A NEW STRATEGY ON ATTACKING MUNICIPAL ANNEXATION AUTHORITY: DIVIDE AND CONQUER?

A local annexation with statewide ramifications. That’s what one city’s annexation process has become. The City of College Station has been in the process of annexing an area in its extraterritorial jurisdiction for the last year. The citizens of the area have unsuccessfully attempted a charter-based referendum and sued the city to stop it from annexing. (The courts concluded that the lawsuit had no merit and that the city can move forward.)

But that’s not the end of the story. State Representative Fred Brown (R- Bryan) introduced legislation that would stop the city in its tracks. His bill, H.B. 107, would prohibit the cities of Bryan and College Station from annexing an area with 50 or more inhabitants unless the persons to be annexed approve the annexation through a popular vote. The bill would, in effect, end the ability of those cities to annex populated areas.

While the bill is bracketed to two cities, the League strongly opposes it. That’s because, rather than applying the consistent and reasonable annexation process in current law, the bill sets a dangerous precedent. State legislators routinely inserting themselves into the local annexation process could lead to a slippery slope on which annexations may eventually become impossible.

DON’T MISS THE LEAGUE’S 2011 LEGISLATIVE WORKSHOPS

The League is pleased to offer live and online seminars regarding the 2011 legislative session:
- Online on April 15.
- Online on May 13.
- Live in Austin on June 27.

Please go to www.tml.org and click on “Training.”
Why is annexation authority so important? In Texas, unlike most other states, cities (city taxpayers) pay for a wide array of services and facilities that benefit entire regions of the state and the state as a whole. Those on the outskirts take advantage of those services, but don’t help support them. Most states assist their cities with financial aid in making these expenditures. In lieu of state aid, Texas law allows cities to annex territory to support the financial well-being of the state.

That’s why the League testified on H.B. 107, a “bracketed bill.” Limiting annexation authority is bad for the economy of individual cities, entire regions, and the state as a whole. To view the League’s brief testimony in the House Committee on Land and Resource Management on March 22, go to http://www.wwwebinars.com/LUVideo3-22/LUVideo2.swf.

According to Rep. Brown, “The Texas Municipal League is very powerful in the state and they fight hard to make sure that cities can go out and annex whoever they want to without the permission of the local residents...this is why we made it only for Brazos County...so that we would have a much better chance of getting it passed in the legislation [sic].”

If legislators believe that the League will always leave bracketed bills relating to annexation alone, they are incorrect. The fact that the City of College Station has provided for ample public input and has followed the law relating to annexation is important, but not the main issue. The main issue is that broad limitations on annexation have failed to pass, and Texas cities must stand together to oppose bracketed bills because they may become the preferred method of challenging annexations.

BILLBOARD HEARING ILLUMINATES REAL PURPOSE OF PROPOSED EMERGENCY DIGITAL DISPLAYS

The Senate Committee on Transportation and Homeland Security held a hearing on S.B. 971 last week. The bill would require the placement of at least 200 digital billboards in cities across Texas under the guise of providing “emergency information” to citizens. (Last week’s Legislative Update reported on the bill as well at http://www.tml.org/leg_updates/legis_update031811fElectronic_billboards.asp.)

However, the true purpose of the bill came to light in the hearing. A representative of a newly created organization, the Texas Emergency Network (TEN), spoke in favor of the bill. He was questioned about the purpose of the bill and why TEN was created. He admitted that the sole purpose of creating the organization was to lobby for the passage of S.B. 971. Why? So TEN could bid on the highly lucrative job of placing digital displays that, as stated by TEN, would likely display commercial advertising for all but four days a month. To see legislators take the TEN representative to task, go to http://www.wwwebinars.com/LUVideo3-22/Transportation.swf.
NEW TXDOT BILLBOARD RULES TO BE DISCUSSED AT MARCH COMMISSION MEETING

The Texas Transportation Commission will discuss proposed state outdoor advertising (billboard) rules on March 31, 2011, at 9:00 a.m. at 125 East 11th Street in Austin. The Texas Department of Transportation (TxDOT), the League, sign companies, scenic interests, and others have collaborated on these rules for months. The main focus of the rules is to strengthen enforcement, increase fees, and provide consistency between primary and rural road programs.

