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Government for the People

Improving Government for the People: SB 1168

Key Points

- Prior law permitted cities to impose fees and fines on ETJ residents even if an area had disannexed or voters had rejected an annexation attempt at the ballot box.
- The state's former policy enabled a type of regulation without representation.
- A new state law aims to protect rural residents and promote democratic ideals by prohibiting certain city overreach in the ETJ.

What Changed?

The 87th Texas Legislature passed [Senate Bill 1168](#), a bill to bar cities from imposing fees and fines on residents of their extraterritorial jurisdiction (ETJ) once an area has disannexed or rejected an annexation attempt at the ballot box. The new law aims to protect ETJ residents from regulation without representation and promote democratic ideals.

Why Now?

The impetus for this session's change has its roots in previously passed legislation that ended the practice of involuntary annexation.

In 2017, the Legislature approved [Senate Bill 6](#)—the Texas Annexation Right to Vote Act—which provided ETJ residents with the right to vote on whether to be annexed by cities in certain counties.¹ Then in 2019, state lawmakers passed [House Bill 347](#), which extended that same courtesy to all Texans, irrespective of geography. The pair of reforms halted involuntary annexations statewide and fundamentally changed the relationship between those living within the city limits and those residing without.

In Texas, a city's corporate boundaries are surrounded by a buffer zone called an ETJ. This area generally consists of unincorporated territory contiguous to a city's borders, and its size can vary between one half mile and five miles, depending on the number of residents. The concept originated as a way for cities to control development in the outskirts and to unilaterally expand their tax base using involuntary annexation; but in the aftermath of that practice's end, many Texans now question the purpose and scope of ETJ authority.

Under current law, cities are permitted to impose a variety of regulations, fines, and fees on residents of the ETJ, even though they are not allowed to vote in municipal elections and have little opportunity to remove themselves from the city's shadow. Further, cities may exercise their authority even when the consent of the governed has been actively denied.

However, beginning in September 2021, Senate Bill 1168 will protect the rights of ETJ residents by prohibiting cities from imposing fees and fines in an area that has either been disannexed or where voters have rejected an attempt to govern them through a municipal annexation election, as now required by the changes made in 2017 and 2019. This incremental change will improve the position of certain ETJ residents by limiting city authority.

¹ Under Senate Bill 6, those municipalities required to obtain consent via a public election included "[cities in counties with a population of 500,000 or more...](#)"

Why Does It Matter?

Depriving a person of their ability to participate in the democratic process on the basis of an artificial boundary is at odds with the spirit of the U.S. and Texas constitutions. Let's remember that [Article IV, Section 4 of the U.S. Constitution](#) guarantees "a Republican Form of Government," and that [Article I, Section 2 of the Texas Constitution](#) says: "All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient." Making changes that move us closer to these constitutional ideals is in Texans' best interest.

Where to Next?

The passage of SB 1168 modestly improves property rights for ETJ residents. However, there are still more changes needed to protect rural Texans and curtail city excesses. To that end, policymakers should build upon the 2021 session's success by considering the following reforms in the future:

- **Extend Fee & Fine Protections to All.** Future legislation might expand the new law's prohibition on imposing fees and fines in certain areas to include every part of the ETJ, whether or not it has been disannexed or an annexation election attempted. Such a change would establish a single standard for all ETJ residents and eliminate a key concern expressed by voting rights advocates.
- **Expand the Scope of Prohibited Activity.** Whereas the new law prohibits cities from imposing fees and fines in certain areas, future legislation might expand the scope of restricted activity to include municipal regulations, like tree preservation ordinances, signage requirements, and rules governing fireworks. After all, if a majority of ETJ residents have actively denied their consent to be governed by city hall, then a municipality should not be allowed to exercise any authority in that particular area.
- **Abolish Municipal Regulatory Authority in the ETJ.** The ideal reform would eliminate as much municipal regulatory authority in ETJs as possible in order to protect property rights and promote democratic ideals. In light of the elimination of involuntary annexation, serious questions exist today as to why ETJs are needed anymore. ★

ABOUT THE AUTHORS



James Quintero is the policy director for the Foundation's Government for the People initiative. Quintero focuses extensively on state and local government spending, taxes, debt, public pension reform, annexation, and local regulations. His work has been featured in the *New York Times*, *Forbes*, the *Huffington Post*, Fox News, Breitbart, and the *Austin American-Statesman*.

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