

SUBJECT: Notice required of property sellers regarding potential annexation

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Brimer, Dukes, Corte, George, Ritter, Siebert, Solomons, Woolley
0 nays
1 absent — Giddings

WITNESSES: None

DIGEST: HB 637 would amend the Property Code to require a person who sells an interest in real property outside the limits of a municipality to give the purchaser a written notice stating that the property may be subject to annexation. The seller would have to deliver the notice before the date the executory contract bound the purchaser to buy the property.

If an executory contract was entered into without the seller giving notice, the purchaser could terminate the contract on or before the date of transfer of property or within seven days after the purchaser received the notice, whichever occurred first. A seller who provided notice according to this section would not have to provide any other information related to the potential for annexation of the property.

HB 637 would prescribe the language of the notice, which would advise property purchasers that land outside the limits of a municipality could be included in the extraterritorial jurisdiction (ETJ) of a municipality some day and that land within an ETJ could be annexed. The notice would advise property purchasers to contact all nearby municipalities to determine whether the land was within an ETJ or could be within an ETJ in the near future.

The bill would *not* require a notice of possible annexation for the following transactions:

- ! a court order or foreclosure sale;
- ! sales by a trustee in bankruptcy;
- ! sales to mortgagees by mortgagors or to beneficiaries of a deed of trust by

a trustor;

- ! sales by mortgagees or beneficiaries under a deed of trust who have acquired the land through a power of sale under a deed of trust, a sale under court-ordered foreclosure, or by deed in lieu of foreclosure;
- ! sales by a fiduciary in the course of administering an estate or trust;
- ! sales between co-owners of an undivided interest in real property;
- ! sales between spouses or persons in lineal line of consanguinity;
- ! sales to or from a governmental entity;
- ! sales of only mineral, leasehold, or security interests; and
- ! sales of property located entirely within the boundaries of a municipality.

HB 637 would take effect January 1, 2000, and would affect only property transactions in which an executory contract was executed on or after that date.

**SUPPORTERS
SAY:**

People who buy property outside municipal limits often are unaware that the property may be subject to annexation or to city regulation as part of a city's extraterritorial jurisdiction. Many people whose property subsequently was annexed have complained that they did not know of the property's status when they bought it. This has made the annexation process more difficult and contentious, as exemplified by the City of Houston's annexation of Kingwood in 1996.

HB 637 would help alert buyers that they should learn whether property is eligible for annexation or incorporation into an ETJ before they buy it. It would give the buyer a reasonable opportunity to terminate the contract if the seller did not give notice of the possibility of annexation.

The bill is not intended to affect property sales where the buyer is familiar with the property or with the seller, as in the exempted transactions. The exemptions are derived from those already listed in the Property Code for other purposes.

The intent of the bill is to notify customers, not to discourage property transfers. The vast majority of buyers would not change their minds once notified of the potential for annexation of the property. Nevertheless, those buyers who are concerned about annexation would benefit from a standardized reminder to check on the annexation potential of their land, and

their interests are sufficiently compelling that a termination option is needed to insure compliance with the notice requirement.

Property sellers would self-enforce the notice requirement. The possibility of termination of an executory contract should a sufficient motivation to property sellers to provide the notice.

Realtors support HB 637 because the notification would not be an undue burden for sellers of property. Non-professional sellers still must use a formal executory contract to execute a sale. These contracts very likely would contain the notice for potential annexation as part of a standard agreement. The Texas Association of Realtors has indicated that it would fully incorporate such a notice in its standard documents.

OPPONENTS
SAY:

The notice of potential annexation proposed by HB 637 is so general that it likely would make little difference to prospective property buyers in their decision to purchase property. Moreover, it is unclear how the bill would be enforced. Property buyers would not likely become aware of their right to receive a notice of possible annexation until the property actually was annexed, which could be years after the contract could have been terminated for failure to provide the notice.

Non-professional property sellers in rural areas located far beyond areas subject to annexation may not be aware of the requirement to give notice of potential annexation. They may be accustomed to informal methods of negotiating property transfers and be caught off guard by the cancellation of an executory contract for failure to give the required notice.

NOTES:

The companion bill, SB 167 by Carona, passed the Senate by voice vote on March 23. The House Business and Industry Committee reported SB 167 favorably, without amendments, on April 6, making it eligible to be considered in lieu of HB 637.

Section 14 of SB 89 by Madla, revising annexation procedures, is identical to HB 637 and SB 167. SB 89 passed the Senate by voice vote on March 25. The House Land and Resource Management Committee considered SB 89 in a public hearing on April 12 and left the bill pending.

A related bill, HB 641 by Howard, which would require municipal utility districts to disclose to purchasers of residential real property whether the property was located in a city's extraterritorial jurisdiction, was reported favorably, as substituted, by the House Business and Industry Committee on April 13.