



Legislative UPDATE

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Proposed Annexation Limits: Sound Public Policy or Sour Grapes?

Last Wednesday, the House Committee on Land and Resource Management heard testimony on its interim charge to study annexation reform.

The Committee heard invited testimony from League staff and the Cities of Frisco (Mayor Maher Maso), Rockport (City Manager Kevin Carruth), and San Antonio (Director of Government Affairs Jeff Coyle) relating to those cities' annexation practices. The testimony focused on the fact that city boundary expansions have been a key driver in the economic success of Texas.

Frisco continues to be one of the fastest-growing cities in the country, and it thoughtfully prepared for that growth to ensure the continued success of the city and the region around it. Rockport is beginning the process to annex an area that is designated as a colonia in order to provide much-needed services to the area, even though the annexation will result in a net loss of tax dollars after provision of the new services. In San Antonio, eighty-four percent of those living in the extraterritorial jurisdiction work in the city limits. These are modern, on-the-ground examples of how city expansions benefit Texans.

In an unusual move, the author of last session's [reform bill](#) (Representative Dan Huberty [R – Houston]) testified before the committee. That bill was killed on a procedural point of order, but it would have required a favorable vote for annexation at an election held in the area.

Representative Huberty spoke about his concerns with an annexation that happened almost 20 years ago when the City of Houston annexed a highly-populated area known as Kingwood.

Legislation was passed more than a decade ago to address the complaints of the residents of Kingwood. That legislation, Senate Bill 89 in 1999, ensures appropriate services to highly-populated areas. But it doesn't require an election prior to a city annexing. Why hasn't an election requirement been put in place over a century of city expansions? Hopefully, it's because most legislators understand that cities support the state's economy through the services they provide.

State legislators who believe residents of an area should have the right to vote on whether to become part of a city should be aware of other states where cities are similarly handcuffed. If San Antonio, for example, had the same boundaries it had in 1945, it would contain more poverty and unemployment than Newark, New Jersey. The failure to annex prosperous, surrounding areas was partially responsible for the unprecedented bankruptcy of Detroit. With annexation limitations, Texas cities could languish economically as so many northern cities do.

Hopefully, legislators will continue to base their decisions on the economic facts, rather than on ancient history.

Texas A.G. Sues U.S. Department of Labor

The Texas attorney general has sued the U.S. Department of Labor (DOL) over its forthcoming rules related to overtime payment to certain exempt employees. The rules provide that:

1. The new salary threshold to be exempt from overtime under one of the "duties" tests (e.g., administrative, professional, or executive) is raised from \$23,660 to \$47,476.
2. The salary threshold is automatically updated every three years.
3. The effective date of the final regulations is December 1, 2016.

The [lawsuit](#) seeks a temporary and permanent injunction that would block implementation of the rules on several grounds, including that it violates the Tenth Amendment to the U.S. Constitution.

In addition to the lawsuit, there is a legislative effort underway to block the rules from going into effect. H.R. 5813, the Overtime Reform and Enhancement Act, was filed several months ago. It awaits action in the U.S. House Committee on Education and Workforce. The bill would implement a three-year phase-in of the new salary threshold and also eliminate the automatic increases.

U.S. Senate Passes Water Resources Development Act

Last week, the U.S. Senate passed the Water Resources Development Act ([S. 2848](#), the “WRDA”) by an overwhelming bipartisan vote of 95-3. The National League of Cities (NLC) and a coalition of partners issued a statement congratulating the Senate and urging the House to bring their bill up to the floor for a vote, which could happen soon.

NLC supports both the Senate and House versions of the WRDA. The House version, however, does not include the additional water infrastructure provisions (outlined below), which will likely be a major point of contention if the WRDA goes to conference.

In addition to the traditional U.S. Army Corps of Engineers navigation, flood protection, harbor maintenance, and ecosystem restoration projects contained in the bill, there are also significant provisions for wastewater and drinking water infrastructure. Many of those are related to the Flint, Michigan, debacle. The Senate bill:

1. Provides: (a) \$100 million for the Drinking Water State Revolving Loan Fund for any state that receives an emergency declaration under the Stafford Act due to a public health threat from lead or other contaminants in a public drinking water supply system (e.g., Flint, Michigan); (b) \$70 million for the Water Infrastructure Finance and Innovation Act for low-interest loans for large water and wastewater infrastructure projects nationwide and removes the designation of the program as a “pilot” program; and (c) \$50 million to support public health initiatives, such as lead poisoning prevention, research and health assistance.
2. Authorizes a grant program (\$60 million for fiscal years 2017 through 2021, for a total of \$300 million over five years) for replacement of lead service lines, testing, planning, corrosion control, and education. Additionally, the bill provides \$100 million over five years for schools to test for lead in their drinking water.
3. Authorizes a grant program to assist small and disadvantaged communities in complying with the requirements of the Safe Drinking Water Act, with priority given to underserved communities without basic drinking water or wastewater services.
4. Creates a dedicated source of revenue for states and local governments to fund clean water and drinking water projects by establishing a voluntary labeling and contributory system to which businesses that rely on a clean water source could opt-in.
5. Codifies the EPA integrated planning approach, which helps local governments meet Clean Water Act requirements in an efficient and cost effective manner through the sequencing and scheduling of projects;
6. Addresses affordability issues by prohibiting EPA from relying on median household income as the sole indicator of residential affordability, stipulates that the costs of meeting drinking water requirements can be considered in the financial capability assessment, and requires EPA to update its 1997 financial capability guidance and the 2014 financial capability assessment framework;
7. Reauthorizes grants under the Clean Water Act for addressing combined sewer overflows, sanitary sewer overflows, and stormwater discharges, totaling \$1.8 billion over five years; and
8. Modernizes the SRF programs by allowing the planning and design phase of drinking water projects and source water protection projects to be eligible for SRF loans.

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DAS Cell Towers in Your Rights-of-Way: What You Need to Know

Texas cities of every size are being approached by cell phone providers or their agents about placing a “distributed antenna system (DAS)” in the city’s rights-of-way. Essentially, DAS is a newer technology that is supposed to provide better coverage in urban areas through many “small” cell sites, rather than massive towers. Under current law, a city has complete control over its rights-of-way in relation to these systems. That means a city can allow these facilities, deny them, or regulate them as it sees fit. Moreover, contrary to the assertions of some companies, a city can charge a reasonable rental fee for the use of its rights-of-way.

Some of these companies claim that a 17-year-old law, Chapter 283 of the Texas Local Government Code, gives them the power to move forward with their plans without city consent and without paying a rental for the use of a city’s rights-of-way. In reality, that law has never mandated that a city allow wireless equipment installation in its rights-of-way.

Chapter 283 altered the procedures under which cities collect compensation from local wireline telecommunications providers that use city rights-of-way. It replaced telecommunications franchise agreements for wireline providers with a new system of compensation based on retail, end-user “access lines” of the providers. Essentially, a city is mandated to allow a Public Utility Commission (PUC) certified telecommunications provider (CTP) to use its rights-of-way and the CTP pays access line compensation only in accordance with Chapter 283.

Some cell companies and their agents are now arguing that, because they register a CTP (which is nonsensical because they provide no wireline service), their use of the rights-of-way is governed by Chapter 283, including installation of wireless equipment. However, because they have no retail land line customers, they have no “access lines,” and thus aren’t required to pay an access line fees under Chapter 283 for that installation.

The League has [previously reported](#) on a pending case at the PUC. More recently, a planner from California has prepared a [web page](#) that details many of the challenges cities face with regard to these companies. Some of it is specific to California law, but most is very comprehensive information from which Texas city officials can learn a great deal.

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