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## SUPPLEMENT

FORTY-THIRD DAY — TUESDAY, APRIL 18, 2023

### **CSHB 2127 DEBATE - SECOND READING**

**(by Burrows, Meyer, Goldman, K. King, Raymond, et al.)**

**CSHB 2127**, A bill to be entitled An Act relating to state preemption of and the effect of certain state or federal law on certain municipal and county regulation.

**REPRESENTATIVE BURROWS: CSHB 2127**, the Texas Regulatory Consistency Act, essentially directs local governments to forgo regulating things that are already being regulated at the state level. This bill provides the regulatory stability and certainty that enables business owners to expand their businesses to other cities within Texas with more consistency, creating more jobs and prosperity in the process. At the same time, it actually gives local governments a hand by giving them a simple reason why they won't, in fact, be bringing a vote to countless issues that activists have been harassing them to pass locally. This not only saves money in the budgets of local governments, but also gives them back a measure, along with the freedom, to focus on traditional local issues they're equipped with to handle.

Texas' economy relies on businesses and industries across local government boundaries. They often have more than one location. They service customers in many locations, and their employees work in different locations—across boundaries—commuting to work. For example, you may have a restaurant owner with two restaurants in the same area but on different sides of a city limit line. There could be a landscaping company, a general contractor, a plumber, or an electrician all operating within the same area but dealing with different regulations. We want those small business owners creating new jobs and providing for their families, not trying to navigate a Byzantine array of local regulations that twist and turn every time they cross a city limit sign.

The bill also positions Texas to capitalize on the rebounding growth of stateside manufacturing, as the onshoring trend causes businesses to move away from geopolitical hostiles like China, back to U.S. soil. As that opportunity looms larger, why would anyone want a company to go to the trouble of building multiple factories and multiple TAMs when the complexities of disparate rules promise to fill their shops with inspectors and drain their wallets with fines and fees? A statewide standard is far better.

Much has been made about the historical role of what home-rule cities are. They are a creation of the state and enshrined in the Texas Constitution. When they were created they were given limitations despite some popular rhetoric. One of the most important limitations is in Article 11, Section 5, of the Texas

Constitution which provides that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the state, or of the general laws enacted by the legislature of this state. **CSHB 2127** simply gives full force and effect to that provision of the Texas Constitution.

In my first few sessions, we had to deal with one or two preemption bills. This session—because of where cities have been—we've had multiple, over and over and over again. Some specific examples: paid sick leave—we've had Austin, Dallas, and San Antonio enact ordinances that are opposed during an election cycle. Dallas bank requirements—Dallas is now requiring banks vying for city tax dollars to report investment lending deals. The Austin declaw ordinance—passed pretty much secretly in March 2021 during the pandemic, creates a violation if you declaw a cat. Overtime fairness—basically saying workers can decline overtime without penalty from an employer. Fair chance hiring—making sure there are no criminal background checks. Those are just the ones we know about in Texas today. Let's talk about the ones that are coming now from a neighboring state. Pay transparency—would require employers to disclose pay ranges as well as benefits not only to applicants but for internal offerings and promotions as well. Salary history restrictions—preventing employers from asking applicants how much they made at previous jobs. Predictive scheduling—requiring employers to provide work schedules to employees in advance, usually two weeks. Prohibiting criminal background checks by employers. Paid COVID leave. Paid sick leave. Requiring private employers to provide health insurance at \$380 a week. Eliminating at-will employment. Denver requiring not allowing anything but cage-free eggs to be sold.

Now members, cities will retain a lot of power under this bill. One of the things that there is: they still get to have full zoning, they can still deal with unrestrained animals, hawkers, peddlers, pawnbrokers, billboards and other outdoor signs, nuisance, disorderly conduct, vehicle wrecking, day-care centers, massage parlors, game rooms, sexually oriented businesses, historic preservation, public safety, community planning and development, water, utilities, parking and transportation, and a host of others. Those are just a few of the things people have said this bill takes away. Clearly they do not. They are still being preserved in statute. So with that I'd be happy to answer any questions.

**REPRESENTATIVE TURNER:** So there's been some concerns raised about the broad nature of this bill. There could be unintended consequences with several different areas of the state statute in play in this bill. So I think you spoke to your intent with the legislation in your layout. But let me just ask it very simply, if your bill passes, on day one of its enactment, what's going to be preempted in the State of Texas today?

**BURROWS:** Well, the five ordinances that I laid out. And also I have some amendments that I think will take care of a couple others, like some climate change stuff in El Paso. But, obviously, the ones I laid out in there would obviously, be preempted. Many of the ordinances that you brought up, and others brought to my attention, clearly, would, not. We were able to show in section and verse of local government codes and other places where those authorities remain.

TURNER: You mentioned something about declawing cats and the paid sick leave, which I think the courts have already set aside. So I don't think that's an active issue anymore.

BURROWS: Dallas bank requirement, fair chance hiring, overtime fairness, I mean, things of that nature.

TURNER: Is that all of the preempt?

BURROWS: There's a host of things it preempts. Those are the examples I have right here to visit with you about.

TURNER: So you don't have a comprehensive list?

BURROWS: I'm sure the list was—I continue to look at it. There's a lot of them, but I've laid out the ones that we can talk about right now.

TURNER: Okay, those are the ones you want to talk about right now. Okay. So you mentioned that current home-rule cities still have the power of general-law cities. How big are general-law cities?

BURROWS: By the way, the reason I put that in the bill was because I actually sat down and met with the city attorneys and others from TML, and they wanted to make sure that they had at least as much authority as general-law cities. So we gave them that provision to satisfy some of their concerns.

TURNER: Right, and how big are general-law cities?

BURROWS: I believe the number is 5,000 in there. But that was something they asked for, not something we did to them.

TURNER: Okay, understood. So 5,000 people or less is a general-law city and more than 5,000 people is a home-rule city. Is that right?

BURROWS: If they go through the proper proceedings to actually do that. I've never done that, so I'm not 100 percent familiar. But I would also, again, point out what the Texas Constitution does say: that even a home-rule city cannot pass any ordinance in contravention to the general-laws of this state.

TURNER: So hopefully we could agree that a city of, say, 5,000 people or 6,000 people has very different needs and challenges than, say, a city of 2 million people.

BURROWS: And home-rule cities will still be home-rule cities after this, being able to do a host and variety of things.

TURNER: So one of the things that a lot of home-rule cities do, and have done, is they put issues before the voters to decide how to enact a certain policy or whether to enact a certain policy. How does your bill affect the ability of citizens to be able to make their voices heard at the ballot box on a matter of concern within their local community?

BURROWS: Representative Turner, they can still do that unless we currently regulate it. This basically just says no double regulation. So unless we have a regulatory scheme, which would be marked by having a regulatory agency or a

set of laws on the books that seem comprehensive in nature, they can still do those types of things. If we actually regulate it, then they cannot contravene those laws.

TURNER: So if the state regulates it—and I'm going to ask you about that in a second because I think it's unclear to a lot of us—still in the bill what exactly would be preempted here. But if the state regulates it, it's therefore preempted, therefore even the voters wouldn't have the ability to weigh in and adopt a local policy that suits their community's needs. Is that right?

BURROWS: By the way, there's actually preemption language in the Constitution, so it's not unlimited to begin with. That's the point I really want to stress.

TURNER: I understand. But right now we're just talking about your bill.

BURROWS: This bill just broadens it ever so slightly.

TURNER: So what happens if—in the course of preempting so many different areas of statute—a city, a county, a local community has an urgent need that needs to be addressed when the legislature's not in session? Because they're preempted from acting until the legislature comes in and passes a law to address that need under your bill, right? Isn't that what happens?

BURROWS: Most of the examples people gave in that area they can still do. However, that's the beauty of having a court system to actually deal with this and actually help it. I mean, the third branch of government is an important branch of government to basically deal with some of this as well.

TURNER: So is it conceivable that because of this bill, the legislature's going to be called on to go into special session to address needs in, say, the city of Houston or the city of Temple or the city of Waco, to address some acute need that comes up that can't wait 18 months to be addressed?

BURROWS: I don't see that happening.

TURNER: You don't see that happening?

BURROWS: Not at all.

TURNER: Let me ask you about the standing section of the bill. So your bill sets up a regime where, basically, people can sue if they think that the statute's being violated—

BURROWS: They can already sue under the current Declaratory Judgment Act. I want to make sure that's very clear. There it currently provides law where you have standing to do this.

TURNER: So how does your bill differ from current law or current practice?

BURROWS: So we take the court rulings on waiver of immunity, and we codify it. And then I've got a perfecting amendment to narrow the venue down to actually mimic what the current venue provisions are.

TURNER: I'm sorry. Clarifying amendment to do what?

BURROWS: To limit the venue to being the actual county where it occurred rather than a contiguous county. So the bill will basically be modeled after the current existing cause of action available to anybody to sue under preemption.

TURNER: So when your amendment is adopted, presuming it is, then someone can sue but within the same county that the alleged violation has occurred?

BURROWS: The same standing as they have today.

TURNER: Understood. So do you feel like your bill will have the possible, I'm sure unintended, consequence of creating excessive litigation in this area?

BURROWS: Are you concerned about excessive litigation?

TURNER: I am.

BURROWS: Okay, so I think it's actually a brilliant way to handle this because we're not here all the time, and we can't continue to play whack-a-mole. So we're going to allow the courts to actually continue to help us in regulating this, and it's going to give citizens the ability and right to petition their court system to get redress of some of these ordinances which are overreaching and difficult for them.

TURNER: You don't think this will spawn a cottage industry of lawsuits around this legislation?

BURROWS: There's no damages available, so there's really not an incentive for anybody to actually want to do this.

TURNER: So on the issue of standing, your bill says any person "who has sustained an injury in fact, actual or threatened" has standing. Did I quote that correctly?

BURROWS: That's the common law traditional American court system of standing. I basically took that and put it in there, which is the standing we use for negligence suits and a lot of other things that we currently do. So it's not new or unique. It's kind of within the American tradition of standing.

TURNER: Okay. So how does someone prove a threatened injury?

BURROWS: Well, obviously, an ordinance passes and it could potentially harm them. For instance, we've had ordinances pass that have a fine attached to them, but cities have known they're unconstitutional, and so they don't actually impose the fine. Therefore, some people have actually been kicked out of courts because the fine hasn't happened. But the threat of it ought to be enough to actually have your rights litigated in a court of law.

TURNER: So I'm going to move into an area specifically—and you touched on some of this—but local rules or ordinances that are designed to protect safety and enhance safety in the workplace. You mentioned paid sick leave ordinances, I believe, as an example of local overreach, I think is how you phrased it. Did any of those ordinances actually go into effect?

BURROWS: No, but a lot of people spent a lot of money—businesses—and they had to comply with them for the time being before they got court certainty of it. So there was a real cost and expense associated with passing those.

TURNER: So even though those are not in effect, and they actually were overturned before they went into effect, you're saying that businesses say that it cost them money. Am I stating that right?

BURROWS: Sure, they had to try to figure out how to comply with them. Some of them actually had to hire lawyers to challenge them. It was a real effect on there. And I didn't even mention this bill will pick up some of the workers' workplace safety standards, and I'm sure you want to talk about those as well.

TURNER: Well, I do. That's my very next topic, in fact. So are you aware—and I'm sure you are because we've talked about it on this floor before—that Texas construction workers are at particular risk of heat-related illnesses, injury, and, in some cases, even death?

BURROWS: Absolutely. I totally agree with you which is why I've always believed that OSHA standards dealing with this are important. Most of the contractors that I've had the pleasure of knowing probably far exceed those on a daily basis.

TURNER: Do you know that the Texas Department of Insurance has provided data that says at least five Texans have died from heat-related illness—that was just in 2018—and hundreds of Texans have suffered from job-related heat ailments that interfere with their ability to work?

BURROWS: I would argue not having proper tie-offs and being too high probably has more deaths—I don't know that—but if we're talking about construction accidents all together, there's multiple threats out there that are available in workplace safety concerns.

TURNER: You would agree that exposure to heat for long periods of time is one of those threats?

BURROWS: Oh sure. Yes, absolutely.

TURNER: And you would agree that dehydration is such a threat?

BURROWS: We totally agree on that.

TURNER: Okay. And despite those recommendations and some OSHA guidelines—you referenced those a minute ago—that provide that rest and water breaks are a safety concern and are needed, particularly in certain types of job environments, are you aware that, even despite a couple of cities out of our hundreds of cities having ordinances on this matter, that many workers simply do not get those types of breaks during the day?

BURROWS: I'm not aware of the prevalence of workers being denied their rights to rest and water breaks.

TURNER: Would you agree that it probably does happen? I mean, because right now if you're not in those two cities you mentioned, they actually don't have a right.

BURROWS: In full candor, right? I mean, from a concept, sure I can agree there may be that happening out there. But on a first hand account I have never had an injured worker or contractor who's had one come to see me over those particular concerns. So I'm just not aware firsthand of that having happened.

TURNER: Are you aware that there is a University of Texas survey that found more than a third of construction workers in this state do not receive regular rest breaks?

BURROWS: Not aware of it. Not aware of the survey, the metrics, things like that. Sounds like OSHA is not doing its job, and I know there's anonymous hotline reporting, things of that nature. Maybe one of the things we need to do is make sure workers know they can have a report to OSHA without fear of any retaliation by statute when those things actually occur. I would work with you on that in a heartbeat.

TURNER: You say OSHA's not doing its job. OSHA has recommendations, not a rule, but they do have recommendations, but ultimately it is up to—I mean, Texas doesn't typically wait on Washington to solve our problems for us. We pride ourselves in solving our problems ourselves, do we not?

BURROWS: We tend to like to.

TURNER: Yes, so why would—and if the state has not solved this problem, and the legislature has not to date, then why is it a problem for individual cities to say, "This is a concern in our community. We've seen people get sick, we've seen people go to the hospital from dehydration, we've seen, in some instances, people die from heatstroke—to want to solve that problem? Why should we interfere in their ability to protect those workers?"

BURROWS: Well, I would point out to you, I think OSHA—I've only read the rest and water break bulletin a couple of times, but they don't actually have specificity on how to do—what the number of times it needs to because it probably changes. And we both would agree that OSHA's probably the most comprehensive agency looking at these things. What I think is at issue is the cities have come up with a metric which really doesn't work and probably is woefully inadequate by even OSHA's standard of a rest break of 10 minutes every four hours. But they should not be the ones in the business of enforcing it. OSHA's out there. OSHA's looked at this. They have declined to adopt a similar standard probably for the challenges of it.

