
TEXAS PUBLIC POLICY FOUNDATION
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LEGISLATOR'S GUIDE
to the issues
TEXAS PUBLIC POLICY
FOUNDATION

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The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

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The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

TEXAS PUBLIC POLICY FOUNDATION
901 Congress Ave., Austin, TX 78701
(512) 472-2700 Phone (512) 472-2728 Fax
www.TexasPolicy.com

Extraterritorial Jurisdiction (ETJ) Reform

The Issue

Cities have been abusing their authority by imposing regulations within the extraterritorial jurisdiction without a legislative grant of authority. Further, the scope of municipal authority within the ETJ should be re-examined in light of the recently passed Texas Annexation Right to Vote Act, which moves toward a model of annexation with representation in order to better safeguard property rights and the principle of the consent of the governed.

The history of municipal ETJ is closely tied to the history of municipal annexation. Cities like Houston and Pasadena were aggressively and forcibly annexing neighboring areas in the 1940s and 1950s and could annex right up to the corporate borders of a neighboring city.

In response, the state of Texas reformed the annexation process with the Municipal Annexation Act of 1963. The reformed process still permitted unilateral municipal annexation but confined annexation to within certain designated, unincorporated areas contiguous to the city's corporate boundaries.

The geographical extent of the city's ETJ ranges from one-half mile to five miles, depending on the number of inhabitants of the city. By state law, a city's ETJ can only expand through annexation, landowner request, or an increase in the city's number of inhabitants.

Moreover, Texas statutory provisions give cities certain limited, specific regulatory powers within the ETJ, including plat and subdivision regulatory authority; sign location and removal; creation powers over industrial districts, planned unit development districts, and municipal drainage utility systems; and the imposition of impact fees for water and wastewater facilities and stormwater, drainage, and flood control facilities. These legislative grants of power are not located in any one source of authority, but scattered throughout the Texas statutory code.

Texas cities have gone beyond these limited, authorized powers and thereby abused their authority. For example, cities have been enforcing their building codes in the ETJ, despite the lack of constitutional or statutory authorization.

In *Town of Lakewood Village vs. Bizios*, the Town of Lakewood Village argued that state law either expressly or impliedly granted it the authority to enforce its building codes in the ETJ. After examining the relevant statutes, the Texas Supreme Court disagreed and held that the Legislature did not grant this authority.

In response, home-rule cities have argued that their power to enforce building codes in the ETJ does not come from a legislative grant of authority but from the Texas Constitution through the Home Rule Amendment of 1912, which gives them the full power of self-government. In *City of McKinney v. Custer Storage*, the Texas Fifth Court of Appeals rejected this argument, holding that a city does not have inherent authority to enforce building codes in the ETJ—instead, regulatory power in the ETJ must come from a legislative grant of authority.

While the courts are beginning to restrain cities' abuses of authority within the ETJ, these examples should prompt a reconsideration of the scope of municipal authority in the ETJ altogether. The ETJ was created in the context of unilateral,

forced municipal annexation without consent. With the passage of the Texas Annexation Right to Vote Act, that assumption no longer holds for much of the state.

The same objections that moved the state to curtail forced municipal annexation apply with equal force against city regulation of the ETJ: Texans in the ETJ must comply with regulations of their private property by a city government they cannot hold politically accountable. This is both a threat to private property rights and the principle of consent of the governed. Accordingly, lawmakers should identify every legislative grant of regulatory power to cities in the ETJ and re-examine whether such authority is appropriate, or whether it should be eliminated.

Further, Texans in the ETJ need to know that they are responsible for complying with regulations to a city government they do not elect. Therefore, property owners in an area that would be included in the newly extended ETJ as a result of a proposed annexation should be given written notice of the city's scheduled annexation hearings, along with a list of the ordinances that would apply in the ETJ.

The Facts

- The Municipal Annexation Act of 1963 created the concept of municipal ETJ, and a city's authority within its ETJ is restricted to those powers specifically granted by the state.
- Cities have been abusing their authority by imposing regulations that were not granted by the state, such as enforcing building codes in the ETJ.
- The passage of the Texas Annexation Right to Vote Act moved the state from a model of "forced annexation" toward a model of "annexation with representation." In light of that change, the rationale and scope of city powers within the ETJ should be re-evaluated.

Recommendations

- Identify every legislative grant of authority to cities in the ETJ, and determine whether such authority is still needed, or whether it should be eliminated.
- Require cities to give written notice to property owners that are newly included in the ETJ when the ETJ expands through annexation or an increase in the number of the city's inhabitants. This notice should include a list of municipal ordinances that would apply in the ETJ.

Resources

Town of Lakewood Village v. Bizios, 493 S.W.3d. 527, 530 (Tex. 2016).

City of McKinney v. Custer Storage, No. 05-17-00546-CV (Tex.App.-Dallas 2018).

Toward Annexation with Representation by Bryan Mathew, Texas Public Policy Foundation (Feb. 2018).

Ending Forced Annexation in Texas by Jess Fields and James Quintero, Texas Public Policy Foundation (July 2015).

