



House Bill 1279

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Purpose

House Bill 1279 ([2023](#)) proposes to dramatically reduce the scope of a municipality's extraterritorial jurisdiction (ETJ).

Background

An ETJ is an area outside of a municipality's corporate boundaries in which city officials may exercise broad regulatory authority over persons and property. The types of regulations imposed are numerous and include areas like "signage and fireworks restrictions and ... impact fees" ([Texas Public Policy Foundation \[TPPF\], 2020, para. 2](#)). The concept originated with the passage of the Municipal Annexation Act of 1963 as a way "to promote and protect the general health, safety, and welfare of persons residing within and adjacent to the cities of this State" ([HB 13, 1963, p. 2](#)).

Under current law, the scope of a municipality's ETJ varies according to its population size. A municipality with fewer than 5,000 inhabitants may extend its ETJ up to one half mile outside of its city limits; those with a population of between 5,000 and 24,999, up to one mile; those with a population of between 25,000 and 49,999, up to two miles; those with a population of between 50,000 and 99,999, up to 3.5 miles; and those with a population of 100,00 or more, up to five miles, according to [Section 42.021](#) of the Local Government Code. A municipality may also claim jurisdiction over territory that is 5 miles outside of its boundaries if it is on a barrier island or one half mile off a barrier island ([Section 42.021 \(b\) 1-2](#)). Additionally, a municipality may claim three miles outside of its boundaries if it has a population between 20,000 and 29,000, is located in a county with a population of 45,000 or more, and borders the Trinity River ([Section 42.021 \(d\) 1-2](#)).

Problem

The ETJ concept is antithetical to the tenets of self-governance and property rights. Consider that ETJ residents are subject to a host of municipal rules and regulations and yet, those persons are denied the right "to vote for those who regulate the area in which they reside" ([Lawrence and Kalke v. City of College Station, et al., 2022, p. 1](#)). This restriction is implicit in [Section 11.001](#) of the Election Code which, among things, requires that an eligible voter "be a resident of the territory covered by the election for the office or measure on which the person desires to vote." Such a dynamic may be aptly described as regulation without representation. Worse, there is no statutory requirement that ETJ residents ever be released from municipal control, either through the annexation process, the disannexation process, or some other mechanism. Hence, "Texans have no ability to remove themselves from an ETJ, meaning that one could be forced to reside there in perpetuity" ([TPPF, 2020, para. 4](#)). Secondly, the notion of having an ETJ at all is questionable. ETJs were originally created to provide cities with a buffer zone so as to prevent involuntary annexation controversies^{*} as well as a way to prepare territory for annexation through various regulations. However, in 2017 and 2019, policymakers ended the practice of involuntary

Key Points

- The extraterritorial jurisdiction (ETJ) is an area outside of a city's corporate boundaries in which a municipal government can impose rules and regulations without the consent of residents.
- ETJs run counter to Texas' republican ideals by permitting a type of regulation without representation.
- Given the serious policy concerns with ETJs, policymakers should consider broad-based reforms to restore fairness and freedom.

* While there have been many annexation-related controversies in Texas history, one of the more notable, which helped spur the creation of the ETJ concept, was the following: "In the 1940s and 1950s, Houston and Pasadena were aggressively and forcibly annexing neighboring areas, which they could do right up to the corporate boundaries of a neighboring city. In response, the state of Texas reformed the annexation process by enacting the Municipal Annexation Act of 1963" ([Sterling, 2019, para. 2](#)).

annexation with the passage of SB 6 (2017) and HB 347 (2019) thereby eliminating its *raison d'être*. Now that cities are required to hold an election before annexing an area, the ETJ no longer serves a defensible public purpose, nor do its costs (i.e., residents' voting rights) outweigh any purported benefits (i.e., to prepare and control development).

Proposal

To remedy the public policy challenges wrought by the outdated ETJ concept, HB 1279 (2023, p. 1) proposes to amend the Local Government Code to dramatically reduce the scope of a municipality's ETJ. According to the introduced version of the bill, a municipality with fewer than 5,000 inhabitants would have its ETJ reduced from one half mile to 250 ft.; a city with a population of between 5,000 and 24,999 would have its ETJ reduced from one mile to 500 ft.; a city with a population of between 25,000 and 49,999 would have its ETJ reduced from two miles to 1,000 ft.; a city with a population of between 50,000 and 99,999 would have its ETJ reduced from 3.5 miles to one quarter mile; and a city with a population of 100,00 or more would have its ETJ reduced from 5 miles to one half mile. Such a change would greatly diminish the amount of persons and property subject to unilateral municipal control and move Texas policy in a much better direction.

In the absence of ETJ elimination, HB 1279 offers an effective way to minimize elements of the system of regulation without representation that presently exists. Further, its implementation would go far to reinforce the enduring principles of self-governance and property rights. ★

References

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