021 indicates a willingness of the legislature to pass sensible exemptions to the prohibitions from H.B. 2439 when warranted.

When tornadoes swept through Central Texas in March 2022, an editorial in the *Austin- American*

Statesman called for legislation authorizing local governments to reinstate certain building standards necessary to protect city residents against extreme weather events. Addressing H.B. 2439 directly, the article stated: "State and local lawmakers should ask themselves if they are unnecessarily forsaking safety to appease developers who want to save money on construction costs. With a booming construction industry and strong economy, Texas should be able to produce affordable homes that don't skimp on safety."

In 2023, S.B. 2453 by Senator Menendez would have allowed cities to require new construction builders to comply with state-approved energy codes and energy and water conservation design standards, including using code and design standard-compliant building materials. After being approved by the Senate and House State Affairs committee, S.B. 2453 advanced to the House floor. It was there that a very good floor amendment was added to the bill. Representative Donna Howard proposed exempting single-family residential homes in cities with a population under 20,000 from the building materials preemption statute. The House approved the amendment 78 to 62 on second reading. Unfortunately, the House came back the next day and removed the amendment on third reading so as to ensure the bill's final passage.

In the end, removing the House floor amendment didn't help the bill's prospects. Governor Abbott ultimately vetoed S.B. 2453. The governor's veto was part of his veto of over seventy bills to encourage the legislature to pass a property tax relief bill. The governor's veto message did not challenge the bill's substance but instead simply stated that:

> While Senate Bill No. 2453 is important, it is simply as important as property taxes. At this time, the legislature must concentrate on delivering property tax cuts to Texans. This bill can be reconsidered at a future special session only after property tax relief is passed.

Unfortunately, Governor Abbott did not include S.B. 2453 in the call of any of the 2023 special sessions. Still, there remain reasons to be optimistic that the legislature will be willing to consider modifications to the building materials preemption law moving forward into 2025.

The TML Legislative Program provides that the League should support legislation that would make beneficial amendments to H.B. 2439 (2019), the building materials bill.

Texas Commission on Environmental Quality Permitting of Rock Crushing Operations

Section 382.05195 of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality (TCEQ) to issue a standard permit for certain activities, including rock crushing operations, cement crushing operations, and other projects within a city's corporate limits or extraterritorial jurisdiction (ETJ) without the city's consent and without a contested case hearing.

Over the last few years, cities across the state have begun to see a proliferation of rock crushing operations permitted by TCEQ within a city's corporate limits and ETJ without the city's consent.

In 2021, Representative Wilson filed H.B. 1912, which would have required TCEQ to notify a city of a TCEQ hearing if they are considering a permit for a rock crushing or concrete crushing plant within a city's corporate limits or ETJ. The bill would have also prevented TCEQ from issuing or renewing a permit for a facility if the requirements of that notice had not been met. Unfortunately, H.B. 1912, and other similar bills did not pass.

Several similar rock and concrete crushing plant-related bills were filed in 2023. But only one such bill passed. S.B. 1399 by Senator Schwertner required TCEQ to conduct a protectiveness review of any permanent concrete plant permit for plants that perform wet batching, dry batching, or central mixing, at least once every six years. The review must include reviewing available information regarding the background concentrations of air pollutants. After this review, TCEQ may decide whether to allow the facility to continue to operate, amend the permit requirements, or halt operations. If TCEQ decides to amend the permit after the protectiveness review, it must provide the facility with a reasonable time to comply with the new requirements. The facility may continue to operate as before until such a deadline.

Unfortunately, Gov. Abbott vetoed the bill claiming that it "appears to add more bureaucracy and cost."

But the legislature made some progress on this issue as part of the TCEQ sunset bill. The TCEQ sunset bill – S.B. 1397 by Senator Schwertner – contained several provisions, including extending TCEQ for another ten years, and made several changes to certain TCEQ notice requirements, permit review procedures, and enforcement protocols. One of these changes was to establish a new standard permit for temporary concrete batching plants that perform wet batching, dry batching, or central mixing for a public works project. The bill also stated that any such plant must be directly related to a public works project and be located within or contiguous to the right-of-way of the public works project. During the House floor debate, Rep. Keith Bell successfully added an amendment to the bill. Rep. Bell's amendment required TCEQ to develop a manual of best practices for aggregate production operations (which include concrete batch plants) regarding dust control, water use, and water storage. TCEQ would also have to make this manual available on its website.

In April 2024, Lt. Gov. Patrick issued an interim charge to the Senate Natural Resources and Economic Development Committee to:

> [e]xamine the impact of permanent concrete production plants on local communities[] . . . [and] [m]ake recommendations to ensure they are strategically situated and uphold community standards while also fostering economic development.

Shortly after, Lt. Gov. Patrick sent a letter to TCEQ Chairman Jon Niermann asking TCEQ to "immediately pause the permitting process for all permanent cement production plants statewide until the legislature can weigh in." He explained that "[d]uring the upcoming legislative session, beginning in January 2025, the legislature must be able to provide guidance on the permanent cement production plant permitting process and the location of new plants."

The health hazards posed by concrete batching plants remain a key issue for many legislators. City officials should anticipate additional legislation in 2025 to strengthen city and public input on when and where these plants may be located.

The TML Legislative Program provides that the League should support legislation that would require city consent before TCEQ is authorized to issue a standard permit for a rock crushing operation, cement crushing operation, or any similar activity that may be authorized under a standard air permit from TCEQ within the corporate limits or ETJ of a city.

Alternatively, or in addition, such legislation may: (a) authorize a city to restrict, prevent, or regulate the location of such activities in the city's corporate limits or ETJ in other manners, such as imposing minimum distance from such operations and schools, hospitals, churches,

and residences; (b) require TCEQ to provide notice of applications for standard permits to cities for activities proposed in the city's corporate limits or ETJ and require TCEQ to address any and all comments received from the city as required by Sec. 382.112 of the Texas Health and Safety Code; or (c) prohibit TCEQ from issuing a standard permit for activities proposed in the city's corporate limits or ETJ unless the city verifies that the proposed activity is authorized under the city's zoning ordinance or comprehensive plan to locate at the proposed location.

HUD-Code Manufactured Homes

In 2023, the legislature considered another approach to help address rising home costs – allowing for more flexible placement of HUD-code manufactured housing. H.B. 2970 by Representative Guillen would have required a city to allow the placement of a HUD-code manufactured home in any zoning district that allows detached single-family or duplex dwellings if the owner elects to treat the manufactured home as real property. A city also could not adopt a regulation that imposes any requirements on a manufactured home that is more stringent than those that apply to new single-family or duplex dwellings at that location. However, a city could adopt regulations that required a HUD-manufactured home to: (1) comply with the city's site requirements for a single-family dwelling; (2) be securely placed on a permanent foundation; and (3) have compatible exterior features and a value equal or greater than the median value of all single-family dwellings within 500 feet.

The bill's supporters claimed that expanding where people may place HUD-code manufactured housing would provide homebuyers a less expensive alternative to traditional single-family homes.

State statute currently requires cities to permit the installation of a HUD-code manufactured home for use as a dwelling in any area determined appropriate by the city. City decisions on appropriate areas for HUD-code manufactured housing are made after receiving input from professional planning staff and city residents. Allowing manufactured homes in almost all residential zoning districts by right would completely disregard these important planning considerations. And while the bill did allow for some city regulations to help address concerns, the permissible city regulations in the bill likely would not go far enough in many communities to preserve local decision making.

H.B. 2970 passed the House by more than 100 votes. However, it stalled out in the Senate Local Government Committee.

In February 2024, the *Texas Tribune* published an article detailing the policy considerations facing a small East Texas town that decided to ban mobile homes and HUD-code manufactured homes in the city limits. The article highlighted mobile homes and HUD-code manufactured homes as an important component of affordable housing, especially in rural communities. Given continued affordable housing concerns, it is very likely legislation to lessen city authority over HUD-code manufactured homes is introduced during the 2025 session.

Municipal Utility Districts

A municipal utility district (MUD) is a property owner-initiated political subdivision created to provide utility services, usually water and sewer, to a specific area. A MUD can be established either by special legislation or by the Texas Commission on Environmental Quality (TCEQ). The process to establish MUDs through TCEQ has sometimes proved contentious for cities over the years. State statute provides that land within the corporate limits of a city or within the ETJ of a city may not be included in a district unless the city grants its

written consent. Nevertheless, it is possible for the MUD to be created by TCEQ in a city's ETJ over the city's objection upon a showing that the city does not have the ability to provide utility services to the area.

The TCEQ first appoints the initial five-member MUD board of directors. MUD board members serve unpaid four-year terms. State law requires that initial board members reside in or adjacent to the county where the MUD is located, subject to certain conflicts of interest requirements. However, these requirements may be waived if TCEQ cannot find eligible candidates. Residents of the district later vote in elections for the five positions.

MUDs may exercise most of the same powers as a political subdivision, including eminent domain. MUDs are also subject to the Open Meetings Act and Public Information Act. MUDs must hold regular public meetings. MUD meetings may be held outside of the MUD district, but the MUD board must provide notice in a public place within the district.

In 2022, the League adopted a couple of new MUD-related positions. One position came out of the Policy Summit and directed TML to support legislation that gives cities more input in the MUD development process within the city limits and the ETJ, including legislation that promotes additional transparency in the process for cities and city residents. TML also adopted a resolution from the City of Fate to support legislation that adds safeguards to the formation of new MUDs through the Texas Commission on Environmental Quality process, limits MUDs administrative costs, requires MUDs to meet in the cities they tax from, coordinate with local cities or counties on MUD board elections, and provide additional financial information to citizens in an open and transparent manner.

The legislature filed several MUD-related bills during the 2023 legislative session. For example, H.B. 1852 by Representative Holland would have prohibited TCEQ from being able to create several different kinds of special districts, including MUDs. S.B. 1569 by Senator Campbell would have required county commissioner court review for any petition to create a MUD. H.B. 2667 by Representative Rosenthal would have limited MUD tax rates to $1.00 per $100 of taxable value. H.B. 2784 by Representative Holland would have imposed several limits on MUD bonds, including requiring a two-thirds vote to approve a MUD bond. Lastly, H.B. 5222 by Representative Cecil Bell and S.B. 2349 by Senator Bettencourt would have, among other things, shortened the time that a city had to decide whether to consent to creating a MUD, removed the city consent requirement for MUDs in a city's corporate limits, and limited a city's land use authority in MUD districts. None of these bills received a hearing.

Two MUD-related bills did receive a hearing. S.B. 917 by Senator Hall and H.B. 1312 by Representative Vasut would have required that MUDs hold their public meetings at a publicly available location within five miles of the MUD district. Neither bill made it out of committee.

The legislature only passed one MUD-related bill in 2023. H.B. 2815 by Representative Jetton, among other things, allows a city and a MUD to enter into an allocation agreement under certain conditions, and allows a MUD to undertake a road project within the district subject to TCEQ approval.

The TML Legislative Program provides that the League should support legislation that would: (1) give cities more input in the municipal utility district development process within the city limits and ETJ, including legislation that promotes additional transparency in the process for cities and city residents; and (2) add safeguards to the formation of new

municipal utility districts (MUDs) through the Texas Commission on Environmental Quality process, limit MUDs administrative costs, require MUDs to meet in the cities they tax from, coordinate with local cities or counties on MUD board elections, and provide additional financial information to citizens in an open and transparent manner.

Agricultural Operations

In 1981, Texas passed the Right to Farm Act (RFA). The RFA's purpose was to "conserve, protect, and encourage the development and improvement of agricultural land for the production of food and other agricultural products." The RFA sought to achieve this by limiting when agricultural operations were subject to nuisance lawsuits and regulations.

When initially passed, the RFA provided that "agricultural operations" included: (1) cultivating the soil; (2) producing crops for human food, animal feed, planting seed, or fiber; (3) floriculture; (4) viticulture; (5) horticulture; (6) silviculture; (7) wildlife management; (8) raising or keeping livestock or poultry; and (9) planting cover crops or leaving land idle for the purposes of participating in any governmental program or normal crop or livestock rotation procedure.

The RFA prohibited cities from enforcing city regulations against agricultural operations in the city's ETJ. If a city later annexed an agricultural operation into the city, it would need to show that the regulation was reasonably necessary to protect people who reside or are on public property in the immediate vicinity from imminent danger of a list of specific harms. The specific harms included explosion, flooding, vermin/insect infestation, physical injury, contagious disease, radiation, water contamination, improper storage of toxic materials, traffic hazards, and discharge of firearms or other weapons.

In 2023, Representative Burns filed H.B. 1750, which expanded the RFA in several ways. First, H.B. 1750 expanded the definition of agricultural operations to include producing crops for livestock or wildlife management foraging and providing veterinary services. H.B. 1750 also applied the RFA to any agricultural operation within city limits. Additionally, the bill imposes a heightened standard when applying a city regulation. Under the bill, a city regulation may be applied to an agricultural operation in the city limits only if there is clear and convincing evidence that: (1) the purpose of the requirement cannot be addressed through less restrictive means; and (2) the requirement is necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the imminent danger of specific harms spelled out in the statute.

Now, before a city can enforce regulations against any agricultural operation in the city:

- a city health officer or consultant must make a report indicating that the agricultural operation poses an imminent threat of one or more of the specific harms and why and how enforcing the regulation is necessary to address the threat; and
- the city council must adopt a resolution making a formal finding that the agricultural operation poses an imminent threat.

H.B. 1750 also prohibits a city from imposing a regulation on any property that directly or indirectly: (1) prohibits the use of a generally accepted agricultural practice that the Texas A&M AgriLife Extension states does not pose a threat to public health; (2) prohibits or restricts growing or harvesting vegetation for animal feed, livestock forage, or wildlife forage; (3) prohibits the use of pesticides or other measures necessary to prevent a vermin or insect infestation; or (4) requires that an agricultural use also be designated for

agricultural farm, ranch, or wildlife management use for property taxation purposes.

H.B. 1750 does allow a city to regulate maximum vegetation height for agricultural operations if:

- the regulation only applies to portions of an agricultural operation no more than 10 feet away from a property line adjacent to a public sidewalk, street, or highway, or a property owned by someone else and contains an inhabited structure; and
- the maximum vegetation is not less than 12 inches.

In addition to H.B. 1750, Representative Burns also filed H.J.R. 126 – a constitutional amendment protecting the right of Texans to engage in generally accepted farming, ranching, timber production, horticulture, and wildlife management practices on property they own or lease. Over three-quarters of voters approved H.J.R. 126 (Proposition No. 1) on November 7, 2023.

While the amendment protects property owner's right to engage in certain agricultural activities, the amendment expressly does not prohibit the state or political subdivisions from enforcing laws or regulations that may impact such activities when: (1) there is clear and convincing evidence that doing so is necessary to protect public health and safety from imminent harm; or (2) to preserve or conserve natural resources or acquire property for public use under the State Constitution.

Many cities have asked whether H.B. 1750 may impact a city's ability to enforce local ordinances prohibiting keeping livestock or chickens in residential areas. Given that the definition of agricultural operation includes keeping livestock or poultry, a court could potentially prohibit a city from enforcing such ordinances unless it meets the new heightened code enforcement standard on a case-by-case basis.

On the other hand, some case law states that the RFA's original legislative purpose was to protect the production of food and agricultural products. At least two courts, when analyzing the RFA, appear to have limited its application to instances where the agricultural operation is the property's primary use.

Policy Summit delegates may wish to recommend a position on how the League should approach beneficial amendments to H.B. 1750 and/or H.J.R. 126 in 2025.

UTILITIES AND TRANSPORTATION

Municipal Right-of-Way Authority/ Compensation

Telecommunications: Access Line Fees

Chapter 283 of the Texas Local Government Code, enacted in 1999, significantly altered how cities collect compensation from telecommunications providers that use city rights-of-way (ROWs). Chapter 283 replaced individual telecommunications franchise agreements with a new system of compensation based on "access lines." Essentially, a telecommunications provider pays for the use of the ROWs based on how many lines it operates in a city. This represented a relatively successful compromise in 1999. However, new technologies have placed a strain on the existing system, leading to disagreements about which providers and what types of lines are subject to the compensation requirements. In addition, the continuing migration to cell phones has reduced the number of land lines on which the fee can be collected.

Some groups refer to access line fees as a "tax" and recommend that they be eliminated. Cities explain that the fees are a rental for the use of city rights-

of-way and that any revenue stream "eliminated" should be replaced by alternative funding sources. This did not happen in 2019 when the legislature passed S.B. 1152 by Senator Hancock, which limited the franchise fees that telecommunication providers with bundled phone and cable services must pay - more on that legislation is below.

Cable/Video: State Issued Certificate of Franchise Authority

For many years, cable companies were the sole provider of wire-based video programming to city residents. Until 2005, a cable company that wanted to serve customers within a Texas city had to obtain a franchise agreement from the city. Federal law requires a local authority (e.g., a state or local government) to issue a franchise agreement, and Texas law stipulates how much a provider must pay for the use of a city's rights-of-way.

Because of ever-growing technological capabilities, most telecommunications companies now also provide video programming. These companies wanted to reform the local franchise system so they would not have to obtain hundreds of franchises, which they felt would impede their ability to install the necessary infrastructure to implement their new technology.

Cities sought an agreement on a new compensation system that would provide stable and predictable compensation for the use of the public rights-of-way. Cities wanted to ensure that all technologies and services, including cable and newer technologies, that use the public rights-of-way pay a fair and equitable fee for the use of the public's land. Cities also wanted to ensure that they retained police power authority over the public rights-of-way and could still provide public, educational, and governmental (PEG) programming to their citizens.

In 2005, the legislature asked cities, cable providers, and telecommunications companies to reach a compromise on issues related to the right-of-way compensation system for companies that provide video services to city residents. After several failed bills, much negotiation, one regular session, and two special sessions, the legislature passed S.B. 5 by Senator Fraser. S.B. 5 created a new Chapter 66 of the Texas Utilities Code, which made numerous changes to telecommunications, cable, and broadband laws.

For cities, the most important element of Chapter 66 was that it created a state issued certificate of franchise authority (SICFA) to be administered by the Public Utility Commission (PUC). Many telecommunication providers applied for, and received, a SICFA. Some providers used the bill's provisions to "roll out" video services through new technology using fiber optic lines.

In 2019, S.B. 1152 by Senator Hancock passed. S.B. 1152 authorized a cable or phone company to stop paying the lesser of its state cable franchise or telephone access line fees, whichever are less for the company statewide. Providers must file an annual written notice about which fee it will stop paying to each city by October 1 each year.

Telecommunication providers claim that S.B. 1152 prevents them from being "double-taxed." Most cities don't view franchise fees as a "tax." They view it as the cost to allow private companies to rent the use of taxpayer-owned property. Whether part of the business is called "phone service" and part called "cable service" ultimately makes no difference in determining its value.

The Texas Constitution prohibits the legislature from forcing a city to give away publicly-owned property for less than fair market value. S.B. 1152 is arguably unconstitutional because it eliminates value-based compensation because the compensation is no longer based on the value of the right-of-way to the companies. Read on to learn

about litigation related to "small cell" legislation and S.B. 1152's unconstitutional mandate being added to that litigation.

On a related note, in 2022, several Texas cities filed suit seeking franchise fees from Netflix, Hulu, and Disney+. The cities argue that the definition of "video service providers" subject to franchise fees under Chapter 66 of the Texas Utilities Code includes streaming service providers. The lawsuit claims that the streaming services aren't paying the 5% of gross revenue fee required by S.B. 5 to use public rights of way to deliver streaming video programming.

In 2023, Senator Hancock filed S.B. 1117, which would amend the definition of "video service" in Chapter 66 of the Utilities Code to mean video programming services provided by a video service provider through wireline facilities located, at least in part, in a public right-of-way without regard to what technology was used to deliver such services, including via internet service. The new definition did not include direct-to-home satellite services or video programming accessed through a service that allows users to access content, information, email, or other services, including streaming services.

S.B. 1117 came very close to passing. The bill passed the Senate 20-10. It was also reported favorably out of the House State Affairs Committee before being killed by a point of order on the House floor. If passed, S.B. 1117 would have derailed the streaming services lawsuit, and potentially prohibited cities from recovering hundreds of millions of dollars for taxpayers.

