

SUBJECT: Prohibiting annexation of Gulf barrier islands by certain mainland cities

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 6 ayes — Mowery, Harper-Brown, Pickett, Blake, R. Cook, Miller

0 nays

3 absent — Escobar, Leibowitz, Orr

SENATE VOTE: On final passage, April 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Local Government Code, ch. 43 governs annexation procedures for home-rule municipalities. Limits on annexation stipulate that a municipality:

- may not annex lands without first establishing an annexation plan, providing public notices, and holding public hearings;
- may annex only contiguous lands; and
- may not annex lands that increase its size by more than 10 percent.

In addition, ch. 43 places restrictions on most municipalities in annexing a strip of land that follows the course of a road, highway, river, stream, or creek, unless the width of the area to be annexed at its narrowest point is at least 1,000 feet. This prohibition does not apply if:

- the boundaries of the municipality are contiguous to the area on at least two sides;
- the annexation is initiated by a petition of owners or area voters; or
- the area abuts another jurisdictional boundary.

In 2004, the city of Port Isabel began procedures that have led to the annexation of 23,270 acres of submerged lands within the Laguna Madre and 750 acres of land outside the municipality of South Padre Island.

DIGEST: SB 854 would prohibit a home-rule municipality located on the mainland

of Texas with a population less than 50,000 from annexing lands across open waters onto a barrier island that contains a municipality incorporated before September 1, 2005. The mainland municipality also could not extend its municipal limits or extraterritorial jurisdiction (ETJ) onto such a barrier island. The bill would define “barrier island” as an island bordering on the Gulf of Mexico. It would nullify any such annexation that transpired prior to September 1, 2005.

This bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

SB 854 would clear up ambiguities in annexation law that govern home-rule municipalities. In 2004, Port Isabel used a gap in current law to annex submerged lands and hundreds of acres of land north and south of the municipality of South Padre Island by jumping over the open waters of the Laguna Madre. While Government Code, ch. 43 would have limited the ability of Port Isabel to annex land across a river or creek under such circumstances, it is silent about annexation across open water.

Port Isabel interpreted several other ambiguities in current law to its advantage. Of the 750 acres of land it annexed, only 67 acres were annexed with the consent of property owners. Although Port Isabel’s annexations were achieved against the spirit of the law, they technically could be interpreted as permissible. The majority of defects of the annexation were procedural. SB 854 would clarify existing annexation law and establish a new prohibition on annexation across open water, which would be in line with existing restrictions.

In April 2005, the 107th District Court of Cameron County ruled in *H.P. Pinnell Trust v. City of Port Isabel* (13-04-594-CV) that a home rule municipality may not annex across open water. The ruling voided Port Isabel’s annexation of land on South Padre Island and ordered the city to pay attorney fees to the plaintiffs. Although this ruling went in favor of South Padre Island, an appeal is likely. Should an appeal overturn this ruling, state law still could permit such annexations in the future, which makes SB 854 necessary.

If the Port Isabel annexations were held legal, they could create severe problems for the municipality of South Padre Island. The annexations grabbed lands around South Padre Island so that the town itself cannot expand its tax base. The town has enjoyed steady economic growth and development over the past 10 years and should have priority to expand its

tax base into adjacent lands.

Port Isabel is a small city of 5,000 people. Its tax base is limited, and its ability to provide essential services to annexed lands, particularly those across open water, is in doubt. For example, the annexations would create a delay in emergency response time. South Padre Island is better able to respond to an emergency in its adjacent lands than is Port Isabel, which only can access South Padre Island via one connecting causeway over the Laguna Madre. While South Padre Island has received emergency service assistance from Port Isabel in the past, it is not uncommon for districts to assist each other mutually, and this fact does not indicate that South Padre Island is incapable of providing these services.

OPPONENTS
SAY:

This bill is unnecessary because a district court already has ruled against the Port Isabel annexations. Moreover, SB 854 prematurely would trump judicial proceedings, preempting a negotiated settlement between the two parties and possibly the appeals process to which the defendant is entitled. Should the court's decision be appealed, it could take several years before an appellate decision was issued. It is not the role of the Legislature to make swift decisions on longstanding issues between two local governments, regardless of whether Port Isabel plans to appeal.

Port Isabel's municipal boundaries have been locked in by the City of Brownsville's aggressive annexation policies over the past few years. Port Isabel has among the lowest per capita income and highest poverty and unemployment rates of any city in the nation. It desperately needs to expand its tax base. The bill unfairly would limit a city of Port Isabel's size from annexing available land across open water to spur growth and development.

Annexation of land on South Padre Island by Port Isabel would contribute to improved emergency services in the island community. One tract of land, voluntarily annexed, included a private donation to Port Isabel on which to build a safety complex to provide upgraded emergency response services. South Padre Island, with only a small volunteer fire department, often relies on Port Isabel in emergencies. Furthermore, portions of lands

were annexed at the request of developers who felt that Port Isabel would provide better services than South Padre Island.

