



Legislative UPDATE

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Senate Select Committee on Property Tax Reform: City Property Tax Increases Are “Astonishing”

Yesterday, the Senate Selected Committee on Property Tax Reform met to consider several interim charges:

- Study and recommend ways to enhance voter engagement in local government decisions around budgets and property tax rates through digital media and social media. Determine how budget and tax rate information should be formatted for effective communication through digital and social media. Identify the ways in which digital and social media present new opportunities for voters to give feedback to local governments. Identify best practices among local governments in Texas and in other states.
- Evaluate whether existing libraries of property tax data and collection methods are adequate for studying local property tax outcomes and identifying drivers of growing property tax levies. Determine the scope of existing data, where it is stored, and how it is made available to the public. Determine whether existing, available data is adequate for the needs of the legislature and the public. Review existing procedures for the collection and verification of data. Receive recommendations from the comptroller regarding the collection, verification, and publication of property tax data.

- Evaluate the operations of appraisal review boards (ARBs), specifically the training and expertise of members concerning appraisal standards and law, ethics, and meeting procedures. Determine whether ARB operations are sufficiently independent of central appraisal districts and taxing units and whether ARBs and/or chief appraisers should be elected.

As one might expect, the chairman called city property tax increases “astonishing” and “enormous,” some legislators tended to view cities in a dim light, some legislators treated city witnesses with suspicion and disdain, and some cities were praised for their efforts.

Due to the volume of testimony and information presented at the hearing, League staff will review and report in more detail soon.

Ballot Language Litigation and the Role of Texas Cities

At a recent interim committee hearing, Senator Paul Bettencourt (R – Houston) indicated his intent to give the state control over ballot language for city charter amendment and initiative and referendum elections. According to Senator Bettencourt, city officials are drafting “purposely misleading” ballot language, presumably in an attempt to sway voters one way or the other.

The idea isn’t a new one. In 2017, Bettencourt filed S.B. 488. The bill would have authorized the Texas secretary of state to review and edit city ballot language. Oddly, even though the bill required the state to draft the ballot language, the *city* would have had to defend the state’s language in court. A city would even have to pay reasonable attorney’s fees, expenses, and court costs to a prevailing plaintiff in a suit challenging the state-drafted language. The bill made it to the House, but ultimately died.

Senator Bettencourt’s renewed focus on city ballot propositions was based on three recent 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.
- 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.
- The City of Houston hadn’t even finalized its ballot language for an upcoming charter amendment election prior to being sued over the 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.

Bettencourt mentioned the lawsuits above as justification for re-filing legislation like S.B. 488 in 2019. What's ironic about 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.

What should we 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 why 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 "ballot 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. Regardless of those procedures, in the last two years, over 40 [legal challenges](#) have been filed.

In any case, the notion that Texas city officials are deliberately trying to mislead voters is preposterous. (Any legislator who believes differently should grab a pen and paper and give a shot to drafting a ballot proposition that doesn't upset either side.) If recent litigation is any indication, Texas cities have made every effort to conform to current legal standards when drafting ballot language.

City officials are undoubtedly willing to discuss how to make ballot language as fair as possible, but legislation that is punitive against cities that are trying their best (and in many cases winning in legal challenges) is certainly a non-starter. Whether cities would be interested in relinquishing the ballot-drafting process to the state remains to be seen. At the very least, cities that availed themselves of that option would need to be held harmless from lawsuit expenses.

Texas Education Agency Estimates: State Share of School Funding Continues to Plummet

The real property tax crisis in Texas is based on the state's reliance on local school property tax increases to fund education. Each biennium, the state relies on local property value increases, and the resulting increase in school tax bills, to reduce its funding share. In essence, that means that the state is pushing up school property taxes.

That premise was borne out at a preliminary hearing of the Legislative Budget Board last week. At the hearing, the Texas Education Agency (TEA) [estimated](#) that local property values and taxes will increase 6.77 percent in both 2020 and 2021. Because of that, TEA requested nearly \$3.8 billion less in state funding for schools.

[Data presented](#) to the Texas Commission on Public School Finance during a February hearing shows that, for fiscal years 2018 and 2019, local property tax revenue will fund an estimated 64 percent of the foundation school program, with the state contributing only 36 percent of the funding. If the recent TEA estimate holds, the gap between state and local funding of public education will continue to grow in the coming years.

All of this reinforces what we already know about property tax reform. School property taxes make up the largest portion of a taxpayer's bill. Some state officials would have Texans believe that, if the state could just cap city and county property taxes, local taxpayers would see their overall tax bill reduced.

That argument is nothing more than a sleight of hand meant to distract Texans from the real driver of the property tax burden: the state's reliance on local property taxpayers to fund public education. If the recent TEA estimate comes to fruition, the simple truth is that taxpayers will not see their property tax bills lowered one cent in the coming years, even if the legislature were successful in capping city and county property tax rates.

Let's Get to Work: *Our Home, Our Decisions*

The Texas Municipal League's "Our Home, Our Decisions" campaign is ready to roll! The goal of the campaign is to raise awareness about the State of Texas eroding the ability of Texans to have a voice in developing local solutions to local problems that affect their neighborhoods and their communities.



The League has developed informational materials for city officials to use in meetings with local groups and organizations. While the materials are suitable for any public use, they will likely be of greater

interest to city residents who are already actively engaged in civic affairs through membership in business, professional, social, charitable, and neighborhood organizations and individuals who serve on city boards and commissions.

The first components of “Our Home, Our Decisions” are now available for download and use by TML member cities. They are: (1) a three-minute video production; (2) a PowerPoint Presentation that can be customized by cities for local presentations; and, (3) a two-sided handout in PDF format. The video production can be used as an introduction to the slide presentation, and the handout can be photocopied and distributed to attendees. The components, as well as a document with tips on how to use them, are available at www.tml.org/ourhomeourdecisions.

Please feel free to modify all or parts of the materials to suit your city’s needs. If you have questions about the materials or want additional advice on how to use them, contact legislative@tml.org.

Don’t Forget: **Curfew Ordinances Need Review**

[Section 370.002 of the Local Government Code](#) requires that after a city adopts a juvenile curfew ordinance, the city must review and readopt the ordinance *every three years*. The statute requires that a city:

1. review the ordinance’s effects on the community and on problems the ordinance was intended to remedy;
2. conduct public hearings on the need to continue the ordinance; and
3. abolish, continue, or modify the ordinance.

A juvenile curfew ordinance expires if a city does not review and readopt it every three years.

For more information on this issue, please contact the TML Legal Department at (512) 231-7400 or legalinfo@tml.org.

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