

BILL ANALYSIS

C.S.H.B. 1929
By: Wilson
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the enforceability of a development agreement between a municipality and a landowner that governs 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. In an effort to clarify provisions of the Local Government Code with respect to development agreements between landowners and municipalities, C.S.H.B. 1929 seeks to revise applicable provisions relating to these development agreements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1929 amends the Local Government Code to clarify that a development agreement governing land in the extraterritorial jurisdiction of a municipality other than a municipality with a population of 1.9 million or more is a contract for such an agreement. The bill establishes 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. The bill specifies that adjudication of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the bringing of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract agreement for the arbitration proceedings.

C.S.H.B. 1929 specifies that a contract is a program authorized by the legislature under Texas Constitution provisions relating to economic development. The bill clarifies that a contract between a municipality and a landowner entered into prior to the effective date of statutory development agreement provisions, or any amendment to those provisions, and that complies with the provisions is validated, enforceable, and may be adjudicated subject to the terms and conditions of broader development agreement statutory provisions, as amended.

C.S.H.B. 1929 establishes that a municipality that enters into a contract waives immunity from suit for the purpose of adjudicating a claim for breach of the contract. The bill authorizes actual damages, specific performance, or injunctive relief to be granted in an adjudication brought

against a municipality for breach of a contract but limits the total amount of money awarded in the adjudication to the following:

- the balance due and owed by the municipality under the contract as it may have been amended;
- 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;
- reasonable attorney's fees; and
- interest as allowed by law, including interest as calculated under general government provisions relating to payment for goods and services.

The bill prohibits damages awarded in the adjudication from including the following:

- consequential damages, except as expressly allowed under the bill; or
- exemplary damages.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1929 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision not in the original establishing 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.

The substitute replaces language in the original that establishes that a contract is not a loan or grant of public money prohibited by Texas Constitution provisions relating to restrictions on the lending of credit or making of grants by political corporations or political subdivisions with language that establishes that a contract is a program authorized by the legislature under Texas Constitution provisions relating to programs and loans or grants of public money for economic development.

The substitute includes a provision not in the original expanding a development agreement validation provision to establish that a contract between a municipality and a landowner entered into prior to the effective date of statutory development agreement provisions, or any amendment to those provisions, and that complies with the provisions is validated, enforceable, and may be adjudicated subject to the terms and conditions of broader development agreement statutory provisions, as amended.

The substitute does not include a provision in the original establishing that the bill applies only to a cause of action for a breach of a development agreement contract that accrues on or after the bill's effective date, except to the extent that a provision of a contract entered into before that date specifically conflicts with the bill.