Assault on Municipal Annexation Continues: Immediate Action Needed

A recent edition of the Legislative Update reported on a late session assault on municipal annexation authority. That assault has moved into high gear. Home rule cities that annex property unilaterally should contact their legislators now in opposition to H.B. 2221 by Representative Dan Huberty (R – Kingwood) and its Senate companion, S.B. 1639 by Senator Donna Campbell (R – New Braunfels). The bills would do many things, but the most harmful provisions in the bill would require strict voter approval of an annexation of an area with more than 200 residents. (Under the bills, other annexations require a vote if triggered by a petition.) In addition, the bills would eliminate a limited purpose annexation through a strategic partnership agreement.

House Bill 2221 will be heard on the House floor this coming Monday. Make no mistake, these bills would be devastating not only to cities, but to the continued prosperity of the state’s economy.

City officials should act immediately by contacting their House and Senate members to voice opposition. This is serious business, and your legislators need to hear from you now.
25 Days Left: Major Issues Include RV Parks, Building Codes, and Eminent Domain

The 84th legislative session has only 25 days remaining. Things are shaping up relatively well for Texas cities, but there is still plenty of time for legislation or amendments that would erode city authority. Other than the annexation limitation legislation mentioned elsewhere in this edition, the following are three of the most important pending issues for city officials:

- **Complete Preemption of City Authority to Regulate the Location of RV Parks and Campgrounds.** Every city should contact their House member(s) in opposition to H.B. 3266 by Ryan Guillen (D – Rio Grande City). The bill has been presented as “streamlining city regulations,” but it goes much, much further.

  The substance of the bill would preempt any city regulations on how an RV park is constructed by adopting by reference a national code (NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2014 Edition in full, except for sections 1.1.1). That’s bad because city councils should be able to decide what standards apply within the city limits.

  But what’s really bad is that the bill, in new section 769.004 Health and Safety Code, only allows a city council to regulate certain aspects of RV parks, and only then in a way that is more stringent than the national code:

  
  Sec. 769.004. EFFECT OF OTHER LAW. A governmental entity may adopt a law, policy, rule, regulation, ordinance, or order that regulates environmental health and sanitation, safety of electrical distribution systems, safety of liquefied petroleum gas storage and dispensing, or fire protection, provided that the law, policy, rule, regulation, ordinance, or order does not impose standards more stringent than the standards under Section 769.003.

  Take a close look at that list. Do you see zoning or other land use controls authorized? No, because they’re not there. The bill as written would preempt any municipal authority to regulate the location of or to prohibit an RV park. City officials should be adamantly opposed to that. Cities dealt with similar legislation throughout the 1980s in relation to manufactured homes. Then, as now, city officials recognize that different forms of housing are necessary to meet the needs of Texas. However, they also recognize that citizens demand that their property values be protected, and that certain uses are incompatible with others. H.B. 3266 in its current form would do just the opposite.

- **Onerous Building Code Requirements for Cities Under 100,000 Population.** Senate Bill 1679 by Senator Don Huffines (R – Dallas) would provide that, when a city council adopts or amends a national building code, a city council must prepare and publish a
complex, detailed, and expensive cost-benefit analysis of the code or amendment and shall hold two public hearings open to public comment on the proposed action.

The provisions of S.B. 1679 presuppose that a city council doesn’t seek input or consider the implications of a building code adoption or amendment. More troubling, however, is that the bill amends existing Section 214.217 of the Local Government Code that was added in 2009 pursuant to a negotiated agreement between homebuilders and cities.

The key component of those negotiations is that the section applies only to larger cities – those over 100,000 population. Moreover, the current section exempts any city that has established an advisory board to seek input on code amendments. (Every city over 100,000 population has one.)

The provisions of S.B. 1679 may make some sense when applied to a large city, but the bill’s blanket application to smaller cities is unworkable and punitive. Those cities probably don’t need a detailed and expensive analysis for basic code adoption or minor, common-sense code amendments. In addition, many small cities have a hard enough time finding candidates for city council, much less for an additional, unnecessary building code advisory committee. The bill would add unnecessary bureaucracy at the cost of small city taxpayers.

A Senate floor amendment put a population threshold of 40,000 in the bill, but that’s not enough. The bill now moves to the House, and the message to your House member is that we are opposed to S.B. 1679, unless and until it is amended to apply only to cities over 100,000 population.

- **Eminent Domain Reform Attempts Continue.** The League has been accommodating of modest eminent domain reforms that have taken place in recent sessions. For example, Senate Bill 18 – passed in 2011 – provided numerous protections to landowners throughout the process with much input from the League.

  **Senate Bill 479** by Senator Charles Schwertner (R – Georgetown) would, in relation to the tolling a property owner’s right of repurchase: (1) eliminate the following as elements establishing “actual progress” on a project: (a) the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner’s property was acquired; and (b) for a governmental entity, the adoption by a majority of the entity’s governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one tolling action before the tenth anniversary of the date of acquisition of the property; and (2) require three of five remaining elements to be met to establish actual progress.
Cities often need to acquire property well in advance of a project. Current law allows a city to do so, and to keep possession of the property if it is making progress towards completion. Senate Bill 479 would allow a previous landowner to seek to “repossess” the property, even after being paid fair market value, when the city still needs it. That could lead to a repeated cycle of condemnation and repurchase, which isn’t an efficient use of taxpayer dollars.

