

The TML Legislative Program for 2011

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 2009 legislative session, more than 7,600 bills or significant resolutions were introduced; at least 1,500 of them would have affected Texas cities in some substantial way. In the end, nearly 1,500 bills or resolutions passed and were signed into law; approximately 120 of them impacted cities in a direct or indirect way.

There is no reason to believe that the workload of the 2011 session will be any lighter; it may 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 2011 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 for 2011, the Board recognized 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 recognized that the League must very carefully select the bills for which it will attempt to find sponsors and seek passage.

The Board considered nearly 200 initiatives that had been recommended by TML policy committees or by the membership-at-large. Each initiative was 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 placed each legislative issue into one of five categories of effort. Those five 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 bills.”
- **Support** – the League will actively attempt to obtain passage of the initiative if it is introduced by some other entity. The League will provide and/or arrange for testimony.
- **Endorse** – the League will make its support known but will not actively pursue passage.
- **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 for 2011 will be 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.

TML Priority Package

The Board determined that the TML Priority Package will include the following items in priority order:

1. Defeat any legislation that would erode municipal authority in any way or that would otherwise be detrimental to cities, especially legislation that would:

- a. erode municipal authority in any way, impose an unfunded mandate, or otherwise be detrimental to cities.
 - b. impose a revenue cap of any type, including a reduced rollback rate, mandatory tax rate ratification elections, lowered rollback petition requirements, limitations on overall city expenditures, or exclusion of the new property adjustment in effective rate and rollback rate calculations.
 - c. mandate a reduction in the current ten-percent cap on annual appraisal growth.
 - d. erode the concept that appraisals must reflect the true market value of property.
 - e. require cities to act as collection agents for the state or a subdivision of the state, or that would allow the state or a subdivision of the state to usurp municipal revenue.
 - f. decrease the authority of a city to be adequately compensated for the use of its rights-of-way.
 - g. erode municipal authority over the management and control of rights-of-way.
 - h. erode city sovereign immunity.
 - i. expand the current meet-and-confer law.
 - j. establish a standard or process for determining economic loss and related compensation resulting from a regulatory action.
 - k. limit or prohibit the authority of city officials to use municipal funds to communicate with legislators.
 - l. limit or prohibit the authority of the Texas Municipal League to use any revenue, however derived, to communicate with legislators.
 - m. further erode a city's ability to condemn property for a public purpose, specifically legislation that would: (a) place eminent domain restrictions on cities that are more burdensome than those placed on the state; (b) provide for retroactive application of any eminent domain provisions; (c) erode municipal authority to engage in urban renewal efforts; (d) provide an excessive amount of damages to a property owner whose property is acquired through eminent domain; (e) enact adverse amendments to current law relating to subsequent repurchase of land acquired through eminent domain; or (f) amend the definition of "public use" to include any restriction on traditional public projects.
2. Passage of any legislation that would:

- a. exempt as many cities as possible from any federal collective bargaining legislation that may become law in the future.
- b. repeal the requirement in current law that a city must first offer to remove graffiti free of charge prior to requiring the property owner to remove it.
- c. create additional, flexible cost-of-living adjustment (COLA) options under the Texas Municipal Retirement System that are not retroactive to a retiree's date of retirement, such options to possibly include one-time increases tied to increases in the consumer price index or flat percentage increases.
- d. enable the use of electronic notice to the public of bid or proposal opportunities.
- e. authorize cities—in relation to annexation, planned annexation, voluntary annexation, or negotiated annexation—to replace some or all emergency services district (ESD) sales taxes in an area with city sales taxes, provided an ESD's existing sales tax debt is proportionately and reasonably provided for in some manner.
- f. convert the sales tax reallocation process from a ministerial process into a more formalized administrative process that would, at a minimum, require prior notice to all affected parties and impose a time limit of three years on the right of a claimant to request a refund.
- g. require accurate fiscal notes on rules proposed by state agencies.
- h. require the two state agencies that regulate street lighting in state highway rights-of-way (the Texas Department of Transportation and the Public Utility Commission) to adopt a uniform electrical code for street lighting in those rights-of-way.
- i. allow a city to collect thoroughfare impact fees in the extraterritorial jurisdiction.

