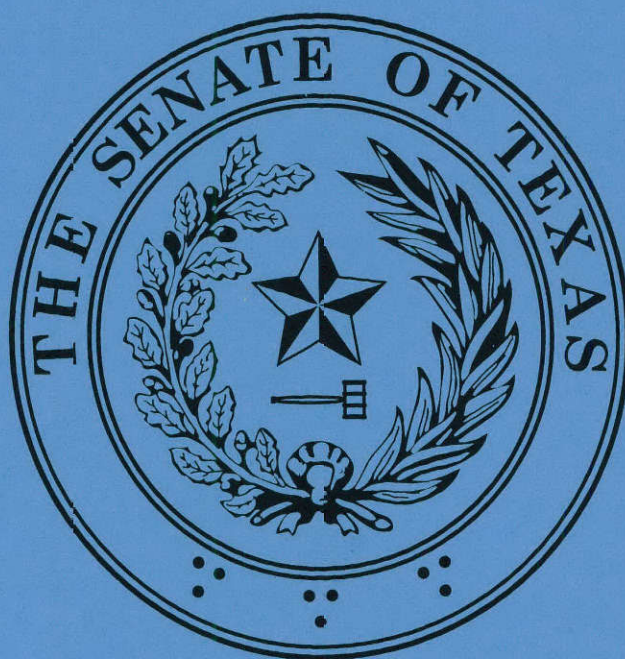


SENATE COMMITTEE ON
INTERGOVERNMENTAL RELATIONS



INTERIM REPORT TO THE
85th LEGISLATURE

November 2016

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS



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SENATOR EDDIE LUCIO, JR

11/14/16

SENATE COMMITTEE ON INTERGOVERNMENTAL RELATIONS

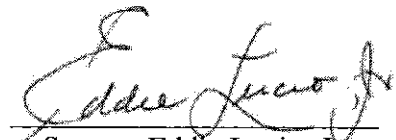
November 14, 2016


The Honorable Dan Patrick
Lieutenant Governor of the State of Texas
Texas State Capitol
Austin, Texas 78701

Dear Governor Patrick:


The Texas Senate Committee on Intergovernmental Relations hereby submits its interim report for consideration by the 85th Texas Legislature. We thank you for providing us with the opportunity to address the issues outlined in the report and to present recommendations that will benefit the State of Texas.

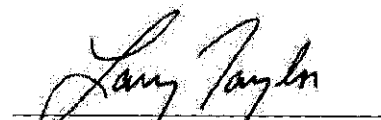
Respectfully Submitted,


Senator Eddie Lucio, Jr.
Chairman


Senator Paul Bettencourt
Vice-Chairman


Senator Robert Nichols


Senator Donna Campbell


Senator Larry Taylor


Senator Sylvia Garcia


Senator José Menéndez

INTERIM CHARGES

Charge 1: Identify areas of concern in regards to statutory extraterritorial jurisdiction expansion and the processes used by municipalities for annexation, specifically reviewing whether existing statute strikes the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development. Make recommendations for legislative action, if necessary.

Charge 2: Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law.

Charge 3: Review natural disaster preparedness planning and coordination in the wake of a growing range of threats. Evaluate whether existing processes maximize regional cooperation to rebuild housing and infrastructure, and allow for the timely dissemination of funds to units of local governments for reconstruction following a federal declaration. Develop recommendations, if necessary, to improve the efficiency of disaster recovery efforts, incorporating best practices identified from other states, as well as lessons-learned from past reconstruction efforts in Texas.

Charge 4: Study the means by which the Texas Legislature reviews the creation of municipal management districts (MMDs) by special law to determine if different processes should be used to evaluate new MMDs created within populated or developed areas from those created over undeveloped areas. Identify ways to better assess how the services and improvements of a proposed MMD within populated or developed areas will supplement and enhance those provided by other local governments, as well as if the territory of the proposed MMD encompasses or overlaps area that is already within other assessment or taxing entities. Make recommendations, if necessary, to improve the notice provided to individuals and businesses within populated or developed areas proposed for inclusion in an MMD.

Charge 5: Review existing statute 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.

Charge 6: Examine ways to improve government accountability in elections regarding the issuance of public debt. Include a review of the information that is currently provided to individuals in the voting booth and provide statutory recommendations, if necessary, to improve transparency.

INTERIM HEARINGS

Visit the Senate Committee on Intergovernmental Relations webpage on the Texas Senate website for interim committee hearing audio/video recordings, minutes, and witness lists.

First Interim Committee Hearing:

Date: December 2, 2015

Time: 9:34 AM

Location: State Capitol, Room E1.012

Proceedings: The Committee received invited testimony on Charges 2, 3, and 6.

Second Interim Committee Hearing:

Date: February 3, 2016

Time: 8:01 AM

Location: The University of Texas Rio Grande Valley, Brownsville Campus

Salon Cassia Room (MAIN 2.402)

1 West University Boulevard

Brownsville, Texas 78520

Proceedings: The Committee received invited and public testimony on Charge 3.

