Report of the

Task Force on Uniform County Subdivision Regulation

Pursuant to HB 2275 as passed by the 81st Legislature

November 30, 2010

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Honorable Eddie Lucio
Chairman, Senate International Relations and Trade Committee
PO Box 12068
Austin, Tx 78711-2910

Honorable Royce West
Chairman, Senate Intergovernmental Relations Committee
PO Box 12068
Austin, Tx 78711-2910

Honorable Veronica Gonzales
Chairman, House Border and Intergovernmental Affairs Committee
PO Box 2910
Austin, Tx 78768-2910

Honorable Garnet Coleman
Chairman, House County Affairs Committee
PO Box 2910
Austin, Tx 78768-2910

Dear Chairman Lucio, West, Gonzales and Coleman:

The Task Force on Uniform County Subdivision Regulation hereby submits its interim report to the Texas Legislature. The Task Force on Uniform County Subdivision Regulation was created by the legislature in 2009 with the passage of HB 2275 by Representative Richard Raymond and Senator Judith Zaffirini.

The Mission of the Task Force on Uniform County Subdivision Regulation is to:

a. Research and identify the conflicts and deficiencies in current law regarding the regulation of the development of subdivisions in the unincorporated areas of counties near the international border and in economically distressed counties.
b. Develop recommendations and draft a proposal for legislation to create uniform standards for the regulation of the development of subdivisions in the unincorporated areas of counties near the international border and in economically distressed counties.
c. Not later than December 1, 2010, the Task Force shall submit its findings, recommendations, and proposals for legislation to the standing committees of the Senate and House of Representatives having primary jurisdiction over border regions or county affairs.

Under the leadership of Co-Chairman Erich Morales of El Paso County and Co-Chairman Rhonda Tiffin of Webb County the Task Force met ten times to discuss existing statutes and consider proposals to clarify or improve the existing county subdivision regulation authority. The following findings and recommendations were adopted by a majority vote of the Task Force during its final meeting.

The Task Force's final report includes recommendations to the Texas Legislature on matters of public policy. Three members of the Task Force are employed by Texas state agencies – The Office of the Attorney General, the Texas Secretary of State, and the Texas Water Development Board. These three members abstained from voting on any particular measure that involved any such public policy recommendation.

The Task Force extends its sincerest thanks to the staff at the Texas Water Development Board for arranging and facilitating meetings of the Task Force. Special thanks go out to Ms. Leila Wurst whose organization and professionalism greatly enhanced the meetings of the Task Force.

Sincerely,

Erich Morales, Co-Chairman

Rhonda Tiffin, Co-Chairman

cc: Senator Judith Zaffirini
Representative Richard Raymond

Members of the Task Force on Uniform County Subdivision Regulations

- Erich Morales, Co-Chair - *El Paso County*
- Rhonda Tiffin, Co-Chair - *Webb County*
- The Honorable Dennis David Gonzalez - *Starr County*
- Raul E. Sesin, P.E. - *Hidalgo County*
- Ernesto E. Hinojosa, P.E. - *Cameron County*
- Tyner Little - *Nueces County*
- Robert Doggett - *Texas Department of Housing and Community Affairs* (replaced by Emily Rickers)
- Emily Rickers - *Texas Department of Housing and Community Affairs* (replaced Robert Doggett)
- Nick Mitchell-Bennett - *Texas Department of Housing and Community Affairs*
- Ann Cass - *Texas Department of Housing and Community Affairs*
- Lionel Lopez - *Texas Department of Housing and Community Affairs*
- Juan Vargas - *Texas Department of Housing and Community Affairs*
- Eduardo Anaya - *Texas Department of Housing and Community Affairs*
- The Honorable Jonathan Letz - *Kerr County*
- Dennis DeWitt - *Bee County*
- The Honorable Mark Evans - *Trinity County*
- Randy Bowling - *Texas Association of Builders*
- Scot Campbell - *Texas Association of Builders*
- Hank Smith - *Texas Association of Builders*
- Donald Lee - *Texas Conference of Urban Counties*
- The Honorable Debbie Ingalsbe - *County Judges & Commissioners Association of Texas*

State Agency Members

- Joe Reynolds, Task Force Secretary – *Texas Water Development Board*
- Jay Dyer - *Office of the Attorney General*
- Enriqueta "Keta" Caballero – *Office of the Texas Secretary of State*