The bill has passed the Senate and was recently heard in the House Committee on Business and Industry. City officials with concerns should contact their House member(s) now to express opposition.

Senate Bill 474 by Senator Lois Kolkhorst (R- Brenham) would provide that, if the amount of damages awarded by the special commissioners is at least 20 percent greater than the amount the condemnor offered to pay before the proceedings began or if the commissioners’ award is appealed and a court awards damages in an amount that is at least 20 percent greater than the amount the condemnor offered to pay before the proceedings began, the condemnor shall pay: (1) all costs; and (2) any reasonable attorney’s fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.

The bill would put cities in an untenable position. A city can’t offer substantially more than the fair market value of property to a landowner. Doing so would be unconstitutional and provide a windfall at the expense of city taxpayers. Thus, the bill would penalize a city for complying with its constitutional duty to protect its taxpaying residents. While the League certainly supports fairness in the condemnation process, further reforms aren’t necessary at this time.

Senate Bill 474 has passed the Senate and been referred to the House Committee on Land and Resource Management. City officials with concerns should contact their House member(s) now to express opposition.

**Home Rule Cities: Building Permits in the ETJ?**

The Fort Worth Court of Appeals, in the case of *Bizios v. Town of Lakewood Village*, recently held that a general law city does not have the authority to require building permits in its extraterritorial jurisdiction (ETJ). The court’s refusal to uphold the town’s requirement is based on relatively simple logic: the legislature has not expressly granted the authority to general law cities. The case is being appealed.

Some read dicta in the opinion as confirming the authority of a home rule city to require building permits in the ETJ, although that proposition wasn’t being directly questioned. Most expected legislation or a late-session amendment that would attempt to clarify the issue, but that hasn’t yet happened.
Instead, the Collin County auditor has requested an opinion from the attorney general. Request number [RQ-0023-KP](#) asks about the “authority of a home rule municipality to impose building codes and related construction codes in its extraterritorial jurisdiction.”

Interested cities should submit comments on the request.

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**Proposed “Tax Cuts” and What They Might Mean for Cities**

Both the Texas House and the Texas Senate have passed packages of legislation that would cut taxes by $4 to $5 billion. The problem is that both chambers take dramatically different approaches, and both seem unwilling to compromise. Depending on which approach is finally adopted, cities might be affected.

**The Senate Approach**

The Senate has passed three bills as its tax cut package. The first, S.B. 1 by Jane Nelson (R – Flower Mound), would lower school property taxes by increasing the school property tax homestead exemption from $15,000 to 25 percent of the median home value in the state ($31,373 for 2016). The bill would not affect city taxes.

The second bill, SB 1760 by Brandon Creighton (R – Conroe), would affect cities by requiring that all property taxing entities wishing to adopt a tax rate that exceeds the effective rate do so by a vote of at least 60 percent of the governing body. This requirement was added to the bill through an amendment on the Senate floor by Senator Paul Bettencourt (R – Houston). (Senator Bettencourt also authored S.B. 182, the harmful revenue cap bill.) The amendment was not filed as a stand-alone bill, nor did it receive a hearing in any committee.

What effect will a 60 percent vote requirement have on city property taxes? Most cities currently require only a simple majority vote to adopt a tax rate. The super-majority requirement in the amendment appears to only affect cities with seven, nine, or 11-plus regularly voting members, though different home rule charter provisions may create special cases or exceptions. Most general law cities with three or five councilmembers would appear to be unaffected, because a simple majority in such cities already equates to 60 percent.

In those cities affected by the 60 percent rule, the net effect will be to add one additional councilmember vote to the number needed to adopt a tax rate exceeding the effective rate. For example, cities with seven voting councilmembers would need five votes to adopt such a tax rate instead of four.

The Senate’s third tax relief bill, S.B. 8 by Charles Schwertner (R – Georgetown), would lower the state’s business franchise taxes primarily for smaller businesses. The bill would not affect city taxes.
Further, the Senate this Tuesday passed a bill, S.B. 279 by Kirk Watson (D – Austin), that would give cities the option to adopt a property tax homestead exemption from city taxes at a fixed dollar amount (current law permits city homestead exemptions only by a percentage of value). While this exemption would be optional, the bill also has a provision, as does S.B. 1, that prevents cities from reducing or repealing any homestead exemption in place for tax year 2014 for ten years.

The House Approach

The House has passed legislation that focuses on sales and franchise taxes only, and it does not address property taxes like the Senate does. The first bill, H.B. 31 by Dennis Bonnen (R – Angleton), would lower the state’s sales tax from 6.25 percent to 5.95 percent. City sales taxes would be unaffected.

The second bill, H.B. 32 by the same author, would lower the state’s business franchise tax. The bill differs from the Senate version in that it would apply more uniformly to businesses of all sizes. Again, cities would not be impacted.