**audio recording only*

Third Interim Committee Hearing:

Date: May 19, 2016

Time: 9:03 AM

Location: State Capitol, Room E1.012

Proceedings: The Committee received invited and public testimony on Charge 1.

Fourth Interim Committee Hearing:

Date: August 15, 2016

Time: 9:03 AM

Location: State Capitol, Room E1.012

Proceedings: The Committee received invited and public testimony on Charges 2, 4, 5, and 6.

EXECUTIVE SUMMARY

During the 84th Legislative Interim, Texas Lieutenant Governor, the Honorable Dan Patrick, tasked the Senate Intergovernmental Relations Committee (Committee) to study six charges and put forward to the legislature recommendations the Committee deems appropriate to better the circumstances surrounding each individual charge.

The Committee appreciated the opportunity to review several critical subjects facing the people of Texas ranging from local ordinance integrity and debt transparency in the voting booth to annexation and disaster recovery. Throughout the interim, the Committee gained significant insight on the prescribed charges, and although varied, the subjects of the charges share common themes, which were highlighted in the testimony received during the Committee's four interim hearings.

Upon absorbing the hearing content, it is apparent commonalities between the charges exist, including, but not limited to, the themes of statewide uniformity, local government transparency, and private property owner rights.

The first, second, fifth, and sixth charges received by the Committee consider the extent of local government transparency and whether state statutory safeguards are necessary to ensure the integrity of the relationship between residents and their closest form of government. For example, local governments have the authority to draft ordinance ballot language that potentially might lack sufficient information for the voter.

The first, third, fourth, and fifth charges received by the Committee consider subject matter relating to private property owner rights, including property brought within the jurisdiction of a city, property lost to a disaster, or property newly gained via affordable housing programs.

The real-life consequences of the Committee's recommendations necessitated a serious dialogue between Senate legislators and stakeholders representing municipalities, counties, and impacted residents. As census data shows, without intervention, this dynamic is projected to persist.

By some estimations, the State of Texas is one of the fastest growing states in the country. As testimony heard by the Committee indicated, an estimated five out of the top eleven fastest growing cities in the country are in Texas, and similarly, Texas is home to five out of the top ten fastest growing counties in the country. This rapid influx of residents provides the state with a multitude of positives, including the ability for localities to have an increased tax base, a stronger workforce for industries, and residents enjoying all Texas has to offer.

Welcomed population growth, however, invariably draws attention to areas in state and local arenas where improvements can and must be made for an agreeable relationship to exist. To ensure local governments offer fairness and transparency to their residents, certain questions can reasonably be posed to legislators across the state:

- Do Texas statutes provide sufficient guidance for local government elections;
- Do Texas statutes provide adequate statutory safeguards for private property owners;
- Does Texas ensure fair consideration for affordable housing;
- Can Texas improve the way it coordinates disaster preparedness and response;
- Do municipalities provide appropriate notices to residents when needed;
- Do municipalities provide voters with transparent and informative ballots;
- Can special purpose district vetting and implementation be better executed; and
- Are local governments equipped to provide services to residents, regardless of where they live.

The assigned charges instruct the Committee to focus on these subjects and find a better way to manage issues so that residents are provided more transparency, consistency, and fairness in their interactions with government.

The Committee studied these topics within the scope outlined by the charges and reached out to individuals representing counties, municipalities, concerned citizens, and the private sector to gather insight and identify any concerns, observations, or recommendations about the existing statutory structure.

Recommendations:

The recommendations provided here encompass shared themes of multiple charges, specifically Charge 1, Charge 2, and Charge 6. Unique recommendations for each individual charge are covered in the ensuing pages.

- The legislature should consider providing consistency and eliminating the possibility of variances by strengthening the uniformity in ordinance procedures and standards.
- The legislature should improve transparency and find a more appropriate balance between drafting ordinances and providing ordinance information to voters by supporting reforms that provide increased transparency through best practices in Texas statutes that provide a common-sense standard in regard to the process, form, and model language.
- The legislature should weigh-in and afford, at minimum, critical criteria to ensure that ballot language is not misleading by codifying the recent Texas Supreme Court decision

that establishes the "definiteness and certainty" standard in the wording of the ordinances.

- The legislature should take steps to ensure that when local jurisdictions are found by a court of law to have purposely included misleading chief features of an ordinance, measured through their word choice, that safeguards are provided in statutes to eliminate the burden on taxpayers challenging propositions that lack definiteness and certainty.
- The legislature should consider developing a process or establishing an advisory entity that can develop model guidelines, language, and enforcement measures to ensure greater transparency and compliance with state law in ordinance development, drafting, and balloting.
- The legislature should find a better balance in election contests so as to encourage greater citizen participation, while safeguarding the integrity of ordinance making by jurisdictions.
- The legislature should strengthen the delicate balance between cities wishing to expand their jurisdiction and safeguarding private property rights by increasing transparency in the annexation process through greater notice requirements for impacted stakeholders.
- In order to improve the annexation process and provide greater transparency and informed consent to those impacted, the legislature should consider updating the annexation process to provide guidance regarding parcels of land subject to a 3-year annexation plan.
- The legislature should strengthen the annexation process by encouraging greater citizen participation from those impacted by a proposed annexation plan.
- The legislature should ensure uniform structure and procedures that eliminate unnecessary and burdensome administrative requirements that impede citizen interaction in locally-driven petitions.
- The legislature should build-in better statutory safeguards to facilitate greater citizen compliance with administrative petition requirements.
- In order to enhance greater citizen participation and increase uniformity, the legislature should establish uniform thresholds for citizen petitions.
- The legislature should consider providing basic essential information that will inform voters of the potential impact of the issuance of new fiscal obligations.