SUPPORT

The Board voted to support legislation that would:

1. amend Chapter 327 of the Texas Tax Code to authorize the collection of municipal sales and use taxes for street maintenance for a longer or indefinite term instead of the four years provided by current law.
2. require an investor-owned utility to refer to right-of-way rental (i.e., franchise) fees as a "fee" rather than a "tax."

3. clarify that cities have authority to enforce building codes in the extraterritorial jurisdiction.
4. grant immunity from liability for certified municipal building inspectors for damages arising from services provided during an emergency.
5. clarify the authority of cities to use handheld radar/laser speed enforcement technology.
6. make beneficial amendments to the “Scofflaw Program” (Chapter 702, Texas Transportation Code), including removing the fine cap in current law; expanding the law to allow general law cities to participate; and requiring a county tax assessor-collector to refuse to register a motor vehicle if the assessor-collector or the Department of Motor Vehicles receives appropriate information from the city.
7. authorize sobriety checkpoints.
8. combine the Texas Municipal Retirement System’s Municipal Accumulation Fund (MAF), the Current Service Annuity Reserve Fund (CSARF), and the Employee Savings Fund (ESF).
9. allow a city (for purposes of the Texas Municipal Retirement System (TMRS) return-to-work provision) to define “full time” as 1,000; 1,250; or 1,500 hours annually, so long as such a change would not endanger the federal tax status of TMRS.
10. amend the Texas Public Information Act to except from disclosure an employee’s or official’s emergency contact information and any reference to the employee’s or official’s household.
11. amend the Texas Public Information Act to except from disclosure a copy of an employee’s identification badge.
12. amend the Texas Public Information Act to except from disclosure out-of-state driver’s license numbers.
13. clarify that peddlers who sell burglar alarm services are not exempt from municipal regulations governing that activity.
14. simplify the effective tax rate calculation for notice purposes only, provided the legislation would have no effect on the underlying effective tax rate and rollback tax rate calculations themselves, nor upon the hold harmless exemptions to those rates.
15. clarify that the “Prop 2” pollution control property tax exemption isn’t meant to apply to the environmental characteristics of end products.

16. amend Section 11.1825 of the Tax Code by adding a requirement that community housing development organizations must receive an exemption from taxation from any affected municipality prior to receiving a tax exempt status from the local property tax appraisal district.
17. create a new council-option city sales tax for property tax relief that may exceed the two-percent local cap.
18. automatically convert existing sales taxes for property tax relief to any newly-created sales tax for property tax relief that would not count against the two-percent local cap.
19. expand the sales tax base, but only if the city tax base fully benefits from the expansion.
20. permit cities to share tax proceeds with other cities as part of a voluntary Chapter 380 economic development agreement.
21. permit a city, by vote of the citizens, to withdraw from an emergency services district, provided the city will provide fire service inside the city's limits.
22. permit a municipal development district's sales tax, notwithstanding a competing emergency services district (ESD) sales tax, to apply in the extraterritorial jurisdiction, as current law allows, provided an ESD's existing sales tax debt is proportionately and reasonably provided for in some manner.
23. provide for the popular election of emergency services district boards of directors.
24. authorize the expenditure of hotel occupancy taxes on the costs of conducting audits of potentially delinquent taxpayers.
25. 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 municipalities with additional funding options and resources to address transportation needs that the state and federal governments are unable or unwilling to address.
26. discontinue the diversion of transportation revenues to non-transportation purposes and appropriate all revenues from highway user fees and taxes to fund transportation.
27. provide additional funding to the Texas Department of Transportation for transportation projects that would benefit cities, so long as existing funding formulas are followed.
28. increase state authority over air emissions or water quality as those items relate to gas development, so long as municipal authority in those areas is not eroded.

