



# SIERRA CLUB

## LONE STAR CHAPTER

To: The Honorable Todd Hunter, Chair  
Members, House Committee on State Affairs  
Re: HB 2374 (Landgraf) Relating to the authority of a political subdivision to regulate an energy source or engine.  
From: Cyrus Reed, Sierra Club, [cyrus.reed@sierraclub.org](mailto:cyrus.reed@sierraclub.org), 512-888-9991

March 22nd, 2023

Dear Chairman Hunter and members,

The Sierra Club Lone Star Chapter is opposed to HB 2374. The bill, another example of “pre-emption,” creates limits on the abilities of cities and other political subdivisions including counties and special districts to take actions to protect communities. First, under Section 247.002, the bill states that these political subdivisions are not allowed to “adopt or enforce any ordinance, order, regulation or similar measure that limits access to an energy sources or that results in the effective prohibition of a wholesaler, retailer, energy producer or related infrastructure, including a retail service station, that is necessary to provide access to a specific energy source.”

Second, the bill says these same cities and other political subdivisions “may not adopt or enforce an ordinance, order, regulation, or similar measure that directly or indirectly prohibits or restricts the use, sale, or lease of an engine based on its fuel source.”

While we understand the intent of the first section is to prevent a city or other political subdivision from prohibiting a retail service station, this bill as written could fundamentally undermine the ability for cities and other political subdivisions to zone for commercial, retail or industrial sources. We are particularly concerned by the words “that limits access to an energy source” which could mean any small limitation would be prohibited by passage of the act.

Could a gas station retailer operator argue that they needed to be located in a residential community not zoned for such service? Could political subdivisions like the Greater Edwards Aquifer Authority be told they had to allow certain storage tanks in their contributing zone, something that is currently not allowed because of their need to protect the sole source aquifer?

It is worth noting we are not aware of any city that is currently trying to prohibit certain energy producers from locating in their city, meaning this is a piece of legislation in search of a problem to solve. Cities and other political subdivisions do provide some limits on energy sources. In addition, in cities that have municipal utilities that are not open to competition, a city may limit the development of commercial energy production for electricity, and place restrictions on the location of energy sources like storage and solar.

In terms of the second section we again do not see a need for this legislation, which could undermine legitimate actions cities are taking to limit the emissions of nitrogen oxide and volatile organic compounds that contribute to ozone formation. We are particularly concerned with the word "indirectly." Many cities contract with cleaner vehicles or lawn equipment as a means to lower emissions, or have chosen to make their own fleet alternatively-fueled with CNG, hydrogen, or through electrification of transportation. While we are unaware of any city trying to force residential consumers to choose certain types of vehicles, the bill as written could be interpreted to mean that any action that "indirectly" impacted certain engines - like even providing rebates for electric charging stations - could be seen as running afoul of the new legislation. Similarly, there can be legitimate reasons for cities to place limits on lawn equipment or when construction equipment operates to protect citizens and air quality.

Currently, four metropolitan areas in Texas do not meet the national air quality standards for ozone, and EPA is currently reviewing the PM 2.5 standards, which could lead to several urban areas in Texas also violating those standards. There is likely not be any way for Texas to reach compliance with these standards without some regulation of engines and energy sources, and SB 1017 undermines that ability. Cities and other political subdivisions should work with state and federal authorities to reach these standards, but taking away the ability of cities and other political subdivisions to put some restrictions on hours of operations of certain kinds of operations for health and compliance reasons is counterproductive.

We understand the bill might be focused on the use of lawn equipment. The fact is that with air quality concerns, electric leaf blowers, mowers and weed eaters are far cleaner than gas-powered versions and many are less expensive, both now and in long-term costs.

Cities across Texas should not be hampered in trying to improve the air quality, health, and life expectancy for their residents, but this bill would end their ability to respond to the needs of their communities. We understand the City of Dallas has begun a discussion about a potential ban on gasoline-powered lawn mowers, leaf blowers and other landscaping equipment though that is not a final decision, and is subject to public input and change. Our understanding is that the first phase as a test case would be focused on their own equipment before considering any wider application to the public at large.

We respectfully request the Committee leave it tabled, or that it be rewritten to narrowly apply only to the ability of political subdivisions to ban retail service stations or to ban certain engines if that is the concern of the author. As written the bill is much too broad.

### **Proposed Amendments and Committee Substitute**

We understand that a committee substitute is intended to meet some concerns by making it clear that cities can contract for their own needs with any vendor or engine they wish, and that cities can enforce state and federal regulations related to air quality. This certainly improves the bill.

However, the Sierra Club has sent some proposed language to the author -see below - to further refine the bill to make it clear that while a city could not prohibit or ban an energy source, they could adopt reasonable regulations as well as incentives.

### **Potential amendments to preserve the rights of political subdivisions to regulate engines without an effective prohibition of those engines**

1. On Page 1, Line 21 strike the word “limits” and replace it with the word “prohibit”
2. On Page 2, Line 4, strike the words “or indirectly”
3. On Page 2, Line 5, strike the words “or restricts”
4. On page 2, Line 10, strike the words “or restricts”
5. On Page 2, after Line 12 add a new section (c) (then renumber c as (d))

(c) This section does not limit the ability of a political subdivision to encourage, promote, or provide rebates for cleaner engines and cleaner fuel sources through ordinances, resolutions, regulations, codes, orders, or policies, or other measures as long as they do not directly or effectively ban, restrict or prohibit the use, sale or lease of an engine based on its fuel source.