Senate Property Tax Reform and Relief Committee: Recommendations Based on Fundamentally-Flawed Premise

Last Tuesday, Senator Paul Bettencourt (R-Houston) held a press conference to coincide with the release of the Senate Property Tax Reform Committee’s interim report. Not surprisingly, the senator’s statements and the recommendation to impose a revenue cap on cities is based on fundamentally flawed data comparisons that have been clearly refuted in previous editions of the Legislative Update.

The League issued a press release that denounced the recommendation to restrict city budgets as “a direct assault on public safety, economic development, and transportation that will produce no noticeable tax reduction for homeowners.” According to the release:

The committee, appointed by Lt. Gov. Dan Patrick and chaired by Sen. Paul Bettencourt (R-Houston), has recommended placing a state-imposed cap on the property tax revenue of every city and county that could only be exceeded by holding an election.

“The largest budget item for every city in Texas is public safety – police, fire fighting and emergency medical services,” said Bennett Sandlin, Executive Director of the Texas Municipal League. “Politicians can’t proclaim their support for first responders and then turn around and vote to restrict the funding that pays for the salaries, equipment, vehicles, health insurance, and pensions of the men and women who protect our communities.”

Also, among the first items to be cut from city budgets would be economic development incentives and city funding for state highway projects leading to fewer jobs and more traffic congestion in the future, Sandlin said.
“Their statewide cap on city budgets would not produce meaningful tax relief. Hypothetically, under their proposal, some average homeowners in some cities in some future year might possibly have the increase in their property tax bill reduced by $2 or $3 per month. What’s more, elderly and disabled homeowners would have the smallest hypothetical tax savings because of the exemptions they currently receive. Any legislator who tries to convince Texans that is real tax relief will look foolish.”

“Cities are not the cause of high property taxes in Texas,” said Sandlin. “Cities get only 16 percent of the property taxes paid by Texans while 55 percent is levied by school districts. Legislators don’t want to deal with the real cause of high property taxes – the school finance system – because the legislature depends on rising school property taxes to balance the state budget. Under the “Robin Hood” funding scheme, 230 school districts are forced to send part of their property taxes to the state treasury this year.”

Sandlin also accused the Senate committee of misleading Texans about city property taxes by making deceptive “apples-to-oranges” comparisons with household income while ignoring the fact city property tax collections increased at less than half the rate of state taxes from 2009 to 2014.

“Locally elected officials are accountable to voters for taxing and spending decisions every time they run for election. Politicians in Austin should not impose arbitrary and punitive state restrictions on the ability of locally elected city officials to budget for the needs of their communities, especially when the safety of our citizens is at stake,” Sandlin said.

The full video of the senator’s press conference is available here. Senate Bill 2, which would implement the committee’s recommendations, is summarized elsewhere in this edition.

Earlier in the day, another senator on a panel with Senator Bettencourt clearly articulated the real “property tax problem” in Texas: School finance and the “Robin Hood” scheme mentioned in the press release above. While Bettencourt admitted his bill might save some homeowners $30 annually, school finance reform could save significantly more with no cost to public safety and infrastructure funding.

Pre-Filing of Bills Continues: Top 10 “Bad Bills” So Far

The League’s bill summaries published in this newsletter are typically very detailed in nature. For those who don’t have time to review them, the League has prepared this at-a-glance list of the top 10 most harmful city-related bills so far:

1. **H.B. 113 (Keough)** – Eliminates red light camera systems.
2. **H.B. 299 (Larson)** – Requires a popular vote prior to annexing.
3. **H.B. 424 (Huberty)** – Requires a popular vote prior to annexing.

4. **S.B. 2 (Bettencourt)** – Enacts a revenue cap.

5. **S.B. 4 (Perry)** – Addresses “sanctuary cities.”

6. **S.B. 92 (Hall)** – Preempts civil rights ordinances.

7. **S.B. 173 (Campbell)** – Eliminates May uniform election date.

