Texas Municipal League
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STATE'S BUDGET RELIES ON DIVERSION

By Peggy Fikac – San Antonio Express-News

AUSTIN — Nearly $3.7 billion in levies collected for everything from fighting air pollution to helping low-income people with their electric bills to funding trauma care instead will help balance the state's upcoming two-year budget.

The money is largely collected through fees and fines that by law are dedicated to a particular purpose. If lawmakers do not spend the money on those purposes, however, the balances become available to spend on other programs.

"It's kind of like having your (household) budget laid out and spending part of your food money on entertainment, or vice versa," said Dale Craymer, chief economist for the Texas Taxpayers and Research Association. "It's a backdoor way to undedicate the money." If the money remains committed to its intended purpose, he said, "something else in the budget has to give."

In some cases, unspent balances in dedicated accounts over years have grown to hundreds of millions of dollars.

"We're generating funds for a good purpose. We're diverting the funds — without telling people — for general purposes. And then we say we're not taxing. Well, government is lying," said Rep. Sylvester Turner, D-Houston, who said such levies amount to "a tax by misrepresentation."

The biggest unspent balance that will be used to help certify the $182 billion state budget for the two-year period that starts Sept. 1 is $670.7 million accruing in the System Benefit Fund. The program, championed by Turner, imposes a fee on electricity customers in competitive retail markets including Houston, Dallas-Fort Worth and most of the Rio Grande Valley to provide a May-September discount for low-income customers. The state will spend $258.9 million from the fund over the next two years.

"It's just a sinister way of keeping money intended for the poor in the budget to certify the budget. It is a tax on the poor," Turner said.

Among other big balances, $331.3 million will be unspent from the main account that reimburses hospitals for uncompensated trauma care.

A total of $150 million will be allocated from this fund over the next two years, although hospitals reported about $225 million in uncompensated trauma care in fiscal 2009 alone.

Seeing the funds allocated as intended by the law is "one of our highest priorities," said Leni Kirkman of University Hospital in San Antonio. "You have an expectation that if you are involved in a serious car crash, that you are going to get immediately flown to the trauma center, and there's going to be a doctor and a nurse and a bed and all the technology and everything waiting for you or your child. And if we continue to shortchange reimbursements for uncompensated trauma care, that can't continue indefinitely."

An even larger balance, $515.3 million, will be held in the Texas Emissions Reduction Plan account after $271.7 million is spent on the program over the next two years to address polluting heavy vehicles and equipment.

Senate Finance Committee Chairman Steve Ogden, R-Bryan, said he understands the critics' argument against redirecting money, but "if you are going to criticize that, then go tell me what other parts of the budget I'm supposed to cut."

The alternatives to cutting elsewhere, Ogden said, are raising general taxes or dipping into the state savings account known as the rainy day fund, which budget-writers expect to need in the future.

"The long and short of it is we have to do this in order to balance the budget," Ogden said.

He added, however, that the situation points up a major public policy point: "Our tax and revenue system is pretty messed up, and a case can certainly be made for a major overhaul of our tax structure."

Rep. Warren Chisum, R-Pampa and a former House Appropriations Committee chairman, described the unspent accounts as "kind of a safety net" to ensure the state comptroller can certify the budget as balanced.

"It is a shell game," he conceded, "but you know, life's a shell game."

(Note: This article has been reprinted with the permission of the *San Antonio Express-News*.)

UPDATE ON CELL PHONES IN SCHOOL ZONES

Recently passed legislation, **H.B. 55**, makes it a state offense to use a cell phone in a school zone under some circumstances. The bill makes the use of a wireless communication device while operating a motor vehicle within a school crossing zone a class C misdemeanor, unless the vehicle is

stopped or the device is being used in a hands-free mode. Further, the bill requires a city ***that enforces the prohibition*** to post a sign that complies with standards adopted by the Texas Department of Transportation at each school crossing zone in the city in order to inform an operator of a motor vehicle of the prohibition (the TxDOT standards must provide that the sign can be attached to an existing sign). The bill also provides that the prohibition does not apply to an operator of an authorized emergency vehicle if the operator is using the device in an official capacity, or to a radio frequency device operator who is licensed by the Federal Communications Commission. Finally, the bill provides for the preemption of all city ordinances that are inconsistent with specific provisions of the bill.

