SUBJECT: Revising colonias regulations

COMMITTEE: Border and International Affairs — committee substitute recommended

VOTE: 7 ayes — T. King, Frost, Castro, Hardcastle, Hernandez, Merritt, Pickett

0 nays

WITNESSES: For — Rhonda M. Tiffin, Webb County Commissioners Court; (*Registered, but did not testify:* Webb County Commissioner Jerry Garza, Webb County, Daniel Gonzales, Texas Association of Realtors, Judge Danny Valdez, Webb County, and Rafael Vidaurri, Webb County)

Against — None

On — Israel Morales Reyna, Texas Rio Grande Legal Aid, Inc.

BACKGROUND: Colonias are low-income communities in unincorporated subdivisions that lack paved roads and basic services such as water, wastewater treatment, and electricity. Texas is home to more colonias residents than any other state. About 500,000 Texans live in 2,300 colonias communities along the 248-mile stretch from Cameron County on the Gulf of Mexico to El Paso County in the west.

Municipal regulation of subdivisions and property development. Local Government Code, sec. 212.012(c) provides that municipalities, counties, or public utility corporations may not serve or connect any land with water, sewer, electricity, gas, or other utility services unless the person requesting the utility services presents a certificate that the land is in compliance with local plat requirements, except:

- if the land is covered by a development approved plat under an ordinance or rule relating to the development plat;
- the land was first served or connected through the authority of a municipality or public utility before September 1, 1987;
- the land was first served or connected through the authority of a water supply or sewer service corporation, county, or other state authority before September 1, 1989; or

- the municipal authority responsible for approving plats issues a certificate qualifying the land for utility services based on varying dates of prior service, construction, subdivision, and water availability.

Local Government Code, ch. 232, subchapter B addresses the platting requirements for a county near an international border. The provisions of this subchapter are applicable to:

- a county any part of which is located within 50 miles of an international border (sec. 232.022(a)(1));
- a county any part of which is located within 100 miles of an international border that contains the majority of the area of a municipality with a population of more than 250,000 (sec. 232.022(a)(2)); and
- land that is subdivided into two or more lots intended primarily for residential use, of five acres or less.

Under sec. 212.012(d), an entity may provide utility service to subch. B designated land only if the person requesting service is not the land's subdivider or the subdivider's agent, or if the land is qualified by a municipal authority based on the date the land was sold or conveyed. A person requesting service under sec. 212.012(f) may receive utility service if the person provides the municipal authority with documentation verifying the land was not sold or conveyed to that person by a subdivider or the subdivider's agent.

A municipal authority responsible for approving plats currently may issue a certificate permitting utility service without a certificate of plat compliance if the subdivided land was:

- sold or conveyed by a subdivider before September 1, 1995, for counties subject to sec. 232.022(a)(1) or September 1, 2005, for counties subject to 232.022(a)(2)
- had previous utility service;
- located outside the municipal city limits;
- subject to the regulations of chapter 232, subchapter B; and
- the site of construction, evidenced by at least the existence of a completed foundation, begun on or before May 1, 2997 for counties subject to sec. 232.022(a)(1) or September 1, 2005 for counties subject to sec. 232.022(a)(2).

County regulation of subdivisions. On the written request of a subdivider, an owner or resident of a lot in a subdivision, or an entity that provides utility service, a county commissioners court must make certain determinations before issuing a certificate of plat compliance.

For the connection of utilities in subchapter B counties within 50 miles of an international border, under sec. 232.029, a utility may not serve or connect any subdivided land with water or sewer services unless the utility receives a certificate issued by the commissioners court that the plat has been reviewed and approved. Electricity or gas may not be connected unless the entity received a determination from the commissioners court that adequate water and sewer services have been installed to service the subdivision. Counties may serve or connect utilities only if the commissioners court determines that the subdivided land qualifies for utility services based on varying dates of prior service, construction, subdivision, and water availability.

Under sec. 232.029(d), an entity may provide utility service only if the person requesting service is not the land's subdivider or the subdivider's agent, or if the land is qualified by a county authority to meet one of the designated exceptions. A person requesting service under sec. 232.029(f), may receive utility service if the person provides the county authority with documentation verifying the land was not sold or conveyed to that person by a subdivider or the subdivider's agent.

The prohibitions established under sec. 232.029 do not affect the service or connection of electric or gas service to a lot being sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider prior to July 1, 1995, and that was subdivided by a plat approved prior to September 1, 1989.

DIGEST:

CSHB 3068 would revise the circumstances allowing for utility hook-ups and would extend to developers the restrictions and penalties placed on subdividers.

The bill would amend sec. 212.012 to revise when a municipal authority could serve or connect land located within a county subject to subch. B and located in an extraterritorial jurisdiction of a municipality with water, sewer, electricity, gas, or other utility services, regardless of whether the entity held a certificate verifying compliance with plat requirements.

The bill would change the requirements for receiving utilities without a certificate of compliance with plat requirements to include subdivided land conveyed or sold before September 1, 1999, in a county defined under sec. 232.022(a)(1), if on August 31, 1999, the land was located in an extraterritorial jurisdiction. The bill also would stipulate that once the land was sold or conveyed, to qualify it could not have been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable. In determining whether land could receive utility services, the bill also would modify the dates for land considered under construction for subchapter B counties defined under sec. 232.022(a)(1) to require the existence of a completed foundation begun on or before May 1, 2003, rather than on or before May 1, 1997. The land would have to have adequate sewer services installed prior to a municipal authority providing any utility services, and the requirements would apply to land sold or conveyed by a developer.

A certificate permitting utility services also would have to include whether the subdivided land was a lot of record that was located in a subchapter B county subject to sec. 232.022(a)(1) and had adequate sewer services installed that were fully operable.

