Senate Committee Studies Annexation Authority

Last Wednesday, the Senate Committee on Intergovernmental Relations met to hear testimony on the following interim charge:

*ETJ Limitations and Notice: Review the existing regulatory authority granted to home-rule municipalities within the extraterritorial jurisdiction (ETJ), including practices used by cities to expand ETJ boundaries, and whether proper notification is provided to property owners added to a city's ETJ following an annexation proceeding. Determine the limitations that need to be placed on a city’s authority within the ETJ to better protect the private property rights of individuals and landowners, and ways to notify individuals of the impact of being within a city's ETJ. Develop a statewide rule and minimum requirements for such notifications.*

Invited witnesses included city officials, League staff, the Dallas Association of Homebuilders, and others. While the charge appears to speak to city regulations in the ETJ, the hearing actually focused on annexation authority. Representatives from the Cities of Pflugerville and Pearland spoke to the negative effects they are already facing in the wake of S.B. 6, last session’s annexation curtailment bill. Those cities were aggressively planning for utilities and other services in anticipation of annexing. Now that they’ve lost the power, they (and so many other cities) must rethink those plans.
Victor Gonzales, the mayor of Pflugerville, spoke to the efforts that his city has made to plan for the literally hundreds of thousands of people that will eventually move to the city and its ETJ. Unbelievably, a senator from Dallas accused him of “getting the city into a trap” by planning for future growth. The senator’s exact words were:

- “Did the city request the [certificate to provide water or sewer service] from TCEQ?”
- “Can you remove area from the [certificated area]?”
- “Can you remove area from your ETJ?”

The answer to each of those questions is “yes.” The senator then went on to conclude that, “this isn’t a trap that you’re in, this is a trap that you want to be in.”

Statements and conclusions like those show a complete lack of understanding as to what citizens in and around cities need and want, and how cities (rather than counties, special districts, or the state) are the only thing – in the face of exponential population growth – standing between a livable quality of life or bedlam. Planning for what is sure to come isn’t a “trap.”

If cities stop doing it, the results will be detrimental to every aspect of Texans’ lives. The most important aspect is the economy. Companies want to come here because the infrastructure and services to sustain them are within cities. Without city planning and services, those just won’t exist.

That premise is also supported by the testimony of Darrin Coker, the city attorney of Pearland. Pearland provided essentially free fire service to ETJ residents. It did so in anticipation of those residents eventually becoming part of the city and sharing in the costs. Now that the citizens aren’t being annexed, the city has stopped that free service. The ETJ residents may now have to create an emergency services district to get the service, at the cost of a new layer of government and more taxes.

In addition to the testimony of the two home rule cities, Mayor Balis Dailey and Councilmember Klint Dailey from the City of Grapeland, a general law city that doesn’t currently have the authority to annex without consent, testified. They spoke to, among other things, needing the power to regulate the areas just outside of their city to prevent water well contamination and to ensure that businesses that drive their big rigs through the city share in their infrastructure costs.

The city witnesses were outstanding in explaining the harm that curtailing annexation authority is causing and will continue to cause. Some on the committee “get it.” Others, it appears, may not until it’s too late.

FCC Bans Moratoria on Wireless Siting

Last week, the Federal Communications Commission (FCC) commissioners voted to approve a report and order on one-touch make-ready (OTMR) requirements and a declaratory ruling on state and local moratoria. [OTMR requirements deal with who can move wires and other
facilities on existing poles. Essentially, some providers and local governments want to allow that a single construction crew be authorized to move other entities’ facilities to speed the placement of others.]

The vote sets out an explicitly preemptive posture for the FCC on state and local regulations. With regards to moratoria, the declaratory order enacts an immediate, blanket prohibition on all state and local government moratoria for telecommunications services and facilities deployment, and it expands the definition of those moratoria. Under this change, providers who believe that a jurisdiction has an express or de facto moratoria in violation of the order can petition the FCC's Wireline Competition Bureau and Wireless Telecommunications Bureau, which have been directed to expedite these kinds of challenges.

Commissioner Michael O'Reilly, in particular, made clear the intent to take more authority away from local governments: “Every ounce of Congressional authority provided to the Commission must be used as a counterforce against moratoriums, which is just another word for ‘mindless delay’ or ‘extortion attempts to generate some local officials' wish list’,” said O'Reilly. “And, the record is replete with examples of such out-of-bound practices, such as digital inclusion funds, that unnecessarily create political slush funds and raise the cost of service for consumers.” That last remark was likely a shot at the City of San Jose, California, which recently struck a deal with three carriers to build the country's largest small cell deployment and establish a municipal digital inclusion fund to close the digital divide by providing more broadband coverage in underserved, low-income neighborhoods.

NLC released the following statement in response to the vote:

The National League of Cities (NLC) is disappointed that the Commission chose to further preempt local authority with today’s Report and Order.

NLC strongly disagrees with Commissioner Michael O'Reilly’s characterizations of local governments and their associations as obstacles to broadband deployment. In fact, local governments share the Commission’s goal of closing the digital divide. It is local innovative approaches, from investing in public broadband infrastructure to working with providers to address digital inequity in communities, that will allow for cutting-edge technology to be implemented equitably across the country. Cities must retain the flexibility to protect their residents' interests and ensure appropriate management of public property.

In our view, Commissioner Jessica Rosenworcel’s assessment that this decision on moratoria will lead to more, not less, litigation is accurate. Unelected officials in Washington do not know better than the mayors and councilmembers in cities and towns about how best to protect local needs.

NLC remains concerned by the expansive approach the Commission has taken to its interpretation of the law regarding preemption, and we believe that the Commission is overreaching its statutory authority.
[Editor’s note: The article above was reprinted with the permission of the National League of Cities. While this order is detrimental, other pending action at the FCC could be more so. In addition, the U.S. Senate is considering legislation that would further preempt city authority as it relates to small cell deployment and compensation. Texas city officials with an interest should keep the pressure on to oppose that legislation. As a reminder, Senator Cruz (R – Texas) is a member of the Senate Commerce Committee, which will consider the bill. City officials who have a relationship may wish to reach out to Senator Cruz in opposition to federal mandates on city property. See this article for more information and this letter the League sent to Senator Cruz.]