- The legislature should consider the different possibilities of informing potential voters of the chief measures found in aggregate-item elections.
- The term of new bond debt should not exceed the life of the capital improvements financed by bond proceeds; and unspent bond proceeds should not be used for projects other than those approved by voters at the ballot box.

INTERIM CHARGE 1

Identify areas of concern in regards to statutory extraterritorial jurisdiction expansion and the processes used by municipalities for annexation, specifically reviewing whether existing statute strikes the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development. Make recommendations for legislative action, if necessary.

Background:

In the State of Texas, municipal governments are bound by, and must adhere to, laws prescribed by the state and federal governments, unless a municipality with a population over 5,000 has elected, by citizen vote, to adopt a governing charter. A municipality which has elected to adopt a governing charter is known as a "home rule" city, and the city's charter authority can extend to that which is not expressly preempted or prohibited by state, federal, or common laws. Unlike home rule cities, a "general law" city is a municipality which has not elected to adopt a governing charter or does not have a population of over 5,000 and is governed by state, federal, and common laws.

Annexation authority is not prohibited by state statutes, and therefore, a home rule city's charter may include language outlining that municipality's authority to annex area in its extraterritorial jurisdiction (ETJ). Due to not having a charter that outlines annexation authority, a general law city does not have authority to annex.

As alluded to by the Charge, it has been asserted that home rule cities elect to exercise their annexation authority for two reasons:

- To maintain better guided development and growth; and
- To expand jurisdiction of taxable entities.

The ability for home rule cities to unilaterally annex an area in their respective ETJ has, at times, been met with some opposition from those residents being annexed. These residents have primarily been concerned with their property rights and their inability to provide consequential input in the annexation process, which might have tax increase implications.

To become agreeably brought into a home rule city, ETJ residents impacted by a proposed annexation have typically suggested as a solution that the city provide them with a right to vote on the proposed annexation.

Charge 1 directs the Committee to evaluate whether the existing statute that governs ETJ

REPORT ON COMMITTEE INTERIM CHARGE 1

Annexation

expansion and annexation strikes the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development.

Analysis:

On May 19, 2016, the Committee received invited and public testimony on Charge 1.

As brought up during the interim hearing, in part, this Charge is in light of the recent contentious annexation plan put forward by the City of San Antonio. Residents beholden to the City's annexation plan claimed the plan was far-reaching in its aim to annex large swaths of land, home to over 200,000 people. Those in the ETJ were primarily concerned with being annexed due to the expected tax increase for the average resident.

During the hearing, invited witnesses, including the Texas Public Policy Foundation, provided testimony on how Texans need to be given a better safeguard when dealing with their local city government, especially when the fundamental right of property is in question. In this vein, some argue that private property owners should have the ability to say no to a home rule city annexation.

Also providing invited testimony were local government stakeholders, including the Texas Municipal League. These stakeholders suggested the need for a home rule city to manage population growth and development outweighs the ability for impacted residents to approve or reject a proposed annexation plan. These stakeholders generally believe granting a right to vote to impacted property owners would effectively eliminate a city's ability to annex going forward.

In considering these different perspectives and in trying to identify issues of concern with current statutory annexation authority and develop recommendations, which are parts of the Charge, the Committee should put the full extent of annexation impact in context and understand who is being impacted.

For example, neighboring communities and cities may be impacted. This was the case with the City of Brownsville's historic strip annexation, which permitted the City to engulf and land-lock several neighboring smaller cities, ultimately impeding their growth.

Annexation could also mean impacting rural homes and small private businesses that never envisioned themselves being within a home rule city's limits. More fundamentally, when a home rule city expands the footprint of its ETJ upon a successful annexation, it takes in property that may have been formerly under the jurisdiction of counties.

REPORT ON COMMITTEE INTERIM CHARGE 1

Annexation

Therefore, in determining whether an appropriate balance is achieved between safeguarding private property rights and encouraging city orderly growth and economic development, an argument can be made as to why to take into account those impacted by this statutory authority.

The following policy recommendations address and echo the testimony the Committee received and highlight some of the resounding themes the different stakeholders presented.

Recommendations can be found in the Executive Summary.

INTERIM CHARGE 2

Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law.

Background:

In the State of Texas, a home rule city's charter cannot contradict any matter expressly preempted or prohibited by state and federal laws. Like annexation authority, a home rule city's inherent powers include the ability for initiative, referendum, and recall.

