

SUBJECT: Reimbursing developers and landowners before annexation

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 8 ayes — Walker, Crabb, Bosse, F. Brown, Hardcastle, Howard, Mowery, B. Turner
0 nays
1 absent — Krusee

SENATE VOTE: On final passage, March 11 — 31-0

WITNESSES: For — Thurman Blackburn, Texas Capitol Area Builders Association and Texas Association of Builders; Ron Freeman, Phoenix Holdings, Ltd.; Ken Jones, Stratus Properties
Against — None

BACKGROUND: Local Government Code, sec. 43.0715 requires a municipality with less than 1.5 million residents to reimburse landowners and developers for costs and expenses owed to the landowners or developers by municipal utility districts if the municipality intends to dissolve the district under an annexation. The municipality must provide reimbursement in cash simultaneously with the annexation.

DIGEST: SB 262 would require a municipality with less than 1.5 million residents to reimburse landowners and developers before the effective date of annexation for costs and expenses owed by municipal utility districts. If the municipality did not reimburse the affected parties in full before the annexation date, it would have to pay a penalty of 6 percent of the sum for the first calendar month that the sum was not paid, plus an additional 1 percent for each additional month or portion of a month that the sum was not paid.

For annexations occurring before the effective date of the bill, payments would be considered delinquent starting on the first day of the eighth month after the effective date of the annexation. For annexations occurring after the

effective date of the bill, payments would be delinquent starting on the first day after the effective date of the annexation.

SB 262 would require a municipality to complete a report for each developer to whom the municipal utility district owed money to determine how much was owed. If the municipality could not complete this report because the developer failed to provide necessary information that could not be obtained from any other source, the municipality would have to obtain an estimate from the district of how much it owed that developer. The municipality would have to deposit the estimated amount in an interest-bearing escrow account to benefit the developer.

As compensation for the use of infrastructure facilities by the municipality pending the determination of the valid reimbursement amount or a federal preclearance, the developer would receive all interest accumulated in the fund whether or not the annexation occurred. The municipality would not be responsible for any additional penalties or interest to the developer if it deposited the estimated reimbursement amount as required and if the amount of valid reimbursement and the interest on the estimated reimbursement were disbursed to the developer once the valid amount was determined.

For an annexation that was still subject to federal preclearance after a valid reimbursement amount had been determined, a municipality could deposit the required amount in an escrow fund before the effective date of annexation and could disburse the required amount and accrued interest within five business days after the municipality received notice of preclearance. The municipality would not be subject to additional penalties or interest if it acted accordingly.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

SB 262 would ensure that cities pay debts owed to landowners and developers in a timely manner before an annexation occurs. Current law does not provide penalties for late payments to developers for utility infrastructure already built. Cities now can delay payments for months or years if they choose, and the landowner's or developer's only option to address the delay is expensive litigation.

Only in one current case involving the city of Austin, which has delayed paying what it owes to developers in areas annexed over a year ago, would delinquent payments be penalized under the bill for annexations that already had occurred. The city has taken advantage of current law, which assesses no penalties for delayed payments. SB 262 would help ensure that such delays do not occur in the future and that past delays have consequences as well.

The bill also would address specifically situations when the reimbursement amount prior to annexation was unclear or the developer failed to provide sufficient information to determine the amount. It would require the city to deposit in an interest-bearing escrow account the reimbursement amount estimated by the utility district pending final resolution of the reimbursement amount.

The bill would not affect the vast majority of Texas cities that have not been delinquent in compensating developers for outstanding debts from municipal utility districts. Cities participated in drafting the law that requires simultaneous compensation, and most cities do not oppose this bill's requirement to reimburse developers before the effective date of annexation.

**OPPONENTS
SAY:**

SB 262 retroactively would add penalties for delinquent payments for annexations that already had occurred, which would affect only one past annexation in one municipality — the city of Austin's annexation of the Circle C and Western Oaks subdivisions. The city has had difficulty gaining the cooperation of the developers to obtain hard numbers to pinpoint the actual reimbursement costs. Stratus Properties, the current owner of Circle C, has given the city cost estimates ranging from \$23 million to \$31 million. The Legislature should not enact retroactive legislation that would penalize one specific municipality to benefit a few specific developers.

The bill does not provide for an independent method, such as mediation or arbitration, for determining the valid reimbursement amount owed to a developer by a municipal utility district. Municipalities and developers need a mechanism to resolve disputes over the accuracy of information given by developers to justify a valid reimbursement amount.