

- SUBJECT:** Enforcement of a city service plan by those in an annexed area
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 7 ayes — Saunders, Mowery, Combs, Hamric, Howard, Krusee, B. Turner
0 nays
2 absent — Alexander, Hilderbran
- WITNESSES:** For — Sabrina Foster, for Houston Mayor Bob Lanier; William Glass, Wells Branch Municipal Utility District/Central Texas Association of Utility Districts
Against — William Bunch, Save Our Springs Legal Defense Fund
On — Frank Sturzl, Texas Municipal League
- BACKGROUND:** A city that annexes an area must prepare a service plan providing for the extension of full city services to the area. Full service must be extended within four and one-half years after annexation. A service plan may not provide fewer services or lower levels of services than existed before annexation.

Local Government Code sec. 43.141 allows a majority of the qualified voters of an annexed area to petition the governing body of a city to disannex the area if the city has failed or refused to provide the services specified by the service plan for the area. If the city refuses to disannex the area within 60 days after receiving the petition, a cause of action may be brought in a district court to request that the area be annexed. A court may order disannexation if a valid petition is filed and the court finds the city has failed to live up to its service plan.
- DIGEST:** CSHB 2758 would amend Local Government Code sec. 43.056 to provide that a resident of an area annexed by a city could enforce a service plan by applying to a court for a writ of mandamus. If a court issued the writ, the city would pay the person's cost and reasonable attorney's fees in bringing

the action. A writ issued under this subsection would have to provide the city the option of disannexing the area within 30 days.

The bill would apply only to annexations initiated on or after the effective date of the act. The bill would take effect upon approval by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 2758 would give a long overdue legal remedy to residents who are annexed by cities that fail to provide the services promised in their service plan. Current law does allow the majority of residents in an annexed area to file a petition for disannexation, but if the city refuses, the petitioners must bring a cause of action in district court against the city. This is too expensive for most people to pursue, allowing the city to continue to refuse to provide promised services.

Cities should be held accountable for the promises they make. If a city knew it might have to pay someone's costs and attorney's fees, it might promptly become a lot more accountable. If a city wants to annex an area, it must write a service plan for the area. If CSHB 2758 is enacted, cities would be careful to write an honest service plan they know they can implement. There is no excuse for a city to annex an area without providing service to the people who are paying for those services. Too many cities annex to extend control, but fail to extend services.

CSHB 2758 would discourage cities from annexing areas if they had no intention of providing services to them. The bill would help avert problems, rather than forcing residents to take the city to court because of broken promises.

The bill would only apply to annexations initiated after the effective date of the act. This would encourage cities to think long and hard before considered annexing areas to which they may not be able to provide services, as well as saving them from a barrage of disannexation requests from areas annexed in the past.

An escape hatch is built in for a city ordered to provide services to an area it really could not afford to serve — the writ would have to provide the city with the option of disannexing the area within 30 days.

OPPONENTS
SAY:

Local Government Code sec. 43.141 already allows residents in an area that has been annexed to apply for disannexation if a city has failed to live up to its service plan. If a majority of these residents petition the city for disannexation, and the city refuses, they can ask a court to force the city to disannex them. This is a sensible remedy for a situation in which a city does not live up to its service plan.

Most cities try to live up to their service plans and usually manage to do so, barring unforeseen circumstances. CSHB 2758 would allow a single individual (rather than the majority of the residents in an annexed area) to request an order to force a city into disannexing an area. This would mean that even if 98 percent of the residents in an annexed area wanted to remain annexed, one person could apply for a writ of mandamus and get the area disannexed, if, for example, a service plan was taking a little longer to implement than was expected.

A resident who has just installed a new septic tank, for example, may be angry about being annexed and unwilling to help pay for services provided to others, even if everyone else in the area desperately wants services. It is unwise to give one individual the power to affect everyone else's life without any input from them. The current statutes wisely provide that a *majority* of the residents in an annexed area must apply for disannexation.

It would be time-consuming and expensive for cities to defend themselves against frivolous nuisance actions brought by people with various gripes about their city, who might, especially if they thought they could get their attorney's fees paid, try to obtain a writ even if a city were providing services promised in the service plan. It could be very expensive to pay a person's costs and attorney's fees.

NOTES:

The committee substitute would add that attorney fees must be reasonable and would allow municipalities the option of disannexing an area within 30 days.