

SUBJECT: Requiring approval by ETJ residents of Austin annexations

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 9 ayes — Saunders, Mowery, Alexander, Combs, Hamric, Hilderbran, Howard, Krusee, B. Turner

0 nays

WITNESSES: For — Martin Denbar, Lost Creek Neighborhood Association; Charles Walters, Wells Branch Municipal Utility District; Russell Larson, Onion Creek Homeowners Association; John Romano, Wells Branch Neighborhood Association; Mike Swenson, Northwest Travis County Municipal Utility District; John Burke, Central Texas Association of Utility Districts; Tom Jones, Lamplight Village Area Neighborhood Association; David Harper, Anderson Mill Municipal Utility District

Against — Bruce Todd, mayor of Austin; Jim Smith, City of Austin; L.G. Skip Cameron, Great Hills Neighborhood Association

BACKGROUND: The City of Austin, as a home-rule city, is authorized by state law to annex certain unincorporated territory immediately outside the city limits — the extraterritorial jurisdiction, or ETJ — without holding an election. The extent of a city's ETJ varies according to city population, and in Austin's case is five miles.

Austin may annex territory that is contiguous to the city limits, at least 1,000 feet wide (less if the landowners request) equal to no more than 10 percent of the city's corporate area — 30 percent if the city has unused annexation "credits" from past years. State law requires cities to provide the annexed areas certain basic services, at least equal to those available immediately before annexation, by specified deadlines.

In addition to full annexation, Austin has authority to annex areas for limited purposes: the annexed area falls under city ordinances and land use regulations but the city does not levy taxes in the area or provide services to it, and residents may vote in council and charter elections, but not in city

bond elections. Limited-purpose annexations must be converted to full-purpose annexations after three years unless landowners request otherwise.

The 73rd Legislature, in HB 1312 by Combs, required the City of Austin to allow residents of its ETJ to vote in city elections on city ordinances, charter provisions and non-binding referendum questions involving the ETJ.

DIGEST:

CSHB 564 would amend the Local Government Code to require a home-rule city that has annexed territory for limited purposes (Austin) to obtain approval by a majority of the voters in any area with 50 or more inhabitants before annexing the area. The election would be held in the area to be annexed. If the voters rejected annexation, the city could not initiate new annexation proceedings in any part of that area for five years.

The ballot proposition, election order and election notice description of the area to be annexed would refer to streets, landmarks or other commonly understood points of reference, to provide voters with a reasonable understanding of the area to be annexed. The election order and notice of the election would also describe the area by metes and bounds or by legal description. However, the ballot proposition language could describe the area more generally.

The ballot proposition would have to read: "Annexation of the area described in the municipal order calling this election, generally described as (a general description of the area to be annexed)."

CSHB 564 would apply only when the first hearing notice of a proposed annexation was published on or after August 28, 1995.

**SUPPORTERS
SAY:**

CSHB 564 would not eliminate Austin's power to annex in its ETJ, but merely would impose the reasonable requirement that the city first ask ETJ residents if they want to become part of the city. This requirement would foster useful negotiation between Austin and areas that the city has targeted for annexation. Voters in unincorporated areas have a right to decide whether or not they will be annexed into a city — anything less amounts to a form of taxation without representation and an erosion of local control. Residents of communities outside Austin simply want to be asked before they are annexed.

Residents of Austin's ETJ already contribute their share for the city services they use. They pay various city fees and sales taxes in Austin, and are often charged more than Austin residents for city water and wastewater services. Austin has charged such extortionate rates to some out-of-city customers that they have gone to court and won reductions in the electric and water rates they pay. The profits from the rates charged to ETJ residents help fund Austin services, just as Austin benefits from the county sheriff's department's jail and law enforcement services.

Austin should not be allowed to arbitrarily take what some communities have toiled to develop and pay for merely to fatten the city tax base. Annexation destroys the spirit of community these areas have worked hard to create, leads to tax increases of as much as \$1,100 per household and does not always produce better services. Austin city planners admit that it is impractical to provide services to some parts of the city's ETJ.

Residents in utility and service districts that paid off debt and kept expenses down, often enabling them to have lower property tax rates than Austin, can under current law be forced by Austin to assume the massive debt of a city that has not always spent funds prudently.

Annexing unwilling communities is a poor way to expand a city's tax base, and warnings that this bill would cause urban deterioration in Austin are overblown. Austin should develop its resources and tax base within the city, rather than chasing tax wealth outside the city. The city should focus on selling services rather than chasing tax-rich areas in its ETJ while ignoring poorer areas.

The bill would not affect commercial annexation, which usually involves territory with fewer than 50 voters, so it really has little to do with tax base expansion. It is often very costly for cities to annex residential areas if full services are provided, and cities get more fiscal benefit from annexing commercial areas.

Austin is targeting financially sound developments and municipal utility districts (MUDS) for annexation without having to do anything in return. These areas have often built and financed their own roads, sewers, water lines, swimming pools, parks, etc. Utility districts, governed by locally

elected boards, respond more efficiently to problems than a city bureaucracy, and may provide services Austin would not.