Of the approximately 1,217 cities in Texas, there are approximately 848 general law cities and 369 home rule cities, and approximately 88 percent of home rule cities have some pronouncement of initiative and referendum authority in their charters. When constructing ballot language, home rule cities look to their charter, as well as state statute and common law. With ordinance procedure and authority being outlined independently in each 369 home rule city charters, there will always be variances across Texas, especially as state statutory direction on local ballot language is limited.

Voters in Texas have commented on inadequacies of ballot language regarding appropriate transparency and clarity. There have been assertions that inadequate, confusing, and broad ballot language can be justified due to a lack of state uniformity and guidance.

Local governments typically counter arguments of foul play by enumerating the difficulties involved in ensuring the language of an ordinance is fair and balanced and provides equal deference to the different stakeholders invested in the initiative.

Charge 2 directs the Committee to assess the process used by home rule cities to adopt legislative initiatives and determine whether the process for drafting ballot language is sufficient to ensure the ideals of transparency and fairness are being met.

Analysis:

On December 2, 2015 and August 15, 2016, the Committee received testimony on Charge 2.

REPORT ON COMMITTEE INTERIM CHARGE 2

Local Ordinance Integrity

Recently, the question of sufficient and appropriate ballot language has been challenged at the Texas Supreme Court in multiple cases involving the City of Houston. Some residents of the City of Houston, including some who provided testimony to the Committee, consider the City's ballot language to be ambiguous and not informative enough, especially when dealing with fees. With the multiple cases brought to the City of Houston, some questioned how local officials have taken advantage of their duties.

When testifying, the Texas Municipal League described how home rule city ordinances are carefully constructed and worded so as not only be agreeable to the different parties involved, but to the requirements laid out in their charter, and any egregious acts by a local official should be considered as rogue negligence, not a failure in a city charter.

In the December hearing, the Committee requested the Texas Municipal League look into best practices of other states and deliver findings to the Committee. During the August hearing, the League testified, in part, on their findings and detailed that although in Colorado a nonpartisan group of state elected officials draft ballot language, court challenges are still brought up that call in to question the biasness of the language.

In reviewing this Charge, it has been important for the Committee to consider the benefits of added transparency and accountability and to keep sight of where it might be necessary to implement safeguards and where it might not.

The following policy recommendations address and echo the testimony the Committee received and highlight some of the resounding themes the different stakeholders presented.

Recommendations can be found in the Executive Summary.

INTERIM CHARGE 3

Review natural disaster preparedness planning and coordination in the wake of a growing range of threats. Evaluate whether existing processes maximize regional cooperation to rebuild housing and infrastructure, and allow for the timely dissemination of funds to units of local governments for reconstruction following a federal declaration. Develop recommendations, if necessary, to improve the efficiency of disaster recovery efforts, incorporating best practices identified from other states, as well as lessons-learned from past reconstruction efforts in Texas.

Background:

In the State of Texas, local jurisdictions respond to disasters using their own resources and develop plans that outlines the area's approach to emergency operations and provides general guidance for emergency management activities. When the toll of the disaster exceeds the resource capacity of the local jurisdictions, state and federal agencies can become involved.

At the federal level, there are two primary agencies that assist with disaster response and administer corresponding funding: the United States Federal Emergency Management Agency (FEMA) and the United States Department of Housing and Urban Development (HUD).

FEMA works with the Texas Division of Emergency Management (TDEM) to complete certain tasks immediately after a disaster strikes, including the following:

- Coordinate shelter and evacuation needs;
- Provide temporary housing;
- Check directly with affected individuals;
- Conduct damage assessments; and
- Provide funding assistance and reimbursements.

If the United States Congress decides a disaster warrants supplemental funding, they will appropriate additional funding in the form of a HUD grant, which HUD receives almost a year post event. This then triggers the ensuing process of funds dissemination.

HUD works with the General Land Office (GLO), Disaster Recovery to complete certain tasks 9 to 12 months after a disaster strikes, including the following:

- Assist in the reconstruction of homes;
- Prioritize planning and mitigate future risk.
- Environmental reviews; and
- Provide funding assistance, requiring no reimbursement.

REPORT ON COMMITTEE INTERIM CHARGE 3

Disaster Preparedness Planning and Coordination

As the Charge suggests, the volume of disasters Texas faces on a yearly basis has given the state insight on how to best prepare and respond to disasters by having highlighted deficiencies in three areas: infrastructure resilience, permanent housing solutions, and retention of best practices.

Throughout the years, the various parties involved have made note of the financial, administrative, and implementation difficulties in the recovery of certain disasters, including Hurricane Ike, Rita, and Dolly. The continuous difficulties experienced have emphasized, to a point, a lack of disaster preparedness and planning.

Charge 3 instructs the Committee to consider the state of disaster preparedness and recovery in Texas and how the processes can be improved.

Analysis:

On December 2, 2015 and February 3, 2016, the Committee received testimony on Charge 3.

During the hearings, the Committee heard testimony from TDEM and GLO, in addition to local government officials who are on the frontline of disaster response. A proposal made by these witnesses was to maintain current staffing levels at TDEM and GLO, and to consider an increase in staff funding. This coincides with requests made to increase total funding to state agencies to improve disaster mitigation and recovery. In the past, the state has experimented with vesting the administration of disaster recovery to different state agencies, and with the recent work done by TDEM and GLO, stakeholders advocated for ensuring institutional knowledge continue and that permanent funding be provided to have staff in place to better respond to disasters.

