



# Testimony

## HB 3417

# 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 on [House Bill 3417](#). I am here to testify in support of the bill.

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. As SB 6 demonstrated, big cities do not have an unlimited interest or ability to meddle in their ETJs. This simple yet crucial fact is one that needs reinforcement today.

Pursuant to [Local Government Code § 212.003](#), municipalities may not regulate certain activities or uses of property in the ETJ "unless otherwise authorized by state law." Despite the statutory language, municipalities still attempt to circumvent the law by claiming that their inherent authority provides them with sufficient authorization. If this were found to be true, then cities would always have the ability to regulate the laundry list of private property activities in the ETJ.

This not only speaks to the expansive nature of regulatory authority, but it also exposes the uncomfortable fact that cities have oversight and administrative powers over residents that have no say in the political process. That is further compounded by the fact that some Texas cities have gone beyond their limited scope and abused their legislative grant of authority. For example, some cities have been enforcing their building codes in the ETJ, despite the lack of constitutional or statutory authorization.

The Texas Supreme Court held in *Town of Lakewood Village vs. Bizios* that the Legislature did not grant the Town of Lakewood express or implied authority to enforce its building codes in the ETJ. As a response, home-rule cities have argued that this grant of authority does not come from the Legislature but from the Texas Constitution through the Home Rule Amendment of 1912, which gives them the full power of self-government. However, 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 and that such 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. Texans in the ETJ are forced to comply with regulations of their private property by a city government they cannot even hold politically accountable. They should not be forced to comply with regulations imposed by those they cannot even elect.

HB 3417 represents a commonsense idea that is a step toward liberty for those in the ETJ. As the filed bill presents, HB 3417 seeks to provide more clarity to ETJ residents by amending current law to provide that a municipal ordinance is considered otherwise authorized by state law to be extended into the ETJ only if state law explicitly authorizes the specific municipal ordinance to be extended. CSHB 3417 amends the bill as filed to align with SB 6 of the 85th first called special session to pertain only to cities wholly or partially located in a county with a population of more than 500,000.

HB 3417 takes the state one step closer to liberty and freedom for all residents of the ETJ so that their voices are never silent. Thank you for your time and consideration. I look forward to answering any questions you may have. ★