Austin has often heavy-handedly annexed narrow strips of land containing valuable commercial real estate. This strip-annexation has stretched the city's ETJ far into the surrounding counties encompassing people who never imagined they might end up in Austin, and who strongly disagree with the city policies. These residents feel it is only fair that they have a voice in their own destiny. On the other hand, many outlying areas that once begged the city to annex them and provide services, but were refused, now find that after they have built and paid for their own infrastructure the city wants to annex them.

This bill may apply only to Austin at this time, but it could easily apply to other cities in the future and therefore does not violate the Constitution's Art. 3, sec. 56, prohibition on local bills. The courts have upheld laws that apply only to one city, if they refer to a category under which the city falls and do not identify the city.

**OPPONENTS
SAY:**

This attempt to single out Austin and limit its annexation authority would represent a disaster for the city and lead to the deterioration of one of the state's most liveable and best-loved cities. The ability to annex, critical to a city's health, would often be thwarted if voter approval of the annexed territory were required. Limits on growth and economic development have been shown in numerous studies to lead to urban decay. By severely limiting municipal annexation authority in Austin, CSHB 564 would set a dangerous precedent that could be applied to other Texas cities and would be a serious state infringement on local control.

When a city is unable to annex, the economically advantaged move outside the city to the suburbs, and the city's tax base shrinks. This leaves the poor and indigent, who may need extensive city services, behind in a city that no longer has the tax base to deal with such problems as urban crime and structural decay. Increased taxes then cause even more flight of taxable wealth. An isolated metropolitan area surrounded by independent local jurisdictions often results in racial and economic segregation. Eventually, as in the case of Detroit, Cleveland and Syracuse, the state may have to come to the city's aid.

If Austin cannot expand its tax base, it will deteriorate, and low-income residents in particular will suffer, as will the general quality of life. The central city's faltering economy eventually affects even those in outlying areas. Studies have concluded that the economies of cities and their suburbs are closely linked. In order to thrive Austin needs the authority other cities have to expand the city tax base into areas where the average tax valuation is higher than in the city and services needs are limited, such as residential subdivisions.

A coordinated regional economy generates economic power in a way that isolated communities cannot. If everyone in a metropolitan region shoulders part of the burden for city services, the tax rates remain low and equitable. Good citizens do not turn their backs on their neighbors. And those in suburban areas who disagree with Austin policies will have more ability to affect those policies if they become Austin voters and participants in Austin politics. Austin would welcome them to the debate.

Residents of outlying areas enjoy the city's facilities and services without paying for them, and might be reluctant to vote to change that status. Their use of Austin roads, bridges, parks and other city facilities and services is subsidized by Austin residents, including the inner city poor. As much as 80 percent of the revenue used for county services that benefit those outside Austin, such as the sheriff's office, is paid for by Austin residents. Annexation ensures that the burden for these services is fairly shared, and that newly annexed areas receive city amenities and services.

CSHB 564 would make it far more difficult for Austin to annex areas with such problems as severely leaking septic systems that pose a potential health hazard; only the city would have the resources to help solve such problems. It could be difficult to get voter approval if, for example, some members of the community had just installed new septic systems and did not want sewage service from the city.

Austin may have handled some annexations awkwardly years ago, but in recent years the city has made every effort to allow those who might be annexed to participate in the process, through publicity about possible annexations, public hearings and full access to city staffers. The city negotiates with citizens to ensure that their needs and fears are addressed.

CSHB 564 applies only to Austin and is the kind of "special law" the Texas Constitution specifically prohibits in Art. 3, sec. 56. Singling out one city for special limitations is poor public policy, unfair and unjustified.

OTHER
OPPONENTS
SAY:

If seeking voter approval of residents in an area a city wants to annex is a sound and reasonable proposal, it should be made to apply to all Texas cities, not just to one. Many residential areas outside of other cities have the same concerns as those on the outskirts of Austin and desire a say in whether they are to be absorbed.

The concerns expressed by those in areas outside Austin can be addressed short of the drastic step of forcing Austin to gain voter approval in areas to be annexed. The city could be authorized to negotiate phased annexation agreements by mutual consent with the municipal utility districts serving the annexed areas in order to ease the transition to full incorporation into the city.

NOTES:

The committee substitute changed the definition of the city or cities to which the bill would apply. The bill originally would have applied to a home-rule city with a population of more than 400,000 that has disannexed territory that had been annexed for a limited purpose, and not to the annexation of an area that requires, under another statute, approval of the voters in the area or approval by another city affected by the annexation.

An identical bill, SB 530 by Wentworth, was referred to the Senate Intergovernmental Relations Committee on February 14.

HB 311 by Yost, which would require all Texas cities to seek voter approval in areas they want to annex, was referred to subcommittee on February 21 by the House Land and Resource Management Committee. Two bills related to Houston annexation have been referred to the same committee. They are HB 1344 by Hamric et al., which would prohibit Houston from annexing certain subdivisions without first obtaining written consent from a majority of the voters in that area, and HB 1710 by Brady, which would require Houston to seek voter approval in areas it wants to annex.

SB 1395 by Barrientos would allow a municipality to negotiate phased annexation and continuation agreements with municipal utility districts to allow the districts to retain certain authority after they are annexed. SB 1396 by Barrientos would allow certain cities and municipal utility districts to negotiate annexation alteration agreements changing a district's annexation status from full purpose to limited purpose.