8. **S.B. 201 (Campbell)** – Puts local debt information on ballot.

9. **S.B. 241 (Burton)** – Prohibits TML from lobbying.

10. **S.B. 245 (Burton)** – Enacts complex local debt procedures.

Each week, League staff summarizes the city-related bills filed during the previous week. For a cumulative list of all city-related bills filed to date, including those listed above, click [here](#).

### Federal Overtime Rules Put on Hold

Two weeks ago, the *Legislative Update* prematurely reported that federal overtime rules had been halted by a federal court. Well, that actually did happen after all, shortly after the incorrect article was published. (The article was later deleted.)

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

Last week, a federal district judge entered an [order](#) granting an injunction to block the implementation of the rules.

The injunction appears to mean that employers do not need to implement changes by December 1. Congress has the opportunity to address the final rule during its lame-duck session or next year, and/or the new administration could seek to change or abandon the proposed rules.

The League will monitor and report as information becomes available.
Trial Court: No Licensed Carry in Court Buildings

On November 28, a district judge in Waller County issued an order in the case of Waller County v. Terry Holcomb. The order concludes that the entire building that houses a court is off-limits to anyone carrying a firearm, including the holder of a license to carry. The court order also concludes that the attorney general has no authority to investigate the county’s signs providing notice that no firearms are allowed. (Each of the court’s conclusions, if affirmed by an appellate court, would be equally applicable to municipal courts within the appellate court’s jurisdiction.)

Terry Holcomb is the leader of the group known as Open Carry Texas, and spends much of his time complaining about governmental entities posting licensed carry signage in what he alleges is the wrong place or with the wrong wording. He sent a written complaint to Waller County officials claiming that – based on a recently-issued attorney general opinion – they can’t prohibit licensed carry in the entire courthouse building. He also claims that the attorney general’s office, under its investigatory authority over signage, can seek civil penalties against the county if it refuses to remove its signs. (Another recently-issued attorney general opinion incorrectly asserts investigatory authority that is not authorized by law.)

The county filed a lawsuit against Mr. Holcomb seeking a declaratory judgment from a district court that: (1) the entire courthouse is off-limits to licensed carriers; and (2) the attorney general’s office doesn’t have as much enforcement authority as it claims. The court’s order agreed fully with the county’s position.

The order isn’t precedential, but it does show that courts – which have access to all the facts surrounding a dispute – are often in a much better position to make informed decisions than the attorney general through the advisory opinion process.

Of course, the matter isn’t settled yet, either in Waller County or beyond. The attorney general has vowed to appeal the district judge’s order. Also, the attorney general has filed a lawsuit against Waller County in Travis County District Court on the exact same issues. In Ken Paxton v. Waller County et al., the attorney general is asking a Travis County district court to: (1) force the county to remove signs prohibiting any firearms in the county courthouse (including by license to carry holders); and (2) impose civil penalties on the county.

The outcome of the Travis County case should be interesting. An updated paper explaining cities and firearms is available here.

Senate Intergovernmental Relations Committee Releases Interim Report

The Senate Intergovernmental Relations Committee released its interim legislative report this week. All of the committee’s charges are relevant to cities. They include annexation authority, charter referendum, emergency preparedness, municipal management districts, affordable
housing, and debt. Condensed versions of the charges, along with highlights from the committee’s recommendations, are listed below. Interested city officials are encouraged to read the entire 31-page report.

- **Charge summary:** Identify areas of concern in regards to the processes used by cities for annexation. Specifically, review whether existing statutes strikes the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development.

  **Recommendation summary:** The recommendations focus on increased citizen participation and input in the annexation process. Interestingly, they make no mention of a mandatory election to approve an annexation, as harmful bills from last session would have required.

- **Charge summary:** Examine the processes used by home rule cities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. This charge focused on the complaints of lawyers representing groups who submitted referenda petitions in various cities.

