

SUBJECT: Revising colonias regulations

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — Coleman, L. Gonzales, Gooden, Jackson, Paxton, W. Smith, White
0 nays
2 absent — Marquez, Hamilton

WITNESSES: For — Jack McClelland, Texas Land Developers Association; (*Registered, but did not testify*: Kyndel Bennett; Scot Campbell; Anthony Gray, John Womack, Texas Land Developers Association; Ned Muñoz, Texas Association of Builders)

Against — Jim Allison, County Judges and Commissioners Association of Texas; Kevin Courtney, Eloiso De Avila, EPISO — El Paso Interreligious Sponsoring Organization; John Henneberger, Emily Rickers, Texas Low-Income Housing Information Service; Raul Segin, Hidalgo County; Kathleen Staudt, Border Interfaith; (*Registered, but did not testify*: Don Allred, Oldham County; Steve Bresnen, El Paso County; Matt Hull, Habitat for Humanity of Texas; Cyrus Reed, Lone Star Chapter, Sierra Club)

On — Donald Lee, Texas Conference of Urban Counties; David Preister, Office of the Attorney General; Rhonda Tiffin, Webb County

BACKGROUND: Colonias are low-income communities in unincorporated subdivisions along the Texas-Mexico border that lack paved roads and basic services such as water, wastewater treatment, and electricity. The Office of the Attorney General identifies more than 1,800 colonias in 29 border-area counties, and state and federal entities estimate their population to range from 400,000 to 500,000.

Local Government Code, ch. 232, subch. B contains requirements for subdividing, advertising, selling, and connecting utilities to residential subdivision lots. “Subchapter B counties” must be within 50 miles of the border and meet certain qualifications for being economically distressed.

Subchapter C contains platting requirements for residential subdivisions that are economically distressed but not located within 50 miles of the border.

In 2009, the 81st Legislature enacted HB 2275 by Raymond, et al., which created the Task Force on Uniform County Subdivision Regulation, containing stakeholders from subchapter B and subchapter C counties, community groups, county associations, and state agencies. In its November 30, 2010, report to the Legislature, the task force made recommendations for uniform standards for the regulation of subdivision development in the unincorporated border areas.

DIGEST: CSHB 1604 would amend portions of the Local Government Code and Water Code governing colonias.

Earnest money contracts. CSHB 1604 would permit property owners and buyers to enter into an earnest-money contract of up to \$250 for the sale of land under subchapter B before the plat had been finally approved and recorded.

The seller or subdivider would have to be licensed, registered, or otherwise credentialed as a residential mortgage loan originator under applicable state and federal law and the Nationwide Mortgage Licensing System and Registry.

Advertising property. CSHB 1604 would repeal Local Government Code, sec. 232.021(9), which includes “offer to sell” in the definition of “sell.” The bill would require that any advertising for platting of a subchapter B property that was not finally approved include notice that:

- no contract for deed, other than the \$250 earnest-money contract allowed by the bill, could be accepted until the plat was approved; and
- the land could not be possessed or occupied until it received final approval from the county commissioners court, and all water and sewer service facilities for the lot were connected or installed according to the Water Code.

The bill would not change the restricted size of advertising signs.

CSHB 1604 would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for engaging in false advertising for sale of land subject to subchapter B plat requirements.

Cure provisions. The bill would require that before a civil action could be filed against a subdivider, the subdivider be notified in writing about the alleged violation and given 90 days to cure, or remedy, the defect. This would not apply to civil enforcement actions brought by the attorney general, district attorney, or county attorney if:

- the alleged violation or threatened violation posed a threat to a consumer or to the health and safety of any person; or
- delay in bringing the enforcement action would cause a financial loss or increased costs to any person, including the county.

The cure provision would not apply in cases of repeat violations and would apply only to enforcement actions taken on or after the bill took effect.

Other provisions. CSHB 1604 would amend subchapter B to require platting for subdivisions that created at least one lot of five acres or less and would give county commissioners courts the option of requiring plats where at least one lot was more than five acres but no more than 10 acres. The bill also would amend subchapter C to give county commissioners courts the option of requiring plats where at least one lot was more than five acres but no more than 10 acres.

CSHB 1604 would require that counties and cities adopt model subdivision rules before applying for grant funds offered under the Water Code to provide water and wastewater infrastructure for existing colonias.

The bill would prohibit counties from imposing a higher standard for streets or roads in a subdivision than it applied to construction of new county streets or roads.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1604 would recognize the enormous strides Texas has made to remediate the problems caused by colonias and acknowledge that standards that prevail elsewhere should be applied to border counties. Broad consensus exists among all stakeholders that subchapter B

regulations have been successful in preventing the spread of new colonias. Disagreements reflect broad philosophical and often very emotional views about the future. The Legislature needs to encourage public policies that create opportunities for economic development along the border. That goal becomes very critical given both current and historical economic woes in this region.

CSHB 1604 would provide adequate safeguards to ensure all infrastructure necessary for convenience, health, and safety would be available while permitting the market to offer affordable housing opportunities for Texans of all income levels. The bill would not reintroduce the old problems of colonias. Any problems or unintended consequences could be addressed by future Legislatures.

The bill would help end separate regional standards and contribute to the development of a uniform statewide standard for development in unincorporated areas. While colonias have been historically viewed as a border problem, irregularly and poorly developed subdivisions can be found throughout Texas. Counties need stronger tools to manage development in unincorporated areas. Most of the state's population growth in the past decade has occurred in these areas, and this will likely continue.

