



Legislative UPDATE

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Special Session Ends: Divide-and-Conquer Is Name of the Game Against Cities

In a special session in which eight of the twenty items on the call would have directly impacted Texas cities, six of those eight bills died outright: revenue caps, spending caps, permit super vesting, expedited permitting, cell phone preemption, and bathrooms. A tree bill passed in slightly worse form than the League had agreed to in the regular session, but much better than the outright tree ordinance preemption bill. All that is the good news. The bad news? One item that passed—annexation restrictions on cities in counties over 500,000 population—was quite harmful. The tree and annexation bills are described in full detail elsewhere in this issue.

Both the annexation bill and revenue cap bill were “bracketed” to apply only to certain cities. The revenue cap bill would have applied only to cities over \$25 million in maintenance and operations property tax levy, and the annexation bill applies only to cities in counties over 500,000 population (plus additional cities under certain circumstances). These brackets partly explain why the annexation bill passed and the revenue cap bill came close to passage: the Legislature has no problem singling out large cities and the regions around those large cities for harsh treatment.

This trend of divide-and-conquer by city or county size should be disturbing to all cities, large or small. For the larger affected cities, the reason is obvious—they've been singled out for bad legislation and probably will be again in the future. But smaller cities shouldn't feel any sense of relief—it will likely be a matter of time before the brackets of these bills expand to include many if not all of them. Divide-and-conquer can succeed will be the message received by the bills' authors and supporters this special session.

In accordance with League legislative policy adopted in 2016, TML opposed *every* version of both bills, regardless of brackets of any kind. The membership has long recognized that we must stand together, or risk getting picked off a few at a time. And to small cities' credit, some of the fiercest opposition to both bills came from cities that weren't affected by the bills, both out of a feeling of solidarity with their sister cities and from a recognition that they would likely be the next victim in the process.

Why were the mostly larger cities targeted by these bill brackets? It boils down to one of the reasons cities as whole are being singled out for blame at the Capitol: a desire to politicize our wonderfully non-partisan Texas cities. Some legislators feel the larger urban areas of the state don't jibe with their own politics, so it's easy to single them out while protecting cities in the less populous regions. There's no other way to analyze what happened, and it's a sad trend. Look for more of these small/large, urban/rural brackets in future sessions.

How do we reverse this dual trend of politicizing Texas cities and the accompanying strategy of divide-and-conquer? The League will study this issue carefully, and appoint interim legislative policy committees to attack this trend head-on in 2018. In the meantime, cities must stay the course of opposing all efforts to handcuff any of our neighboring Texas cities. Potholes aren't Democratic or Republican, nor are there small-city or big-city potholes. They're all just potholes, and the non-partisan mayors, councilmembers, and appointed officials who toil ceaselessly to fill them need to be left alone by the Legislature so they can serve their citizens who demand results, not ideology.

First Special Session – City-Related Bills

The following are the summaries of the major city-related bills passed during the first special session of the Eighty-Fifth Legislature. The text of any bill is available at the Texas Legislature's [website](#).

Elections

1S.B. 5 (Hancock/Goldman) – Voter Fraud: makes several changes relating to the prevention of fraud in the conduct of an election. Among other things, the bill provides that:

1. A person commits an offense if the person: (a) knowingly votes or attempts to vote a ballot belonging to another person, or by impersonating another person; or (b) knowingly

- marks or attempts to mark any portion of another person's ballot without the consent of that person, or without specific direction from that person how to mark the ballot.
2. Precinct election records must be preserved for at least 22 months after election day, regardless of whether the election involves a federal office.
 3. An electronic signature is not permitted on an application for a ballot by mail.
 4. A person commits a state jail felony if the person: (a) knowingly provides false information on an application for ballot by mail; (b) intentionally causes false information to be provided on an application for ballot by mail; (c) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or (d) knowingly and without the voter's authorization alters information provided by the voter on an application for ballot by mail.
 5. An offense under (4)(d) does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.
 6. For an application for ballot by mail submitted by fax or electronic transmission to be effective, the application also must be submitted by mail and be received by the early voting clerk not later than the fourth business day after the submission by fax machine or electronic transmission is received.
 7. The early voting clerk must, not later than the 30th day after election day, deliver notice to the attorney general of cancellation requests received, including certified copies of cancellation requests, applications, and carrier envelopes, if available.
 8. The signature verification committee may compare the signatures on each carrier envelope certificate and the voter's ballot application with any two or more signatures of the voter made within the preceding six years and on file with the county clerk or voter registrar.
 9. The early voting clerk must, not later than the 30th day after election day, deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because: (a) the voter was deceased; (b) the voter already voted in person in the same election; (c) the signatures on the carrier envelope and ballot application were not executed by the same person; (d) the carrier envelope certificate lacked a witness signature; or (e) the carrier envelope certificate was improperly executed by an assistant.
 10. A person commits an offense if the person knowingly or intentionally makes any effort to: (a) influence the independent exercise of the vote of another in the presence of the ballot or during the voting process; (b) cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or (c) cause any intentionally misleading statement, representation, or information to be provided to an election official or on an application for ballot by mail, carrier envelope, or any other official election-related form or document.
 11. Legislation related to early voting at residential care facilities that passed during the regular session of the 85th Legislature is repealed.