City officials have questioned whether the bill requires a city to install signs, or if it gives a city the option to do so. City attorneys throughout the state have reached different conclusions on this question. One thing is reasonably certain, however: the bill provides no penalties or enforcement methods against cities that choose not to install signs (or are unable to do so because of budget or economic conditions). Further, a city may not enforce the bill's cell phone ban unless signs are posted.

Cities that install signs may view information about the TxDOT-approved sign format at the following link:
ftp://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/gov/sign/5_em_school.pdf.

NEW LAW CHANGES CITY GRAFFITI REMOVAL ORDINANCES

Late in the 2009 legislative session, unfavorable graffiti provisions were added to House Bill 2086, a bill relating to gangs. The new graffiti provisions require a city to have specific provisions in any graffiti removal ordinance, including language that provides that a city may require removal of graffiti by a property owner **only if the city has first offered to remove the graffiti free of charge, and the owner has refused to allow the city to remove the graffiti.** Then, if the city has offered to remove the graffiti for free and the owner has rejected that offer, a city can remove the graffiti and charge the expenses to the property owner. Many cities have ordinances that require property owners to remove graffiti at their own expense, and these ordinances will be preempted by the new law. These new provisions take effect on September 1, 2009. The bill can be found at http://www.capitol.state.tx.us/tlodocs/81R/billtext/doc/HB02086F.doc.

These unfortunate provisions, which will probably have the effect of reducing graffiti abatement across the state, were added to a House bill during the Senate floor debate on the bill. The provisions had not been considered by either the House or the Senate until that moment, and had never been the subject of a public hearing.
Please contact the TML Legal Department with any questions at (512) 231-7400 or email at legal@tml.org.

WITH NEW WATER FEE INCREASES, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY DISCOVERS A NEW WAY TO CALCULATE FISCAL IMPACTS…SIMPLY IGNORE THEM

On July 7, the Texas Commission on Environmental Quality (TCEQ) adopted an increase in three water quality fees applicable to cities: (1) the Public Health Service fee; (2) the Consolidated Water Quality fee; and (3) the Water Use Assessment fee. The rule passed with no amendments from the commissioners and very little discussion, and took effect on July 30. For cities serving fewer than 160 connections, the Public Health Service fee has increased, but remains a flat fee. For cities serving more than 160 connections, the Public Health Service fee calculation has changed from an equation to a per-connection fee of up to $2.15. The Consolidated Water Quality Fee increased rates and minimums for all the fee factors by a percentage across the board and increased the fee multiplier from 1.00 to an amount up to a maximum of 1.75. The Water Use Assessment Fee will also increase for all levels of water use.

When the proposed rule was published in the Texas Register, the TCEQ staff claimed there would be no significant economic impact to cities, because the cost could simply be passed on to the customer. TML Executive Director Frank Sturzl replied with the following comments on the rulemaking:

> *Over five years, the rule will generate $15.3 million for the state. Incredibly, however, there will be no fiscal implications for local governments since any resulting fee increases "are anticipated to be passed on to their customers." Of course the fees will be passed along; cities can't print money!*
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> *This fiscal note produces an entirely new and outlandish result: no governmental action will ever impose a negative fiscal effect on any other unit of government. If the federal government were to place an unfunded mandate on the TCEQ, there would be no fiscal note because the TCEQ would simply increase fees, as it is now doing. If Congress were to place an unfunded mandate on the Texas Legislature, there would be no fiscal note because the Legislature would simply raise taxes or fees paid by Texans.*
>
> *The purpose of a fiscal note is to quantify the amount of revenue that an affected unit (or units) of government would be forced to generate as the result of a proposed action. The fiscal note in question clearly and utterly fails to do so.*