TURNER: Right. And in Texas are you aware that we do not have a statewide agency that has the responsibility or the authority to enforce workplace safety standards? Are you aware of that?

BURROWS: So I believe that to be accurate. And, obviously, if we need to talk about having concurrent jurisdiction because OSHA's inadequately equipped—which I'm not saying I agree with—I'm happy to have that conversation. But it should never go to the cities on doing that. What I hear you saying is perhaps you think OSHA is inadequate. I have not been led to believe that.

TURNER: So let me get back to something you said at the very beginning. You claimed your legislation would help cities, I think you said, refocus on their primary responsibilities or something to that effect. In your mind, in your view, what is a city's or local government's appropriate responsibility? What is their role in our governmental system?

BURROWS: As we look outside and we see streets and keeping them clean and making sure we have water and sewer and utilities and a police force and fire and things of that nature. I don't have a comprehensive list.

TURNER: Why are police and fire, just to pick two examples, why are those important?

BURROWS: Because it's something they have historically done, and we expect them.

TURNER: Well, cities have done a lot of things historically that I think are about to be preempted under your bill. Why police and fire? Why sewer? Why water?

BURROWS: Your definition of "historically done" and mine are probably very different. This seems to be a recent adventure and foray into these areas by cities that continues to be growing. Historically speaking, when we think about what the core functions are, it's not having their own set of railroad commissions and labor codes and things of that nature. And, obviously, they're venturing into it. And that's not something you think of traditional cities—is part of what they do.

TURNER: So with respect to police and fire, that's important because—

BURROWS: Because we expect when something bad happens or we need them they are there.

TURNER: Okay. Because it's a matter of public safety. Is that right?

BURROWS: Which is preserved under my bill.

TURNER: Right. And I would agree with you that's very important to preserve. I would also argue that a rest break and a water break every four hours in 105 degree heat is a matter of public safety. Would you not agree with that?

BURROWS: So two cities, out of all the municipalities we have, have these and started to do this. I would tell you this is not historically the function of city government to do this. This is where OSHA has been. If the state needs to take a look at it, happy to do that. But we do not need to have a patchwork of these ordinances across the state at every municipal level.

TURNER: Chairman Burrows, you agree that police and fire, as two examples, are historically in a city, a local government's purview and are important because they deal with matters of public safety. And so my question is if a city has some level of responsibility for public safety of its residents—

BURROWS: Public safety versus workplace safety. Don't conflate the two issues based on the historical things.

TURNER: So there's a difference between workplace safety and public safety?



BURROWS: What I would tell you is this: I am very happy to work with you or anybody else on a bill if we can sit down and say this is not being handled by OSHA, and we need to actually have a regulatory agency that has concurrent jurisdiction to look at workplace safety issues. I am happy to work with you on those because we all want workers protected. I do not believe municipalities need to be the ones enforcing these.

TURNER: Well, I appreciate your willingness to work with us. I hope we can continue to do that this afternoon. I think that workplace safety is public safety, but we'll disagree on that for now.

REPRESENTATIVE WU: I know that a lot of cities in Texas have historically passed nondiscrimination ordinances in relation to any number of things including race, ethnicity, national origin, sexual orientation, veteran status, women, or any other religious preferences or anything like that. Would your bill, as it is drafted, preempt these type of ordinances?

BURROWS: The bill does not effect NDOs. If you look at the Local Government Code under the employment section, there is actually specific authority we have already delegated there. We have run the traps also on fair housing. Protected classes, both state and federally, NDOs are not preempted by this legislation.

WU: Okay. Another area of concern—and I know this is an area that I know our body, so far, has failed to act—is the issue of predatory lending. By this I mean payday loans, title loans, auto title loans, and a lot of business practices that—in my opinion, at least—prey on the very poor and most vulnerable in our society. I know that this body, despite efforts over the past decades, has largely failed to put any type of regulation in. And in response to that many cities have put in ordinances and regulations on how many of these businesses can be in a neighborhood—restricting some of the more unethical practices that they might have. Does this legislation that you are proposing ban future ordinances in this respect?

BURROWS: So it does, but I want to make sure the record is clear as we talk about this. When I brought my bill, I heard from a lot of constituents, and I worked with a stakeholder group who led the charge on creating these ordinances. I agreed with them that I would preserve all 49 ordinances in existence, and they said that this was a good position. I intend to honor that as this moves through here. So we did grandfather those in, it was one of the first amendments we changed to try to address that.

WU: My follow-up question on that is because these ordinances have to be in place by a certain time, if a city needs to adjust their existing ordinance that was in place prior to the deadline, would they be able to do that? Would they be able to go and tweak their existing laws to change whatever circumstances?

BURROWS: Anybody can amend the ordinance to bring it into compliance with this statute.

WU: Just to be clear, for the purposes of legislative intent—if they tweak an existing law under the safe harbor of this bill, that would not be considered a new law?

BURROWS: What I would tell you is this is the language I agreed to with the stakeholder group that wanted the language in there preserving it. Every "and", "the", and "what" was talked about and discussed with them. This is what they wanted, and I agreed to it.

WU: I appreciate that, and again I wasn't part of that process, but purely as a way to understand the implication of this legislation—

BURROWS: This is it—the 49 that are in there. We're not going to see new ones. They are not going to be amended to address other things. The ones that are in existence stay in existence.

WU: Again, I think the answer that you're giving me is that no, any changes or tweaks to these laws in the future would not be acceptable.

BURROWS: Under this bill, I do not believe—these are the 49 that stay in existence as is, which is what I agreed to with the stakeholder group.

WU: Thank you. Another area of concern that cities have been dealing with is unethical puppy mills, roadside pet sellers, and other things like that, that I know our body has had some say in it and have dealt with it somewhat—

BURROWS: If you wait for my perfecting amendment you will see I've grandfathered those in as well, having worked with another stakeholder group who wanted to make that sure those things were done. I think it is the second amendment that will come up when dealing with it.

WU: Just to clarify, the amendment that you are going to offer—does it clarify the conflict with the Texas Dog or Cat Breeders Act?

BURROWS: What I can tell you is when it comes to issues of puppy dogs and these issues, it's not really an area of policy that I work on very often by choice. Members who are concerned about it brought this to my attention, and I asked them to work on language. I believe it is acceptable to the stakeholder groups trying to preserve the things that are in place.

WU: Thank you.

REPRESENTATIVE RAMOS: One of the things that's mentioned in the introduction of your bill—it references that the idea is to stop a patchwork of regulations and apply them consistently across the state. Is that correct?

BURROWS: Absolutely. I think that's what Texans want, that's what businesses want, and it's good policy.

RAMOS: Okay, and in fact it's beyond statewide, right? The reality is that the attempt to do this is a nationwide movement, correct?

BURROWS: I have no idea.

RAMOS: Okay. Are you familiar with the right-wing ALEC group? The American Legislative Exchange Council?

BURROWS: I know what the name is.

RAMOS: Are you familiar that this American Legislative Exchange Council promotes legislation that advances corporate interests and conservative positions nationwide?

BURROWS: Awesome. Maybe they'll take my bill and make it a model for the entire country.

RAMOS: In fact, did you not take their bill and try to make it as a model in this state because if people watching—

BURROWS: No, I want to be very clear Representative, this is not their bill. This is one I worked on with lawyers in Texas, myself, and others. My guess is they're going to take my bill and make it nationwide because it's so good and important.

RAMOS: Well, thank you. I think if our representatives here or people watching at home—if they Google "ALEC model policy," they'll actually be able to find this there on their website. Were you aware of that?

BURROWS: Because they took my bill and used it. This gave them model policy, not the other way around.

RAMOS: So this ALEC priority—

BURROWS: No, this is not an ALEC priority, let's not characterize that. This is a Dustin Burrows priority bill. It is important. I worked on this bill—and Jeff Leach will remind me—I worked on this bill with people here, and ALEC and others are so interested. *Forbes* published an article on it, *People* published an article on it, because it's getting nationwide attention because it's that important. It's not just an issue that's affecting Texas. They have taken this bill, and they're going to hopefully take it nationwide, and that's a good thing.

RAMOS: So the article that they wrote a few years ago, "Stop Local Governments from Being Victims of Localized Progressive Politics"—they wrote that based on your bill years ago?

BURROWS: You're talking about an article, not something you found on the website about my bill? I mean, this issue? This issue is pervasive, there's no doubt about that.

RAMOS: Correct. When we're talking about something that you're wanting to implement in Texas that is a movement nationwide, the idea of local democracies and communities choosing their representatives at the city council level—this is an attempt to stop that voice from local communities to choose their local leaders and make those local, neighborhood community decisions?

BURROWS: We have a fundamental disagreement on civics. Now, I want to go back to the Texas Constitution. When we set up and established home-rule cities, it said "no city ordinance or charter can have anything that contravenes the general-laws of this state." That is Texas Government 101. This bill essentially gives full force and effect to that.

[Amendment No. 1 by Turner was laid before the house.]

TURNER: This amendment is a very simple amendment—it would strike the enacting clause of this bill.

Members, **CSHB 2127** is unconstitutional. It is against the will of Texas voters and is so sweeping that we can't—as you heard from that extensive dialogue between the back mic and the front mic a few moments ago—we don't know everything that this bill is going to preempt. We don't know every county rule or every city ordinance that's going to be preempted under this legislation.

So a little history lesson. Over 100 years ago Texas voters approved a constitutional amendment authorizing cities with over 5,000 residents to establish a home-rule charter. These voters understood that they did not want to depend on the Texas Legislature to address every local issue and problem that arose within their communities. Voters, 100 plus years ago, understood that Dallas is different from Euless. They understood that Arlington is different from Austin. And they understood that the Panhandle has different challenges than the needs of deep East Texas. Texas is unique, and our communities are diverse. A cookie cutter one-size-fits-all approach simply does not work for our vast and complex state. Texans across our state elect local leaders who live in their communities and know what their citizens need. That's how they get elected. They talk to their neighbors, and they respond to them about the issues that they're facing in their communities, in their neighborhoods. So you might say, "Well, that was over 100 years ago, Chris. The state's changed a lot since then." You're right, it has changed. It's become bigger. It's become more diverse. It's become more complex and complicated. In 1920, Texas had a population of 4.6 million people. Today, Texas has more than 30 million people in it. My district, the city of Arlington, had a population of 16,000 in the 1920s. It has nearly 400,000 today.

So why would this house pass a bill that would remove flexibility and the ability to respond to local challenges from local communities when our state has only gotten bigger, more diverse, and more complicated in the last several decades? It is the very definition of big government for this legislature to tell every single city and every single county in the state that they are no longer allowed to respond to the needs of their local citizens. It is the definition of big government to require all cities and counties to live under a state-run regulatory regime, one-size-fits-all. This bill will harm our constituents. It will harm your districts. **CSHB 2127** specifically preempts protections for workers that have been proven to save lives, including workers' basic rights to have a short break during the work day so they can take a rest in the shade and drink some water. Members, you all know how hot it gets here in our summers. Are we really going to stand here in this air-conditioned building and tell workers of Texas on construction sites that they are not entitled to one 10 minute rest break every four hours? Are we really going to do that? When we can walk over to that lounge any time we want and get a drink of water if we get thirsty? We are really going to tell workers on construction sites they can't have a drink of water every four hours?

**CSHB 2127** preempts ordinances, potentially, that prevent discrimination. The bill author has said that nondiscrimination are not included, but there's a lot of ambiguity around that, and I don't think we really know what's going to be preempted. On predatory lending, the law as written as it comes to the floor

would prevent new predatory lending ordinances from being enacted, and even more concerning, would prevent cities that have existing ordinances—because they were reacting to a problem in their communities that they identified—from amending their current ordinances. This is important because predatory lenders prey on vulnerable populations already in financial distress, trapping borrowers in a cycle of debt by selling loans with up to 500 percent interest rates annually. These predatory lenders are already finding loopholes in current city ordinances around the state, and preventing them from being amended, as this bill would do, strips them of their teeth in the future.

Finally, the private right of action that **CSHB 2127** creates will spur an onslaught of frivolous lawsuits, and Texans will pay the price. Almost everything a city does can be tied to one of the codes in this bill—meaning there will be an inevitable increase in lawsuits. Many of these lawsuits will not have merit but will still cause a massive expenditure of taxpayer funds. The bill preempts things that I don't even think have been considered by the proponents of the legislation. The unintended consequences of this bill are innumerable. The bill could preempt valet parking restrictions, nuisance vegetation ordinances, firework regulations, catalytic converter license requirements, heavy truck ordinances, you get the idea. Anything you can think of potentially could be preempted by **CSHB 2127**.

As a legislature with only 140 days to pass legislation every two years, does this body really want to spend our time regulating who and who cannot keep chickens on their property and how clean those pens must be? There are so many issues that deserve this body's attention—issues that our constituents elected us to work on, like property tax relief, public education, fixing our electric grid. We are doing a disservice to our constituents if we tie up our time with legislating local matters and deny the ability of our local elected officials to respond to the problems in their community. This is an unconstitutional blanket transfer of power that will have far-reaching implications and will harm the people that live in the cities and counties in your district, in my district, and everyone we represent.

WU: Representative Turner, how often does the Texas Legislature meet?

TURNER: We meet every other year for 140 days.

WU: So the amount of time between legislative sessions is pretty significant, right?

TURNER: About 18 months, about 19 months, yeah.

WU: And a lot of things can happen inside of 18 months?

TURNER: Yes.

WU: Were you here in this body when our state went through Hurricane Harvey?

TURNER: Yes, I was.

WU: Do you remember that after Hurricane Harvey we—many of us, especially in the coastal areas—begged the governor to call a special session to deal with the aftermath of Hurricane Harvey?

TURNER: Yes, I do.

WU: Do you remember us ever having a special session for Hurricane Harvey?

TURNER: My recollection is we did not have a special session after Hurricane Harvey.

WU: And we were told, "Wait 18 months," right?

TURNER: Yes.

WU: And would it be fair to say that the federal government, the nation as a whole, might provide a certain level of protection for people? And then the state itself can provide this same level of protection or can provide a higher level of protection?

TURNER: Absolutely.

WU: In fact Texas, in many areas, provides greater protections—especially in areas like criminal justice—Texas provides a higher level of protection than even the U.S. Constitution and U.S. federal law.

TURNER: In many cases that is true, yes.

WU: And in that sense, many cities then go and say, "The federal government provides the very, very foundation. The state may provide a little more protection, and we're going to provide even greater protection." Is that fair?

TURNER: Yes, I think that's right, and I think that is the reflection that—again, cities are unique and the needs in Arlington and Grand Prairie, that I have the privilege of representing, are probably not always the same as Harris County, that you have the privilege of representing.