  **Recommendation summary:** The recommendations suggest more uniformity and transparency in referenda elections. Specifically, the report recommends a statewide form petition, state-mandated ballot language, a state advisory committee to make recommendations on uniformity, and making election contests more accessible to citizens.

- **Charge summary:** Review natural disaster preparedness planning and coordination in the wake of a growing range of threats.

  **Recommendation summary:** The report recommends increased support for the Texas Division of Emergency Management and local governments in the wake of disasters.

- **Charge summary:** Study the means by which the Texas Legislature reviews the creation of municipal management districts (MMDs).

  **Recommendation summary:** The report recommends increased notice to interested parties upon the creation or expansion of an MMD.

- **Charge summary:** Review existing statutes and rules that govern the Texas Department of Housing and Community Affairs in light of the recent Supreme Court decision in *Inclusive Communities Project, Inc. vs. TDHCA, et al.* and recommend if any modifications are necessary to conform to the decision. (Note: The Court in *Inclusive Communities Project* concluded that “disparate impact claims” can be brought under the federal Fair Housing Act. Essentially, this means that a governmental entity can be sued if its policies end up being discriminatory, even if that wasn’t the intent.)
**Recommendation summary:** The report points out that, even though the Court validated disparate impact claims, the Texas Department of Housing and Community Affairs (TDHCA) “won” the case. (The case was about TDHCA appearing to cluster affordable housing in minority areas.) The committee recommendations focused on more local input in the location of affordable housing and TDHCA reporting and transparency.

- **Charge summary:** Examine ways to improve government accountability in elections regarding the issuance of public debt.

**Recommendation summary:** The report mentioned legislation from 2015 that currently requires detailed information related to city debt at polling places. (Current law does not require detailed information on the ballot itself.) The recommendations were relatively unspecific, and concluded that the legislature should consider “different possibilities” of keeping voters informed. Additionally, the report recommended legislation that would limit bond debt to the life of capital improvements financed by the bond.

All told, especially given some of the harmful legislation filed on these topics in 2015, the committee report was balanced and thoughtful with regard to city issues. The Chairman of the committee is Senator Eddie Lucio (D – Brownsville).

### City-Related Bills Filed

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](#).

**Property Tax**

**H.B. 455** (Metcalf) – **Appraisal Review Board:** would authorize a property owner to participate by telephone in an appraisal review board protest hearing.

**H.J.R. 35** (Button) – **Property Tax Exemption:** would amend the Texas Constitution to authorize the legislature to exempt inventory held for sale at retail from property taxation by one or more political subdivisions of the state.

**S.B. 2** (Bettencourt) – **Revenue Cap:** of primary importance to cities, the bill would:

1. lower the property tax rollback rate from eight percent to four percent, with an exception for a taxing unit located in an area declared a disaster area by the governor or president of the United States during the current tax year;
2. require a taxing unit to hold a ratification election on the November uniform election date of the applicable year in order to adopt a tax rate that exceeds the four-percent rollback rate (as opposed to current law, which only requires an election if a petition is received from the citizens); and
3. make numerous calendar changes to the property tax appraisal, collection, and rate-setting process in order to have property tax ratification elections on the November uniform election date.

Additionally – and more specifically – the bill would:

