

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 89
By: Madla
Intergovernmental Relations
3/21/1999
Committee Report (Substituted)

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, C.S.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 and not contiguous to other territories of the municipality. Provides that the annexation of an area expands the extraterritorial jurisdiction of a municipality only to include the area located within one mile of the boundaries of the annexed area. Provides that an extraterritorial jurisdiction of the municipality does not expand following an annexation of territory located only in the municipality's extraterritorial jurisdiction that is created under Subsection (b)

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. Provides that this section does not prohibit a municipality from imposing certain regulations.

SECTION 3. Amends heading of Chapter 43C, Local Government Code, as follows:

SUBCHAPTER C. New heading: ANNEXATION PROCEDURE FOR AREAS ANNEXED UNDER MUNICIPAL ANNEXATION PLAN

SECTION 4. Amends Sections 43.052 and 43.053, Local Government Code, as follows:

Sec. 43.052. New heading: 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, including certain

districts and excluding a county, independent school district, and an emergency services district from reducing an area's tax rate, voluntarily transferring an asset without consideration, entering into a contract for services 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 until the first anniversary of the date the area was first removed from the annexation plan, before the end of the 18th month after the month an area is included in 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 second anniversary of the date the area was first removed from the annexation plan, during or after the 18 months after the month an area is included in the three-year annexation cycle. Requires the municipality to give written notice within 90 days after the adoption or amendment of an annexation plan to all property owners within the affected area, as indicated by certain records, to be included or removed from the municipality's annexation plan; all public and private entities that provide services for the area proposed for annexation; and certain railroad companies. Provides that this section does not apply to certain areas that are proposed for annexation. Deletes text regarding annexation hearing requirements.

Sec. 43.053. New heading: **INVENTORY OF SERVICES AND FACILITIES REQUIRED.** Defines "public entity." Requires a municipality to compile a comprehensive inventory, which must include all services and facilities the municipality is required to provide or maintain following the annexation, of services and facilities provided by public and private entities (entities), in each area proposed for annexation. Requires the municipality to request in the notice provided under Section 43.052(e), information necessary to compile the information from each entity that provides services or facilities in each area proposed for annexation, and requires the fulfillment of the request by the various entities within 90 days. Requires the information provided under this subsection to include the type of service provided, the method of service delivery, and all information prescribed by Subsections (e) and (f). Authorizes a municipality to impose a certain administrative penalty of \$200 for each day of violation within the 90-day period. Requires the municipality to prescribe procedures to provide for due process in the imposition of administrative penalties. Requires the information to be based on the services and facilities provided during the year preceding the date of adoption or amendment of an annexation plan. Requires entities to include a certain engineers report and a summary of certain expenditures for utility facilities, roads, drainage structures, and other infrastructures provided. Requires the inventory to include certain information for police, fire, and emergency medical services provided by various entities. Requires the municipality to complete the inventory and allow for public inspection within 60 days after the municipality receives the required information. Deletes existing section concerning the period for completion of annexation and the effective date of annexation.

SECTION 5. 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 (features) are not included in computing the 1,000 foot distance unless the area annexed includes such features.

SECTION 6. Amends Section 43.056, Local Government Code, as follows:

Sec. 43.056. **PROVISION OF SERVICES TO ANNEXED AREA.** (a) Requires a governing body proposing an annexation to certain departments to prepare a service plan before the first day of the 10th month after the month in which the inventory is prepared as provided by Section 43.053. Requires the municipality to provide the services by any of the methods by which it extends the services to any other area of the municipality. Deletes text setting the date the service plan was required.

(b) 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, unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule providing for those services. Requires the schedule to provide for the full provision of full municipal services no later than 4½ years after the annexation's effective date, if the municipality proposes an extension to the schedule to provide certain services. 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.

(c) Makes no change.

(d) Redesignated from existing text.

(e) Requires the service plan to include a program under which the municipality will initiate, after the effective date of annexation, the acquisition or construction of capital improvements. Requires the construction to be completed within the period provided in the service plan. Authorizes the service plan to be amended to extend the period for construction provided that the construction is proceeding with all deliberate speed, rather than 4½ years after that date. Deletes text regarding the required starting date for construction. Makes conforming and nonsubstantive changes.

(f) Prohibits a municipality from providing services under a service plan in a manner that would have the effect of lowering fire and police protection services previously provided within the municipality before annexation.

(g) 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 and operate the infrastructure of the annexed area, including facilities described by Sections 43.056(b)(5) - (8) 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.