The proposed changes would most impact the cities that have an agreement with TxDOT to be “certified” to regulate signs on state highways in their city limits. The rules would require those cities to provide annual reports to TxDOT and to engage in conferences with TxDOT, but only if the city wishes to remain certified.

One new proposal that may prove useful to cities requires that electronic sign owners allow local authorities to post emergency information on their signs. The new rules also would allow electronic signs to have back-to-back electronic faces.

To read the proposed rules, go to ftp://ftp.dot.state.tx.us/pub/txdot-info/row/proposed_rules_033111.pdf.

SIGNIFICANT COMMITTEE ACTIONS

H.B. 12 (Solomons), Relating to the enforcement of state and federal laws governing immigration by certain governmental entities. Reported from the House Committee on State Affairs. As reported, the bill would provide that: (1) a city may not adopt a rule, order, ordinance, or policy under which the city prohibits the enforcement of state or federal laws relating to immigration; (2) a city may not prohibit a person employed by or otherwise under the direction of the city from: (a) inquiring into the immigration status of a person who is arrested or lawfully detained; (b) sending information to, or receiving information from, United States Citizenship and Immigration Services or United States Immigration and Customs Enforcement, or exchanging information with another federal, state, or local governmental entity, in regard to the immigration status of a person lawfully detained or arrested; (c) assisting a federal immigration officer as needed; or (d) permitting a federal immigration officer to conduct enforcement activities at a municipal jail; (3) a city may not receive state grant funds if it adopts a rule, order, ordinance, or policy prohibiting the enforcement of state or federal laws relating to immigration, or prohibits of enforcement of the laws by consistent action; (4) a city may not receive state grant funds in the fiscal year following the year in which a final judicial determination in an action brought under this bill is made that the city intentionally prohibited the enforcement of state and federal laws relating to immigration; (5) the attorney general may file a petition for a writ of mandamus or other appropriate equitable relief in Travis County or in a county in which the city’s principal office is located to compel a city to comply with (1), above, upon valid complaint by a citizen residing in the jurisdiction of the city; and (6) an appeal of a suit described in (5), above, is governed by the rules for accelerated appeals in civil cases.
H.B. 234 (Otto), Relating to liability for interest on ad valorem taxes on improvements that escaped taxation in a previous year. Reported from the House Committee on Ways and Means.

H.B. 258 (Gonzalez), Relating to the amount of the state traffic fine. Reported from the House Committee on Transportation. As reported, the bill would increase the amount of the “state traffic fine” on convictions in municipal court from $30 to $45.

H.B. 345 (Kleinschmidt), Relating to limitations on awards in an adjudication brought against a local governmental entity for breach of contract. Reported from the House Committee on Judiciary and Civil Jurisprudence.

H.B. 670 (Crownover), Relating to the elimination of smoking in certain workplaces and public places. Reported from the House Committee on Public Health. As reported, this bill would: (1) preempt and supersede a local ordinance, rule, or regulation adopted by any political subdivision relating to smoking; but (2) provide that, to the extent that a local ordinance, rule, or regulation adopted by a political subdivision prohibits or restricts smoking to a greater degree than the bill, the ordinance, rule, or regulation is not preempted or superseded.

H.B. 904 (Thompson), Relating to court costs imposed on conviction and deposited to the municipal court building security fund. Reported from the House Committee on Judiciary and Civil Jurisprudence.

H.B. 993 (Rodriguez), Relating to the closure of a road or highway by certain firefighters. Reported from the House Committee on Transportation.