1. require the comptroller to appoint a property tax administration advisory board to make recommendations to the comptroller regarding state administration of property taxation and state oversight of appraisal districts and local tax offices;
2. require an appraisal district to appraise property in accordance with standards, procedures, and methodology prescribed by appraisal manuals prepared and issued by the comptroller;
3. provide that, in order to be eligible to serve on the board of directors of an appraisal district, an individual must be an elected county officer or an elected official of a political subdivision all or part of the territory of which is located in the county;
4. authorize an appraisal district board of directors for a district established in a county with a population of 120,000 or more to increase the size of the district’s appraisal review board by resolution to a number of members the board considers appropriate;
5. require the appraisal review boards located in counties with populations of 120,000 or more to establish special appraisal review board panels for each of the following classifications of property: (a) commercial real and personal property; (b) real and personal property of utilities; (c) industrial and manufacturing real and personal property; and (d) multifamily residential real property;
6. provide that a person is entitled to a property tax exemption for the tangible personal property the person owns that is held or used for the production of income if the property has a taxable value of less than $2,500;
7. make numerous calendar changes to the property tax appraisal, collection, and rate-setting process in order to have property tax ratification elections on the November uniform election date, including among others:
   a. requiring the appraisal district to certify the appraisal roll to taxing units by July 10\textsuperscript{th} (instead of July 25\textsuperscript{th} under current law);
   b. requiring the tax assessor/collector to submit the appraisal roll showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property to the governing body of the taxing unit by July 15\textsuperscript{th}, or as soon thereafter as practicable (instead of August 1\textsuperscript{st} under current law); and
   c. requiring taxing units adopting a tax rate exceeding the lowered rollback tax rate to do so before August 15\textsuperscript{th} (instead of September 30\textsuperscript{th}, under current law) (NOTE: this would also require a city that adopts a tax rate exceeding the rollback rate to adopt its budget before August 15\textsuperscript{th}, as state law provides that property taxes may only be levied in accordance with the city budget);
8. lower the property tax rollback rate from eight percent to four percent, with an exception for a taxing unit located in an area declared a disaster area by the governor or president of the United States during the current tax year;
9. require a taxing unit to hold a ratification election on the November uniform election date of the applicable year in order to adopt a tax rate that exceeds the four-percent rollback
rate (as opposed to current law, which only requires an election if a petition is received from the citizens).

10. provide that the meeting to adopt a tax rate that exceeds the lower of the rollback tax rate or the effective tax rate may not be earlier than the third day or later than the seventh day after the date of the second public hearing on the tax rate;

11. eliminate the ability of a taxing unit to challenge before the appraisal review board the level of appraisals of any category of property in the appraisal district or in any territory in the appraisal district;

12. require an appraisal review board to provide for hearings on protests on a Saturday or after 5 p.m. on a weekday;

13. provide that an appraisal review board may not schedule: (a) the first hearing on a protest held on a weekday to begin after 7 p.m.; or (b) a hearing on a protest on a Sunday;

14. provide that a property owner is entitled to appeal through binding arbitration an appraisal review board order related to certain protests if the appraised market value of the property as determined by the order is $5 million or less; and

15. amend current law related to the property tax rate notices provided by cities and counties to require cities and counties to use one notice if the proposed tax rate will not exceed the rollback tax rate, and another notice if the proposed tax rate will exceed the rollback tax rate. (Note: under current law, the city or county uses one of the two notices based on whether the proposed rate will exceed the lower of the effective tax rate or the rollback tax rate.)

**S.B. 15 (Huffines) – Property Tax Exemption:** would provide: (1) that the surviving spouse of a first responder who is killed or fatally injured in the line of duty is entitled to an exemption from taxation of the total appraised value of the surviving spouse’s residence homestead so long as the surviving spouse has not remarried since the death of the first responder; and (2) that a surviving spouse who receives an exemption under (1) is entitled to receive an exemption from taxation of a property that the surviving spouse subsequently qualifies as the surviving spouse’s residence homestead in an amount equal to the dollar amount of the exemption from taxation of the first property for which the surviving spouse received the exemption in the last year in which the exemption applied so long as the surviving spouse has not remarried since the death of the first responder.

**Sales Tax**

No city-related sales tax bills were filed this week.

**Purchasing**

**S.B. 252 (V. Taylor) – Terrorists:** would provide that: (1) a governmental entity, including a city, may not enter into a governmental contract with a company that does business with Iran, Sudan, or any known terrorist organization; and (2) the comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
**Elections**

**H.B. 450 (Fallon) – Cell Phones:** would allow a person who is occupying a voting station to use a mobile phone to access information that was downloaded or created on the phone before the person entered the polling place.

**Open Government**

No city-related open government bills were filed this week.