Small Cell Nodes

Senate Bill 1004 by Senator Hancock, passed during the 2017 session, required a city to allow access for cellular antennae and related equipment ("small cell nodes"). Cities must also allow providers to place equipment on city light poles, traffic poles, street signs, and other poles. S.B 1004 capped small cell node and equipment rights-of-way rental fees at $250 per node. Negotiations during the legislative session led to concessions giving cities some authority over placement. These concessions made the bill's access provisions more palatable to many cities, but local preparation remains key to dealing with the installations.
Small cell nodes are not a replacement for the large "macro towers" that dot our landscape. Rather, they are meant to expand network bandwidth in densely populated areas. S.B. 1004 allows cell companies and others to place the nodes in city rights-of-way, but cities in rural areas may not be affected immediately – if at all.

The City of McAllen has led a coalition of around twenty cities that filed a lawsuit to challenge the unconstitutionally low right-of-way rental fees in S.B. 1004. Prior to S.B. 1004, cities were charging between $1000 - $1200 per node. The bill capped a city's right-of-way rental fee at around $250 per small cell node. The cities argue that the substantially below market rate price per node in the current bill is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The lawsuit also claims that S.B. 1004 unconstitutionally delegates a city's legislative authority to control its rights-of-way to private businesses. The City of Austin also filed a lawsuit challenging the constitutionality of S.B. 1004. Both lawsuits remain pending.

Small Cell Lawsuit Update

In 2020, cities amended their petition in the "small cell" lawsuit to include S.B. 1152. The cities argue that just like the $250 cap on small cell node rights-of-way rental fees in S.B. 1004, the franchise fee elimination provision in S.B. 1152 allows companies to profit from the discounted use of public property. And just like S.B. 1004, S.B. 1152 violates the Texas Constitution and

harms taxpayers by forcing them to subsidize private industry.

In July 2022, the 53rd State District Court in Travis County issued a mixed ruling on the cities' claims. The Court held that the franchise fee elimination provision in S.B. 1152 violates the Texas Constitution Article III, Section 52 prohibition on "public gifting" of things of value to corporations or private entities. However, the court found that the $250 cap on small cell node rights-of-way rental fees in S.B. 1004 did not. The state appealed the ruling declaring S.B. 1152 unconstitutional. The cities cross-appealed the ruling regarding S.B. 1004. The parties have fully briefed their appeals. The case remains pending before the Austin Court of Appeals.

Shortly after the Court's rulings, the Federal Communications Commission (FCC) issued an order limiting small cell node rental fees to $270 per node. Unless the federal rule is revoked, this will likely play a deciding role in resolving the issues regarding a city's authority over small cell deployment and related fees.

Because S.B. 1004 and S.B. 1152, if left unchecked, could lead the way to further erosion or even elimination of some franchise fees in future sessions, the lawsuit remains extremely important to Texas cities.

The FCC and Congress

State preemption is not the only thing cities need to be concerned with. Over the last decade, the FCC has issued numerous orders preempting city right-of-way and other authority.

Such issues may seem technical to some, but they are among the most important issues that cities face today. If unchallenged, FCC efforts could ultimately eliminate a city's ability to direct what goes where in its rights-of-way. Just as important, they could collectively cost Texas cities hundreds of millions of dollars in right-of-way compensation.

Congress is also moving into the fray. League officers and staff have travelled to Washington, D.C., to visit with key members of the Texas Congressional delegation about the federal efforts mentioned above. The goal of the visit was to show that Texas has enacted legislation (for telecommunications, cable/video, and small cell deployment) to address industry concerns and that further preemption – especially regarding right-of-way compensation – would create a subsidy for telecommunications companies on the backs of taxpayers.

Electric Franchise Fees

S.B. 7, passed in 1999, deregulated the Texas electric power market. The legislation, which went into full effect in 2002, not only deregulated most electric utilities in Texas but also changed how municipal electric franchise fees are charged and collected.

Traditionally, cities and electric utilities operated under a franchise agreement. The agreement governed the relationship between the parties, including how much the utility had to pay for use of the city's rights-of-way. Typically, the rights-of-way fee was stated as a percentage of the utility's gross receipts for service provided within the city limits.

Prior to S.B. 7 in 1999, Section 182.025 of the Texas Tax Code provided that a city could unilaterally charge and collect a fee equal to two percent of gross receipts from an electric utility. But Section 182.026 provided that Section 182.025 would not impair or alter a provision of a contract, agreement, or franchise made between a city and an electric utility company relating to a payment made to the city. In other words, under Section 182.026, cities and electric utilities were free to enter into franchises that provided for a fee

of greater than two percent. Based on this, many cities negotiated for and received franchise fees equal to three or four percent of gross receipts.

Since January 1, 2002 (the date deregulation was implemented), a city's electric franchise fee has been – with some exceptions – based on the number of kilowatt-hours (kwh) that a utility delivered to customers located within the city's boundaries in 1998. The total franchise fees for 1998 were divided by the total KWHs for that year to arrive at a "per kwh rate." That rate is multiplied by the current kilowatt hours used by all customers within the city to arrive at the franchise fee amount due to the city.

The TML Legislative Program provides that the League should oppose legislation that would erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.

Solid Waste Franchise Fees

In recent years, the legislature has made efforts to limit city franchise for exclusive solid waste providers. Under the Texas Health and Safety Code, cities have broad authority to contract with solid waste services providers to furnish solid waste collection, transportation, handling, storage, or disposal, require the use of the service by city residents, and charge fees for the service. The statutory authority allowing cities to collect such fees pursuant to exclusive franchise agreements has led to different fee methodologies and rates based on each community's specific needs. The variation of the amount of fees across the state has drawn the ire of some in the Texas Legislature.

In 2019, Representative Stephenson filed H.B. 4344, which would have provided that a city may not charge a solid waste management franchise fee of more than two percent of the franchisee's gross receipts for services within the city. The bill also prohibited a city from being able to restrict a company from being able to contract for commercial or industrial waste with someone other than the city or the city's exclusive solid waste management franchisee. The bill was heard by the House Environmental Regulation Committee but did not advance after testimony against the bill from cities and solid waste providers.

The bill was refiled in 2021, this time as H.B. 753 by Representative Cain. Once again, the bill was heard by the House Environmental Regulation Committee, and the committee heard a committee substitute of the bill that took out the component allowing for a person to contract with anyone for solid waste management services other than the city or exclusive franchisee, only leaving the provision of the bill limiting the franchise fee to two percent of gross receipts of the franchisee for the sale of solid waste services in the city. Consequently, two major solid waste service providers dropped their opposition to the bill, indicating that the providers were neutral on a bill that would only limit the amount they pay in franchise fees for the right to be exclusive provider of solid waste services. Several cities and other groups opposed the bill, and it was not voted out of the committee.

On May 20, 2022, the Texas Supreme Court issued its opinion in *Builder Recovery Servs., LLC v. The Town of Westlake,* finding that the Town of Westlake as a general law city exceeded its authority when it assessed a percentage-of-revenue license fee on construction-site waste hauling businesses. Notably, the Court expressly stated that its opinion was not intended to address the ability of general law cities to impose solid waste franchise fees.

In the case, the Town of Westlake passed an ordinance that required third-party construction trash haulers to obtain a license to provide temporary construction waste services, imposed

certain regulations on the licensee, and assessed a licensing fee based on 15 percent of the licensee's gross revenue. Builder Recovery Services, LLC (BRS) sued the Town asserting, among other things, that the Town as a general law city lacks authority to require BRS to obtain a license to haul construction waste and lacks the authority to impose a licensing fee based on a percentage of BRS's revenue. Ultimately, the Texas Supreme Court held that a general law city's express power to regulate construction trash hauling does not include the implied authority to charge a license fee based on a percentage of revenue, and that such fees would have to be tethered to the cost of providing services.

The Court opined that because a percentage-of-revenue fee "fluctuates based on market forces having nothing to do with the Town's regulatory expenses, and because it resembles a business tax in its calculation method, a percentage-of-revenue fee is different in kind from cost-recovery fees a general-law city might validly charge incident to its power to regulate trash hauling." The Court provided that a "more conventional, volume-based fee under which the Town charged fixed amounts per license application or per construction site, for instance, could be calibrated to offset staffing or paperwork expenses incurred by the Town because of the regulation."

Although the Court determined that a general law city cannot charge a percentage-of- revenue fee to a licensee who hauls construction waste, the Court clearly noted that the decision does not apply to exclusive franchise agreements between a general law city and its residential and commercial solid waste providers adopted pursuant to Section 364.034 of the Health and Safety Code. Specifically, the Court stated:

> Turning to the merits of [the authority to impose a percentage-of-revenue fee] claim, an initial distinction should be drawn between the licensing fee imposed on BRS and the franchise fee imposed on Republic. Republic is the Town's conventional residential and commercial trash-hauling franchisee. The Town's relationship with Republic is governed by an exclusive franchise agreement as described in section 364.034 of the Health and Safety Code. Republic is not a party to this case, and nothing in our decision should be construed to comment on the rights of the Town, of Republic, or of similarly situated parties operating under section 364.034 or under franchise agreements. Instead, we address the Town's authority under section 363.111 of the Health and Safety Code, the primary statutory provision on which the Town relies for its authority to charge licensing fees to companies like BRS.

Following the Court's decision, some solid waste providers began questioning whether they could be required to pay a percentage-of-revenue franchise fee to a general law city. Though nothing specific on that point was filed in 2023, two other solid waste franchise bills were considered.

Representative Gates filed H.B. 4297 in 2023, which once again would have capped a city's solid waste franchise fee at two percent of gross receipts. The bill wasn't heard in committee. H.B. 3015 by Representative Kuempel would have expressly authorized cities to enter into an exclusive franchise for solid waste services, allowed cities to limit the scope of services in an exclusive franchise, and allowed residents to contract with private operators for services not covered by the exclusive franchise. The bill also would have provided that if a city chose to expand the scope of an exclusive franchise, it must

provide 60-days' notice to a private operator to be displaced by the expanded franchise and allow private operators to continue operating under an existing contract until the end of a contract term or two years, whichever is shorter. Cities registered on both sides of the bill in committee. A version of the bill was reported from the committee, but never made it to the House floor.

The TML Legislative Program provides that the League should oppose legislation that would erode city solid waste franchise fee authority.

Broadband Access and Expansion

Lack of broadband access is a serious issue for Texas cities and their residents. According to a 2019 comptroller report, more than two million Texas households do not have high-speed internet. 31 percent of rural Texans do not have access to basic broadband services. Additionally, many urban areas of the state have areas with poor access to broadband, and rank amongst the worst connected large cities in the country. The problem is both one of access and affordability.

So, what exactly is broadband? According to the Federal Communications Commission (FCC), broadband is high-speed Internet access that is always on and faster than the traditional dial-up access. Broadband includes high-speed transmission technologies such as: (1) digital subscriber line; (2) cable modem; (3) fiber; (4) wireless; (5) satellite; and (6) broadband over power lines. To meet the FCC's definition of broadband, internet speed must reach at least 25 Mbps for downloads and 3 Mbps for uploads.

The COVID-19 pandemic prompted Texans and state leaders to view the problem in a whole new light. For Texas cities, the importance of widely accessible broadband is hard to overstate. Not only is fast and reliable internet imperative to our ever-evolving system of commerce, it is also critical to fully participate in most modern societal institutions. For rural communities, many of which have seen their prosperity drop as their populations have decreased in recent years, broadband access provides hope for new jobs and economic development in a rapidly changing society. The prospect of increased connectivity makes physical location less important for employment purposes, giving people more flexibility to live and raise families outside of urban and suburban hubs.

The confluence of these factors virtually guaranteed that the legislature would seriously address broadband connectivity in 2021. In September 2020, a bipartisan group of 88 state legislators sent a letter to Governor Abbott calling for the adoption of a statewide broadband plan. At the time, Texas was one of six states in the country without a statewide broadband plan.

In November 2020, the newly-created governor's broadband council issued a report highlighting the connection between the impact of COVID-19 and limited broadband access in Texas. According to the report, the digital divide in Texas "is particularly problematic for those who need to attend school virtually, visit a doctor online, or work remotely, either due to the COVID-19 pandemic or other factors."

The council's first recommendation was the adoption of a statewide broadband plan. In its recommendation, the council highlighted the need for a plan to facilitate local and regional coordination: "Local and regional planning efforts can help communities identify their needs and goals, start conversations with providers, evaluate options, and move toward implementing infrastructure projects."

The council's second recommendation was to establish a state broadband office. According to the council "[t]he absence of both cohesive, statewide development plans as well as a statewide broadband office with dedicated staff to coordinate efforts in Texas have contributed to the

previous broadband initiatives failing to reach the potential they could have with greater policy and funding coordination."

In 2021, the high degree of consensus on a broadband plan and a state broadband office following the COVID-19 pandemic finally came to fruition with the passage of H.B. 5 by Representative Ashby. The League strongly supported the bill.

H.B. 5 established a state broadband development office (BDO) within the comptroller's office and required the BDO to develop a statewide broadband plan. The bill also required the BDO to consult with political subdivisions, including cities, to develop the broadband plan and a state broadband map categorizing broadband access across the state and identifying areas eligible for broadband expansion and funding.

Following a statewide listening tour and gathering survey data, the BDO released the Texas Broadband Plan in June 2022. According to the report, 5.6 million Texas households lack access to quality internet. This digital divide prevents millions of Texans from accessing necessary health, education, employment, and safety services.

The legislature appropriated $5 million to the comptroller's office to develop and administer the plan. In addition, the federal government allocated around $600 million to the State to expand broadband access in Texas.

In 2021 the legislature also tried to enact some telecommunication market reforms designed to bolster the Texas Universal Service Fund, with the goal of incentivizing the deployment of broadband in underserved areas. H.B. 2667 by Representative Smithee would have required providers of voice over internet protocol service in rural areas to pay the uniform Texas Universal Service Fund charge. Governor Abbott vetoed the bill stating:

> Coming into the 87th Legislative Session, everyone knew the Legislature needed to consider significant reforms on broadband and the Texas Universal Service Fund. Transformational broadband reform was achieved through multiple bills that have been signed into law, which significantly expand broadband access in Texas, especially in rural areas. Yet the only meaningful change made to the Texas Universal Fund was, in H.B. 2667, to expand the number of people paying fees. It would have imposed a new fee on millions of Texas.

As broadband market reform continued to gain steam after the 2021 session, cities understood that legislation could potentially impact city right-of-way authority. The governor's broadband council's report cites "local permitting processes" as a regulatory barrier to broadband deployment. In addition, the 2022 Texas Broadband Plan recommended legislative action:

> Areas of focus may include clarifying which entities can provide broadband (e.g., municipal/locally owned networks) and how entities may access the infrastructure or right-of-way needed to deploy broadband services. Feedback during outreach efforts covered dig-once regulation, streamlining state and local permitting requirements, reducing application and infrastructure use fees, and increasing coordination with TxDOT and other state agencies.

The legislature doubled down on broadband funding in 2023. Two legislators, Representative Ashby and Senator Nichols, filed bills to fund

and establish the framework to vastly expand broadband access across the state.

Representative Ashby shepherded H.B. 9, which created a state broadband fund and added over $1.5 billion in state money to the fund. H.B. 9 was one of Speaker Phelan's priority bills and sailed through the House and Senate. As with many other state funds, creating the state Broadband Infrastructure Fund required voter approval (H.J.R. 125). Nearly 70 percent of voters supported the constitutional amendment to create the fund.

The other key broadband bill that passed was S.B. 1238 by Senator Nichols, which established the parameters of how to spend the Broadband Infrastructure Fund. This bill did several things, including: (1) defining adequate broadband service; (2) defining areas unserved, underserved, and served by broadband service; (3) authorizing the BDO to award grants, loans, and other financial incentives to deploy broadband infrastructure and non-infrastructure projects (e.g. education, training, community outreach, remote learning, and telehealth facilities; and (4) directing the BDO to prioritize projects in unserved and underserved areas.

While the bills were considered by the legislature, the BDO continued to work on creating the state's broadband program. It began creating a map categorizing locations in the state as unserved, underserved, or served based on internet service provider information and public surveys. The BDO also created several working groups and held numerous public meetings to get input on the bills.

The League participated in two working groups and attended many of the public meetings. The League's Broadband Advisory Committee also provided significant feedback to the BDO. These efforts resulted in many helpful changes to the bills, in particular: (1) substantially increasing the standard for broadband service from the FCC's outdated 25 Mbps download/3 Mbps upload to a much more realistic 100 Mbps download/25 Mbps upload; and (2) a preference for fiber optic cable technology.

Another bill of note passed in 2023 – S.B. 2119 by Senator Schwertner, which directed the BDO to work with the PUC to create and routinely update a state broadband access map. The PUC will host the map on its website.

Over the 2021 and 2023 legislative sessions, the legislature appropriated over $6.5 billion for broadband. Texas received another $3.3 billion dollars of broadband funding from the federal government through federal infrastructure legislation. Texas now has almost $10 billion dollars to improve broadband access across the state.

Texas' broadband program has three major components: (1) the Bringing Online Opportunities to Texas (BOOT) program; (2) the Broadband Equity, Access, and Deployment (BEAD) program; and (3) the Texas Digital Opportunity Plan (TDOP). The BOOT program is a state-funded $120 million competitive grant program for broadband infrastructure projects. The BEAD program is a multi-billion-dollar state and federally funded grant program for broadband infrastructure projects. The TDOP program is a state and federally funded grant program for non-infrastructure broadband projects.

After the bills passed, the BDO held a series of public meetings across the state to get input on the state's broadband program. The BDO accepted public comments on its draft state rules and the draft BEAD and TDOP program rules in late 2023. The draft BEAD program rules were submitted to the National Telecommunications and Information Administration (NTIA) for approval in December, and Volume I of the BEAD proposal was approved in April 2024. The draft TDOP program rules

were submitted to NTIA in February 2024. The BDO adopted its final state rules in March 2024.

If recent history is any indication, the state legislature will not shy away from limiting city oversight over their rights of way, and franchise fee revenue, in favor of general authority to expand broadband infrastructure. Nevertheless, city officials have a strong interest in seeing broadband access expanded for all Texans. Texas cities have a strong interest in seeing broadband access expanded for all Texans. Local economies depend on that expansion, and on a more basic level, Texans need access to high-speed internet. Cities will play a critical role in this process, as they have access to local rights of way and are uniquely positioned to facilitate the expansion.

The TML Legislative Program provides that the League should support legislation that would: (1) treat broadband service similar to other critical utility infrastructure to ensure statewide availability, equity, and affordability for citizens and businesses; and (2) modernize the Texas Universal Fund through revenue sources that ensure long-term sustainability for the provision of broadband services.

Utility Reliability

Electric utility reliability during or following extreme weather events was not on many people's radar heading into the 2021 legislative session. Winter Storm Uri in February 2021 changed that. The ensuing grid and utility failure prompted the legislature to shift its focus to respond to the electricity and water issues Texans experienced during the storm.

In response, in March 2021, the TML Board of Directors approved three new policy positions to support legislation that would:

1. harden the state's electric grid against blackouts, especially those caused by extreme weather events;
2. provide additional tools for municipally-owned electric utilities to harden their systems against blackouts, especially those caused by extreme weather events; and
3. mitigate the cost and liabilities of the outage event caused by Winter Storm Uri from being passed on to cities and city residents.

With these new positions in the League's legislative program as a guide, the League and city officials actively monitored the myriad of legislative proposals filed to address utility failures during and after extreme weather events. Members' robust engagement and participation helped shape the bills that ultimately passed.

When the dust settled, the legislature passed several bills in response to Winter Storm Uri. Most notably, S.B 2, S.B. 3, and H.B. 4492.

S.B. 2 by Senator Hancock required the presiding officer of the Public Utility Commission (PUC) and all members of the Electric Reliability Council of Texas (ERCOT) board to be residents of Texas. It replaced the ERCOT board with political appointees and involves the PUC more closely in ERCOT's regulations. It also changed the members of the ERCOT board from mostly electric industry members to members with executive-level experience in areas such as finance, business, engineering, trading, risk management, law, and electric market design.

S.B. 3 by Senator Schwertner was the omnibus utility weatherization bill for certain electric, gas, and water utilities. The bill required electric generation facilities, electric transmission and distribution facilities, and certain natural gas pipeline facilities and wells to implement measures to operate during a weather emergency.

More specifically, S.B. 3: (1) created an alert system to be activated when the power supply in Texas may be inadequate to meet demand; (2) required the Railroad Commission and the PUC to designate certain natural gas facilities as critical infrastructure during energy emergencies so the electricity generators can still get fuel to produce power; and (3) established the Texas Energy Reliability Council to enhance industry coordination and ensure that the Texas electric and energy industries meet high priority human needs and address critical infrastructure concerns.

