SUBJECT: Annexing areas served by investor-owned utilities

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Bosse, B. Turner, Hamric, Howard, Jackson, Krusee, Mowery, Staples

0 nays

1 absent — Crabb

WITNESSES: For — Jimmy Gaines, Texas Landowners Council, Inc; Elizabeth Elleson

Against — James Bertram and David Nelson, City of Lubbock; Luther Pollan, City of Austin

BACKGROUND: Municipalities annexing land within their extraterritorial jurisdiction (ETJ) must provide municipal services, including water and wastewater services, to the area within a certain time. Municipalities can assess landowners in the annexed areas certain "impact fees" to pay for the costs of such capital improvements. The assessment and collection of these fees must comply with statutory provisions, unless the landowner agrees to pay for the improvements. A municipality cannot provide fewer or lower levels of services in the annexed area than are available in other parts of the municipality. However, uniform levels of full municipal services are not required to be provided to each area of the municipality if there are differences in topography, land use, and population density.

DIGEST: CSHB 1394 would establish special requirements for a home-rule municipality with a population greater than 450,000 to annex an area in its ETJ that was also in the service area of a developer- or investor-owned water or wastewater utility.

The municipality would have to notify the owner of the utility of its intent to annex the area at least 180 days before the adoption of an annexation ordinance. Within 30 days of receiving notice, the utility would have to notify the municipality whether it would elect to continue operating as an independent utility after annexation or would require the annexing

municipality to assume its assets and liabilities at a price established by a bona fide appraisal.

If the municipality agreed to the price, it would have to complete a contract for purchase no later than 60 days before the date proposed for adoption of the annexation ordinance. If it disputed the appraisal, it could conduct a separate appraisal and make a counteroffer. If the counteroffer was accepted, the municipality would have to make payments no later than 30 days before adoption of the annexation ordinance.

If the municipality and utility were unable to agree upon a fair market value, the municipality could use its powers of condemnation to acquire the utility and would have to pay reasonable and customary court costs and attorney's fees incurred by the utility during the condemnation proceedings. The area could not be annexed until the condemnation proceedings were completed.

CSHB 1394 would also amend the Local Government Code to prohibit a municipality from requiring a landowner in an annexed area to fund capital improvements for water and wastewater services unless agreed to by the landowner.

It also would prohibit municipalities from providing fewer or lower levels of service in an annexed area than were available in any other parts of the municipality with similar land uses and population densities. A municipality could not refuse to provide water or wastewater service to any property in an annexed area if it provided the service to other parts of the municipality. The bill would redefine “full municipal services” to include services funded in whole or in part by utility revenues.

CSHB 1394 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

SUPPORTERS SAY:

CSHB 1394 would ensure equity in provision of municipal services, and require municipalities to live up to their responsibilities to citizens in the areas they annex. All residents pay the same taxes and are entitled to basic municipal services for water and wastewater, regardless of where they live.

CSHB 1394 would close a loophole in Texas law that allows municipalities to hit landowners twice for these same service. Currently municipalities can exact impact fees from landowners within a specified boundary to cover the costs of extending municipal services to an annexed area and require the same landowners to build their own capital improvements to hook up to municipal services. It is only fair that landowners who pay for their own connections not be forced to pay impact fees as well.

The time periods specified for the purchase of utilities in annexed areas would encourage friendly negotiation and provide an adequate opportunity to resolve issues relating to fair market value appraisals. If an agreement could not be reached, a municipality would still be able to use its powers of condemnation to acquire the utility.

OPPONENTS SAY:

CSHB 1394 would undercut a municipality's ability to negotiate a fair price for a private or investor owned utility. It would give utilities a disincentive to negotiate because the utility could simply stall until the municipality agreed to its terms to avoid incurring extra legal costs.

In addition, the bill would remove any flexibility a municipality had to determine where to direct municipal services. Cities must spread their limited resources as they determine appropriate. By law cities do not have to provide municipal services immediately to areas they annex. Requiring special treatment for areas that already have utility service would mean that other areas might have to wait longer to benefit from capital improvements.

NOTES:

The committee substitute lowered the population bracket to 450,000, thereby including Austin; the original version of the bill would have applied to home-rule cities with populations of 500,000 or more — Houston, Dallas, San Antonio and El Paso.