(h) Makes a conforming change.

(i) Requires the service plan to be made available and explained to the public at hearings held under Section 43.0561, rather than 43.052.

(j) Makes a conforming change.

(k) Authorizes a person owning land in an annexed area to apply for a writ of mandamus within two years of knowing that the municipality was not complying with the 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.

(l) Authorizes certain other remedies in a writ of mandamus under this section.

(m) Specifies that the governing body of the municipality determines the different levels of service necessary for each area of the municipality. Provides that nothing in this subsection modifies the requirement under Subsection (g) for a service plan to provide a level of services in an annexed area that is equal or superior to the level of services provided prior to annexation. Deletes text requiring a municipality to provide service.

SECTION 7. Amends Chapter 43C, Local Government Code, by renumbering Section 43.0561 as Section 43.0566 and by adding Sections 43.0561, 43.0562, 43.0563, and 43.0564, 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 filed by permanent 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.** Requires the municipality and the property owners of the area proposed for annexation to negotiate the provision of services in lieu of annexation under Section 43.0563. Requires the commissioners court of the county in which the area proposed for annexation is located (court) to select five representatives to negotiate with the municipality for the provision of services. Requires a court to select two representatives to negotiate with the municipality, in cases where the area proposed for annexation is located in multiple counties, with the county with the largest population sending three representatives to negotiate. Requires the governing body of the district to negotiate with the municipality for the provision of services.

Sec. 43.0563. **CONTRACTS FOR PROVISION OF SERVICES IN LIEU OF ANNEXATION.** Authorizes the governing body of the municipality to negotiate and enter into a written agreement with representatives designated under Section 43.0562 for the provision and funding of services. Authorizes the agreement to include agreements related to land uses and compliance with municipal ordinances. Provides that an agreement under this section is in lieu of annexation by the municipality of the area. Authorizes the parties to agree to certain terms.

Sec. 43.0564. **ARBITRATION REQUIRED.** Authorizes either the municipality or the representatives of the area proposed for annexation to, by a majority decision, request the appointment of an arbitrator to resolve any dispute under Sections 43.0562 or 43.0563. Requires the request to be made in writing to the other party by a certain date. Prohibits a municipality from annexing an area under another section of this chapter pending an arbitration proceeding or appeal from an arbitrator's decision. 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 appoint a qualified person who is not a resident or property owner of the municipality or area of proposed for annexation to serve as arbitrator, if the parties cannot agree on an arbitrator before the 31st day after the date arbitration was requested. Requires the arbitrator to set a hearing before a certain date and notify the parties to the arbitration in writing before a certain date. Establishes that the arbitrator is limited to issuing a decision relating to the service plan issues in dispute. Authorizes the arbitrator to receive certain evidence the arbitrator considers relevant, administer oaths, and issue subpoenas to require the attendance and testimony of witnesses and the production of certain materials. Requires the arbitrator to complete the hearing within one day. Authorizes the arbitrator to schedule an additional hearing within one week of the conclusion of the first. Requires the arbitrator to issue a decision in writing and deliver a copy to the parties within two weeks of the day of the final decision, unless otherwise agreed to by the parties involved. Authorizes either party to appeal any provision of an arbitrator's decision that exceeds the authority granted under Subsection (d) to a district court in a county in which the area proposed for annexation is located. Prohibits a municipality from annexing an area before the fifth anniversary of the date of the arbitrator's decision, if the municipality does not agree with the terms of the decision. Requires the municipality to pay the cost of the arbitration.

SECTION 8. Amends Chapter 43, Local Government Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. ANNEXATION PROCEDURE FOR AREAS EXEMPTED FROM MUNICIPAL ANNEXATION PLAN

Sec. 43.061. **APPLICABILITY.** Provides that this subchapter applies to an area proposed for annexation that is not required to be included in a municipal annexation plan under Section 43.052.

Sec. 43.062. **PROCEDURES APPLICABLE.** Provides that Sections 43.051, 43.054, 43.0545, 43.055, 43.0565, and 43.057 apply to the annexation of an area to which this subchapter applies.

Sec. 43.063. **ANNEXATION HEARING REQUIREMENTS.** Requires the governing body to conduct two public hearings, during a certain time period, giving persons interested in an

annexation the opportunity to be heard. Requires at least one of the hearings to be held in an area proposed for annexation if a site is available and more than 10 percent of the permanent residents of the area file a written protest with the secretary of the municipality within 10 days after the date of the required publication of notice. Requires the protest to include certain information about the protestors. Requires a municipality to publish a notice of hearings in a certain manner and time.

