1-1   By: Creighton   S.B. No. 2858
1-2   (In the Senate - Filed March 14, 2025; April 7, 2025, read
1-3   first time and referred to Committee on Business & Commerce;
1-4   April 28, 2025, reported adversely, with favorable Committee
1-5   Substitute by the following vote: Yeas 6, Nays 5; April 28, 2025,
1-6   sent to printer.)

1-7   COMMITTEE VOTE

1-8		Yea	Nay	Absent	PNV
1-9	Schwertner	X			
1-10	King	X			
1-11	Blanco		X		
1-12	Campbell	X			
1-13	Creighton	X			
1-14	Johnson		X		
1-15	Kolkhorst	X			
1-16	Menéndez		X		
1-17	Middleton	X			
1-18	Nichols		X		
1-19	Zaffirini		X		

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 2858   By: Creighton

1-21   A BILL TO BE ENTITLED
1-22   AN ACT

1-23 relating to state preemption of certain municipal and county
1-24 regulation.
1-25   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-26   SECTION 1. The legislature finds that:
1-27   (1) the state has historically been the exclusive
1-28 regulator of many aspects of commerce, trade, elections, and
1-29 criminal justice in this state;
1-30   (2) in recent years, several local jurisdictions have
1-31 sought to establish their own regulations of commerce, trade,
1-32 elections, and criminal justice that are different than the state's
1-33 regulations; and
1-34   (3) the local regulations have led to a patchwork of
1-35 regulations that apply inconsistently across this state.
1-36   SECTION 2. The purpose of this Act is to provide additional
1-37 statewide consistency by returning sovereign regulatory authority
1-38 powers to the state where those powers belong in accordance with the
1-39 Texas Constitution, including Section 5, Article XI, of that
1-40 constitution.
1-41   SECTION 3. This Act:
1-42   (1) may not be construed to prohibit a municipality or
1-43 county from building or maintaining a road, imposing a tax, or
1-44 carrying out any authority expressly authorized by statute;
1-45   (2) may not be construed to prohibit a home-rule
1-46 municipality from providing the same services and imposing the same
1-47 regulations that a general-law municipality is authorized to
1-48 provide or impose;
1-49   (3) does not affect the authority of a municipality or
1-50 county to conduct a public awareness campaign; and
1-51   (4) does not affect the authority of a municipality or
1-52 county to repeal or amend an existing ordinance, order, or rule that
1-53 violates the provisions of this Act for the limited purpose of
1-54 bringing that ordinance, order, or rule in compliance with this
1-55 Act.
1-56   SECTION 4. Chapter 102A, Civil Practice and Remedies Code,
1-57 is amended by adding Subchapter A, and a heading is added to that
1-58 subchapter to read as follows:
1-59   SUBCHAPTER A. PRIVATE ACTION
1-60   SECTION 5. Sections   102A.001,   102A.002,   102A.003,

