SUBJECT: Agreements between municipalities and extraterritorial landowners

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Mowery, J. Jones, Goolsby, Haggerty, Hochberg, Howard, Noriega, Pickett

0 nays

1 absent — Guillen

WITNESSES: For — Rex Baker, City of Dripping Springs; Jimmy Gaines, Texas Landowners Council, Inc.; Jesus Garza, City of San Antonio; Louis A. Lendman, City of San Antonio; (*Registered, but did not testify:*) Sue Littlefield

Against — (*Registered, but did not testify:*) Bill Crolley, Texas Chapter of American Planning Association; James E. Shepard, City of Parker, Texas

BACKGROUND: Local Government Code, sec. 42.021 defines the extraterritorial jurisdiction (ETJ) of a municipality as the unincorporated area contiguous to the corporate boundaries of the municipality and located within a certain distance of its boundaries, depending on the municipality's population.

Local Government Code, ch. 43 governs municipal annexation. Home-rule municipalities may fix their boundaries, extend their boundaries to annex adjacent area, and exchange area with other municipalities. To complete an annexation, a home-rule city of 100,000 inhabitants or fewer must hold two elections — one in the city and another in the area that is the target of annexation. A majority vote by each group is required to complete the annexation. Larger home-rule cities may annex without this voting requirement.

Cities can apply their taxing and other laws to the land they annex. After annexing an area, however, a municipality may not prohibit a person from continuing to use annexed land in the way it was being used when the municipality began annexation proceedings, so long as the land use was legal

at that time. But municipalities still may apply regulations to annexed land in exercise of their police powers.

Local Government Code, sec. 42.044 authorizes municipalities to create "industrial districts" in their ETJs. Industrial district has the meaning customarily given to the term but also includes any area in which tourist-related businesses and facilities are located. Under this section, the governing body of a municipality may:

- designate any part of its ETJ as an industrial district;
- treat the area in a manner considered by the governing body to be in the best interests of the municipality; and
- make mutually agreeable written contracts with landowners in the industrial district to guarantee the continuation of the extraterritorial status of the district and its immunity from annexation by the municipality for a period not to exceed 15 years.

Local Government Code, ch. 212 governs municipal regulation of subdivisions and property development.

DIGEST:

CSHB 1197 would authorize the governing body of a municipality to make a written contract with an owner of land located in the municipality's ETJ. The contract could:

- guarantee the continuation of the land's ETJ status for a period not to exceed 15 years;
- provide for a development plan prepared by the landowner and approved by the municipality in which certain land uses and land development would be authorized;
- authorize municipal enforcement of certain municipal land use and development regulations to be enforced as they were within the municipality's boundaries;
- authorize municipal enforcement of land use and development regulations other than those that apply within the municipality's boundaries, as agreed by the parties;
- provide for infrastructure, including streets, drainage systems, and utility systems;
- authorize enforcement of environmental regulations;

- provide for annexation of the land as a whole or in parts and provide for the terms of annexation, if agreed to by the parties; and
- include other lawful terms and consideration the parties consider appropriate.

Any agreement under this bill would have to be in writing, contain a legal description of the land, be approved by the municipal governing body and the landowner, and be recorded in the real property records of each county in which any part of the land subject to the agreement was located. The municipality and land owner could renew their contract for up to three successive periods not to exceed 15 years each.

This bill would allow a municipality in an economically distressed county to enter into such an agreement only to the extent that it was consistent with minimum standards set by the Water Code for safe and sanitary water supply and sewer services.

An agreement under this bill would be binding on the municipality and the landowner and on their respective successors and assigns for the term of the agreement. It would not bind any end-buyer of a fully developed and improved lot within the development, except for land use and development regulations that might apply to a specific lot. The agreement also would be considered a permit as defined by Local Government Code, sec. 245.

The bill also would validate, on the effective date of this bill, an agreement between a municipality and a landowner entered into before the effective date.

CSHB 1197 would not apply to or affect any ordinance, order, rule, plan, or standard adopted by this state or any of its political subdivisions under the federal Coastal Zone Management Act of 1972 and its subsequent amendments.

The 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, 2003.

SUPPORTERS SAY:

CSHB 1197 would formalize the practice of municipalities forming agreements with large investors who wanted to invest in major housing or industrial developments but required certain assurances before proceeding.

Large manufacturers who want to build factories in an ETJ, for example, often seek guarantees that the municipality would not zone nearby land for residential use following an annexation. Similarly, a residential developer might wish to build a subdivision in an area that would remain unincorporated for some time, and might seek a binding agreement to that effect with a nearby municipality. CSHB 1197 could facilitate the granting of these simple assurances and speed regional development. It is necessary because existing law is not clear in regard to the contractual authority of municipalities.

Some municipalities currently create industrial districts as a means of granting simple assurances to prospective ETJ developers. This bill would spare municipalities from this cumbersome, unnecessary process and instead allow them to reach straightforward, written agreements with landowners. In addition, this bill would benefit cities that needed more tools to plan and preserve standards while accommodating growth in their ETJs. It specifically would authorize them to win agreement from developers to allow the application of zoning and environmental regulations in ETJ developments.

Governing bodies of municipalities already form agreements that bind cities beyond the terms of current councils, and the sorts of agreements proposed by this bill would be no different.

OPPONENTS SAY:

By formally introducing contract law into the context of relations between municipalities and ETJ landowners, the bill could confuse municipal authorities into thinking they were required to take action when, in fact, they were not. Municipalities already control subdivision plat approval and extend certain other authorities — often those involving fire protection or other police powers — into these territories without any contract to do so. Cities also already form contracts with a range of parties and have authority to annex land in compliance with state law. CSHB 1197 would suggest that they should seek written agreements before annexing land, when in fact this would not be required at all.

CSHB 1197 would not contain adequate safeguards to prevent the spending of public money on projects that never would bear fruit. Under an agreement contemplated by this bill, a city might make a large investment for infrastructure on land not yet annexed only to have the developer to go bankrupt or breach contract for some other reason. If this happened after the investment but before annexation, the city would be limited to remedies under contract or bankruptcy law, as it would not have yet have a tax or other lien on the real property of any indebted landowners in the ETJ. In addition, there would be no mandate that a municipality receive compensation for the infrastructure it agreed to build. Less sophisticated governing bodies of municipalities could make costly mistakes under this bill.

Certain aspects of this bill might prove unworkable. A contract between the parties allowing for the extension of municipal zoning regulations in ETJs would require that zoning violations be enforced under contract law in district court rather than as simple ordinance violations in municipal court. In addition, the bill would assume that a current governing body of a municipality could bind itself 15 years into the future. In fact, an agreement under this bill might prove legally or practically unenforceable against a governing body whose entire composition might have changed during this period.

NOTES:

The committee substitute differs from the bill as introduced by adding provisions that would:

- validate any agreement reached between a municipality and a landowner prior to the effective date of the bill;
- require a legal description of the land as part of a contract;
- trigger a permitting for the purpose of Ch. 245; and
- prohibit certain agreements that did not comply with Water Code regulations.

The companion bill, SB 1711 by Wentworth, was referred to Senate Intergovernmental Relations on March 20.