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House Land and Resource Management Interim Report

The House Committee on Land and Resource Management issued its interim report last week. Some of the recommendations of the committee, which considers most bills related to city planning and zoning matters, could be detrimental to cities.

The first charge is as follows:

Examine population growth in Texas cities and the impact the growth has had on housing, available land resources, city centers, businesses, and the state's economy. Evaluate Texas' preparedness to respond to future growth and ensure economic stability. (Joint charge with the House Committee on Urban Affairs) In reviewing this charge, the committee focused on the annexation, zoning, and other regulation of land use to ensure Texas' ability to sustain the population growth and ensure economic stability.

According to the report:

[T]he state relies heavily on municipalities to create stable environments which provide for economic growth. Municipalities must provide and maintain residential, employment and entertainment areas; safety in the form of police stations, fire stations and hospitals; and proper infrastructure for roadways, clean water and sewage. In turn, these amenities offered by municipalities allow for residents, tourists, businesses and

industries to prosper. All the while, the state does not provide significant funding to municipalities but it does grant them the ability to create and enforce ordinances, control land development and create revenue.

Following that favorable statement, the committee made no recommendations on the charge.

The second charge is as follows:

Study current regulatory authority available to municipalities in their extraterritorial jurisdiction. Examine how citizens are involved in the zoning process, and make necessary recommendations to ensure a proper balance between development activities, municipal regulations, and the effect zoning decisions have on Texas citizens.

On this charge, the report focused on the alleged actions of a handful of cities, and concludes that “the legislature can and should re-examine the balance between public benefits and private burdens imposed by the comprehensive planning process, especially the time horizon under which such plans should apply.” In addition, the report contains unfavorable conclusions about municipal annexation authority and building permit authority.

In an unusual recommendation, the report states that “the majority of the committee remains silent on recommendations due to the complaints being isolated to certain areas of the state and unintended consequences [of changes based on that].” But a section titled “other recommendations” squarely targets municipal authority with the following recommendations:

- *Zoning*: Reintroduce legislation from last session that would allow a county commissioners court to overturn a city’s zoning decisions.
- *ETJ/Annexation*: This recommendation isn’t entirely clear, but appears to require a vote prior to annexation, and to erode municipal authority in the extraterritorial jurisdiction (ETJ). Specifically, “a majority vote from the citizens of an ETJ area must take place to decide annexation between the ETJ and city. The area must be as wide as it is away from the current city limits, unless it is an ETJ within city limits. Prior to annexing outside the existing city limits, cities must annex areas within city limits that may not be already a part of the city.” In addition, “ETJ’s need to be reduced to ½ mile for all cities. Currently larger cities have a massive advantage over smaller cities that are having their growth stifled. This measure would only apply if a vote of the citizens of the “to be” annexed area is not required.”
- *Building Codes*: “If a city gives a permit then chooses to revoke it at a later date, the city should be responsible for any costs experienced by the permit holder in undoing past work and complying with the new requirements.”

Legislation to limit municipal authority in this area is a certainty.

General Law Cities: No Building Permits in the ETJ

The Fort Worth Court of Appeals, in the case of *Bizios v. Town of Lakewood Village*, has held that a general law city does not have the authority to require building permits in its extraterritorial jurisdiction (ETJ).

The dispute centered on the construction of a home worth over \$1 million in the town's ETJ. The owner refused to seek a permit from the town, and the town asked the court to force the owner and his builder to comply. 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 opinion can be read to confirm the authority of a home rule city to require building permits in the ETJ, although that proposition hasn't been directly questioned. It is possible that legislation will be filed by homebuilders to eliminate that authority as well.

TML E-List Project: Choose Your Area of Interest

The Texas Municipal League is once again implementing the TML E-List project by gathering email addresses from city officials (elected and appointed) who: (1) may be willing to provide testimony during the 2015 legislative session; (2) want to be kept "in the loop" on certain subject matters; and/or (3) are willing to simply provide their perspective on a particular legislative matter.

The "E-lists" are one way TML staff contacts city officials regarding harmful legislation and are an invaluable grassroots tool. In many cases, bills will be set for committee hearings with essentially no notice. When that happens, an email will go out to the appropriate E-list asking for information or action on your part. Legislators need to hear from their city officials more than from TML staff.

To participate in the E-List project, go to <http://www.tml.org/genform/E-List.asp> and fill out the online form. If you have any questions, please contact JJ Rocha at jj@tml.org or 512-231-7400.

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](#).