29. grant cities or counties additional authority to regulate gas wells in a city's extraterritorial jurisdiction (ETJ), so long as municipal authority in the ETJ remains superior to that of the county.
30. require the Texas Commission on Environmental Quality to consider minimum standards for fire protection for new or amended certificate of convenience and necessity applications for water providers in a city's extraterritorial jurisdiction.
31. allow landowners to opt out of a federally-indebted rural water supply corporation's certificate of convenience and necessity when the corporation cannot provide adequate fire flow of at least 1,000 gallons per minute for single family residential developments with at least 50 lots and 2,500 gallons per minute for multifamily and commercial property.
32. amend the Public Information Act to allow governmental bodies to recoup costs of responding to "inspection-only" requests for e-mails that require a significant amount of public employee time and resources and that would allow for tolling of the 10-day period to seek an attorney general request for ruling while the requestor responds to cost estimate.
33. allow municipalities the option of selecting either an official newspaper or an official Web site for the municipality's publication of official notices required by law.
34. repeal or provide beneficial amendments to Section 1301.551(e) of the Texas Occupations Code, relating to local control of residential fire sprinklers.
35. make beneficial amendments to Section 214.197 of the Texas Local Government Code, relating to false burglar alarm penalties.
36. amend the Open Meetings Act by replacing the criminal enforcement provisions with less restrictive penalties that balance the First Amendment right of government officials.
37. exempt municipalities from state motor fuel taxes.
38. exempt municipal officers and employees who are traveling on official business from state hotel taxes.
39. allow Texas cities with tax increment financing reinvestment zones to extend the lives of their zones.
40. impose on each video provider (e.g., cable television and similar services, as well as satellite service) a state "assessment" of 6-1/4 percent of gross revenues derived from the provision of subscription video services in this state only if such legislation: (a) entitles cities to one-quarter of the revenue generated by the assessment; (b) expressly reaffirms cities rights to collect rental fees for use of public rights-of-way; and (c)

does not interfere with the collection or payment of rental fees paid to cities for use of public rights-of-way.

41. allow cable and video providers to opt out of all “grandfathered” local cable or video franchise agreements under Chapter 66 of the Texas Utilities Code (S.B. 5, 2005 Second Special Session) only if such legislation: (a) provides for standard and consistent termination of all grandfathered agreements and requires that a cable or video service provider immediately seek a state-issued certificate of franchise authority; (b) allows for expansion of the permissible uses of the one-percent fee paid by cable and video providers to support municipal public, educational, and governmental programming (PEG); (c) allows all cities to obtain two or three PEG channels based on population; (d) expressly reaffirms cities rights to collect rental fees for use of public rights-ofway; and (e) is made contingent upon the passage of additional legislation imposing on each video provider (e.g., cable television and similar services, as well as satellite service) a state “assessment” of 6-1/4 percent of gross revenues derived from the provision of subscription video services in this state, with cities being entitled to one-quarter of the revenue generated by the assessment.

ENDORSE

The Board voted to endorse legislation that would:

1. increase from \$25,000 to \$50,000 the dollar amount at which a city council may delegate contract change order approval to an administrative official.
2. allow a city to mandate that pharmacies located within the city participate in a pseudoephedrine reporting program.
3. permit local regulations to prohibit the ownership, possession, harboring, maintenance, transportation, or sales of specific breeds of dogs within a local municipality and/or support the repeal of state law that prohibits breed-specific regulations by home rule municipalities and local municipalities.
4. make the burglary of a motor vehicle a state jail felony with mandatory deferred sentencing for first time juvenile offenders and mandatory jail time for any offender with multiple offenses.
5. exempt a second-in-command police officer who attends any two-year block in the training program at the Bill Blackwood Law Enforcement Institute of Texas (LEMIT) from any line-level training required by the Texas Occupations Code in the same training block.
6. provide that the interest rate on public improvement district bonds is not limited by Section 373.023 of the Texas Local Government Code.