2-1   102A.004, 102A.005, and 102A.006, Civil Practice and Remedies Code,
2-2   are transferred to Subchapter A, Chapter 102A, Civil Practice and
2-3   Remedies Code, as added by this Act, and amended to read as follows:
2-4   Sec. 102A.001. DEFINITION. In this subchapter [chapter],
2-5   "person" means an individual, corporation, business trust, estate,
2-6   trust, partnership, limited liability company, association, joint
2-7   venture, agency or instrumentality, public corporation, any legal
2-8   or commercial entity, or protected or registered series of a
2-9   for-profit entity.
2-10   Sec. 102A.002. LIABILITY FOR CERTAIN REGULATION. Any
2-11 person who has sustained an injury in fact, actual or threatened,
2-12 from a municipal or county ordinance, order, or rule adopted or
2-13 enforced by a municipality or county in violation of any of the
2-14 following provisions or a trade association representing the person
2-15 has standing to bring and may bring an action against the
2-16 municipality or county:
2-17   (1) Section 1.004, Agriculture Code;
2-18   (2) Section 1.109, Business & Commerce Code;
2-19   (3) Section 1.023, Election Code;
2-20   (4) Section 1.004, Finance Code;
2-21   (5) Section 1.006, Health and Safety Code;
2-22   (6) [(4)] Section 30.005, Insurance Code;
2-23   (7) [(5)] Section 1.005, Labor Code;
2-24   (8) [(6)] Section 229.901, Local Government Code;
2-25   (9) [(7)] Section 1.003, Natural Resources Code;
2-26   (10) [(8)] Section 1.004, Occupations Code;
2-27   (11) Section 1.08(b), Penal Code; or
2-28   (12) [(9)] Section 1.004, Property Code.
2-29   Sec. 102A.003. REMEDIES. (a) A claimant is entitled to
2-30 recover in an action brought under this subchapter [chapter]:
2-31   (1) declaratory and injunctive relief; and
2-32   (2) costs and reasonable attorney's fees.
2-33   (b) A municipality or county is entitled to recover in an
2-34 action brought under this subchapter [chapter] costs and reasonable
2-35 attorney's fees if the court finds the action to be frivolous.
2-36   Sec. 102A.004. IMMUNITY WAIVER. Governmental immunity of a
2-37 municipality or county to suit and from liability is waived to the
2-38 extent of liability created by this subchapter [chapter].
2-39   Sec. 102A.005. NOTICE. A municipality or county is
2-40 entitled to receive notice of a claim against it under this
2-41 subchapter [chapter] not later than three months before the date a
2-42 claimant files an action under this subchapter [chapter]. The
2-43 notice must reasonably describe:
2-44   (1) the injury claimed; and
2-45   (2) the ordinance, order, or rule that is the cause of
2-46 the injury.
2-47   Sec. 102A.006. VENUE. (a) Notwithstanding any other law,
2-48 including Chapter 15, a claimant may bring an action under this
2-49 subchapter [chapter] in:
2-50   (1) the county in which all or a substantial part of
2-51 the events giving rise to the cause of action occurred; or
2-52   (2) if the defendant is a municipality, a county in
2-53 which the municipality is located.
2-54   (b) If the action is brought in a venue authorized by this
2-55 section, the action may not be transferred to a different venue
2-56 without the written consent of all parties.
2-57   SECTION 6. Chapter 102A, Civil Practice and Remedies Code,
2-58 is amended by adding Subchapter B to read as follows:
2-59   SUBCHAPTER B. ATTORNEY GENERAL ENFORCEMENT
2-60   Sec. 102A.051. DEFINITION. In this subchapter,
2-61 "no-new-revenue tax rate" means the no-new-revenue tax rate
2-62 calculated under Chapter 26, Tax Code.
2-63   Sec. 102A.052. ATTORNEY GENERAL INVESTIGATION AND ACTION.
2-64 (a) The attorney general may investigate an alleged violation of a
2-65 law described by Section 102A.002 by a municipality or county.
2-66   (b) The attorney general may bring an action for injunctive,
2-67 declaratory, or mandamus relief against a municipality or county if
2-68 the attorney general determines after conducting an investigation
2-69 under Subsection (a) that the municipality or county violated a law

