

BILL ANALYSIS

Senate Research Center
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S.B. 89
By: Madla
Intergovernmental Relations
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As Filed

DIGEST

Currently, under Texas law, municipalities have the exclusive right to annex within their extraterritorial jurisdictions. This bill revises the municipal annexation process, requiring cities to implement advance annexation planning procedures and providing for the timely provision of services to the annexed areas, among other revisions.

PURPOSE

As proposed, S.B. 89 revises the municipal annexation process.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 42B, Local Government Code, by adding Section 42.0225, as follows:

Sec. 42.0225. EXTRATERRITORIAL JURISDICTION AROUND CERTAIN MUNICIPALLY OWNED PROPERTY. Provides that this section only applies to an area owned by a municipality that is annexed by the municipality, not located in the extraterritorial jurisdiction of the municipality before the annexation, and not contiguous to other territory of the municipality.

SECTION 2. Amends Chapter 43A, Local Government Code, by adding Section 43.002, as follows:

Sec. 43.002. CONTINUATION OF LAND USE. Prohibits a municipality, after annexation of an area, from denying a person the continuation of land use as of the date of annexation if the land use was legal at that time; or from denying a person from beginning to use land in the manner planned before the 90th day of the effective date of annexation, under certain conditions. Provides that a completed application is filed if the application includes all ~~documents~~ and other information required by the governmental entity.

SECTION 3. Amends Sections 43.052 and 43.053, Local Government Code, as follows:

Sec. 43.052. MUNICIPAL ANNEXATION PLAN REQUIRED. Authorizes a municipality to annex an area identified in an annexation plan only as provided in this section. Requires a municipality to prepare an annexation plan that specifically identifies any annexations which may occur within a prospective three-year period. Authorizes a municipality to amend the plan to specifically identify annexations which may occur within a prospective three-year period from the date of the plan amendment. Prohibits another political subdivision, other than a county, from reducing an area's tax rate, voluntarily transferring an asset without consideration, entering into a contract beyond the three-year annexation plan period, or incurring a debt for which payments would extend beyond the three-year period, while an area is included in a municipality's annexation plan. Authorizes a municipality to amend the annexation plan at any time to remove an area from annexation. Prohibits a municipality from amending an annexation plan to reinstate an area once removed from the annexation plan by a certain date. Prohibits a municipality from amending an annexation plan to reinstate an area once removed from the annexation plan until the second anniversary of the date the area was first removed from the annexation plan, within the second year of the three-year annexation cycle. Prohibits a municipality from amending an annexation plan to reinstate

an area once removed from the annexation plan until the fifth anniversary of the date the area was first removed from the annexation plan, within the third year of the three-year annexation cycle. Requires the municipality to give written notice within 30 days after the adoption or amendment of an annexation plan to all property owners within the area to be included or removed from the municipality's annexation plan. Provides that this section does not apply to a municipality that annexes an area under Sections 43.023-43.032. Deletes text regarding annexation hearing requirements.

Sec. 43.053. INVENTORY OF SERVICES AND FACILITIES REQUIRED. Defines "public entity." Requires a municipality to compile a comprehensive inventory of services and facilities provided by public and private entities, directly or by contract, in each area to be annexed, upon the adoption or amendment of an annexation plan. Requires all public and private entities to provide to the municipality all information necessary to compile the inventory. Requires the information provided in the inventory to be based upon the services and facilities provided in the year prior to the date of the adoption or amendment of the annexation plan. Requires certain information to be provided in the inventory from the public and private entities providing the utilities, roads, drainage structures, and other infrastructure. Requires certain information to be provided in the inventory from the public and private entities providing police, fire, and emergency medical services. Requires the municipality to complete the inventory and provide public access to the inventory prior to the 18th month before the month of the effective date of annexation. Deletes text concerning the period for completion of annexation and the effective date of annexation.

SECTION 4. Amends Chapter 43C, Local Government Code, by adding Section 43.0545, as follows:

Sec. 43.0545. ANNEXATION OF CERTAIN ADJACENT AREAS. Prohibits a municipality from annexing an area located in the municipality's extraterritorial jurisdiction if the only reason for annexation is that the area is contiguous to the municipal territory, which is less than 1,000 feet in width at its narrowest point. Prohibits a municipality from annexing an area located in the municipality's extraterritorial jurisdiction only because the area is contiguous to certain municipal territory. Provides that Subsections (a) and (b) do not apply to certain areas. Provides that Subsection (b) does not apply if the minimum width of the narrow territory described is no longer less than 1,000 feet in width at its narrowest point after the annexation. Provides that for purposes of this section, roads, highways, rivers, lakes, or other bodies of water are not included in computing the 1,000 foot distance.

