HOUSE RESEARCH ORGANIZATION bill analysis | 4/23/2003 | HB 1204 Baxter (CSHB 1204 by Van Arsdale)

SUBJECT: Arbitration over city or county regulation in extraterritorial jurisdictions

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 4 ayes — Talton, Van Arsdale, Hunter, Wong

0 nays

3 absent — Menendez, Bailey, Edwards

WITNESSES: For — Thurman Blackburn, Andrew Erben, Harry Savio, and Hank B. Smith, Home Builders Association of Greater Austin; Gerald Daugherty

Against — Chris Bowers, City of Dallas; Lisa Y. Gordon, City of Austin; Rod Sanchez, City of San Antonio; Leonard D. Young, San Antonio Water System

On — Joe Gieselman, Travis County; Donald Lee, Texas Conference of Urban Counties

BACKGROUND: Local Government Code, sec. 42.021 defines the extraterritorial jurisdiction (ETJ) of a municipality as the unincorporated area contiguous to the corporate boundaries of the municipality and located within a certain distance of its boundaries, depending on the municipality's population.

In 2001, the 77th Legislature enacted HB 1445 by B. Turner, requiring that a city and county reach an agreement on regulations for a subdivision within a city's ETJ. Before HB 1445 was enacted, a plat — the legal description of land showing the division of lots and placement of streets and utilities — for a subdivision within a city's ETJ had to be approved by both the city and the county. Sec. 242.001(d) requires a city and county to regulate subdivisions in an ETJ by:

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

HB 1445 required that a city and county agree to a set of ETJ regulations by April 1, 2002. If they cannot agree on how to regulate subdivisions in an ETJ, the more stringent regulations apply.

DIGEST:

CSHB 1204 would require a city and county that have not reached an agreement on the regulation of subdivisions in an ETJ to enter into arbitration to settle the disputed issues. Arbitration would be required if the city and county had not reached an agreement regarding regulation by the effective date of the bill. Either entity could request arbitration, and neither could refuse to participate. The bill would specify that a single set of regulations for plats in an ETJ is required from a city and county.

CSHB 1204 would repeal current law under which the more stringent regulation of plats in an ETJ prevails if city and county regulations conflict. If a regulation relating to subdivisions in ETJs conflicted with a proposal or plan adopted by a metropolitan planning organization (MPO), the MPO proposal or plan would prevail. The bill also would repeal a requirement that a jurisdiction notify a subdivider if that jurisdiction does not require the filing of a plat for a subdivision.

Arbitration process. The city and county would have to agree on a person to serve as an arbitrator within 30 days after the bill's effective date. If the parties could not agree on the arbitrator, each would select an arbitrator, and the two arbitrators would select a third to preside over the arbitration panel.

The arbitrator would have to render a decision within 60 days of the arbitrator's selection. If no decision had been reached by then, arbitration would continue. After the 60-day period, the county would have exclusive authority to regulate plats in the ETJ until the arbitrator reached a decision.

The arbitrator's authority would be limited to decisions regarding city and county regulation of plats. The two parties could not arbitrate regulation of an individual plat. The two parties would be equally liable for the costs of the arbitration, and the prevailing party would have to maintain infrastructure covered by the arbitrated regulations. The arbitration requirements would expire September 1, 2005.

Application. CSHB 1204 would not apply to the City of Houston or Harris County, to counties within 50 miles of the Texas-Mexico border, or to economically distressed counties as defined under Local Government Code, chapter 232.

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, 2003.

SUPPORTERS SAY:

In 2001, the Legislature made clear its desire for cities and counties to coordinate the regulatory framework in overlapping areas. CSHB 1204 is needed to jump-start a process that has stalled in many communities.

Before HB 1445 became law, a developer in an ETJ was subject to dual regulation by city and county. The resulting maze of bureaucracy led to expensive delays as home builders attempted to satisfy the different, often conflicting codes for separate jurisdictions. HB 1445 sought to reconcile this problem by forcing cities and counties to agree on a common set of standards. CSHB 1204 would require mediation in areas where jurisdictions have been unable or unwilling to meet the intent of HB 1445.

The bill would require a city and county that have not agreed on regulation in an ETJ to enter into binding arbitration, allowing an impartial person to determine the proper regulatory framework. Although cities and counties were given ample time to adopt consistent regulations, some have been unable to reach a settlement. Meanwhile, home builders working in ETJs remain subject to the burdensome process of dual approval of their projects. CSHB 1204 would settle the issue by requiring the parties to produce an arbitrated single set of regulations within 90 days after the bill’s effective date.

Although most overlapping jurisdictions have met HB 1445's requirements, some have reached an impasse that can be resolved only through binding arbitration. Inherent territoriality has politicized the process in some areas, and without a method to break the deadlock, the relief from red tape sought under HB 1445 may never be realized.

CSHB 1204 would not grant an advantage to any party during the arbitration process, since the arbitrated decision alone would govern ETJs. Currently, a

city with stricter development standards has no incentive to compromise with a county, since the stricter regulations prevail until an agreement is reached. Because a county is responsible for services provided to its citizens, it makes sense that the county's regulations should apply before the negotiation is complete. This bill would level the playing field for the two entities and would expedite the adoption of a balanced agreement.

OPPONENTS SAY:

By allowing county regulations to prevail until an agreement had been obtained, CSHB 1204 would grant an unfair advantage to counties in the negotiation process. If a single set of standards must prevail in the interim, it should be the city's, since a city is presumed to annex an ETJ at some point and generally has stricter standards. By allowing county standards to prevail until arbitration is complete, CSHB 1204 would eliminate any incentive for a county to negotiate in good faith during the arbitration process.

By eroding a city's authority to regulate areas outside its boundaries, CSHB 1204 would weaken cities' annexation powers. A recent study suggests that interfering with cities' annexation processes could cost Texas billions of dollars in lost economic activity and income. Regulation of ETJs is essential to city planning and growth management. CSHB 1204 would make it difficult if not impossible for cities to establish the requisite urban infrastructure and land-use requirements in ETJs.

The goals of Texas cities are much broader than those of counties, and the law should accommodate municipal attempts to manage water quality, growth, traffic, and other issues that are important to Texas citizens. Counties in Texas are granted little or no zoning or other land-use regulatory authority, while cities have broader powers to plan and manage land use. Arbitration could force a city to weaken regulations that protect the quality of life for city dwellers.

Although the Legislature may have set too ambitious a deadline in HB 1445 for cities and counties to reconcile their ETJ regulations, many have made considerable progress toward completion of their responsibilities. The process of identifying conflicts in city and county codes has been time-consuming, but cities and counties can resolve the outstanding issues if the Legislature gives them adequate time to do so.

NOTES:

As filed, HB 1204 would have allowed only county regulations to apply in ETJs in which the city and county have not reached an agreement. County regulation of roads and drainage would have prevailed in areas where municipal and county regulations conflicted. The original bill would have granted a county, rather than a municipality, exclusive authority to regulate plats and subdivisions. It would have allowed interlocal agreements for subdivision construction and design standards if the county relinquished its authority to regulate those standards and if the municipality maintained the infrastructure and did not adopt more stringent standards than those present in the municipality.

The companion bill, SB 544 by Wentworth, was considered by the Senate Intergovernmental Relations Committee in a public hearing on April 16 and left pending.