

BELL NUNNALLY PARTNER ALLISON ELKO AUTHORS TEXAS LAWYER ARTICLE “CITIES FIGHT TO KEEP ‘ETJ’: A LOOK AT THE LITIGATION OVER SENATE BILL 2038”

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Bell Nunnally Partner Allison L. Elko, with research assistance from Associate Matthew DeWitte, authored the *Texas Lawyer* article “Cities Fight to Keep ‘ETJ’: A Look at the Litigation Over Senate Bill 2038.” The piece explores the impact of Texas’ recently enacted bill SB 2038 – allowing landowners on the outskirts of major cities to petition to be removed from a municipality’s EJT (extraterritorial jurisdiction), often with the aim of speeding up development by freeing pending projects from municipal oversight and regulation. Elko looks at the law’s rollout, including growing disputes along gateway tracts and key boundaries where landowners and developers are increasingly facing a fight with municipalities.

SB 2038 is subject to litigation from numerous Texas cities, challenging its constitutionality based on a possible conflict with existing Texas Local Government code stating that a municipality’s ETJ cannot be reduced without the written consent of its governing body by ordinance or resolution. Elko writes, “While the court considers the declaratory judgment action, municipalities are rejecting petitions from residents and landowners on the basis of Section 42.023 when the municipalities have an interest in retaining the area at issue in their ETJ, and municipalities are granting petitions for areas that the municipalities do not consider vital to the municipality’s master plan or that otherwise cannot be serviced by the municipality without significant tax increases.”

Elko concludes by cautioning, “Prior to a ruling on the constitutionality of SB 2038, it is recommended that all resident and landowner petitions include a request in the alternative under Section 42.023 for a resolution or ordinance evidencing the municipality’s written consent to release of the area from the municipality’s ETJ pursuant to Section 42.023. For landowners or developers whose petitions are denied during pendency of the litigation, a mandamus action overriding the denial and affirming the self-operative nature of the statute may be the best avenue of relief.”

To read the full article, please click [here](#).

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