3-1 described by Section 102A.002.
3-2 (c) Notwithstanding any other law, including Chapter 15,
3-3 the attorney general may bring an action under this section in:
3-4 (1) the county in which all or a substantial part of
3-5 the events giving rise to the cause of action occurred; or
3-6 (2) if the defendant is a municipality, a county in
3-7 which the municipality is located.
3-8 Sec. 102A.053. EFFECTS OF PENDENCY OF ACTION. (a) During
3-9 the pendency of an action brought under Section 102A.052, with
3-10 respect to a municipality or county defending the action:
3-11 (1) the comptroller shall withhold payment of any
3-12 money due to the municipality or county under Section 321.502 or
3-13 323.502, Tax Code;
3-14 (2) the municipality or county may not adopt an ad
3-15 valorem tax rate that exceeds the municipality's or county's
3-16 no-new-revenue tax rate;
3-17 (3) the municipality or county may not adopt a budget
3-18 that exceeds the total expenditures of the budget under which the
3-19 municipality or county is operating at the time the attorney
3-20 general brings the action under Section 102A.052; and
3-21 (4) the municipality or county may not receive state
3-22 grant funds and any pending application for such funds shall be
3-23 denied.
3-24 (b) Section 109.004(a)(1), Local Government Code, does not
3-25 apply to a municipality if the comptroller is withholding payments
3-26 from the municipality in accordance with Subsection (a)(1).
3-27 (c) Notwithstanding Section 120.002, Local Government Code,
3-28 a county may not hold an election under that section if the
3-29 comptroller is withholding payments from the county in accordance
3-30 with Subsection (a)(1).
3-31 Sec. 102A.054. ACTION PROCEDURES. (a) A municipality or
3-32 county defending an action brought under Section 102A.052 has the
3-33 burden of proof to establish that the municipality or county
3-34 complied with the law that is the subject of the action.
3-35 (b) The trial court shall set an action brought under
3-36 Section 102A.052:
3-37 (1) for an initial hearing not later than the 30th day
3-38 after the date the municipality or county defending the action was
3-39 served with process for the action; and
3-40 (2) for a trial on the merits not later than the 90th
3-41 day after the date the municipality or county defending the action
3-42 was served with process for the action, unless:
3-43 (A) the municipality or county and the attorney
3-44 general agree to a later date; and
3-45 (B) the court determines that holding trial at a
3-46 later date is in the interest of justice.
3-47 Sec. 102A.055. APPELLATE JURISDICTION; EXPEDITED APPEAL.
3-48 (a) The Fifteenth Court of Appeals has exclusive intermediate
3-49 appellate jurisdiction of an action brought under Section 102A.052.
3-50 A party must appeal the action not later than the 30th day after the
3-51 date the judgment is signed.
3-52 (b) An appellate court shall expedite an appeal of an action
3-53 brought under Section 102A.052.
3-54 Sec. 102A.056. RESOLUTION OF ACTION IN FAVOR OF ATTORNEY
3-55 GENERAL. (a) If the attorney general prevails in an action brought
3-56 under Section 102A.052:
3-57 (1) the municipality or county defending the action
3-58 may not, during the five fiscal years following the year in which
3-59 the judgment becomes final:
3-60 (A) adopt an ad valorem tax rate that exceeds the
3-61 municipality's or county's no-new-revenue tax rate; or
3-62 (B) receive state grant funds; and
3-63 (2) the court issuing the final judgment resolving the
3-64 action shall provide in the judgment that the state is entitled to
3-65 recover from the municipality or county defending the action a
3-66 penalty equal to the balance of the suspense account maintained for
3-67 the municipality or county under Section 321.501 or 323.501, Tax
3-68 Code, as applicable, that exists on the date the judgment is signed.
3-69 (b) The comptroller shall, on receipt of a copy of the final