WU: And in fact over the past decade that we have been in this office we have heard people talk about the amazing growth of Texas and how so many people are moving to Texas. Have you heard those same stories?

TURNER: Absolutely.

WU: And the people who are moving here from California and from New York—they're moving to the cities.

TURNER: Yes they are. They're drawn to unique quality of life attributes that different cities have, you know? I know people like to move to Grand Prairie, where I live, because we have an award-winning, world-class park system. And we're located right in the middle of the Dallas-Fort Worth Metroplex. There's a lot of reasons to move to Grand Prairie, but other people may choose instead to move to Frisco because of their unique quality of life attributes that they have. Others may want to live in Keller. There's a lot of different—some people may want to live in Fort Worth or Dallas and have more of an urban living experience. There are a lot of different reasons people move because cities and communities are unique, and we ought to embrace that not try to undermine it.

WU: Mr. Turner, would it be fair to say that many of these cities are putting these additional protections in because the cities we compete with are also putting those protections in? And if our cities don't have the same level of protections, the same level of benefits, then we are no longer being competitive to our competitor cities?

TURNER: Absolutely, that's absolutely right. And with people's increasing ability to work from anywhere, as more and more people have the ability to work virtually, that's a real consideration. People aren't tied down to one specific location anymore as much as they used to be, say, a generation ago. So people have the freedom to vote with their feet and move if they don't feel like the quality of life is what they want it to be in their local community.

WU: Because when we talk about economic growth, it's not just about the companies and the people who own companies, but it's also about the labor force and workers, right?

TURNER: Well, that's exactly right. That's one of the things that I find so problematic with this legislation. It really undermines basic protections for workers—very modest, basic protections for workers in our state. And the fact is we do have a strong economy. I said this before a couple weeks ago when we were talking about Medicaid expansion—it is the workforce of Texas that makes our economy strong. It is the workforce of Texas that makes our economy the envy of many places around the country and around the world. It is the workers who power and fuel this economy. Why we want to undermine workers' health and safety is beyond me.

WU: I know Chair Burrows says that the intent of this legislation is to make Texas economically competitive. But would it be fair to say that because we don't know the full implication of this legislation and because we cannot predict what disasters loom in our future, that potentially this legislation may actually make us less competitive and less ready to deal with future disasters?

TURNER: Yes, Representative Wu, I think that the potential unintended consequences, or perhaps intended consequences, of this bill very much could undermine what makes Texas great and undermine our local economy. I think that it's interesting to say, "We've got to pass this bill to be economically competitive," when we're told all the time we've got the greatest economy. So which is it? Are we great or are we in trouble and we need to pass this bill? I don't think you can have it both ways.

REPRESENTATIVE MARTINEZ FISCHER: There are a lot of new people here on the floor. I think an amendment that strikes the enacting clause seems a little extreme. I mean, have you tried to make some improvements to this legislation?

TURNER: Yes, I have.

MARTINEZ FISCHER: Maybe for the purpose of making the body aware, can you tell us some of the things that you've been trying to work on in this legislation to make this legislation a little bit better for working families?

TURNER: Absolutely. These are issues that were raised in the State Affairs Committee. Several members, including myself, raised these issues at that time. We've stayed in contact with Chairman Burrows, and, I'll say, he's certainly been accessible and willing to visit with us. But specifically, just the broad nature of the preemption in this bill really could hinder local governments ability just to do basic things that they do now in a wide array of areas. So we are trying to get some clarity on that, number one. And then to hone in worker protections and workplace protections as we were just talking about. You know, legislation that specifically calls out, as this bill does as it comes out of committee, rest and water breaks as being prohibited from being instituted at a local level is extremely problematic for our communities around the state. Those are two key areas of focus I would say.

MARTINEZ FISCHER: I appreciate that. I think for the purposes of this discussion, you've been working hard to try to find ways to make some modest improvements. You're not asking for an entire rewrite. You're talking about some basic rights, basic protections, if this is going to apply to every city in this state.

TURNER: Well, that's exactly right. I think the premise of this bill is probably contrary to anything I could ever support, honestly. But could we at least do some minor surgery to protect a few existing rights that some workers have in the State of Texas right now?

MARTINEZ FISCHER: The reason why I mentioned all cities is that the Texas Constitution is pretty clear. We have a certain set of rules for cities that have big populations, and then we have another set of rules for cities that don't.

TURNER: Right.

MARTINEZ FISCHER: This proposal, am I right, that if it passes it would apply to any city big or small?

TURNER: Yes, that is my understanding of the legislation, Chairman Martinez Fisher. I think that under the Constitution, a city over 5,000 has the ability to adopt a home-rule charter. So this bill applies to home-rule charters, but dramatically ratchets back their ability to adopt local regulations and ordinances specific to this. It really strips away their home-rule, frankly. It runs contrary to the idea of a home-rule city. It very much makes home-rule cities much more similar to general-law cities, which are small cities with less than 5,000 or fewer people.

MARTINEZ FISCHER: Again, lastly, as it pertains to statewide policy—I am aware of a number of initiatives that this body is seeking to pursue, whether it be broadband or whether it be CHIP and science. A lot of those federal regulations are looking to invest in cities that have a local government structure that takes into account, whether it be workers' rights or diversity or making sure it's a local community that has an interest in advancing, let's say in engineers for that matter—this law seems like it could be counterintuitive for all of our jurisdictions to be equally competitive to see those opportunities and to take them. Because, let's face it, some of these decisions are being made at the national level. Some of



these decisions are being made in the corporate suite. And if we have this sort of policy how do cities distinguish themselves to be able to attract those national and business dollars?

TURNER: I think it's a great point. And I fear that this bill will make it harder for us to attract some of those investments in the future. Again, like Representative Wu and I were just talking about, the workforce can vote with their feet and they can move to a city or to a state that provides a better quality of life and is more in line with their values. I think corporate America is increasingly on the same page there because they want to attract and retain the best employees. If they are going to relocate and expand in a city, in a community, or in a state that doesn't have some basic protections, they know it's going to be harder to attract and retain their workforce. So why even go there? Why not just go to a place that does?

MARTINEZ FISCHER: I guess the goal that you are trying to accomplish is on a motion to strike. That just puts people back at the table to try to negotiate some decent changes. Maybe this could get to a certain level. Maybe not everybody will support it, but some might.

TURNER: That's right. And to be clear, it's a good point, not everyone has seen an amendment to strike the enacting clause before. Members, if you're not sure what this amendment would do, it would strike the enacting clause of the bill, which would essentially nullify the bill, gut the bill. There's a lot more amendments on the floor today. If this amendment passes, I think we'll be moving to the next item on the calendar. We can go back to the drawing board and work out something that works a little bit better than what this bill does.

MARTINEZ FISCHER: Thank you. I appreciate your work on this. I know you've worked very hard on it, and hopefully, as we continue with these debates we have an opportunity to bring some language that takes some of the sharp edges off this proposal.

BURROWS: I would ask that you go with me in opposing this amendment. Vote for your small business owner, your local community, your restaurants, and everybody who, basically, is in there as a business owner trying to make a living, which is the economic engine of the State of Texas. Thank you. I oppose.

TURNER: Members, I would ask that you vote yes on this amendment. Chairman Burrows said this is about small business owners. I represent a lot of small business owners in Tarrant County. I have not heard from a single one of them asking me to pass this bill. What they are asking me to do is to invest in the workforce, invest in education, invest in health care, infrastructure, roads, broadband—those are the things we should be focusing on, not undermining our cities' and counties' ability to address local problems at the local level. So I ask that you vote yes on this amendment.

[Amendment No. 1 failed of adoption by Record No. 258.]

[Representative Bryant raised a point of order against further consideration of **CSHB 2127** under Rule 8, Section 3, of the House Rules and under Article III, Section 30, of the Texas Constitution, on the grounds that the bill contains more than one subject. The point of order was overruled.]

[Amendment No. 2 by Burrows was laid before the house.]

BURROWS: This is a perfecting amendment. It does a couple of things. One of the things it does do is it makes sure that the venue is now down to the county where things actually occurred. Also, it preserves some of the puppy ordinances that we talked about. Mr. Patterson was very instrumental in getting those done.

[Amendment No. 2 was adopted.]

[Amendment No. 3 by Martinez Fischer was laid before the house.]

MARTINEZ FISCHER: Members, this is an amendment—if you have the main portion of the bill in front of you—it addresses page 1, line 19, Section 4, and it runs all the way through page 2, line 11. There's some really good language in here that—as I listen to this debate there's references over and over again that this is not going to stop local governments from doing what they do. When I see those couple of pages I have some comfort, but then I go to code, and I realize that's not current law. That's not in our code. And I look at this bill—and if this bill passes, that language does not go into Vernon's Civil Statutes. It's what they call the non-amendatory language.

So all this amendment does is that if we really mean this, in Section 4, that our local governments can continue to operate. These functions, enumerated on page 1 and page 2, we ought to put it in our Vernon's Statutes so that everybody knows it's not going to be—the non-amended language gets submitted, and it's not part of our Vernon's Statutes. It is a pocket piece that goes in on Vernon's session laws. If we are going to be consistent in the application of how we do this, that's all this amendment says. We are going to lift the language off page 1 and page 2, we are going to underline it, which means that if it is adopted and it is passed and it becomes law, that underlined text becomes part of the law that goes into our statute. I have not had a chance to talk to the author about this amendment, but I hope it is acceptable to the author.

BURROWS: Members, I am going to respectfully oppose and rather than having a very nerdy, lawyerly argument about where it is—this law is law, it is findable, we will do it. Mr. Martinez Fischer and I actually agree that this is good language, which is why it is in the bill, but respectfully I'm going to oppose because we don't need to put it in different sections there. So respectfully I do oppose.

MARTINEZ FISCHER: Chairman Burrows, I appreciate it. We had a brief chat up here and we have a general agreement but a difference of how we get there. If this law passes, I admit those words will be in the law, they just won't be in statute. They will be in a pocket piece, a session update. If you are looking at this for your local jurisdictions, there is the opportunity for lots of lawsuits. The current proposal—you can file these lawsuits almost anywhere, almost anybody can bring it. So if we are going to have an argument over what a city can and

can't do, we ought to have page 1 and page 2 as part of the law. This is not a trick, this is just Law 101. Lets go to the primary authority. If we took the trouble to come up with the new language to say what we are not going to be doing going forward, and then we go through the trouble to say, "Don't worry. The things you're doing, you can still do." All I am asking for is an underline. This is not even a request for new language. This is just a request to underline what we have already said.

If you vote for this amendment, you are not putting new words into this house bill. You are just underlining it to make sure that it all goes to the same place. So when somebody opens up that book before they decide that they are going to sue a city, or a county, or a hospital district, or you name it—that they recognize that there are some authorities and some actions that are currently being granted in law that are not going to change. That's all I am hoping to do. So I hope you would vote for me to adopt this amendment. It's not a vigorous disagreement we have here. We both think it is going to be law at some point. If it is good enough to put in the bill, if it is good enough to put in Vernon's Statutes, then annotate this in code. I ask that you vote with me to adopt this amendment.

[Amendment No. 3 failed of adoption by Record No. 259.]

[Amendment No. 4 by Ramos was laid before the house.]

RAMOS: This amendment would ensure our municipalities and counties are still able to address the unique needs of their constituents. This amendment protects your constituents. Texas has seen a boom in the short-term rental phenomena. With this boom, we've also seen the unintended consequences of local constituents, including neighborhood concerns about noise, trash, parties in their own neighborhood, unknown individuals in their communities, crowded residential streets, and loss of community.

This amendment allows our local bodies to adopt, enforce, and maintain ordinances and rules regulating residential properties that are rented out for periods under 30 consecutive days. With this current situation you could have pedophiles—you could have sexual predators renting the property next door to your family homestead. What this amendment does is protect you and your constituents from having these short-term rental operations in your community. This amendment ensures that local governments continue to have the ability to offer solutions that best meet the needs and the unique circumstances of your community.

BURROWS: I'm going to respectfully oppose this amendment at this time. I think there may be some other amendments that may come up dealing with short-term rentals—not 100 percent certain, but I don't think this is the policy we want to get into at this time in the debate.

RAMOS: I encourage you all to protect your constituents. What do you want next door to you and your children? This allows you to continue to have your local representative democracy protect you and your community and your neighborhood. I encourage you to support my amendment. Please vote yes.

[Amendment No. 4 failed of adoption by Record No. 260.]

[Amendment No. 5 by Ramos was laid before the house.]

RAMOS: This amendment is in the spirit of protecting your community and your neighborhoods. We have seen illegal game rooms in many communities popping up in different neighborhoods. What this amendment does—it does not affect the authority of the municipality to adopt, enforce, or maintain an ordinance—it allows, once again, your local democracies and democratically elected officials in your community to protect you and your constituents from illegal game rooms and allows them to enforce ordinances protecting your constituents.

BURROWS: This is absolutely, completely unnecessary as an amendment. In fact, the amendment cites the Local Government Code, Section 234.131, where this authority is absolutely retained. There is no reason to put this on the bill. It is completely unnecessary. Your local communities are unaffected whatsoever about dealing with game rooms in the bill, and anything to suggest otherwise is just completely not accurate. So for that reason it is unnecessary, and I oppose.

RAMOS: Thank you, Mr. Burrows. As you heard members, he supports this amendment. There is no problem in adopting it because he clearly supports it, as he just stated it's in there. So why don't we make it clear? Support your constituents, support Chair Burrows, and please adopt this amendment. I encourage you to vote yes.

[Amendment No. 5 failed of adoption by Record No. 261.]

[Amendment No. 6 by Reynolds was laid before the house.]

REPRESENTATIVE REYNOLDS: Members, this bill is really broad. However, there are some exemptions to the bill relating to roads, imposing taxes, buildings, and other things. This is a very simple amendment that adds additional exemptions that relate to health and safety requirements to maintain the municipalities proprietary functions. For example, allowing local governments to require certain standards on their project and maintaining cities and counties ability to respond to disasters. For example, enacting certain labor protections on construction projects to rebuild after a hurricane. These are really important, members, since we really have many issues in the construction arena.

Finally, making sure that there is some clarification around discrimination protections. This amendment allows our local communities to maintain the existing protections in place to build projects with certain standards, protecting workers, and responding the best way possible if disasters hit the communities that they serve.