In the final rulemaking package as published in the Texas Register, the TCEQ responded:

> *TML commented that the fiscal note produces an entirely new and outlandish result: no governmental action will ever impose a negative fiscal effect on any other unit of government. For example, TML stated that if the federal government were to place an unfunded mandate on the TCEQ, there would be no fiscal note because the TCEQ would simply increase fees, as it is now doing. Further, TML stated that if Congress were to place an unfunded mandate on the Texas Legislature, there would be no fiscal note because the legislature would simply raise taxes or fees paid by Texans.*
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> *The fiscal notes to the proposed rule published in the March 13, 2009, issue of the Texas Register stated that local governments would not see significant fiscal impacts. The commission assumed that municipal utilities would pass the cost of the increase along to its customers. The increase is*

not projected to significantly impact a utility's customers because such costs are not anticipated to be significant and are typically spread across a 12-month period. The commission made no change in response to this comment.

It seems clear that the fiscal impact analysts at the TCEQ have passed through a magical looking glass into their own private wonderland, where entities (including cities) that must generate revenue for the TCEQ do so without feeling any fiscal impact whatsoever. This must be seen for what it is: an astonishing refusal to properly calculate a fiscal note.

The TCEQ is arguing that the fee increases will not "significantly impact a utility's customers." But the agency isn't imposing the increase on individual customers; to do so would require the agency to send a bill to each customer. The agency is imposing the increase on each municipal utility, and that increase *will be significant.* Each utility will have to decide how to pay for the increase: from utility reserves, from other municipal funds, or by increasing the customers' rates. It is widely known from previous research that any of the methods will require a large outlay, an outlay that TCEQ refuses to recognize.

More information on the rule change may be found on TCEQ's Web site, at: http://www.tceq.state.tx.us/agency/waterfees.html. TML will continue to monitor TCEQ and other agency rulemakings on behalf of our member cities. If you have any questions or need more information, please contact TML at (512) 231-7400.

ENTIRE FIFTH CIRCUIT TO REVIEW THE TEXAS OPEN MEETINGS ACT

Earlier this year, the U.S. Court of Appeals for the Fifth Circuit released its opinion in the Alpine Open Meetings Act lawsuit (*Avinash Rangra, Anna Monclova, and All Other Public Officials in Texas v. Frank D. Brown, 83rd Judicial District Attorney, and the State of Texas).*

The question presented in the appeal was whether a local government official's speech, made pursuant to official duties, has the same constitutional protections that the First Amendment grants to other types of speech. A three-judge panel of the Fifth Circuit did not directly answer that question, but instead returned the case to the trial court for further proceedings. That action is significant because the legal standard of review imposed by the Fifth Circuit presents a very high hurdle for the government to overcome. Essentially, the state must prove that the criminal provision of the Open Meetings Act is *not* unconstitutional.

Shortly after the opinion was issued, both sides filed for a rehearing by the court *en banc*. An *en banc* rehearing is one that is conducted by all of the court's seventeen judges. The State of Texas argues that the panel's decision should be overturned. The plaintiffs argue that no additional trial proceedings are necessary, and that the court should simply declare the criminal provision of the Act unconstitutional. TML, along with the Texas City Attorneys Association, the Illinois Municipal League, the South Dakota Municipal League, the National League of Cities, and the International Municipal Lawyers Association filed an amicus brief in the case in support of the plaintiff's position.

The court granted the motions last month, and will hear oral argument in September. It is important to remember that neither TML nor any other entity is opposed to open government. Quite the contrary.

This case is simply arguing that the threat of jail time is not the least restrictive means of achieving that goal.