4-1 judgment in an action brought under Section 102A.052, deposit the
4-2 balance of the suspense account maintained for the municipality or
4-3 county defending the action under Section 321.501 or 323.501, Tax
4-4 Code, as applicable, as of the date the judgment is signed to the
4-5 credit of the general revenue fund.
4-6   (c) Section 109.004(a)(1), Local Government Code, does not
4-7 apply to a municipality subject to a final judgment in an action
4-8 brought under Section 102A.052 for six state fiscal years following
4-9 the date the judgment is signed.
4-10   (d) Notwithstanding Section 120.002, Local Government Code,
4-11 a county may not hold an election under that section if the county
4-12 has been the subject of an adverse final judgment in an action
4-13 brought under Section 102A.052 before the sixth anniversary of the
4-14 date the judgment is signed.
4-15   Sec. 102A.057. RESOLUTION OF ACTION IN FAVOR OF
4-16 MUNICIPALITY OR COUNTY. If a municipality or county prevails in an
4-17 action brought under Section 102A.052, the comptroller shall
4-18 immediately send to the municipality or county any balance of the
4-19 suspense account maintained for the municipality or county under
4-20 Section 321.501 or 323.501, Tax Code, as applicable, being held
4-21 under Section 102A.053(a)(1) as of the date the final judgment
4-22 resolving the action is signed.
4-23   SECTION 7. Chapter 1, Election Code, is amended by adding
4-24 Section 1.023 to read as follows:
4-25   Sec. 1.023. PREEMPTION. Unless expressly authorized by
4-26 another statute, a municipality or county may not adopt, enforce,
4-27 or maintain an ordinance, order, or rule regulating conduct in a
4-28 field of regulation that is occupied by a provision of this code.
4-29 An ordinance, order, or rule that violates this section is void,
4-30 unenforceable, and inconsistent with this code.
4-31   SECTION 8. Chapter 1, Health and Safety Code, is amended by
4-32 adding Section 1.006 to read as follows:
4-33   Sec. 1.006. PREEMPTION. Unless expressly authorized by
4-34 another statute, a municipality or county may not adopt, enforce,
4-35 or maintain an ordinance, order, or rule regulating conduct in a
4-36 field of regulation that is occupied by a provision of this code.
4-37 An ordinance, order, or rule that violates this section is void,
4-38 unenforceable, and inconsistent with this code.
4-39   SECTION 9. Section 1.08, Penal Code, is amended to read as
4-40 follows:
4-41   Sec. 1.08. PREEMPTION. (a) No governmental subdivision or
4-42 agency may enact or enforce a law that makes any conduct covered by
4-43 this code an offense subject to a criminal penalty. This subsection
4-44 [section] shall apply only as long as the law governing the conduct
4-45 proscribed by this code is legally enforceable.
4-46   (b) Unless expressly authorized by another statute, a
4-47 municipality or county may not adopt, enforce, or maintain an
4-48 ordinance, order, or rule regulating conduct that is otherwise
4-49 prohibited by a provision of this code. An ordinance, order, or
4-50 rule that violates this subsection is void, unenforceable, and
4-51 inconsistent with this code.
4-52   SECTION 10. Subchapter B, Chapter 102A, Civil Practice and
4-53 Remedies Code, as added by this Act, applies only to a cause of
4-54 action that accrues on or after the effective date of this Act.
4-55   SECTION 11. Every provision, section, subsection,
4-56 sentence, clause, phrase, or word in this Act, and every
4-57 application of the provisions in this Act to every person, group of
4-58 persons, or circumstances, are severable from each other. If any
4-59 application of any provision in this Act to any person, group of
4-60 persons, or circumstances is found by a court to be invalid,
4-61 preempted, or unconstitutional, for any reason whatsoever, then the
4-62 remaining applications of the Act to all other persons and
4-63 circumstances shall be severed and preserved and shall remain in
4-64 effect. All constitutionally valid applications of the provisions
4-65 in this Act shall be severed from any applications that a court
4-66 finds to be invalid, preempted, or unconstitutional, because it is
4-67 the legislature's intent and priority that every single valid
4-68 application of every statutory provision be allowed to stand alone.
4-69 The legislature further declares that it would have enacted this

5-1 Act, and each provision, section, subsection, sentence, clause,
5-2 phrase, or word, and all constitutional applications of the
5-3 provisions of this Act, irrespective of the fact that any
5-4 provision, section, subsection, sentence, clause, phrase, or word,
5-5 or applications of this chapter were to be declared invalid,
5-6 preempted, or unconstitutional.
5-7 　　　　SECTION 12. The Texas Supreme Court has exclusive and
5-8 original jurisdiction over a challenge to the constitutionality of
5-9 this Act or any part of this Act and may issue injunctive or
5-10 declaratory relief in connection with the challenge.
5-11 　　　　SECTION 13. This Act takes effect September 1, 2025.

5-12 　　　　　　　　　　　　* * * * *