S.B. 3 also contained a significant provision for cities that operate their own water utilities. Except for Harris and Fort Bend counties, who already had similar requirements in place, S.B. 3 required municipally owned water utilities to: (1) ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by TCEQ as soon as safe and practicable following the occurrence of a natural disaster. The bill also required that all municipally owned utilities adopt and submit an emergency preparedness plan and implementation timeline to meet these requirements to TCEQ for approval before March 1, 2022. The bill, as originally filed, would have required a water pressure of 35 PSI, but city input helped bring that number down to a more reasonable standard, among other changes.

H.B. 4492 by Representative Paddie provided two financing mechanisms to address the extraordinary costs ERCOT and market participants incurred because of Winter Storm Uri. The first mechanism utilized an $800 million dollar loan from the state's rainy-day fund to address ERCOT's non-payments to market participants. This loan allowed ERCOT to "clear the market" by using these funds to pay the market participants that ERCOT owed. ERCOT's loan would be repaid by a charge assessed to remaining market participants which will eventually be paid by their customers over a period of 30 years. The second financing mechanism addressed ancillary charges assessed to certain market participants during the storm. This allowed market participants who chose to participate during the storm to utilize securitization financing to spread their costs over a period of 30 years to lessen the immediate impact on customers. It would also be backed by a customer charge, but the bill also mandated that benefits received by a provider will be passed along to customers who paid for the assessment. This fund is capped at $2.1 billion.

One other disaster-response bill passed in 2021 was S.B. 968 by Senator Kolkhorst. S.B. 968 provided that, in the event of a disaster or other event that causes an extended electricity, water, or gas outage, the Texas Division of Emergency Management (TDEM) shall collaborate with first responders, local governments, and local health departments, to conduct wellness checks on medically fragile individuals (as defined by TDEM) within 24 hours of such events. The wellness checks must include an automated phone call, a personalized call, and if the person is unresponsive to calls, an in-person check. The bill also requires each city to adopt procedures to conduct wellness checks in compliance with TDEM-adopted minimum standards.

Even after the reforms made during the 2021 legislative session, electricity reliability remained a big concern. In particular, the legislature focused on the need to improve and expand dispatchable electricity generation facilities. After vigorous debate and several amendments, the legislature passed S.B. 2627 by Senator Schwertner. S.B. 2627 created the Texas Energy Fund (TEF) which would provide loans to electric providers for building new dispatchable electricity generation facilities capable of producing at least 100 megawatts or expanding existing facilities capable of generating at least 100 megawatts. The PUC will administer the fund which will provide 20-year loans at three percent interest for up to sixty

percent of the facility's cost. The fund will also provide bonuses for each megawatt generated by newly constructed facilities. All funded facilities must connect to ERCOT by June 1, 2029, subject to very limited exceptions.

S.B. 2627 will not provide funding for wind or solar power facilities or energy storage facilities. However, the bill will provide some funding to support energy backup power packages (stand-alone, behind-the-meter, multiday backup power sources).

S.B. 2627 also required the approval of voters. Sixty-five percent of voters approved the constitutional amendment to create the TEF in November 2023.

The legislature also addressed electricity reliability in the 2023 PUC sunset bill. H.B. 1500 by Representative Holland, among other things, continued the PUC until 2029. However, it also contained a few dispatchable and renewable energy provisions. Specifically, H.B. 1500 required the PUC to file a report on dispatchable and non-dispatchable generation facilities with the legislature every year. The bill also required certain dispatchable electricity generators to demonstrate their ability to provide electricity at or above seasonal average generation capability during times of high-reliability risk. H.B. 1500 also repealed the statute's renewable energy goals and phases them out entirely by September 1, 2025.

The TML Legislative Program provides that the League should support legislation that would: (1) harden the state's electric grid against blackouts, especially those caused by extreme weather events; (2) provide additional tools for municipally owned electric utilities to harden their systems against blackouts, especially those caused by extreme weather events; (3) mitigate the cost and liabilities of the outage event caused by Winter Storm Uri from being passed on to cities and city residents; and (4) provide stabilization and funding for the electric grid in response to increased demand.

Oil and Gas Pipeline Routing

In 2019, the cities of Woodcreek, Wimberley, and Kyle submitted a resolution at the TML Business Meeting that would require oil and gas pipeline companies to work with cities regarding pipeline routes, establish bonds for performance, and require environmental studies for intrastate projects. After much discussion, the TML membership ultimately adopted the resolution and included it in the TML legislative program beginning in the 2021 legislative session.

In 2021, Representative Zwiener filed H.B. 37, which would have provided that, with certain exceptions, a person may not begin constructing a pipeline before obtaining a permit from the Public Utility Commission (PUC) authorizing the route of the pipeline. Under the bill, the PUC could only grant a permit if it determined that the pipeline route moderates negative effects on the affected community and landowners (e.g. community values, recreational and park areas, historical and aesthetic values, environmental integrity, public safety, and economic development). H.B. 37 would have required the PUC to grant or deny such a permit within one year the permit application was filed. The bill also established a process for someone to complain about a violation of the pipeline routing permit requirements and authorized the PUC and attorney general to enforce violations through judicial review and administrative penalties. Unfortunately, H.B. 37 did not receive a committee hearing.

Representative Zweiner filed similar legislation in 2023 – H.B. 2049. Once again, the bill did not receive a hearing.

The TML Legislative Program provides that the League should support legislation that

would require the State of Texas to create a state regulatory process for oil and gas and CO2 pipeline routing that: (1) enables affected communities and landowners to provide input prior to establishment and publication of routes; (2) provides for negotiation on routes when municipalities believe that substantial threats to economic development, natural resources, or standard of living are potential outcomes; (3) provides that intrastate pipelines will comply with environmental and economic impact study standards, including the participation of local governmental entities and public participation; and (4) requires pipeline operators to have in place performance bonds like those the state has in its own contracts.

Local Transportation Funding

For several decades, TML has attempted to identify new city revenue sources to address longstanding infrastructure issues (streets in particular) to take some pressure off property tax rates. For example, in the late 1970's the League pushed for legislation to raise the local option sales tax from one cent to two cents, with the goal of using the additional revenue for street projects. Unfortunately, the League's initiative failed.

In 1981, the League pressed for legislation to raise the state automobile registration fee to create a City Street Improvement Fund. This effort also failed.

In 1983, the League pushed for a "Pothole Bill." The January 1983 edition of *Texas Town & City* magazine explained the effort:

A TML survey of Texas cities indicated that the current backlog of municipal street repair needs exceeds $1 billion – a sum that will grow each year, as cities fall further and further behind.

Upwards of 20 percent of all municipal streets – 12,000 miles – need major repairs, and the magnitude of the problem is steadily growing. Texas cities are spending an estimated $180 million per year on street repairs, 58 percent more than three years ago. But they are falling even further behind because the street repair backlog is snowballing at rates that exceed local spending increases. The cities will never be able to bring their streets and bridges up to standard without state financial assistance.

In 1983, the backlog was estimated to be $1 billion. It is obviously much higher now. The League proposed the following solution in 1983:

> [C]ity residents, who comprise 80% of Texas' population, pay a major proportion of all motor vehicle-related taxes collected by the state. But none of these revenues are remitted back to the cities to help deal with the problems created by the millions of vehicles which generated the funds and the potholes in the first place. The TML City Street Improvement Fund would provide a remedy by tying the problem (motor vehicle wear on city streets) to the solution (repair funding provided from motor vehicle-related taxes).

Again, the League's efforts failed.

During the late 1980's and in 1991, the League urged the legislature to raise the state gasoline tax by five cents and remit the revenue back to cities for street improvements. The proposal came very close to passing during a special session in 1991 when the House approved the five-cent increase, but the Senate narrowly rejected it.

The League's concerted efforts likely failed, because of how the legislature views tax increases. Lawmakers remain reluctant to raise state taxes *at all* but are more likely to allow city

councils (or local voters) the authority to adopt taxes. For example, lawmakers have given cities the authority to adopt a local sales tax for: (a) economic development, (b) property tax relief, and (c) other specific purposes (see "The 2001 Legislation" below).

The legislature is even more reluctant to raise a state tax (like the gasoline tax) and give the increase in revenue to the cities, because the state may want to increase that tax for its own purpose sometime in the future. Indeed, virtually all the taxes listed above have been increased by the legislature *for state revenue* sometime after the League asked for an increase for local revenue.

The 2001 Legislation

The 2001 legislature passed H.B. 445, a bill that authorized a city to hold an election to adopt a one-fourth-percent sales tax to repair and maintain city streets. Only those cities with room under the two-percent local sales tax cap are eligible to adopt the tax. If approved by the voters, the tax expires after four years, unless a new election is held to reauthorize the tax.

The 2003 Legislation

The 2003 legislature passed H.B. 164, a bill that authorizes a one-eighth-percent sales tax to repair and maintain city streets, in addition to the one-fourth-percent tax mentioned above.

The 2005 Legislation

In 2005, the legislature passed no bills that directly altered municipal funding for transportation projects, but did pass a bill (H.B. 3195) that gave cities more flexibility to switch between optional sales taxes by permitting a single ballot proposition to raise an optional sales tax while simultaneously reducing another. Numerous cities have used this authority since its passage.

The 2007 Legislation

The 2007 legislature passed a bill (H.B. 3084) that abolished the four-year expiration of the street maintenance sales tax. Unfortunately, the governor vetoed that bill.

The 2009 Legislation

By 2009, it had become painfully obvious that Texas was experiencing a severe shortage of federal and state transportation dollars. The burden of dealing with mobility issues was increasingly being pushed down to local governments. In an effort to provide those local governments with the tools to fund projects that are essential to the state's mobility and economy, legislators introduced the Texas Local Option Transportation Act (TLOTA). Sen. John Carona and Rep. Vicki Truitt filed TLOTA in the form of S.B. 855.

As filed, S.B. 855 would have allowed the voters in only Dallas and Tarrant Counties to choose from a menu of options for raising transportation funds through local fees and assessments. The menu included such revenue alternatives as: (1) a county motor fuels tax of up to ten cents per gallon that could be adjusted for inflation; (2) a mobility improvement fee not to exceed $60 annually; and (3) a parking regulation and management fee of $1 per hour/per parking space. As passed by the Senate Transportation and Homeland Security Committee, the bill expanded TLOTA to include the twelve-county North Texas region (Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) as well as Bexar, Travis, and El Paso Counties.

When S.B. 855 was deliberated on second reading in the Senate, three additional regions were added to the bill (Corpus Christi, the Rio Grande Valley, and Waco). Another amendment adopted by the Senate provided that the bill would not take effect unless the legislature passed and the voters

approved a constitutional amendment limiting diversions from the state highway fund. S.B. 855 finally passed the Senate by a vote of 21-9.

The House Committee on Transportation waited an entire month before voting 6-1 to approve the bill. As passed by the House committee, S.B. 855 would have applied to any county within a Metropolitan Planning Organization. Although broader in its applicability, the bill allowed for only one funding mechanism: a local option gas tax of 10 cents per gallon.

Opposition to S.B. 855 began to grow. The Texas Public Policy Foundation and other groups expressed concerns over increasing taxes during a recession, as well as the ability of some counties to raise taxes while others could not. Opponents argued that local governments already have the ability to pay for additional transportation infrastructure by redirecting existing sales tax revenue that, they said, was originally intended for mobility, or to cut "waste" and apply those savings to transportation. S.B. 855 was set on the House calendar, but the House hit a crucial deadline before being able to consider the bill.

The 2011 Legislation

The 2011 legislature passed a bill (H.B. 2972) that would generally allow cities to reauthorize the street maintenance sales tax every eight years instead of every four years. The bill also authorized a city to spend street maintenance sales tax revenue on sidewalks. As with H.B. 3084 in 2007, the bill was vetoed by the governor.

The 2013 Legislation

No comprehensive TLOTA-type legislation was filed in 2013. However, H.B. 1511 would have, among other things, extended the requirement that a street maintenance sales tax be reauthorized by election by election every four years to every eight years. H.B. 1511 actually passed both the House and Senate overwhelmingly, but was vetoed by Governor Perry. According to the governor's veto message, the bill was vetoed because he believed voters deserve the right to vote on whether to be taxed.

During 2013, it was hoped that the announcement of the TxDOT Turnback Program, through which TxDOT essentially offered to "give" state highways back to cities, would be a springboard for further discussions about how the state's transportation system is funded. Unfortunately, however, no legislation creating new city transportation funding sources passed in 2013.

Recent Issues

Because of the passage of that significant state funding in 2013 (see discussion below), the legislature has been relatively quiet on the local funding issue in every session since.

In 2021, Senator Johnson filed TML priority legislation that would have authorized certain cities (cities in which a majority of the voters in each of the last two consecutive street maintenance elections favored adoption or reauthorization) to call a street maintenance sales tax election for an eight- or ten-year period, instead of four years. Revenue from the street maintenance sales tax could be used to maintain and repair a city street or sidewalk, or a city water, wastewater, or storm water system locating within or on a city street. S.B. 402 passed the Senate 29 to 1, but never received a hearing in the House.

It was a similar story in 2023. Senator Johnson refiled his bill (S.B. 612) which passed on the Senate's Local and Uncontested calendar. Unfortunately, the bill was never heard in the House Ways and Means Committee.

The TML Legislative Program provides that the League should support legislation that would allow for greater flexibility by cities to

fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments fail to address.

The TML Legislative Program provides that the League should seek introduction and passage of legislation that would: (1) eliminate reauthorization provisions for the collection and use of street maintenance sales and use tax; (2) authorize cities to reimburse themselves from sales and use tax collections for actual election costs required for tax implementation; and (3) clarify that cities may use street maintenance sales tax revenue to use for all streets and sidewalks in the city.

State and Federal Transportation Funding

State Funding

During the 2013 regular session, the legislature considered dozens of state transportation funding bills that would have enacted new fees, changed the use of existing fees, and/or ended "diversions" of transportation-related revenues to other purposes. Examples include bills that would end or modifying the diversion of the state's gas tax revenues, dedicate motor vehicle sales taxes to transportation purposes, and create new fees or taxes.

None of the bills above passed. However, the legislature was finally able to address at least a portion of the state's transportation funding problems. In the 2013 third special session, the legislature passed two bills – S.J.R. 2 and H.B. 1 – passed and both chambers promptly adjourned *sine die*.

The general idea behind these bills was to amend the Texas Constitution to divert some of the state's oil and gas tax revenues from the rainy-day fund for transportation purposes. However, legislators had not been able to agree on certain details, specifically whether the rainy-day fund should retain a minimum balance before money can be diverted for transportation. In the second special session, different versions of these bills passed the House and the Senate. They then went to a conference committee, but the conference committee version failed to pass either chamber.

The legislation that ultimately passed during the third special session provided for about $1.2 billion in new funding annually. That amount is far less than the $4 billion needed at the time, but it was a start. It also provided that the funding mechanism would end in 2025. However, legislation passed in 2019 (S.B. 962) extending the funding allocation until 2034.

It appeared that the governor and lawmakers were satisfied with the compromise reflected in 2013's two-bill package. But the lack of full funding meant that completely fixing the state's transportation funding problem continued to be on the table in the 2015 session.

The 2015 session saw dozens of bills filed (some of which would have needed constitutional amendments to be implemented) that would have enacted several different transportation funding schemes. The key piece of legislation that passed was S.J.R. 5 by Senator Nichols. The voters approved this constitutional amendment on November 3, 2015. S.J.R. 5 directed the comptroller to transfer part of the state's motor vehicle sales tax to the State Highway Fund, but these funds could not be used for toll roads. Essentially, if the state sales and use tax revenue reached $28 billion in a given year starting in 2017, any additional money – up to $2.5 billion – would go to the highway fund. And starting in 2019, 35 percent of state motor vehicle sales and rental tax revenue that exceeds $5 billion would also go to the highway fund.

The highlight of the 2017 session was the TxDOT sunset bill. S.B. 312 by Senator Nichols made various administrative improvements and continued the agency until 2029. In 2019 the main state transportation funding bill was S.B. 69 by Senator Nelson, which modified the allocation methods in the 2013 funding bills mentioned above.

H.B. 2230 by Representative Canales passed in 2023. The bill extends the transportation funding allocation approved by the voters back in 2014 from 2034 to 2042.

Federal Funding

Heading into 2015, the then-current federal transportation funding legislation – known as MAP- 21 (Moving Ahead for Progress in the 21st Century Act) – was about to expire. Because of this, many feared that federal transportation monies were about to dry up.

The League joined the National League of Cities (NLC) in advocating for a multi-year, multi-modal bill that allows local governments a greater say in spending decisions through their regional planning organizations. With transportation so critical to job creation and economic output, NLC has long advocated that more of the funding decisions should be in the hands of local officials acting through their local planning organizations.

Congress passed a multi-year transportation bill with remarkable bipartisan support in December 2015. The bill, dubbed the Fixing America's Surface Transportation (FAST) Act was paid for with gas tax revenue and a package of $70 billion in offsets from other areas of the federal budget. It called for spending approximately $205 billion on highways and $48 billion on transit projects over the following five years.

Before passing the FAST Act, the last time Congress passed a bill that gave five or more years of certainty to our nation's local leaders was 1998's *Transportation Equity Act for the 21st Century* (TEA-21), which made some consider the speedy passage of the FAST Act a small miracle. This monumental effort would not have been possible without city officials' strenuous lobbying efforts.

To help make the final price tag of the 2015 FAST Act more palatable, lawmakers at the time included a $7.6 billion rescission targeting individual state's unobligated balances in the bill's text. The rescission, which would have taken effect in mid-2020, would have allowed the federal government to take back nearly $8 billion in highway contract authority. According to the U.S. Department of Transportation, this could have impacted more than $960 million in contract authority in Texas alone. Congress removed the rescission provisions in late 2019 and extended the FAST Act through the end of 2021.

As the FAST Act expired, Congress passed the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law. The IIJA was signed into law on November 15, 2021. The IIJA is altogether a $1.2 trillion bill that will invest in the nation's core infrastructure priorities including roads, bridges, rail, transit, airports, ports, energy transmission, water systems, and broadband. Over $550 billion will be new spending, mostly in the form of formula grants to states and competitive grants over the next five years. The IIJA sets aside roughly $35 billion for infrastructure projects in Texas alone, with the possibility of significantly more federal dollars flowing to the state.

There is no doubt that the IIJA opens the door to significant and much-needed infrastructure funding for Texas cities. Since the IIJA was signed into law in late 2021, the League has monitored state and federal agencies and worked with the National League of Cities (NLC) to provide Texas cities with the latest information about how to access IIJA funding for local infrastructure

projects. Members can find regular IIJA-related updates in the League's weekly *Legislative Update*.

In addition to the historic levels of transportation funding in the IIJA, pandemic-related federal grant programs also included the ability to fund certain infrastructure projects. The State and Local Fiscal Recovery Funds Program (SLFRF), part of the federal American Rescue Plan Act, authorized the use of part of a city's local allotments for transportation infrastructure spending under certain circumstances. More specifically, the U.S. Treasury authorized cities to use SLFRF dollars to replace lost public sector revenue due to the pandemic and use the revenue to pay for "government services." Under the SLFRF, the U.S. Treasury defines "government services" as "road building, maintenance, and other infrastructure."

The TML Legislative Program provides that the League support legislation that would provide additional funding to the Texas Department of Transportation for equitable transportation projects that would benefit cities and provide local, state, and federal transportation funding of transportation infrastructure, including rail.

Protecting Transit in Communities Affected By a Natural Disaster

Major natural disaster events such as hurricanes, tornadoes, floods, tsunamis, earthquakes, and mudslides occur beyond human control. Local communities who experience these catastrophic events often have little recourse and often suffer a temporary population drop as a result of such disasters.

Under current law, local communities with a population of 50,000 or more according to Decennial U.S. census data qualify as urbanized areas. Urbanized areas receive a greater share of U.S. Department of Transportation federal transit funding than areas with populations below 50,000. Following a natural disaster, if a local community's population drops below this threshold but grows back within a few years, the community must wait until the next Decennial Census before it can be redesignated as an urbanized area. The City of Galveston experienced this problem in 2008, when a population drop following Hurricane Ike resulted in the city losing $750,000 in federal transit funds. This was despite population estimates showing that the city has long since again passed the 50,000 population requirement for urbanized areas.

This is just one of many examples of how local communities suffer from a loss of transit funds after a drop in population following a natural disaster, even when recent estimates by the Census Bureau show their populations have been restored.