TEXAS SUPREME COURT ISSUES FAVORABLE UTILITY RELOCATION OPINION

Texas cities have the authority to manage and regulate the use of public rights-of-way by utility companies. However, it seems that authority is under constant attack.

For example, in 2005 the City of Houston adopted an ordinance that requires owners of facilities located in public rights-of-way to bear the cost of relocating their equipment to accommodate city public works projects. The city then required AT&T to remove its facilities for a city drainage improvement project at a cost of $420,000. AT&T relocated its facilities but, believing the city's relocation ordinance was preempted by federal law, sued the city to recover the cost of the relocation.

The federal Fifth Circuit Court of Appeals concluded in *Southwestern Bell v. City of Houston* that the Houston ordinance is not preempted. That decision is a favorable one for Houston and all other cities that have projects that might require relocation of utility facilities. However, AT&T's state law claims were not addressed in the federal courts.

AT&T has since re-filed the suit in county court in Harris County. The suit claims that AT&T has a "vested right" to use the city's rights-of-way, and that the city's ordinance worked an unconstitutional taking of that property right. Previous case law indicates that the claim is without merit, and the state court suit seems to simply be another in a long and storied dispute between cities and telecommunications providers over right-of-way issues.

An April 3, 2009, Supreme Court of Texas decision in a similar suit clearly refutes AT&T's claims. In *Southwestern Bell Telephone, L.P. v. Harris County Tollroad Authority*, the facts were essentially identical to the City of Houston case, but involved a toll road authority and a county instead of a city.

After refusing to pay the costs of relocation caused by a transportation project, AT&T brought a takings claim under Article I, Section 17, of the Texas Constitution (presumably to do an end run around the county's immunity). The court concluded that AT&T, because it does not have a vested property interest in the public right-of-way in which its facilities are located, it is not entitled to reimbursement. Citing the U.S. Supreme Court and various secondary sources, the court concluded that a utility essentially uses the public rights-of-way pursuant to a license, and that the license is secondary to the primary public need, which is transportation.

TxDOT THREATENS TO GARNISH CITY SALES TAXES

TML has learned that the Texas Department of Transportation (TxDOT) has threatened to solve a highway funding/utility relocation dispute with one small Texas city by asking the comptroller's office to withhold sales taxes due the city in an amount equal to the disputed amount under the highway project.

As authority for this proposed action, TxDOT has cited a state statute, Government Code Section 403.055, which permits the comptroller to withhold payment of warrants due to persons who are

indebted to the state. TxDOT has cited no authority for the proposition that this section was ever meant to apply to the distribution of sales taxes levied by a city. In fact, case law makes clear that local sales taxes established by citizen election create a "contract with the voters" that cannot be abrogated by state action. *See San Saba County v. McCraw*, 108 S.W.2d 200, 203 (Tex. 1937). Further, it is questionable whether a good-faith dispute between a political subdivision and the state's highway department constitutes a "debt" under the statute, especially when not reduced to judgment by a court.

Any city that has similarly been told by TxDOT that the city's sales taxes may be imperiled by not accepting TxDOT's conclusions in a disputed highway or right-of-way project should contact Bennett Sandlin at TML, at (512) 231-7400 or bennett@tml.org.

GOVERNOR PERRY SUPPORTS LOCAL CONTROL OF "LAND USE AND PLANNING"

On June 19, 2009, Governor Rick Perry vetoed S.B. 1269, a bill that would have established a "smart growth policy work group" made up largely of representatives of state agencies. The work group would have been tasked with developing a "comprehensive smart growth plan for the state to prepare for the projected population growth in the state." The bill passed the Senate by a vote of 31-0 and was approved by a large margin (99-48) in the House.