Additionally, these witnesses described the difficulties in adhering to federal government guidelines while simultaneously attending to the immediate and long-term demands of disaster response.

The Committee also received testimony from renown disaster recovery centers and national disaster recovery leaders. These experts made the point throughout the two hearings to emphasize the wealth of experience Texas has in handling disasters and identify ways Texas can continue to learn and improve from those experiences.

A major theme of the recommendations put forward by the witnesses was for the state to prioritize regional disaster planning before a disaster occurs. Widely identified as being the most crucial aspect to a successful and quick response to disasters, disaster planning and mitigation

REPORT ON COMMITTEE INTERIM CHARGE 3

Disaster Preparedness Planning and Coordination

entails ensuring local officials are familiar with their responsibilities in responding to disasters, including adhering to federal and state guidelines, ensuring housing plans are readily available for displaced residents, and ensuring effective and non-wasteful use of state and federal funds and other resources.

In the 81st Regular Legislative Session, SB 2292, authored by Senator Eddie Lucio, Jr., which ultimately was passed as an amendment on HB 2450, called for state agencies and stakeholders to come together to develop best practices with an emphasis on disaster planning and rapid disaster recovery. With this legislative decree and precedent in mind, some disaster experts' understanding of how best to plan and rebuild for a disaster has culminated into the rapid response demonstration project, commonly known as RAPIDO.

With the help of GLO, the RAPIDO demonstration program has been implemented in South Texas, and members of the Committee saw first-hand how RAPIDO-built homes are of admirable quality, designed around the preferences of the family, and maximize state and federal dollars. As opposed to the costly FEMA practice of supplying trailers to disaster-impacted areas, the RAPIDO model begins by building on the foundation of the damaged home a CORE unit, which is a humble home that provides displaced families the ability to move back into their neighborhoods within months. As a temporary-to-permanent solution, the CORE then is transformed and built-out completely, giving families a home to be proud of.

The RAPIDO model has been given wide acclaim for being more effective and cost-conscious than the current solutions put forward by FEMA, and is being considered in other states. A Texas solution, the RAPIDO model has given Texas a glimpse at how well it can tackle the issue of disaster by implementing best practices learned from past experiences.

The following policy recommendations address and echo the testimony the Committee received and highlight some of the resounding themes the different stakeholders presented.

Recommendations:

- Direct the Texas Division of Emergency Management and the General Land Office to do the following:
 - Emphasize disaster mitigation and preparedness in goals of each agency;
 - Enhance training outreach efforts to new emergency management coordinators;
 - Prioritize mitigation resources, financial assistance, and staffing to "hot-spot" regions of Texas, as identified by the Texas Division of Emergency Management;
 - Assist, to the extent possible, local political subdivisions with facilitating

REPORT ON COMMITTEE INTERIM CHARGE 3

Disaster Preparedness Planning and Coordination

- immediate disaster recovery federal and state government responsibilities, including accounting and damage assessments; and
 - Work with the legislature to codify best practices learned from recent disaster recoveries.
- The legislature should assess the staffing demands of the Texas Division of Emergency Management and the General Land Office.
 - The legislature should work with the Texas Division of Emergency Management to find the most effective way to implement a certification track for emergency management coordinators and personnel, online or otherwise.
 - The legislature should work with the General Land Office to have available model off-the-shelf housing plans that local jurisdictions can utilize immediately after a disaster.
 - The legislature should consider providing greater resources to communities in the aftermath of disasters and maximize the leveraging of Federal Emergency Management Agency reimbursements for up-front costs.
 - Review historical local government resource and technical assistance needs and recommend reforms that would decrease administrative burdens and reduce delays in administering disaster recovery funds, and urge the Texas congressional delegation to encourage federal counterparts to do the same.
 - The legislature should establish uniform guidelines in order to provide consistency and increase the potential for more participation in disaster response.
 - The legislature should develop reforms so that the state's reconstruction system runs parallel to federal requirements in order to maximize efficiency and effectiveness of rapid housing reconstruction.
 - The legislature should work with the Texas congressional delegation to encourage federal agencies to reform their disaster recovery requirements so as to alleviate accounting requirements.
 - In order to help victims of disaster, Texas should do the following:
 - Codify goals for disaster recovery in statute, including a timeframe for replacement into permanent housing for those displaced by disasters;

REPORT ON COMMITTEE INTERIM CHARGE 3

Disaster Preparedness Planning and Coordination

- Prioritize relationships with community groups and private industry to assist with disaster response preparation;
 - Encourage local jurisdictions to plan before a disaster strikes to encourage local-based solutions;
 - Work with nationally renowned Texas A&M University's mitigation center so as to assist local community develop pre-disaster planning;
 - Codify in statute the rapid response demonstration project that maximizes temporary-to-permanent solutions in order to minimize inadequacies and funding waste currently found in the Federal Emergency Management Agency trailer procurement program; and
 - Encourage local jurisdictions to plan ahead before disasters strike and develop rebuilding plans in order to have efficient, expedient, and sustaining recovery solutions.
-
- The legislature should develop guidelines and templates for contract procurement to minimize bureaucratic red-tape and expedite reconstruction.

