

SUBJECT: Surface water and annexation agreements for Houston ETJ

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Bosse, B. Turner, Howard, Jackson, Krusee, Mowery  
0 nays  
1 present, not voting — Crabb  
2 absent — Hamric, Staples

WITNESSES: None

DIGEST: CSHB 3151 would delineate terms by which Houston would provide surface water supplies to conservation and reclamation districts in its extraterritorial jurisdiction currently relying primarily on groundwater supplies. Under the terms, Houston would forego annexing eligible districts until at least September 1, 2012.

The bill would take effect September 1, 1997.

**Water services.** CSHB 3151 would require Houston to develop a detailed plan for developing and financing facilities to serve the freshwater needs of districts as soon as possible after May 31, 1998. The plan would have to contain details on how costs would be apportioned among districts and would have to be developed in cooperation with districts and applicable regional and state authorities. At least three public hearings during three separate months would have to be held before the plan could be adopted.

Houston would have to establish a regional surface water project fund to deposit pumpage fees collected from participating districts and use the revenue to construct and operate facilities to treat and deliver surface water to the district. Houston could also reimburse itself from the fund to pay for the facilities. The pumpage fee would be one-tenth of one cent per gallon of groundwater pumped or acquired by the district. Pumpage fees would be required until the total costs of meeting the city's obligations were paid or until

the district began using the city's surface water to meet its ground and surface water obligations.

Houston would be required to sell and deliver treated surface water to a participating district at non-discriminatory wholesale rates upon completion of the surface water delivery system.

A participating district would be given the same water priority rights as other municipal water customers in the same customer class as the district.

**Agreement for service.** The bill would require eligible districts to hold a special election on the first Saturday in May 1998 and submit a proposition to the voters to decide whether the district would be authorized to be a participating district.

If participation were approved by voters, the district could negotiate the final terms of the agreement with Houston. The district would become a participating district upon the execution of the agreement. Two or more districts could jointly negotiate and enter into an agreement with a municipality. If the district and Houston did not come to a final agreement prior to September 1, 1999, the district would be deemed a non-participating district.

The city would be responsible for the costs of providing treated surface water to the boundary of the participating district and all costs associated with planning, construction and operation. It could issue bonds and would be required to pay off the debt within 30 years of issuance. The district would be responsible for the maintenance and continuation of any necessary interconnection and the delivery costs of water within the district.

A non-participating district could use facilities constructed to serve participating districts only if it paid fees equal to those paid by original participating districts, plus interest and a penalty of 10 percent, and the municipality determined that the facilities could accommodate the additional requirements of the new district.

**Annexation.** A participating district could not be annexed by Houston until September 1, 2012, unless approved by voters of the district. Houston and the

district could extend the moratorium on annexation to September 1, 2027. The district would be prohibited from incorporating as a municipality during this time.

Houston would be able to annex a non-participating district not adjacent or contiguous to the city if the city could have annexed the non-participating district but for the presence of participating districts.

If a district decided not to become a participating district or was otherwise excluded, it could enter into an agreement with the city that it not be subject to annexation until September 1, 2012, or another time mutually agreed upon. During the moratorium, the city could impose within the district city sales and use taxes, franchise fees and assessments other than ad valorem taxes. In exchange, the municipality would be required to provide municipal services to the area agreed upon by the district. This provision would take effect September 1, 1999.

The rights and responsibilities of the parties would be enforceable in a district court under the law of contracts. The provisions of the bill would be incorporated into any agreement between a municipality and a district.

**SUPPORTERS  
SAY:**

CSHB 3151 would help Houston solve two local problems: annexation and surface water needs. Often, municipalities are encouraged to annex and increase their tax base in order to pay for the costs of infrastructure associated with providing municipal services. The bill would encourage Houston to negotiate with districts to create mutually beneficial agreements to address the issues of annexation and surface water conversion.

Because Houston controls the available surface water in its ETJ but does not have the infrastructure necessary to serve surrounding districts, the bill would outline a way for Houston to work cooperatively with districts to solve this issue. The entities could enter into agreements to build and pay for the necessary infrastructure to carry surface water to districts. The bill would give Houston the flexibility needed to fund this expensive infrastructure.

CSHB 3151 would neither encourage nor restrict annexation. Houston would still retain its ability to annex nonparticipating districts at any time and participating districts at a mutually agreed time. The bill is permissive and

would simply provide districts one more tool to facilitate the conversion from groundwater to surface water. Without CSHB 3151, districts would be subject to annexation while still having to meet surface water requirements.

CSHB 3151 would require Houston to negotiate in good faith with districts because of its inability to do so in the past. It would set out specific and strict guidelines, including pumpage rates, to ensure all agreements were fair and even-handed. Similarly, residents would be guaranteed that revenue collected through pumpage fees would be used on appropriate infrastructure as specifically defined in the bill. The bill would establish the contractual rights of all parties and provide for specific legal remedies in case of nonperformance.

OPPONENTS  
SAY:

CSHB 3151 would not be meaningful annexation reform because it would still allow Houston to annex nonparticipating districts. While the language in the bill requires Houston to negotiate in good faith with districts, the city's past conduct with the Kingwood and other annexations shows it cannot be trusted to fulfill this requirement.

In addition, CSHB 3151 would set pumpage rates too high and districts would not be able to afford them. The \$1 per 1,000 gallon fee would produce millions for Houston without ensuring district residents Houston would properly use the funds for infrastructure.

OTHER  
OPPONENTS  
SAY:

Once Houston entered into an agreement with a district to provide surface water under CSHB 3151, it would be prevented from annexing the area. Without the power to annex new areas, cities can start to lose the bulk of their tax base, creating even greater strain on the taxpayers who remain in the city.

Any legislation that limits a city's right to annex should apply to all cities and not single out one particular city. Local control is meaningless if special interests on the losing end of local land use policies can exert political influence at the state level to have them overridden.

NOTES:

The committee substitute made a several substantive changes to the original version of the bill, including adding the prohibition on annexation, deleting the length of contracts, and setting the pumpage fee.

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