BURROWS: With all due respect to my good friend, this is another one that is absolutely unnecessary. I don't know what proprietary functions means, I think that's a big loophole, but the rest of them—health and safety requirements, the Health and Safety Code is not one of the codes preempted. Also, if you look at the natural disasters, that authority is clearly retained under the Government Code. And then also, prohibiting employment discrimination—we actually have statutes on the books that have given cities the authority to basically prohibit that. Therefore, this is unnecessary because cities retain that authority under this bill. For that reason, it's unnecessary, and I'll respectfully oppose.

REYNOLDS: Members, this amendment simply gives more local control, and it also helps protect the welfare, health, and safety of residents.

[Amendment No. 6 failed of adoption by Record No. 262.]

[Amendment No. 7 by Goodwin was laid before the house.]

REPRESENTATIVE GOODWIN: This amendment deals with honey and honeybees. Honey and the protection of bees and other pollinator species is a legitimate concern that often requires governmental action at the local level. This amendment, the Honey Amendment, would continue to allow governmental agencies to promote and protect the honeybees and honey production, and more broadly, other pollinator species like butterflies and birds. Many areas have unique local economies based on the production of honey.

BURROWS: I will respectfully oppose. There is not a regulatory provision or authority I'm aware of where the State of Texas regulates bees, butterflies, and birds. Therefore, this would still retain at the local level and is unnecessary. For that reason, I respectfully oppose.

GOODWIN: So I just want to be specific and clear that we do allow our cities this ability to be able to manage and protect our pollinators.

[Amendment No. 7 failed of adoption by Record No. 263.]

[Amendment No. 8 by Reynolds was laid before the house.]

REYNOLDS: This amendment is regarding pesticides. While state agencies, like the Department of Agriculture, already play an important role in regulating pesticides, local governments in some cases also play a role in ensuring the safe application and use of pesticides, in part, to protect local water resources—including both aquifers and surface water. This simple amendment assures local governments can continue to take action on the safe use of pesticides and promoting alternatives to pesticides. Whether it's homeowners, school kids, or our water resources the local government can and should play a role in implementing local policies that protect our citizens.

BURROWS: I'm going to respectfully oppose this amendment. I do not believe it is necessary, and for that, I will respectfully oppose.

REYNOLDS: Again members, I favor local control. I want to help our public health and safety. This is regarding pesticides. With that, I ask for your vote.

[Amendment No. 8 failed of adoption by Record No. 264.]

[Amendment No. 9 by Lalani was laid before the house.]

REPRESENTATIVE LALANI: This amendment would allow local government to promote soil and water conservation and best practices. Members, the Texas State Soil and Water Conservation Board plays an important role in promoting the soil and water conservation, but so do many local cities which promote through ordinance, rebate, and other regulations. Water and soil conservation, which is generally part of the Agriculture Code, is caught up in this bill.

BURROWS: I'm going to respectfully oppose this. Local Government Code, Section 551.007, actually deals with water restrictions, and those rights will be retained. Nothing will be changed. Therefore, this is an unnecessary amendment, and I respectfully oppose my friend's amendment on this.

LALANI: This amendment would allow local government to promote soil and water conservation and best practices.

[Amendment No. 9 failed of adoption by Record No. 265.]

[Amendment No. 10 by Cole was laid before the house.]

REPRESENTATIVE COLE: Members, many cities have taken leading roles in promoting water conservation and restricting water use through drought contingency plans when the weather doesn't cooperate to ensure sufficient water supply. Indeed, many subdivisions are required by the state to have drought contingency and water conservation plans in place in order to gain access to state funding through the Texas Water Development Board. Leading cities like Austin, San Antonio, and El Paso are national leaders on such plans and it would be a shame if **CSHB 2127** were to impact these policies. My amendment simply seeks to clarify that cities can continue to do this great work.

BURROWS: Again, I will respectfully oppose this. The city retains full power to do these things. It is unnecessary. Therefore, I will respectfully oppose.

COLE: I ask that you protect local control.

REPRESENTATIVE ZWIENER: Representative Cole, is it true that over 70 percent of the State of Texas is still in a state of drought right now?

COLE: Yes.

ZWIENER: And is it true that we desperately need all hands on deck to try to conserve water in the State of Texas, so we have adequate resources for our communities and to keep our streams flowing?

COLE: Yes, we do.

ZWIENER: And Representative Cole, could you conceivably see things like water use falling under some of the fields that this bill is trying to preempt?

COLE: Yes, it would.

ZWIENER: Isn't that the exact issue we are struggling with? This bill is so broad that we are not sure that our cities and counties will be able to continue to do water conservation work here in Texas if this becomes law?

COLE: Absolutely.

ZWIENER: Thank you so much, Representative.

[Amendment No. 10 failed of adoption by Record No. 266.]

[Amendment No. 11 by Bhojani was laid before the house.]

REPRESENTATIVE BHOJANI: **CSHB 2127** preempts local regulation of agriculture, business and commerce, finance, insurance, labor resources, local government, occupation, and property codes. **CSHB 2127** negates existing local ordinances that conflict with the provisions of this bill. My amendment would allow existing ordinances to stay in place and not be preempted.

Members, I'm proud to have served on the city council for the City of Euless. I can tell you from experience that no one is closer to their constituents than city council members, mayors, and local governments. They see their constituents in the gas station and in the grocery store. They see them twice a month in city hall. They understand the needs and concerns of the constituents. Texans across our state have petitioned their cities and counties to adopt certain ordinances. It is not the role of the state to stifle the ability of local governments to find innovative, local solutions to problems. We must respect the will of Texans—the will of the people. We must not retroactively invalidate laws that have been approved by the people of Texas. My amendment preserves local control by allowing existing ordinances to stay in place.

BURROWS: This is essentially going to grandfather in all of the ordinances that we are seeking to repeal. That is not what we want to do. There also would likely be a rush to get a bunch of other really bad ordinances enacted before this bill takes effect. Therefore, I very much oppose this amendment.

[Amendment No. 11 failed of adoption by Record No. 267.]

[Amendment No. 12 by Martinez Fischer was laid before the house.]

MARTINEZ FISCHER: This is an amendment that I talked about earlier. If you look at the bill, there's going to be lots of questions. When there's questions about the bill, there's one place to answer them, and that's going to be in a courtroom—private right of action. I saw language that said you didn't even have to live in the county to sue the city that you want to sue. This just says you have to have standing.

I know that in Chairman Burrows' layout he talked about taking just traditional common law, well our law has advanced significantly since common law. We have an issue of standing where you actually have to have a reason. You have to be injured. You have to be an affected party to go to a courtroom to have your grievance heard. That's all this does. This just puts a standing requirement. It's not lost on me that we have legislation this session to create additional courts. The big argument is we need more courts because we're overwhelmed right now with—our dockets are heavy, these judges are working too much, or cases aren't going to trial. If we have a law that we pass in this state that says anybody can sue for anything, and you may not even have to live in the county where you bring this action, we're going to congest those courtrooms quite a bit more. This is just—be an injured party, be an affected party, or have traditional standing to get into a courtroom. That's all I ask for. I hope that it's acceptable to the author.

BURROWS: I'm going to have to oppose this amendment. This essentially changes the standing requirements that we've historically appreciated for common law and almost every cause of action we have. It is unnecessary, and we do not want to start monkeying with standing, in my opinion, for this suit or any others. For that reason, I oppose.

MARTINEZ FISCHER: Listen, I don't want to talk about a lot of things that we did under common law that we don't do anymore. Common law sounds fancy, but that is just a way of saying, "We don't have any standards, we can't make our own decisions, so we're just going to adopt the law that came on the ships when they crossed the ocean and we started American jurisprudence."

We are far more sophisticated than that now. We don't need common law to decide. If you're going to have a dispute with your neighbor, there are going to be rules. You have to have an injury. You have to have reason to be there. You can't just show up and say, "I had an extra \$300 to file a court case, so I just thought I'd just get into this fight because I had nothing else to do." We don't want common law for this. I think when we go back home we'll be answering that question quite a bit. Part of this law will impact our local officials—that may or may not be a good thing for you. But then there's a whole other part that's going to end up in our courtrooms. I don't know the relationship that you have with your judges and your local folks, but if you're in a small county and you only have one judge and that judge travels from county to county, I'm not sure you're going to end up on the Christmas card list if we inundate those courts with a ton of these lawsuits. Let's just have traditional standing. If you have a car wreck you have standing to sue the person who hurt you and vice versa. If we didn't have standing in a car wreck suit, the person who saw the accident or the person who sold you the car might be able to come in and sue you. We don't want to do that in our civil jurisprudence.

Likewise, we don't want to do this in our jurisprudence as it relates to suing cities, and suing counties, and suing local governments. Let's just have a little baseline of rules that you have to have an admission to get into the courtroom and that admission is you're affected by this, you are a party, you have a right and that right has been abridged. Or you're a member of an organization that's been impacted by these changes. I think that's enough to keep the courthouse plenty busy. I ask that you don't adopt the common law standard. I hope that you adopt a more advanced, a more current, and a more sophisticated standard of being a party who was actually injured. I ask you to vote yes on the amendment.

[Amendment No. 12 failed of adoption by Record No. 268.]

[Amendment No. 13 by Morales Shaw was laid before the house.]

REPRESENTATIVE MORALES SHAW: This is a Texas wetlands protection measure. This should be of particular interest to the coastal counties, and if we remember our pristine waters bill last session, then the rural counties as well. Almost all cities have policies and ordinances that protect the wetlands which are also protected by state and federal laws. Wetlands are important to tourism, water purification, endangered species, flood control, and green infrastructure. This amendment simply states that local governments continue to promote the



preservation of wetlands and keep development away from wetlands as long as it does not conflict with state and federal law. It's an easy amendment. It protects our Texas wetlands.

BURROWS: I am going to respectfully oppose this. There's still ample tools in the toolbox, and nothing is really being taken away for cities and municipalities to deal with this. This is unnecessary, and therefore, I oppose.

MORALES SHAW: I respectfully request that you vote favorably for this amendment that protects the Texas wetlands, and I ask for a record vote.

[Amendment No. 13 failed of adoption by Record No. 269.]

[Amendment No. 14 by Zwiener was laid before the house.]

ZWIENER: One thing that really stood out to me about this legislation when I read it was its provisions around qualified immunity. That's something we have discussed a lot in this building, largely around law enforcement. For those of y'all that are not familiar, qualified immunity is the doctrine that when a government official is acting in the course of their duties to do the job to the best of their ability that they are generally not able to be held liable for those actions. Well, this legislation says that for the purposes of this bill, city and county officials can be held liable and brought before a court of law for their attempts to enforce these ordinances if they don't comply.

Members, that alarms me quite a bit for a number of reasons. If we think about who enforces a lot of our ordinances it is our law enforcement, or it is a city manager working to implement what their duly elected council told them to. Members, the bill provides a couple types of relief right now when somebody sues a city, a county, or any of those officials. It allows for injunctive relief and it also allows for the collection of legal fees from the defendant if they lose. What my amendment would do is say that those city and county officials—who are simply doing the job that the voters in their community sent them to do to the best of their ability—would not have to pay legal fees to a plaintiff if they were sued under this bill.

I have feelings about the reform of qualified immunity, but I think it's something we need to be very careful about, and I think this bill takes a big, two-footed leap into removing qualified immunity in specific circumstances. I think we need to be careful that unelected employees are not held liable for the actions of their council or commissioner's court when they're acting on the legal advice from those entities. Members, I would ask you to support this amendment to make sure that the average code enforcement officer is not potentially subject to impossible-to-pay legal fees simply for trying to enforce a local law.

BURROWS: Let me remind the body there already currently exists a cause of action and remedy available for preemption under the Uniform Declaratory Judgment Action. The courts have interpreted to necessitate that immunity has to be waived in order to bring suit and actually recover attorney's fees. My bill essentially codifies the existing court cases out there to make sure that you can

actually bring the lawsuits and do what needs to be done on attorney's fees. That is what it does—it does not change anything. This is the reason why I respectfully oppose this amendment.

ZWIENER: My amendment would not at all harm the ability of an injured party to bring suit against the county or the city. What it would do is make it harder for them to collect legal fees, potentially, from a city or county official who is simply an employee trying to do their job. I ask you to think real hard if you think the average law enforcement officer trying to enforce a city ordinance should potentially be opened up to personal liability where they can owe somebody money simply for doing their job.

[Amendment No. 14 failed of adoption by Record No. 270.]

[Amendment No. 15 by Zwiener was laid before the house.]

ZWIENER: This amendment is very closely related to the first one. What this amendment would do is allow a defendant who is a city or county official and is sued under this section to be able to collect attorney's fees and their costs from the plaintiff if the suit against them is dismissed.

Members, this is critical because we do not need people filing frivolous and unnecessary lawsuits against cities—and again, city and county officials—in order to try and bully them out of enforcing the laws they are able to enforce. This bill is going to create a legal quagmire for our cities and counties. They are going to have a difficult time navigating it. I ask you to help us at least make sure this law discourages frivolous lawsuits against code enforcement officers, our law enforcement officers, and other city and county employees.

BURROWS: We all oppose frivolous lawsuits. However, when your rights and businesses are threatened to be shut down by a governmental entity and you need to actually have a declaratory judgment to preserve them that is anything but frivolous. That is very important. Therefore, I respectfully oppose this amendment.

ZWIENER: This amendment would only go into effect in the case of the lawsuit being dismissed against those specific defendants. Nothing in my amendment affects the ability of a plaintiff to pursue relief against a city or the county itself. It just restricts the ability to pursue relief from those everyday employees. This language as is could have a chilling effect on our local employees from trying to enforce the law. If that's not the intent, then let's protect them from being hit with frivolous lawsuits just for showing up to work for the cities and counties where we all come from. Please vote yes.

[Amendment No. 15 failed of adoption by Record No. 271.]

[Amendment No. 16 by Rosenthal was laid before the house.]

REPRESENTATIVE ROSENTHAL: This amendment is about allowing municipalities to really continue to rein in payday lenders. It's an issue I am particularly passionate about. Most of the people in this room have never had to use the services of a payday lender. These folks are really predatory lenders. Payday loans are unsecured cash advances for small amounts of money, usually

less than \$1000. A typical loan is \$500 or less at very high interest rates for a short term. Borrowers often need to cover essentials such as rent, food, utilities, and medical bills. Thanks to my predecessor in this house, rates on these loans are virtually unregulated in Texas which is why our municipalities need to be able to regulate them. Some in my area are charging over 700 percent APR on a 30-day loan. Once again, we are allowing these businesses to charge an over 700 percent annual rate on a 30-day loan. Borrowing costs soar astronomically with interest rates that high in a very short amount of time. Borrowers will often return to the lender saying they don't have the money to pay it off. This is something lenders really appreciate because they will extend the loan and charge them extra money. For example, if you borrow just \$100, at the first rollover you would owe an additional, typically, \$30 to roll it over. After six months your fees hit \$180. The loan itself was only \$100 and now you're at \$280. Borrowers can easily get caught in a debt cycle, taking out additional payday loans to repay old ones. It's usury, plain and simple, all the time sinking deeper into a financial quicksand of debt.