What It All Means

The Senate’s approach to cutting taxes would affect cities to some degree, while the House’s version would not. Neither version currently contains harmful revenue caps, but all bills will need to be watched carefully for harmful amendments to that effect.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that the list of cities that have adopted regulations is expanding. An updated list is available on the webpage.

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. The League extends its thanks to all those who have vigilantly represented cities during the legislative session.

- Alonzo Linan, Assistant Director of Transportation and Public Works, Fort Worth
- Anita Burgess, City Attorney, Denton
• Arturo Rodriguez, Director of Public Health, Brownsville
• Beth Van Duyne, Mayor, Irving
• Brooks Bennett, Assistant City Manager, Round Rock
• Chris Watts, Mayor, Denton
• Dana Burghdoff, Deputy of Planning and Development, Fort Worth
• Dave Carter, Assistant Director of Development Services, Richardson
• J. Ross Lacy, Councilmember, Midland
• Jerry Morales, Mayor, Midland
• John Dugan, Planning and Community Development Director, San Antonio
• John Steiner, Assistant City Attorney, Austin
• Katherine Caffrey, Assistant City Manager, Cedar Park
• Martin Heines, Mayor, Tyler
• Mary Beth Stevenson, Assistant City Attorney, Houston
• Patrick Walsh, Director of Planning, Houston
• Paul Wendland, Assistant City Attorney, San Antonio
• Randy Zamora, Division Chief, Houston
• Rolando Vela, Town Manager, Laguna Vista
• Terry Trevino, Executive Director of Economic Development, Seguin
• Virginia Collier, City Planner, Austin

**Significant Floor Actions**

**H.B. 1953 (D. Bonnen)**, relating to the deadline for counties and municipalities to provide notice of a proposed property tax rate. Passed the House. As passed, the bill would allow a city or county to provide the required property tax rate notice not later than the later of September 1 or the 30th day after the first date the taxing unit receives each applicable certified appraisal roll. (Note: This is a TML priority bill.)

**H.B. 2049 (Darby)**, relating to indemnification and duties of engineers and architects under certain governmental contracts. Passed the House. As passed, the bill would prohibit a city from including a “duty to defend” clause in an engineering contract. City officials in cities that are frequently using the services of an engineer for construction projects should carefully review this bill and contact their legislator(s) with concerns.

**S.B. 714 (Hall)**, relating to the authority of the governing body of a local authority to impose a civil penalty for certain violations recorded by an automated traffic control system or a photographic traffic signal enforcement system. Passed the Senate. As passed, the bill would prohibit a city from operating a red light camera system.

**S.J.R. 20 (Watson)**, proposing a constitutional amendment authorizing the governing body of a political subdivision other than a school district to adopt an exemption from ad valorem taxation of a portion, expressed as a dollar amount, of the market value. Passed the Senate.
S.J.R. 60 (Campbell), proposing a constitutional amendment authorizing the governing body of a political subdivision to adopt a local option exemption from ad valorem taxation of a portion, expressed as a dollar amount, of the market value. Passed the Senate.

**Significant Committee Actions**

**H.B. 134 (Simpson),** relating to certain information included with ballot propositions for elections to authorize state and local general obligation bonds. Reported from the House Committee on Elections.

**H.B. 187 (S. Thompson),** relating to unlawful employment practices regarding discrimination in payment of compensation. Reported from the House Committee on Business and Industry.

**H.B. 1182 (Shaheen),** relating to ballot propositions authorizing political subdivisions to issue bonds. Reported from the House Committee on Elections.

**H.B. 1283 (Simmons),** relating to a proposition to approve the issuance of bonds or other debt. Reported from the House Committee on Elections.

**H.B. 1380 (Flynn),** relating to transparency requirements for the disclosure of debt information to voters. Reported from the House Committee on Elections.

**H.B. 1872 (Murphy),** relating to the authority of certain general-law municipalities to restrict sex offenders from child safety zones in the municipality. Reported from the House Committee on Urban Affairs.

**H.B. 1949 (Springer),** relating to the annexation of county roads. Reported from the House Committee on Land and Resource Management.

**H.B. 2440 (Paddie),** relating to the regulation of transportation network companies. Reported from the House Committee on Transportation. Any city that regulates transportation network companies (e.g., Uber/Lyft) should carefully review the provisions of this bill.

**H.B. 3042 (G. Bonnen),** relating to access to and review of information by a law enforcement agency regarding a potential employee of the agency. Reported from the House Committee on Homeland Security and Public Safety.

**H.B. 3266 (Guillen),** relating to the construction standards for Recreational Vehicle Parks and Campgrounds. Reported from the House Committee on Culture, Recreation and Tourism. (See detailed “25 Days Left” article elsewhere in this edition.)

**H.B. 3428 (Deshotel),** relating to the temporary continuation of utility service for real property of a decedent. Reported from the House Committee on State Affairs.
H.B. 3929 (Fletcher), relating to the use of automatic license plate reader systems. Reported from the House Committee on Emerging Issues in Law Enforcement.

City-Related Bills Filed This Week

Each week, League staff summarizes in this section the city-related bills filed during the previous week. For a cumulative list of all city-related bills filed to date, click here. There were no city-related bills filed this week.