

SUBJECT: Excluding municipal abatement of public nuisances in ETJ waterway

COMMITTEE: Urban Affairs —favorable without amendments

VOTE: 6 ayes — Talton, Wong, A. Allen, Bailey, Blake, Rodriguez
0 nays
1 absent — Menendez

WITNESSES: None

BACKGROUND: Local Government Code, ch. 217 authorizes municipalities to prohibit nuisances within municipal limits and within 5,000 feet outside the municipal limits, which is within their extraterritorial jurisdiction (ETJ).

DIGEST: HB 2097 would amend Local Government Code, ch. 217 to exclude municipal authority of home-rule cities to regulate nuisances in areas within 5,000 feet outside city limits that are 50 feet from a public waterway.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: Current law grants home-rule cities authority beyond their corporate limits to plan growth and development standards so as not to incur health and safety problems or significant debt upon annexation of certain areas in an ETJ. HB 2097 would refine current law only to curtail municipal authority along waterways in the ETJ. Because citizens in ETJs have limited influence on municipal policies, limiting municipal nuisance ordinances in ETJs is justified.

HB 2097 is not designed simply to deal with an isolated local problem. Businesses located along certain waterways in ETJs should be able to serve patrons without municipal interference, which this bill would affirm. The public, especially tourists, should be able to enjoy the services of these businesses without excessive regulation, particularly noise abatements. In addition, cities should not apply noise ordinances along

waterways in the same way they apply ordinances elsewhere because sound travels differently across water than it does over land.

HB 2097 would avoid over-regulation of nuisances on some waterways located 5,000 feet from city limits. Concerns that the bill would expose certain waterways to pollution and potentially dangerous situations are unwarranted because other entities, in addition to municipalities, oversee activities on and near waterways. For example, river authorities and the Army Corps of Engineers, among others, monitor rivers, lakes, streams, and coastal areas.

**OPPONENTS
SAY:**

HB 2097 was crafted in response to a complaint from the owner of a restaurant on a Central Texas waterway who does not wish to comply with a local noise ordinance. State law should not be amended to cater to isolated incidents, particularly when the amendment could have unintended consequences that might negatively impact communities across Texas. In any case, when noise creates a public nuisance, whether it has traveled across water or land, ETJ residents are entitled to the relief provided by noise ordinances.

HB 2097 would decrease local control and leave certain waterways vulnerable. The bill would create severe unintended consequences, especially for coastal cities that have miles of waterways within 5,000 feet beyond their municipal limits. The bill unintentionally could permit activities that otherwise would be prohibited. A public nuisance is an interference with the common right of the general public, which encompasses more than just noise ordinances.

Regulating public nuisances is essential to public safety, comfort, and recreation. If municipalities no longer could enforce nuisance abatements in these areas, they likely would remain unprotected, as counties have limited authority in these areas. Additionally, while other entities may monitor waterways, they do not enforce the same public nuisance regulations as municipalities. River authorities, for example, provide emergency and rescue services, enforce marine safety, and mitigate environmental hazards, but they cannot issue public nuisance ordinances.