In 2017, Congressman Randy Weber filed H.R. 3452 and U.S. Senator John Cornyn filed S. 1664, both of which would amend current law to allow urbanized areas to retain their designation and preserve access to federal transit funding streams following a presidentially-declared major disaster until the next Decennial Census. These bills would ensure that America's communities are not penalized with a loss of federal transit funds due to a natural disaster beyond their control.

Specifically, these bills would:

1. Clarify federal Congressional intent that federal transit law protect cities across the United States from being penalized due to a population drop suffered as a direct result of a natural disaster, retroactive to 2000;
2. Explicitly state that only Presidentially declared major disasters are covered in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

3. Protect federal transit streams for urbanized areas until the execution of the next Decennial Census.

Unfortunately, these bills did not pass. They were supported by the League, the City of Galveston, the National League of Cities, the U.S. Conference of Mayors, and several other state municipal leagues around the country.

In June 2020, the House Transportation & Infrastructure Committee unanimously adopted an amendment by Congressman Weber to H.R. 2. As amended, H.R. 2 addressed the unique transit funding gap for Galveston and ensured protection for all small, urbanized areas hit by a natural disaster within a three-year period prior to a Decennial Census and were unable to recover the population because of that disaster. The House passed H.R. 2 with this amendment in early July 2020. The U.S. House of Representatives passed this bill again in 2021. Unfortunately, when the Senate negotiated and passed the Infrastructure Investment and Jobs Act, Sen. Cornyn was unable to attach his language that would have added protections for small, urbanized areas hit by natural disaster.

The TML Legislative Program provides that the League support legislation in relation to federal transit funding that would: (1) clarify federal congressional intent of federal transit law to protect cities across the United States from being penalized due to a population drop suffered as a direct result of a natural disaster; (2) explicitly state that only presidentially declared major disasters are covered, in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707); and (3) protect federal transit funding streams for urbanized areas until the execution of the next decennial census.

Speed Limits

Members of the 2018 TML Policy Summit recommended that the League advocate lowering the prima facie speed limits from 30 mph to 25 mph on city streets. While some cities wanted to amend the Transportation Code to lower the 30 mph prima facie speed limit for all cities, some cities objected to the lowered limit. Others voiced concerns about the unfunded mandate of having to replace all speed limit signs in the city if the prima facie speed limit was lowered. Because of these different views, the League's legislative program includes a compromise between the two positions – support for legislation that gives city councils the authority to lower the prima facie speed limit to 25 mph without the need for a traffic study, which is currently required by state law.

During the 2019 legislative session, Representative Israel filed H.B. 1287, which would have simply lowered the prima facie speed limit on a street in an urban district from 30 mph to 25 mph. While several cities and transportation safety groups supported the bill, the League did not take a position on this bill because of the compromise position adopted as part of the League's 2019 legislative program. To garner the support necessary to make it out of committee, H.B. 1287 was amended to only lower the speed limit to 25 mph if the street is located in a residence district and is not officially designated or marked as part of the state highway system. That version of the bill was reported from committee but not taken up on the House floor.

In 2021, Rep. Israel refiled the committee substitute from 2019 in the form of H.B. 442. H.B. 442 was heard in committee and substituted once again, this time to comport with the position in the TML program by giving cities discretion to lower the prima facie speed limit to 25 mph and providing that "[a] municipality is not required to perform an engineering or traffic investigation to

declare a lower speed limit under this subsection if the street is located in a residence district."

H.B. 442 was reported from committee and set on the House calendar for consideration, but fell victim to the clock running out on consideration of the bill under the House rules.

The legislature considered two other speed limit-related bills in 2021. H.B. 3877 by Representative Israel and S.B. 221 by Senator Zaffirini were identical bills that would lower the prima facie speed limit from 30 mph to 25 mph, but only in cities with a population greater than 250,000. Neither bill received a committee hearing.

In 2023, the legislature considered two bills that would allow cities to reduce speed limits in residential areas. H.B. 2224 by Representative Hernandez and S.B. 1663 by Senator Alvarado would allow a city to reduce the speed limit to 20 mph in a residential district without a traffic study. The League supported both bills as part of the 2023 legislative program. Unfortunately, although both bills were approved by their respective chamber of origin, neither bill made it through both chambers.

The legislature did pass H.B. 1885 by Representative Canales, which allows the Texas Transportation Commission (TTC) to create a variable speed limit program that would allow the TTC to temporarily lower the speed limit on state highways to address inclement weather, congestion, road construction, or any other condition that may affect the safe and orderly movement of traffic. H.B. 1885 does not impact the speed limit on residential city streets.

The TML Legislative Program provides that the League support legislation that would allow a city to lower the prima facie speed limit from 30 to 25 miles per hour without the need for a traffic study.

GENERAL GOVERNMENT

Community Advocacy Limitations

Prior to the 2007 legislative session, interim legislative committees studied the question of so- called "taxpayer-funded lobbying." One reason for this research was that local government officials and their membership organizations (like TML) had been successful in previous legislative sessions in defeating numerous bad ideas that were being pushed by influential state officials and various interest groups.
In preparation for what the League knew would be an assault on its ability, and the ability of its membership, to advocate the legislature, a special TML Legislative Task Force on Intergovernmental Relations was convened to study this and other issues concerning the League's relationship with state government. The conclusions of that task force were ultimately embodied in the following positions taken by the League in 2007:

- Oppose legislation that would limit or prohibit the authority of city officials to use municipal funds to communicate with legislators.
- Oppose legislation that would limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.

Those positions were adopted none too soon, as 2007 did indeed bring about legislation that would have harmed the League and its members. H.B. 1753 by Rep. Frank Corte (and its companion bill, S.B. 1944 by Sen. Dan Patrick). Those bills had nothing to do with legislative communications undertaken by city officials, nor did they relate to the authority of cities to contract for the services of a legislative consultant – a "hired gun lobbyist." Rather, H.B. 1753 and S.B. 1944 would have prohibited a city from paying dues to an

organization if that organization or an employee of that organization directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature. In other words, the bills were designed to force TML to not advocate on behalf of its member cities or force cities to stop paying dues to TML.

The introduction of bills like H.B. 1753 and S.B. 1944 raised an interesting question. Why does TML spend any resources, however derived, on attempting to influence legislation? The answer is simple: TML does so because legislative advocacy is the service that city officials most want from the League. Every membership survey conducted by the League has shown that advocacy is the League's most important activity.

It is also worth remembering that the legislative program that directs the TML advocacy efforts is developed and adopted by the League's membership-at-large and its Board of Directors, not by the TML staff.

It stands to reason, then, that future bills resembling H.B. 1753 and S.B. 1944 should be of the most concern to city officials, not to the TML staff. Such bills would prevent the League from speaking out against the dozens of unfunded state mandates that are proposed each legislative session. They would also prohibit the League from speaking in opposition to legislation that increases the liability of city officials and endangers their personal resources. They would, most importantly, limit city officials' access to information on statewide policy, and therefore also limit the ability of local leaders to effectively participate in the legislative process.

In 2015, three bills were filed that would have prohibited cities from spending public money to attempt to influence the outcome of any legislation pending before the legislature, as well as expressly prohibiting cities from being members of a nonprofit association that attempts to influence the outcome of any pending legislation—H.B. 1257 (Shaheen), S.B. 711 (Burton), and S.B. 1862 (Burton). Of the three bills, both H.B. 1257 and S.B. 1862 were heard in committee, although neither was voted out. During those committee hearings, local government officials pointed out that the legislation in question would make it next to impossible for legislators to get all the facts they need to cast an informed vote on a bill that affects the cities in their districts. Additionally, cities hire lobbyists for the same reason many state agencies and state universities in Texas spend taxpayer money to employ dozens of lobbyists in Washington, D.C.

Though nothing passed in 2015, the issue was back in high gear in 2017. Two House bills that would have prohibited advocacy by cities were filed in 2017: H.B 1316 (Swanson) and H.B. 2553 (Shaheen). Those bills never received hearings. One bill, S.B. 445 (Burton) would have instituted transparency reforms related to local government lobby contracts. It passed the Senate but wasn't heard in the House.

The 2019 version was S.B. 29. That bill passed the Senate and died on the House floor by a 58-85 vote. In fact, the bill became the center of a controversy that ended up with the Speaker of the Texas House resigning.

One reporting bill did pass. H.B. 1495 provided, among other things, that the proposed budget of a political subdivision must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in the state's lobby law.

Neither the bill nor current law defines what it means to "directly or indirectly influence or

attempt to influence legislation." It's safe to say that money spent on a contract lobbyist should be included, but what about internal expenditures related to influencing legislation? Those internal expenditures might include staff travel time to Austin and related expenses to meet with a legislator or testify before a committee. What to include is ultimately up to each city to decide in good faith based on the advice of local legal counsel. (Note: TML member service fees are not spent to influence legislation. As such, they need not be included in the budget comparison.)

Prior to the 2019 session, then-League President Holly Gray-Moore appointed a special legislative committee to examine, among other issues, whether the League's primary focus on defeating harmful bills was the correct one considering all the potential negatives that can flow from being a bill-defeating organization. The committee's recommendation was unanimous that defeating harmful legislation should continue to be the League's primary focus.

Following the 2019 session, TML President Eddie Daffern appointed another committee (with many of the same members) called the Legislative Policy Committee on Advocacy Strategy. The purpose of the 2020 committee was not to re-litigate the question of the League's broad strategic goal to defend against harmful legislation. Rather, it was to examine whether the League is on the right track in achieving that strategy. How might tactics change given a changing environment? How can mayors and councilmembers reassert themselves as the primary spokespersons of what's best for Texas cities, using the League as a resource to do so? These and other questions were critical heading into a 2021 legislative session where it was imperative that the League stem the tide of harmful bills.

The relevant recommendations of the 2020 Advocacy Strategy Committee included the following:

- The League should begin efforts to inform and educate city officials about the legislative process. Those efforts should include more concise written materials in the *Legislative Update*, a social media presence, and oral presentations at every TML or city event in the coming year where doing so is feasible, including every TML regional meeting and affiliate conference.
- The League should redouble its efforts to educate and encourage all municipal elected officials through the following:
    - Increased use of weekly conference call updates to officials so they are aware of bad legislation well in advance of needed engagement.
    - Narrowed focus of written updates, such as the *Legislative Update* email, to a handful of the most important issues, perhaps ranked by significance.
    - Increased use of old-fashioned "phone trees" when it is time to engage against a bill, with a goal of timely contact and avoiding the perception that talking points are being invented by TML staff.
    - Significant improvement to the League's GRIP (Grassroots Intervention Program) database. Improvements could include more information about subject matter expertise of member city officials, professional affiliations, and more information about the willingness of city official to take certain types of advocacy actions during a session.
    - Utilization of communications consultants and public information offices to help with advocacy messaging.
- The League should, when using the local clout of elected officials in advocacy

> efforts, and through TML affiliates, educate city staff on how they can assist in that process by providing individualized advocacy points to their elected officials.

The stage was set for yet another showdown on community censorship in 2021. The Republican Party of Texas listed "banning taxpayer funded lobbying" as one of their eight legislative priorities in the 2021 legislative session. Lieutenant Governor Patrick counted the issue as one of his 31 legislative priorities, and assigned Senator Bettencourt to shepherd the bill through the process – S.B. 10.

As filed, S.B. 10 would have generally prevented a city from hiring staff, contracting with lobbyists or other professional advocates, or joining associations like TML that engage in advocacy at the state capitol. Specifically, the bill provided:

> The governing body of a county or municipality may not spend public money or provide compensation in any manner to directly or indirectly influence or attempt to influence the outcome of any legislation pending before the legislature.

The first thing that stood out is how broadly the language limits city and county authority regarding advocacy. A city council certainly has a firm grasp of whether or not it contracts with a lobbyist or hires an employee to engage in legislative advocacy. However, the language prohibited the city council from spending public money on directly or indirectly influencing legislation "in any way." This would potentially put a city in the impossible position of trying to track every dollar spent by the city, say in a contract with a vendor, to make sure that the money is not ultimately used for legislative advocacy.

More troubling was the use of the phrase "indirectly influencing or attempting to influence the outcome" of legislation. That phrase was not defined in the bill, nor was it defined in existing state law. While directly influencing the outcome of legislation would encompass traditional communications with members of the legislature and staff (which is problematic in and of itself), "indirectly influencing" would go far beyond any notion of lobbying to include other communications and activities. S.B. 10 would prohibit TML, for instance, from providing its members' information about a bill, since doing so could potentially influence the outcome of the legislation.

The bill contained three exceptions to the general prohibition on community advocacy listed above. Those exceptions were:

1. Allowing an elected official to advocate for or against or otherwise influence or attempt to influence the outcome of legislation pending before the legislature;
2. Allowing an officer or employee of a city to provide information to a member of the legislature or appear before a legislative committee, but only if requested by the member of the legislature or committee; and
3. Allowing an employee to advocate for or against or otherwise influence or attempt to influence the outcome of legislation, but only if the employee engages in a minimal amount of lobbying activity so as not to be required to register as a lobbyist under state law.

Taken together, these exemptions granted very limited access to the state lawmaking process during the legislative session. Though a mayor or councilmember was given the ability to advocate on behalf of the city, they are simultaneously prohibited by the bill from receiving any extensive guidance on legislation by staff, professional advocates, or nonprofit associations. In other words, the bill allowed elected city

leaders to participate, but only if they are able to independently monitor legislation and make time to advocate in addition to performing their jobs as public servants.

The original iteration of S.B. 10 did not have the full support of the Senate Local Government Committee. In order to garner sufficient votes to pass the bill out of committee, Senator Bettencourt was forced to amend the language of the bill to allow a city or county to provide compensation to a nonprofit state association or organization to advocate for or against or otherwise influence the outcome of legislation, so long as the association or organization does not contract with lobbyists or attempt to influence legislation related to property taxation. While this change was a bit more promising for associations like TML in theory, it made an already constitutionally dubious bill arguably even more unconstitutional by prohibiting advocacy on one particular issue. Further, all other broad prohibitive language remained in the bill with intended goal of censoring local communities at the Capitol. Not surprisingly, the bill was reported from committee on a 5 to 4, party-line vote, and ultimately passed the Senate by a vote of 17-13.

In the House, the House State Affairs Committee heard H.B. 749 by Representative Middleton, which would have broadly prohibited political subdivisions from hiring lobbyists or paying statewide associations that contract with or hire lobbyists. The bill was heard in committee, but from the discussion in committee it was relatively clear that the bill lacked the necessary votes to be reported from committee. As H.B. 749 languished, the House State Affairs Committee received S.B. 10 as passed by the Senate and took action to further amend the bill in the form of a House committee substitute. The House version of S.B. 10 replaced the strict community censorship provisions of the bill with transparency reforms related to the practice of community advocacy. The committee substitute would have applied to most political subdivisions and required a vote of the governing body to authorize a contract with a person required to register as a lobbyist. The bill required a political subdivision to post a copy of the lobby contract on its website, including other information like the amount spent on contract lobbyists and membership fees or dues to nonprofit state associations or organizations. The bill also prohibited a city from reimbursing a lobbyist for expenditures on food, drink, and entertainment and prohibited lobbyists who contract with political subdivisions from advocating on property tax rates.

Many in the Texas House viewed the House committee substitute as a more reasonable measure than earlier iterations of S.B. 10. However, when it became clear that a consensus in the House could not be reached on the committee substitute to S.B. 10, the House sponsor postponed the bill until September 18, 2021 – a procedural move that effectively ended any chance of the bill passing in 2021.

In the interim leading up to the 2023 session, Lieutenant Governor Patrick charged the Senate Local Government Committee to study the community censorship issue. Not surprisingly, given the last few legislative sessions, the Senate Local Government Committee recommended that the "[l]egislature consider legislation that would prevent the governing body of a city or county from spending public money or providing compensation in any manner to directly or indirectly influence the outcome of any legislation pending before the Legislature." No similar interim charge was issued in the Texas House. Additionally, the concept of banning taxpayer funded lobbyists did not make the list of the top eight legislative priorities of the Republican Party of Texas entering the 2023 legislative session.

In 2023, the primary vehicle to reign in community advocacy was S.B. 175, filed by now-Senator Middleton. As filed, the bill would have prohibited

a political subdivision from spending public funds to either: (1) hire a lobbyist; or (2) pay a nonprofit state association that hires or contracts with a lobbyist. The bill was voted from the Senate State Affairs Committee on an 8 to 3 vote.

Due to difficulty garnering the votes necessary to bring the bill up for a debate on the Senate floor, a floor amendment by Senator Flores was added to the bill. The amendment would have expressly allowed a full-time employee of a nonprofit state association to: (1) provide legislative services, including services related to bill tracking, bill analysis, and legislative alerts; (2) communicate directly with a member of the legislature to provide information; or (3) testify for or against legislation before a legislative committee. The bill passed the Senate on a 19-12 vote as amended, but was never heard in a House committee.

City officials can continue to expect community censorship legislation to be strongly pursued in 2025.

The TML Legislative Program provides that the League should oppose legislation that would limit or prohibit the authority of city officials to use municipal funds to communicate with legislators; or limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.

Elections: Ballot Language/Initiative and Referendum

Prior to the 2017 legislative session, the lieutenant governor charged the Senate Intergovernmental Relations Committee with studying the following topic:

> Local Ordinance Integrity: Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions, and the means by which they are put forth to voters, conform with existing state law.

When the committee met regarding the charge, it became clear that some want more state regulation of ballot language used in initiative, referendum, and home rule charter amendment elections, which sometimes become highly contentious. Proponents argue that these reforms are necessary due to case law striking ballot language proposed by cities.

The interim charge to the Senate Intergovernmental Relations Committee culminated with the filing of S.B. 488 by Senator Bettencourt and H.B. 3332 by Representative Kuempel in 2017. S.B. 488 made it furthest of the two companion bills. It was approved by the full Senate and House Elections Committee but was never considered on the House floor. In short, S.B. 488 would have authorized the secretary of state to review home rule city ballot language and required cities to make changes to the ballot language based on that review. Even more troubling, the bill would have required cities to pay reasonable attorney's fees, expenses, and court costs to a prevailing plaintiff in a suit challenging the ballot language, even if the city were using language recommended by Secretary of State.

With highly charged political issues on a ballot, there is always a distinct possibility of a pro-forma legal challenge to the ballot language by the opponents of a given measure. As the only level of government in Texas that has initiative

and referendum elections, home-rule cities are uniquely targeted by proposals like S.B. 488 just by virtue of having a process that allows for the citizens to vote on certain measures. The irony of S.B. 488 is that the Texas legislature—a body that has not come close to adopting direct democracy measures like initiative and referendum at the state level (like many other states)—is attempting to punish home-rule cities for improperly managing their voter-approved procedures for heightened accountability and transparency.

At a 2018 interim committee hearing, Senator Paul Bettencourt indicated his intent to re-file his ballot language legislation from 2017. According to Senator Bettencourt, city officials are drafting "purposely misleading" ballot language, presumably in an attempt to sway voters one way or the other.

Senator Bettencourt's renewed focus on city ballot propositions was based on three lawsuits, described here:

- The City of Austin received a petition to call an election on the implementation of a city land use plan. The petition required any new land use plan to include a waiting period and voter approval before it could go into effect. The city's ballot language provided that the waiting period could be "up to three years." The plaintiffs sued the city over this language, arguing that the city's ballot language should have excluded the length of the waiting period. The Texas Supreme Court rejected the plaintiffs' challenge. (Note: this proposition was ultimately rejected by the voters.)
- The City of Austin received a petition to mandate the city to conduct an annual "efficiency audit." The city's ballot language included the cost of each proposed efficiency audit, estimated at $1 - $5 million. The plaintiffs argued that the inclusion of the cost was misleading political commentary on the proposed requirement. The Supreme Court rejected the plaintiffs' challenge. (Note: this proposition was ultimately rejected by the voters.)
- The City of Houston hadn't even finalized its ballot language for an upcoming charter amendment election prior to being sued over the proposed language. The proposition was to establish a dedicated fund for street and drainage infrastructure spending. The lawsuit claimed that *proposed* ballot language didn't comply with the common-law ballot language standard requiring that the "key features" be included in the language. (The original language didn't state that the funding would come from fees on city residents.) The city ultimately adopted ballot language that referenced the drainage charges. The Supreme Court rejected plaintiffs' challenge. (Note: this proposition was passed by the voters.)

Senator Bettencourt mentioned the lawsuits above as justification for re-filing legislation like S.B. 488 in 2019. This in spite of the fact that the Supreme Court of Texas dismissed the lawsuits and determined that the language drafted by the cities was in accordance with current legal standards.