 - The legislature should work with governor's office in order to have a permanent state agency to oversee all disaster reconstruction efforts in the state to ensure timely decisions, consistency, and effectiveness in all parts of reconstruction.

 - The legislature should make SB 1376, out of the 84th Regular Legislative Session, the standard for disaster reconstruction in the State of Texas.

INTERIM CHARGE 4

Study the means by which the Texas Legislature reviews the creation of municipal management districts (MMDs) by special law to determine if different processes should be used to evaluate new MMDs created within populated or developed areas from those created over undeveloped areas. Identify ways to better assess how the services and improvements of a proposed MMD within populated or developed areas will supplement and enhance those provided by other local governments, as well as if the territory of the proposed MMD encompasses or overlaps area that is already within other assessment or taxing entities. Make recommendations, if necessary, to improve the notice provided to individuals and businesses within populated or developed areas proposed for inclusion in an MMD.

Background:

Municipal Management Districts (MMDs) in Texas play a critical role in alleviating the residential and commercial needs of communities. Unlike home rule cities, MMDs are a quasi-government structure usually passed by specific state law that allow a developer to issue bonds.

As testimony heard by the Committee indicated, since their introduction in the Houston area in the late 1980s, MMDs have been used as a way for commercial property owners to collaborate with other owners and expand their business opportunities, as well as assist cities and counties provide some services to its residents. MMDs are also authorized to develop on raw land and for neighborhood revitalization needs, including parks, lighting, and beautification. Ultimately, most MMDs are defined by the needs of the involved stakeholders.

As a quasi-government entity, MMDs can be granted, as well as be subject to, certain expansion authority. The issues associated with this authority is similar to those outlined in Charge 1 relating to annexation. If home rule cities choose to annex an MMD, questions arise as to the appropriate notice requirements the city should provide so that impacted residents and stakeholders are aware of potential actions involving their private property.

State statutes require certain notices be given to any property owners within a proposed MMD that can be subject to district taxes. Because a designated MMD parcel of land may encompass long-standing neighborhoods, these notices are widely viewed as essential so residents, property owners, and stakeholders can be cognizant of actions that may impact their land and finances.

Charge 4 instructs the Committee to study how the Texas Legislature reviews the creation of MMDs developed over populated and raw land, how best to assess the services provided by MMDs, and how notice requirements for MMD actions can be improved.

REPORT ON COMMITTEE INTERIM CHARGE 4

Municipal Management Districts

Analysis:

On August 15, 2016, the Committee received invited and public testimony on Charge 4.

Prominent Texas MMD stakeholders were present as invited testimony. These witnesses remarked how private property rights are central to the planning, implementation, and success of MMDs stating, "[Property owners] are on board or it's not happening."

Invited and public testimony alluded to private property rights as an issue glaring to MMDs as the residents, property owners, and stakeholders must live in the community and pay bond assessments. Because of the fundamental issues involved, the role of notices was notably mentioned during the hearing.

The testimony received identified notices as an absolute essential source of information when dealing with MMDs, especially when there are residents living on the land. Therefore, the importance of notices also applies when an MMD is proposed and takes in additional land. Additionally, best possible notice improvements were identified as being in the interest of the private property owners involved.

Regarding other aspects of the Charge, when the Committee asked the MMD stakeholders to provide insight on the best practices of other states, they noted that, to date, Texas practices are generally considered best practices. This legacy makes it incumbent on the Committee and legislature to ensure the prioritization of transparency and state guidance, especially as it pertains to notices for MMDs on developed land.

The following policy recommendations were provided to the Committee by MMD stakeholders, practitioners, and developers.

Recommendations:

- The Committee should adopt policies that specifically confirm that all required notices relating to the creation of management districts have occurred prior to considering a creation or legislative annexation bill.
- When proposing the creation of a new management district or annexation of land into an existing management district, the Committee should adopt procedures to confirm that, if there are special purpose districts within the boundaries of the proposed district or the territory to be annexed, that written notice has been provided to the registered agent (as reflected in Texas Commission on Environmental Quality records) of any existing special

REPORT ON COMMITTEE INTERIM CHARGE 4

Municipal Management Districts

purpose district.

- The Committee should ensure that the same notices given to land owners being included in a new management district are given when a land owner's property has been included in a proposed legislative annexation into an existing management district.
- When proposing the creation of a new management district, the Committee should ensure that, in addition to the initial notice required by Section 313.006 of the Government Code, a second written notice is given after a bill has been filed that includes the bill number(s) corresponding to the proposed district. In this way, the affected property owner(s) can more easily track the legislation and attend committee hearings or take any actions needed in regard to the legislation during the legislative process.

INTERIM CHARGE 5

Review existing statute 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.

