

SUBJECT: Transfer of portions of water quality protection zones from a city's ETJ

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Counts, Walker, Cook, Culberson, King, R. Lewis, Moffat,
Puente

0 nays

1 absent — Corte

WITNESSES: For — Richard Suttle, Freeport-McMoRan Properties

Against — None

BACKGROUND : In 1995 the Legislature enacted SB 1017 by Wentworth, which authorized owners of contiguous tracts of land of 500 to 1,000 acres within the extraterritorial jurisdiction (ETJ) of certain cities to designate their land as a “water quality protection zones.” Water quality plans for such zones must be submitted to the Texas Natural Resource Conservation Commission (TNRCC). Upon TNRCC approval, the zone is presumed to meet state and local water quality requirements.

A city cannot enforce land-use ordinances, pollution abatement programs, water quality ordinances and other regulations in a water quality protection zone. The city cannot annex a zone until 20 years after the zone is designated or after 90 percent of all facilities and infrastructure described in the water quality plan of the entire zone is completed.

Water quality protection zones can only be created in the extra-territorial jurisdiction (ETJ) of cities with certain characteristics, which at this time describe only the City of Austin. There are currently eight water quality protection zones in Austin's ETJ, covering approximately 20,000 acres.

Cities can annex areas within their ETJ, which can be as large as five miles beyond the city limits for cities with more than 100,000 residents. When a city annexes additional areas, its ETJ is also extended. Once a city has annexed an area, it must provide city services to the area within a certain

amount of time. A city can transfer a portion of its ETJ to another city, or remove an area from its ETJ.

DIGEST:

CSHB 1707 would remove an entire water quality protection zone from a city's ETJ if the city took action that caused any part of the zone to be located outside the ETJ. Once a zone was removed from a city's ETJ, it could not be brought back for 20 years from the date the zone was designated.

CSHB 1707 would require the TNRCC to assess reasonable fees adequate to recover its costs in monitoring water quality in water quality protection zones.

The bill would apply to any action taken by a city after January 1, 1997, if finally approved by a two-thirds record vote of the membership in each house.

SUPPORTERS
SAY:

CSHB 1707, as amended, would ensure that cities not put the legal status of water quality protection zones in question by selectively removing or transferring to another city a portion of the zone. Such actions would be an obvious attempt to circumvent the will of the Legislature, which established water quality protection zones in 1995 by enacting SB 1017 by Wentworth.

Before the creation of water quality protection zones, cities like Austin abused their water quality authority — using it almost as if it were land-use authority — to prevent development in the city's ETJ. ETJ residents are not allowed to vote on city water quality ordinances that directly affected their lives, so it is important that they retain the protection afforded to them by water quality protection zones.

Water quality protection zones must meet certain criteria, including size and location. If a city deannexes or transfers a portion of the zone to another city, legal questions could be raised as to whether or not the zone was still valid. Such questions surfaced recently when the City of Austin transferred a portion of its ETJ covering a water quality protection zone to the City of Lakeway. CSHB 1707 would clarify the status of such transfers in the future, and would be retroactive to January 1 of this year to establish the continued validity of the zone affected in the Austin-Lakeway transfer.

The statutes concerning water quality protection zones allow waivers or conditional waivers of various provisions concerning zones if property owners agree. ETJ transfers that were beneficial to both cities and supported by landowners in the zone could still be possible under CSHB 1707.

The bill would also ensure that water quality in zones would be protected by requiring TNRCC to adopt reasonable fees to recover costs in monitoring water quality in the zones. TNRCC is currently required to assess reasonable fees for administration costs related to water quality protection zones, but there is no provision for ongoing monitoring.

OPPONENTS
SAY:

CSHB 1707 would limit a city's ability to make agreements with neighboring cities regarding ETJ boundaries — agreements that could benefit the residents of both cities. Under CSHB 1707, if an area to be transferred was part of a water quality protection zone, the city could not afford to have the entire zone, which could be as large as 1,000 acres, removed from its ETJ. This would prevent a transfer that might be desperately needed by a smaller city.

As cities have expanded, they have both encompassed smaller communities within their ETJs and run up against the border of ETJs of neighboring cities. A larger city may agree to transfer portions of its ETJ to a neighboring city that wishes to expand its tax base. The larger city may not have the resources to service the area, so the agreement is beneficial to both parties.

Such has been the case in the Austin area. Austin has made a number of consensual agreements to transfer portions of its ETJ to surrounding cities, including the City of Lakeway, and has scheduled transfers with the City of Buda and other cities. Under CSHB 1707, however, these proposed transfers could be halted if a portion of the area to be transferred is in a water quality protection zone.

Although current statute does allow for waiving provisions if property owners agree, CSHB 1707 could very well supercede this law.

NOTES: The committee substitute doubled from 10 to 20 years the period during which a zone removed from an ETJ could not be brought back. The substitute also required the TNRCC to assess fees to recover costs associated with monitoring the water quality protection zone.

SB 757 by Wentworth, the companion bill to HB 1707, was reported favorably by the House Natural Resources Committee on April 2, making it eligible to be considered in lieu of CSHB 1707.