

SUBJECT: Authorizing border counties to regulate residential land development

COMMITTEE: Border and International Affairs — favorable, without amendment

VOTE: 4 ayes — Chavez, Griggs, Canales, Castro
0 nays
2 absent — Merritt, Riddle

SENATE VOTE: On final passage, March 20 — 29-0

WITNESSES: For — Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify:*) Jim Allison, County Judges and Commissioners Association of Texas; Deborah Kastrin, El Paso County

Against — James P. Atkins, Valley One Real Estate Financing; Jimmy Gaines, Texas Land Owners Council; Jack McClelland, Texas Land Developers Association

BACKGROUND: Local Government Code, ch. 232 governs county subdivision regulation and platting approval. Subchapter B applies to counties within 50 miles of the Texas-Mexico border, granting them specific powers to regulate subdivisions and approve plats in unincorporated areas. Counties do not have authority to adopt zoning ordinances or building codes.

DIGEST: SB 535 would apply to a county that includes territory within 50 miles of the Texas-Mexico border. To prevent the proliferation of colonias, a county commissioners court could regulate residential land development in the unincorporated area of the county by adopting building codes or regulations relating to:

- maximum densities, including lot size;
- height, number of stories, size, or number of buildings or other structures on a lot; or
- location of buildings or structures on a lot or tract.

A commissioners court could not regulate land development on agricultural or open-space land, except for maximum density regulations, and could not regulate commercial property that was uninhabitable.

A county would have to issue a building permit if an applicant submitted the location of the residence, filed building plans, and complied with applicable regulations. A county could charge a reasonable building permit fee and would have to deposit collected fees to an account in the county's general fund dedicated to the building permit program.

If a county ordinance authorized by the bill conflicted with a municipal ordinance, the municipal ordinance would prevail within the municipality's jurisdiction to the extent of the conflict. The bill would not affect a county's authority to adopt an order or ordinance under other law. A county would be entitled to injunctive relief to prevent a violation of an order adopted by a county under authority that would be granted by the bill.

Violating a restriction or prohibition imposed by an order adopted under authority granted by the bill would be a Class C misdemeanor, punishable by a maximum fine of \$500. A penalty could not be assessed against an owner-occupant of a residence for violating building standards or codes if the Texas Department of Housing and Community Affairs classified the household as low-income, unless the county provided housing rehabilitation assistance sufficient to cure the violation. Assistance would have to be in the form of a grant or loan under payment terms that did not cause the owner-occupant's housing expenses to exceed 30 percent of his or her net income.

The 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, 2003.

**SUPPORTERS
SAY:**

SB 535 would give border counties additional tools to stop development of colonias and to improve housing conditions in unincorporated areas. Colonias are substandard housing developments lacking basic services, such as paved streets, sewer lines, or water service. Although the Legislature has granted border counties some specific powers to regulate subdivision development, counties have been unable to stop the proliferation of colonias. Unscrupulous developers continue to prey on low-income or other buyers by selling homes

that lack basic amenities. SB 535 would enable counties to adopt regulations to prevent development of new colonias.

Allowing border counties to adopt building codes would ensure a basic level of safety in new home construction in unincorporated areas. Building codes set standards that reduce the risk of fire and ensure that new buildings are structurally sound and sanitary. Enacting county building codes would prevent unscrupulous businesses from preying on unsophisticated home buyers by selling new houses that do not meet basic standards of safety or sanitation.

Although regulating residential development and enacting building codes would create an additional expense for counties, spending this money up front to prevent colonias from being developed would be much cheaper than going back years later to pave streets and install water and sewer service. The state and federal government have spent hundreds of millions of dollars trying to improve living conditions for colonia residents. Giving counties the tools to stop these developments from occurring in the first place, instead of spending money to fix them after the fact, would save taxpayers' money and prevent families from suffering through years of substandard living conditions.

**OPPONENTS
SAY:**

SB 535 would allow more regulations on residential development in border counties, making it more difficult for low-income families to own new homes. Establishing a county planning and zoning department to regulate residential development would require a large staff and a cumbersome bureaucracy. The added costs would be passed along to taxpayers and home buyers. Along the border, many low-income residents buy lots and then build their own homes. However, the bill would make even this option more difficult by allowing counties to adopt building codes that could increase the expense and complexity of building a home. The bill not only would drive up the cost of buying a new home along the border but also would make it more difficult and expensive for families to build their own homes.

The supposed proliferation of colonias along the border has decreased greatly or ceased in some counties. Existing colonias in these areas are 20 or 30 years old. New subdivisions in unincorporated areas have paved streets and curbs,

as well as water and sewer service. The bill unnecessarily would attempt to solve a problem that has begun to ease.