Background:

The United States Department of Housing and Urban Development (HUD) administers two types of housing tax credits, competitive and non-competitive, to states with the goal of developing low-income rental housing where needed. The federal housing tax credit guidelines are generally broad, leaving discretion on how exactly to disperse the credits to individual state housing agencies. The Texas Department of Housing and Community Affairs (TDHCA) is responsible for administering the tax credits pursuant to a Qualified Allocation Plan (QAP) that defines affordable housing development eligibility for housing tax credits.

In 2008, the Inclusive Communities Project, Inc. (ICP), brought forward litigation against TDHCA for intentional racial discrimination. ICP contended that TDHCA disproportionately awarded tax credits to areas with high concentrations of minority populations, creating a certain amount of racial segregation. In 2015, in *Inclusive Communities Project, Inc. vs. TDHCA, et al.*, the United States Supreme Court ruled that TDHCA had indeed produced a disparate impact with their administering of housing tax credits and thereby violated the Fair Housing Act of 1968. A critical component of the Fair Housing Act of 1968 is the belief that households should have choices on where to live.

The Supreme Court remanded the case to the trial federal district court in order to make a *prima facie* case of disparate impact. After Charge 5 was considered in the Committee hearing, the federal district court judge ruled that ICP did not make its *prima facie* case.

TDCHA has since made updates to their QAP and part of this response includes prioritizing low-income rental developments located in high opportunity areas, defined, in part, by having public schools with strong scores.

Charge 5 directs the Committee to study the state statutes and rules that govern TDHCA as they relate to the Supreme Court case.

Analysis:

On August 15, 2016, the Committee received invited and public testimony on Charge 5.

REPORT ON COMMITTEE INTERIM CHARGE 5

Supreme Court ICP Ruling

The Committee received testimony from TDHCA representatives, developers, and other stakeholders. A TDHCA representative remarked on how neither the Supreme Court nor district court have issued any order that invalidates any TDHCA statute or rule.

A common area of concern for stakeholders was how letters of support, which can bolster a housing tax credit application scoring, can be used to steer low-income rental developments away from high opportunity areas. Some developers wishing to develop in high opportunity areas can face difficulties in obtaining local or state support letters if the area decides it would prefer to not have low-income developments and face a possible reduction in property values.

Another concern outlined by developers and stakeholders related to how TDHCA's QAP alterations after the court case were dismissive of the differences that exist between the many regions in Texas, as well as the differences in developments themselves.

Additionally, it was suggested that statutory language regarding TDHCA should explicitly include the goal to further fair housing in the state.

The following policy recommendations address and echo the testimony the Committee received and highlight some of the resounding themes the different stakeholders presented.

Recommendations:

- To continue the strides the State of Texas has made in ensuring fair federal housing tax credit allocation scorings, the legislature should consider increasing the impact of local input as the local community is impacted daily by the decisions made by the Texas Department of Housing and Community Affairs.
- To offer clarity in the State of Texas' goal of continuing federal low-income housing, the legislature should amend the enabling statute for the Texas Department of Housing and Community Affairs to include in the Department's purpose and duties: "[. .]further Fair Housing and provide inclusive housing opportunities[. .]."
- Require the Texas Department of Housing and Community Affairs to report to the legislature on a regular basis as to how it implements fair housing through a set of performance measures, and outline any corrective actions if the Department is noncompliant.

REPORT ON COMMITTEE INTERIM CHARGE 5

Supreme Court ICP Ruling

- The legislature should work with the Texas Department of Housing and Community Affairs to ensure the Qualified Allocation Plan is considerate of the uniqueness and diversity of the different regions of the state and of the different types of developments, and does not solely respond to the circumstances of the five county area covered in the initial Inclusive Communities Project, Inc. lawsuit.

INTERIM CHARGE 6

Examine ways to improve government accountability in elections regarding the issuance of public debt. Include a review of the information that is currently provided to individuals in the voting booth and provide statutory recommendations, if necessary, to improve transparency.

Background:

As previously mentioned, Texas is in a state of tremendous growth in cities and counties. This growth provides an added responsibility for local governments as they must continuously find ways to increase their capacity to offer services. One avenue local governments, at times, must rely on to mitigate this burden and attend to infrastructure needs, among other items, is to pass bonds.

As bond proposal language on ballots are predominantly left to the discretion of the local political subdivision, this Charge offers similar themes as those discussed in Charge 2, relating to local ordinance integrity. With bonds, the need for government accountability and ballot transparency is elevated for some who contend that while state debt is low, local debt is disproportionately high across the state. For others who might believe the State of Texas does not offer local governments with enough financial assistance and that bonds are a needed tool to help shoulder the responsibility of population growth, current government accountability on bond ballot language has sufficient safeguards in place to allow for an informed citizenry.

Presently, when a local political subdivision intends on issuing a general obligation bond, the bond must first be approved by the voters in an election. As laid out in Section 1251.002 of the Government Code, a submitted bond proposition must state, at minimum, the following:

- The purpose for which the bonds are to be issued;
- The amount of the bonds;
- The rate of interest;
- The imposition of taxes sufficient to pay the annual interest on the bonds and to provide a sinking fund to redeem the bonds at maturity; and
- The maturity date of the bonds or that the bonds may be issued to mature serially over a specified number of years not to exceed 40.