(Effective December 1, 2017.)

Other Finance and Administration

1H.B. 7 (Phelan/Kolkhorst) – Tree Mitigation Fees: provides that:

1. “Tree mitigation fee” means a fee or charge imposed by a city in connection with the removal of a tree from private property.
2. A city may not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that: (a) is diseased or dead; or (b) poses an imminent or immediate threat to persons or property.
3. A city may not require a person to pay a tree mitigation fee for the removed tree if the tree: (a) is located on a property that is an existing one-family or two-family dwelling that is the person's residence; and (b) is less than 10 inches in diameter at the point on the trunk 4.5 feet above the ground.
4. "Residential structure" means: (a) a manufactured home as that term is defined by the Texas Manufactured Housing Standards Act; (b) a detached one-family or two-family dwelling, including the accessory structures of the dwelling; (c) a multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or (d) any other multifamily structure.
5. A city that imposes a tree mitigation fee for tree removal on a person’s property must allow that person to apply for a credit for tree planting to offset the amount of the fee.
6. An application for a credit under (5), above, must be in the form and manner prescribed by the city.
7. To qualify for a credit, a tree must be: (a) planted on property: (i) for which the tree mitigation fee was assessed; or (ii) mutually agreed upon by the city and the person; and (b) at least two inches in diameter at the point on the trunk 4.5 feet above ground.
8. For purposes of determining where an off-site tree must be planted, the city and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the city.
9. The amount of a credit provided to a person must be applied in the same manner as the tree mitigation fee assessed against the person and: (a) equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person ’s residence; (b) at least 50 percent of the amount of the tree mitigation fee assessed against the person if: (i) the property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and (ii) the person is developing, constructing or renovating the property not for use as the person’s residence; or (c) at least 40 percent of the amount of the tree mitigation fee assessed against the person if: (i) the property is not a residential structure; or (ii) the person is constructing or intends to construct a structure on the property that is not a residential structure.
10. As long as the city meets the requirement to provide a person a credit under (8), above, the bill does not affect the ability of or require a city to determine: (a) the type of trees that must be planted to receive a credit, except as provided by (7), above; (b) the requirements for tree removal and corresponding tree mitigation fees, if applicable; (c) the requirements for tree-planting methods and best management practices to ensure that

the tree grows to the anticipated height at maturity; or (d) the amount of a tree mitigation fee.

11. The bill does not apply to property within five miles of a federal military base in active use as of December 1, 2017.

(Effective December 1, 2017.)

Community and Economic Development

S.B. 6 (Campbell/Huberty) – Annexation: completely rewrites the Municipal Annexation Act to severely curtail the ability of cities to annex property. Generally, the bill provides that:

1. A “Tier 1 county” means a county with a population of less than 500,000, except that Kaufman County is not included because it has “Texas Parks and Wildlife Department Freshwater Fisheries.”
2. A “Tier 2 county” means a county with a population of 500,000 or more, or a Tier 1 county that opts to become a Tier 2 county through a petition and signed by 10 percent of the registered voters in the county and approval at a countywide election.
3. A “Tier 1 municipality” means a municipality wholly located in one or more tier 1 counties that proposes to annex an area wholly located in one or more tier 1 counties.
4. A tier 2 municipality is authorized to annex 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.
5. A tier 2 municipality may annex 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, or if the voters don’t own more than 50 percent of the land in the area, the petition must be signed by the owners of more than 50 percent of the land in the area.

