SUBJECT: Removing the two-year limit for a municipality to challenge annexation

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Walker, Crabb, F. Brown, Geren, Howard, Mowery

0 nays

3 absent — Krusee, Truitt, B. Turner

WITNESSES: None

BACKGROUND: Local Government Code, secs. 42.022(c) and 42.023 prevent a municipality from annexing land within the extraterritorial jurisdiction (ETJ) of another municipality. ETJ is the unincorporated area that is contiguous to the corporate boundaries of a municipality and may not be reduced unless the governing body of the municipality consents in writing, except in cases of judicial apportionment of overlapping ETJs. Under Local Government Code, sec. 43.901, a municipal annexation is conclusively presumed to have been adopted with the consent of all parties if an action to annul or review the annexation is not filed within two years of the annexation.

In 1996, the Texas Supreme Court interpreted sec. 43.901 in *City of Murphy v. City of Parker*, 932 S.W.2d 479 (Tex. 1996). In 1988, some landowners in Collin County petitioned Parker for annexation. Parker enacted an ordinance annexing the land, approximately half of which lay within the ETJ of neighboring Murphy. In 1993, Murphy sued, seeking a declaration that the annexation was void. The Court held that sec. 43.901 acts as a statute of limitations, barring a municipality's suit complaining of a nonconsensual annexation of land within its ETJ if it fails to challenge the annexation within two years.

DIGEST: CSHB 1264 would amend Local Government Code, sec. 43.901 to exempt from the two-year limitation another municipality challenging an annexation.

The bill would take effect September 1, 2001, and apply only to an ordinance that defines boundaries or annexes an area adopted on or after September 1, 2001.

SUPPORTERS SAY:

CSHB 1264 would help restore fairness in annexation disputes among municipalities. Prior to annexing an area, a municipality must notify landowners of the proposed annexation, but no similar notification requirement applies to neighboring municipalities. Many municipalities do not have the necessary resources constantly to monitor the city council agenda and other activities of neighboring municipalities, which is often their only avenue for discovering potential annexations.

The current law, as interpreted by the Texas Supreme Court, allows a municipality to ignore the Local Government Code, which clearly states that a municipality may not annex territory within the ETJ of a neighboring municipality. Also, a municipality can essentially waive the requirement of written consent from a second municipality by annexing with little fanfare a portion of the second municipality's ETJ, then merely waiting for two years.

This loophole is a significant problem for smaller municipalities, which may attempt to annex land within the ETJ of a neighboring municipality, either intentionally or accidentally. For example, Reno and Paris, and Anna and McKinney, recently have disputed the legality of specific annexations.

Many municipalities are hostile towards one another and may not necessarily be relied upon to provide notice of proposed annexations to neighboring municipalities. Further, smaller municipalities may lack knowledge or notice of the exact location of their neighbor's ETJ.

While this bill would probably not prevent municipal annexation lawsuits, it could help the municipality that is claiming disputed land within its ETJ to prevail over a municipality that attempted to annex it.

OPPONENTS SAY:

This bill would create uncertainty by removing finality from municipal annexations. Making future annexations forever subject to challenge by neighboring municipalities potentially could result in a loss of essential services to an area. After annexing an area, a municipality must provide services, including police, fire fighting, solid waste collection and disposal,

and maintenance of public roads, parks, and playgrounds. The residents of the annexed land pay taxes to the municipality for these services and depend on the municipality to provide them.

This bill would not prevent annexation lawsuits. Furthermore, releasing municipalities from the two-year time limit may give rise to challenges from newly-elected officials who disagree with a prior administration's tacit lack of challenge to an annexation. With no time limit, this process could go on forever, at great cost to the annexing municipalities. For example, El Paso experienced this problem in 1985 when the City of Socorro, incorporated in the 1880s, decided to start functioning as a city again. Socorro challenged the annexation of some areas in El Paso's ETJ, forcing El Paso to incur legal fees to defend its annexation.

It would be preferable to require cities to notify neighboring cities of any annexation plans, then allow them two years to make any challenge, just like anyone else.

NOTES:

The committee substitute added that the bill only would apply prospectively to actions taken on or after the effective date.