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Franchise Fee Elimination Bill Ruled Unconstitutional

This week, the 53rd State District Court in Travis County ruled in favor of a coalition of cities, led by the Cities of McAllen and Dallas alongside Houston, challenging the constitutionality of [S.B. 1152](#), the “franchise fee elimination bill” passed by the Legislature in 2019. The legislation eliminated over \$100 million+ annually in municipal rights of way (“ROW”) fees from cable and telecom providers. The Court granted the cities’ motion for Summary Judgment and declared that S.B. 1152 violates the Texas Constitution Article III, Section 52 prohibition on “public gifting” of things of value to corporations or private entities. S.B. 1152 allowed private cable and telecom providers to unilaterally stop paying franchise fees to cities for either telecom or cable service even if those providers used the public ROWs to provide such service.

In addition to challenging the constitutionality of S.B. 1152, the city coalition lawsuit originally challenged the constitutionality of [S.B. 1004](#) passed in 2017. S.B. 1004 capped what cities could charge for “small cell” wireless nodes placed in the public ROWs at \$250 per site. Previously, many municipal ROW ordinances charged \$1,000-\$2,000 per site. Unfortunately, the Court ruled in favor of the State of Texas and denied summary judgment as it related to S.B. 1004. It should be noted that the issues related to S.B. 1004 small cell wireless deployment are currently being considered before the Federal Communications Commission (FCC). The FCC will likely play a

deciding role in resolving the issues such as allowable fees and land use authority by political subdivisions over small cell deployment.

The League's Board previously approved financial and legal support to the City of McAllen and the coalition to bring the challenge forward. Additionally, the League in conjunction with numerous cities vigorously opposed S.B. 1004 and S.B. 1152 when the bills were originally filed. Those in opposition testified that the bills violated Texas Constitutional protections against giving away public resources to for-profit entities and eroded local land use authority to respond to citizen concerns to the legislature. There is a strong likelihood that issues raised by S.B. 1004 and S.B. 1152 could be brought back next session.

The ruling declaring S.B. 1152 unconstitutional is expected to be appealed by the State of Texas to the 3rd Court of Appeals. It is anticipated that the city coalition will likely consider appealing the denial the of Summary Judgment as it relates to S.B. 1004. The League will continue to report on the case as it develops.

Comptroller Updates Revenue Estimate by Nearly \$14 Billion

Yesterday, Texas Comptroller Glenn Hegar [released](#) the revised Certification Revenue Estimate (CRE) that was previously released late last year by an upwards of \$13.75 billion. The comptroller announced the state will have \$149.07 billion in General Revenue funds available for general-purpose spending for the 2022-2023 biennium. This will result in an extra \$26.95 billion heading into the 2023 legislative session. The Economic Stabilization Fund (the "Rainy Day Fund") will also have \$13.6 billion in the account.

Several factors contribute to the extraordinary CRE including inflation that has aided in the increase of revenues from sales taxes and oil and gas production taxes. The comptroller will release the Biennial Revenue Estimate (BRE), the basis of the state budget, in January 2023 at the start of the 2023 session.

Governor Announces Operation Lone Star Grant Program

Last week, Governor Abbott [announced](#) an additional \$30 million in Operation Lone Star (OLS) grant funding for cities and counties to enhance border security operations. The grant includes \$14 million for border-adjacent counties and \$16 million for any county or city. The grant application for cities opened on Monday, July 11. Interested cities can learn more information on the grant program [here](#).

Census of Governments

Every five years, the U.S. Census Bureau [conducts](#) a Census of all state and local government called the [Census of Governments](#). Data is obtained about how governments are organized, how

many people they employ, payroll amounts, and the finances of governments. The program is set to release data between July 2023 and September 2023. Currently, Phase 1, Government Organization, is completed. Phase 2, Employment, is underway. The last phase, Phase 3, Finance, will start in the fall of 2022.

The Bureau of Economic Analysis and the Federal Reserve Board uses the data collected to measure the nation's economic and financial performance. State and local governments use the data to develop programs and budgets, assess financial conditions, and perform comparative analyses. In addition, analysts, economists, market specialists, and researchers use the data to measure the changing characteristics of the government sector economy to conduct public policy research.

Cities can learn how to respond to program online [here](#).

Don't Forget: Resolutions for 2022 Annual Conference Due August 22

Resolutions for consideration at the annual conference are due no later than 5:00 p.m. on **August 22, 2022**. The TML Constitution provides that resolutions must be submitted by any member city, TML region, or TML affiliate to the TML headquarters 45 calendar days prior to the first day of the Annual Conference.

The League's advocacy efforts are based on a legislative program that is developed by member city officials in two ways.

First, a member city, TML region, or TML affiliate may submit a resolution for consideration at the business meeting of each year's annual conference. Each city is asked to provide one delegate to serve as its liaison at the meeting. The representatives will be 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 made only if needed.

Second, member city officials can participate in the League's Municipal Policy Summit during the summer of 2022. The report of the Summit takes the form of a resolution that is submitted to the annual conference in interim years. The summit participants were appointed by the TML President based on volunteers and others chosen to balance the demographics of the TML membership at large.

Details on the submission process can be found [here](#).

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