

SUBJECT: City and county regulation of subdivisions in an ETJ

COMMITTEE: Land and Resource Management — committee substitute recommended

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

WITNESSES: For — Andrew Erben, KB Homes; Jimmy Gaines, Texas Landowners Council; J. Robert Long, Texas Association of Builders; Harry Savio, Texas Capital Area Builders Association

Against — Marcia L. Conner, City of Austin; Marlene Gafrick, City of Houston; Kelvin Knauf, City of Lago Vista and Texas Municipal League

On — Donald Lee, Texas Conference of Urban Counties

BACKGROUND: Under Local Government Code, sec. 242.001, a plat — a legal description of land showing the division of lots and placement of streets and utilities — for a subdivision within a city’s extraterritorial jurisdiction (ETJ) must be approved by both the city and the county before the plat can be filed with the county clerk. Chapter 212 authorizes municipalities to regulate subdivisions in their ETJs. Chapter 232 provides for county regulation of subdivisions.

In 1999, the 76th Legislature approved SB 1421 by Lucio, et al., granting border counties additional authority to regulate subdivisions in unincorporated areas. The bill sought to remedy problems with colonias — low-income communities in unincorporated subdivisions that lack paved roads and basic services such as water, wastewater treatment, and electricity.

DIGEST: CSHB 1445 would prohibit a city and a county from both regulating subdivisions within a common ETJ. The city and county would have to enter into a written agreement on or before January 1, 2002, identifying the governmental entity authorized to regulate subdivision plats and approve

related permits within the ETJ. The city would have to notify the county of any expansion or reduction of its ETJ, and the two entities would have to amend their subdivision regulation agreement to take into account any expansion or reduction of the city's ETJ.

The city and county could regulate subdivision plats in the ETJ by:

- ! granting exclusive authority to the city;
- ! granting exclusive authority to the county;
- ! apportioning regulation between the city and county; or
- ! adopting an interlocal agreement to create a separate governmental entity that would accept applications, collect fees, and take final action on plats and related permits.

If the city and county failed to reach an agreement, the city would have to continue to regulate subdivision plats if the proposed subdivision was completely within the ETJ. The county would have to regulate subdivision plats if all or part of the proposed subdivision was not included in the ETJ when the application for the plat was filed.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 1445 would end duplication of regulation and needless red tape that developers face when building in ETJs. Most of Texas' population growth has occurred outside city limits in ETJs because of the availability of infrastructure such as roads and water and sewer service, as well as access to employment and recreational and cultural amenities. Conflicting development standards and differing interpretations can create a Catch-22 situation for developers trying to satisfy both city and county officials. Inability to resolve those concerns can inhibit completion of development projects in the ETJ where growth is more likely to occur.

The expense and difficulties of developing within an ETJ often force developers to move to unincorporated areas of a county to produce affordable housing. This trend encourages sprawling development, requires more reliance on wells and septic systems, and puts pressure on counties to provide and maintain infrastructure such as roads and water and sewer systems. Developing in areas with fewer controls can contribute to the rise of

future colonias. The Legislature is considering proposals that would increase counties' authority to regulate in unincorporated areas and provide more tools to combat the development of future colonias, but the problem with dual authority in the ETJ should be addressed before allowing counties to impose additional regulations.

CSHB 1445 would improve the accountability of government. Current law allowing cities to regulate development in ETJs grants them authority over land they may have no intention of annexing. ETJ residents cannot vote in city elections. Clarifying the county's authority to regulate in an ETJ can provide better accountability of county officials to citizens living in the ETJ.

The bill would provide flexibility by giving cities and counties several options for regulating ETJ subdivisions. The agreement could grant either entity exclusive control, or the city and county could agree to apportion the ETJ or create a separate governmental body to regulate ETJ subdivisions. Probably 90 percent of cities and counties should be able to resolve the question of ETJ regulation and reach agreements satisfactory to both.

CSHB 1445 would not change existing local standards for regulation of infrastructure. Developers still would have to meet city or county standards for roads, drainage, water and sewer systems, and other improvements before dedicating them to a public entity.

**OPPONENTS
SAY:**

CSHB 1445 would not end questions about duplication or overlapping of regulations. For example, a county could wind up regulating a subdivision of which a portion lay outside the ETJ. A crafty or unscrupulous developer could plat a 100-lot manufactured-home subdivision and deliberately leave one lot outside the ETJ. The resulting muddle over jurisdictions could lead to a lengthy and expensive court fight to resolve the issue.

The bill would provide no incentive for cities or counties to agree on how to regulate subdivisions in an ETJ. Most criticism of subdivision regulations has been directed at city rather than county policies. In the absence of an agreement between cities and counties such as envisioned by this bill, the more stringent city regulations would remain place, and developers would not gain the relief sought by the bill.

Counties also could be held accountable for maintaining infrastructure without authority to regulate the original installation. City subdivision requirements for streets might not meet county standards, but the county would be accountable to citizens in the ETJ subdivision for maintaining those roads.

Whether the Legislature will grant counties additional authority to regulate land use remains uncertain. It would not be prudent to weaken existing regulations for unincorporated areas.

CSHB 1445 could shift plat regulation from dual control to no control. Such “in between” situations have fostered colonias and other instances of uncontrolled growth. Unregulated subdividing and sale of land does not provide affordable housing. It only creates the need for expensive public investment to remedy what reasonable regulations could have prevented.

NOTES:

Floor amendments are expected to be offered to require a process of binding arbitration if cities and counties fail to reach an agreement on how to regulate subdivisions in the ETJ and to address the “all or part” question about subdivisions with portions lying outside the ETJ.

HB 1445 as filed would have allowed cities to regulate subdivisions in their ETJs only if all of the subdivision had been included in the city’s annexation plan. A county could have regulated an ETJ subdivision only if all or part of the subdivision was not included in the city’s annexation plan.

The companion bill, SB 1172 by Wentworth, was considered by the Senate Intergovernmental Affairs Committee in a public hearing on April 10 and left pending.