

SENATE AMENDMENTS

2nd Printing

By: Wilson

H.B. No. 1929

A BILL TO BE ENTITLED

AN ACT

relating to the breach of development agreement contracts governing land in the extraterritorial jurisdiction of certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 212.172, Local Government Code, is amended by amending Subsections (a), (c), (e), (f), (g), and (h) and adding Subsections (i), (j), and (k) to read as follows:

(a) In this subchapter:

(1) "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.

(2) "Contract" means a contract for a development agreement authorized by this subchapter.

(3) "Extraterritorial [~~,"———"extraterritorial]~~
jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42.

(c) A contract [~~An agreement under this subchapter]~~ must:

(1) be in writing;

(2) contain an adequate legal description of the land;

(3) be approved by the governing body of the

1 municipality and the landowner; and

2 (4) be recorded in the real property records of each
3 county in which any part of the land that is subject to the contract
4 ~~[agreement]~~ is located.

5 (e) A municipality in an affected county, as defined by
6 Section 16.341, Water Code, may not enter into a contract ~~[an~~
7 ~~agreement under this subchapter]~~ that is inconsistent with the
8 model rules adopted under Section 16.343, Water Code.

9 (f) The contract ~~[agreement]~~ between the governing body of
10 the municipality and the landowner is binding on the municipality
11 and the landowner and on their respective successors and assigns
12 for the term of the contract ~~[agreement]~~. The contract ~~[agreement]~~
13 is not binding on, and does not create any encumbrance to title as
14 to, any end-buyer of a fully developed and improved lot within the
15 development, except for land use and development regulations that
16 may apply to a specific lot. Annexation by a municipality of land
17 subject to a contract does not invalidate the enforceability of the
18 contract or infringe on the rights of a party to adjudicate a claim
19 arising under the contract.

20 (g) A contract:

21 (1) [An agreement under this subchapter] constitutes a
22 permit under Chapter 245; and

23 (2) is a program authorized by the legislature under
24 Section 52-a, Article III, Texas Constitution.

25 (h) A contract ~~[An agreement]~~ between a municipality and a
26 landowner entered into prior to the effective date of this section,
27 or any amendment to this section, and that complies with this

1 section is validated, enforceable, and may be adjudicated subject
2 to the terms and conditions of this subchapter, as amended.

3 (i) A municipality that enters into a contract waives
4 immunity from suit for the purpose of adjudicating a claim for
5 breach of the contract.

6 (j) Except as provided by Subsection (k), actual damages,
7 specific performance, or injunctive relief may be granted in an
8 adjudication brought against a municipality for breach of a
9 contract. The total amount of money awarded in an adjudication
10 brought against a municipality for breach of a contract is limited
11 to the following:

12 (1) the balance due and owed by the municipality under
13 the contract as it may have been amended;

14 (2) any amount owed by the landowner as a result of the
15 municipality's failure to perform under the contract, including
16 compensation for the increased cost of infrastructure as a result
17 of delays or accelerations caused by the municipality;

18 (3) reasonable attorney's fees; and

19 (4) interest as allowed by law, including interest as
20 calculated under Chapter 2251, Government Code.

21 (k) Damages awarded in an adjudication brought against a
22 municipality for breach of a contract may not include:

23 (1) consequential damages, except as expressly
24 allowed under Subsection (j)(2); or

25 (2) exemplary damages.

26 SECTION 2. Section 212.174, Local Government Code, is
27 amended to read as follows:

1 Sec. 212.174. MUNICIPAL UTILITIES. A municipality may not
2 require a contract [~~an agreement under this subchapter~~] as a
3 condition for providing water, sewer, electricity, gas, or other
4 utility service from a municipally owned or municipally operated
5 utility that provides any of those services.

6 SECTION 3. This Act takes effect September 1, 2021.

ADOPTED

MAY 25 2021

Lately Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *D. Bucking*

1 Amend H.B. No. 1929 (senate committee printing) by adding the
2 following appropriately numbered SECTION to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION __. Chapter 212, Local Government Code, is amended by
5 adding Subchapter H to read as follows:

6 SUBCHAPTER H. DEVELOPMENT AGREEMENTS AND RELEASE OF

7 EXTRATERRITORIAL JURISDICTION FOR CERTAIN AREAS

8 Sec. 212.201. DEVELOPMENT AGREEMENT BY PETITION. (a) A
9 petition under this section may be filed only for an area of a
10 municipality with a population of more than 790,000:

11 (1) that:

12 (A) is located in a subdivision that was developed
13 with public infrastructure outside the boundaries of the
14 municipality; and

15 (B) was subject to a change in the provider of fire
16 suppression and emergency medical services after annexation for
17 full purposes that led to a degradation in the quality and level
18 of those services, as determined by the petitioners; or

19 (2) that:

20 (A) is subject to a municipal determination by
21 ordinance or resolution that the municipality cannot or has not in
22 the past regularly and routinely provided full municipal services
23 to the area; and

24 (B) was exempt from municipal taxation until full
25 municipal services were provided, regardless of whether the

1 ordinance or resolution is repealed or purported to be repealed.