These folks prey on the poor. These loan lenders take advantage of people who live paycheck to paycheck and can least afford these high rates. Typically, a borrower has at least one or more of these following characteristics: young in age, has children, is a high school graduate, does not own their own home, and relies on social security checks. Can you imagine this on a fixed income? They have no access to any other type of credit. Members, nearly everyone who visits a payday lender has been there before. It's unusual for a customer to go to a store, repay the loan and a company fee, and never return.

REPRESENTATIVE HINOJOSA: Can you please help me understand, Representative Rosenthal, the purpose of your amendment? Is it to preserve the ability of localities to change ordinances when payday lenders find ways around predatory practices?

ROSENTHAL: It does. This amendment not only preserves their opportunity to keep it and amend it as conditions change, but it would also allow municipalities to adopt ordinances to rein in these payday lenders. Members, this is super important. These folks are predatory. They prey on the least among us. And this is one area where I think we can agree, it's reasonable to allow municipalities to rein in predatory lenders.

HINOJOSA: My understanding from the bill's author is that the bill grandfathers in existing ordinances as I understand it, but we know that these predators change their practices and so there needs to be flexibility for localities to address these new practices that prey on our constituents. Is that right?

ROSENTHAL: That is absolutely right. Thank you for your questions.

BURROWS: My understanding is there was litigation about the legitimacy of these. I worked with a stakeholder group and agreed to do this. Help me honor my commitment to them to keep their language in this bill all the way through until it becomes law, assuming that's what this body wants. With that, I'll respectfully oppose.

ROSENTHAL: These lenders in Texas—over 347,000 cars have been repossessed by car title lenders in the past decade. Over \$18 billion in fees have been drained from financially vulnerable Texans. For loans that average somewhere between 200 percent to 700 percent APR. These businesses charge Texans two to five times more than they charge borrowers in other states. A 2022 impact statement from The Perryman Group found that over the past decade, payday and auto title loan businesses drained \$1.6 billion in annual gross product and caused an annual loss of over 2,100 jobs. These products hurt families. They hurt small businesses and local economies. I hope you'll join me in at least letting our municipalities put guardrails on these horrible predatory lenders. I urge you to vote yes on this amendment.

[Amendment No. 16 failed of adoption by Record No. 272.]

[Amendment No. 17 by Rosenthal was laid before the house.]

ROSENTHAL: This is exactly the same as the last amendment, except instead of allowing municipalities to adopt a new one it will allow them to modify existing amendments as these predatory lenders modify their practices. I urge you to adopt.

BURROWS: For exactly the same reasons as the previous amendment, I respectfully oppose. Help me honor the agreement I made with one of the stakeholders to try to preserve the integrity of the language.

ROSENTHAL: Please rein in payday lenders and predatory lending practices.

[Amendment No. 17 failed of adoption by Record No. 273.]

[Representative Turner raised a point of order against further consideration of **CSHB 2127** under Rule 4, Section 32(c)(5), of the House Rules on the grounds that the comparison section of the bill analysis is substantially or materially misleading. The point of order was withdrawn.]

[Amendment No. 18 by V. Jones was laid before the house.]

REPRESENTATIVE V. JONES: This bill is broad in a lot of ways. It will impact many existing ordinances, from our ability to expand or pass new payday lending ordinances to the very basic functions of cities. We have heard so many examples of the impact that this bill will have on local communities such as Dallas, Texas, where I represent.

My focus today will be on workers' protections that are endangered by this bill. The impact on workers' protections will be sweeping as **CSHB 2127** will repeal existing protections such as: water breaks for construction workers, fair chance hiring, safety standards, nondiscrimination ordinances, and will prohibit the passage of future protections. Because of this, my amendment simply allows for existing protections to stay in place. For example, it is important that certain projects with taxpayer money have certain workers' protections. It would allow for cities and counties to make sure that when they spend taxpayer money on projects, the recipients provide health care for their employees so that the county does not end up paying twice—once for the project and once when that employee gets sick on a project and does not have health insurance. We need to further

clarify that cities and counties will be allowed to pass policies that deal with employment benefits for their own employees. We must keep workers safe and be consistent with the standards and recommendations related to heat outlined by the "Occupational Exposure to Heat and Hot Environments", published by the National Institute for Occupational Safety and Health. We must protect our workers from wage theft. We must ensure that we maintain local nondiscrimination—

REPRESENTATIVE GARCIA: Representative Jones, isn't it true that this bill as currently written would usurp the ability of local authorities to dictate ordinances and regulations that address the needs of their communities?

V. JONES: Absolutely.

GARCIA: And as currently written, would it prevent local authorities from making decisions to protect workers in their communities?

V. JONES: Yes, it would.

GARCIA: Are you aware that while a wage theft ordinance became law in Austin in 2020, the last time a similar bill became law at the state level was back in 2011?

V. JONES: Yes, ma'am.

GARCIA: Do you think that the city passing a law to address an issue such as wage theft should be the prerogative of the city's elected officials, in response to the needs of the city and wishes of their constituents?

V. JONES: Absolutely, that's why we elected our local officials.

GARCIA: Don't you think that these cities should have the authority to take action or not take action on an issue like this that will affect local workers based on the wishes of their residents?

V. JONES: Yes.

GARCIA: Don't you think that cities and municipalities should have the power to enforce and protect contracts—binding agreements that were made before the law would go into effect and have been operating effectively for both parties?

V. JONES: Yes, ma'am.

GARCIA: Are you aware that the heat death in Texas reached an all time high last year?

V. JONES: Yes, ma'am, and it continues to rise with each and every year that passes.

GARCIA: Are you aware that in the criteria for recommended standards by the "Occupational Exposure to Heat and Hot Environments" published by the National Institute for Occupational Safety and Health, they outlined the dangers of heat stress and discuss rest breaks as an administrative solution to the issue?

V. JONES: Yes, ma'am.

GARCIA: Don't you agree that it is crucial for the health and safety of workers that there be no gap in the workplace protection that could provide life saving standards and rest breaks?

V. JONES: Yes, I do, and I hope my colleagues agree too.

GARCIA: If this bill were to become a law in its current form, is it true that in order to seek resolution on a number of these issues, including workplace nondiscrimination, a resident as far away as El Paso, Lubbock, or Brownsville might have to travel all the way to Austin to lobby the state government to pass a law, rather than deal with their issue in their municipality?

V. JONES: Unfortunately, yes, I do know that.

GARCIA: Thank you, Representative Jones.

BURROWS: I'm going to respectfully oppose this amendment.

V. JONES: This amendment will ensure workers protections are protected. I hope that we continue to find bipartisan solutions to protect our workforce, the lifeblood of our economy in Texas—the state that represents the ninth largest economy in the world. This is larger than Canada, Korea, Russia, and Australia. I look forward to working with leadership for the remainder of the legislative session to protect working families in this great State of Texas. Thank you.

[Amendment No. 18 failed of adoption by Record No. 274.]

[Amendment No. 19 by Vo was laid before the house.]

REPRESENTATIVE VO: **CSHB 2127** would prohibit cities and counties from passing any local employment protection that exceeds existing requirements of state and federal law. Neither state nor federal law protects an employee from discrimination if they work for an employer with fewer than 15 employees. This amendment would protect the ability of local governments to expand protection against employment discrimination on the basis of an individual's fluency or literacy in a language, or an individual's accent, to cover employers of any size. Under state and federal laws, discrimination on the basis of a person's native language or characteristic of a person's speech is often considered a form of national discrimination origin. State and federal law does acknowledge that there's circumstances in which it is appropriate for an employer to require an employee to speak English when performing certain work duties, or that an employer may have other legitimate, nondiscriminatory reasons for denying someone an employment opportunity on account of an individual's accent or manner of speaking. Treating employees differently because they have a foreign accent is lawful only if the accent or language fluency materially interferes with their ability to do their job.

However, I know from my experience and from the experience of many constituents in my district whose native language is not English that too many Texans continue to be unjustly discriminated against because they are not native English speakers or speak English with an accent. This discrimination happens not because their job duties require a certain level of fluency but out of hate, out of malice, and out of people failing to remember that if someone is speaking with

an accent, it's likely because they have mastered another language. Members, all this amendment does is ensure that cities and counties retain their authority to expand employment protections so that people are not unjustly discriminated against at work because of the language they speak or the accent they speak with.

BURROWS: I respectfully oppose this amendment.

VO: Again, I just want to make sure that the workplace doesn't discriminate against anybody at all.

[Amendment No. 19 failed of adoption by Record No. 275.]

[Amendment No. 20 by Walle was laid before the house.]

REPRESENTATIVE WALLE: This amendment would ensure that local communities have the ability to make policies that will save lives during a disaster. Even though we've already passed legislation limiting what municipalities can do in response to disaster responses, it's important that whether it's the next hurricane or the next pandemic, we know that Texas, unfortunately, will inevitably face the pain and trauma of disasters in the future. We've also heard loud and clear, members, from our constituents that during the COVID pandemic many Texans did not want to have top-down, one-size-fits-all approaches to disaster responses. Whether it's local policies to encourage social distancing and hygiene stations on work sites or local policies to mandate safety protocols for workers performing emergency repairs after a flood, we need our local communities to have the tools to protect safety during an ongoing disaster or in the immediate aftermath of a disaster. A vote in favor of this amendment, members, is a vote to keep our communities safe during the next pandemic, flood, or freeze.

BURROWS: My very good friend, Representative Walle, has offered this. I'll tell you it is unnecessary, just to make sure that the body and those listening are clear. First off, the Health and Safety Code is not encompassed by the bill. Chapters 81 and 121 of the Health and Safety Code on pandemics and public health still gives all the necessary provisions and this would remain completely unchanged and unaffected by my bill, and for natural disasters as well. So because I believe that this bill does not address those concerns, I believe this amendment is unnecessary, and I respectfully oppose it.

WALLE: Members, all we want is some uniformity as it relates to natural disasters or pandemics. We just want to make sure we have local control over those responses when those unfortunately occur.

[Amendment No. 20 failed of adoption by Record No. 276.]

[Amendment No. 21 by Ortega was laid before the house.]

REPRESENTATIVE ORTEGA: This amendment would protect the local policies that relate to workers' health and safety like safety training requirements. Many jurisdictions across the state have basic safety requirements for construction in place. For example, some cities have an ordinance that requires the OSHA 10-hour safety training for all workers and a 30-hour safety training for supervisors on construction sites.

Texas continues to be the most dangerous place to be an American worker. According to the Bureau of Labor Statistics, 608 workers died on the job in Texas in 2019—the highest number of fatalities in any United States state. A 2016 research report found that work site injuries, illnesses, and fatalities in Texas cost an estimated \$895.9 million in medical bills, lost wages, lost productivity, and legal fees. OSHA is the primary federal agency responsible for ensuring workplace health and safety compliance. In 2018, there were 87 OSHA inspectors responsible for monitoring the workplaces of more than 12.3 million employees in the State of Texas—a rate of one inspector for every 141,406 employees. It would take this current level of inspectors 175 years to inspect every Texas workplace once. Texas construction sites are 22 percent deadlier than the national average, where one worker dies on the job every three days. Everyone should be able to get home to their family safe and sound at the end of their workday, and occupational safety and health training designated for the construction industry is one way to prevent injuries and fatalities. The more precautions we have in place for these workers, the better. We should embrace our local safety ordinances and not forbid them.

BURROWS: I believe the OSHA standard should be the ones that everybody follows so that it's consistent, and for that reason, I respectfully oppose this amendment.

ORTEGA: Again, there are too many deaths at construction sites in Texas. This promotes safety in all communities—rural or urban. It's not contrary to the intent of the bill. I would urge you to vote yes.

[Amendment No. 21 failed of adoption by Record No. 277.]

[Amendment No. 22 by Lalani was laid before the house.]

LALANI: **CSHB 2127** would prohibit cities and counties from extending local nondiscrimination protection that exceeds existing state or federal law. This bill would undo existing local nondiscrimination policies that already protect against discrimination on the basis of political belief and would prohibit cities and counties from passing any similar policies in the future. This is an amendment that would allow local governments to prohibit employment discrimination on the basis of a person's political affiliation, political beliefs, or political viewpoint. There has been a lot of talk in the last few years about cancel culture. Representatives on both sides of the aisle should agree that someone shouldn't be discriminated against by an employer based on the candidate they support in elections or the political party they belong to. I hope you will join me in supporting this amendment so that the local governments may protect their employees from discrimination on the basis of political views.

BURROWS: I respectfully oppose this amendment.

LALANI: This amendment would allow local government to prohibit employment discrimination on the basis of personal political affiliation, political belief, or political viewpoints.

[Amendment No. 22 failed of adoption by Record No. 278.]



[Amendment No. 23 by Garcia was laid before the house.]

GARCIA: This amendment would protect the ability of cities and counties to pass local policy that protects veterans from employment discrimination. Members, brave men and women who have laid their lives down on the line for this country have a right to be treated fairly and given equal access to jobs and opportunities. Texas is proud to be home to more veterans than any other state. Currently, Texas law provides for veterans to receive preference in employment with state agencies. Federally, the Uniformed Services Employment and Reemployment Rights Act protects some service members and veterans from certain kinds of employment discrimination. Members, there is so much more that can be done to make sure that our veterans and our service members are protected from discrimination on the basis of their service. Local leaders who are closest to these constituents and their needs are doing fantastic work on addressing the issue. This amendment only ensures that local governments continue to have the ability to expand nondiscrimination practices and protections for veterans and service members. If you love veterans and you love Texas, this is a wonderful amendment.

REPRESENTATIVE R. LOPEZ: First of all, thank you for your service. I know that you are the only female combat veteran on this floor. I know that you honor us on the Defense and Veterans' Affairs Committee with your insights, and I know that you understand exactly what you're talking about when you deliver an amendment like this. Can you explain to me and to the body how important it is for veterans to be able to be addressed properly and professionally by virtue of your amendment?

GARCIA: Absolutely. What this would do is it would allow for the local municipalities to continue providing services for our veterans. As we know, we've come a long way since Vietnam. The way our veterans are treated nowadays is more with love and support and safety. We want to make sure that those measures are still available because, rest assured, many of us who are coming home from war are still meeting various issues in the employment realm. We're still facing some discriminations and some issues that are limiting our access to good employment.