The governor's veto message follows:

> *Senate Bill No. 2169 would create a new governmental body that would centralize the decision-making process in Austin for the planning of communities through an interagency work group on "smart growth" policy.* ***Decisions about the growth of communities should be made by local governments closest to the people living and working in these areas.*** *Local governments can already adopt "smart growth" policies based on the desires of the community without a state-led effort that endorses such planning.* ***This legislation would promote a one-size-fits-all approach to land use and planning that would not work across a state as large and diverse as Texas.*** *(Emphasis added.)*

Regardless of one's opinion of "smart growth" planning, it is nice to know that the governor stands with the vast majority of city officials in opposing legislation that would erode the authority of local governments to make decisions about the growth of their communities.

NOVEMBER BALLOT WILL INCLUDE CITY-RELATED PROPOSITIONS

The November 3, 2009, constitutional amendment ballot will include five city-related propositions. Each was placed on the ballot by the passage of a joint resolution by the 81st Texas Legislature. The propositions are described below.

Proposition 1 (H.J.R. 132) - passage of this proposition will allow cities and counties to finance the acquisition of buffer areas around military installations for the prevention of encroachment or for the construction of roads, utilities, or other infrastructure to protect the military installation's mission.

Proposition 2 (H.J.R. 36) - if passed, this proposition will provide that the *ad valorem* taxation of a residence homestead must be based solely on the property's value as a residence homestead, regardless of the otherwise "highest and best use" of the property.

(Note: passage of this proposition will mean that Section 2 of H.B. 3613, passed by the 81st Legislature and signed by the governor, will go into effect on January 1, 2010.)

Proposition 3 (H.J.R. 36) - this proposition, if passed by the voters, will provide for "uniform standards and procedures for the appraisal of property for *ad valorem* tax purposes," meaning that two or more adjoining appraisal districts may consolidate appraisal review board operations by interlocal contract.

(Note: passage of this proposition will mean that H.B. 3611, passed by the 81st Legislature and signed into law, will go into effect on January 1, 2010.)

Proposition 5 (H.J.R. 36) - passage of this proposition will amend the Texas Constitution to provide that administrative and judicial enforcement of uniform standards and procedures for appraisal of property for property tax purposes "shall be prescribed by general law" and shall not originate in individual counties, as the constitution currently provides.

Proposition 11 (H.J.R. 14) - if passed, this proposition will amend the Texas Constitution to provide 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. The proposition also provides 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.

Six additional propositions aren't directly city-related. They are the following:

Proposition 4 - establishing a "national research university fund."

Proposition 6 - authorizing the Veterans' Land Board to issue bonds.

Proposition 7 - allowing a member of the Texas State Guard to hold another office.

Proposition 8 - authorizing the state to contribute money and other resources for veterans' hospitals.

Proposition 9 - protecting the right of the public to access and use public beaches.

Proposition 10 - relating to the terms of governing boards of emergency services districts.

MUNICIPAL COST INDEX SHOWS TWELVE-MONTH DECLINE

The Municipal Cost Index (MCI), developed exclusively by *American City and County* magazine, shows the effect of inflation on the cost of providing municipal services. The MCI is used to study price trends, make informed government contract decisions, and facilitate sound budget planning. The MCI measures changes in the cost of providing local government facilities and services.

In calendar year 2007, the MCI rose in ten of the twelve months; its change for the year was +3.7 percent. During 2008, the MCI again rose steadily through October; the increase for that 10-month period was 6.7 percent.

Then in November 2008, the picture changed dramatically. The MCI has fallen by 4.7 percent since that time, and even though the index climbed slightly for July 2009, it has fallen by 3.7 percent in the past 12 months.