CSHB 1604 would maintain a policy that developers and the ultimate purchasers, rather than the taxpayers in general, be responsible for paying for the infrastructure needed in subdivisions. Water lines and sewage treatment facilities are expensive to provide and maintain, but providing those amenities must be balanced with the need for affordable housing.

Earnest money contracts. CSHB 1604 would help eliminate some of the regulatory roadblocks keeping developers from obtaining needed financing. Current restrictions prohibit developers from entering agreements that would demonstrate a market demand, so financial institutions cannot make sound business decisions whether to extend credit. Availability of financing will be more important as the housing market emerges from its downturn. Limiting access to credit penalizes only developers who want to follow the rules and does not hinder the marginal subdividers who initially created the colonias problem.

CSHB 1604 would help screen out sketchy operators by requiring that they meet strict standards on originating loans created after the meltdown

of the subprime mortgage market. Unfortunately, no laws can entirely deter the unscrupulous from cheating people who wish to fulfill their dreams of owning their own land and home. The bill would add to existing levels of protections. The housing crisis showed that even very sophisticated investors can be duped. The Legislature should avoid adopting what could be seen as a patronizing attitudes toward hardworking Texans families with more common sense than available money.

The \$250 limit on earnest-money contracts would allow low-income Texans to commit to a longer agreement without risking a large amount of money. These families would be likely not to use professional real estate brokers or have money for a 20-percent down payment. Regulation should not penalize those seeking affordable housing.

Advertising. Provisions in CSHB 1604 revising the advertising standards would assist developers and potential homebuyers in identifying and creating a market for new subdivisions. Advertising and access to earnest-money contracts would show financial institutions that a demand exists for these homes. It properly would keep current restrictions on signs to prevent erecting large signs or billboards either on the proposed development or elsewhere in the county.

Cure provisions. Allowing developers a 90-day period to correct minor defects in the platting process would add to the viability of the market for these affordable properties. CSHB 1604 would not prevent enforcement actions when the health or safety of any person was involved and would not cause financial hardship for a developer, homeowner, or the county. It also would preclude delays in addressing repeat or ongoing potential violations. However, it would limit a developer's exposure to possibly ruinous penalties for minor problems such as mistakes in translating technical information on the filed plat into Spanish. Such technicalities should be allowed to be addressed without penalty.

The Legislature routinely passes measures intended to prevent harmful acts from occurring. Lawmakers should not have to wait until a developer is severely fined for a technicality before providing strict guidance to state and local administrators.

The attorney general already must exercise discretion in using limited resources to pursue violations in the colonias regulations. Providing a notice and 90-day cure period would not materially change its operations.

Other provisions. CSHB 1604 would make the five- and 10-acre standards for filing plats uniform in all Texas counties. It would clarify a slight difference in the statutes that requires border counties to exempt subdivisions only where all plots were greater than 10 acres, while the rest of the state can exempt subdivisions of exactly 10 acres as well as larger ones.

CSHB 1604 would end a discrepancy that excludes extraterritorial jurisdictions from eligibility for Texas Water Development Board grants for water supply and sewer system infrastructure. These areas could qualify if the city adopted and enforced the model subdivision requirements.

The bill would set a clearer standard on county standards for accepting developer-built roads and streets by tying it to newly constructed roads.

OPPONENTS
SAY:

Texas has spent millions in taxpayer money to remedy the health and safety dangers posed by colonias along the border. By all accounts, the subchapter B rules have worked, and every county that has enacted and enforced them has prevented the establishment of more colonias. CSHB 1604 would dull the limited tools counties have to prevent colonias. The bill could mean that those taxpayer dollars have been wasted if the colonia standards are weakened. The Legislature should maintain the regulations as they exist and not risk returning to the days when colonias flourished unchecked.

Collapse of housing markets nationwide, not colonias regulations, have harmed development along the border. However, development has easily kept pace with the rapid population growth, even with the colonias restrictions in place. If existing restrictions do not affect established developers, they should not be revised.

The goal of colonias regulations should remain providing for decent and safe affordable housing. It is expensive to retrofit and remediate problems when developers cut corners to save money and earn higher profits at the expense of low-income homebuyers.

Earnest money contracts. CSHB 1604 provisions that would allow even small installment payments on unplatted land could signal a return to the days when unscrupulous developers would collect money for land, making empty promises to buyers and local officials about providing infrastructure

only to disappear once the lots were sold. In many cases, the potential buyer would occupy the land without capital improvements. The bill could again allow these operators to prey on unsophisticated Texans' dreams of owning their own home and land.

Advertising. Much like the earnest-money contract provisions, the bill could allow shifty developers to advertise and sell lots in bad developments without ever ensuring that the lots would be made habitable.

Cure provisions. Allowing a 90-day cure period would allow developers to ignore colonias regulations until they finally got caught and regardless of whether they knowingly violated the law. The provision could allow developers to delay compliance by "slow-walking" corrections to violations brought to their attention.

The 90-day cure provision is unnecessary because of the exemptions for correcting major threats to health and safety. The cure proponents base their arguments on mere conjecture. They offer hypothetical situations and have failed to demonstrate any case where a developer has drawn severe civil penalties for a trivial violation.

OTHER
OPPONENTS
SAY:

CSHB 1604 should be amended to revise the restriction on signs advertising lots. Developers in the rest of the state rely on off-premises signs to market their properties. Even in some border counties, a developer can advertise lots in an undeveloped area, if they lay within the city limits, rather than in the unincorporated portion of the county. Conspicuous signs can alert county code enforcement officials of potential developments and trigger monitoring for compliance with colonia regulations.