Experts

Kara Belew, *Senior Education Policy Advisor, Center for Innovation in Education*
kbelew@texaspolicy.com AREAS OF EXPERTISE: State Budget, Taxes, Public Education Finance and Policy, Public Education Accountability

Derek Cohen, Ph.D., *Director, Center for Effective Justice and Right on Crime*
dcohen@texaspolicy.com AREAS OF EXPERTISE: Juvenile Justice Reform, Victims' Rights, Overcriminalization, Constitutional Limitations on Corrections

The Hon. Chuck DeVore, *VP of National Initiatives; Senior Fellow for Fiscal Policy*
cdevore@texaspolicy.com AREAS OF EXPERTISE: Tax and Fiscal Policy, Elections, Foreign Affairs, Military Affairs, Energy and Environmental Policy

Vance Ginn, Ph.D., *Director, Center for Economic Prosperity; Senior Economist*
vginn@texaspolicy.com AREAS OF EXPERTISE: State Budget and Tax Reform, National and State Labor Market Trends, Tax and Expenditure Limits, Energy Markets and Policy

Michael Haugen, *Policy Analyst, Center for Effective Justice and Right on Crime*
mhaugen@texaspolicy.com AREAS OF EXPERTISE: Civil Forfeiture, Overcriminalization, Substance Abuse Policy

The Hon. Talmadge Heflin, *Director, Center for Fiscal Policy*
theflin@texaspolicy.com AREAS OF EXPERTISE: State Budget and Taxation, Economic Stabilization Fund, Local Government Spending, Pension Reform, Federal Funds

Haley Holik, *Attorney, Center for Effective Justice and Right on Crime*
hholik@texaspolicy.com AREAS OF EXPERTISE: Juvenile Justice, Grand Jury Reform, Constitutional Limitations on Search and Seizure, Overcriminalization

Marc Levin, Esq., *VP of Criminal Justice and Right on Crime*
mlevin@texaspolicy.com AREAS OF EXPERTISE: Adult Corrections, Juvenile Justice, Overcriminalization, Victim Empowerment and Restitution, Law Enforcement, School Discipline

Thomas Lindsay, Ph.D., *Director, Center for Innovation in Education*
tlindsay@texaspolicy.com AREAS OF EXPERTISE: Higher Education, Culture Wars (Political correctness, cultural decline, etc.), America's Founding Principles, Online Learning, Federalism, Tenth Amendment, Interstate Compacts

Brandon J. Logan, Ph. D., *Director, Center for Families & Children*
blogan@texaspolicy.com AREAS OF EXPERTISE: Child Welfare Policy, Foster Care, Adoption, Family Law, Parental Rights

Bryan Mathew, *Policy Analyst, Center for Local Governance*
bmathew@texaspolicy.com AREAS OF EXPERTISE: Local Economic Regulation, Local Economic Development, Municipal Annexation, Housing Affordability, Property Rights, Special Districts

Stephanie Matthews, *VP of Public Affairs*
smatthews@texaspolicy.com AREAS OF EXPERTISE: Workforce Development, Charter Schools, School Choice, Virtual Learning

Jennifer Minjarez, *Policy Analyst, Center for Health Care Policy*
jminjarez@texaspolicy.com AREAS OF EXPERTISE: Medicaid Reform, Mid-Level Providers, Medical and Dental Licensure Reform

Bill Peacock, *VP of Research*
bpeacock@texaspolicy.com AREAS OF EXPERTISE: Electricity Markets and Renewable Energy, Insurance, Technology and Telecommunications, Tort Reform, Property Rights, Economic Development, Consumer Issues

Randy Petersen, *Senior Researcher, Center for Effective Justice and Right on Crime*
rpetersen@texaspolicy.com AREAS OF EXPERTISE: Policing Policy, Diversion Programs, Civil Asset Forfeiture

James Quintero, *Director, Center for Local Governance*
jquintero@texaspolicy.com AREAS OF EXPERTISE: Budgets, State and Local Spending, Debt, Taxes, Transparency, Pensions

Kevin D. Roberts, Ph.D., *Executive Director*
kroberts@texaspolicy.com AREAS OF EXPERTISE: K-12 Education Growth, Increasing Public School Efficiency, Education Choice, Higher Education, Tenth Amendment

Emily Sass, *Policy Analyst, Center for Innovation in Education*
esass@texaspolicy.com AREAS OF EXPERTISE: K-12 Education, Education Choice, School Finance, Civic Education, Charter Schools

Deane Waldman, Ph.D., *Director, Center for Health Care Policy*
dwaldman@texaspolicy.com AREAS OF EXPERTISE: Health Care, Medicaid, Telemedicine, Scope of Practice, Regulatory Issues

The Hon. Kathleen Hartnett White, *Distinguished Senior Fellow-in-Residence; Director, Center for Energy & the Environment*
khwhite@texaspolicy.com AREAS OF EXPERTISE: EPA Regulation, Energy and Environmental Policy, Free Market Environmental Policies, Endangered Species Act, Water Rights

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