**Other Finance and Administration**

**H.B. 411 (Longoria) – Credit and Debit Card Purchases:** would require a merchant, including a city, to verify the identity of an individual for certain face-to-face debit or credit card transactions.

**H.B. 448 (Guillen) – State Parks Funding:** would provide that the Texas Parks and Wildlife Department may transfer an amount not to exceed 15 percent of all amounts collected during the previous month from vessel fees to the state parks account.

**H.B. 451 (Moody) – Workers’ Compensation:** would: (1) waive governmental immunity for claims against a public employer, including a city, that discriminates or retaliates against a first responder who has filed a workers compensation claim; and (2) cap damages at $100,000 for each person’s claim.

**Municipal Courts**

**H.B. 419 (White) – Drug Offenses:** would require a municipal court judge to inform a defendant who is entering a plea of guilty or no contest to a drug offense, for which the complaint is based on the results of a field test, that the prohibited substance was identified by a field test conducted by law enforcement and not by a forensic analysis conducted by a crime lab.

**Community and Economic Development**

**H.B. 424 (Huberty) – Annexation:** would completely rewrite the Municipal Annexation Act to severely curtail the ability of cities to annex property. Generally, the bill would provide that:

1. a city wholly or partly located in a county with a population of 500,000 or more may not annex an area with a population of 200 or more unless: (a) the city holds an election in the area that approves the annexation; and (b) if the registered voters of the area do not
own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area;

2. a city wholly located in one or more counties each with a population of less than 500,000 that proposes to annex an area in a county with a population of 500,000 or more must meet the requirements of (1)(a) and (1)(b), above; and

3. with certain very limited exceptions, beginning September 1, 2017, a city may not enter into a strategic partnership agreement that provides for limited purpose annexation.

More specifically, the bill would provide – among many other things – that:

1. a new chapter 43, subchapter A-1, of the Local Government Code is created that applies only to a city: (a) wholly located in one or more counties each with a population of less than 500,000; and (b) a city wholly or partly located in a county with a population of 500,000 or more that proposes to annex an area in a county with a population of 500,000 or more;

2. most of the existing, statutory authority to annex is transferred into the newly-created subchapter A-1;

3. existing subchapter C (“plan” annexation procedures) applies only to a city wholly located in one or more counties each with a population of less than 500,000 (unless the city proposed to annex an area in a county with a population of 500,000 or more, in which case subchapter C-4, described below, applies);

4. existing subchapter C-1 (“exempt” annexation procedures) applies only to an area that is proposed for annexation by a city wholly located in one or more counties each with a population of less than 500,000 and that is not required to be included in a municipal annexation plan (unless the city proposed to annex an area in a county with a population of 500,000 or more, in which case subchapter C-4, described below, applies);

5. a new subchapter C-3 is created that applies only to a city: (a) wholly or partly located in a county with a population of 500,000 or more; and (b) wholly located in one or more counties each with a population of less than 500,000 that proposes to annex an area in a county with a population of 500,000 or more;

6. the new subchapter C-3 would authorize annexation if each owner of land in the area requests annexation, two public hearings are held, and the governing body negotiates and enters into a written agreement with the owners of land in the area for the provision of services in the area;

7. a new subchapter C-4 is created that applies only to a city: (a) wholly or partly located in a county with a population of 500,000 or more; and (b) wholly located in one or more counties each with a population of less than 500,000 that proposes to annex an area in a county with a population of 500,000 or more;

8. the new subchapter C-4 would authorize annexation of an area with a population of less than 200 only if the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area;

9. the governing body of a city that proposes to annex an area under subchapter C-4 must, among other things, adopt a resolution that includes a description of the services to be provided to the area.

