

Legislative UPDATE

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APPRAISAL CAPS LEGISLATION KILLED ON HOUSE FLOOR; REVENUE CAP BILL SENT BACK TO COMMITTEE

On April 12, in a huge victory for local governments, the Texas House of Representatives, on a vote of 81-65, killed legislation that would have reduced the appraisal cap from 10 percent to five percent.

The following day, a point-of-order sent H.B. 1006, which would impose a property tax revenue cap, back to the House Ways and Means Committee. But H.B. 1006 could return to the House floor for debate as early as next week.

(In its filed form, H.B. 1006 would reduce the property tax rollback rate from eight percent to three percent and require an automatic popular election if an adopted tax rate exceeds that three-percent level.)

H.B. 1006 has powerful friends, including the governor. A spokesman for the governor, commenting on the delay brought about by the point-of-order, said **“taxpayers have the opportunity to let House members know they are tired of runaway spending at the local level.”** Most city officials would be very surprised to learn that they are guilty of “runaway spending.”

Property tax revenue caps are also supported by the Texas Association of Realtors (TAR). In a message to its members, TAR said, **“H.B. 1006 would deter the current blank-check-mindset that city and county officials so often seem to operate under.”** It would be interesting to find out if the realtors in your city think you have a “blank-check-mentality” when it comes to operating your city.

We must keep the pressure on! City officials should contact their House members immediately by phone or e-mail to urge them to oppose H.B. 1006. (Please see the insert in this update.)

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HOUSE COMMITTEE APPROVES DEVASTATING LAND USE BILL (H.B. 2833)

The Texas Private Real Property Rights Preservation Act (Act) requires that the state and certain other political subdivisions (excluding cities) consider whether a proposed regulation might be a “taking” of private real property. It is designed to protect rural landowners from unnecessary government actions.

The Act defines a taking as an action that would reduce the value of property by more than twenty-five percent. That definition is drastically different than both the Texas and United States Supreme Courts’ definition of a “taking” as applied to cities.

Currently, the law requires the state or a covered political subdivision (excluding cities) to prepare a “takings impact assessment” before adopting a regulation that might reduce the value of property. Among other things, the assessment must: (1) describe the burdens imposed on private real property and the benefits to society resulting from a proposed regulation; (2) determine whether engaging in the proposed governmental action will constitute a taking; and (3) describe reasonable, alternative actions that could accomplish the specified purpose and compare, evaluate, and explain how an alternative action would further the specified purpose. The failure to prepare the assessment results in a regulation being struck down.

Cities are exempt from the law as a matter of public policy. As opposed to rural residents, city residents have the expectation that their property will be protected for the good of the city as a whole. Because of that expectation, cities regulate private real property in many ways: zoning and platting; regulating nuisances, sexually oriented businesses, setbacks, and landscaping; and adopting building codes.

H.B. 2833 (R. Cook) would make cities subject to the Act, drastically altering the way in which cities exercise their authority to regulate land use. The bill would arguably require a takings impact assessment for almost every action a city takes. That requirement is unduly burdensome and runs counter to effective public policy. The Act’s requirement that a city prepare a takings assessment for any land use regulation is extremely burdensome in and of itself. Even more troubling, however, is that the bill also attempts to “backdoor” an even worse initiative that failed to pass during the last two legislative sessions.

During the 2001 and 2003 legislative sessions, lawmakers considered legislation that would have required a city to compensate a property owner for a zoning change that results in a reduction in the property’s value, unless the owner of the property consents to the change. Those bills would have also allowed a prevailing land owner, in lieu of accepting compensation, to develop the property under the zoning rules that

applied to the property before the change in the property's zoning. Neither bill passed.

While H.B. 2833 has exceptions for certain types of zoning, most city regulations that might reduce the value of property would require a takings impact assessment and may require a city to compensate an owner for the reduction in value. Such requirements would severely hamper the ability of cities to regulate the use of land for the common good. In fact, most land use regulations increase the value of most property in an area by prohibiting a certain use on one parcel. The effect of H.B. 2833 would be to require city residents to subsidize one property owner to the detriment of neighboring property owners. Interestingly, H.B. 2833 does not provide that if a land use regulation *increases* a parcel's value, the owner must compensate the city in any way.

H.B. 2833 was approved by the House Land and Resource Management Committee on April 7. City officials should contact their representatives now to urge opposition to this bill.

SIGNIFICANT COMMITTEE ACTIONS

H.B. 121 (Chavez), authorizing a local option property tax exemption for personal property held temporarily for assembling, storing, manufacturing, processing, or fabricating. Reported from the House Local Government Ways and Means Committee.

H.B. 148 (Harper-Brown), relating to extending the probationary period for beginning positions in civil service (Chapter 143) cities. Reported from the House Urban Affairs Committee.

H.B. 635 (Solomons), relating to property in the custody of a pawnbroker and to reporting pawn shop data. Reported from the House Financial Institutions Committee.

