SUBJECT: Notifying certain property buyers of water and sewer service availability

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Dukes, Corte, J. Davis, Elkins, George, Solomons, Woolley

0 nays

1 absent — Giddings

WITNESSES: For — Charles Beseda, Birome Water Supply Corp.; John Burke, Aqua Water Supply Corp.; Ken Petersen, Texas Rural Water Association

Against — None

DIGEST: CSHB 2033 would require sellers of unimproved property in unincorporated, certificated utility service areas to notify buyers about the availability of water and sewer service. It would apply to water supply or sewer service corporations and special utility districts but would exclude municipal utilities, municipal utility districts, and water control and improvement districts.

Before a binding sales contract was signed, the seller would have to notify the buyer in writing of the property's water and sewer service area and of the sole utility service provider. The notice would have to state that the buyer might have to pay special costs or charges before receiving water or sewer service and that the service provider might have to construct lines and other facilities to provide service to the property. Such notices could be separate or included within contracts.

A buyer could terminate a contract for failure to notify. A seller could provide notice at closing with the buyer's consent, but the buyer would waive all rights to terminate the contract and to recover damages and pursue other remedies. For purposes of preparing and providing notice, parties involved in the sale and purchase of the property, and any subsequent sales,

could rely on the accuracy of certified service-area maps filed in real property records by utility service providers.

The notice requirements would not apply to title or interest transfers:

- under lien foreclosures;
- by deeds in cancellation of debt secured by property liens;
- by reason of wills and probate proceedings;
- to governmental entities;
- of property within corporate municipal limits;
- of property receiving water and sewer service on the transfer date;
- by bankruptcy trustees;
- of property acquired by mortgagees or beneficiaries under deeds of trust at authorized sales or by deeds in lieu of foreclosure;
- between two co-owners;
- between spouses or blood relatives; and
- of mineral, leasehold or security interests.

A buyer could sue for noncompliance within four years of the sale date or within 90 days of learning either the costs of obtaining water and sewer service or the period required to provide those services, whichever date was earlier. Buyers who relinquished property for the seller's failure to give proper notice could recover costs, interest, and attorney's fees. Buyers who retained property could recover up to $5,000 plus attorney's fees. Buyers could not recover damages under both provisions. Any damages recovered would have to be paid first to satisfy unpaid obligations on outstanding liens, and the remainder would be paid to the buyer. These damages would provide the buyer's exclusive remedy for the seller's noncompliance and would not affect the validity of any existing vendor's, mechanic's, or deed-of-trust lien on the property. A purchaser of an equity interest in real property who assumed any liens, including a purchase money lien, and did not require proof of title by abstract, title insurance policy, or any other method could not recover damages. A buyer who subsequently sold or conveyed the property would waive any rights to damages arising from the prior purchase.

Sellers, title insurance companies, real estate brokers, examining attorneys, or their agents or representatives would be exempt from civil damages for unintentionally providing incorrect notices, or for failure to provide notice, if

utility service providers did not file service-area maps with the Texas Natural Resource Conservation Commission (TNRCC) or if the commission did not maintain accurate maps. Buyers could not sue sellers who gave notice at closing based on information filed with TNRCC or on maps filed in real property records. Buyers could not sue title companies for failure to provide notice if utility service providers did not file service-area maps with TNRCC or in real property records.

This bill would take effect September 1, 2001.

SUPPORTERS SAY:

As Texas' metropolitan areas grow, more and more residents and businesses are moving into the "exurbs" and undeveloped, unincorporated rural areas. Some developers and other sellers include water and sewer availability in their advertising, but do not disclose the potential time and expense involved. Providing these utilities can take months and can cost thousands of dollars. Unsuspecting buyers have borne needless hardships because they were unaware of these facts.

CSHB 2033 would give buyers better information before they decided to acquire unimproved land outside city limits. It would hold sellers accountable for providing information about utility service by allowing sellers to sue them for not doing so. Currently, buyers stuck with unforeseen utility costs have difficulty suing sellers under the Deceptive Trade Practices Act for failure to disclose utility availability as a material defect, as might apply to a vehicle sale, for example. Sellers often live elsewhere, and collecting judgments can be problematic. CSHB 2033 would create a much less cumbersome approach.

The bill would simplify the notice process by allowing parties to rely on utilities' maps of their service areas filed with the deed records at county clerks' offices, as well as with TNRCC. Requiring such notice would not overburden sellers because they could include the notices with existing forms or in contracts.

Some developers subdivide large tracts into smaller lots and sell them piecemeal with little information recorded about water and sewer lines. This bill would encourage more orderly real estate transactions by requiring more information about utilities. Information about utilities provided by or within

municipalities and municipal utility districts typically is readily available to prospective land buyers. Water development districts and districts that collect taxes already have disclosure requirements and do not need to be included in this bill.

OPPONENTS SAY:

CSHB 2033 would put too much responsibility on sellers. Buyers have as much duty as sellers, if not more, to investigate the property they plan to buy and to perform title searches. If land is undeveloped and has no utilities, it should be obvious to potential buyers that they need to arrange for utility installation. Sellers should be liable for misleading buyers or withholding information from them but should not have to do their research for them.

OTHER OPPONENTS SAY:

CSHB 2033 would exempt too many transactions that should be subject to the bill's requirements to protect buyers in those situations. The bill should allow county clerks to recover administrative costs for filing utility service providers' maps of their service areas.

NOTES:

The bill as filed would have applied to real property in general. The committee substitute would exempt seven additional methods of title transfer from written notice requirements as to water or sewer service area and availability. It also would allow utilities to file maps with local deed records to be relied upon by sellers and others.