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

1. A tier 1 municipality can continue to annex under the existing procedures for plan annexations (subchapter C three-year negotiation process) or exempt annexations (subchapter C-1 service plan, notice, and hearing process).
2. Most of the existing, statutory authority to annex is codified into the newly-created subchapter B.
3. In relation to provision of solid waste services by a tier 1 municipality, before the second anniversary of the date an area is annexed, the municipality may not: (a) prohibit the collection of solid waste in the area by a privately owned solid waste management service provider; or (b) offer solid waste management services in the area unless a privately owned solid waste management service provider is unavailable.

4. A new subchapter C-2 is and certain bracketed provisions are transferred to that subchapter.
5. A new subchapter C-3 is created that applies only to a tier 2 municipality and authorizes 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;
6. A new subchapter C-4 is created that applies only to a tier 2 municipality and authorizes 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.
7. 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.
8. Not later than the seventh day after the date the governing body adopts the resolution under (8), 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.
9. If the governing body of a city proposes to annex an area under subchapter C-4 and a petition protesting the annexation is signed by a number of registered voters of the municipality proposing the annexation equal to at least 50 percent of the number of voters who voted in the most recent municipal election, the municipality may not complete the annexation of the area without approval of a majority of the voters of the municipality voting at an election.
10. A new subchapter C-5 is created that applies only to a tier 2 municipality and authorizes the annexation 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.
11. 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 (8-9), and (10), above.
12. With regard to an existing strategic partnership agreement, a municipality shall follow the procedures established under the strategic partnership agreement for full-purpose annexation of an area.
13. With certain very limited exceptions, beginning September 1, 2017, a tier 2 city may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area only if it complies with the procedures in (6-12), above.
14. Conforming changes are made to the “disannexation for failure to provide services” provision in current law, with some changes making the process more favorable to those in an annexed area.
15. A municipality may not annex an area unless it provides written notice of the proposed annexation within a certain timeframe to each public entity and political subdivision that

- is located in or provides services to the area that includes, among other things: (a) any financial impact on the public entity or political subdivision resulting from the annexation, including any changes in the public entity's or political subdivision's revenues or maintenance and operation costs; and (b) any proposal the municipality has to abate, reduce, or limit any financial impact on the public entity or political subdivision.
16. Until the 20th anniversary of the date of the annexation of an area that includes a permanent retail structure, a municipality may not prohibit a person from continuing to use the structure for the indoor seasonal sale of retail goods if the structure: (a) is more than 5,000 square feet; and (b) was authorized under the laws of this state to be used for the indoor seasonal sale of retail goods on the effective date of the annexation.
 17. The annexation law may be enforced only through mandamus or injunctive or declaratory relief and a city's immunity from suit is waived for that purpose.
 18. A court may award reasonable an necessary attorney's fees to the prevailing party in an action brought under the annexation law.

With regard to specific cities or types of annexations, the bill provides that:

1. The City of Austin: (a) may not annex an area that is subject to a strategic partnership agreement executed on or after September 1, 2009, and for which an area proposed for annexation will be annexed before January 1, 2021, unless it complies with (6-12), above; and (b) may not annex the territory in certain municipal utility districts unless a majority of the total number of voters voting in all of the districts' elections vote in favor of authorizing the annexation.
2. The City of Fort Worth is authorized to annex without consent certain enclaves that are surrounded by the city.
3. Various exemptions from certain annexation requirements for the City of Houston are removed.
4. A city may annex all or part of the area located in an industrial district designated by the governing body under the requirements applicable to a tier 1 municipality, but only: (a) on or after the date the contract expires, including any period renewing or extending the contract; or (b) as provided by the contract.
5. A city may annex an area for full or limited purposes, under the annexation provisions applicable to that city under the bill (i.e., an approval election for an annexation in a Tier 2 county), any part of the area located within five miles of the boundary of a military base, but that the annexation proposition for such an annexation shall be worded to allow the voters to choose between either annexation or providing the city with the authority to adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study.
6. No provision is made for non-annexation agreements with agriculture exempt property, thus such agreements are governed by their existing terms.

(Effective December 1, 2017.)

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 this special session.

The following officials testified in committee hearings held August 9 through August 15:

- Michael Dice, Development Services Manager, City of San Antonio
- Patricia Link, Assistant City Attorney, City of Austin

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