

Date: March 15, 2023

To: Chairman Hunter and the Members of the House Committee on State Affairs

From: **Adrian Shelley, Public Citizen, ashelley@citizen.org, 512-477-1155.**

CC: Rep. Ana Hernandez, Rep. Rafael Anchía, Rep. Jay Dean, Rep. Charlie Geren, Rep. Ryan Guillen, Rep. Will Metcalf, Rep. Richard Peña Raymond, Rep. Shelby Slawson, Rep. John T. Smithee, Rep. David Spiller, Rep. Senfronia Thompson, Rep. Chris Turner

Via hand delivery and by email.

Re: HB 2127 Opposition Testimony by Public Citizen

Dear Chairman Hunter and Members of the Committee:

Public Citizen appreciates the opportunity to testify against HB 2127 by Representative Burrows, relating to state preemption of certain municipal and county regulations. We must oppose this bill because (1) it reverses a century of precedent allowing municipalities and counties to make and enforce local ordinances supported by their voters and (2) we fear that the bill as drafted is overly broad, unclear, and will have serious consequences.

Municipalities and Counties should have authority to enact local ordinances supported by their constituents.

Fundamentally, we believe that municipalities and counties should have authority to enact local ordinances supported by their voters. Texas has done it this way for a century. Local ordinances regulate matters of local concern within their jurisdiction. They are presumably supported by local voters, and if they are not, local voters can advocate for new ordinances or vote for new elected officials.

The present situation has been described as “whack-a-mole” as state lawmakers pass laws to preempt local ordinances they deem undesirable. First: it is not unreasonable to ask state lawmakers to write laws that are specific and unambiguous in their application. If lawmakers don’t want a specific activity regulated at the local level, they should indicate so in a narrowly tailored piece of legislation. Second, nothing compels state lawmakers to whack these moles in the first place. Let them live in the cities where they were born.

The bill’s language is overly broad and uncertain. Retroactivity is extreme.

The bill attempts “field preemption” in six major titles of Texas law. We have concerns about areas of local regulation that might be impacted by broad “field preemption.” Specifically, in the following codes we are concerned about the following areas of local regulation:

- **Agriculture Code:** fuels; children’s food programs; pest and disease control; soil and water conservation; tree protection ordinances; puppy mills; chickens, bees, and other animals.
- **Finance Code:** payday lending.



- **Labor Code:** minimum wage, paid sick leave, heat-stress protections, mandatory breaks.
- **Natural Resources Code:** oil and gas (broadly), public beaches and coastal matters, hazardous materials transport, mining and quarries, mineral leasing, forest and wetlands management, prescribed burning.

This list is not exhaustive, but it points to dozens of areas of law with hundreds or thousands of local ordinances potentially impacted.

Preemption of “enforcement” and the “void and unenforceable” language of the bill also indicate that preemption will be retroactive. This is an overreach of state authority and will create significant problems in application.

The private right of action is too broad and will overwhelm courts.

We are very concerned with the bill’s grant of a private right of action. The definition of “person” is broadly defined to grant personhood to virtually any legal entity—we oppose corporate personhood. The right of action for any “adverse effect” could be interpreted to mean almost any effect. The remedy of injunctive relief and assessment of costs and attorney’s fees is extreme. The choice of venue anywhere in the state with no option for change of venue contradicts the Texas Rules of Civil Procedure. Although the cause of action cannot be retroactive, the effect of the law is, so causes of action will arise from long-standing local ordinances that are newly preempted.

Bottom line: these suits could easily overwhelm courts.

We ask you to please vote No on HB 2127.