7. authorize the state fire marshal to investigate all line-of-duty firefighter deaths, including those involving training incidents, fire-based emergency medical service, on-duty motor vehicle collisions, and hazardous materials incidents.
8. return appraisals of oil and gas properties to the pre-H.B. 2982 (2007) methodology.
9. apply hotel occupancy taxes to recreational vehicle parks, except for stays of longer than 30 days.
10. increase future local parks funding.
11. change the eight-percent statutory interest rate on property tax refunds under Tax Code Section 42.43 to the rate of the 3-month treasury bill, as referenced in other portions of that section, as of the date of settlement.
12. change the Public Utility Commission's rate setting formulas and policies related to municipal street lights to allow a city, under certain circumstances, to discontinue service to a street light.
13. grant counties additional land use authority, so long as municipal authority in the extraterritorial jurisdiction remains superior to that of the county.
14. clarify the authority of general law cities to enact sex offender residency restrictions.
15. make the sale of Salvia divinorum or K2 a state criminal offense.
16. prospectively expand municipal authority relating to interlocal cooperation agreements, so long as such legislation is optional and would not otherwise be detrimental to cities.
17. provide for a statewide, state-funded, electronic pseudoephedrine database program, so long as cities are not required to participate in the program.
18. require mandatory disclosure of real estate sales prices.
19. modify the Super Freeport property tax exemption statute to match the related constitutional amendment.
20. allow municipal wastewater under a "no discharge" permit to be used for irrigation on land that is owned, leased, or otherwise controlled by the wastewater permittee, or upon land belonging to another person who has agreed to accept and utilize the wastewater in a manner allowed by Texas Commission on Environmental Quality regulations.
21. provide that all electric generators, regardless of size, should be explicitly barred from the unlawful exercise of market power.

22. provide that entities such as cities harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the Public Utility Commission.
23. increase fines for market abuses in such a way that the Public Utility Commission can order full restitution to the market, market participants, or parties injured by the violation.
24. prohibit activities defined as market abuse by the Federal Energy Regulatory Commission.
25. modify the statutory purpose of the Public Utility Commission to require it to harmonize its pursuit of competition with the protection of consumers of electricity.
26. as a condition of conducting business within Texas, require competitive retail electric providers to include among their offers one standard electricity package that has Public Utility Commission-approved terms and conditions.
27. increase the number of consumer representatives on the Energy Reliability Council of Texas board from three members to six members.
28. assign a seat on the Energy Reliability Council of Texas board (and on appropriate budget oversight panels within the Energy Reliability Council of Texas) to the state comptroller's office.
29. require the Public Utility Commission to pre-approve all debt financing by the Energy Reliability Council of Texas.

OPPOSE

The Board voted to oppose legislation that would:

1. erode current municipal authority to regulate manufactured or industrialized housing.
2. erode municipal annexation authority.
3. erode municipal zoning authority.
4. restrict a city's ability to adopt or amend zoning regulations, or vest or otherwise create a property right in a zoning classification.
5. further erode a city's ability to regulate religious or charitable organizations.