R. LOPEZ: Well, thank you very much again for bringing this. There are some cities that do have these types of protections, and I think it's important. I wonder if you would agree that it's important that we put these types of protections across the entire state?

GARCIA: Absolutely, especially when it comes to terms with our veterans. Our veterans are a very specialized community, and not every city in Texas has a large veteran population, such as our county, Bexar County. We have many bases there, and a lot of our veterans seek those bigger places to reside and to carry on their lives. Many of them aren't from the State of Texas, but they choose the State of Texas because of the protections that we have in place.

R. LOPEZ: Well, thank you very much for representing veterans, for representing Bexar County—Military City, U.S.A. Thank you very much for this amendment. It's very well needed. Thank you.

BURROWS: I respectfully oppose.

[Amendment No. 23 failed of adoption by Record No. 279.]

[Amendment No. 24 by M. González was laid before the house.]

REPRESENTATIVE M. GONZÁLEZ: Members, imagine working a full eight hours and then not being paid for the work that you did. Wage theft is theft. A lot of times the only way to combat the very serious issue of wage theft is for our cities to have wage theft ordinances and for our cities to educate workers about what you do when you've worked a whole day and you didn't get paid. Where do you go? What are your rights? Millions of dollars are taken from our workers through the act of wage theft. Would we not want our cities and counties to be able to help or take care of our families if it came to car burglaries or to our houses being burglarized? Why are we okay with not having some protections when it comes to the real thing of wage theft? Wage theft is theft. We need all levels of government to be able to have access to protect our families. When these workers lose their paycheck it has a very dangerous domino effect. We're only asking for little considerations when it comes to wage theft. I urge you to support this amendment.

BURROWS: Respectfully, I oppose my good friend's amendment.

M. GONZÁLEZ: Members, are you okay with wage theft? Do you want to ensure that we are allowing all levels of government to take care of the workers who might work eight hours, 10 hours? These are sometimes waitresses, construction workers—any type of industry. They deserve to be taken care of. Please vote yes on this amendment.

[Amendment No. 24 failed of adoption by Record No. 280.]

[Amendment No. 25 by Moody was laid before the house.]

REPRESENTATIVE MOODY: This amendment is about human dignity. Every person has an innate human dignity, and the dignity of every person is the foundation of a moral society. This is about farm workers and migrant laborers.

Nine in 10 of Texas farm workers lack access to licensed housing—many of them living in packed homes together on floors that are bug-infested, in ramshackle structures that lack running water or electricity or ventilation. There's not a year that goes by that we don't hear about tragedies related to the living conditions of those people who do the backbreaking work in the fields of this state to put the food in the stores so you can bring it home to your families. This amendment is about their dignity and their humanity. We have a state agency right now that has never punished one single noncompliant or unlicensed facility since it took over the program to enforce this in 2005. The state has this authority now and does nothing. If the state is going to do nothing then why don't we allow those closest to these situations and to these communities to provide standards of

living and to give the smallest amount of human dignity to those who work so hard. That's all this amendment does. It ensures that we can protect those who are out doing backbreaking work to provide for us.

BURROWS: I do respectfully oppose my good friend's amendment.

MOODY: Because of the broad nature of this bill, housing could potentially be considered a benefit or a term of employment. And so what I would ask for you to do is to allow our cities and counties to take care of these folks who are laboring in the hot sun. We're already not going to give them breaks. Let's make sure that we have the ability to give them some modicum of dignity in the way that they're able to live. That's what this amendment does. I would ask for you to support the amendment.

[Amendment No. 25 failed of adoption by Record No. 281.]

[Amendment No. 26 by J. González was laid before the house.]

REPRESENTATIVE J. GONZÁLEZ: This is an amendment that would allow local governments to prohibit employment discrimination on the basis of gender identity or sexual orientation for employers of any size. The truth of the matter is that today in Texas it would still be perfectly legal for a small business with fewer than 15 employees to fire an employee because they are a part of the LGBTQ community. That is the state of our federal and state employment laws in 2023. While I know that some of our colleagues in this chamber may be okay with the status quo, we are not and many of the cities that we represent are not. While we still have a long way to go to ensure that all workers are protected from discrimination at work, this amendment would protect the authority of cities to expand nondiscrimination protections for all employees to employers of any size.

BURROWS: Hopefully I covered this in my layout. When we are talking about employment hiring practices like fair housing, specific authority is granted for the employment. Fair housing is preserved. I do not believe that this is necessary. Therefore, I respectfully oppose. My bill is not going to change those ordinances on the NDOs.

J. GONZÁLEZ: Cities have gone a long way on the forefront of advancing civil rights protections for their workforce. It's crucial that we protect their ability to continue do so, and I urge for you to vote on this amendment.

[Amendment No. 26 failed of adoption by Record No. 282.]

[Amendment No. 27 by Bucy was laid before the house.]

REPRESENTATIVE BUCY: This amendment would protect existing policies created to give individuals with a criminal background a fair chance at finding gainful employment. This is a question of public safety, fairness, and economic opportunity. No one should be punished forever for the worst mistake of their life. Especially when they have completed all legal requirements to reinstate their place in society. Ban the Box policies help remove barriers for these individuals to find their footing and obtain gainful employment by removing inquiries about a persons criminal background on different types of applications. Cities like Austin and DeSoto currently have policies like this on the books that help reduce

recidivism and break the cycle of incarceration. These policies do not require anyone to be hired by an employer but simply remove the barrier and stigma for those with criminal backgrounds. Through these policies, individuals have a chance to get their foot in the door, explain their story and how they've overcome past challenges. Getting folks back to work after they've served their time is good for them, good for the economy, and good for society and Texas as a whole. This amendment wouldn't create or expand any policies in Texas but would simply allow cities to continue this work if they choose to do so.

REPRESENTATIVE HOWARD: Mr. Bucy, this already exists in some places right? It's called Ban the Box?

BUCY: Yes, absolutely. The City of Austin—our city—and the City of DeSoto to name two.

HOWARD: If I understand it correctly, the purpose is to just not prevent somebody from the initial employment screening when they're applying for a job. Rather than asking them at the very beginning whether or not they have a criminal background, they decide who they're going to call back for that second interview, and then they can ask and can make a decision. There's no requirement here to have to hire anybody. Is that correct?

BUCY: That's correct. These people have served their time. You can still ask after the fact, but this is saying let them have a fair chance on their merit for an application and then have that conversation. Bring them in and let them explain their story to their potential employer.

HOWARD: I think this body has been pretty supportive of the concept of making sure that we have some kind of justice system that provides the necessary tools to get people back into society where they can be gainfully employed and hopefully be able to be good citizens and not recommit crimes. Is that not correct?

BUCY: That is correct. This chamber has led on criminal justice reform, and we want to make sure that these types of measures are being upheld. If not this, let's take it even further and go statewide.

HOWARD: How will protecting Ban the Box policies promote public safety?

BUCY: Look, people become repeat offenders when they cannot find a good path forward. Getting people jobs helps them find that good path that helps them as an individual, helps their family, and helps all of us as Texans to move forward.

HOWARD: We know, as you said, that Austin has this already. Would anything in your amendment here require other cities to Ban the Box?

BUCY: Absolutely not. It just says let's leave this up to local control, let's move forward, and let's continue to see how effective this is in communities. Then, hopefully, we can push for statewide policies one day.

HOWARD: You're mentioning local control. So this is about local control, which most of us, I think, have said for a long, long time that the best decisions are made locally by the citizens that are directly impacted. Is that not correct?

BUCY: That is correct.

HOWARD: How would this amendment help the economy?

BUCY: More employed Texans and more money going back in—that's good for all of us, that's the success rate and that's what we want. This amendment helps individuals who have served their time get a job, become a taxpayer working and benefitting their community, and not go back into the prison system. Getting a job is a major step forward in staying away from repeating crime.

HOWARD: Is it your understanding that the bill, as it's currently written, would not permit this?

BUCY: That's my understanding. This would override cities like ours that have passed this and that are trying to have this path forward with criminal justice reform to get these individuals their foot in the door so they can explain what led to some incident at some point in their past to a potential employer.

HOWARD: That they have already paid their dues for?

BUCY: They have already paid their debt to society. Let's make sure now they can fully reenter society by not overriding this.

HOWARD: It's a great amendment. Thank you very much.

BUCY: Thank you very much, Representative Howard.

BURROWS: I respectfully oppose.

BUCY: This is a commonsense way to help get people back into society. Criminal justice reform—many of us have stood together on this. I hope you'll vote for this amendment.

[Amendment No. 27 failed of adoption by Record No. 283.]

[Amendment No. 28 by Neave Criado was laid before the house.]

REPRESENTATIVE NEAVE CRIADO: Today, we bring to you an opportunity to show the state that we, as a legislative body, respect Texas women and that we respect any city ordinances or orders or rules governing sexual harassment in the workplace. We, as state representatives, respect that no person should work in a hostile work environment. Sexual harassment occurs in every industry and in many workplaces throughout our state. Sexual harassment is something that we know clearly disproportionately impacts women. That's all of us up here and in this body. That's our sisters, our nieces, our cousins, our girlfriends, our wives, our mothers, our daughters. Sexual harassment isn't just about sex; it's about power or the abuse of power. They can include different types of things like inappropriate statements, lewd gestures, sexually explicit jokes. Texas women from the warehouse to the Texas House deserve a safe work environment that is free of hostility, a workplace where we are judged by our work ethic and not on whether we submit to unwelcome sexual advances. A workplace where we are valued for our minds not physically violated or sexualized. A workplace where we can focus on our work and breaking the cycle of poverty to put food on the table to feed our families not a workplace where we have to worry about our physical safety.

One in four women report that she has experienced sexual harassment at work. Between 2018 to 2021, more than 27,000 charges alleging sexual harassment were filed with the Equal Employment Opportunity Commission. Those aren't just numbers, those are just reports of people that were willing to come forward. We know, and experts say the data shows, that most are not reported. In fact, according to the EEOC, approximately three out of four individuals who experience harassment have never talked to a supervisor, a manager, a union representative about the harassing conduct. So when a person is sexually harassed at work many of them don't come forward for a variety of reasons. That may be embarrassment. It may be shame. It may be that folks think that we won't be believed. One may feel like future job prospects could be compromised. You may have to balance making sure that you don't get terminated for reporting something so that you can put food on the table and keep a roof over your family's head. Workplace abuse and harassment stands in the way of equal opportunity and economic stability.

Here's what this amendment does: it ensures that any ordinance, order, or rule that prohibits sexual harassment is not preempted by this legislation. This amendment would ensure that we don't shut the door on city councils who want to do more at the local level to ensure that workers and their communities have greater protections against sexual harassment at work. We have a long way to go with respect to our Texas laws to ensure safety, respect, and freedom from fear at the workplace. It's time to address the gaps in the laws. We've had bipartisan support in the past on some sexual harassment legislation to make the workplace better, and we hope that we'll have the same support on this amendment as well.

J. GONZÁLEZ: Does sexual harassment in the workplace also impact productivity?

NEAVE CRIADO: Absolutely. We want to ensure that Texas businesses thrive. We want to ensure that when folks are at work, they're producing and making money for themselves and their families and their businesses. There's data that showed—there was a wellness team that estimated, based on their research, that the average cost through lost productivity was \$22,500 per person working in a team that was affected by sexual harassment.

J. GONZÁLEZ: So a U.S. Merit Systems Protection Board study from the early 1990s estimated the economic cost of sexual harassment to federal government workplaces over a two year period was \$327 million. Were you aware of that?

NEAVE CRIADO: Yes, and that study that was done in 1990—if we can extrapolate that and assume that there would be billions of dollars in lost productivity today in 2023. Those are the economic costs of sexual harassment that we are trying to prevent through this amendment.

J. GONZÁLEZ: You'd agree that there's a positive economic impact in having these protections in place at the workplace? Overall just good for business, right?

NEAVE CRIADO: Absolutely.

REPRESENTATIVE C. MORALES: Chairwoman Neave Criado, thank you so much for filing this amendment. I had a couple of questions. First of all, according to a 2018 Stanford study, workplace discrimination and harassment can lead to women avoiding professions or industries altogether that are male-dominated or that are higher paying which perpetuates the wage gap. Were you aware of that?

NEAVE CRIADO: Yes, and we want women to know that they should be able to enter any profession regardless of whether it's male-dominated or not. Women continue to break glass ceilings every day in every industry, and we want to ensure that we're continuing to open that pathway to uplift more women.

C. MORALES: We're proud of the accomplishments that we've made, but Texas women earn an average of \$12,500 less per year in Texas than white men. Were you aware of that?

NEAVE CRIADO: You know, I wasn't sure on the data, but I know that there is a significant wage gap for women in general. In fact, there's data that shows that white women earn on average 79 cents on the dollar for the same work that a man does. Black women earn 59 cents on the dollar, and Latina women earn 44 cents on the dollar for the same work that a man does. So when you overlay that wage gap—that pay gap—with sexual harassment in the workplace, the consequences can be devastating. We need to try to eliminate that and make sure that women are paid what we're worth in the workplace and that we protect—we have environments that are free from sexual harassment.

MORALES SHAW: I don't think there's any member here who would disagree that harassment laws that have come into place locally, statewide, and federally have been good guardrails. Would you agree to that?

NEAVE CRIADO: There's a lot more that we can do, yes.

MORALES SHAW: Is the primary intent of your amendment your concern that there could be an unintended consequence that preempts local entities from having these guardrails in place to protect employees, but specifically women?

NEAVE CRIADO: Yes, absolutely.

MORALES SHAW: You mentioned, Chairwoman, that one in four women report—when you're talking about workplace sexual harassment. Do you think that's all women reporting?

NEAVE CRIADO: No, there's data that shows that many women do not report at all for a wide variety of reasons. The reports that we do have, even though it sounds like a big number, we know is vastly larger than that.

MORALES SHAW: I would agree. And not to be partial, I would say that there are men who are subject to this kind of harassment in the workplace as well.

NEAVE CRIADO: Absolutely, yes.

MORALES SHAW: Do you believe that when we set standards to address harassment and things like that, oftentimes it's a minimum standard?

NEAVE CRIADO: Yes.

MORALES SHAW: Would you agree that a minimum standard is better than no standard, which is what effectively **CSHB 2127** could do?

NEAVE CRIADO: That's correct, and we want to ensure that we're not tying the hands of our local communities.

[Amendment No. 29 by Neave Criado was laid before the house.]

