

SUBJECT: City economic development programs in extraterritorial jurisdiction

COMMITTEE: Economic Development — favorable, without amendments

VOTE: 4 ayes — B. Cook, Anchia, Kolkhorst, Seaman
0 nays
3 absent — Ritter, Deshotel, McCall

WITNESSES: For — David Armbrust; (*Registered, but did not testify:* Brandon Aghamalin, City of Fort Worth; Maureen Crocket, City of Houston; Shanna Igo, Texas Municipal League)
Against — None

BACKGROUND: Under Local Government Code, ch. 380, municipalities are authorized to create economic development programs making loans and grants of public money, such as municipal sales tax rebates, referred to as 380 agreements. A contract between the business and the municipality specifies the rebate terms and the duration of the agreement. The statute specifies that the purpose of these programs is to promote economic development and commercial activity in the municipality.

DIGEST: HB 918 would expand a municipality's authority to create economic development programs to areas annexed for limited purposes and to the city's extraterritorial jurisdiction.

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, 2005.

SUPPORTERS SAY: HB 918 would expand economic development opportunities to areas outside city corporate boundaries but within a municipality's extraterritorial jurisdiction. Agreements under ch. 380 have allowed cities to provide a wide array of economic development programs that have attracted new business, employment, and tax revenue. For example, a 380 agreement helped Round Rock lure Dell Computers, which employs about

10,000 people in Round Rock and provides nearly \$16.7 million annually in sales tax revenue for the city.

A municipality that is unable to extend its city limits needs the statutory authority granted in HB 918 to expand the reach of available economic development tools. By allowing cities to conduct 380 agreements in areas annexed for a limited purpose, this bill would extend the economic benefits made possible by such agreements to areas that would be unfeasible for cities to annex entirely. For example, cities that are surrounded by special utility districts financially may be unable to take on the debt necessary to annex these areas in full, yet they could annex such areas for the limited purpose of conducting a 380 agreement with a preferred company. HB 918 would give cities practical solutions when attempting to spur economic development beyond their municipal boundaries.

Economic development agreements specifically are authorized by statute and the Texas Constitution. Although a judge in Travis County recently ruled against a 380 agreement by the village of Bee Cave, the ruling applied only to the narrow circumstances of that case and has been appealed to the Third Court of Appeals. Such agreements remain legally viable elsewhere in the state and should be allowed to cover projects within a municipality's entire jurisdiction.

OPPONENTS
SAY:

This bill would encourage cities to conduct economic development agreements that might not be in the best interests of communities outside municipal boundaries. While economic development certainly is vital to municipal prosperity, preventing sprawl is equally important to an area's environmental health. Open space and environmentally sensitive areas in extraterritorial jurisdictions could be harmed by pollution that accompanies the construction of large development projects. The proliferation of such projects, facilitated by 380 agreements, especially would be likely outside a city's urban core, where municipal property taxes may not apply and cities often employ permissive development policies.

In February 2005, state district Judge Darlene Byrne of Travis County ruled in *Save Our Springs Alliance v. Village of Bee Cave* (cause number 400441), that a 380 agreement violated Art. 11, sec. 5, of the Texas Constitution, which prohibits cities from assuming long-term debt in the absence of an appropriate funding source. The case came about when the

Save Our Springs Alliance challenged an agreement between the village of Bee Cave near Austin and a shopping center developer that would allow the developer to retain a portion of sales tax revenue over 15 years. Such long-term agreements bind future city councils and restrict their ability to write future budgets by restricting revenue. With 380 agreements under legal uncertainty, it would be premature for the Legislature to expand municipal authority to approve such agreements.

NOTES:

The companion bill, SB 583 by Wentworth, is pending in the Senate Intergovernmental Relations Committee.

HJR 80 by Krusee, which would amend Art. 3, sec. 52-a of the Texas Constitution to stipulate that economic development grants and loans do not constitute prohibited debt, is pending in the House Economic Development Committee.