Nevertheless, Senator Bettencourt did refile a bill on the topic in 2019. S.B. 1225 was virtually a copy of S.B. 488 from the 2017 session. The League opposed the bill, but it still was reported from the Senate committee chaired by Senator Bettencourt and passed by the full Senate on a 20-10 vote. That momentum did not carry over to the House, possibly because another bill had seemingly become the primary vehicle for ballot language changes.

S.B. 323 by Senator Huffman required a city, not later than the 123rd day before an election, to submit ballot language to the regional presiding

judge, who then appointed a three-judge panel to consider and approve the language. As originally filed, the panel could disapprove the language without rewriting it. Given the strict election deadlines that would apply, a disapproval under S.B. 323 would often mean that the city would need to postpone certain initiative and referendum elections at least six months to the next uniform election date. The League voiced this concern at the committee hearing in the senate, and the bill was modified to require the panel of judges to rewrite the ballot language if disapproved. Still, the bill would have subjected the city to an election contest even when the city used the judicially-approved ballot language. S.B. 323 was approved by the Senate and reported from the House Elections committee before time running out in the session.

Although the three-judge panel didn't resurface in 2021, Senator Bettencourt's Secretary of State review bill did – S.B. 1430. However, it was a nearly identical bill in the House – H.B. 782 by Representative Swanson – that was pushed. H.B. 782 was reported out of the House Elections Committee and heard on the House floor. There, a valid point of order was raised against the bill, and the bill was pronounced dead by procedural action. The fatal point of order occurred late enough in the session that it was too late for the Senate to mobilize behind S.B. 1430.

Following the 2021 session, the Texas Supreme Court reviewed ballot language used when the City of Austin placed a voter-initiated ordinance on police funding before the voters. The city prepared its own ballot language instead of using the ballot language in the petition for the ordinance. The organization responsible for the petition filed suit, claiming that the city was required by its charter to use petitioners' caption language in the proposition and could not add language addressing the ordinance's financial impact. The Supreme Court concluded that the city correctly added the financial impact language to the ballot proposition in accordance with past Texas Supreme Court precedent but was otherwise required by its charter to use the caption from the petition in the proposition.

Once again, the issue was included as an interim charge to the Senate Local Government Committee. A hearing was held on the charge in April 2022. Ironically, most of the focus of the testimony on the ballot language charge focused on the state's drafting of ballot language for a constitutional amendment election held in May 2022 regarding property tax homestead exemptions, highlighting the inherent difficulties in drafting ballot language no matter which level of government is doing the drafting.

Two bills of interest were filed on the subject in 2023. S.B. 221 by Senator Bettencourt resembled legislation he authored in previous sessions. And, just like 2021, the bill passed the Senate only to be thrown out on a point of order on the House floor. H.B. 190 by Representative Swanson, though it didn't advance at all through the legislative process, took a slightly different tack that is worth monitoring. The bill would require a city to use wording identical to the caption of any petition submitted to the city for an election and give the city the ability to appeal the caption's language to the secretary of state's office.

What should city officials make of the increased (and perhaps misplaced) scrutiny of city ballot language? If nothing else, it reflects the increased litigiousness of plaintiffs when political measures are on the ballot. When controversial political issues are put up to a vote, it's common for interests on either side of the issue to – as a matter of practice – file a lawsuit challenging the ballot language. This "sue first, ask questions later" approach is apparent in the recent legal challenges in Austin and Houston. In the Houston lawsuit, the city was actually sued *before it even adopted any ballot language in the first place*.

The other aspect of these challenges is that, when it comes to participatory democracy measures like initiative and referendum in Texas, cities are the only game in town. Home rule cities are the only level of government in Texas that actually gives voters the ability to directly shape public policy. State government provides no such mechanism. That begs the question of whether the state legislature should be involved at all.

Several other states allow for initiative and referendum at a statewide level. Some of those states have ballot language review boards and independent third parties that attempt to craft "neutral" ballot language. Even they receive legal challenges. For example, Colorado allows citizens to place initiatives on statewide ballots. Colorado law requires a "Initiatives and Title board," consisting of the secretary of state, attorney general, and director of legislative counsel, to determine that ballot language is fair and not misleading. Citizens can appeal the approved language directly to the Colorado Supreme Court. In spite of those procedures, over 50 legal challenges have been filed in the last two years.

In any case, the notion that Texas city officials are deliberately trying to mislead voters is misplaced. If recent litigation is any indication, drafting ballot language is a complicated business, but Texas cities have generally succeeded in conforming to current legal standards when drafting ballot language.

The TML Legislative Program provides that the League oppose legislation that would: (1) restrict city authority to draft ballot propositions in such a way that reflects the full fiscal impact of the proposition; and (2) require preclearance of city ballot propositions by a state agency.

Elections: Partisan City Elections

2017 saw the beginnings of a new effort to politicize the successfully non-partisan nature of city government in Texas. One early-filed bill that didn't progress was H.B. 2919 by Sanford. H.B. 2919 would have required candidates for mayor and city council to declare party affiliation and run as partisans in their elections (Note: current Texas law authorizes a home rule city to hold partisan city elections by charter, but to the League's knowledge no city has opted into a partisan election scheme). Representative Sanford refiled his bill in 2019, but the bill (H.B. 3432) once again did not receive a committee hearing. In 2021, Rep. Sanford's bill—H.B. 2092—not only received a hearing in the House Elections Committee, but was actually voted out of committee by a vote of 5 to 4. However, the bill went no further and Representative Sanford chose not to run for reelection.

No similar bill was filed in 2023, at least as it relates to city elections. H.B. 221 by Representative Toth would have required candidates for a board of trustees of an independent school district to run in partisan elections. That bill was not heard in committee.

As the partisanship in Washington continues to creep down to the state and local levels, supporters of the two major parties are now getting active in local city elections through endorsements and fundraising. The League's membership has traditionally held the belief that one of the primary reasons that city governments are able to efficiently respond to their citizens is because city leaders are able to avoid the partisan gridlock that plagues Washington D.C. and, on occasion, the state legislative process in Austin.

The TML Legislative Program provides that the League oppose legislation that would require candidates for city office to declare party affiliation in order to run for office.

Elections: Uniform Election Dates

Prior to 2005, most city elections had to be held on one of four uniform election dates. In 2005, the legislature passed H.B. 57, which deleted the February and September election dates, leaving only two uniform election dates: (1) the second Saturday in May and (2) the first Tuesday after the first Monday in November.

H.B. 57 also gave cities the ability to change the date on which they held a general election to another authorized uniform election date, so long as the action was taken prior to December 31, 2005. Since then, numerous proposals have been filed, and some passed, that alter the deadline for a city to change the date of its general election. As an example, H.B. 3619 by Raymond passed in 2007 and would have extended the deadline for a city to change the date of its election to December 31, 2008. Governor Perry vetoed that bill on the grounds that voters needed to have some confidence in when city elections were to take place. In his veto message, the Governor stated that "[w]hile some of the deadline extensions were necessary in sessions in which the legislature cut back the number of uniform election dates, we have now reached the point where the cities and other local subdivisions need to stop moving their election dates."

For whatever reason, the governor signed a bill (H.B. 401 by Raymond) extending the deadline for switching election dates in 2009, but with one slight change. H.B. 401 provided that a city that held its general election on the May uniform election date could change the date of the election to the November uniform election date no later than December 31, 2010. In other words, a city that held its general election in November had no statutory authority to move its elections to the May uniform election date.

A major elections bill in 2011 further impacted a city's ability to change the date of its general election. S.B. 100 by Van de Putte implemented the federal Military and Overseas Voter Empowerment (MOVE) Act of 2009. The MOVE Act, among other things, requires that ballots be transmitted to military and overseas voters 45 days prior to an election held in conjunction with a federal election to ensure that military and overseas voters would have ample time to return their ballots.

S.B. 100 implemented the federal legislation by leaving the current primary election date intact but moving the primary runoff date, which used to be held on the second Tuesday in April of even-numbered years, to the fourth Tuesday in May of even-numbered years. This was needed to be able to transmit ballots overseas 45 days in advance of a primary runoff election. The election calendar changes of S.B. 100 meant that the May uniform election date would fall between the primary and primary runoff dates in even-numbered years. Counties were concerned that they would not be able to both lend their machines to cities and school districts for local elections on the second Saturday in May of even-numbered years, and have the electronic voting machines ready for use in the primary runoff election held at the end of May of even-numbered years.

These concerns led to practical limitations on the availability of the May uniform election date in some locations. Following the passage of S.B. 100, a city could still hold an election on the second Saturday in May of an odd-numbered year or on the November uniform election date. However, counties might refuse to provide electronic voting machines to cities for use on the second Saturday in May of an even-numbered year due to the proximity of that election date to the primary runoff date in even-numbered years.

As a result, some cities received notice from the county that they can no longer use the county's electronic voting machines for this date, which forced those cities to take one of three actions:

(1) move all elections to the November uniform election date; (2) unstagger terms of office for elected officials so that all officials are elected on the May uniform election date in odd-numbered years; or (3) purchase electronic voting machines so that May elections are not dependent upon the availability of machines from the county.

S.B. 100, along with a separate bill, H.B. 1545, both extended the deadline to December 31, 2012, for cities with May elections to switch to the November uniform election date. That statutory deadline expired, but still remained in place until 2015, thus precluding a city from changing its election date for three years.

In 2015, H.B. 2354 passed which moved the May uniform election date to the first Saturday in May to avoid potential scheduling conflicts with state political party conventions. Additionally, S.B. 733 by Fraser was passed, which extended the deadline to switch from May to November elections to December 31, 2016. By the time the 2017 legislative session began, Texas cities once again had no statutory authority to move their general election to another uniform election date. This lack of flexibility has become problematic for many cities, primarily because counties still have the ability to refuse to provide electronic voting machines to cities conducting their elections in May of even-numbered years.

A handful of bills were filed in 2023 that would make beneficial changes to the statute authorizing a city to change its general election date. H.B. 2133 by Representative Thimesch, as-filed, would have authorized a city to move its election from November to May. H.B. 824 by Representative Buckley would have extended the deadline for a city to move from May elections to November elections to December 31, 2024. H.B. 455 by Representative Schofield would have simply repealed the existing December 31, 2016 deadline altogether, thus allowing cities to move from May elections to November elections freely. Though none of these bills passed, the fact that they were filed indicates a growing support for giving cities some additional flexibility to change their general election dates.

A number of bills were filed from 2017 to 2023 that would have eliminated the May uniform election date, though none of them gained much traction. In June 2022, the San Antonio court of appeals held that while the Texas Election Code does currently prohibit all cities from changing the date of their elections from May to November, home rule cities could change their elections from November to May, since they weren't prohibited from doing so by the Texas Election Code. Entering the 2025 session, cities still have two uniform election dates, though still face some limitations in switching the date of their elections.

Some theorize that certain legislators want all elections to be held on one date, such as the November uniform election date. Such a joint election would eliminate the need to procure the now-required electronic voting machines for a stand-alone municipal election. But many city officials are uncomfortable with that possibility. City officer elections and propositions, including important bond issues, could be shunted to the end of the ballot, and city issues could be drowned-out under huge national and state campaigns.

The TML Legislative Program provides that the League oppose legislation that would eliminate any of the current uniform election dates.

Elections: Ballot Proposition Assignments

S.B. 957 by Senator Campbell passed in 2017 to provide that each political subdivision's proposition on a ballot must be assigned a letter of the alphabet corresponding with its order on the ballot. In 2022, the City of Amarillo submitted a resolution that was ultimately approved by the TML membership relating to

how ballot propositions are labelled. The issue was that Amarillo found that being required to only use letters of the alphabet for measures led to confusion amongst voters, particularly when holding elections in back-to-back years on a Proposition A. Amarillo's preference would be to broaden the naming conventions required for propositions to alternate from numbers to letters every other election in order to avoid confusion for voters who may think a proposition is the same item from a prior election they may have voted in.

No legislation was filed in 2023 on the topic.

The TML Legislative Program provides that the League support legislation that would amend Section 52.095, Election Code, related to the requirement that cities are only able to assign a letter of the alphabet to the measure that corresponds to its order on the ballot.

Publication of Legal Notices

Cities are required by over 100 state statutes to publish some sort of legal notice in the newspaper. As a result, cities spend a substantial amount of taxpayer money on a means of notice that has become more obsolete by the year with the ubiquity of the internet. As newspaper readership continues to decline, newspaper publication requirements represent a costly and ineffective relic of the past.

Back in 2006, TML member cities approved a resolution submitted by the Texas Purchasing Management Association to support legislation that would enable the use of electronic notices for bid/proposal opportunities. Since then, some form of the same position has remained in the TML legislative program. Progress on the issue has been slow for local governments, in large part because the newspapers who stand to lose revenue from a move away from published notice also have an outsized platform to decry the legislation as anti-transparency. But there have been some important policy breakthroughs over the years.

The first major movement on lessening newspaper publication requirements began in earnest in 2009 with the filing of S.B. 2145 by Senator West, which was limited to merely allowing a city to post notice for competitive bids on the city's website in addition to publishing notice in the newspaper. The bill passed the Senate unanimously and was approved by a House committee before time ran out. The next session, nearly identical legislation in the form of H.B. 507 by Representative Button faced much more opposition from newspaper companies and other media associations. The bill never received a vote in the House.

Representative Stickland filed H.B. 335 in 2013, which would have simply provided that a political subdivision satisfies a legal requirement to publish notice in the newspaper by posting the notice on the political subdivision's website. The bill did not advance to the House floor, and media groups strongly opposed the bill. But the filing of H.B. 335 signified a shift away from narrowly-focused legislation dealing with procurement notices to a broad push to move all legal notices to local government websites as a way to save taxpayer dollars.

The issue started to pick up steam a bit in 2015, at least in terms of the number of bills filed. Representative Stickland refiled his legislation as H.B. 139. Representative Flynn filed similar legislation in H.B. 1019. Meanwhile, Senator Burton filed S.B. 392, which would have allowed governmental entities to post notices of meetings on their websites instead of in the newspaper. That bill was heard in a Senate committee and strongly opposed by the Texas Press Association and other newspapers. Once again, the legislature adjourned without taking action on the issue.

In addition to another increase in the number of beneficial bills filed on the topic in 2017, the

legislature took action to begin gathering more information on the cost of legal notices by passing S.B. 622 by Senator Burton. The bill imposed a requirement that political subdivisions located in counties with a population of 50,000 or more, including cities, include a line item indicating expenditures for notices required by law to be published in a newspaper in the entities' proposed budgets. The goal of the legislation was to create a way of gathering information about the true expense of newspaper publication requirements on local governments. Though no legislative committee has accumulated the data and studied the issue since the bill passed in 2017, some of the dollar figures reported by Texas cities are eye-opening. For example, San Antonio's estimated expenditures on newspaper publication in 2023 exceeded $690,000.

Based solely on the number of bills filed, the push for moving away from newspaper publication and towards internet notice may have reached its peak (to this point, at least) in 2021. No less than six bills were filed in 2021, many by committee chairs in both the House and Senate. Two of those bills received committee hearings – H.B. 1030 by Representative Shaheen and H.B. 2578 by Representative Leach. H.B. 2578 would have required the Texas comptroller to establish a public information internet website to serve as a clearinghouse for local governments' public notices, and publication by the local government on the comptroller's site would satisfy any requirement in state statute to publish notice in a newspaper.

Neither bill passed, but the clamor for action on the issue led the Texas Press Association to proactively push and pass legislation in 2023, perhaps in an attempt to head off some of the pressure from the legislature to move away from newspaper notice altogether. S.B. 943 by Senator Kolkhorst requires a newspaper that publishes a legal notice to, at no additional cost to a governmental entity placing the notice, publish the notice on the newspaper's website on a page that is accessible at no cost to the public. Further, the bill requires the newspaper to forward the notice to the Texas Press Association for publication on an association-controlled website as a statewide repository of public notices, if the association chooses to maintain such a website.

That website now exists at:
www.texaspublicnotices.com. The landing page of the website contains this statement relating to public notices:

> Every state in our nation, including Texas, has laws that regulate the manner in which public notices are published. These laws are designed to ensure that people within a community receive important information about the actions of their government. Local newspapers remain the preferred venue to distribute public notices. This website is funded and maintained by Texas newspapers, the trusted source for all community news and information.

Even with the passage of S.B. 943, cities and other local governments must continue to pay for the publication of public notices in local newspapers. It remains to be seen if the passage of S.B. 943 delays what seems like an inevitable shift away from the mandated publication of legal notices in newspapers in favor of the more taxpayer-friendly use of an official website or statewide clearinghouse for free.

The TML Legislative Program provides that the League seek introduction and passage legislation that would allow cities alternative methods for publication of legal notices.

Open Meetings Act: Remote Meeting Flexibility

Current law authorizes cities to use videoconference and teleconference to conduct meetings under certain circumstances. In order to conduct a meeting by videoconference, a quorum of the city council must be present at one physical location and the city must follow specific procedures under Government Code Sec. 551.127. A city may generally only conduct a meeting by telephone conference if: (1) an emergency or public necessity exists; and (2) it is impossible or difficult for a quorum of the city council to meet at one location.

On March 16, 2020, the governor suspended several provisions of the Texas Open Meetings Act (TOMA) in order "to maintain government transparency and continued government operations while reducing face-to-face contact for government open meetings." The governor's TOMA suspensions terminated on September 1, 2021.

The result of the governor's TOMA suspensions was flexible options for holding meetings and receiving public testimony without gathering in-person. For videoconferencing, for instance, the following provisions were suspended:

1. A quorum of the city council need not be present at one physical location. TEX. GOV'T CODE § 551.127(b).
2. In light of (1), above, the meeting notice need not specify where the quorum of the city council will be physically present and the intent to have a quorum present. *Id*. § 551.127(e).
3. In light of (1) above, the meeting held by videoconference call is not required to be open to the public at a location where council is present. *Id*. § 551.127(f).
4. The audio and video are not required to meet minimum standards established by Texas Department of Information Resources rules, the video doesn't have to be sufficient that a member of the public can observe the demeanor of the participants, the members faces don't have to be clearly visible at all times, and the meeting can continue even if a connection is lost, so long as a quorum is still present. *Id*. § 551.127(a-3); (h); (i); (j).

Additionally, the TOMA suspensions removed the requirement that an emergency exists to conduct a telephone conference call meeting. According to the attorney general, "a quorum still must participate in the telephonic meeting." Moreover, statutory provisions "that require the telephonic meeting to be audible to members of the public who are physically present at the specified location of the meeting are suspended; provided, however, that the dial-in number provided in the notice must make the meeting audible to members of the public and allow for their two-way communication; and further provided that a recording of the meeting must be made available to the public."

In the lead up to the 2021 legislative session, the League heard from many cities that saw public participation in meetings increase due to the added flexibility of citizens testifying remotely. The benefits of increased flexibility for local meetings were not lost on the Texas legislature in 2021. In total, eleven bills were filed that would have, to one degree or another, broadened remote meeting authority to at least approximate the flexibility cities received under the governor's TOMA suspension. Only one of those bills received a hearing – S.B. 861 by Senator Angela Paxton. Despite overwhelming support at the committee level from cities, counties, special purpose districts, the Texas Press Association, and others, the bill never made it to a vote on the Senate floor.

It was a different story for the 2023 session. After eleven bills were filed to increase remote meeting flexibility in 2021, exactly zero bills were filed in 2023 doing the same. Once the governor's TOMA suspension that was in effect throughout the 2021 legislative session was lifted, it was as if the flexible meeting framework during the pandemic never existed. It is certainly possible that the legislature revisits the issue in 2025, though it would appear as though the issue is trending the other direction.

The TML Legislative Program provides that the League support legislation that promotes increased flexibility under the Texas Open Meetings Act, including flexibility for public participation, so long as the legislation doesn't mandate any new costs on local governments.

Emergency Service Districts (ESDs)

In recent years, a number of issues have cropped up involving ESDs and cities. Some of these issues involve the allocation of sales taxes between cities and ESDs. Others deal with more fundamental questions of ESD authority in the city limits and the city's extraterritorial jurisdiction.

Legislation passed in 2007, S.B. 1502 by Zaffirini, allows an ESD to "carve out" portions of the district that are already at the two-cent sales tax cap, thus permitting the district to impose a sales tax in non-capped portions of the ESD. As a result of this bill, cities have experienced an increased number of new ESD sales taxes in their ETJ (prior to the bill, an ESD couldn't pass a sales tax unless the entire district was eligible under the two-cent cap). Further, when a city annexes territory located in the ESD, the city is unable to collect sales taxes if they have already been claimed by the ESD.