SECTION 5. Amends Section 43.056, Local Government Code, to require a service plan for the provision of services to an annexed area before the 90th day after the date the inventory is prepared as required by Section 43.053. Deletes text setting the date the service plan was required. Requires the service plan to provide full municipal services in the annexed area no later than 2½ years, rather than 4½ years, after the effective date of annexation. Requires the municipality to provide certain critical services, with the addition of emergency medical services, on the effective date of annexation, rather than within 60 days after. Deletes text concerning service plans and the services which must be provided by municipalities with a population of 1.5 million or more. Prohibits a municipality from providing services under a service plan in a manner that would have the effect of lowering services previously provided within the municipality before annexation. Requires a service plan to provide services in the annexed area at the same level as provided in the municipality, if the level of services in the annexed area was at or below the level of services in the municipality. Requires a service plan to provide to an annexed area a level of services available in other parts of the municipality with similar land use and population densities to those reasonable contemplated or projected for the annexed area, if the services in that area are superior to that provided in the municipality. Requires a service plan to maintain the infrastructure of the annexed area at a level of services that is equal or superior to the prior level of services for maintaining the infrastructure in the annexed area, if there was a superior level prior to annexation. Deletes text concerning the level of services required in a service plan. Establishes that if a writ of mandamus is applied for, the municipality has the burden of proof to establish that the provided services meet the service plan as required. Authorizes certain other remedies in a writ of mandamus under this section. Specifies that the governing body of the municipality determines the different levels of service necessary for each area of the municipality. Authorizes certain remedies for a person aggrieved by a determination of the governing body of the municipality. Makes conforming changes.

SECTION 6. Amends Chapter 43C, Local Government Code, by renumbering Section 43.0561 as Section 43.0564 and by adding Sections 43.0561, 43.0562, and 43.0563, as follows:

Sec. 43.0561. ANNEXATION HEARING REQUIREMENTS. Requires the governing body of the municipality to conduct two public hearings on annexation prior to instituting annexation proceedings. Requires the hearings to be conducted by a certain date. Requires at least one of the hearings to be held in the proposed annexation area if a written protest is signed by area residents within 10 days after the notice publication date. Specifies certain information required on the protest concerning the protesters. Requires the municipality to publish notice of the hearings with certain requirements concerning when, where, and to whom the notice must be published.

Sec. 43.0562. NEGOTIATIONS REQUIRED. Provides that this section only applies to the annexation of an area with 250 or more inhabitants. Requires the municipality to negotiate the provision of services with the proposed annexation area property owners, after the required hearings are held. Requires the property owners of the proposed annexation area to select by majority vote no more than five representatives for the negotiations with the municipality, except as stated in Subsection (d). Requires the governing body of the municipal utility district (MUD) to represent the property owners in negotiations with the municipality if the municipality proposes to annex a MUD.

Sec. 43.0563. ARBITRATION REQUIRED. Authorizes either the municipality or the representatives of the property owners or the governing body of the MUD to request the appointment of an arbitrator to resolve any dispute under Section 43.0562. Requires the request to be made in writing to the other party by a certain date. Authorizes the parties to the dispute to agree on the appointment of an arbitrator. Requires the chief administrative judge in the county with jurisdiction to randomly select a state visiting judge who is not a resident or property owner in either the municipality or the proposed annexation area, if the parties cannot agree on an arbitrator before the 31st day after the date arbitration was requested. Requires the visiting judge to appoint an arbitrator who is not a resident or property owner in either area prior to the 61st date after arbitration was requested. Establishes that the arbitrator is limited to making a decision concerning the proposed service plan's compliance with Section 43.056. Requires the arbitrator to enter a binding decision before the 121st day after arbitration was first requested. Requires the municipality to pay for the cost of arbitration.

SECTION 7. Amends Section 43.0751, Local Government Code, by amending Subsection (b) and adding Subsection (o) to authorize rather than require the governing bodies of a municipality and a MUD or a water control and improvement district (district) to negotiate and enter into a written strategic partnership agreement for the MUD or district by mutual consent. Requires the governing body of a municipality to negotiate and enter into a written strategic partnership agreement with the MUD or district, on a written request from a MUD or a district included in the municipality's annexation plan. Deletes a requirement that parties evidence their intention to negotiate by passing a resolution and available remedies. Authorizes either party to seek binding arbitration of the issues relating to the disputed agreement under Section 43.0753, if either party fails to agree on the terms of a strategic partnership agreement and makes a written request by a certain date. Prohibits the governing body of a municipality to annex the MUD or the district pending negotiations of the strategic partnership agreement, the arbitration proceeding, or any appeal from the arbitration award.

SECTION 8. Amends Chapter 43D, Local Government Code, by adding Sections 43.0752 and 43.0753 as follows:

Sec. 43.0752. CONTRACTS WITH CERTAIN AFFECTED AREAS IN LIEU OF ANNEXATION. Defines "community association." Requires the governing body of a municipality to negotiate and enter into a written agreement with a community association for the provision and funding of services on written request from a community association within the municipality's annexation plan. Authorizes the agreement to include an agreement related to permissible land uses and compliance with municipal ordinances. Provides that an agreement under this section is in lieu of annexation by the municipality of the distinct geographic area containing the requesting community association. Requires the municipality to negotiate an agreement with each requesting community association if more than one community association requests a written agreement. Prohibits a municipality from annexing an area unless the specific area for annexation has been identified and notice has been provided to each inhabitant or property owner in the area prior to the 31st day after the municipality has adopted or amended the annexation plan which includes the area, if the municipality is not required under Subsection (b) to negotiate and enter into an agreement.