H.B. 726 (Berman), granting a local option property tax exemption for certain law enforcement officer associations in counties with less than 250,000 population. Reported from the House Ways and Means Committee. (See **H.J.R. 32**, below.)

H.B. 879 (Madden), relating to the sale of tax receivables by a local government. Reported from the House Local Government Ways and Means Committee.

H.B. 2039 (Nixon), providing that a city that enters into a contract waives sovereign immunity for the purpose of adjudicating a claim under the contract, subject to certain limitations. Reported from the House Committee on Civil Practices.

H.B. 2070 (Rose), reducing a city's liability for injuries incurred during certain recreational activities. Reported from the House Committee on Civil Practices.

H.B. 2097 (Chisum), relating to public nuisances. Reported from the House Urban Affairs Committee. **As reported, this bill provides that when a home rule city regulates a nuisance within 5,000 feet of the city limits, it may not do so within 50 feet of a public waterway.**

H.B. 2131 (Phillips), relating to the demonstration of financial assurance by a local government relative to a solid waste landfill. Reported from the House Environmental Regulation Committee.

H.B. 2650 (Krusee), authorizing a city to assist in the financing of a turnpike project. Reported from the House Transportation Committee.

H.B. 2661 (Krusee), providing that certain construction projects that cost \$1.5 million or less may be awarded using the competitive sealed proposal procedure. Reported from the House Urban Affairs Committee.

H.B. 2748 (Pickett), reducing the authority of cities relative to "vested rights" to a permit. Reported from the House Land and Resource Management Committee. (Companion bill is **S.B. 574** by **Armbrister**.)

H.B. 2833 (R. Cook), relating to the authority of cities to restrict land use for any purpose. Reported from the House Land and Resource Management Committee. **(Please see a more expansive article elsewhere in this update.)**

H.B. 3017 (Orr), relating to condemnation proceedings. Reported from the House Land and Resource Management Committee.

H.B. 3020 (Phillips), relating to local government authorization of charitable solicitations by pedestrians. Reported from the House Transportation Committee.

H.J.R. 32 (Berman), proposing to amend the Texas Constitution to allow for a local option property tax exemption for certain law enforcement associations.. Reported from the House Ways and Means Committee. (See **H.B. 726**, above.)

H.J.R. 80 (Krusee), proposing an amendment to the Texas Constitution clarifying that certain economic development programs do not constitute a debt. Reported from the House Economic Development Committee.

S.B. 6 (Nelson), relating to protective services. Reported from the House Human Services Committee. As reported, S.B. 6 could impose additional duties on local law enforcement agencies.

S.B. 9 (Staples), relating to homeland security. Reported from the Senate Transportation and Homeland Security Committee. As reported, S.B. 9 provides that in the absence of a contract, if a local entity furnishes fire or emergency services to another local entity, each local entity is responsible for its own actions for any civil liability that may arise.

S.B. 286 (Wentworth), relating to open government training. Reported from the Senate State Affairs Committee. **As reported, S.B. 286 would provide that:**

1. Each elected or appointed member of a governmental body shall complete an open meetings training course of not less than one nor more than two hours.
2. The training must be completed not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.
3. After initial training, the member must complete another training course every two years.
4. The attorney general shall ensure the availability of a videotape at no cost and may approve training by other entities.
5. The entity providing training shall provide a certificate of course completion, and each governmental body shall maintain the certificates of its members.
6. Failure to complete the training does not affect the validity of an action taken by the governmental body.
7. Course completion may not later be used as *prima facie* evidence of a "knowing" violation.
8. Each member of a governmental body and each public information officer must complete an open records training course of not less than one nor more than two hours.
9. With regard to open records training, numbers 2, 3, 4, 5, and 7 (above) each apply.
10. A public official (member of a municipal government body) may designate a public information coordinator to satisfy the open records training requirement.

11. The bill becomes effective on January 1, 2006, and any person who is required to take a training course and is in office on January 1, 2006, must complete the required training by January 1, 2007.

(Companion bill is H.B. 634 by Baxter.)

S.B. 574 (Armbrister), reducing the authority of cities relative to “vested rights” to a permit. Reported from the Senate Intergovernmental Relations Committee. (Companion bill is H.B. 2748 by Pickett.)

S.B. 848 (Shapiro), reducing the authority of cities relative to “vested rights” to a permit. Reported from the Senate Intergovernmental Relations Committee.

S.B. 1303 (Seliger), relating to peace officer employment records. Reported from the Senate Criminal Justice Committee. As reported, S.B. 1303 would require a law enforcement agency to : (1) file a written request for employment termination reports from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) before hiring a licensed peace officer; (2) submit an employment termination report each time a person licensed by TCLEOSE resigns or is terminated from the agency; and (3) correct a person’s report in a timely manner upon request by TCLEOSE.