In 2013, legislation was filed and passed that represents a step in the right direction for cities on this issue. H.B. 3159 by Isaac authorized a city that annexes territory served by an ESD (but does not provide emergency services in the newly-annexed area) to enter into an agreement with the ESD to divide the sales tax revenue in the newly-annexed area in an amount acceptable to both entities. The bill was not perfect from a city perspective, since an ESD could still refuse to negotiate such an agreement with the city and therefore limit the city sales taxes to be collected in the newly-annexed territory. However, some cities have utilized this authority to collect a higher percentage of sales taxes than they otherwise would have received without an agreement.

There are many other issues that can occur between cities and ESDs, including whether ESDs should be allowed to form outside the city limits or ETJ and then expand into the ETJ or city limits without the city's consent. In 2013, Representative Goldman filed H.B. 1798, which would have required city council approval for an ESD to expand into a city's corporate limits or ETJ. (Under current law, an ESD must receive city council approval when forming in the city limits or a city's ETJ, but only for the initial formation of the district.) Oftentimes a city is providing emergency services in the ETJ when an ESD holds an election for the district to expand into the area, yet the city does not have the statutory authority to approve of such expansion. From the city perspective, if an ESD must receive city council approval when initially forming in the city limits or ETJ, why shouldn't the ESD receive council approval if it seeks to expand into the same area? This potentially problematic reading has been upheld by the courts. In late 2022, the Waco Court of Appeals held that the Walker County ESD No. 3 was not required to receive city consent when expanding the ESD into the Huntsville city limits or ETJ.

Prior to the 2023 session, the TML Policy Summit considered several items related to ESDs. Ultimately, the Summit recommended, and the TML membership and board approved, that the League seek introduction and passage of legislation that would: (1) allow cities to remove themselves

from an ESD; (2) expressly authorize ESDs to expand into a city's corporate limits or ETJ only with city council approval; and (3) require an ESD to enter into a sales and use tax sharing agreement with a city when a city annexes territory located in an ESD and, should negotiations fail, enter into binding arbitration and/or mediation.

The 2023 legislative session saw a noticeable uptick in legislation filed relating to the relationship between cities and ESDs, though very little passed other than an ESD bill bracketed to the City of San Antonio. On the positive side, bills were filed to pursue perhaps the most compelling ESD issue added to the TML program relating to ESD expansion. S.B. 659 by Senator Eckhardt, along with House companion bills H.B. 1776 and H.B. 4492, would have required city consent when an ESD expands into the city's boundaries or ETJ. H.B. 1775 by Representative Ed Thompson would have required an ESD located in a county over 200,000 population to elect the commissioners of the ESD. H.B. 1775 was approved overwhelmingly by the House and was heard in a Senate committee prior to time running out on the regular session.

On the other side of the equation, a number of bills were filed that would have further limited city authority when it comes to cities' relationship with their ESDs. H.B. 4275 by Representative Rogers would have allowed an ESD to prohibit a city from removing territory from an ESD, as permitted under existing law, if the ESD board reached the conclusion that city services would not meet or exceed the level of service provided by the ESD in the territory. H.B. 4878, also by Representative Rogers, would have given an ESD the exclusive authority to determine whether another person, including a city, may provide services in the district that the district is authorized to provide. Meanwhile, H.B. 1204 by Representative Martinez would have allowed an ESD to prohibit a city from removing territory from an ESD and becoming the provider of emergency services in an area. None of these bills were approved by the Texas House.

At the TML Business Meeting in October 2023, the TML membership approved of a resolution to also seek introduction and passage of legislation that would "change the governance structure for ESDs from appointed boards to elected boards to produce accountability to taxpayers, for ESDs above a certain size threshold." This position follows up on the momentum generated by H.B. 1775 during the 2023 session.

The TML Legislative Program provides that the League seek introduction and passage of legislation that would: (1) allow cities to remove themselves from an emergency services district (ESD) if the city is capable of providing services to the area; (2) expressly authorize ESDs to expand into a city's corporate limits or ETJ only with city council approval; (3) require an ESD to enter into a sales and use tax sharing agreement with a city when a city annexes territory located in an ESD and, should negotiations fail, enter into binding arbitration and/or mediation; and (4) change the governance structure for ESDs from appointed boards to elected boards to produce accountability to taxpayers, for ESDs above a certain size threshold.

Competitive Bidding

During the 2022 TML Policy Summit, the City of Burnet brought up the issue of increasing the $50,000 competitive bidding threshold in Local Government Code Section 252.021 to account for inflation as well as the difficulty in finding material vendors who will hold their prices for an extended period of time due to supply chain issues. The Summit recommended, and the TML membership approved, a new position in the TML program to seek introduction and passage of legislation that would increase the competitive bidding threshold to account for increased costs to cities.

During the 2023 session, Representative Spiller filed H.B. 1132, which would have raised the expenditure threshold for competitive bidding from $50,000 to $100,000 for cities, school districts, and counties. After receiving broad support in the House County Affairs committee, the bill was reported to the full House and passed by a vote of 140-0 on the local and uncontested calendar. In the final days of session, the bill was heard in the Senate Local Government committee, but unfortunately the clock struck midnight on H.B. 1132. The League expects there to be another push to raise the expenditure limit in 2025, with wide support for the concept coming from cities, counties, and school districts.

One other position relating to competitive bidding was added by the TML membership to the program for the 2023 legislative session. In 2022, a resolution from the City of League City was approved for TML to support legislation that would allow for competitive procurement of professional services enumerated in the Professional Services Procurement Act by home rule and general law cities. The purpose of the resolution was to give cities the option to competitively procure professional services in a manner that considers price once the professionals' necessary qualifications have been reviewed and confirmed. According to the resolution, "such competition amongst qualified professionals will both increase the level of service provided by the professional as well as allow home-rule cities to be the best stewards of the public's dollars." Nothing was filed during the 2023 session to allow for competitive procurement for professional services.

The TML Legislative Program provides that the League seek introduction and passage of legislation that would increase the competitive bidding threshold to account for increased costs to cities.

The TML Legislative Program provides that the League support legislation that would allow for competitive procurement of the professional services enumerated in the Professional Services Procurement Act by home rule and general law municipalities.

Community Development Block Grant Expenditures as a Government Function

Cities are immune from suit and liability while performing government functions under the doctrine of governmental immunity unless that immunity is expressly waived by the Texas Legislature.

In recent years, the Texas Supreme Court has determined that certain contracts entered into by cities funded by the Community Development Block Grant (CDBG) program are proprietary functions for which there is no governmental immunity. CDBG funds are used for rehabilitation of residences after natural disasters such as hurricanes, floods, or tornadoes and by their very nature are governmental functions to protect public health and safety.

Ensuring local governmental immunity related to actions under disaster recovery-related contracts will help facilitate an orderly and efficient recovery for a community following a natural disaster.

In 2019, State Senator Carol Alvarado carried and passed S.B. 1575 that would have provided two important protections. First, the bill amended the Civil Practice and Remedies Code to grant a city governmental immunity to suit and from liability for a cause of action arising from the city entering into a contract for a purpose related to disaster recovery after a gubernatorial disaster declaration or taking an action under that contract. The bill also amended the Local Government Code to exempt certain disaster recovery contracts from provisions relating to the adjudication of claims arising under written contracts with local governmental entities.

Unfortunately, Governor Abbott vetoed the bill. The governor stated in his reason for the veto:

> Disaster-recovery tools are critically important in Texas, and this session I have signed into law important legislation that will help Texans rebuild from prior disasters and prepare for future ones. But Senate Bill 1575 goes too far in shielding municipalities from being sued for all sorts of contracts they may enter into for an unspecified period after a disaster declaration. I look forward to working with the Legislature on a more tailored approach to this issue next session.

The legislation was not filed in 2021 or 2023.

The TML Legislative Program provides that the League support legislation that would establish that expenditures of Community Development Block Grant funds by cities are a governmental function.

Public Safety: Police Reform

Following a national movement on police reform in the summer of 2020, there was a consensus that police reform would be a major focus in the 2021 legislative session. In fact, the Texas Legislative Black Caucus held a press conference late that summer to announce the George Floyd Act. The Act would address chokeholds, police intervention, and qualified immunity, among other things.

The Texas legislature passed significant police reform legislation in the sessions leading up to 2021. In 2015, Senator Royce West authored S.B. 158, a comprehensive body camera law that created a grant program for local enforcement agencies to equip officer with body cameras. In the 2017 legislative session, the legislature passed the Sandra Bland Act, S.B. 1849 by Senator Whitmire. The as-filed bill largely focused on racial profiling during traffic stops, consent searches, and jail reforms. The bill faced large opposition and was transformed into a mental health bill which ultimately passed the legislature. The Act required training for police officers on limiting use of force and understanding implicit bias, increases training in general de-escalation and mental health de-escalations, and prohibits officers from conducting a search with a person's consent unless they first tell the person they can refuse and after that person signs off on the search or verbally consents to one.

After much discussion and debate, the 2020 TML Municipal Policy Summit declined to recommend a position for the League on police reform issues. Yet again, during the TML Business Meeting at the Annual Conference in 2020, the membership decided that the League should not take a position. Ultimately, the Texas Association of Black City Council Members brought forth a resolution to the TML Board and the Board approved a position that focused on body worn camera legislation (see below).

In 2021, hundreds of bills were filed on police reform. The large omnibus bill, the George Floyd Act did not gain traction and stalled in committee. Instead, multiple one-subject bills that addressed police de-escalation, the use of chokeholds, use of force, no-knock warrants, and body worn cameras moved through the legislative process. Many of these bills passed on a vote in one chamber but failed to gain traction in the other chamber.

But the legislature did pass some police reform legislation in 2021. H.B. 3712 by Representative Ed Thompson required officer training regarding chokeholds and use of force and required the Texas Commission on Law Enforcement (TCOLE) to develop and maintain model training curriculum. Meanwhile, S.B. 69 By Senator Miles

placed a duty on a peace officer to prevent another officer from using excessive force under certain circumstances, and S.B. 2212 by Senator West required a peace officer to request and render aid to an injured person under certain circumstances. H.B. 929 by Representative Sherman required a law enforcement agency's body worn camera policy to include provisions related to the collection of video and audio as evidence and requiring a peace officer to keep the camera activated throughout the course of the officer's active participation in an investigation. Finally, H.B. 54 by Representative Talarico prohibited a law enforcement agency from allowing a person to accompany a peace officer in the line of duty for the purpose of producing a reality television show.

Once again, several policing reform bills were filed in 2023, both of the broad, omnibus variety and targeted bills on specific policing reforms. Especially given the passage of limited reforms in 2021, very little momentum coalesced around these attempts in 2023. Perhaps most significant was the passage of the TCOLE sunset legislation – S.B. 1445. Among many other things, S.B. 1445 establishes minimum standards with respect to the creation and continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency, and requires police departments to adopt policies investigating alleged police officer misconduct and managing personnel files of licensed peace officers.

The TML Legislative Program provides that the League should support legislation that would increase existing or creates new grant program funding that provides financial assistance to local governmental law enforcement agencies for public safety resources, including legislation that support the use and the purchase of body cameras and associated data storage costs.

Increasing the Maximum Hiring Age of Firefighters

A firefighter in a civil service city is ineligible to begin a position if he/she is over 35 years of age. The civil service firefighter age hiring limit is set by Section 143.023(b) of the Local Government Code: "A person may not be certified as eligible for a beginning position in a fire department if the person is 36 years of age or older."

Each city in Texas that has adopted civil service standards for firefighters is subject to this age restriction, sometimes making firefighter recruitment very difficult in cities across the state. Raising the maximum hiring age for firefighters from 35 to 45 would allow for the recruitment and hiring of qualified individuals who have waited later in life to become a firefighter or those who have waited until after their military obligations were complete.

This issue was brought to TML by the City of Belton prior to the 2021 legislative session. However, as the session moved along the City of Belton decided against pursuing this idea due to a variety of legislative and political reasons.

The Texas Local Government Code currently allows for the hiring of temporary fire fighters and police officers under limited circumstances but does not allow them to become permanent civil service employees with benefits:

> Sec. 143.083. EMERGENCY APPOINTMENT OF TEMPORARY FIRE FIGHTERS. (a) If a municipality is unable to recruit qualified fire fighters because of the maximum age limit prescribed by Section 143.023 and the municipality's governing body finds that this inability creates an emergency, the commission shall recommend to the governing body

additional rules governing the temporary employment of persons who are 36 years of age or older.

(b) A person employed under this section:
(1) is designated as a temporary employee;
(2) is not eligible for pension benefits;
(3) is not eligible for appointment or promotion if a permanent applicant or employee is available;
(4) is not eligible to become a full-fledged civil service employee; and
(5) must be dismissed before a permanent civil service employee may be dismissed under Section 143.085.

In 2023, the legislature passed H.B. 1661 by Representative Burns, which eliminated the applicability of Sec. 143.083, above, to police officers. The stated purpose of the bill was to allow "police departments to accept recruits who can satisfy all applicable hiring criteria, regardless of their age.

Despite the positive change for police officers in a civil service city, nothing similar passed for firefighters. Representative Shine filed H.B. 2782 to increase the maximum hiring age to 45 for firefighters in a civil service city, but the bill was never heard in committee.

The TML Legislative Program provides that the League support legislation that would increase the maximum hiring age for firefighters in a civil service city from age 35 to 45, or to eliminate the maximum hiring age altogether.

Disease Presumption

Chapter 607 of the Texas Government Code states that a firefighter, peace officer, or emergency medical technician (EMT) who suffers from certain respiratory diseases or illnesses that result in death or disability is presumed to have contracted the disease or illness during the course and scope of employment.

Under Section 607.057, the presumption applies to a determination of whether a firefighter, peace officer, or EMT's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

After extensive negotiations between cities and firefighters, the legislature in 2005 passed a bill, S.B. 310 by Senator Deuell, which provided that certain diseases contracted by firefighters and EMTs are presumed to be work-related and thus included in workers' compensation coverage. Although several bills were filed in the next several sessions, additional presumption legislation did not pass until 2015, perhaps in recognition of the political capital expended reaching a compromise on S.B. 310 in 2005.

In 2015, H.B. 1388 by Representative Bohac passed. That bill required that: (1) a rebuttal made by a government employer regarding workers' compensation disease presumption include a detailed statement of the evidence used to determine that the disease in question was not caused by the individual's employment; and (2) a denial by a carrier include evidence reviewed in making the denial.

2019 saw two major presumption bills pass. S.B. 1582 by Senator Lucio added peace officers, for purposes of workers' compensation coverage, to the firefighters' disease presumption statute for certain illnesses broadening the types of illnesses

police officers would be presumed to contract on the job.

Perhaps more significantly, S.B. 2551 by Senator Hinojosa made major changes to the cancer presumption provision affecting firefighters and EMTs. More specifically, the bill (among other things): (1) provided that certain firefighters and EMTs who suffer from one or more of the following 11 cancers resulting in death or total or partial disability are presumed to have developed the cancer during the course and scope of employment as a firefighter or EMT: (a) cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain; (b) non-Hodgkin's lymphoma; (c) multiple myeloma; (d) malignant melanoma; and (e) renal cell carcinoma; (2) repealed the law that provided for a presumption to apply, the cancer must be known to be associated with firefighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen; and (3) repealed the law that provided that the presumption could be rebutted by a showing, by a preponderance of evidence, that a risk factor, accident, hazard, or other cause not associated with the individual's service as firefighter or EMT caused the individual's disease or illness, and replaces that standard with a showing that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or EMT was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. The League and TML Intergovernmental Risk Pool worked closely on the bill all session and supported its passage.

With such significant reforms passing in the 2019 session, it'd be reasonable to think that presumption bills wouldn't gain much traction in the 2021 legislative session. However, the COVID-19 pandemic changed that calculus. S.B. 22 by Senator Springer became effective June 14, 2021 (and retroactively applied to a COVID-19 diagnosis on or after the date of the governor's disaster declaration on March 13, 2020), and provided a disease presumption for first responders diagnosed with COVID-19.

The COVID-19 presumption statute established by S.B. 22 contained an expiration date of September 1, 2023. Despite efforts during the 2023 legislative session to extend the COVID-19 presumption date from S.B. 22, namely H.B. 2926 by Representative Turner, the COVID-19 presumption expired at that time.

The TML Legislative Program provides that the League oppose legislation that would substantively change or expand the scope of the current disease presumption law, unless doing so is supported by reputable, independent scientific research.

Catalytic Converter Theft and Prevention

Cities of all sizes have seen a proliferation of catalytic converter theft in their communities. Precious metals such as platinum, palladium and rhodium make catalytic converters a target of thieves who can quickly remove them from vehicles and easily sell them to scrap metal dealers for cash. In Houston alone, data shows that catalytic converter thefts have multiplied every year since 2019. In 2019, 375 people reported thefts to the Houston Police Department. By 2020, theft cases quadrupled to over 1,400 and in 2021 they had risen to 7,800 thefts reported.

To address these rising thefts, Rep. Jeff Leach filed and passed H.B. 4110 during the 2021 legislative session that required a person attempting to sell a catalytic convertor to a metal recycling entity to provide to the entity the year, make, model, and identification number for the vehicle in which the convertor was removed as well as a copy of the title certificate or other documentation that the person had an ownership in the vehicle. The legislation prohibited a metal recycling entity from purchasing a catalytic converter from a seller who does not comply with those requirements.

H.B. 4110 enhanced certain criminal penalties for providing false information to metal recycling entities, knowingly purchasing stolen regulated material, and other related offenses from a Class A misdemeanor to a state-jail felony. The bill also enhanced the penalty for repeat offenses from a state jail felony to a third-degree felony.

Going into the 2023 session, many communities wanted to do more to prevent thefts and began looking at local ordinances to enhance prevention, detection, and reporting. The summit delegates took the position listed below on strengthening current law as it pertains to catalytic converter theft and prevention.

In 2023, the legislature passed S.B. 224, which, among other things, creates: (1) a presumption that a person in possession of two or more catalytic converters unlawfully appropriated the catalytic converters, unless the actor: (a) is the owner of each vehicle from which the catalytic converters were removed; or (b) possessed the catalytic converters in the ordinary course of business; and (2) a new criminal felony offense for possession of a catalytic converter if: (a) the person intentionally or knowingly possesses a catalytic converter that has been removed from a vehicle; and (b) the person: (i) is not the owner of the vehicle from which the catalytic converter was removed; or (ii) does not possess the catalytic converter in the ordinary course of business.

The bill also limits a metal recycling entity from purchasing or acquiring a catalytic converter and imposes recordkeeping requirements on metal recycling entities. At the same time, the bill prevents a city from restricting the purchase, acquisition, sale, transfer, or possession of a catalytic converter removed from a motor vehicle by a metal recycling entity and prevents a city from altering or adding to the recordkeeping requirements imposed by the state on a metal recycling entity. In other words, the legislature decided to impose much stricter regulations at the state level and expressly limited cities authority. Due to the increased regulations, many cities still favored the approach of the legislature with S.B. 224.

As a result of the passage of S.B. 224, the Summit may want to consider altering or removing the existing position on catalytic converter theft from the TML program.

The TML Legislative Program provides that the League support legislation that would strengthen current law as it relates to catalytic converter theft and prevention, including increasing penalties for auto repair facilities and individual sellers who resell or are in possession of stolen catalytic converters.

Greater City Authority Over Railroad Crossing Delays

Many communities across Texas and around the country are experiencing extreme train delays that block railroad crossings on critical arteries in their cities. These delays pose concerns for public safety as they impede first responders who are unable to transport injured persons due to excessive train delays at railroad crossings.

Federal courts have found that local ordinances attempting to limit and manage train delays are preempted by the Interstate Commerce Commission Termination Act and the Federal Railroad Safety Act.

During the 117th Congress in 2021, the U.S. House of Representatives and U.S. Senate passed the Infrastructure Investment and Jobs Act (IIJA), which created a program that aids cities in addressing railroad crossing issues. The Railroad Crossing Elimination Grant Program was established in the IIJA to give local governments access to funds to mitigate or eliminate hazards at railway-highway crossings.

Up until the enactment of the IIJA, the primary resource for addressing railroad crossing issues was through the formula-driven Railway-Highway (RHCP) administered by the Federal Highway Administration that apportions funds to states. While the IIJA continues authorization of the RHCP, the Railroad Crossing Elimination Grant Program, administered by the Federal Railroad Administration provides funding opportunities for a direct local government role in addressing such issues.

The IIJA provides $3 billion to the Railroad Crossing Elimination Grant Program in advance appropriations and an additional $2.5 billion is authorized subject to appropriation, for a total program level of $5.5 billion over five years.