UNITED STATES SUPREME COURT RULES IN FAVOR OF FIREFIGHTERS IN CIVIL SERVICE EXAM DISCRIMINATION CASE

On June 29, 2009, the Supreme Court of the United States issued an opinion regarding discriminatory practices and civil service exams in *Ricci v. DeStefano*. The trial record indicates that the City of New Haven, Connecticut, tested its firefighters to determine promotions. It hired a company to design tests that were racially-neutral and based on information obtained from job analyses the company developed. The job analyses identified particular tasks, knowledge, skills, and abilities essential for the positions in question. In November and December 2003, candidates completed the exams. A disparate number of white candidates passed the tests. Because the test results yielded lower passing rates for blacks and Hispanics compared to whites, the city attorney expressed concern that the test had a disparate impact that might subject the city to Title VII disparate impact liability if the results were certified by the Civil Service Board (CSB). Over the course of several hearings with the CSB, various people testified on the question of whether the CSB should certify the results. Ultimately, the CSB did not certify the test results. Subsequently, seventeen white and one Hispanic firefighter who passed the examinations but were denied a chance at promotion filed suit under the disparate treatment provision of Title VII. The trial court ruled in favor of the city, and the court of appeals affirmed that ruling.

The Supreme Court ruled against the city and its decision to not certify the test results. The Court looked at Title VII's two tests: (1) the disparate treatment test; and (2) the disparate impact test. Disparate treatment prohibits intentional discrimination on the basis of a protected category. Disparate impact involves actions that are not intentionally discriminatory but unintentionally have a disproportionately adverse effect on minorities. The Court held that the mere desire to avoid liability under Title VII's disparate impact provision does not automatically justify a conscious choice to take an action that intentionally discriminates on the basis of a protected category; i.e., results in disparate treatment. Because it is difficult for an employer to balance the interests of a protected category while not harming a non-protected or other protected category, the Court adopted a "strong basis in evidence" test to be used in such situations. This test would require that an employer demonstrate that a strong basis in evidence exists that the employer's actions might violate Title VII's disparate impact provisions before the employer can make race-based decisions.

In *Ricci*, the Court held that several white and Hispanic firefighters were entitled to judgment in their favor on their claims that the city intentionally discriminated against them when it refused to certify the results of the firefighter promotion exams, because the city failed to show that it had "an objective, strong basis in evidence to find the tests inadequate."

To view *Ricci v. DeStefano*, Nos. 07-1428 and 08-328 (June 29, 2009) go to: http://www.supremecourtus.gov/opinions/08pdf/07-1428.pdf. If you have any questions regarding this case please contact the TML Legal Department at 512-231-7400 or email at legal@tml.org

SALES TAX SOURCING LETTER FROM COMPTROLLER

The state comptroller has requested that the following informational letter be published for *TML* members:

Dear Municipal or County Authority:

Senate Bill 636, passed by the 81st Legislature, changes how retailers who operate multiple places of business in Texas should collect local sales taxes beginning Sept. 1, 2009. The bill also contains a temporary exclusion clause that requires qualifying municipalities and counties to provide certain information to the Comptroller's office by Sept. 1, 2009. This notice explains the changes related to the collection of local sales taxes and provides instructions to municipalities and counties regarding registration for the temporary exclusion clause.

Retailers Operating Multiple Places of Business – Local Tax Collection Changes are Effective Immediately

Prior to the enactment of SB 636, Tax Code Sections 321.203 and 323.203 provided that the local sales tax collected on delivery sales by a seller with more than one place of business in Texas was determined by the place of business from which the items were shipped, not the location where the order was received.

Senate Bill 636 amends Tax Code Sections 321.203 and 323.203 to specify that each sale of a taxable item is now consummated at the retailer's place of business in this state where the retailer first accepts the order, provided that the order is placed in person by the purchaser or lessee of the taxable item. Now, when a purchaser places an order in person, retailers should collect local sales tax based on the location of the place of business where the order is received rather than the place of business from which the item is shipped.

Retailers should continue to collect local sales tax based on the "ship from" location on all delivery sales of taxable items that are shipped from a place of business in Texas when the order is not placed in person by the purchaser or lessee. Orders placed over the Internet, by telephone or through the mail are still consummated at the retailer's place of business in this state from which the items are shipped, if the items are shipped from a place of business of the seller in Texas.