Sec. 43.064. PERIOD FOR COMPLETION OF ANNEXATION; EFFECTIVE DATE. Requires the annexation proceedings to be completed within 90 days of the annexation proceeding being instituted, or those proceedings are void. Provides that days during which a municipality is restrained or enjoined by a court of competent jurisdiction from annexing an area, are not included in the 90-day time limit. Authorizes a governing body of a municipality with a population of more than 1.5 million or more to provide that an annexation take effect on any date within 90 days after the adoption of the ordinance providing annexation.

Sec. 43.065. PROVISION OF SERVICES TO ANNEXED AREA. Requires a governing body of a municipality to direct certain departments to prepare a service plan, before the publication of the first notice of the first meeting required under Section 43.063. Requires a municipality to provide services by any of the methods used to provide services to any other area of the municipality. Applies Sections 43.056(b) - (m) to the annexation of an area to which this subchapter applies.

SECTION 9. 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 municipal utility district (MUD) or a water control and improvement district (ID) to negotiate and enter into a written strategic partnership agreement for the MUD or ID by mutual consent. Requires the governing body of a municipality to negotiate and enter into a written strategic partnership agreement with the MUD or ID, on a written request from a MUD or a ID included in the municipality's annexation plan. 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 from annexing the MUD or the ID pending negotiations of the strategic partnership agreement, the arbitration proceeding, or any appeal from the arbitration award. Deletes a requirement that parties evidence their intention to negotiate by passing a resolution and available remedies.

SECTION 10. 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, if authorized under its home-rule; charter to annex a certain area.

SECTION 11. Amends Section 43.141(c), Local Government Code, to prohibit an area which has been disannexed from being reannexed for 10 years, rather than five years. Deletes text concerning actions to be taken should an area be reannexed in seven years.

SECTION 12. Amends Chapter 43G, 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 13. Amends Chapter 43Z, Local Government Code, by adding Section 43.905, as follows:

Sec. 43.905. EFFECT OF ANNEXATION ON OPERATION OF SCHOOL DISTRICT. Requires a municipality that proposes to annex an area to provide a written notice of the proposed annexation to each public school district located in the area within the time period prescribed for publishing the notice of the first hearing under Section 43.0561 or 43.063. Requires a notice to a public school to contain certain descriptions. Prohibits a municipality from proceeding with the annexation unless a city provides the required notice. Requires a municipality that has annexed an area between December 1, 1996 and September 1, 1999 in which a school district has a facility, to grant a variance from the municipality's building code if needed. Requires a municipality to notify the governing board of the school district in writing of a variance granted by a municipality under this subsection. Requires the governing board of the school district to notify the

municipality in writing of the proposed actions to be taken in regard to the granted variance.

SECTION 14. Amends Chapter 5A, Property Code, by adding Section 5.011, as follows:

Sec. 5.011. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION. Requires a seller of an interest in real property in this state to provide a written notice regarding possible annexation as prescribed in this section to the purchaser of the property. Sets forth the minimum notice required under this section. 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 a notice to be given separately, as part of a contract during negotiations, or as part of any other notice the seller delivers to the purchaser. Provides that this section does not apply to certain transfers of real property. Provides that a seller has no duty to provide additional information regarding the possible annexation of the property by a municipality, if a notice is delivered as provided by this section. Authorizes the purchaser to terminate the contract for any reason within the earlier of seven days of receiving the notice or the date the transfer occurs, if a notice was not provided as required by this section.

SECTION 15. (a) Effective date: September 1, 1999, except SECTION 14, whose effective date is January 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 SECTIONS 2-7 and 9-12 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) of this section. 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 (m); 43.121(a); 43.141(c); 43.148; and 43.905, 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 changes in law made by this Act in Sections 43.002; 43.0545; 43.056(b), (e), (f), (g), (k), (l), and (m); 43.121(a); 43.141(c); 43.148; and 43.905, Local Government Code, apply to the annexation of an area that is not included in a municipality's annexation plan under Section 43.052, Local Government Code, as added by this Act, if a certain first hearing notice is published on or after September 1, 1999.

(f) 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.

(g) Provides that the change in law made in SECTION 14 applies only to transfers of property on or after January 1, 2000. 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.

SECTION 16. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 42.0255, Chapter 42B, Local Government Code, to delete a provision regarding

the applicability of this section to a certain area.