The TML Legislative Program provides that the League support legislation that would: (1) in relation to federal legislation, provide states greater authority over management of train delays in conjunction with affected cities; and (2) provide greater authority to the Texas Department of Transportation to improve city railroad crossings and install signal lights where there are safety concerns.

Personnel: Pension Reform

Although many of Texas' defined benefit (DB) plans seem to be in better shape than the rest of the country, the debate over shifting all government DB plans to defined contribution (DC) plans continues to build momentum. Organizations in Texas such as the Greater Houston Partnership, Texans for Public Pension Reform, the Texas Conservative Coalition, and the Texas Public Policy Foundation (TPPF) are all seeking reforms in public pensions, including advocating for a constitutional amendment against DB plans for public employees.

TPPF issued a report in 2011 calling for the following changes in public retirement systems:

- Freeze the current defined benefit pension plan for all new and unvested employees.
- Enroll newly-hired or unvested employees in a 401(k)-style defined contribution pension plan.
- Implement either a hard or soft freeze of the system for vested employees.

TPPF claimed that these changes would have saved the state and local governments considerable money over the long term. The report goes on to add:

> With government workers now reaping more compensation than their private sector counterparts, taxpayers can no longer afford to subsidize generous retirements. During the past several years, state and municipal pension systems have implemented changes in the hopes of reigning in ballooning liabilities. Modifications like an increased minimum retirement age and readjusted benefit calculations have bought some time for the plans, but in no way have they gone far enough to keep long-term costs at bay.
>
> Public-sector defined-benefit pension plans - retirement packages that promise retirees a set monthly income based on an employee's salary history and years of service - are entitlements that transfer wealth from workers in the private sector to public sector retirees.
>
> When pension funds fall short of their expected return rates (the case for the past several years), governments must eventually fill the gap by either increasing taxes or reallocating existing revenue.

> With public workers now making more than workers in the private sector, poorer taxpayers end up subsidizing generally wealthier government retirees.

The report concludes that the changes "would not only shield Texas from an inevitable public pension cost explosion, they would align public sector benefits with those in the private sector and create a more just retirement system."

To counter the efforts of TPPF and others, members of Texas employee pension systems, employee groups, unions, and other related groups benefiting firefighters, police, and municipal employees formed an organization called Texans for Secure Retirement (TSR). TSR's objectives included retaining DB plans as the primary retirement planning option for all current and future public employees in Texas; educating the business community about the advantage of DB plans for public sector employees, employee groups, and related institutions; and, enhancing public awareness about how DB plans for public employees are advantageous for the general public and the economy in Texas.

With so many coordinated efforts to address public pensions, League staff expected a healthy debate on pension reform during the 2013 legislative session. Many bills were filed and a few passed, largely related to reporting, auditing, and training. Those bills included H.B. 13 by Representative Callegari and the Pension Review Board Sunset bill, S.B. 200, by then-Senator Patrick.

In the 2015 legislative session, the focus turned on reforming the Texas employee pension systems. Only a few public pension bills were filed and none received a hearing.

In 2016, TPPF issued a policy brief, *Restoring Local Control of State-Governed Pension Plans*, which examined the fiscal health of the systems and gives recommendations. TPPF acknowledged the difficulty in making substantive changes that are needed to make systems viable when approval must come from the legislature. The brief recommended that the legislature give the localities the authority to govern their own pension systems. Notably, Senator Bettencourt filed legislation supporting this concept in the 2017, 2019, and 2021 sessions.

In the 2017 legislative session, the legislature largely concentrated on reforming the pension systems of Houston and Dallas, and significant bills were passed affecting those two cities. A few oversight bills were filed but none passed.

In the 2019 legislative session, a few oversight bills passed, as well as an omnibus Texas Municipal Retirement System (TMRS) bill that overhauled the system's administrative procedures. S.B. 322 by Representative Murphy required a public retirement system to use an independent firm to evaluate the appropriateness, adequacy, and effectiveness of the system's investment practices. S.B. 2224 by Senator Huffman required a public retirement system to adopt a written funding policy. And S.B. 1337 by Senator Huffman enacted numerous administrative and operational improvements to TMRS.

In the 2021 legislative session, a large focus of the pension debate centered on overhauling the Employees Retirement System of Texas, the pension system for state employees. Another transparency bill passed in the form of H.B. 3898 by Representative Anchia, as well as a bill that allowed retired TMRS members return to work after a one-year break in service without benefit payments suspended – S.B. 1105 by Senator Hughes.

The 2023 legislative session saw the passage of helpful legislation in the form of H.B. 2464 by Representative Price, which gives discretion to a city council participating in TMRS to create

optional, non-retroactive annuity increases for its retirees and beneficiaries of TMRS.

The TML Legislative program provides the League should oppose legislation that would further erode local control as it pertains to retirement issues.

Municipal Court: Collection of State Fees

Municipal courts in Texas collect funds on behalf of the state for a wide variety of state programs. These state programs range from the Criminal Justice Planning Account to the Fair Defense Account. In most cases, the fees are imposed on persons convicted of any criminal offense. For these collection efforts, cities are generally allowed to keep some small amount of revenue as reimbursement for costs incurred to collect the fees and remit them to the state.

Many city officials contend that state court costs adversely impact municipal courts in two ways. First, the state's court costs are complicated to administer. While cities can keep a small percentage of the costs as an administrative fee, that amount is not sufficient to reimburse the cities for the bookkeeping and administrative problems connected with this function. Second, when setting an appropriate fine for an offense, a judge must consider the fact that the defendant will also be paying state court costs. As a result, municipal fine revenue is often lower than it would otherwise be because the judge has considered the state court costs when setting a defendant's total fine.

Municipal court clerks also point out that the state requires that, in the event of a partial payment, the state court costs must be paid first before the city can keep any of the fine. This means that cities have to do all the work collecting fines but do not get to keep any money until the state court costs have been satisfied.

Much of the legislative activity to increase state fees imposed in municipal courts occurred between 1993 and 2007. Some of the notable legislation during that time frame includes:

- H.B. 2178 in 1993, increasing the municipal court costs collected for the Crime Victims Compensation Fund;
- H.B. 2272 in 1997, establishing a five-dollar fee on misdemeanor convictions to go to a fugitive apprehension account and a 25-cent fee on all misdemeanor convictions going to the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University;
- H.B. 2424 in 2003, creating a $40 state consolidated fee on conviction of a non-jailable misdemeanor offense, including a criminal violation of a city ordinance other than an offense relating to a pedestrian or the parking of a motor vehicle;
- H.B. 2 during the third special session in 2003, which created a new $30 "state traffic fine" to fund the state's general fund, transportation projects, and trauma care; and
- H.B. 11 during the second special session in 2005, which imposed a $4 court cost on any person convicted of any offense (other than a pedestrian or parking offense) in municipal court to be used for court-related purposes for the support of the judiciary.

In 2011, the legislature mounted an ultimately unsuccessful attempt at increasing state fees to be collected by municipal courts. H.B. 238 by Representative Naomi Gonzalez would have increased the state traffic fine from $30 to $45 as a way to fund state trauma centers. The fiscal note on H.B. 258 indicated that the bill would generate roughly $28.5 million in additional annual revenue for the state general fund, $14 million for trauma centers, and $2.4 million for the local

governments that were tasked with imposing and collecting the fee.

But that fiscal note was misleading. City officials knew that as the state imposes more and more fees on municipal fines, the revenues generated *for the city* from the fines themselves will decrease. If a municipal judge normally imposes a total charge of $250 for a traffic conviction, each dollar that goes to the state is a dollar that won't go into municipal coffers. And, as the state's share goes up, the local share goes down. Thus, contrary to what the H.B. 258 fiscal note said, the bill most likely would have actually reduced municipal revenue.

H.B. 258 ultimately did not pass. However, a similar battle was also being waged in the Senate when provisions of S.B. 726, which would have created a $10 fee to be collected by municipal courts for judicial access and improvement, to be used to fund basic civil legal service and criminal defense for indigents and electronic filing in court, were added to another bill, S.B. 1811. The League and city officials mobilized against this effort late in the session. Ultimately, because of those efforts, no legislation with a municipal court fee passed in 2011.

In 2019, H.B. 2048 by Representative Zerwas repealed the driver responsibility program. Due to the anticipated revenue hit to the state resulting from the repeal, the legislation increased the state traffic fine from $30 to $50. According to the fiscal note, cities were expected to see a revenue gain of roughly $4 million per year. However, this estimate did not account for municipal court fine revenue lost due to the increase in state fees and municipal judges' reluctance to compensate for it.

The legislature also passed S.B. 346 by Senator Zaffirini in 2019. S.B. 346 was an omnibus court cost bill that notably consolidated a number of local option municipal court fees into one local fee. Additionally, the bill increased the state's consolidated fee from $40 to $62 on a person's conviction of a non-jailable misdemeanor offense other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle.

Where do we stand now? The total amount of local and state court costs that get paid upon the conviction of an offense vary depending on the offense. On a typical traffic offense conviction, a municipal court defendant must currently pay $115 in state fees and $14 in local fees before any city fine is collected.

The TML Legislative program provides the League should oppose legislation that would impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state.

Municipal Court: Texas Court Clerks Association (TCCA)

In 2018 TCCA, a TML affiliate, submitted a resolution to include a position on uniform compliance dismissals in the TML program. That position was added and is detailed below, along with three other new proposals from TCCA.

Uniformity on Class C Misdemeanors Violation Compliance Dismissal

Several types of Class C violations that may be dismissed upon proof of compliance have different requirements. TCCA argues that municipal court clerks that work in customer service windows often find it confusing to keep track of and/or consider all the various regulations regarding compliance dismissals. These fees vary from $10.00 to $20.00 depending on a number of different factors.

These compliance dismissals do not include completion of driving safety, deferred disposition, or teen court but deal with bringing defective equipment and expired registrations into

compliance. More uniformity and consistency would make for more efficient court procedures and provide for more equal administration of justice among courts.

No legislation has been filed in recent sessions dealing with this issue.

New TCCA Issues

- H.B. 4074 by Representative Bernal and S.B. 1281 by Senator Hughes were filed during the 2023 legislative session to repeal DPS' Failure to Appear/Failure to Pay Program through OmniBase Services. The program allows courts to suspend a defendant's driver's license when they fail to satisfy the judgements placed against them. Many municipal courts do not issue warrants for defendants who fail to comply and solely use this program as a way to try to get defendants back into compliance.
- TCCA is also concerned that some have advised that municipal courts are no longer supposed to submit the DIC-81 Form to DPS (which reports that a juvenile offender has failed to appear or failed to satisfy their judgment after appearing) even though the law that requires courts to submit these forms has not been changed by the legislature.
- S.B. 1367 by Senator Creighton, which was vetoed by Governor Abbott, would have extended the same confidentiality and protection judges and their families have regarding their information to courthouse employees and employees of the Office of Court Administration. TCCA would like to see the protections from S.B. 1367 also apply to municipal court employees.

The TML Legislative Program provides that the League should support legislation that would provide consistency and uniformity in the compliance deadlines and fees for compliance dismissals of Class "C" misdemeanors.

Municipal Court Reporting/Election Records: Texas Municipal Clerks Association (TCMA)

The following two issues were suggested by the Texas Municipal Clerks Association during the 2020 TML Policy Summit. The two positions below were added during that Summit.

Municipal Court Reporting

Section 29.013 of the Texas Government Code requires city secretaries to notify the Texas Judicial Council of the names of municipal court judges, mayors, and municipal court clerks. However, the Office of Court Administration and the Texas Judicial Council generally only seek and accept the names of municipal court judges and alternate judges. As a result, some question whether it is necessary for state statute to require city secretaries to report mayors and municipal court clerks to the Texas Judicial Council.

No legislation has been filed in recent sessions to address this issue.

Election Records

The names of voters who apply to vote by mail are protected from release once the ballots are sent out under the Texas Election Code until the day after election day. However, state statute does not protect the list of applicants for a mail-in ballot between the time they make an application and when the ballots are sent to the voter.

No legislation has been filed in recent sessions to address this issue.

The TML Legislative Program provides that the League support legislation that would: (1) rectify the wording of Texas Government Code Section 29.013 to eliminate the requirement

that a city secretary notify the Texas Judicial Council of elected or appointed mayors or municipal court clerks; and (2) protect from disclosure the list of applicants for a mail in ballot up until the time ballots are sent for those applications, regardless of whether a request is made for the applications.

Administration: Submitting Attorney General Letter Request

In 2011, the 82nd Legislature passed H.B. 2866 by Representative Harper-Brown which allowed a city to submit an attorney general letter ruling under the Public Information Act by an electronic filing system. The law allowed the attorney general to adopt rules necessary to administer the system including an associated fee. The attorney general office adopted a $15 initial filing fee to submit documents online, with a $5 fee for subsequent submissions associated with the initial filing. Prior to H.B. 2866, cities could only submit such requests by first class United States mail, common carrier, or in person. The bill has allowed for greater efficiency, more flexibility while reducing or avoiding the associated administrative costs needed when submitting hard copies through postage.

In 2020, the TML Legislative Policy Committee on Advocacy Strategy Subcommittee studied positive legislation to work on ahead of the 2021 session. The subcommittee approved that the League should seek introduction and passage of legislation that would allow a request for an attorney general letter ruling under the Public Information Act by email at no charge.

Since the passage of the attorney general's electronic submission system and fee in 2011, no legislation has been filed on the issue. However, the legislature passed H.B. 3033 in 2023 which makes numerous changes to the Public Information Act. Among them is a requirement that all requests for attorney general decisions, other than those hand delivered to the attorney general, be submitted through the attorney general's electronic filing system. The only exceptions to the requirement are: (1) for cities with fewer than 16 full-time employees; (2) cities located in a county with a population of less than 150,000; or (3) if the amount or format of responsive information at issue in a particular request makes use of the system impractical or impossible.

Since the passage of H.B. 3033, the attorney general has lowered the filing fee to an initial $7.50 filing fee to submit materials online. After that, all future submissions associated with the initial filing are $5.

The TML Legislative Program provides that the League should support legislation that would allow a city official to submit a request for an attorney general letter ruling under the Public Information Act by email at no charge.

COVID-Related Issues/Disaster Authority

The Texas Disaster Act in Chapter 418 of the Government Code lays out the basic legal framework for cities' preparation for, and response to, disasters in the state of Texas. Not only does the law require cities to develop emergency management plans and engage in emergency management training, but also spells out the extent of local authority during a disaster.

For years, the local disaster authority provisions in Chapter 418 have gone relatively unquestioned, if not mostly unnoticed, by many state legislators - particularly for those representing areas that aren't regularly dealing with natural disasters. Beyond that, few have doubted the importance of local leaders having the legal flexibility to make important health and safety decisions for those they represent during a disaster.

The 2020 COVID-19 pandemic put the Texas Disaster Act under a microscope. At the outset

of the pandemic in March, local governments across the state were engaging with the statute in unprecedented ways. Much of that was due to the fact that COVID-19 has a statewide impact, unlike more traditional disasters like floods, fires, or tornadoes that have a devastating, but geographically limited impact. Indeed, Governor Abbott declared a statewide disaster on March 19, 2020, and consistently renewed that declaration.

Until mid-April 2020, the governor had ceded a large amount of disaster authority to local governments to manage the pandemic in ways befitting each individual community. While this general approach was lauded by many and generated positive results in many areas of the state, it wasn't without controversy. Some interest groups and citizens decried the measures taken by local leaders to promote social distancing and mask wearing, and efforts made to enforce those measures. On April 17, 2020, Governor Abbott signed GA-16, which contained the following disaster preemption language that became more-or-less standard in subsequent proclamations:

> This executive order shall supersede any conflicting order issued by local officials in response to the COVD-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

To a large extent, the language above shifted the responsibility for response to the COVID-19 disaster away from local governments and towards the governor. The result was heightened scrutiny of the governor's actions taken to quell the spread of COVID-19, and promises from legislators and interest groups to file legislation reining-in executive power during a disaster. Still, local disaster authority promises to be on the table during the 87th Texas Legislature, both directly and potentially as a collateral issue from any legislation addressing gubernatorial authority.

Using the pandemic response as a guide, here are some examples of current legal authority for cities in a disaster that the legislature looked at during the 2021 legislative session and might reexamine again:

- Under a local disaster declaration, the mayor may order the evacuation of all or part of the population from a stricken or threatened area within the city limits if the mayor believes it is necessary for the preservation of life or other disaster mitigation, response or recovery. Tex. Gov't Code § 418.108(f).
- Under a local disaster declaration, the mayor may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area. *Id*. §418.108(g).
- A mayor serves as the governor's designated agent in the administration and supervision of emergency management duties, and may exercise the powers granted to the governor on an appropriate local scale. *Id*. § 418.1015(b).

- A mayor may, under certain circumstances, commandeer or use any private property if the mayor finds it necessary to cope with a disaster, subject to compensation requirements. *Id*. § 418.017(c). (This was the subject of an attorney general's opinion in KP-304.)
- Separate and apart from a city's authority under Chapter 418 of the Government Code, both home rule and general law cities have broad authority to protect residents from communicable diseases under Chapter 122 of the Health and Safety Code. That authority includes, among other things, "any action necessary or expedient to promote health or suppress disease," and, in home rules cities, "quarantine rules to protect the residents against communicable disease."

The bill filed in 2021 that most embodied the push and pull between both state and local authority during a disaster, and legislative and executive authority, was H.B. 3 by Representative Burrows. H.B. 3 would have made numerous changes regarding how the state and local governments prevent, prepare for, respond to, and recover from a pandemic disaster.

Of primary importance to cities, the bill would have, among many other things: (1) provided that any local order or rule issued in response to a state or local state of pandemic disaster is superseded and void to the extent that it is inconsistent with orders, declarations, or proclamations issued by the governor or Department of State Health Services; (2) prohibited an election official of a political subdivision from seeking to alter, in response to a pandemic disaster, any voting standard practice, or procedure in a manner not otherwise expressly authorized by state law, unless the election official first obtains approval of the proposed alternation from the secretary of state by submitting a written request for approval to the secretary of state; and (3) provided that if the governor issues a written determination finding that the presiding officer of a city council has taken issued an order requiring the closure of a private business in response to a pandemic, the city council for that city may not adopt a property tax rate for the current tax year that exceeds the lesser of the city's no-new-revenue tax rate or voter-approval tax rate for that tax year.

H.B. 3 passed the House, but because of irreconcilable disagreement between the House and Senate, and even intra-party disagreement on the role of the governor as the executive versus the legislative branch, the bill collapsed under its own weight.

Although other bills were filed that would have many changes to Chapter 418, Texas Government Code, very few passed of any import to cities. However, the legislature did pass S.B. 968 by Sen. Kolkhorst that became effective in June of 2021. The bill provided that a mayor may not issue an order during a declared state of disaster or local disaster to address a pandemic disaster that limits or prohibits: (1) housing and commercial construction activities, including related activities involving the sale, transportation, and installation of manufactured homes; (2) the provision of governmental services for title searches, notary services, and recording services in support of mortgages and real estate services and transactions; (3) residential and commercial real estate services, including settlement services; or (4) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts.

S.B. 968 also prohibited a city, other than for health care purposes, from: (1) issuing to a third party a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status; or (2) otherwise publishing or sharing any individual's

COVID-19 immunization record or similar health information.

Additionally, the bill provides that, in the event of a disaster or other emergency as determined by the Texas Division of Emergency Management (TDEM), TDEM shall collaborate with first responders, local governments, and local health departments, to conduct wellness checks on medically fragile individuals (as defined by TDEM) within 24 hours of such events. The wellness checks must include an automated phone call, a personalized call, and if the person is unresponsive to calls, an in-person check. TDEM has proposed rules to implement S.B. 968 through the State of Texas Emergency Assistance Registry program that largely reflect the language in the statute. The rules will go into TDEM's state plan.

Even as life started to return to normal during the 2023 session, several bills were filed to permanently alter city authority during a pandemic or a declared disaster generally. The vast majority of these proposals didn't receive serious consideration by the legislature. One bill that did pass was S.B. 29 by Senator Birdwell, which is COVID-19-specific. S.B. 29 provides that a governmental entity may not impose a mandate requiring: (1) a person to wear a face mask or other covering to prevent the spread of COVID-19; or (2) a person to be vaccinated against COVID-19; or (3) the closure of a private business, public school, open-enrollment charter school, or private school to prevent the spread of COVID-19. The legislature came back during the third special session of 2023 to pass S.B. 7, which extended the vaccine mandate prohibition to private employers.

