

**SUBJECT:** Allowing planning commissions in border and other counties

**COMMITTEE:** Land and Resource Management — committee substitute recommended

**VOTE:** 8 ayes — Walker, Crabb, Bosse, F. Brown, Hardcastle, Howard, Mowery, B. Turner  
0 nays  
1 absent — Krusee

**WITNESSES:** For — Brian Quintero, El Paso County Attorney's Office; Rhonda M. Tiffin, Webb County Planning Advisory Board; Donald Lee, Conference of Urban Counties  
Against — None  
On — Craig Pedersen, Texas Water Development Board

**DIGEST:** CSHB 52 would allow the commissioners courts of certain counties to establish planning commissions. The county commissioners could authorize planning commissions to review and approve subdivision plats and to perform other duties assigned to counties by law. The bill also would revise several sections of the Local Government Code related to subdivision platting requirements in border counties.

The option to establish planning commissions under CSHB 52 would be available to counties within 50 miles of the Texas-Mexico border, as well as to other counties eligible for financing under the Economically Distressed Areas Program. The commissioners courts of these counties could authorize planning commissions to regulate subdivisions in accordance with Chapter 232 of the Local Government Code, which includes reviewing and approving subdivision plat applications and household requests for utility services. The commissioners courts also could authorize planning commissions to enforce other laws delegated to counties, including those related to land use, health and safety, and planning and development.

The planning commission would have 60 days to review plat applications. If the commission received an incomplete application, it would have to notify the applicant of all missing information within 15 days and allow the applicant to submit the information in a timely manner. The commission could extend the 60-day limit for a reasonable period if requested by the applicant or for 60 additional days if the county were required to perform a “takings” impact assessment in connection with the application.

If the commission failed to approve or deny the application within 60 days, the applicant could file for an injunction in a county district court. The commission then would have 10 more days to approve or deny the application before the applicant could sue for damages. If the planning commission rejected an application before or after the 60-day time limit, it would have to notify the applicant of the reason for the rejection.

The county commissioners would appoint the five members of the planning commission for staggered two-year terms, with no limit on the number of terms a member could serve. Members would have to be U.S. citizens and residents of the county that the planning commission represented. Planning commission meetings would be subject to open-meeting and open-record requirements under the Government Code.

CSHB 52 also would make several changes to Chapter 232, Subchapter B of the Local Government Code, which governs subdivision platting requirements in certain counties. It would remove the condition that a county have an unemployment rate 25 percent above the state average and a per-capita income rate 25 percent below the state average to be regulated under Subchapter B. The only requirement for counties to be regulated under Subchapter B would be that a portion of the county area lies within 50 miles of an international border.

CSHB 52 would apply Subchapter B to land that is subdivided into two or more lots, rather than four or more lots as in current law. The bill also would allow Subchapter B counties to regulate subdivisions within the extraterritorial jurisdiction of cities, which are now regulated by the cities.

SUPPORTERS  
SAY:

Giving border and certain other counties the option to create planning commissions could improve planning decisions for areas outside city limits. This would speed up the process of providing services to colonia residents

and would create a stronger check against substandard colonia developments. It also would help developers who need timely responses to their plat applications.

Planning commissions, if adopted by eligible counties, could improve the efficiency and quality of the review process for plat applications and requests for utility services. Cities already have the authority to designate planning and zoning boards to review applications for subdivision or home development. These boards have accumulated valuable expertise in local planning and zoning.

Webb County has had a Planning Advisory Board (PAB) since 1991. This board has been very helpful in reviewing subdivision plats and requests for utility connections in consultation with the Webb County Commissioners Court. However, the board is not authorized to review and approve such plats and requests on its own. The PAB model has worked especially well in helping individual residents obtain utility connections. CSHB 52 would allow eligible counties to use the PAB model to improve response time for individual applications, especially for colonia residents who are uncomfortable going through commissioners courts.

CSHB 52 would not vest county planning commissions with any authority that county commissioners courts do not have now. County commissioners would be responsible for delegating specific authority to the planning commissions and for appointing and removing their members.

The changes to Chapter 232, Subchapter B contained in CSHB 52 are necessary to improve enforcement of the Model Subdivision Rules in counties near the Texas-Mexico border. These rules have been instrumental in stopping the proliferation of colonias, and the area where the rules are in effect should be expanded.

CSHB 52 would close loopholes in the implementation of strict Model Subdivision Rules to help prevent the spread of colonias. By developing properties in border counties that do not meet the current Subchapter B requirement of 25 percent above average unemployment and 25 percent below average per-capita income, developers have avoided the intent of the laws to prevent proliferation of colonias. They also have avoided strict regulations by subdividing land into only two or three lots and by developing

within the extraterritorial jurisdictions of cities that are not strict in enforcing subdivision regulations in their outlying areas.

OPPONENTS  
SAY:

The provision describing the authority that county commissioners courts could delegate to planning commissions is too broad and too vague. CSHB 52 would leave too much discretion to the commissioners courts to delegate “enforcement provisions” to the planning commissions. This could lead to problems with the abuse or misuse of power by planning commissions.

The deadlines for the planning commission to approve applications and to provide notice of incomplete applications are too strict. Also, it may be unrealistic to expect counties to conform to such specific deadlines for all of their cases. County planning commissioners should not be subject to more stringent deadlines than are county commissioners.

CSHB 52 would provide no additional resources for counties to create and maintain planning commissions. Many counties might not be able to afford planning commissions even if they wanted to establish them.

OTHER  
OPPONENTS  
SAY:

Counties need to adopt sound planning methods to ensure the delivery of utility services to colonias and to stop the proliferation of colonias. CSHB 52 would not improve counties’ planning methods. It merely would transfer the current authority of county commissioners to planning commissioners without a substantive guarantee of fulfilling these goals. It would be more effective to help counties deal with colonias through targeted financial and technical assistance under the current system, without adding another layer of bureaucracy to local government.

NOTES:

The committee substitute added all of the changes in the applicability of Chapter 232, Subchapter B of the Local Government Code. The changes include the removal of the unemployment and per-capita income requirement for eligible counties, the change in the minimum number of subdivided plots, and the inclusion under county authority of subdivisions within the extraterritorial jurisdictions of cities.

The committee substitute modified the design of the county planning commissions by requiring specific deadlines for application review and approval. It also would subject planning commissions to open-meeting and

open-record requirements and allow removal of planning commission members.

The original bill would have limited the planning commission option to counties with a population of 100,000 or more. The substitute would apply the planning commission option to all counties eligible to regulate subdivisions under Chapter 232 of the Local Government Code.

Finally, the committee substitute removed a section of the original bill that required planning commission members to file affidavits notifying the commission of a potential conflict of interest on particular applications. The original bill also would have required commissioners to abstain from voting on applications when a conflict of interest was present.