NEAVE CRIADO: This amendment to the amendment adds on two sections of the Texas Penal Code, specifically Section 22.011 of the Penal Code which is sexual assault and 22.021 of the Penal Code which is aggravated sexual assault.

This is something that has, throughout the state and this body, heavily focused on making significant and vast improvements to our Texas laws throughout the year with respect to rape. Sexual assault is rape. On average, there are about 18,000 sexual assaults that occur every single year, and so we want to make sure that we're continuing to build on that, but this amendment adds on to the amendment to ensure that local cities—and I'll give you an example. Our local city in Dallas has been working hard on the rape kit backlog—in many different ways, along with our state and federal partners, we want to ensure that the hands of our local community are not tied with respect to this issue.

C. MORALES: Chairwoman Neave Criado, again thank you for filing this amendment to the amendment. I wanted to ask you, April is a special month for certain types of awareness regarding what we are discussing, is it not?

NEAVE CRIADO: Yes, it is.

C. MORALES: In fact, this month of April is Sexual Assault Awareness Month, correct?

NEAVE CRIADO: That's correct. It's a month when we should be focusing and highlighting the issues that survivors have gone through for years and the work that we have yet to do to ensure that people who are coming forward—that women who have undergone some of these most traumatic events—know that we have their back, that they are believed, and that our state and our cities are going to do everything to get them the justice that they deserve.

C. MORALES: How often would you say sexual assaults happen?

NEAVE CRIADO: On average, there are about 18,000 that are reported in Texas alone. Again, those are just the ones that are reported, and there's data that shows in Texas that one in five women and one in 20 men have been sexually assaulted at some point in their lifetime.

C. MORALES: Wow. How often are these assaults reported?

NEAVE CRIADO: They're not reported as often as they occur. In fact, there's data that shows that over 80 percent of the Texans who were sexually assaulted did not report to law enforcement.

C. MORALES: Wow. Isn't it sad, but true, that most assaults are committed by someone known to the victim?

NEAVE CRIADO: Yes, and there's data that shows that over 80 percent of sexual assaults are committed by somebody that they know.



C. MORALES: So another question I have is how often are drugs and alcohol involved with assaults made by someone known to the victim?

NEAVE CRIADO: It's often.

HOWARD: Chairwoman, you're talking about some of the statistics here, and I know we're talking about it within the framework of this bill. We know that there are things that could be done in our communities to help address this issue. Were you aware that the CDC has research that suggests that changes to alcohol-related policies can reduce the risk for sexual violence at the community level? Did you know that?

NEAVE CRIADO: I didn't, and that's really helpful to know. It makes sense.

HOWARD: With what you were just talking about and the prevalence of this, Texas has the highest rate of sexual assault. Is that not correct?

NEAVE CRIADO: That's correct. I know there's been a lot of work done throughout the years by you and others with respect to sexual harassment and sexual assault on college campuses. Alcohol, unfortunately, is involved in some of those situations so we want to ensure that our students, our friends, and our family members on college campuses are also protected and that the bill would not preempt potential rules, ordinances, or whatever it may be to ensure the safety of girls and women in our community.

HOWARD: I believe you were just talking about this as well. Is it not true that the vast majority, in fact, over 90 percent do not even report these assaults because we don't have a system that necessarily supports those reports?

NEAVE CRIADO: You're correct that we have a long way to go to make sure that women and men are comfortable enough reporting their assault, their rape, their sexual harassment—that it will be prosecuted, or that it will be addressed.

HOWARD: Did you know that according to the Institute for Domestic Violence and Sexual Assault at UT, I believe the number was of the nine percent that report only three percent are actually prosecuted? Were you aware of that?

NEAVE CRIADO: I knew that it was a really low number. If somebody's going to be getting away with something like this, if there is not a strong consequence to this potential action and they're not going to be prosecuted, then it's hard to deter. It's something that is prevalent in our state that we have to address at the root.

HOWARD: Certainly it's going to require a lot of different approaches, would it not?

NEAVE CRIADO: A lot of different approaches, including working with the hands of our local communities and our local cities who have the ability to enact rules that can make a difference on the lives of our sisters, on the lives of our community, and on public safety in our neighborhoods so that we don't have to worry about walking down a dark street and having to constantly look over our shoulder and be concerned about someone potentially sexually assaulting us. Not

everybody has that concern. We women have to deal with that reality. So this is trying to ensure that we don't tie the hands of our local communities to do something to make sure to keep all of us safe.

HOWARD: So what you're trying to do here is ensure that we have the ability in our communities to make policies, to pass ordinances, and to do whatever we can to make sure that women in our community are protected to freely walk about in their own communities. Is that not correct?

NEAVE CRIADO: That's absolutely right.

[Amendment No. 29 was adopted.]

[Amendment No. 30 by Ramos was laid before the house.]

[Representative Geren raised a point of order against further consideration of Amendment No. 30 under Rule 11, Section 2, of the House Rules on the grounds that the amendment is not germane. The point of order was withdrawn.]

[Amendment No. 30 was withdrawn.]

BURROWS: I am going to respectfully oppose this amendment.

RAMOS: Were you aware that sexual misconduct—as we talked about earlier, sexual misconduct by employers is a major issue in our country. That's what your amendment is about, correct?

NEAVE CRIADO: That's correct. It impacts so many different industries, career paths, and workplaces—even here where we are now.

RAMOS: You mentioned even here. In fact, according to the Associated Press, 100 state legislators have been accused of sexual harassment and sexual misconduct between 2018 and 2020. Were you aware of that?

NEAVE CRIADO: I was not aware, but we know that sexual harassment across many different industries is an issue.

RAMOS: Thank you. Employers, including state legislators and elected officials, are representatives of the people they serve and have a responsibility to not only uphold the law but to also follow it and maintain the public's trust. This amendment is ensuring that happens, correct?

NEAVE CRIADO: That's correct.

RAMOS: Now, if a legislator or elected official is accused of rape or other serious crimes, it's important that they be held accountable for their actions just like any citizen. This amendment would help address that, correct?

NEAVE CRIADO: Yes, and that's also why we wanted to make sure that it wasn't just sexual harassment, that it was also sexual assault—aggravated sexual assault. A lot of times there are power dynamics between an employer and an employee, whatever that may be and whatever position that employee may have. We want to make sure that those people are not feeling like they have to submit, and this is part of the language of the amendment. We want to make sure that if there is submission to the advance, request, or contact that should not be a term or provision or requirement of that person's employment. People should not feel like

they have to do something in order to keep their job. It's also if you reject an advance, request, or contact that should not be the basis for a decision affecting that individual's employment. Somebody shouldn't be demoted; they shouldn't be fired, and their pay shouldn't be reduced because they said no.

RAMOS: Right, and this amendment reminds everybody that no one is above the law, and everyone should be held accountable regardless of their position or status, correct?

NEAVE CRIADO: That's correct.

RAMOS: It's especially important, in accordance with your amendment, to hold actions like these—and their perpetrators—accountable, especially in a position like you said where the individual has power and authority over another. The power differential between a state legislator and their staff lends itself, many times, to have some of this harassment and these unwanted sexual advances. Many times that allows for that to occur in these types of situations, correct?

NEAVE CRIADO: Yes, and what we want to ensure through this amendment is that in every industry and every workplace there should not be a hostile work environment, an intimidating work environment, or a place where you feel like you have to do something, and if you say no you could lose your job. That's why there are laws in place. Many people don't report because they feel like they won't be believed. When circumstances do happen, we want to make sure that the laws are in place so that women know that they're believed and their cases are going to be prosecuted if it's a crime—rape, assault, or aggravated sexual assault—or that their employment claims are going to move through the process in a way that is fair for all and that the laws are enforced with respect to sexual harassment in the workplace.

RAMOS: You referenced universities and college students. In fact, many of us here employ a lot of young staffers who are college students and underage for the drinking age limit. We have many interns—college interns. Some of us even have high school interns in our office that contribute significantly to the advancement of policy in each legislative session. However, because their environment is high stakes and highly competitive we know that creates numerous opportunities for unethical and even illegal behavior—unwanted sexual advancements to these young staffers. Is that correct?

NEAVE CRIADO: That's correct. You know, Representative Ramos, I remember going to a local college, and a group of students were telling their stories about sexual assault at fraternity parties or out in the community thinking that people who may have been friends, or should have been there for them, were actually taking advantage of them and then being raped and not knowing what to do. Those are seriously traumatic experiences for individuals, and that's why I'm really proud that this chamber, this state, has taken a lead on addressing the rape kit backlog. We want to make sure that we're continuing to build on that progress and not tying the hands of our local communities to make sure that people—our survivors—get the justice that they deserve.

RAMOS: I appreciate your amendment. We know our young staffers here are put in vulnerable positions working here with us. We owe it to them to do all we can to show them respect and protect them from any potential harm. This amendment sends a strong and clear message that such disgusting abuse of power will not be tolerated. I appreciate your amendment, thank you.

[Amendment No. 28, as amended, failed of adoption by Record No. 284.]

[Amendment No. 31 by Morales Shaw was laid before the house.]

MORALES SHAW: Members, we are still talking about **CSHB 2127**, and this amendment is about making sure that workers have meal breaks. If you don't know, everyone is not entitled to that. Sometimes, if it is not specified, workers can be on a job outside or inside and not have a meal break if it's not specified. Some of us might not be able to relate to that because we have our own lounge here, and as I was in it a few minutes ago it was very full. We can go in and out as we please. But that's not true for all workplaces.

Let me tell you a little bit more about this bill. Neither Texas law nor federal law guarantees workers the ability to have time during the day to take a break to eat. This amendment would carve out a future local policy that guarantees workers the right to a meal break sometime during their workday. It doesn't require employers to pay them during a work break, and it doesn't dictate what time they can take their work break. All this amendment does is ensure that in the future cities and counties all over the great State of Texas can pass policies to ensure that employees working for all kinds of companies will have a 30-minute work break some point during the day. I hope this amendment is voted for favorably, and I yield to the author.

BURROWS: We do not need to have cities doing this for meal breaks. Therefore, I respectfully oppose the amendment.

[Amendment No. 31 failed of adoption by Record No. 285.]

[Amendment No. 32 by Flores was laid before the house.]

REPRESENTATIVE FLORES: This amendment is great. It strikes Section 10 of the bill relating to field preemption of the Labor Code, but it replaces it with a statewide regulation. We have one of the greatest economies and our cities are growing fast. These developers often have projects in different cities, and having the same rules from location to location will help to make them more efficient in overseeing contracts and setting standards to protect their workers. This amendment, members, is to prevent heat related illness and death among Texas workers by directing the Texas Workforce Commission to create a Heat Illness Prevention Advisory Board that will develop heat illness prevention standards consistent with the CDC's criteria for occupational exposure to heat and hot environments including rest breaks, access to drinking water, shade, rest rooms, and other recommended heat safety practices. For industries with workers—

[Representative Vasut raised a point of order against further consideration of Amendment No. 32 under Rule 11, Section 2, of the House Rules on the grounds that the amendment is not germane. The point of order was withdrawn.]

[Amendment No. 32 was withdrawn.]

[Amendment No. 33 by Flores was laid before the house.]

FLORES: Okay, this is even simpler, but it's just as great. This amendment would just strike on page 6, lines 5 to 17, and renumber the subsequent sections of the bill accordingly. This way the Labor Code is just exempted from all of this bill, and therefore, we will have those protections by local cities and counties that will want to protect their workers from heat, illness, and other labor related issues. So this is a quite simple amendment. It just removes a mere 12 lines from the bill.

BURROWS: I am going to oppose this. We certainly need and want the Labor Code included in this bill.

FLORES: With all due respect, I ask for your support on this amendment. It's really great for the workers in this state and our communities. Thank you.

[Amendment No. 33 failed of adoption by Record No. 286.]

[Amendment No. 34 by Flores was laid before the house.]

FLORES: This amendment deals with local governments having the right and the responsibility to enact regulations to protect the health and safety of their residents. One important way they can do so is by requiring setbacks or buffer zones between wells and homes or businesses. Studies have linked oil and gas development with cancer, liver damage, immunodeficiency, and neurological symptoms. Oil and gas development emits benzene and formaldehyde—both carcinogens. The drilling also emits methane, a potent greenhouse gas that increases global heating. This amendment would create an exemption for the regulation of gas wells, allowing local governments to protect the health of their residents. It would amend **CSHB 2127** on page 7, line 11, striking "unless" and substituting "acceptance provided by this section unless" and between lines 16 and 17, insert the following appropriately lettered subsection, "This does not apply to an ordinance or order or rule that regulates a gas well as defined by Section 86.002." I respectfully ask you to vote for the safety of our communities. Please vote aye on this amendment. Thank you.

BURROWS: I oppose this amendment.

FLORES: I'd appreciate an aye vote on this amendment.

[Representative Zwiener raised a point of order against further consideration of **CSHB 2127** under Rule 11, Section 2, of the House Rules on the grounds that the committee substitute is not germane. The point of order was withdrawn.]

[Amendment No. 34 failed of adoption by Record No. 287.]

[Amendment No. 35 by Goodwin was laid before the house.]

GOODWIN: In many areas of Central Texas there are important caves, caverns, and aquifer recharge features which deserve to have special protections. Whether it's requirements by some home-rule cities that developers seek permits or they're protecting bats or other endangered species, or special assessments, or other protections that are part of the Natural Resource Code, this amendment simply states that cities can continue to take action to protect these special places and the

endangered species they often house. Members, in many districts cave exploration, local tourism, and many businesses actually depend on protection of these unique areas. While state law provides some general protections for caves and caverns, cities must maintain some additional powers to assure they are protected. My amendment does that.

BURROWS: I oppose this amendment and respectfully ask you to follow with me.

GOODWIN: This would protect our aquifers, including the Edwards and Trinity Aquifers, and caves and so much more. I hope that you will vote in favor of this amendment.

[Amendment No. 35 failed of adoption by Record No. 288.]

[Representative Zwiener raised a point of order against further consideration of **CSHB 2127** under Rule 4, Section 40, and Rule 11, Section 2, of the House Rules on the grounds that the committee substitute is not germane. The point of order was withdrawn.]

[Amendment No. 36 by Zwiener was laid before the house.]

ZWIENER: This is a simple amendment that is here to try and guarantee that our cities and counties can continue to regulate the right-of-ways that they own. This is important because this bill provides field preemption for the Natural Resources Code, which includes regulation of pipelines. When a pipeline comes through a city, it has to pass underneath roads. Right now, cities have tools to determine the depth of that pipeline so that they can work with the company and make sure that the pipeline is safe and doesn't interfere with their existing infrastructure—both the road itself as well as any other utilities.

