



HB 1038

Testimony Before the Texas House Committee on Land and Resource Management

by Shelby Sterling, Policy Analyst

Mr. Chairman and Members of the Committee:

My name is Shelby Sterling, and I am the policy analyst for the Think Local Liberty project at the Texas Public Policy Foundation. Thank you for the opportunity to address the committee today. I am here to testify in support of [House Bill 1038](#).

The 85th Texas Legislature's successful passage of Senate Bill 6 during the first called special session launched the most significant annexation reform seen in the Lone Star State for many years. Among other things, the [Texas Annexation Right to Vote Act](#) (TARVA) prohibits certain cities from annexing property owners who reside in an extraterritorial jurisdiction without their consent. In place of the practice, lawmakers created a new system that requires affected cities to hold an election on the question of annexation.

While TARVA changed the system for the better, the new law falls short in one key area: It does not protect all Texans from being forcibly annexed.

For the most part, only cities located in counties with populations greater than 500,000 or more are required to ask before annexing under TARVA. Everyone else is still subject to the old rules. However, TARVA does include the prospect of relief for property owners residing in unaffected areas, i.e., an opt-in election provision.

The law outlines a process by which a Tier 1 county may become a Tier 2 county, and thereby allows its residents to come under the law's protections. First, at least 10 percent of registered voters in the county must sign a petition requesting an election on the question of becoming a Tier 2 county and submit that material to the county commissioners court. Second, a majority of registered voters must approve becoming a Tier 2 county at a publicly held election.

This opt-in election process has proved to be quite popular. According to [StopForcedAnnexation.com](#), less than a year after the new law went into effect, six counties have already held a successful election to change from a Tier 1 county to a Tier 2 county. Those counties include:

- [Parker County](#) voted 81.1 percent to 18.9 percent in favor of change;
- [Wise County](#) voted 77 percent to 23 percent in favor of change;
- [Johnson County](#) voted 77.5 percent to 22.5 percent in favor of change;
- [Freestone County](#) voted 79.3 percent to 20.7 percent in favor of change;
- [Palo Pinto County](#) voted 75.5 percent to 24.5 percent in favor of change;
- [Atascosa County](#) voted 64.7 percent to 35.3 percent in favor of change.

Further still, another three counties are expected to hold elections in May 2019. Those include Ellis, Montague, and Reeves counties.

Clearly, the opt-in election process is being utilized, which makes it all the more important that lawmakers clarify and strengthen the system. As proposed, HB 1038 provides a more detailed breakdown of the opt-in election process so that each step is described.

As beneficial as further clarification of the process may be, that is not to say that the system could not also be improved. The Foundation recommends that the bill author consider making the following changes.

First, we recommend that the petition threshold of 10 percent be reduced to ease the burden on petitioners. This would be of particular assistance to Texans living in rural counties with smaller population sizes, who have greater difficulty reaching the required number of signatures plus a certain overage to act as a buffer. A threshold of 7 percent or less should be considered.

Secondly, the system could be strengthened in such a way so as to better respect the will of voters. Under current law, if a majority of voters reject a municipality's proposed annexation at the ballot box, those same residents could be propositioned on the same question as soon as the "first anniversary of the date [that the municipality adopted] the resolution." A longer cooling off period is warranted to give both parties more time to absorb the results. To achieve this, we recommend adding a provision that requires a "cooling off" period of at least 5 years from a failed annexation election so that the city cannot repeatedly ask the same question.

Together, these reforms could improve the opt-in election process and ultimately reinforce the importance of a fundamental principle: the consent of the governed. For these reasons, we ask the author to consider our amendments favorably.

Thank you for your time. I look forward to answering any questions that you may have. ★

ABOUT THE AUTHOR



Shelby Sterling, J.D., is a policy analyst for the Think Local Liberty project at Texas Public Policy Foundation. She was previously an intern in the Foundation's Center for the American Future.

Sterling has a J.D. from Texas A&M University School of Law in Fort Worth. She participated in the law school's residency externship program and graduated with a concentration in public policy. Sterling received her B.A. in Letters from the University of Oklahoma, a combination study of philosophy, history, and literature on the U.S. Constitution and the Founding Fathers.

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