6. enact adverse amendments to the permit vesting statute (Chapter 245 of the Local Government Code).
7. allow special districts to form in the extraterritorial jurisdiction without a city's permission, or that would impose additional requirements on cities relating to special districts.
8. reduce municipal authority to require exactions related to and required by new development, or that would erode the authority of cities to adopt and enforce minimum development standards.
9. erode a city's ability to make amendments to model building codes.
10. impose additional time restrictions on the issuance of building permits, or that would erode municipal authority regarding building permits in any way.
11. further restrict a city's ability to impose building fees.
12. erode municipal authority in the extraterritorial jurisdiction.
13. exempt any entity from paying municipal impact fees.
14. require a city to place a disclaimer of any type on a geospatial data product used by the city.
15. erode municipal authority to regulate renewable energy technology and green building initiatives.
16. repeal or limit red light camera authority generally. (Further, the committee recommends that TML defer to the Texas Red Light Coalition on more detailed matters relating to revisions to red light camera policy.)
17. erode municipal authority to regulate or abate a nuisance in the city limits or extraterritorial jurisdiction.
18. further shift to cities the cost of transporting mental health patients who are under an emergency detention order.
19. erode existing municipal authority relating to sex offender residency restrictions, or create a state standard that preempts current or future municipal sex offender residency restrictions.
20. prohibit peace officers from making arrests for any offense.
21. erode the authority of cities to tow vehicles for no insurance or no driver's license, or exempt motorists from having to pay any vehicle impoundment fee.

22. mandate jail standards for city jails or mandate any form of certification for city detention officers.
23. eliminate any of the current uniform election dates.
24. impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state.
25. permit the waiver of appearance at a municipal court trial.
26. give state fees and costs precedence over city fees and costs in municipal court.
27. substantively change or expand the scope of the current disease presumption law.
28. impose expanded collective bargaining rights.
29. enact detrimental amendments to the civil service law (Chapter 143 of the Texas Local Government Code).
30. impose healthcare or prescription drug mandates or enhancements.
31. mandate employment benefit enhancements.
32. mandate city-paid leave for city employees for specific purposes.
33. specify what and how cities may regulate with regard to cell phones.
34. repeal existing municipal ordinances relating to cell phone bans or create a state standard that preempts more restrictive current or future municipal cell phone bans.
35. make the sign-posting provisions of H.B. 55 (2009 – relating to prohibiting cell phone use in a school zone) mandatory for all cities.
36. restrict or limit indemnification clauses in construction contracts.
37. require the reporting of lobbying activities beyond the requirements in current law.
38. impose a statewide smoking ban that would preempt existing or future municipal smoking bans.
39. ban or limit the ability of cities to engage in proprietary functions.
40. impose unfunded mandates on cities or city officials related to immigration.
41. prohibit a city from following its own policies related to immigration.

42. require mailed notice of tax rates.
43. impose new property tax exemptions that substantially erode the tax base.
44. impose a property tax freeze that can be implemented by any mechanism other than council action.
45. remove the authority of a city to collect its own property taxes.
46. extend the “Prop 2” pollution control property tax exemption to processes, facilities, or end products.
47. impose new mandatory homestead exemptions or exemption increases.
48. impose any sales tax exemption that would substantially erode the sales tax base.
49. lengthen or broaden the scope of the current sales tax holiday.
50. impose a requirement that the adoption of a new sales tax for property tax relief shall result in a lower property tax rollback rate for the adopting city.
51. expand the sales tax base without fully benefitting the city tax base.
52. impose destination-based sales tax sourcing.
53. expand an emergency services district’s sales tax authority within city limits.
54. limit the authority of type A or type B sales tax corporations.
55. expand election requirements for issuance of any city debt or that would impose a petition/election procedure where none currently exists.
56. prevent a city from applying hotel occupancy taxes on the final cost of the hotel room to the guest, or prohibit a city from suing any entity necessary to collect such hotel occupancy taxes.
57. cut state appropriations for future local parks grant funding.
58. divert sporting goods sales taxes away from use for parks.
59. create earmarks of local parks grant funds.
60. impose mandatory water conservation measures on cities.
61. impose on cities any additional mandates relating to irrigation/sprinklers.

