

## **BILL ANALYSIS**

C.S.H.B. 1656  
By: Guillen  
Border & Intergovernmental Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Since 1989, legislation has passed with the intention of curbing the proliferation of colonias by developers in border and economically distressed counties. The most significant changes occurred in 1995, when the 74th Texas Legislature enacted provisions to tighten restrictions on existing colonias and to prohibit the sale of any residential lot without adequate water and sewage facilities. With limited enforcement tools available, restriction on the connection of utilities provided a solution for local government enforcement. However, many of these restrictions have resulted in an undue hardship on the purchasers of these properties.

Colonias are currently limited to providing only electricity or gas services to lots platted before 1989. Therefore, individual lots must now be re-platted before water or sewer services are connected, which can limit the colonia's ability to systematically phase in water and sewer services to areas in need. C.S.H.B. 1656 amends existing statutes that restrict utility connections and penalize individual property owners who are not subdividers of residential properties.

C.S.H.B. 1656 clarifies the grandfathering provisions regarding the sale of colonia property and eases the number of unfulfilled requests for utility connections from pre-existing colonias by allowing the connections to be made without re-platting the land.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

#### **Municipal Regulation of Subdivisions**

C.S.H.B. 1656 amends the Local Government Code to authorize an entity that provides water, sewer, electricity, gas, or other utility service in a county near an international border with subdivision platting requirements to serve or connect land with utility service that is located in a municipality's extraterritorial jurisdiction regardless of whether the entity is presented with or otherwise holds a certificate of compliance with plat requirements if the municipal authority responsible for approving plats issues a certificate stating that:

- the subdivided land was sold or conveyed by a subdivider by any means of conveyance: before September 1, 1995, in a county located within 50 miles of an international border; before September 1, 1999, in such a county if, on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality; or before September 1, 2005, in a county located within 100 miles of an international border that contains the majority of the area of a municipality with a population greater than 250,000, has not been subdivided after any of those dates, is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before May 1, 2003, in a county within 50 miles of an international border or September

1, 2005, in a county within 100 miles of an international border, and has had adequate sewer services installed to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage disposal systems;

- the subdivided land is a lot of record that is located in a county within 50 miles of an international border and has adequate sewer services installed that are fully operable to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage disposal systems; or
- the land was not subdivided after September 1, 1995, in a county within 50 miles of an international border, or September 1, 2005, in a county within 100 miles of an international border that contains the majority of the area of a municipality with a population greater than 250,000, and water service is available within 750 feet of the subdivided land or water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

C.S.H.B. 1656 removes the existing provisions that authorize an entity that provides a utility service to serve or connect land with service without the appropriate certificate if the municipal authority responsible for approving plats issues a certificate containing the required information relating to the sale or conveyance of land to a person in a county near an international border, and makes conforming changes.

C.S.H.B. 1656 specifies the conditions under which a utility is authorized to serve or connect certain subdivided land with water, sewer, electricity, gas, or other utility service and makes conforming changes. The bill requires a person to be the owner or purchaser of the subdivided land to obtain a certificate allowing for the provision of utilities service and requires the person to provide to the municipal authority responsible for approving plats certain documentation, including the following:

- a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider before September 1, 1995, September 1, 1999, or September 1, 2005, as applicable;
- for a certificate issued by the authority responsible for approving plats, a notarized affidavit by the person requesting service that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 2003, in a county within 50 miles of an international border or September 1, 2005, in a county within 100 miles of an international border that contains the majority of the area of a municipality with a population greater than 250,000, and the request is to connect or serve a residence;
- a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable; and
- evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from a utility service provider or the authorized agent responsible for the licensing or permitting of on-site sewage facilities, under Health and Safety Code provisions relating to on-site sewage disposal systems.

C.S.H.B. 1656 establishes that, except as otherwise provided in the following paragraph, provisions relating to the connection of utilities within 50 miles of an international border do not prohibit a water or sewer utility from providing utility connection or service to a residential dwelling that: is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias

or to residential lots located in a county within 50 miles of an international border; is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements; when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the existing model subdivision rules; and is located in a project for which the municipality with jurisdiction over the project or the approval of plats within the project area has approved the improvement project by order, resolution, or interlocal agreement under the Interlocal Cooperation Act, if applicable.

C.S.H.B. 1656 prohibits a utility from serving any subdivided land with water utility connection or service under these provisions unless the entity receives a determination that adequate sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity that provides a utility service, or the authorized agent responsible for the licensing or permitting of on-site sewage facilities pursuant to provisions of the Health and Safety Code relating to on-site sewage disposal systems.

### **County Regulation of Subdivisions**

C.S.H.B. 1656 defines "lot of record" as a lot, the boundaries of which were established by a plat recorded in the county clerk's office before September 1, 1989, that has not been subdivided after that date or a lot, the boundaries of which were established by a metes and bounds description in a deed of conveyance, a contract of sale, or other executory contract to convey real property that has been legally executed and recorded in the county clerk's office before September 1, 1989, that has not been subdivided after that date. The bill redefines "subdivider" to mean an individual, firm, corporation, or other legal entity that directly or indirectly subdivides land into lots for sale or lease as part of a common promotional plan in the ordinary course of business.

C.S.H.B. 1656 includes a subdivision that is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted in relation to that program in the exceptions to a provision prohibiting the commissioners court from approving the plat, as it relates to land intended for residential housing and any part of that land lies in a floodplain and makes conforming changes.

C.S.H.B. 1656 includes a request made by the commissioners court on its own motion in the requests on which the court is required to make certain determinations regarding compliance with plat requirements and land in which the court or requesting entity is interested that is located within the jurisdiction of the county and makes conforming changes.

C.S.H.B. 1656 includes a water and sewer utility with an electric or gas utility in an exemption from a requirement that a utility receive the required certificate or determination from the commissioners court before serving or connecting any subdivided land with water or sewer service, and specifies a utility is not prohibited from providing a 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 prior to July 1, 1995, or September 1, 1999, if on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality that has adequate sewer services installed that are fully operable to service the lot, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage disposal systems, and was subdivided by a plat approved prior to September 1, 1989. The bill makes conforming changes.

C.S.H.B. 1656 establishes that, except as otherwise provided in the following paragraph, provisions relating to the connection of utilities within 50 miles of an international border do not prohibit a water or sewer utility from providing utility connection or service to a residential dwelling that: is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county within 50 miles of an international border; is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate

water and wastewater facilities or improvements; when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the existing model subdivision rules; and is located in a project for which the municipality with jurisdiction over the project or the approval of plats within the project area has approved the improvement project by order, resolution, or interlocal agreement under the Interlocal Cooperation Act, if applicable.

C.S.H.B. 1656 prohibits a utility from serving any subdivided land with water utility connection or service unless the entity receives a determination from the county commissioners court that adequate sewer services have been installed to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage disposal systems. The bill repeals a provision authorizing a person requesting service to obtain a certificate stating that land has not been subdivided following certain dates, as applicable, and that water service is available if the person provides the commissioners court with an affidavit stating that the land has not been subdivided.

C.S.H.B. 1656 repeals Section 232.029(f), Local Government Code.

### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1656 adds a provision not in the original providing that installed sewer services are adequate and fully operable to service certain lots or dwellings if they are determined as such by an authorized agent responsible for the licensing or permitting of on-site sewage disposal systems. The substitute retains a provision stricken in the original prohibiting a utility from providing service to a person with the required certificate if the person is the land's subdivider or the subdivider's agent.