

- SUBJECT:** Incorporating a municipality within an existing municipality's ETJ
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Mowery, Harper-Brown, Pickett, Blake, Escobar, Leibowitz, Miller, Orr
- 0 nays
- 1 absent — Cook
- WITNESSES:** For — Glenn Gross; Destiny Schaefer; Steve Schaefer; (*Registered, but did not testify*: Scott Norman, Texas Association of Builders; Richard Patnaudot, Committee of Incorporation)
- Against — Euline Brock, City of Denton; Bill Crolley, The American Planning Association; Richard Gertson, City of Mesquite; Emil Moncivais, City of San Antonio; (*Registered, but did not testify*: David Gattis)
- BACKGROUND:** Local Government Code, ch. 8, governs the incorporation of a municipality. A municipality may be created if a majority of voters approve in an incorporation election.
- A municipality may not be incorporated within the extraterritorial jurisdiction (ETJ) of another municipality except under certain conditions. The ETJ of a municipality with 100,000 or more inhabitants, under Local Government Code, ch. 42, extends five miles from the municipal boundaries. An existing municipality can permit creation of a municipality within the ETJ boundaries upon receipt of a request for consent. If it refuses, a majority of voters of the area of the proposed municipality and the owners of at least 50 percent of the land in the proposed municipality may petition the governing body to annex the area. If the governing body fails or refuses to annex the area within six months it constitutes consent to the incorporation of the proposed municipality.
- DIGEST:** CSHB 585 would permit residents of an ETJ to file with the county judge of the county in which the proposed municipality is located a written petition signed by at least 10 percent of the registered voters of the area to

order an incorporation election. The election would be held under the same process as is used for a municipality under Local Government Code, ch. 8, and the municipality would be incorporated if a majority of voters approved.

The bill would apply only to an ETJ:

- of an existing municipality with more than 1 million residents that had operated under a three-year annexation plan for at least 10 years;
- that had not been included in the municipality's annexation plan before the 180th day before the request for consent was received; and
- for which the existing municipality refused consent.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 585 would apply only to San Antonio and would remedy a problem for communities in the city's ETJ that have been stuck in incorporation limbo for some time. The city of San Antonio has not included some communities in its annexation plan, notably Timberwood Park, a community in north Bexar County that has experienced tremendous growth in the last decade.

Although located within San Antonio's ETJ, Timberwood Park is about 20 miles from downtown. With a population of about 6,000 residents, Timberwood Park is ready to bring the issue of incorporation before voters to decide if it should be its own city. San Antonio, however, has neither permitted this area in its ETJ to become a municipality nor included it in the city's annexation plan. Without a change in the law governing ETJ, Timberwood Park and other communities like it could be left without a way to become their own municipality or be annexed.

Communities deserve an opportunity to become municipalities if the existing city refuses to annex them. The benefits of municipal governance include better delivery of services and more responsive local government. Communities in ETJs do not benefit from economies of scale when it comes to paying for services, whereas cities generally do. In addition,

construction and development in an ETJ largely is governed by the existing city, yet residents are not constituents of the city.

While the existing ETJ laws may work well for cities, communities in ETJ areas often report difficulties working with the city government. The last decade brought significant growth to suburban areas, which now need more options in dealing with annexation and incorporation issues. Permitting them to hold an election with a petition signed by 10 percent of residents would allow the issue more easily to be brought before voters.

OPPONENTS
SAY:

This bill fundamentally would undermine the convention of extraterritorial jurisdiction, even if it is limited to only one area. The rationale behind having an ETJ is that cities should grow in a rational and efficient manner. This is accomplished by ensuring that construction and development of nearby land is consistent with city regulations. In turn, the existing city bases its long-term growth assumptions on the existence of ETJ land and the possible annexation of that land. If land within an ETJ could self-incorporate without the consent of the municipality, an ETJ would be no different from any other area.

The bill could change the basic assumptions for city planning. Long-range plans are based on population, revenue, and needs assumptions that include ETJ land. Cities have water, mobility, and other service plans and finance large projects to support them based on the assumption that the ETJ could be annexed. Changing those assumptions after the bonds have been issued, the projects begun, or the development slated could result in financial uncertainty for the city or investors.

OTHER
OPPONENTS
SAY:

CSHB 585 would not even help Timberwood Park. The San Antonio city council voted for limited annexation of Timberwood Park, so that community could not incorporate. Other communities like Timberwood Park also would not particularly be helped by this bill because the process for incorporation already exists and works well.

The courts, not the Legislature, would be the right place to decide whether or not the law was being followed. If the city of San Antonio inappropriately were thwarting Timberwood Park's statutory right to request annexation as a step toward incorporation, then Timberwood Park should take the city to court, not request a change in statute that could have significant policy implications for many communities. The courts also are

the best place to decide the issue of whether or not Timberwood Park can be annexed by the city of San Antonio.

NOTES:

The original bill would have applied statewide, and the committee substitute is bracketed to include communities in the ETJ of the city of San Antonio.