2 (b) A person owning land wholly or partly located in an area
3 described by Subsection (a) may file a petition requesting the
4 municipality to:

5 (1) disannex the area from the municipality and include
6 the area in the municipality's extraterritorial jurisdiction; and

7 (2) enter into a development agreement under Subchapter
8 G for the area.

9 (c) The petition filed under Subsection (b) must:

10 (1) include the signatures of owners of at least 51
11 percent of the land in the area described by the petition;

12 (2) include a determination by the petitioners that:

13 (A) the municipal services provided by the
14 municipality are not regular and routine; and

15 (B) the appropriate relief to the petitioners is
16 to:

17 (i) be disannexed and included in the
18 municipality's extraterritorial jurisdiction; and

19 (ii) be subject to a development agreement
20 under Subchapter G; and

21 (3) if the land is located in a subdivision, request
22 disannexation of all land in the subdivision that is located in
23 the municipality.

24 (d) The municipality shall disannex from the municipality
25 and include in the municipality's extraterritorial jurisdiction
26 the area described by a petition filed under Subsection (b) not
27 later than the 30th day after the date the municipality receives

1 the petition.

2 (e) The municipality shall enter into a development agreement
3 under Subchapter G with the petitioners filing a petition under
4 Subsection (b). A development agreement under this section may
5 only contain terms described by Section 212.172(b)(1). If the
6 municipality does not enter into a mutually acceptable development
7 agreement with the petitioners not later than the 90th day after
8 the date the municipality receives the petition, the petitioners
9 may record an affidavit in the deed records of the county in which
10 the petitioners' land is located. If the affidavit is recorded in
11 accordance with this subsection, the municipality:

12 (1) may not annex land for which an affidavit is
13 recorded; and

14 (2) is not required to enter into a development agreement
15 with the petitioners.

16 (f) This section expires September 1, 2023.

17 Sec. 212.202. RELEASE INSTEAD OF DEVELOPMENT AGREEMENT. (a)
18 Instead of entering into a development agreement under this
19 chapter, an owner of land disannexed under Section 212.201 may
20 file a written petition with the municipality that disannexed the
21 land for the land to be released from the municipality's
22 extraterritorial jurisdiction if the land is at least five acres
23 and contains not more than five residents.

24 (b) A petition requesting release under this section must:

25 (1) be signed by the owners of a majority in value of
26 the land described by the petition, as indicated by the ad valorem
27 tax records of the central appraisal district for the county in

1 which the land is located; and

2 (2) include a determination that release from the
3 municipality's extraterritorial jurisdiction is necessary or
4 convenient to promote the development of public infrastructure
5 instead of a development agreement.

6 (c) The municipality shall release from the municipality's
7 extraterritorial jurisdiction the land described by a petition
8 filed under Subsection (a) not later than the 30th day after the
9 date the municipality receives the petition.

10 (d) This section does not apply to land:

11 (1) subject to a strategic partnership agreement under
12 Section 43.0751; or

13 (2) that is located in an industrial district under
14 Section 42.044.

15 Sec. 212.203. SUIT TO COMPEL; WAIVER OF GOVERNMENTAL
16 IMMUNITY. (a) If a municipality fails to disannex or release
17 land from the municipality's extraterritorial jurisdiction as
18 required by this subchapter, the person filing the petition
19 requesting the disannexation or release may bring an action against
20 the municipality to compel the disannexation or release of the
21 land. If the person prevails, the person may recover attorney's
22 fees and court costs resulting from bringing the action.

23 (b) Governmental immunity to suit and from liability of the
24 municipality is waived to the extent of liability created by this
25 subchapter.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1929 by Wilson (Relating to the breach of development agreement contracts governing land in the extraterritorial jurisdiction of certain municipalities.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies:

LBB Staff: JMc, AF, CMA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 20, 2021

TO: Honorable Paul Bettencourt, Chair, Senate Committee on Local Government

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1929 by Wilson (Relating to the breach of development agreement contracts governing land in the extraterritorial jurisdiction of certain municipalities.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

The fiscal impact to units of local government could not be determined due to a lack of responses.

Source Agencies:

LBB Staff: JMc, AF, DPE, AJL, BC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 21, 2021

TO: Honorable Joe Deshotel, Chair, House Committee on Land & Resource Management

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1929 by Wilson (Relating to the breach of development agreement contracts governing land in the extraterritorial jurisdiction of certain municipalities.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

Local Government Impact

The fiscal impact to units of local government could not be determined due to a lack of responses.

Source Agencies:

LBB Staff: JMc, AJL, BC, DPE

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 5, 2021

TO: Honorable Joe Deshotel, Chair, House Committee on Land & Resource Management

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1929 by Wilson (Relating to the breach of development agreement contracts governing land in the extraterritorial jurisdiction of certain municipalities.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

The fiscal impact to units of local government could not be determined due to a lack of responses.

Source Agencies:

LBB Staff: JMc, AJL, BC, DPE