

Tuesday, December 26, 2017

In direct violation of the Oregon Constitution, Lee Beyer's Senate Bill 1573 granted the Legislature the right to amend city charters. Passed and adopted in 2016 the bill also deprives hundreds of thousands of Oregonians their constitutional right to vote on annexations.

The Primary Issue: citizen authority over city charters

The Oregon Constitution is very clear, only Oregon citizens have authority over city charters;

The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. (emphasis added). Article XI, Section 2 of The Oregon Constitution.

SB 1573 amended our city charters to deny voter annexation wherever that right is stated in a city charter. Annexations impact all aspects of community living and often impose costly new mandates to fund additional services for the new territory. Now the appellate court must rule whether the Oregon Constitution means what it says or if the legislature can overthrow city charters at will.

SB 1573 effectively means that the Legislature can pre-empt, amend, repeal or revoke any city charter or provision for any reason. (The history and details on SB 1573 are on the Oregon Communities For A Voice In Annexations website (www.ocva.org)).

This is why The League of Oregon Cities and the cities of Philomath and Corvallis are suing Governor Brown and the Legislature for bulldozing "home rule." Other groups taking a keen interest in the historic court case; Associated Oregon Counties; Oregon Communities for a Voice in Annexation; The League of Oregon Women Voters. (Benton County Circuit Court Case 16CV17878; Court of Appeals No. A164595)

How SB 1573 sows confusion; "delegation of annexation authority"; "forcing" annexation on cities; "unfunded mandate"; "unequal treatment, unequal imposition of burden"; "gut and stuff"; "emergency clause"

1. Under SB 1573, the Legislature delegates annexation authority to landowners, not to cities, to initiate the most common annexations.

The bill REQUIRES cities to accede to a developer's demand for annexation provided the territory meets some relevant conditions in the city's comprehensive plan without regard to its costs or social and environmental impacts on the community. SB 1573 requires cities to annex territory in certain ways different from prior land use law.

2. The SB 1573 directive to cities amounts to an UNFUNDED MANDATE which appears to conflict with Oregon's Unfunded Mandate Law

Section 15. Funding of programs imposed upon local governments; exceptions. (1) Except as provided in subsection (7) of this section, when the Legislative Assembly or any state agency requires any local government to establish a new program or provide an increased level of service for an existing program, the State of Oregon shall appropriate and allocate to the local government moneys sufficient to pay the ongoing, usual and reasonable costs of performing the mandated service or activity. (Article XI, Section 15 of the Oregon Constitution).

The popularity of voter annexation charter changes has always centered on a wide variety of development impacts on communities and who will pay for new infrastructure to accommodate growth. SB-1573 prohibits citizens from asking those questions and mandates that citizens pay those costs without having a voice in the process.

Oregon Statewide Planning Goal 1 leaves no doubt about citizen involvement: The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process. OAR 660-015-0000(1)

<http://www.oregon.gov/LCD/docs/goals/goal1.pdf>

SB 1573 requires cities to bypass Goal 1 and to immediately adopt annexations into City Comprehensive Plans.

3. SB 1573 imposes requirements on cities with "Voter Annexation" in their charters that it does not impose on cities without voter annexation, this appears to constitute unequal treatment and unequal imposition of burden, both prohibited by the Oregon Constitution.

4. The Oregon Health Authority authorizes annexations deemed necessary to correct failing water and sewer systems. These annexations are mandated by state law.

Recognizing this mandate many city charter amendments authorize public votes on all annexations except those “mandated by state law.”

In its brief the State claims that SB 1573 is a state law mandating most annexations and displacing voting rights. However, OCVA chairman, Jeff Lamb, affirmed via affidavit to the court that the intent and meaning of the “mandated by state law” exemption is to allow “health hazard annexations” under ORS 222.850

Water and sewer systems often fail because communities grow faster than their capacity to fund and maintain systems this is known as “carrying capacity.” Politicians should include “carrying capacity” and all public health and safety goals in all community development plans.

How “gut and stuff” thwarted citizen involvement and created SB 1573
Former Senator Chris Edwards (D., Eugene), sponsored the developer’s language for SB 1573 and publicly stated that he would not have sponsored SB 1573 if it applied in his district. Apparently Edwards didn’t mind denying some 700,000 Oregonians in 34 cities the long-held voting right they earned by local initiatives adopted under “home rule” in their communities.

But Sen. Edwards’ legislation didn’t get out of committee so Sen. Lee Beyer (D., Springfield) sanctioned an 11th hour “gut and stuff” of a different bill, HB 2938, after the House had unanimously approved it (59:1). OCVA wrote HB 2938 to cease the practice of forcing homeowners outside city limits to agree to future annexation in exchange for building permits (“hostage” annexations).

When HB 2938 went to the Senate it went the Senate Business and Transportation committee where Sen. Beyer gutted and stuffed it with the text that became SB 1573. Although repeatedly disavowing SB 1573 as “his” bill Sen. Beyer sponsored and carried SB 1573 during 2016 session. (His butchered HB 2938 died in 2015.)

After the initial committee hearing on SB 1573 scant public notice, sometimes only 1 hour, was given for subsequent hearings. Proponents of the bill apparently knew of these hearings beforehand but the public did not.

The bill included a totally unnecessary “emergency” clause citing “public safety” and other issues. “Emergency” clauses deny citizens ample time to use citizen referenda to amend or reverse bills before they are signed into law.

In 2016, OCVA joined other groups promoting an initiative to limit the flagrant abuse of emergency clauses. That campaign came close to attracting enough signatures to qualify the initiative. It is likely more people will recognize how frivolous emergency clauses in bills deny citizen referenda rights affirmed by the Oregon Constitution.

No evidence links voting on annexations to causing public safety or health issues and no evidence connects annexation voting to the affordable housing crisis. But late in the 2016 session SB 1573 was included in a sham 4-bill “deal” claimed to “cure” the affordable housing crisis. Governor Brown endorsed the travesty by signing the bill into law justifying it with the same unproven argument that it would increase “affordable housing” construction. A year later there is still no evidence of a link.

For 40 years building interests have consistently challenged citizen involvement in community development especially annexation voting and they have repeatedly lost in the courts and the legislature. With Beyer’s SB 1573 they may have succeeded but to do so they trumped a century of Oregon constitutional authority granting citizens local control of city charters. That trump is now in court.

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