

## **BILL ANALYSIS**

Senate Research Center  
87R12393 MP-F

H.B. 1929  
By: Wilson (Buckingham)  
Local Government  
5/20/2021  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of H.B. 1929 is to clarify provisions in the Local Government Code relating to development agreements between landowners and municipalities. Concerns have been raised regarding the enforceability of those development agreements concerning land in the extraterritorial jurisdiction of certain municipalities. Areas of concern include a lack of an explicit waiver of governmental immunity for a breach of an agreement, the applicability of certain constitutional provisions to an agreement, and the effect of an annexation of property.

H.B. 1929 seeks to clarify the terms of governmental immunity specific to agreements in Article III, Section 52-a, of the Texas Constitution. By changing the language from "an agreement" to a "contract," and adding additional language that will allow for adjudication in a breach, H.B. 1929 also clarifies that an agreement made between a municipality and a landowner is held to the same standards as a contract.

H.B. 1929 seeks to address these concerns by revising and clarifying provisions relating to these development agreements. The bill also levels the playing field and holds contracts between cities and landowners under the same term as private businesses have to abide by.

H.B. 1929 amends current law relating to the breach of development agreement contracts governing land in the extraterritorial jurisdiction of certain municipalities.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 212.172, Local Government Code, by amending Subsections (a), (c), (e), (f), (g), and (h) and adding Subsections (i), (j), and (k), as follows:

- (a) Defines "adjudication" and "contract" for Subchapter G (Agreement Governing Certain Land in a Municipality's Extraterritorial Jurisdiction). Makes a nonsubstantive change.
- (c) Requires a contract, rather than requires an agreement under Subchapter G, to be recorded in the real property records of each county in which any part of the land that is subject to the contract, rather than agreement, is located.
- (e) Prohibits a municipality in an affected county, as defined by Section 16.341 (Definitions), Water Code, from entering into a contract, rather than into an agreement under Subchapter G, that is inconsistent with the model rules adopted under Section 16.343 (Minimum State Standards and Model Political Subdivision Rules), Water Code.
- (f) Provides that annexation by a municipality of land subject to a contract does not invalidate the enforceability of the contract or infringe on the rights of a party to adjudicate a claim arising under the contract. Makes conforming changes.

(g) Provides that a contract is a program authorized by the legislature under Section 52-a, Article III, Texas Constitution. Makes conforming and nonsubstantive changes.

(h) Provides that a contract, rather than an agreement, between a municipality and a landowner entered into prior to the effective date of Section 212.172 (Development Agreement), or any amendment to Section 212.172, and that complies with Section 212.172 is validated, enforceable, and is authorized to be adjudicated subject to the terms and conditions of this subchapter, as amended.

(i) Provides that a municipality that enters into a contract waives immunity from suit for the purpose of adjudicating a claim for breach of the contract.

(j) Authorizes actual damages, specific performance, or injunctive relief, except as provided by Subsection (k), to be granted in an adjudication brought against a municipality for breach of a contract. Provides that the total amount of money awarded in an adjudication brought against a municipality for breach of a contract is limited to the following:

(1) the balance due and owed by the municipality under the contract as it may have been amended;

(2) any amount owed by the landowner as a result of the municipality's failure to perform under the contract, including compensation for the increased cost of infrastructure as a result of delays or accelerations caused by the municipality;

(3) reasonable attorney's fees; and

(4) interest as allowed by law, including interest as calculated under Chapter 2251 (Payment for Goods and Services), Government Code.

(k) Prohibits damages awarded in an adjudication brought against a municipality for breach of a contract from including:

(1) consequential damages, except as expressly allowed under Subsection (j)(2);  
or

(2) exemplary damages.

SECTION 2. Amends Section 212.174, Local Government Code, as follows:

Sec. 212.174. MUNICIPAL UTILITIES. Prohibits a municipality from requiring a contract, rather than requiring an agreement under Subchapter G, as a condition for providing water, sewer, electricity, gas, or other utility service from a municipally owned or municipally operated utility that provides any of those services.

SECTION 3. Effective date: September 1, 2021.