CSHB 3068 would define developer to mean a person who owned any interest in real property and directly or indirectly developed real property in the ordinary course of business or as part of a common promotional plan. To develop would be to make a structural improvement or man-made change to a lot intended for residential use undertaken to improve, enhance, or otherwise make suitable real property for purposes of sale, resale, or lease. The bill also would amend the definition of common promotional plan to include plan or schemes undertaken by developers.

A lot of record would mean a lot, the boundaries of which were established by a plat recorded in the office of the county clerk before September 1, 1989, that had not been subdivided after September 1, 1989, *or* a lot, the boundaries of which were established by a metes and bounds description in a deed of conveyance, a contract for sale, or other executory contract to convey real property that had been legally executed and recorded in the office of the county clerk before September 1, 1989, that had not been subdivided after September 1, 1989.

In sec. 212.012, the bill would specify that a person requesting a certificate to receive utility service would have to be the owner or purchaser of the

subdivided land. Further, in addition to providing evidence of when the land was sold or conveyed, when construction began, and that the land was not further subdivided after sale or conveyance, a person would be required to show that adequate water and sewer service or facilities were installed and were fully operable.

Under sec. 212.012, the bill would allow a lot subject to sec. 232.022(a)(1) to be eligible to receive water utility service if it was demonstrated that the proper facilities were to be provided in conjunction with a federal or state program designed to address inadequate water or wastewater facilities and when connected would comply with the minimum state standards prescribed by the Water Code. This would include approved municipal improvement projects.

Modifications in sec. 212.012 to circumstances allowing municipal authorities to service or connect utilities also would be made in sec. 232.029, which regulates the connections for utilities in counties within 50 miles of an international border. The prohibitions established by the bill would not prevent a utility corporation from providing water, sewer, electric, or gas utility connection or service to a lot sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider or a developer prior to July 1, 1995, and now including September 1, 1999 if on August 31, 1999, the subdivided land was located in an extraterritorial jurisdiction of a municipality that had adequate sewer services installed that were fully operable, and was subdivided by a plat approved before September 1, 1989.

In determining whether land met the established requirements for plat compliance, under the bill, the commissioners court could ask for the determination on its own motion. The bill would allow for a certificate of approval to be given to a single lot rather than only for the entire subdivision. The bill also would stipulate that a determination of whether the land had proper and operable sewer service facilities, if the land was using a septic system, would include whether the lot was served by a permitted on-site sewage facility.

Under sec. 232.024(b), the bill would require any subdivision to be developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations in addition to any substantiation of a restrictive covenant on the plat to construct residential housing in compliance with the National Flood Insurance Program.

Sections governing county regulation of colonias would be amended to apply the restrictions and penalties to developers in addition to subdividers.

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, 2007.

SUPPORTERS SAY:

CSHB 3068 would incorporate into legislative policy some important lessons learned from 15-plus years of efforts to improve the lives of colonia residents and to stop the proliferation of substandard colonia developments. The bill would eliminate current impediments presented by the strict platting requirements for purchases of colonia homes.

Past legislation appropriately adopted strict platting requirements to avoid further proliferation of colonias but failed to accommodate those that subsequently purchased the homes "grandfathered" by these laws. The law allows for the sale of the "grandfathered" colonia homes, but does not authorize the transfer of utilities with the sale. This has created a financial hardship for those who purchased these homes because in order to receive utility services, the new owner must make improvements associated with the platting requirements.

Another hardship resulting from the strict platting requirements includes residents that move out of the area but do not cede ownership of the "grandfathered" home. When these residents return to reestablish their colonia homes, they cannot reconnect the utilities because they have fallen out of the "grandfathered" provisions. Amending the current regulations would address these hardships without compromising the strict standards designed to prevent any further proliferation of colonias.

Developers no longer would be able to contribute to the proliferation of colonias. Because the colonia laws regulate only subdividers and their agents, developers have been able to build new colonia subdivisions, leaving municipal and county authorities without recourse. With developers not building according to established regulations and because current law does not require residents to have septic tanks, some residents are creating a health nuisance by using cesspools. The bill would allow for the enforcement of developers, subjecting them to a Class A misdemeanor for any violations, and would require residents to demonstrate that their

homes had adequate water and sewage facilities, eliminating cesspool problems, before receiving a certificate to authorize utility connections.

The bill would allow residents to receive water and sewage utilities through local, state, and federal grant initiatives without the delays of replatting. Platting is a timely and costly process, done at the taxpayers' expense, which consequently creates a financial hardship to the locality. Permitting residents to receive water and sewage utilities provided through government programs designed to assist colonias, would allow residents to receive necessary improvements while replatting was in process. This flexibility would provide the locality more time to finance the completion of the platting and avoid the obstacle of not being able to support the same improvements required of developers.

OPPONENTS SAY:

CSHB 3068 could facilitate the issuance of permits and certifications without meeting all local requirements. The bill stipulates that an entity could receive utility services if located in an extraterritorial jurisdiction of a municipality provided that the lots met all the designated platting or exception requirements. For areas where a municipality and county had concurrent jurisdiction over these decisions, the bill could be misconstrued to require the permit or certificate to need only municipal authority. This would be a disservice to areas where counties had stricter requirements.

Caution should be exercised in authorizing residents to receive improvements or utility services before completion of platting or without defining how soon these grant approvals could be made. Longstanding efforts to avoid the proliferation of colonias could be undermined if somehow authorizations were made too early and developers saw this as an opportunity to build homes knowing that water and sewage improvements would be made through grant funds. Residents could bide time with illegal utility hook-ups and cesspools until the improvements and platting were complete.