This is a critical thing to keep our communities functional and operative. I don't know how many of y'all have had a large pipeline with eminent domain authority come through your district, but they're hard folks to negotiate with. When a pipeline came through Hays County in 2018, they did not even know they were crossing through the city of Kyle because they were working off of five-year-old maps. With those five-year-old maps, they had no clue that they were interfering with existing City of Kyle right-of-way and both existing roads and planned roads. The City of Kyle had to reach out to them directly and do this negotiation in order to not interfere with the quality of life for their residents. The City of Kyle did that aggressively and worked with the company but made sure that pipeline didn't interfere with the local roadways.

Members, under this bill right now those same officials who negotiated that space and who worked to try and keep the pipeline from interfering with their roads, their power lines, and their water lines would risk being sued by the company. And not just sued as a city but sued as individuals. Let's make sure that those city officials who are doing everything they can to try and protect their local infrastructure in the ground know that they still have the authority to do so and can't be bullied out of it by threats of frivolous lawsuits. Members, I ask for your favorable consideration.

BURROWS: This is a completely unnecessary amendment. I oppose.

ZWIENER: Members, this amendment is necessary. This bill is so broad. None of us in this room have a full scope of what operations of our cities and counties it is going to affect. If the author of the bill believes some of these amendments are duplicative of what is in existing code, then let's go ahead and duplicate it. Let's make sure that our cities and our counties can continue with core services like roadways, water, and electricity like they are doing right now. This bill, as written, would make it hard, if a pipeline came through your city, for your city to negotiate with the pipeline company on exactly where it went and how deep it went under their existing city infrastructure. If you want that, then vote no on this amendment. If you want common sense and to make sure that your cities can operate their core functions, vote yes.

[Amendment No. 36 failed of adoption by Record No. 289.]

[Amendment No. 37 by Thimesch was laid before the house.]

REPRESENTATIVE THIMESCH: My amendment adds language to Section 15 of the bill, which covers the Occupational Code, to regulate a massage establishment in accordance with Section 455.005. This amendment is acceptable to the author.

[Amendment No. 37 was adopted by Record No. 290.]

[Amendment No. 38 by Anchía was laid before the house.]

REPRESENTATIVE ANCHÍA: I know we've fallen into a little bit of a pattern of votes this afternoon, and it reminds me of my first freshman session when a senior member pulled me aside and said, "Listen, you are your votes. You are the votes that you take and what you put your name next to." And in Dallas, like many other places—I just want us to bear that in mind—we have nondiscrimination ordinances. I do believe the author of this bill, in good faith, believes his bill does not impact nondiscrimination ordinances. We've been having this conversation since this bill went through committee. I sit on State Affairs, and we had this dialogue. I think he has the sincere belief that it will not touch nondiscrimination ordinances. However, I also have lawyers who are concerned that nondiscrimination ordinances will be adversely impacted, and I think it is the subject of genuine debate on whether or not certain protected classes would be covered by a nondiscrimination ordinance locally, yet not by federal law.

And so we've been talking over the last few days, and certainly here on the floor, about how we wanted to approach this. My amendment is very simple. If in fact this bill does not impact nondiscrimination ordinances, like the ones we have in Dallas and around the state, then we just need to say it explicitly in the bill so there is no confusion. Why? Because this bill also allows for the filing of lawsuits to challenge ordinances if there's ambiguity. That's a risk I will tell you I do not want to expose my constituents to. In Dallas, we have nondiscrimination ordinances that protect people in housing from discrimination on the basis of gender identity or sexual orientation. There is no case in the State of Texas that is directly on point that says the Fair Housing Act will protect these constituents. They're your constituents; they're my constituents in Dallas and all around the

state where these ordinances exist. To avoid any doubt, any doubt whatsoever, we can simply say in this bill that this does not touch nondiscrimination ordinances at all, explicitly. If you look at the amendment itself, it says that in three places. It says on page 2, immediately after line 27, "This section does not apply to an ordinance, an order, or a rule that prohibits discrimination." It says it again on page 6, "This section does not apply to an ordinance, an order, or a rule that prohibits discrimination." And finally, on page 8, it would say in that, "This section does not apply to an ordinance, an order, or a rule that prohibits discrimination."

Now there are antidiscrimination ordinances of all types in the State of Texas. Some protect veterans, some protect the disabled, others protect on the basis of gender identity, or being LGBTQ. I think these are really important. I think the author does, too. In fact, during a dialogue in State Affairs the head of the Texas Association of Business said, "No, absolutely. We think these nondiscrimination ordinances are important. They set the right business tone for our state, and we don't want those affected either." All this does is say, "Yes, we agree with you Mr. Chairman, the author of this bill." Let's make it explicit to avoid any doubt, to avoid costly litigation, and to really give our constituents the comfort that they need that those protections at the local level will not be called into question, not be stripped away, and not be violative, ultimately, of their rights.

So members, I am grateful for your attention. Thank you, to those of you who are listening. I know that there is a legitimate disagreement about the extent to which this bill affects NDOs. I acknowledge it. I think it is healthy, and I just want to avoid doubt with this amendment. Members, as I ask you to ponder that we are our votes. Right? We are the votes that we take. All this bill says is, "I do not want discrimination in this state. And I support local communities that have an ordinance saying no discrimination."

NEAVE CRIADO: We know that there are many local cities throughout the state that have passed these local policies that provide protections against employment discrimination on the basis of a variety of protected classes. Some have expanded nondiscrimination protections to apply to veterans, immigrants, and other groups that are not usually protected by state and federal law. Would your amendment ensure that municipalities can apply nondiscrimination protections to groups of people not always covered by state and federal law?

ANCHÍA: I take the author at his word that he believes his bill does not touch them. There are also people who I also take at their word that believe this bill puts at risk nondiscrimination ordinances. I say we eliminate that doubt by being express in our intention and saying we will not affect nondiscrimination ordinances of any type, and this bill shall exempt them.

NEAVE CRIADO: There has also been lots of progress made—and we still have a long way to go—regarding protecting employees from discrimination on the basis of their sexual orientation and gender identity. We want to protect LGBTQ workers. We know that the Supreme Court has ruled in *Bostock* that Title VII fully protects LGBTQ employees from discrimination, but Title VII only covers a



fraction of the state's workforce because it applies to businesses that have 15 or more employees. Would your amendment allow municipalities to expand nondiscrimination protections to LGBTQ Texans?

ANCHÍA: Certainly, it would. If a local community wants to respond to those concerns of their citizenry, they'd be permitted to do so expressly, if my amendment is adopted.

NEAVE CRIADO: Would your amendment also ensure that cities and counties can attract the best businesses, workers, and talent, and ensure that our state is not known as a place where discrimination is allowed to thrive?

ANCHÍA: This is what I worry about. I worry about this bill passing and then a bunch of lawsuits seeking to upend nondiscrimination ordinances in cities occurring—in the absence of federal protections, as you correctly pointed out, in the workplace for companies of under 15 employees. As you point out in housing—if for some reason the Fair Housing Act does not apply in Texas or if a Texas state or federal judge says that it does not apply to orientation or identity, then my constituents and your constituents are at risk. That's really what I want to avoid. Let's take this risk right off the table. If we adopt this amendment, it is simply in accordance with the opinion of the author. I do believe him when he says, "I don't think this upends nondiscrimination ordinances." Well, if that's the case, then let's just be explicit and clear.

NEAVE CRIADO: There are also some cities and some counties that have local human rights commissions that investigate the complaints of discrimination. Sometimes that's far less expensive and quicker than going to court or to file a complaint. Do you think that local human rights commissions should be able to enforce nondiscrimination rules without being impeded or impacted by this bill?

ANCHÍA: I think in this case city, council members in Dallas are the closest to the people. If they wanted to set up a human rights commission to investigate any human rights abuses, I think it is their prerogative. I think they are much closer to the people than politicians in Austin, in fact. If something goes wrong in the community, they get called first. So I think we should, in fact, defer to them. Just let me underscore one more thing, Chairwoman, which bears mentioning. This is not some sort of cavalier concern that we have. This is not pretext for something else. This is articulating real fear from the constituents that I represent about their ability to be discriminated against on the basis of their orientation or identity in housing or in the workplace. These are real fears, and they feel protected by the City of Dallas's ordinances on the subject. It gives them a layer of protection and confidence and the ability to pursue happiness.

NEAVE CRIADO: There's an economic impact to that, too. You're aware of the Texas economist Dr. Ray Perryman's study on the cost to the state for not having comprehensive nondiscrimination protections in place?

ANCHÍA: Look, if we don't have them in place, then I fear that we are going to send the wrong signal to the marketplace and to employees.

BURROWS: I'm going to speak a little bit more about this just to make sure that everyone understands. For several weeks now, I have claimed that this does not affect nondiscrimination ordinances of all classes. I've had some legal briefings. I've shared them with my colleagues and have been under that impression this entire time. In fairness, Representative Anchía, you did bring to my attention there may be some contravening opinion, but of course, it was today during the middle of debate so I have not had a chance to look at it and read it. But up until today, it has been my belief—and confirmed multiple different times—this would not affect NDOs, and I have represented that. I'm going to stand by in opposing only because that has been the belief I've had for so many days and by so many people. I will read your brief when I actually get a chance to do that.

ANCHÍA: Mr. Chairman, I appreciate you doing that. I am grateful. This information has been widely disseminated and placed at least in front of your staff for some time now. I apologize that we didn't get to talk about it before the day started, but it is a legitimate concern. I take you at your word. I am not suggesting that you're trying to mislead anybody and that you've looked at briefing that makes you confident that NDOs will not be touched. I worry, however, that the breadth of your bill really does put in jeopardy, potentially, nondiscrimination ordinances. There is briefing to suggest the opposite. That, in fact, in the absence of on point case law, it would be very easy for the Fair Housing Act, for example, to be determined not to apply to orientation or identity in Texas, if that occurred. Nondiscrimination ordinances would fill that gap, right? I fear that we're pulling out that safety net as we're engaging in this trapeze exercise, and if we were just explicit about it for the avoidance of doubt, just put this to bed.

BURROWS: So the issue being when you have several days down here—which is kind of like months—and you have many conversations confirming that this is actually not affecting NDOs then it's very hard during the middle of the debate. It's the first time I've been made aware that there's an alternative opinion out there that somehow this does affect them, and I just don't think I can pivot on that dime at this point in time because there has been several confirmation issues where many people from all sides—not just people who want to confirm that, but from all sides seem to agree with my analysis and have agreed with my analysis that it does not affect. So I believe that.

ANCHÍA: And so what do we do? You heard the dialogue between both Representative Neave Criado and I that, in fact, for nondiscrimination in the workplace, even though there is a federal court opinion, that it does not impact employers under 15 persons. However, a nondiscrimination ordinance in Dallas, by way of example, would protect them.

BURROWS: Well, employment—we've actually given the rights to the city, which are preserved in here, and that's actually in the Labor Code. So that's actually explicit in the Labor Code that they can still do all the employment. So I'm convinced of that. I don't think there's anything on employment practices that those NDOs are not going to remain valid because of the explicit authority that's given there. I have not briefed the Fair Housing Act, but I thought everybody had

kind of come to that consensus. But I'll also make this point: there were several bill authors who talked about actually getting rid of all NDOs explicitly in my bill. So I thought the compromise was just not to deal with them in my bill. Rather than making it explicitly clear or getting rid of them, this would be the way to basically try to balance the interest and not make my bill about NDOs, and I still don't think my bill is about NDOs.

ANCHÍA: Okay. Just so we have clear intent, it is not your intent that this bill affect any NDO at all in the state?

BURROWS: Not only is it not my intent, I am fairly confident that it does not.

ANCHÍA: If, in fact, the breadth of the bill is such that we are wrong, and I'm glad you clarified employment, but let's say in Housing—the Fair Housing Act is ruled as not applying to the State of Texas, what is our remedy? What do we do at that point to satisfy your intent?

BURROWS: Well, obviously, we're now dealing with a hypothetical, and I love playing the hypothetical game, but I don't think at this point in time that it is in jeopardy.

ANCHÍA: Let me ask you this question because the problem in not wanting to deal in hypotheticals is that the minute we put this law out into the world, every fact pattern is a hypothetical, right? My constituents who are protected by nondiscrimination ordinances have to live with the consequences of that. So that's why I'm bringing this amendment because everything is a hypothetical, and every fact pattern becomes a hypothetical.

BURROWS: Representative, I've spoken more about this amendment on purpose to make sure the body is aware of it. I am going to vote no and oppose it, but if there's members who agree with you, that is with them. But that is where I am for those reasons, but I certainly understand it.

ANCHÍA: I'm grateful for the bill author very clearly stating his intent. Legislative intent is very helpful for any of us that have gone to law school, but it's certainly not dispositive. The reason I think it's very important for us to be explicit in this amendment is think about the nondiscrimination ordinances that may be adopted in any of the cities that you represent. Think about the people that they protect. Think about the people that they give hope to. Think about the people who they inspire and who have advocated for them before their local city councils, the representatives that are closest to the people. Think about whether or not we want to preserve those ordinances. Members, I ask you to just look in your heart. We can be explicit here in this bill to make sure there is no confusion whatsoever and articulate for the State of Texas where are values are.

[Amendment No. 38 failed of adoption by Record No. 291.]

TURNER: This bill has been well debated today by so many members today, and I'm appreciative so many members brought amendments to try to and improve this bill this afternoon. I think everyone is very clear on what this bill does and doesn't do. I would just say this, if you believe in your heart of hearts that a one-size-fits-all cookie cutter policy that emanates from this building is the best

thing for your community in virtually every situation, then you should absolutely vote for this bill. If you think that your community has the exact same challenges, has the exact same needs, and the exact same lived experiences as another community a county away, two counties away, 200 miles away, or 800 miles away then you should vote for this bill. But if you think that your community has something about it that makes it unique, that makes it special, that makes it such that local elected leaders—your county officials, your city officials, the people that your neighbors have elected to represent and lead your local communities—if you think that maybe they have something to offer because they may have some insights about what's happening in their neighborhoods, in their towns, in their cities and counties. If you think that they bring some value to the process because they have that local perspective that maybe, despite our best efforts, we may not maybe always have here in the House of Representative or here in the Texas Legislature. If you think maybe that they bring some value to that process and bring some local perspective that helps improve your community, as I know my local officials help improve my local community each and every day, then you should vote no on this bill.

BURROWS: I just want to sincerely thank all of you for this time, for this debate, and this discussion. Even those who are opposing this, I appreciate the debate on this, so thank you.

[CSHB 2127, as amended, was passed to engrossment by Record No. 292.]