See Guidelines for Collecting Local Sales and Use Tax *(Publication 94-105), at www.window.state.tx.us/taxinfo/taxpubs/tx94_105.pdf for more information concerning sellers' responsibilities for collecting local sales and use taxes.*

The Temporary Exclusion Clause and Registration Requirements for Qualifying Local Jurisdictions

Temporarily excluded from this change are warehouses that are places of business of a retailer as defined under Tax Code Section 321.002, ***if*** *the retailer has an existing economic development agreement with the municipality or county in which the warehouse is located that was entered into under Local Government Code Chapter 380, 381, 504 or 505, or a predecessor statute, before Jan. 1, 2009. This exclusion expires Sept. 1, 2014.*

To be eligible for the exclusion, the county or municipality must provide the Comptroller's office with the information listed below on or before Sept. 1, 2009. Please note that in order to provide the information requested, you will require the assistance of the taxpayer operating the warehouse:

- *a copy of the economic development agreement for each warehouse with which the jurisdiction has a qualifying economic development agreement;*
- *detailed information about the warehouse including the taxpayer name, DBA name (if applicable), 11-digit Texas taxpayer number and the warehouse address;*
- *a list of all retail outlets in existence and identified as being served by the warehouse as of Jan. 1, 2009.*

Form 01-159, available at www.cpa.state.tx.us/taxinfo/taxforms/01-159.pdf, may be used to provide the detailed information concerning the warehouse and retail locations. Please submit a separate form for each warehouse with which the jurisdiction has a qualifying economic development agreement.

We hope this information is helpful. If you have any questions concerning this notice or Texas sales and use tax, please feel free to call us at (800) 252-5555 or (512) 463-5555, or e-mail us at tax.help@cpa.state.tx.us.

Sincerely,
Bryant K. Lomax
Manager, Tax Policy Division

U.S. GOVERNMENT AGENCIES ISSUE GUIDELINES FOR FLU SEASON PLANNING

This month, the U.S. Departments of Health and Human Services, Education, and Homeland Security updated federal guidelines for fall flu season planning. These guidelines may be helpful to cities as they prepare for rapid response to outbreaks at varying levels of the H1N1 virus. To view the new guidelines go to: http://www.flu.gov/plan/states/index.html.

IMPLEMENTATION OF FTC IDENTITY THEFT RULES IS DELAYED

The implementation date of Federal Trade Commission (FTC) rules requiring cities to adopt identity theft programs (pursuant to the Fair and Accurate Credit Transactions [FACT] Act of 2003) has been extended from August 1, 2009, to November 1, 2009. (See the FTC Web site for information on this latest deadline extension: http://www.ftc.gov/opa/2009/07/redflag.shtm?utm_source=delivra&utm_medium=email&utm_campaign=frupdate+7-31-09. City officials should contact their city attorney or the TML Legal Department with any questions regarding adoption and implementation of a program. Contact Laura Mueller at the TML Legal Department at 512-231-7400 or by email at laura@tml.org.

(For more information please see "FTC Requires Businesses to Adopt Identity Theft Programs" in the August 21, 2008, edition of the *TML Legislative Update*; "FTC Identity Theft Rules" in the October 9, 2008, edition of the *TML Legislative Update*; and "The FTC Releases Guide on Implementation of Identity Theft Rules" in the July 2, 2009, edition of the *TML Legislative Update* at tml.org.

FEDERAL STIMULUS PACKAGE IMPLEMENTATION

The League's American Recovery and Reinvestment Act (ARRA) Web page can be accessed at www.tml.org, by clicking on "Federal Stimulus Information." League staff continuously updates information on the TML Web page as it becomes available.

In addition, the League sends e-mails to the mayor and/or city manager of each Texas city when especially important information becomes available. If your city is interested in a particular program or programs, you should periodically check the TML Web page and the links posted there for updated information.

League staff will continue to monitor the implementation of the ARRA.