Provides that the notice requirement under this subsection is in addition to any other notice requirements of this chapter. Requires the written request under Subsection (b) to be made by the community association before the second anniversary of the date of adoption or amendment of the annexation plan to include the area. Authorizes the parties to agree to certain terms in negotiating an agreement under this section. Authorizes either party to seek binding arbitration, upon a written request by a certain date, should the parties fail to agree on the terms of the written agreement. Prohibits the governing body of a municipality to annex the area containing the community association pending negotiations of the written agreement, the arbitration proceeding, or any appeal from the arbitration award.

Sec. 43.0753. ARBITRATION OF CERTAIN DISPUTES. Defines “area proposed for annexation.” Provides that this section applies to the arbitration of disputes arising under Section 43.0751 or 43.0752. Requires all parties to the dispute to meet and select a three-member arbitration tribunal consisting of certain members, prior to the 31st day after the notice that either party is seeking arbitration. Requires the chief administrative judge in any county with jurisdiction over either party to select by random drawing a visiting judge to select the remaining member of the arbitration panel, if the two party representatives on the panel cannot select a neutral member or either party cannot select a representative for the arbitration panel by a certain date. Requires the visiting judge to select an arbitrator with certain qualifications by a certain date. Requires an arbitration to conclude by a certain date. Authorizes the arbitration panel to fashion any remedy or apply any term allowed under Section 43.0751 or 43.0752. Provides that the maximum length of any remedy or other term is 15 years but the remedy or other term may allow for renewal of the remedy or term. Requires the arbitration tribunal to issue a decision and an award prior to a certain date. Provides that if the arbitration award is accepted by all parties, all terms of the award is binding on all parties. Prohibits the area from being annexed by the municipality for five years after the arbitration tribunal’s decision, if the municipality does not agree with the terms of the arbitration award.

SECTION 9. Amends Section 43.121(a), Local Government Code, by deleting text requiring the governing body of a home-rule municipality with more than 225,000 inhabitants to be authorized under its home-rule charter to annex by ordinance an area for the limited purpose of applying certain ordinances in the area.

SECTION 10. Amends Section 43.141(c), Local Government Code, to require that an area which has been disannexed cannot be reannexed for 10 years, rather than five years. Deletes text concerning actions to be taken should an area be reannexed in seven years.

SECTION 11. Amends Subchapter G, Local Government Code, by adding Section 43.148, as follows:

Sec. 43.148. REFUND OF TAXES AND FEES. Requires a municipality disannexing an area to refund to the area landowners any taxes or fees collected for the period the area was part of the municipality that was not spent for the direct benefit of the area. Requires the municipality to proportionately refund the amount in Subsection (a) to each landowner.

SECTION 12. Amends Chapter 5A, Property Code, by adding Section 5.0081, as follows:

Sec. 5.0081. SELLER’S DISCLOSURE REGARDING POTENTIAL ANNEXATION. Requires a seller of residential real property with no more than one dwelling unit to provide a written notice regarding potential annexation as prescribed in this section to the purchaser of the property. Sets forth the minimum notice required under this section. Provides that this section does not apply to certain transfers of real property. Requires the seller to deliver the notice to the purchaser on or before the date of an executory contract binding the purchaser to purchase the property. Authorizes the purchaser to terminate the contract for any reason within seven days of receiving the notice, if the notice was not provided as required by this section.

SECTION 13. (a) Effective date: September 1, 1999, except SECTION 12, whose effective date is February 1, 2000.

(b) Requires each municipality to adopt an annexation plan as required by Section 43.052, Local Government Code, on or before December 31, 1999, that becomes effective December 31, 1999.

(c) Provides that changes in law made by Section 2-11 apply only to an annexation included in a municipality's annexation plan prepared under Section 43.052, Local Government Code, except as provided in Subsection (d). Authorizes a municipality to continue to annex an area between December 31, 1999 and December 31, 2002 under Chapter 43, Local Government Code, as it existed immediately prior to September 1, 1999, if the area is not included in the annexation plan, except as provided in Subsection (d).

(d) Provides that changes in law made by this Act in Sections 43.002, 43.0545, 43.056(b), (e), (f), (g), (k), (l), and (n), 43.121(a), 43.141(c), and 43.148, Local Government Code, apply to the annexation of an area that is not included in a municipality's annexation plan between December 31, 1999 and December 31, 2002, if the first hearing notice required by Section 43.052, Local Government Code, as it existed prior to September 1, 1999, is published on or after that date.

(e) Provides that the change in law in SECTION 1 applies only to an annexation included in a municipality's annexation plan prepared under Section 43.052, Local Government Code and an annexation of an area not included in a municipality's annexation plan between December 31, 1999 and December 31, 2002, if the first hearing notice required by Section 43.052, Local Government Code, as it existed prior to September 1, 1999, is published on or after that date.

(f) Provides that the change in law made in SECTION 12 applies only to transfers of property on or after September 1, 1999. Provides that the date of the transfer of property is determined by the execution date of the executory contract binding the purchaser to purchase the property. Makes application of SECTION 12 of this Act prospective.

SECTION 14. Emergency clause.