62. impose state “tap fees” or any other type of state charge on municipal water systems, except that TML would take no position on any tap fee proposal that contains all of the following features: (1) is adopted by popular vote pursuant to a constitutional amendment; (2) the proceeds of the fee shall fund water infrastructure and not state general revenue; (3) grants regional authority over expenditure of the revenue of such fees; (4) is fairly and proportionately levied not just on municipal water users, but on industrial and agricultural users as well; and (5) permits the collecting water system to retain a percentage of the fee necessary to offset the costs of collection and remittance to the state.
63. expand the requirements of S.B. 361 (Eightieth Legislature), which relates to emergency water utility generators, to areas outside Harris County.
64. erode municipal original jurisdiction relating to the ratemaking authority of electric utilities.
65. negatively affect the provisions of Senate Bill 5 (Seventy-Ninth Legislature, Second Called Session), which relates to cable competition.
66. erode municipal authority to require utility companies to pay the costs of relocating their facilities in a timely manner as required by current law.
67. limit a city’s authority to enter into a solid waste franchise.
68. exempt any entity from paying municipal drainage fees.
69. establish the date of payment of a municipal utility bill as a date other than the actual date of receipt of payment by the city.
70. limit current municipal authority relating to the Gas Reliability Infrastructure Program.
71. amend the Gas Reliability Infrastructure Program to allow the recovery of non-capital expenses by a gas utility.
72. apply the Prompt Payment Act to utility bills submitted to a city if the proposed legislation or rules would diminish a city’s ability to dispute charges or recover any excess payments, including interest and the cost of recovery.
73. erode municipal authority over billboards or that would place any unfunded mandate on cities relating to billboards.
74. enact any provision of the Texas Department of Transportation sunset legislation that would be harmful to cities.

75. establish model rules relating to municipal regulation of gas wells, gas pipelines, or other gas-related equipment, unless the legislation or rules apply to only county regulation in the unincorporated area of the county.
76. weaken the ability of cities to regulate gas wells, gas pipelines, or other gas-related equipment.
77. with regard to state agency sunset or related legislation, adversely affect the interests of cities, including but not limited to their ability to intervene on matters before a state commission or a court of law.

TAKE NO POSITION

The Board voted to take no position on legislation that would:

1. require a city to grant leave from work for municipal employees provided the leave meets each of the following criteria: (1) it is unpaid; (2) it must be used to address serious family or health issues; and (3) it is of a reasonably short duration.
2. authorize a council-option reduction in the current ten-percent cap on annual appraisal growth.
3. impose small property tax exemptions that serve some social good.
4. modify the Super Freeport property tax exemption (other than legislation that would match the statute to the constitutional amendment).
5. allow a council-option city homestead exemption of up to 30 percent.
6. expand or contract eligibility for the community housing development organization (CHDO) property tax exemption (other than legislation relating to municipal approval of CHODO exemptions).
7. broaden the authority of 4A or 4B sales tax corporations.
8. align Texas law with the national Streamlined Sales Tax Project (excepting more specific sales tax-related positions taken elsewhere in this legislative program).

OTHER

The Board voted to endorse the authority and role of homeowners associations, so long as municipal authority is not eroded, and oppose limitations on the functions that homeowners associations were created to perform.

The Board voted to recommend that the League **support** legislation that would assist cities in providing for a greater quality of life and safe neighborhoods, and that TML **oppose** legislation that would unfairly benefit one property owner to the detriment of the citizens at-large.

The Board voted to recommend that, should legislation be filed that would allow cities to adopt a two-tiered plan (one for current employees and retirees and one for new hires) under the Texas Municipal Retirement System, TML staff seek the guidance of the TML Executive Committee regarding the League's position on such legislation.

The Board voted to recommend that the TML Board and staff carefully monitor any recommendations that may be generated by any legislative committee's study of the Texas Open Meetings Act and that the Board establishes legislative positions as appropriate.

The Board voted to recommend that the League **support** the adoption of the parks study called for by H.B. 12 (2007), thus binding future legislatures to full local parks funding.

The Board voted to recommend that the League **oppose** any provision of the Texas Commission on Environmental Quality sunset legislation that would be harmful to all cities, but **take no position** on provisions that would benefit some cities while harming others.