TML Legislative Program provides that the League support legislation that would: (1) require equitable treatment of local governments by preventing a state official or state agency from placing additional restrictions on a city's use of federal funds from future stimulus legislation related to a health pandemic, in contravention of congressional intent; and (2) require counties to share timely information on health emergencies with cities.

Immigration

Recent sessions have seen numerous bills filed that dealt with immigration issues, some of which spilled over to special sessions. Generally, these bills fell into two categories: (1) requirements concerning verification of immigration status of individuals applying for licenses and employment or otherwise contracting with the city; and (2) requirements concerning law enforcement policies and procedures.

Regarding the first category of immigration legislation, historically several bills have been filed that would have required Texas employers, including cities, to participate in the federal government's program for electronic verification of employee immigration status, also known as E-Verify. Other bills prohibited cities from offering economic development incentives or entering into contracts with businesses that did not use the E-Verify system, and prohibited cities from issuing licenses or permits to individuals without first verifying immigration status. The League opposed much of this legislation on the grounds that placing requirements on cities as employers constituted an unfunded mandate from state government, while other ideas like prohibiting cities from contracting with or offering economic development incentives to certain business prospects undermined the concept of "local control." Ultimately, none of these proposals gained much momentum.

Legislation placing requirements on law enforcement policies and procedures concerning immigration did receive a good amount of attention in 2011. Most notable was H.B. 12 by Rep. Solomons, which was aimed at stopping the proliferation of "sanctuary cities," or cities that

have adopted policies that prevent law enforcement officers from inquiring into the immigration status of a person arrested or lawfully detained.

H.B. 12 would have done two things to punish cities that adopted policies prohibiting law enforcement from inquiring into an individual's immigration status: (1) it would have provided that the city could not receive any state grant funds after a final judicial determination that the city had intentionally prohibited the enforcement of state or federal immigration laws; and (2) it would have allowed any citizen to file a complaint with the attorney general regarding a sanctuary city, and the attorney general could then file a civil lawsuit against the city to prevent the enforcement of the city's policy.

The League testified in committee regarding concerns raised by numerous cities. Most notable was that—because sanctuary cities arguably did not exist—any litigation brought by the state against a city was likely to be frivolous in nature. As a result, TML argued (to no avail) that a "loser pays" system should be applied to suits against suspected sanctuary cities that would require the state to pay the legal expenses of city if the lawsuit was unsuccessful. H.B. 12 was ultimately voted out of the House but was amended in Senate committee and never made it to a vote on the Senate floor. The proposal was re-filed as part of S.B. 9 during the special session, where the reverse of what happened to H.B. 12 during the regular session occurred—the bill received the approval of the full Senate but failed to be reported out of a House committee.

No bill addressing sanctuary cities was filed in 2013. The absence of a sanctuary cities bill was emblematic of a more "hands-off" approach by the legislature regarding immigration-related issues in 2013.

Legislation was filed and heard in the Senate on sanctuary cities in 2015. H.B. 185 by Perry closely resembled H.B. 12 from 2011 in that its aim was to prohibit cities and other local governments from adopting a policy that prohibits the enforcement of state and federal immigration laws. After a lengthy committee hearing, and despite a significant amount of opposition to the bill at the hearing, the Senate Subcommittee on Border Security approved the bill. However, the bill did not receive a vote on the floor of the Texas Senate.

Governor Abbott targeted sanctuary city legislation as a priority in 2017. The renewed focus on the issue stemmed largely from a policy change made by the Dallas County sheriff regarding federal immigration detention requests.

Immigration-related legislation ultimately passed in 2017. S.B. 4 by Senator Perry created several new provisions in law related to the enforcement of federal and state immigration laws. Specifically, the bill provided (among many other things) that a local entity may not adopt a policy that prohibits or discourages the enforcement of immigration laws, nor can the local entity prohibit the enforcement of immigration laws by demonstrable pattern or practice.

S.B. 4 also required local law enforcement to cooperate with Immigration and Customs Enforcement detainer requests, and it authorized officers to inquire about the immigration status of people they detain or arrest. In addition, the bill subjects elected and appointed officials to a fine, jail time, and possible removal from office for violating the bill.

During the 2017 session, the TML Executive Committee met and approved the position currently in the TML Legislative Program.

Immediately upon the passage of S.B. 4, a lawsuit was filed by the City of El Cenizo that challenged much of the law. Following the initial lawsuit, several other governmental entities, including

the cities of El Paso, Austin, and Houston, sued the state arguing the bill was unconstitutional. In August 2017, a federal district judge of the Western District of Texas temporarily blocked most of the law from taking effect by issuing a preliminary injunction. In March 2018, the Fifth Circuit ruled that the bill did not violate the constitution and allowed the law to remain in effect and blocked one part of the bill. The court ruled that the law's "endorsement provision" that punished local officials who endorsed policies that specifically prohibit, or limit enforcement of immigration laws violated the First Amendment.

Even with immigration-related issues as a permanent fixture in the news cycle, the state legislature did not seriously address immigration reform again in a way that impacted cities until the fourth special session in 2023. That fact stems, in large part from, the primacy of federal regulatory authority when it comes to immigration issues. Nevertheless, in the fourth special session in 2023 the legislature passed S.B. 4, which essentially serves as Texas' attempt to regulate in the field of immigration due to the perception of some that the federal government has not fulfilled its responsibility. S.B. 4, among other things, established a criminal offense for a person who enters or attempts to enter the state directly from a foreign nation at any location other than a lawful port of entry. From a city perspective, the bill raises questions about the ability of police departments, both in border cities and across the state, to enforce the new criminal provision.

Secondary to the new criminal offense, the bill would require local government indemnification of an official, employee, or contractor of a local government for damages arising from a cause of action under federal law resulting from an action taken to enforce the new criminal provision up to certain caps, but only for an action taken during the course and scope of the individual's office, employment, or contractual performance and only if the individual did not act in bad faith, with conscious indifference, or with recklessness. A local government official, employee, or contractor would generally be immune from liability for damages arising from a cause of action under state law resulting from an action taken to enforce the new criminal provision. The bill retains the requirement for a local government to indemnify an official, employee, or contractor for reasonable attorney's fees incurred in the defense of a criminal prosecution of the individual for actions to enforce the new criminal provision during the course and scope of the office, employment, or contractual performance.

In March 2024, the U.S. Court of Appeals for the Fifth Circuit blocked S.B. 4 from taking effect as litigation over the law continued.

The TML Legislative Program provides that the League should take no position on immigration-related legislation that does not impose new and substantial unfunded mandates or unavoidable liabilities on cities.

Severance Pay for City Employees

In both the 2021 and 2023 legislative sessions, bills were filed to limit the ability of political subdivisions, including cities, to pay severance in relation to the termination of a person's employment or contract. More specifically, the bills (H.B. 3775 in 2021 and H.B. 1738 in 2023, both by Representative Leach) would have prohibited a severance payment if the payment would be paid from tax revenue and exceed the amount of compensation the employee or independent contactor would have been paid for 20 weeks. Further the legislation would prohibit any severance if the employee or independent contractor were terminated for misconduct. The bills also would require a political subdivision to post each severance agreement in a prominent place on the political subdivision's website.
City councils currently have the discretion to offer severance pay to city employees or contractors as

a recruitment tool, as well as recognition of the potential transient nature of certain positions, among other possible reasons. Summit delegates may wish to discuss a position on future legislation that limits the ability of cities to offer severance pay.

THE TEXAS MUNICIPAL LEAGUE PROPOSED LEGISLATIVE PROGRAM (2025–2026)

Introduction

City officials across the state are well aware of the fact that many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials.

During the 2023 session, nearly 8,000 bills or significant resolutions were introduced; more than 1,800 of them would have affected Texas cities in some substantial way. In the end, over 1,200 bills or resolutions passed and were signed into law; 230 of them impacted cities in some way.

The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2023, that percentage had increased to 23 percent. In other words, almost a quarter of the legislature's work is directed at cities, and much of that work aims to limit municipal authority.

There is no reason to believe that the workload of the 2025 session will be any lighter; it will probably be greater. And for better or worse, city officials will have to live with all the laws that may be approved by the legislature. Thus, the League must make every effort to assure that detrimental bills are defeated and beneficial bills are passed.

The TML approach to the 2025 session is guided by principles that spring from a deeply rooted TML legislative philosophy:

- The League will vigorously oppose any legislation that would erode the authority of Texas cities to govern their own local affairs.

- Cities represent the level of government closest to the people. They bear primary responsibility for provision of capital infrastructure and for ensuring our citizens' health and safety. Thus, cities must be assured of a predictable and sufficient level of revenue and must resist efforts to diminish their revenue.

- The League will oppose the imposition of any state mandates that do not provide for a commensurate level of compensation.

In setting the TML program, the Board recognizes that there is a practical limit to what the League can accomplish during the legislative session. Because the League (like all associations) has finite resources and because vast amounts of those resources are necessarily expended in defeating bad legislation, the Board recognizes that the League must very carefully select the bills for which it will attempt to find sponsors and seek passage.

Each initiative is subjected to several tests:

- Does the initiative have wide applicability to a broad range of cities of various sizes (both large and small) and in various parts of the state?

- Does the initiative address a central municipal value, or is it only indirectly related to municipal government?

- Is this initiative, when compared to others, important enough to be part of TML's list of priorities?

- Will the initiative be vigorously opposed by strong interest groups and, if so, will member cities commit to contributing the time and effort necessary to overcome that opposition?

- Is this initiative one that city officials, more than any other group, should and do care about?

The Board places each legislative issue into one of four categories of effort. Those four categories are:

- **Seek Introduction and Passage** – 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 Priority bills."

- **Support** – the League will attempt to obtain passage of the initiative if it is introduced by some other entity.

- **Oppose** – the League will actively and vigorously attempt to defeat the initiative because it is detrimental to member cities.

- **No Position** – the League will take no action.

Our Highest Priority: Oppose Bad Bills

The Board determined that TML's highest priority goal is the defeat of legislation deemed detrimental to cities. As a practical matter, adoption of this position means that the beneficial bills will be sacrificed, as necessary, in order to kill detrimental bills.

The TML Priority Package

The TML Priority Package includes the following items in no particular order:

1. Defeat any legislation that would erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities, especially legislation that would:

    a. provide for state preemption of municipal authority in general.

    b. impose further revenue and/or tax caps of any type.

    c. erode the ability of a city to issue debt.

    d. erode municipal authority related to development matters, including with respect to the following issues: (1) annexation; (2) eminent domain; (3) zoning; (4) regulatory takings; (5) building codes; (6) tree preservation; (7) short-term rentals; and (8) the extraterritorial jurisdiction (ETJ).

    e. erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.

f. limit or prohibit the authority of city officials to use municipal funds to communicate with legislators; or limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.

g. abolish the concept of the ETJ.

2. Seek introduction and passage of any legislation that would:

a. (1) eliminate reauthorization provisions for the collection and use of street maintenance sales and use tax; (2) authorize cities to reimburse themselves from sales and use tax collections for actual election costs required for tax implementation; and (3) clarify that cities may use street maintenance sales tax revenue for all streets and sidewalks in the city.

b. allow cities alternate methods for publications of legal notices.

c. promote pay as you go financing for capital projects by authorizing a dedicated property tax rate that is classified similarly to the debt service tax rate in property tax rate calculations.

d. (1) allow cities to remove themselves from an emergency services district (ESD) if the city is capable of providing services to the area; (2) expressly authorize ESDs to expand into a city's corporate limits or ETJ only with city council approval; (3) require an ESD to enter into a sales and use tax sharing agreement with a city when a city annexes territory located in an ESD and, should negotiations fail, enter into binding arbitration and/or mediation; and (4) change the governance structure for ESDs from appointed boards to elected boards to produce accountability to taxpayers, for ESDs above a certain size threshold.

e. increase the competitive bidding threshold to account for increased costs to cities.

f. require rural water supply corporation to notify the nearest municipality, and any CCN holder closer than the nearest municipality, to inform the entity, via certified mail, of:

1. any pending transfer;
2. any failure to comply with infrastructure improvements per existing and/or development agreements;
3. any failure to comply legally with contractual agreements;
4. any failure to refund finances for improvements, meters, hydrant meters and/or infrastructure related equipment;
5. any failure to provide adequate staffing;
6. any failure to provide defined licensed operators, technicians, backflow inspectors;
7. any failure to refund finances to public improvement district bond obligations;
8. any failure to produce a third-party audit by the annual meeting for its customer members; and
9. any failure to have day-to-day administration and/or operation support.

With one or more violations based on the above list is determined, the water supply corporation is to be sold, placed under receivership, and/or transferred to another entity, then the nearest municipality has first right to asset transfer and/or customers of the corporation.

Support
The Board supports legislation that would:

1. make beneficial amendments to the equity appraisal statute; close the "dark store" theory of appraisal loophole; and require mandatory disclosure of real estate sales prices.

2. authorize a council-option city homestead exemption expressed as a percentage or flat-dollar amount.

3. convert the sales tax reallocation process from a ministerial process into a more formalized and transparent administrative process.

4. authorize a city council to opt-in to requiring residential fire sprinklers in newly constructed single-family dwellings.

5. make beneficial amendments to H.B. 3167 (2019), the subdivision platting shot clock bill.

6. allow for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments fail to address.

7. provide additional funding to the Texas Department of Transportation for equitable transportation projects that would benefit cities and provide local, state, and federal transportation funding of transportation infrastructure, including rail.

8. allow a city to lower the prima facie speed limit from 30 to 25 miles per hour without the need for a traffic study.

9. in relation to federal transit funding: (1) clarify federal congressional intent of federal transit law to protect cities across the United States from being penalized due a to a population drop suffered as a direct result of a natural disaster; (2) explicitly state that only presidentially declared major disasters are covered, in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707); and (3) protect federal transit funding streams for urbanized areas until the execution of the next decennial census.

10. in relation to federal legislation, provide states greater authority over management of train delays in conjunction with affected cities.

11. provide greater authority to the Texas Department of Transportation to improve city railroad crossings and install signal lights where there are safety concerns.

12. establish that expenditures of Community Development Block Grant funds by cities are a governmental function.

13. require city consent before the Texas Commission on Environmental Quality (TCEQ) is authorized to issue a standard permit for a rock crushing operation, cement crushing operation, or any similar activity that may be authorized under a standard air permit from TCEQ within the corporate limits or ETJ of a city. Alternatively, or in addition, such legislation may: (a) authorize a city to restrict, prevent, or regulate the locating of such activities in the city's corporate limits or ETJ in other manners, such as imposing minimum distance from such operations and schools, hospitals, churches, and residences; (b) require TCEQ to provide

notice of applications for standard permits to cities for activities proposed in the city's corporate limits or ETJ and require TCEQ to address any and all comments received from the City as required by Sec. 382.112 of the Texas Health & Safety Code; or (c) prohibit TCEQ from issuing a standard permit for activities proposed in the city's corporate limits or ETJ unless the city verifies that the proposed activity is authorized under the city's zoning ordinance or comprehensive plan to locate at the proposed location.

14. provide consistency and uniformity in the compliance deadlines and fees for compliance dismissals of Class "C" misdemeanors.

15. rectify the wording of Texas Government Code Section 29.013 to eliminate the requirement that a city secretary notify the Texas Judicial Council of elected or appointed mayors or municipal court clerks.

16. protect from disclosure the list of applicants for a mail in ballot up until the time ballots are sent for those applications, regardless of whether a request is made for the applications.

17. allow for the expenditure of municipal hotel occupancy tax revenue for construction of improvements in municipal parks and trails/sidewalks that connect parks, lodging establishments, and other tourist attractions, and related public facilities.

18. require equitable treatment of local governments by preventing a state official or state agency from placing additional restrictions on a city's use of federal funds from future stimulus legislation related to a health pandemic, in contravention of congressional intent.

19. require counties to share timely information on health emergencies with cities.

20. treat broadband service similar to other critical utility infrastructure to ensure statewide availability, equity, and affordability for citizens and businesses.

21. modernize the Texas Universal Fund through revenue sources that ensure long-term sustainability for the provision of broadband services.

22. require the State of Texas to create a state regulatory process for oil and gas and CO2 pipeline routing that:

    i. enables affected communities and landowners to provide input prior to establishment and publication of routes.
    ii. provides for negotiation on routes when municipalities believe that substantial threats to economic development, natural resources, or standard of living are potential outcomes.
    iii. intrastate pipelines will comply with environmental and economic impact study standards, including the participation of local governmental entities and public participation.
    iv. pipeline operators shall have in place performance bonds like those the state has in its own contracts.

23. increase existing or create new grant program funding that provides financial assistance to local governmental public safety agencies for public safety resources, including legislation that supports the use and the purchase of body cameras and associated data storage costs.

24. harden the state's electric grid against blackouts, especially those caused by extreme weather events.

25. provide additional tools for municipally owned electric utilities to harden their systems against blackouts, especially those caused by extreme weather events.

26. mitigate the cost and liabilities of the outage event caused by Winter Storm Uri from being passed on to cities and city residents.

27. provide stabilization and funding for the electric grid in response to increased demand.

28. ensure that each city gets at least one vote on appraisal district board members.

29. strengthen current law as it relates to catalytic converter theft and prevention, including increasing penalties for auto repair facilities and individual sellers who resell or are in possession of stolen catalytic converters.

30. promote increased flexibility under the Texas Open Meetings Act, including flexibility for public participation, so long as the legislation doesn't mandate any new costs on local governments.

31. give cities more input in the municipal utility district development process within the city limits and ETJ, including legislation that promotes additional transparency in the process for cities and city residents.

32. raise the threshold for the ¾ super majority requirements triggered by the opposition of landowners close to proposed zoning changes from 20% of property ownership interest within the notification area, to 50%

33. add safeguards to the formation of new municipal utility districts (MUDs) through the Texas Commission on Environmental Quality process, limit MUDs administrative costs, require MUDs to meet in the cities they tax from, coordinate with local cities or counties on MUD board elections, and provide additional financial information to citizens in an open and transparent manner.

34. allow for competitive procurement of the professional services enumerated in the Professional Services Procurement Act by home rule and general law municipalities.

35. allow for the expansion and preservation of diverse, affordable housing in cities, including additional appropriations.

36. allow a city official to submit a request for an attorney general letter ruling under the Public Information Act by email at no charge.

37. increase the maximum hiring age for firefighters in a civil service city from age 35 to 45, or to eliminate the maximum hiring age altogether.

38. make beneficial amendments to H.B. 2439 (2019), the building materials bill.

39. amend Sec. 52.095, Election Code, related to the requirement that cities are only able to assign a letter of the alphabet to the measure that corresponds to its order on the ballot.

40. prohibit the Texas Department of Transportation from requiring municipalities requesting toll road frontage improvements, ramp improvements, and other competing facilities to pay for any revenue reduction from improvements and maintenance costs of the improvements.

Oppose

The Board opposes legislation that would:

1. negatively expand appraisal caps but take no position on legislation that would authorize a council-option reduction in the current ten-percent cap on annual appraisal growth.

2. impose new property tax or sales tax exemptions that substantially erode the tax base.

3. limit or eliminate the current flexibility of the Major Events Reimbursement Program as a tool for cities to attract or host major events and conventions.

4. limit the type of incentives available to the city or that would limit any use of incentives by a city.

5. further erode local control as it pertains to retirement issues.

6. substantively change or expand the scope of the current disease presumption law, unless doing so is supported by reputable, independent scientific research.

7. require candidates for city office to declare party affiliation in order to run for office.

8. eliminate any of the current uniform election dates.

9. impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state.

10. restrict city authority to draft ballot propositions in such a way that reflects the full fiscal impact of the proposition.

11. require preclearance of city ballot propositions by a state agency.

12. erode city solid waste franchise fee authority.

No Position

The Board takes no position on legislation that relates to immigration matters, so long as it does not impose new and substantial unfunded mandates or unavoidable liabilities on cities.

The Board takes no position on legislation that would impact local sourcing of sales and use taxes.

The Board takes no position on legislation that would authorize a city to annex out a roadway to bring a voluntarily-requested area into the city limits.

Other

The Board takes the following additional actions:

1. with regard to economic development: (1) take no position on legislation that would broaden the authority of Type A or Type B economic development corporations; and (2) oppose legislation that would limit the authority of Type A or Type B economic development corporations statewide, but take no position on legislation that is regional in scope and that is supported by some cities in that region.

The Texas Municipal League Legislative Advocacy Tooklit

Available online: https://tml.org/DocumentCenter/View/4537/2024-TML-Advocacy_Final