General Findings and Recommendations

1. The Texas Legislature's grant of more authority to border counties effectively stopped the creation of more *colonias* on the Texas border by requiring land developers to install or guaranty basic infrastructure, which includes water, sewer, road and drainage, for public health and safety.
2. Basic infrastructure needed to protect the public health and safety at least requires the supply of adequate drinking water and the appropriate disposal of wastewater.
3. The current system requiring the developer to either provide or guaranty the installation of basic infrastructure prevents the taxpayers from having to subsequently fund projects to install infrastructure to meet basic development standards.
4. The current system requiring the developer to either provide or guaranty the installation of basic infrastructure is included in the costs of development of raw land that is ultimately paid by the purchasers of the developed lots.
5. While *colonias* without basic infrastructure were initially concentrated on the Texas border, similar developments with substandard infrastructure have existed across Texas.
6. In 1995 and again in 2005, the Texas Legislature gave non-border Texas counties the discretion to adopt regulations like those used by the border counties to prevent the proliferation of *colonias* and economically distressed areas.
7. The growth of the border has continued vigorously after new regulations were adopted and the new regulations have meant almost no new developments with substandard infrastructure.
8. The Texas Legislature's decisions to remediate *colonias* and economically distressed areas built in the past by using at least a billion dollars of taxpayer money to install basic infrastructure has created improved conditions in many existing substandard subdivisions.
9. Using state taxpayer funds to remediate substandard developments in non-border counties is fair, provided that those counties also must require the same basic infrastructure for future developments so that no additional substandard *colonias* will be created in Texas.
10. The law should be clarified to require a level playing field so that all counties have the same process and requirements for basic infrastructure if they seek access to state funds to remediate *colonias* as the process and requirements required of border counties.

11. Counties currently have authority to impose a legal requirement for new homes to be built following building code standards and to submit third-party inspection certificates to the county. However, counties lack sufficient authority to effectively enforce the building code requirements in order to meet basic health and safety standards for plumbing, electricity and construction.

12. The building code authority should continue to rely on third-party inspections and notification to the county (i.e. no permits are required), but the legislature should make some adjustment to the system in order to give counties additional tools to effectively enforce the requirement. The legislature should make two changes to the statute:

    a. Allow counties to withhold the final utility connection certificate required by Chapter 232 of the Local Government Code for a residential property until all inspections, notices and county regulatory requirements are in order; and

    b. Authorize counties to impose a nominal fee of no more than $125 per housing unit to cover the costs of administering the building code requirements. It should be noted that committee members representing the home building industry are concerned about the impact of a filing fee on housing costs and take the position that building code administration costs be paid with general county revenues.

13. The Colonias statutes should be amended to grant authority to the Texas Water Development Board to consider and approve proposals from counties to utilize, in lieu of the build-it or bond-it requirements for private infrastructure such as septic-tanks and water-wells, an alternative enforcement plan using any tools authorized by law. The legislature should include the following provisions:

    a. Authorize TWDB to consider a county proposed plan, utilizing any legal authority, including the authority to require a bond in lieu of building, to create an alternative to build-it or bond-it;

    b. In order to approve a proposed plan, the TWDB must find that it would reasonably prevent the development of new residential housing units without adequate water and wastewater; and

    c. A county that adopts the alternative plan would be ineligible to apply for state grants to remediate inadequate water and wastewater on land subdivided after the plan has been adopted.

14. The legislature should amend the applicability provisions in Subchapter B, Chapter 232, Local Government Code to include counties that have adopted the model rules and subchapter B requirements pursuant to Section 232.108.

Findings and Recommendations on resolving the 5/10 Acre Issue

1. Subchapters A and B of Chapter 232, Local Government Code, are not consistent with each other regarding what size lots are exempt from platting requirements. This lack of uniformity causes inequality in what size lots are exempt. Subchapter A exempts lots that "are more than 10 acres in area" while Subchapter B exempts lots that are "10 or more acres." This means that Subchapter A does not exempt a 10 acre lot while Subchapter B does.

2. Subchapter B should be amended to exempt lots of more than 10 acres in area from platting requirements instead of lots that are 10 acres or more as the language currently states. This would make the exemption uniform with Subchapter A by clarifying that both subchapters apply to lots of 10 acres or less.

    a. The amendment to Subchapter B would appear as follows:

    Sec. 232.022. APPLICABILITY. (d) This subchapter does not apply if each of the lots of the subdivision is [~~10 or more acres~~] more than 10 acres in area.

3. Subchapters B and C of Chapter 232 are also not consistent with each other regarding platting requirements. This inconsistency raises an issue because Subchapter B counties are required to regulate platting more intensely than Subchapter C counties. Subchapter B counties are required to regulate platting for lots that are five acres or less as well as those between five and 10 acres that are residential. Subchapter C counties are not required to regulate for lots between five and 10 acres.

4. To attain uniformity, subchapters B and C should be modified so that each affected county requires platting for subdivisions in which the smallest lot consists of five (5) or less acres, and allow county discretion to require platting for subdivisions in which the smallest lot consists of greater than five acres but no more than ten (10) acres in area.