Property Tax

H.B. 660 (Raymond) – Property Tax Exemption: would provide a complete residence homestead property tax exemption for the surviving spouse of a 100 percent or totally disabled veteran who died before the law authorizing a residence homestead exemption for such a veteran

took effect, but only if the surviving spouse has not remarried since the death of the disabled veteran. (See **H.J.R. 66**, below.)

H.B. 683 (Sheets) – Property Tax Exemption: would provide a property tax exemption for the residence homestead of a disabled veteran who receives at least 80 percent disability compensation from the United States Department of Veterans Affairs due to a service-connected disability and has a rating of at least 80 percent disabled or of individual unemployability. (See **H.J.R. 67**, below.)

H.J.R. 66 (Raymond) – Property Tax Exemption: would amend the Texas Constitution to permit the legislature to provide a complete residence homestead property tax exemption for the surviving spouse of a 100 percent or totally disabled veteran who died before the law authorizing a residence homestead exemption for such a veteran took effect, but only if the surviving spouse has not remarried since the death of the disabled veteran. (See **H.B. 660**, above.)

H.J.R. 67 (Sheets) – Property Tax Exemption: would amend the Texas Constitution to provide a property tax exemption for the residence homestead of a disabled veteran who receives at least 80 percent disability compensation from the United States Department of Veterans Affairs due to a service-connected disability and has a rating of at least 80 percent disabled or of individual unemployability. (See **H.B. 683**, above.)

S.B. 279 (Watson) – Property Tax Exemption: would: (1) authorize any city council to take action to adopt a flat-dollar amount residence homestead property tax exemption of at least \$5,000, unless a larger amount is specified by the council, before July 1st of any given year; (2) provide that a \$5,000 residence homestead property tax exemption automatically goes into effect in any city that: (a) does not take official action to opt-out of the flat-dollar amount exemption prior to July 1st of any given year; and (b) has not already adopted a percentage-based residence homestead property tax exemption under current law; (3) provide that in any city where the city council has ceased to offer a percentage-based residence homestead property tax exemption and instead adopted a flat-dollar amount property tax exemption, an individual may elect to rescind entitlement to the new flat-dollar amount exemption to continue to receive the percentage exemption that was previously available by filing written notice with the chief appraiser before July 15; (4) provide that the amount of the exemption available to an individual under (3), above, is the dollar amount of the exemption that the individual received in the last tax year the percentage-based residence homestead property tax exemption was in place; and (5) provide that an individual who makes an election to receive the amount of a previous residence homestead property tax exemption under (3), above, may rescind that election by filing written notice with the chief appraiser, but once rescinded, may not elect to reinstate entitlement to the amount of the percentage-based exemption. (See **S.J.R. 20**, below.)

S.B. 280 (Watson) – Property Tax Appraisal: would: (1) provide that, in a property tax protest based on unequal appraisal, the appraised value of the property in question in comparison to other properties is to be determined: (a) using comparable properties located in the same appraisal district; (b) based on the similarity of the properties with regard to specified statutory characteristics, like square footage, property age, and property condition, among other things; (c) by calculating adjustments in accordance with generally accepted appraisal standards; and (d)

based on the calculation of the appraised value of each comparable property as shown in the appraisal records submitted to the appraisal review board by the chief appraiser; and (2) require a district court to grant relief on the ground that a property is appraised unequally if the appraised value of the property exceeds by ten percent the median appraised value of a reasonable number of comparable properties in the appraisal district based on the standards in (1), above.

S.B. 281 (Watson) – Property Tax Appraisal: would require a property owner who submits evidence by affidavit in a property tax protest based on the determination of appraised value of a property or unequal appraisal of a property, to state in the affidavit the property owner’s opinion of the appraised or market value of the property at issue and attach evidence that supports the statement.

S.B. 282 (Watson) – Property Tax Exemption: would exempt from property taxation property acquired by a charitable organization to provide low-income housing for up to 10 years after the organization acquires the property (current law exempts for five years after acquisition).

