



City of Houston Testimony Supporting House Bill 2266
Senate Committee on Local Government
May 19, 2023

The City of Houston opposes to House Bill 2266 (“HB 2266”) because, although ostensibly intended to help businesses, HB 2266 will create chaos and business uncertainty harmful to the Texas economy. Because of these and other harms to businesses and cities described below, Governor Ron DeSantis vetoed a very similar bill during Florida’s last legislative session. This Committee should follow his lead and oppose this bill.

First, this bill is unnecessary. House Bill 2127, which has passed, already preempts fields “occupied” by the Occupations Code. HB 2266 will only create further confusion about what is preempted. Moreover, HB 2127 was passed with the explicit assurance that most local regulation would not be preempted under it. HB 2266 revokes that promise, preempts local regulation HB 2127 spared, and renders such representations fraudulent.

Second, HB 2266 is also unconstitutionally vague. It does not tell businesses or cities whether local regulations in areas in which the State does not regulate at all are, by definition, more restrictive than state law and, therefore, subject to injunction. Instead, HB 2266 unconstitutionally off-loads to the courts the Legislature’s obligation to preempt only with the “unmistakable clarity” required by Texas Supreme Court jurisprudence. Consequently, cities and business will remain in legal limbo about what is preempted for years until courts rule definitively.

Third, the Legislature’s abdication of its responsibility to preempt only with unmistakable clarity will create a flood of costly lawsuits against cities because HB 2266 allows any state occupational license holder to sue cities to prevent enforcement of any and all local laws that merely costs a license holder a little more money. Consequently, a state-licensed restaurant serving alcohol could sue to prevent a city from enforcing local health code regulations preventing salmonella-contamination because compliance might cost more. A state-licensed daycare could seek to enjoin local building and fire codes. State-licensed contractors could seek to prevent enforcement of pay-or-play programs that insure workers on city projects and protect cities from liability. The incentive to sue at cities’ expense to deregulate every regulation a business faces will be overwhelming but will also divert businesses resources and create uncertainty for years.

Fourth, because eliminating local regulation will also deregulate the businesses that serve other businesses and those businesses’ employees, HB 2266 will decrease confidence in and create uncertainty about the available level of city and private services, suppliers, inspections, and quality of life in home-rule cities. No matter how accommodating the State’s regulations are, if businesses cannot be sure that their suppliers and service providers are secure and safe or cannot convince their employees that the quality of life in Texas is good enough for them to move here, those business will not move to Texas and the Texas economy will suffer. It has thrived without such draconian preemption bills.

Finally, by making the state the sole regulator, HB 2266 not only violates the Texas Constitution's home-rule provision but also deprives Texas of crucial local innovation. Houston's noise ordinance is a good example. It was specifically tailored over two years to address the specific needs of an almost 700 square mile city without zoning. The State can never match that custom effort and instead could provide only a one-size fits all, generic noise statute that would not serve well cities like Houston or the bars, restaurants, music venues and other businesses that benefit from Houston's customized ordinance.

For these reasons, Houston asks that Senators oppose House Bill 2266.