Findings and Recommendation on Model Subdivision Rules in the ETJ

1. Current statute requires the Texas Water Development Board to adopt model subdivision rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions, including rules relating to septic tanks and other waste disposal systems, are met. The rules are intended to reduce and eliminate the development of Colonias.

2. Applicants in economically distressed areas may apply for grant funding to address existing Colonias, but they must be located in a city or county that has adopted the model subdivision rules in order to be eligible to receive grant funding. Unfortunately, as the statute is currently written, an applicant in the Extraterritorial Jurisdiction (ETJ) of a city is blocked from receiving the grant funds if the city does not want to adopt the model subdivision rules for both the city and ETJ.

3. The Water Code (Section 16.343) should be amended to clarify that the applicant can apply for and receive the grant funding if the applicant is:

    a. Located in a city, and the city has adopted the model rules;

    b. Located in the ETJ of a city, and the applicant demonstrates that the model rules have been adopted and are enforced in the ETJ by either the city or county; or

    c. Located outside the ETJ of a city, and the county has adopted the model rules.

    d. The amendment to Section 16.343(g), Water Code, would appear as follows:

    (g) Before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board, [~~a political subdivision must adopt the model rules pursuant to this section~~] <u>if the applicant is:</u>

    <u>(1) located in a city, the city must adopt the model rules pursuant to this section;</u>

    <u>(2) located in the extraterritorial jurisdiction of a city, the applicant must demonstrate that the model rules have been adopted and are enforced in the extraterritorial jurisdiction by either the city or the county; or</u>

    <u>(3) located outside the extraterritorial jurisdiction of a city, the county must adopt the model rules pursuant to this section</u>.

Findings and Recommendation on Identifying and Classifying Colonias

1. The Secretary of State (SOS) in Section 405.021, Government Code is directed to maintain a system to identify and classify colonias within 62 miles of an international border. Section 405.021 does not provide for a process whereby anyone is authorized to designate colonias to the SOS. While it is the practice of the SOS to allow cities and counties to provide information on colonias, there is no formal provision for this system. Therefore, some confusion has occurred on whom may propose official colonia identification and how it occurs.
2. A new subsection should be inserted in Section 405.021, Government Code that clearly provides for a process for cities and counties to nominate areas for inclusion on the State list of colonias maintained by the Secretary of State.
    a. The amendment to Section 405.021, Government Code, would appear as follows:

    (g-1) A system described by subsection (g):

    (1) Shall include a way for cities and counties, on a form prescribed by the secretary of state, to nominate areas for identification as a colonia; and

    (2) May refer nominated areas for review by the Texas Water Development Board, the Office of Attorney General, or any other appropriate agency as determined by the secretary of state.

Findings and Recommendation on Model Rule Platting Requirements

1. The Texas Water Development Board's model rules impose platting obligations as the method of regulatory enforcement to assure compliance with the state's minimum standards for water and wastewater facilities; however, the applicability provisions of the model rules are not consistent with the applicability provisions of the Local Government Code (LGC). For those certain divisions specifically exempt or excepted from the LGC provisions, the platting obligations adopted by the model rules have been brought under scrutiny as to whether or not the enabling legislation (Sec. 16.343, Water Code) granted adequate authority for said administrative rules to implement a requirement for platting outside the authorities of the LGC provisions.
2. While it has long been held that the more stringent provisions of the model rules supersede the platting exemptions in the LGC, the model rules do not adequately provide for the authority of a political subdivision to process a plat under the model rules using all of the regulatory authority contained in the LGC. Principally, the model rules are limited in scope to the state's minimum requirements for water and sewer facilities and do not address other important platting issues contained in the LGC (i.e., proper descriptions; acknowledgements; dedications; surveyor certifications; drainage of lots; advertising standards; connection of utilities; revisions; amendments or cancellation of plats; and similar authorities as set out by the LGC provisions).
3. The Water Code (Subsection 16.343(f)) should be amended to clarify the authority to impose platting obligations through the model rules and political subdivisions can avail themselves of the full authority of the platting practices contained in chapters 212 and 232 of the LGC for plats required by the model rules but otherwise exempt or excepted from those chapters.
    a. The amendment to Section 16.343(f), Water Code, would appear as follows:

        (f) The model rules may impose requirements for platting, replatting, or any other method authorized by law to augment regulatory compliance by political subdivisions. Regardless of any new law to the contrary, a political subdivision that has adopted the model rules pursuant to this section may impose the platting requirements of Chapter 212 or 232, Local Government Code, as applicable to any division of real property that is required to be platted or replatted by the provisions of the model rules.