S.B. 1417 (Gallegos), establishing a meet-and-confer process for firefighters in certain cities that exceed 50,000 in population. Reported from the Senate Committee on Intergovernmental Relations. As reported, S.B. 1417 is virtually identical to the House-passed version of H.B. 304, which applies to peace officers.

S.B. 1423 (Gallegos), relating to residential building codes. Reported from the Senate Intergovernmental Relations Committee. As reported, S.B. 1423 generally prohibits a city from adopting an amendment to a local residential building code if the amendment is less stringent than requirements in the code.

SIGNIFICANT FLOOR ACTIONS

H.B. 150 (Reyna), relating to the reappointment of civil service commissioners in civil service (Chapter 143) cities. Passed the House. (This is TML bill.)

S.B. 282 (Madla), relating to the disclosure and use of sales price information for property tax purposes. Passed the Senate.

S.B. 310 (Deuell), relating to diseases/illnesses suffered by firefighters or EMTs. Passed the Senate. As passed, S.B. 310 would create a presumption that certain diseases or illnesses suffered by a firefighter, an emergency medical technician,

or certified volunteer firefighter are work-related. A presumption would trigger workers' compensation benefits. Here are the details.

1. The bill would apply to a firefighter or EMT who: (a) received a physical exam when first employed or during employment that did not reveal the illness or disease for which presumption benefits are sought, (b) has been employed as a firefighter or EMT for five years or more, and (c) seeks benefits for a disease or illness discovered while employed as a firefighter or EMT.
2. The bill would define "actively serving" as a volunteer firefighter as participating in 40 percent of the drills and 25 percent of the fire/emergency calls.
3. The bill provides that the presumption would not apply if the disease or illness for which benefits are sought is known to be caused by the use of tobacco and the claimant is or has been a user of tobacco, or the claimant's spouse has, during the marriage, been a smoker.
4. The presumption established by the bill would apply to total or partial disability or death resulting from an immunization against smallpox or other disease to which the firefighter or EMT may be exposed during the course and scope of employment.
5. The presumption would also apply to tuberculosis or other respiratory illness that has a positive correlation with service as a firefighter or EMT and results in total or partial disability or death.
6. The presumption would also apply to a cancer that results in total or partial disability or death if the firefighter or EMT: (a) regularly responded to calls involving fires or firefighting; (b) regularly responded to events involving release of radiation or carcinogens; (c) has a cancer known to be associated with firefighting or exposure to heat, smoke, radiation, or a known carcinogen.
7. The presumption would also apply to an acute myocardial infarction or stroke that: (a) results in disability or death and (b) occurs while the claimant is on duty and engaged in nonroutine stressful or strenuous physical activity involving fire suppression, rescue, emergency medical services, and the like.
8. The bill provides that a presumption established by the bill may be rebutted through a showing by a preponderance of the evidence that a cause not associated with a person's service as a firefighter or EMT caused the condition for which benefits are sought.

(Note: this bill is similar to **H.B. 3306** by **Bohac**.)

S.B. 495 (Williams), increasing the fee charged by the Texas attorney general for examining public security documents. Passed the Senate.

S.B. 716 (Gallegos), relating to payroll deductions for peace officer associations. Passed the Senate.

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 time to travel to Austin to speak out on important city issues should be applauded by us all.

The following city officials testified recently in front of legislative committees:

Jim Darling, City Attorney, McAllen

Mark Poindexter, Fire Chief, Rockwall

While TML monitors most hearings, we won't catch the testimony of every city official. If we missed your testimony or the testimony of another official in your city, please contact us at the following e-mail address and we will include your name in the next edition of the *TML Legislative Update*: testify@tml.org.

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TOP FIVE REASONS TO OPPOSE H.B. 1006 (PROPERTY TAX REVENUE CAPS)

1. H.B. 1006 won't allow property tax revenue to keep up with inflation **without a popular vote**. The bill allows an annual increase in property tax revenue of up to only three percent. **Municipal cost inflation has been 5.24 percent** during the past year.
2. Since H.B. 1006 won't allow cities and counties to keep up with inflation, it certainly won't allow them **to pay for state and federal mandates**.
3. Any city or county that must raise more property tax revenue than is allowed by a three-percent increase would be **forced to develop two budgets**: one to go into effect if the voters approve the tax rate, and another to go into effect if the reverse is true. In either event, **the city or county would bear the cost of an election**.
4. To avoid elections, many cities and counties will likely **cut spending on capital improvements, economic development incentives, and other services**.
5. Noted economist Ray Perryman has concluded that **"...revenue limitations bear no relation to the legitimate demand for public services provided by local government..."** and that such limitations **don't account for demographic shifts, will constrain the capacity of high-growth regions to meet public service needs, and will adversely impact bond ratings**.

According to Dr. Perryman, a **3-percent cap** on growth in local property tax revenues will result in **annual losses of \$10.8 billion in expenditures, \$5.1 billion in gross state product, \$3.3 billion in personal income, and nearly 80,000 jobs**.