H.B. 1844 (Guillen), Relating to storage of local government records by the Texas State Library and Archives Commission. Reported from the House Committee on Culture, Recreation, and Tourism.

S.B. 18 (Estes), Relating to the use of eminent domain authority. Voted from the House Committee on Land and Resource Management. (Note: The final committee substitute of this bill is not yet available. Future issues of the Legislative Update will have a detailed summary of the language that is reported from the committee.)

S.B. 86 (Nelson), Relating to municipal contracts for enforcement of outstanding traffic violation arrest warrants. Reported from the Senate Intergovernmental Relations Committee.

S.B. 360 (Fraser), Relating to the composition and use of money in the rural water assistance fund. Reported from the Senate Natural Resources Committee.

S.B. 519 (Hegar), Relating to the period during which a motion for a new trial in a criminal proceeding in a justice or municipal court must be made. Reported from the Senate Jurisprudence Committee. As reported, the bill would extend the period after the rendition of judgment and sentence in municipal court during which a motion for new trial must be made from one to five days.
S.B 766 (Estes), Relating to regulation and enforcement of laws affecting sport shooting ranges. Reported from the Senate Agriculture and Rural Affairs Committee. (For more information on this bill, please go to http://www.tml.org/leg_updates/legis_update031811g_shooting_range.asp.)

SIGNIFICANT FLOOR ACTIONS

S.B. 160 (Williams), Relating to the regulation of certain aggregate production operations by the Texas Commission on Environmental Quality. Passed the Senate.

S.B. 173 (West), Relating to civil remedy of violations of certain municipal health and safety ordinances. Passed the Senate.

S.B. 181 (Shapiro), Relating to the reporting of water conservation measures by municipalities and water utilities. Passed the Senate.

S.B. 244 (Patrick), Relating to the continuing education requirements for certain peace officers. Passed the Senate.

S.B. 309 (Harris), Relating to the events eligible to receive funding through a major events trust fund. Passed the Senate.

S.B. 316 (Whitmire), Relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition. Passed the Senate.

S.B. 350 (Williams), relating to the restructuring of fund obligations and accounts of the Texas Municipal Retirement System and related actuarial and accounting procedures. Passed the Senate.

S.B. 361 (Duncan), relating to indemnification provisions in construction contracts. Passed the Senate. As passed by the Senate, the bill would essentially eliminate “broad form” indemnification in construction contracts by, among other things, providing: (1) that a provision in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable as against public policy to the extent that it requires an indemnitor to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, other than the indemnitee or its agent, employee, or subcontractor of any tier; (2) for an exception to (1), above, for a provision in a construction contract that requires a person to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim for the bodily injury or death of an employee of the indemnitee, its agent, or its subcontractor of any tier; (3) that provision in a construction contract that requires the purchase of additional insured
coverage, or any coverage endorsement or provision within an insurance policy providing additional insured coverage, is void and unenforceable to the extent that it requires or provides coverage the scope of which is prohibited for an agreement to indemnify, hold harmless, or defend; (4) for certain exclusions from (1), above; and (5) that the provisions of the bill may not be waived by contract or otherwise.

S.B. 370 (Seliger), Relating to the authority of the Texas Water Development Board to provide financial assistance for certain projects if the applicant has failed to complete a request for information relevant to the project. Passed the Senate.

S.B. 396 (Deuell), Relating to the state fire marshal's investigation of the death of a firefighter who dies in the line of duty or in connection with an on-duty incident. Passed the Senate.