S.J.R. 20 (Watson) – Property Tax Exemption: would amend the Texas Constitution to (1) authorize any city council to take action to adopt a flat-dollar amount residence homestead property tax exemption of at least \$5,000, unless a larger amount is specified by the council, before July 1st of any given year; (2) provide that a \$5,000 residence homestead property tax exemption automatically goes into effect in any city that: (a) does not take official action to opt-out of the flat-dollar amount exemption prior to July 1st of any given year; and (b) has not already adopted a percentage-based residence homestead property tax exemption under current law; (3) provide that in any city where the city council has ceased to offer a percentage-based residence homestead property tax exemption and instead adopted a flat-dollar amount property tax exemption, an individual may elect to rescind entitlement to the new flat-dollar amount exemption to continue to receive the percentage exemption that was previously available by filing written notice with the chief appraiser before July 15; (4) provide that the amount of the exemption available to an individual under (3), above, is the dollar amount of the exemption that the individual received in the last tax year the percentage-based residence homestead property tax exemption was in place; and (5) provide that an individual who makes an election to receive the amount of a previous residence homestead property tax exemption under (3), above, may rescind that election by filing written notice with the chief appraiser, but once rescinded, may not elect to reinstate entitlement to the amount of the percentage-based exemption. (See **S.B. 279**, above.)

Sales Tax

H.B. 633 (G. Bonnen) – Sales Tax Exemption: would exempt various veterinary items from sales and use taxes.

H.B. 641 (Canales) – Sales Tax: would exempt the sale, use, or consumption of college textbooks from sales taxes during two, seven-day periods, one beginning in August and one beginning in January. (Companion bill is **S.B. 232** by **Schwertner**.)

Purchasing

H.B. 689 (Walle) – Workers’ Compensation Coverage: would: (1) require construction contractors and subcontractors to provide workers’ compensation insurance coverage for each of their employees; (2) require a contractor to provide certification of coverage of its and any subcontractor’s employees to the governmental entity; and (3) provide that, if the contractor enters into a contract with a governmental entity for a public project, the coverage must be satisfactory to the governing body of the governmental entity.

Elections

H.B. 622 (Lozano) – Elections: would: (1) require a voter with the necessary documentation but whose name is not on the precinct list of registered voters to be accepted for voting if the voter registrar verifies the voter as a registered voter and the voter presents a voter registration certificate indicating that the voter is currently registered; and (2) require a voter who is not accepted to vote under (1), above, to be accepted for provisional voting if the voter executes an affidavit stating that the person is a registered voter and eligible to vote in the election.

H.B. 675 (G. Bonnen) – Elections: would allow a person who is occupying a voting station to use a mobile phone to access information that was downloaded, recorded, or created on the phone before the person entered the polling place.

Open Government

H.B. 685 (Sheets) – Public Information: would provide that a public information officer complies with the requirement to promptly produce public information by referring a requestor to a publically accessible website maintained by the city if the requested information is identifiable and readily available on that website.

Other Finance and Administration

H.B. 649 (McClendon) – State Agency Contracts: would: (1) compel each state agency to include a provision in its contracts for goods or services requiring a party (and any subcontractor) to the contract – which could include cities – to disclose to the state agency information concerning any formula, material, method, work product, trade secret, process, or research used or considered in the performance of the contract, regardless of whether the information is confidential by law; and (2) provide that information disclosed to a state agency under (1), above: (a) is confidential and not subject to public disclosure; (b) does not waive or affect the confidentiality of the information for purposes of state or federal law; and (c) does not waive the right to except to the required disclosure of the information in the future.

H.B. 670 (Flynn) – Application of Foreign Law: would: (1) prohibit a ruling or decision of a court, arbitrator, or administrative adjudicator from being based on a foreign law if the

application of that law would violate a right guaranteed by the United States or Texas Constitutions; (2) void a provision of a contract providing that: (a) a foreign law is to govern a dispute arising under the contract to the extent the application of that law would violate a right guaranteed by the United States or Texas Constitutions; and (b) the forum to resolve a dispute arising under the contract is located outside the states and territories of the United States if the foreign law that would apply in that forum would violate a right guaranteed by the United States or Texas Constitutions; and (3) prohibit a court from granting a motion for forum non conveniens to a Texas resident that commences an action in Texas if the foreign law that would be applied to the dispute in the new forum would violate a right guaranteed by the United States or Texas Constitutions.

H.J.R. 65 (Riddle) – Protection of Religious Speech: would propose a constitutional amendment that would prohibit a governmental entity, including a city, from: (1) controlling or interfering with any political speech expressed by a religious leader in a house of worship; or (2) controlling or interfering a student's voluntary expression of a religious viewpoint at a school event or graduation ceremony.

Municipal Courts

H.B. 629 (G. Bonnen) – Jurors: would permit a challenge for cause to a potential juror who cannot read or write in English.

H.B. 642 (Canales) – Drug Education Program: would allow a municipal court judge to require a defendant on deferred adjudication of a class C misdemeanor to participate in a drug education program approved by the Department of State Health Services.

