

# WHAT THE TEXAS REGULATORY CONSISTENCY ACT MIGHT MEAN FOR SOME LABOR ISSUES

In June 2023, Texas Governor Greg Abbott signed the [Texas Regulatory Consistency Act](#) (TRCA) (HB 2127) into law, which went into effect on September 1st. The Texas Legislature says the primary aim of the TRCA is to provide regulatory consistency across the state and restore the exclusive regulatory powers to the state. However, the law has sparked a contentious debate, as it curtails city and county municipalities' ability to create local ordinances that exceed the bounds of state law. This article delves into the key provisions of the TRCA, its implications on labor issues, and the ongoing debate between proponents and opponents.

## Understanding the Texas Regulatory Consistency Act

The TRCA's central purpose is to streamline regulatory standards throughout the state, ensuring uniformity and clarity in the legal landscape. To achieve this, the law restricts cities and counties from enacting local ordinances that pertain to broad "fields" regulated by state law. While Texas already prohibits cities from adopting rules that contradict state law, the TRCA goes a step further, preventing cities from passing any laws that touch on the same subjects covered within entire sections of state law. The areas affected include labor, agriculture, business and commerce, finance, insurance, property, and more.

The TRCA also will allow a person licensed under the Texas Occupations Code to sue certain governmental bodies, such as counties and municipalities, for passing or maintaining an ordinance that results in an injury to the licensed person.

Texas is one of 39 states to follow the "Dillon's Rule" for at least some of its local governments. The rule makes clear that municipalities are subordinate to the state's government. Under Dillon's Rule, local governments possess only those powers specifically delegated to them by state law or implied from expressly granted powers.

On the other hand, with very few exceptions, cities in Texas are classified as general law or “Home Rule”. The Home Rule Amendment gave cities with over 5,000 inhabitants the power to adopt their own charter after an election, thereby giving them the power of self-government. One reason Texas gave its cities Home Rule authority is so the state legislature's agenda isn't clogged with local-interest legislation – this has historically been a particular concern for states like Texas where the legislature only meets for a few months every other year. However, the Texas constitution also specifies that even Home Rule cities can't pass ordinances that contradict state law.

## Supporters

Proponents of the TRCA say that it will be beneficial for small businesses, as it will limit their need to navigate different laws in various cities. The law's proponents also argue that it ensures consistency and simplifies compliance for businesses operating across Texas.

Proponents also say that, even with the TRCA in place, the state still gives cities explicit authority to regulate many issues within the new-restricted codes. For that reason, supporters of the law say they think its impact will be much smaller than critics anticipate.

## Critics

Conversely, city officials in Dallas, Austin, and San Antonio are evaluating the potential impacts of the TRCA, given its broad wording and implications for local governance. Some cities have expressed concerns that the law could significantly weaken their authority to self-govern and address unique local challenges.

For instance, the TRCA would nullify San Antonio's ability to mandate water breaks for workers, as it would revert to the requirements set by the Occupational Safety and Health Administration (OSHA), a federal agency overseeing worker safety in the United States.

## Impact on Small Business

The law's supporters argue it's needed to combat what they call a growing patchwork of local regulations that make it difficult for business owners to operate, subsequently harming the state's economy.

“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 city limits,” said state Rep. Dustin Burrows, the Lubbock Republican who helped carry the bill in the House.

Critics, on the other hand, argue that the law's reliance on the state legislature for addressing local issues such as egress-ingress problems, building permits, property contracts, etc. could lead to adverse effects like delays and complications for small businesses, which often deal with time-sensitive matters. Critics also say that decisions made at the state level might lack insight into the unique challenges faced by local

businesses in various communities. They say this shift could also introduce more bureaucracy, with state processes possibly being slower and more complex than local ones.

## Legal Challenges Likely Ahead

In response to the TRCA, the city of Houston has already filed a lawsuit against the State of Texas. San Antonio has since joined the lawsuit. They argue that the new law violates the state constitution and infringes upon cities' rights to govern themselves. The legal battle over the TRCA's constitutionality is likely to unfold in the coming months as the law has just gone into effect this month.

## Next Steps

We will continue to monitor updates and keep you informed. As always, please reach out to us with any questions or concerns.

## For More Information

If you have any questions, please contact our HR team at **210-775-6082**, toll-free at **1-888-757-2104**, or [HRmanagement@BFGonline.com](mailto:HRmanagement@BFGonline.com).



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