SUBJECT: Hearing and notice requirements for development moratoria

COMMITTEE: Land and Resource Management — committee substitute recommended

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

1 nay — Truitt

2 absent — Geren, Krusee

WITNESSES: For — Mindy Carr, Texas Apartment Association; Jimmy Gaines, Texas Landowners Council.; Michael D. Moore, Texas Association of Builders, Greater San Antonio Builders Association, and KB Homes; Keller W. Webster, Texas Association of Builders

Against — Van James, Town of Flower Mound; Marcella Olson, City of Fort Worth; Frank F. Turner, City of Plano and Texas Municipal League

BACKGROUND: Current law does not require cities to hold public hearings or provide notice other than that required for their regular city council meetings under the Open Meetings Law before adopting an ordinance placing a moratorium on further development.

In January 1999, Flower Mound in Denton County resolved to adopt a "smart growth" program in response to a higher than expected rate of population growth. The city council adopted the program to "manage both the rate and character of residential growth in Flower Mound" because growth was expected to overload the town's water, wastewater, and transportation systems and threaten the town's "character and quality." In March 2001, Rowlett, near Dallas, imposed a six-month moratorium on new residential development that would prohibit residential development on land the city may rezone for commercial use.

Attorney General Opinion JC-0142 (November 10, 1999) determined that "a home-rule municipality may implement a growth-management plan that apportions, or 'caps,' the number of building permits the municipality will issue in a specific time period even in the absence of an emergency."

DIGEST:

CSHB 2117 would require a notice and hearing process for declaring a moratorium on development, establish standards for a moratorium, limit a moratorium to 120 days, and provide a waiver process.

The bill would define "essential services" as water or sewer facilities or street improvements provided by a municipality or private utility. It would define a moratorium on property development as occurring if a city routinely delayed the issuance of or stopped issuing permits, authorizations, or approvals needed for subdivision, site planning, or construction of real property. A delay of a permit, authorization, or approval would not be considered a moratorium if the application was inconsistent with statutes, rules, or ordinances, including zoning ordinances.

**Notice and hearing requirements.** The city would have to publish notice of a hearing on a proposed moratorium in a newspaper of general circulation in the city four days before the hearing. The city could impose a temporary moratorium on the fifth business day after publishing the notice. Hearings would be required before the zoning commission and the city council. General-law municipalities would have to hold two city council hearings at least four days apart. The bill would set a 12-day deadline on giving two readings on an moratorium ordinance. Otherwise, the moratorium could not be adopted and the temporary moratorium would expire.

**Justifying moratorium.** CSHB 2117 would require written findings to justify the moratorium. Evidence would have to show the extent of need beyond the estimated capacity of essential public facilities that was expected to result from new property development, including identifying:

- any essential facilities operating beyond capacity;
- the portion of that capacity committed to the development; and
- impact fees allocated to address the need.

Additional evidence would have to be presented to show that the moratorium was reasonably limited to areas where a shortage of essential public facilities would occur and to property that had not been approved for development because of the insufficiency of existing public facilities.

Finally, evidence would be required to show that the housing and economic development needs of the affected area had been accommodated as much as possible by any programs that allocated the remaining essential facilities capacity. A moratorium not based on a shortage of infrastructure could be justified by a compelling need for other public facilities, such as police and fire facilities.

The summary of findings also would have to include evidence demonstrating how:

- existing law was inadequate to prevent irrevocable harm in the affected area;
- the proposed moratorium was sufficiently limited to ensure development of commercial and industrial facilities;
- alternative methods were considered and found unsatisfactory; and
- public harm from not imposing the moratorium would outweigh the effect of the moratorium on the overall demand for housing, economic development, public facilities, and population distribution.

**Expiration and extension.** A moratorium on new property development would expire in 120 days unless the city council held another public hearing, adopted new findings justifying the extension, and published a notice in the newspaper of general circulation.

**Waiver provisions.** CSHB 2117 would require a process for a waiver of the moratorium if a property owner could claim a right under a development agreement or a protected or vested right or could claim that public facilities under consideration as part of the moratorium were provided at the property owner's expense.

This 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, 2001.

SUPPORTERS SAY:

CSHB 2117 would require procedures for notice and justification of moratoria that are absent in current law. A city now can place a ban on building by placing an action item on its agenda and a simple vote of its city

council. A moratorium can be scheduled on the agenda on Friday and decided on Monday without additional notice to citizens.

Builders and lending institutions need a sense of predictability in making long-term development decisions. CSHB 2117 would provide for an orderly procedure in imposing moratoriums. Unanticipated and ill-considered actions by a city council could cause property values to jump and the supply of housing to diminish. Buyers of affordable housing are particularly sensitive to delays that cause the cost of their monthly mortgage payments to increase and price them out of the housing market.

Cities should have to show a substantial reason, such as a lack of infrastructure, before slowing development. Moratoria should not be used to stop development while cities redraft their subdivision or development standards ordinances. Typically, cities do this to limit apartment and other affordable housing developments. CSHB 2117 would restrict this kind of capricious action by limiting use of moratoria to true crisis situations.

CSHB 2117 has been tailored to apply only to residential development. Cities still would have the power to use a moratorium to block sexually oriented businesses or billboards while their zoning ordinances were redrafted.

Some cities use dubiously justified moratoria as an extortion device against developers. Property owners are reluctant seek legal redress in courts because of the delay and the expense. Landowners need specific statutory protections of their rights.

OPPONENTS SAY:

No documented need exists to justify enactment of CSHB 2117. Developers and builders cite anecdotal and sometime hypothetical cases in claiming the harm done by development moratoria. If problems exist, they should be addressed at the local level rather than in the Legislature. Most city council members actively promote economic development of their communities and are responsive to the needs of their communities.

As written, this bill would limit moratoria to full-blown emergencies such as lack of water and sewer lines. Municipalities need the flexibility — including moratoria — to head off problems before they occur. Moratoria also can be

used to forestall other problems, such as destruction of historic buildings or environmentally sensitive areas or the encroachment of sexually oriented businesses. CSHB 2117 would preclude the use of moratoria to solve these kinds of problems.

The bill would not contribute to an orderly development or land-use process. The notice provisions could set off a "land rush" mentality and cause developers to submit "back of the envelope" site plans for hastily prepared projects simply to secure a claim to vested rights.

Case law in Texas already protects the property and due-process rights of property owners. It would be better to codify this case law than to create the cumbersome process under CSHB 2117.

NOTES:

The committee substitute would apply only to moratoria placed on development of residential property, rather than all property, as in the filed version. The bill as filed would have required notice to be published 15 days before the hearing. The substitute would allow the temporary moratorium to be in place within five business days of the notice. The substitute also removed a provision that would allow a landowner aggrieved by the moratorium to file legal action in district court to contest the adoption of the moratorium.

The companion bill, SB 980 by Carona, passed the Senate by 27-2 on April 30. SB 980 differs from CSHB 2117 by adding provisions that would define residential property, as well as by deleting the requirement that a city show that a moratorium was sufficiently limited as not to affect the supply of commercial and industrial facilities and that the public harm from not imposing the moratorium would outweigh the effect of the moratorium on the overall demand for housing, economic development, public facilities, and population distribution. SB 980 was reported favorably, without amendment, by the House Land and Resource Management Committee on May 2, making it eligible to be considered in lieu of HB 2117.