10. not later than the seventh day after the date the governing body adopts the resolution under (9), above, the city must mail to each resident in the area proposed to be annexed notification of the proposed annexation that includes: (a) notice of a public hearing
required by the bill; (b) an explanation of the petition process; and (c) a description, list, and schedule of services to be provided by the city;

11. A new subchapter C-5 is created that applies only to a city: (a) wholly or partly located in a county with a population of 500,000 or more; and (b) wholly located in one or more counties each with a population of less than 500,000 that proposes to annex an area in a county with a population of 500,000 or more;

12. the new subchapter C-5 would authorize the election of an area with a population of 200 or more only if the following conditions are met, as applicable: (a) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (b) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area;

13. the governing body of the municipality that proposes to annex an area under subchapter C-5 must, among other things, follow procedures that are similar to (10), above;

14. with certain very limited exceptions, beginning September 1, 2017, a city may not enter into a strategic partnership agreement that provides for limited purpose annexation;

15. with certain very limited exceptions, beginning September 1, 2017, the following cities may not annex an area for the limited purposes of applying their planning, zoning, health, and safety ordinances in the area: (a) a city wholly or partly located in a county with a population of 500,000 or more; or (b) a city wholly located in one or more counties each with a population of 500,000 or less that proposes to annex an area in a county with a population of 500,000 or more;

16. a city wholly or partly located in a county with a population of 500,000 or more may by ordinance annex a road or the right-of-way of a road on request of the owner of the road or right-of-way or the governing body of the political subdivision that maintains the road or right-of-way under the procedures applicable to a municipality wholly located in one or more counties each with a population of less than 500,000;

17. disannexation for a claim of failure to provide services is made easier;

18. a city may annex an area that is noncontiguous to the boundaries of the city if the area is in the city’s extraterritorial jurisdiction;

19. various exemptions from certain annexation requirements for the City of Houston are removed; and

20. subchapters C-3 through C-5, described above, do not affect the procedures in current law applicable to a certain defense community.

**H.B. 445 (Frank) – Wind Energy:** would, among other things, provide that a city may not enter into a tax abatement agreement for property where a wind-powered energy device is installed or constructed if the property is located within 30 nautical miles of the boundaries of a military aviation facility in Texas.

**Personnel**
H.B. 443 (Walle) – Personnel: would require a public employer, including a city, to provide a place, other than a bathroom (whether single or multiple user), for an employee to express breast milk.

Public Safety

H.B. 429 (Villalba) – Offense Against Peace Officer: would, in some circumstances, increase the punishment for an offense committed against a person because of the person’s status as a peace officer, firefighter, or emergency medical services personnel.

H.B. 435 (T. King) – Licensed Handgun Carry: would provide that: (1) a governmental unit, including a city, is not liable in a civil action arising from the discharge of a handgun by an individual who is volunteer emergency services personnel and licensed to carry the handgun; (2) the discharge of a handgun by an individual described by (1) is outside the course and scope of the individual's duties as volunteer emergency services personnel; (2) the bill may not be construed to waive the immunity from suit or liability of a governmental unit; and (2) an individual described by (1) may carry a handgun essentially anywhere a peace officer may do so.

H.B. 447 (Bell) – Licensed Handgun Carry: would provide that: (1) a person with control over the premises of a business who forbids entry by a license holder with a handgun is liable for damages that could have been prevented by the otherwise lawful use of a handgun by a license holder who would otherwise have carried a handgun onto the premises; and (2) a person with control over the premises of a business who allows entry by a license holder with a handgun is not liable based solely on that permission for damages arising from the lawful carrying of a handgun on the premises. (It is unclear how the bill would apply to cities because it does not define “business.”)

Transportation

H.B. 432 (Metcalf) – Transportation Funding: would provide that: (1) in each state fiscal year beginning on or after September 1, 2019, the comptroller shall deposit to the credit of the state highway fund a graduated percentage of the money that is received from the motor vehicle sales tax until that percentage equals 100 percent in 2028; and (2) money deposited to the credit of the state highway fund under this section may not be used for toll roads.

Utilities and Environment

H.J.R. 36 (Gonzalez) – Texas Water Development Board Funding: would amend the Texas Constitution to authorize the Texas Water Development Board to issue additional general obligation bonds for economically distressed areas.