CITY-RELATED BILLS FILED

H.B. 3623 (Darby) – Transportation: would provide, among other things, that: (1) the Texas Transportation Commission by rule shall establish a process to certify environmental specialists, public involvement specialists, engineers, and attorneys to work on all documents related to state and federal environmental review processes; (2) the certification process must require continuing education for recertification and be available to Texas Department of Transportation employees, private contractors, and local government employees who routinely work with the department relating to state or federal environmental review processes; (3) the commission by rule shall set standards for processing an environmental review document for a transportation project; (4) each person who prepares or submits a document for review by the department (an engineer, consultant, or attorney) must hold a valid certificate issued by the department; (5) before the department may process an environmental review document a detailed scope of the project must be prepared; (6) if a city prepares an environmental review document for a project, the department shall make a determination whether the documents are administratively complete and ready for technical review not later than the 20th day after receiving them; and (7) a city may submit an environmental review document for a transportation project only if: (a) the transportation project is contained in the approved state transportation improvement program; or (b) the transportation project is contained in the unified transportation program, another statewide transportation plan, the applicable metropolitan transportation plan, or an applicable rural transportation plan.

H.B. 3823 (Thompson) – Emergency Operators: would: (1) require an employer of emergency operators, including a city, to provide 24 hours of crisis communications training approved by the Texas Commission on Law Enforcement Officer Standards and Education before the first anniversary of the operators first day of employment; and (2) allow the commission to adopt rules regarding employment, training, education and competence of emergency operators.

S.B. 1602 (Seliger) – Sales Tax: would require a person to apply for and obtain an exemption number from the comptroller in order to qualify for a sales tax exemption for certain agricultural items. (Companion bill is H.B. 268 by Hilderbran.)
**S.B. 1850 (Van de Putte) – Cruelty to Animals:** would: (1) authorize a city animal control officer who has reason to believe an animal is being cruelly treated to seize the animal in place by allowing the animal to remain with the owner in lieu of impoundment, but prohibiting the owner from moving or disposing of the animal; (2) give the owner of an animal the right to request a jury trial, in lieu of a hearing, in a justice or municipal court to determine whether the animal has been cruelly treated; (3) provide that an owner divested of ownership of an animal for cruelly treating the animal may perfect an appeal by paying an appeal bond in an amount determined to be the approximate actual cost anticipated for housing and caring for the impounded pet; (4) require the court hearing the appeal described in (3), above, to consider the matter de novo not later than the tenth calendar day after the date of notice of appeal and payment of bond; (5) provide that in relation to the appeal described in (3), above, the owner of the animal does not have to file a motion for a new trial to perfect the appeal; and (6) authorize a county court of a court of law to hear an appeal described in (3), above, notwithstanding any other law.

**S.B. 1884 (Wentworth) – Specialty and Personalized License Plates:** would: (1) make various changes to the law regarding the marketing, hosting, and sale of specialty and personalized license plates; (2) authorize a city that receives money related to the issuance of professional sports team license plates to contract with a private vendor to distribute the city’s portion of the money in a manner other than to the credit of a venue project fund, to retire public debt incurred in the construction or acquisition of professional sport team facility, or to maintain or improve such a facility; (3) authorize the Texas Department of Motor Vehicles to contract with a private vendor for the vendor to host all or some of the specialty license plates on the vendor’s website, process the purchase of specialty license plates hosted on the vendor’s website and pay additional transaction costs, and share in the personalization fee for the license plates hosted on the vendor’s website; and (4) provide that the state’s portion of the personalization fee may not be less than $40 for each year issued.

**S.J.R. 4 (Hinojosa) – Texas Water Development Board Bonds:** would authorize the Texas Water Development Board to issue general obligation bonds for one or more accounts of the Texas Water Development Fund II, with certain restrictions.

**CITY OFFICIALS TESTIFY**

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take their time to travel to Austin to speak out on important city issues should be applauded by us all.

Among the city officials who recently testified in front of legislative committees are the following:

- Robert Cluck, Mayor, Arlington, and TML President
- Rick Douglas, President, Clifton Economic Development Corporation
While TML monitors most hearings, we won’t catch the testimony of every city official. If we missed your testimony or the testimony of another official in your city, please contact us at the following e-mail address, and we will include your name in the next edition of the TML Legislative Update: testify@tml.org.