S.B. 285 (West) – Failure to Attend School: would: (1) repeal the offense of failure to attend school; (2) require a school district to refer a student who misses school 10 or more days within a six-month period or on three or more days within a four-week period to juvenile court; (3) allow a school district to file a complaint against a student's parent for the offense of parent contributing to non attendance; and (4) create a class C misdemeanor for a parent failing to attend a hearing sentencing their child in a truancy case.

Community and Economic Development

H.B. 665 (K. King) – Annexation: would provide that a general law city may not annex an area in which 50 percent or more of the property in the area to be annexed is primarily used for a commercial or industrial purpose unless the city: (1) is otherwise authorized to annex the area; and (2) obtains the written consent of the owners of a majority of the property in the area to be annexed.

Personnel

H.B. 627 (Johnson) – Employment Discrimination: would make it an unlawful employment discrimination practice to discriminate against an individual based on the employee’s sexual orientation, gender identity, or expression.

H.B. 630 (G. Bonnen) – E-Verify: would: (1) require a governmental entity, including a city, to enroll in e-verify for its employees; (2) require the immediate termination of an employee responsible for verifying employment information through e-verify if they fail to comply with this requirement; and (3) create a license suspension process, including for city licenses, for businesses that knowingly employ a person not lawfully present in the United States.

Public Safety

H.B. 289 (Estes) – Volunteer Fire Fighter Training: would prohibit a state agency from requiring a license or certification for a volunteer fire fighter who is a not a full-time paid employee or on an industrial emergency response team. (Companion bill is **H.B. 237 by Springer**.)

H.B. 636 (Springer) – Overweight Vehicles: would, except in certain circumstances, provide that the offense of operating a vehicle at a weight heavier than the permit allows is a misdemeanor offense punishable by a fine of not more than \$25 if the vehicle is loaded primarily with agricultural products in their natural state.

H.B. 640 (Canales) – Identification and Proof of Licensure: would require the Texas Department of Public Safety to conduct a study regarding the use of a digital image for identification and proof of licensure purposes.

H.B. 646 (Collier) – E-Cigarettes: would: (1) define “vapor products” to include an electronic cigarette or another device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor or any substance use to fill or refill an electronic cigarette or similar device; (2) include vapor products, such as electronic cigarettes, in the existing state regulations that govern the sale, distribution, possession, use, and advertising of cigarettes and other tobacco products; and (3) prohibit the use of an electronic cigarette or similar device in a school, elevator, theater, library, museum, hospital, bus, plane, or train except in certain designated areas.

H.B. 647 (Isaac) – E-Cigarettes: would add electronic cigarettes to the list of products that are regulated by the state and that may not be sold to minors.

H.B. 693 (Gutierrez) – Temporary Visitor’s Driver’s License: would create a temporary visitor’s driver’s license to be issued by the Texas Department of Public Safety to anyone that: (1) has resided in the state for at least a year, (2) is ineligible to obtain a social security number, and (3) is unable to present documentation authorizing the person to be in the United States.

S.J.R. 22 (Creighton) – Firearms: would amend the Texas Constitution to provide that: (1) the people have the right to hunt, fish, and harvest wildlife, including by the use of traditional

methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing; (2) hunting and fishing are preferred methods of managing and controlling wildlife; and (3) the bill does not affect any provision of law relating to trespass, property rights, or eminent domain. (Note: this bill would likely eliminate a city's ability to regulate the discharge of firearms.)

Transportation

No transportation bills were filed this week.

Utilities and Environment

H.B. 632 (Simpson) – Regional Water Plan: would prohibit a regional water planning group from including a proposal for the construction of a water project in another regional water planning area, unless two-thirds of the members of the regional water planning area where the project will be constructed consent to the inclusion of the proposal.

H.B. 652 (Isaac) – Texas Emissions Reduction Plan: would extend the expiration of Texas Emissions Reduction Plan programs.

H.B. 655 (Larson) – Aquifer Storage and Recovery: would: (1) allow a water right holder to undertake an aquifer storage and recovery (ASR) project without completing a pilot project; (2) provide the Texas Commission on Environmental Quality (TCEQ) with exclusive jurisdiction over the regulation and permitting of ASR injection wells and task the agency with associated rulemaking; (3) allow TCEQ to authorize the use of Class V injection wells and adopt technical standards to govern the wells; (4) require the project operator to install a meter on each ASR injection and recovery well associated with the ASR project; (5) require the project operator to provide TCEQ and the groundwater district with reports on volume of water injected and recovered; and (6) require a project operator to register the ASR injection and recovery wells with any groundwater district in which the wells are located.

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