HB 1378 of the 84th Regular Legislative Session, in part, tackles this dynamic by requiring local political subdivisions to annually provide to the Office of the Comptroller certain debt obligation information for publication on the Comptroller's website. As discussed during the hearing by numerous stakeholders, this change has offered greater insight for residents interested in learning about the impact of a newly proposed bond initiative.

REPORT ON COMMITTEE INTERIM CHARGE 6

Debt Transparency in the Voting Booth

Charge 6 directs the Committee to study the similar dynamics of Charge 2, but with a focus on government accountability in providing sufficient information to voters when deciding public debt ballot language.

Analysis:

On December 2, 2015 and August 15, 2016, the Committee received testimony on Charge 6.

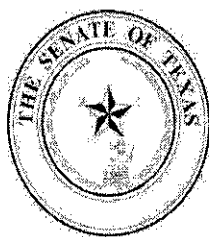
During the hearings, the Committee heard from concerned Texans who argued that because of the generational effects of bonds, bond ballot language should be clear and contain basic information regarding the potential effects of the bond if it were to pass. Witnesses argued that a significant percentage of voters may not be proactive in seeking the details of bond proposals before entering the voting booth, and therefore, the local government has a responsibility to maintain a certain level of transparency in the language of the ballot bond proposal.

The Texas Municipal League and county stakeholders shared a similar concern regarding the essential nature of transparency. With current statutory safeguards in place, including HB 1378, these stakeholders generally felt a voter already has the resources needed to become educated on a bond proposal. They also identified reasons, including voter fatigue and diminished voter participation, to be concerned with adding cumbersome ballot language requirements.

When there are competing interests that go to the core of the balance between ensuring local governments meet the demands of growth and providing more information on ballots for proposed fiscal obligations, it makes finding an agreeable solution in identifying how much information is adequate for voters on bond balloting challenging.

The following policy recommendations address and echo the testimony the Committee received and highlight some of the resounding themes the different stakeholders presented.

Recommendations can be found in the Executive Summary.



THE SENATE OF TEXAS

Dear Chairman Eddie Lucio, Jr.,

Thank you for the privilege of serving on the Senate Committee on Intergovernmental Relations. It has been a true honor to discuss, research, and debate the six interim charges put before our committee. We would also like to recognize the incredible work of your staff. They did a thoughtful job drafting an interim report and mapping out recommendations for the 85th legislature.

We are submitting this letter as a point of clarification not an objection of your findings. It is important that cities, counties, school boards, and other units of local government have the right of self-determination and self-rule. Local control is more than a slogan. It is the ability of democratically elected officials to carry out the work of their constituents. It is important the state limit its interference in the hard and passionate effort of our local governments. Texas is a large state with a diverse population. Cities, counties, and others are uniquely qualified to handle the needs of their constituencies whether it is setting tax policy or passing ordinances.

Thank you again for drafting an interim report that moves our state forward. The efforts of this committee will directly impact 254 counties, 1,216 incorporated cities, and 27 million people who call this great state home. We are grateful for the opportunity to contribute to this diligent report.

Sincerely,

A handwritten signature in black ink, appearing to read "Sylvia R. Garcia".

Senator Sylvia Garcia
The 6th District of Texas

A handwritten signature in black ink, appearing to read "José Menéndez".

Senator José Menéndez
The 26th District of Texas



ROBERT L. NICHOLS
STATE SENATOR
November 16, 2016

The Honorable Eddie Lucio, Jr.
P.O. Box 12068
Austin, Texas 78711

Senator Lucio,

Thank you for your leadership of the Senate Committee on Intergovernmental Relations (IGR) throughout the 84th Regular Session and Interim. While I support the preponderance of the Committee's recommendations, I am writing to express my reservations on two recommendations.

The recommendation to make SB 1376 (84R) the standard for disaster reconstruction in the State of Texas. Specifically, I am concerned provisions of the bill may hamper the ability of local communities to respond efficiently and in an expeditious manner in the wake of a disaster. I recognize the intent of the committee's work on this issue is to secure a coordinated effort that builds upon previous lessons learned, which is why I previously co-authored and supported SB 1376. Since then, I have had an opportunity to meet with many local elected officials who believe decisions regarding disaster recovery are best made as locally as possible, and absent as much state or federal interference as possible. I look forward to working with you to ensure we maintain a balance of local control in disaster recovery decision-making.

I am also concerned about recommendations regarding notification requirements for municipal management district legislation. I share your belief that the Legislature should encourage as much transparency as possible, especially when considering creating a new local governmental entity, or adding territory to an existing district. From a practical standpoint, existing statutes in Government Code 313.006 require real property owner to receive notice of intent to file legislation. If the Committee were to adopt a second or third mandatory notice, this could have the unintended consequence of stymying economic development. I am confident we can meet our shared objectives by working together in the 85th Legislative Session.

Please add my name and this letter to the Committee Interim Report. Again, thank you for your leadership; it is an honor to serve with you in the Texas Senate.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Nichols".

Robert L. Nichols
State Senator, District 3

RLN/al/jh

