

BILL ANALYSIS

Senate Research Center

S.B. 2858
By: Creighton
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2858 reinforces statewide consistency in the enforcement of laws governed by the Election Code and Penal Code. Some local governments have taken actions that openly defy state law, resulting in the unequal application of justice, confusion for voters and law enforcement, and a fragmented patchwork of conflicting policies across the state. Preempting local authority in these areas will help restore uniformity and legal clarity.

In various cases, local governments have altered election procedures in ways not authorized under state law, leading to discrepancies in voting access and administration. Others have failed to enforce provisions of the Penal Code, such as the statewide ban on unauthorized public camping, allowing violations to continue despite the law. By explicitly preempting local ordinances related to these areas and implementing a strict enforcement mechanism, S.B. 2858 ensures that Texas law is uniformly applied and enforced across Texas.

In addition, these bills strengthen enforcement for all preempted codes, including those originally covered in H.B. 2127, by authorizing the attorney general to take action against local governments that violate any of the listed statutes, and imposing meaningful penalties to deter noncompliance.

As proposed, S.B. 2858 amends current law relating to state preemption of certain municipal and county regulation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the legislature finds that:

- (1) the state has historically been the exclusive regulator of many aspects of commerce, trade, elections, and criminal justice in this state;
- (2) in recent years, several local jurisdictions have sought to establish their own regulations of commerce, trade, elections, and criminal justice that are different than the state's regulations; and
- (3) such local regulations have led to a patchwork of regulations that apply inconsistently across this state.

SECTION 2. Provides that the purpose of this Act is to provide additional statewide consistency by returning sovereign regulatory powers to the state where those powers belong in accordance with Section 5 (Cities of More than 5,000 Population: Adoption or Amendment of Charters; Taxes; Debt Restrictions), Article XI (Municipal Corporations), Texas Constitution.

SECTION 3. Provides that this Act:

(1) is prohibited from being construed to prohibit a municipality or county from building or maintaining a road, imposing a tax, or carrying out any authority expressly authorized by statute;

(2) is prohibited from being construed to prohibit a home-rule municipality from providing the same services and imposing the same regulations that a general-law municipality is authorized to provide or impose;

(3) does not affect the authority of a municipality or county to conduct a public awareness campaign; and

(4) does not affect the authority of a municipality or county to repeal or amend an existing ordinance, order, or rule that violates the provisions of this Act for the limited purpose of bringing that ordinance, order, or rule in compliance with this Act.

SECTION 4. Amends Chapter 1, Election Code, by adding Section 1.023, as follows:

Sec. 1.023. PREEMPTION. Prohibits a municipality or county, unless expressly authorized by another statute, from adopting, enforcing, or maintaining an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of the Election Code. Provides that an ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

SECTION 5. Amends Chapter 1, Penal Code, by adding Section 1.11, as follows:

Sec. 1.11. PREEMPTION. Prohibits a municipality or county, unless expressly authorized by another statute, from adopting, enforcing, or maintaining an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of the Penal Code. Provides that an ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

SECTION 6. Amends Section 102A.002, Civil Practice and Remedies Code, to provide that any person who has sustained an injury in fact, actual or threatened, from a municipal or county ordinance, order, or rule adopted or enforced by a municipality or county in violation of certain provisions, including Section 1.023, Elections Code, or Section 1.11, Penal Code, or a trade association representing the person has standing to bring and is authorized to bring an action against the municipality or county and to make nonsubstantive changes.

SECTION 7. Amends Chapter 102A, Civil Practice and Remedies Code, by adding Sections 102A.008 through 102A.013, as follows:

Sec. 102A.008. DEFINITIONS. Defines "local government" and "no-new-revenue tax rate."

Sec. 102A.009. ATTORNEY GENERAL INVESTIGATION AND ACTION. (a) Authorizes the attorney general to investigate an alleged violation of Chapter 102A (Municipal and County Liability for Certain Regulation) by a local government.

(b) Authorizes the attorney general, if after conducting an investigation under Subsection (a), the attorney general determines that a local government adopted, enforced, or maintained an ordinance, order, or rule in violation of the provisions listed in Section 102A.002 (Liability for Certain Regulation), to bring an action in the name of the state against the local government for the violation.

Sec. 102A.010. ENFORCEMENT ACTIONS DURING PENDENCY OF ACTION. Provides that, during the pendency of an action brought under Section 102A.009, with respect to a local government defending the action:

(1) the Comptroller of Public Accounts of the State of Texas (comptroller) is required to withhold payment of any money due to the local government under

Section 321.502 (Distribution of Trust Funds) or 323.502 (Distribution of Trust Funds), Tax Code, as applicable;

(2) the local government is prohibited from adopting an ad valorem tax rate that exceeds the local government's no-new-revenue tax rate; and

(3) the local government is prohibited from receiving state grant funds and any pending application for such funds is required to be denied.

Sec. 102A.011. BURDEN OF PROOF; INITIAL HEARING. (a) Provides that a local government defending an action brought under Section 102A.009 has the burden of proof to establish by a preponderance of the evidence that the local government complied with the law the alleged violation of which is the subject of the action.

(b) Requires the court of original jurisdiction to set an action brought under Section 102A.009 for an initial hearing not later than the 30th day after the date the local government defending the action was served with process for the action.

Sec. 102A.012. RESOLUTION OF ACTION IN FAVOR OF ATTORNEY GENERAL. (a) Provides that, if the attorney general prevails in an action brought under Section 102A.009:

(1) the local government defending the action, during the five state fiscal years following the year in which the judgment becomes final, is prohibited from adopting an ad valorem tax rate that exceeds the local government's no-new-revenue tax rate or receiving state grant funds; and

(2) the court issuing the final judgment resolving the action is required to provide in the judgment that the state is entitled to recover from the local government defending the action a penalty equal to the balance of the suspense account maintained for the local government under Section 321.501 (Trust Account) or 323.501 (Trust Account), Tax Code, as applicable, that exists on the date the judgment is signed.

(b) Requires the comptroller, on receipt of a copy of the final judgment in an action brought under Section 102A.009 that includes a provision described by Subsection (a)(2), to deposit the balance of the suspense account maintained for the local government defending the action under Section 321.501 or 323.501, Tax Code, as applicable, as of the date the judgment is signed to the credit of the general revenue fund.

Sec. 102A.013. RESOLUTION OF ACTION IN FAVOR OF LOCAL GOVERNMENT. Requires the comptroller, if a local government prevails in an action brought under Section 102A.009, notwithstanding any other law, to immediately send to the local government the balance of the suspense account maintained for the local government under Section 321.501 or 323.501, Tax Code, as applicable, as of the date the judgment resolving the action is signed.

SECTION 8. Makes application of Section 102A.002, Civil Practice and Remedies Code, as amended by this Act, and Section 102A.009, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 9. Severability clause.

SECTION 10. Provides that the Supreme Court of Texas has exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act and is authorized to issue injunctive or declaratory relief in connection with the challenge.

SECTION 11. Effective date: upon passage or September 1, 2025.