SECTION 2.

Amends Chapter 43A, Local Government Code, to provide that this section does not prohibit a municipality from imposing certain regulations.

SECTION 3.

Amends the heading of Chapter 43C, Local Government Code.

SECTION 4.

Amends Section 43.052, Local Government Code, to include or exclude certain districts from taking certain actions. Changes text regarding time periods during which a municipality is prohibited from amending an annexation plan. Specifies required recipients of a certain notification before a certain date. Provides that this section does not apply to certain areas. Deletes a provision prohibiting certain political subdivision from taking a certain action; and a provision prohibiting a municipality from amending an annexation plan during a certain period.

Amends Section 43.053, Local Government Code, to redefine a “public entity.” Requires an inventory of services and facilities to include certain services and facilities. Requires a municipality to make a certain request. Sets forth a date for required response to a municipalities request, and guidelines for information required in the response to the request. Requires an inventory of infrastructure maintained by certain entities to include certain information. Requires a municipality to make an inventory available for public inspection before a certain date.

SECTION 5.

Amends Section 43.0545, Chapter 43C, Local Government Code, to designate an area to which Subsections (a) and (b) do not apply. Provides that an area that includes land in addition to a road, highway, river, lake, or other body of water, is included in computing a 1,000 foot distance.

SECTION 6.

Amends Section 43.056, Local Government Code, to change the date on which a governing body of a municipality proposing an annexation is required to take certain action. Sets forth guidelines for establishing a schedule for providing certain services. Changes text regarding the date on which the construction of capital improvements is required to begin and authorizes a service plan to be extended. Prohibits a service plan from reducing the level of fire, police protection and emergency services. Authorizes a person owning land in an annexed area to apply for a writ of mandamus within a certain time period. Requires a court to provide the option of disannexing within a reasonable period. Authorizes a court to take certain actions. Deletes provisions authorizing a person aggrieved by a determination take certain actions. Makes conforming and nonsubstantive changes.

SECTION 7.

Amends Section 43.0561, Local Government Code, to set forth guidelines regarding public hearings required prior to annexation.

Amends Section 43.0562, Local Government Code, to set forth procedures for selecting representation for counties involved in negotiations with a municipality proposing annexation of an area which includes multiple counties. Deletes text requiring a certain district to represent property owners in negotiations. Makes conforming and nonsubstantive changes.

Amends Section 43.0563, Local Government Code, to set forth guidelines for the establishing of agreements between governing bodies of municipalities and certain representatives for the provision and funding of services.

Amends Section 43.0564, Local Government Code, to set forth procedures for requesting

arbitration to reach an agreement for the provision of services under Section 43.0563. Requires a request for arbitration to be made before a certain date. Prohibits a municipality from taking certain action during arbitration. Requires a chief administrative district judge to appoint a certain person as arbitrator. Requires and authorizes the arbitrator to take certain actions. Authorizes a party involved in arbitration to appeal to a district court. Prohibits a municipality from annexing an area without agreeing to an arbitrator's terms. Deletes text regarding the selection of an arbitrator, its authority, and the date a decision is required to be rendered.

SECTION 8.

Amends Chapter 43, Local Government Code, by adding Subchapter C-1, regarding annexation procedures for areas exempted from municipal annexation plans.

SECTION 9.

Removes Chapter 43D, Local Government Code.

SECTION 13.

Amends Chapter 43Z, Local Government Code, by adding Section 43.905, regarding the effects of annexation on the operation of certain school districts.

SECTION 14.

Amends Chapter 5A, Property Code, by adding Section 5.011, to provide a format of a required notice to be given by a seller to a buyer of an interest in real property. Authorizes a seller to terminate a contract the date the transfer occurs.

SECTION 15.

Makes Section 14 effective January 1, 2000. Provides that changes in the law made by SECTIONS 2 - 7 and 9 - 12 only apply to certain annexations. Provides that changes in the law made by Sections 43.056(m) and 43.905 only apply to certain annexations. Provides that changes in law made by this Act in Sections 43.002; 43.0545; 43.056(b), (e), (f), (g), (k), (l), and (m); 43.121(a); 43.141(c); 43.148; and 43.905, Local Government Code, apply to the annexation of an area that is not included in a municipality's annexation plan under Section 43.052, Local Government Code, as added by this Act, if a certain first hearing notice is published on or after September 1, 1999. Provides that changes in the law made by SECTION 14 apply on or after January 1, 2000. Makes application of this Act prospective to January 1, 2000.