

BILL ANALYSIS

Senate Research Center
78R17462 E

C.S.H.B. 1204
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Intergovernmental Relations
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Committee Report (Substituted)

DIGEST AND PURPOSE

The 77th Texas Legislature passed legislation which enabled subdivisions in the extraterritorial jurisdiction (ETJ) of a municipality to not be subject to both municipal and county development regulations by consolidating development regulations. C.S.H.B. 1204 clarifies who approves subdivision plats in the ETJ. Since less populous counties are not experiencing the same level of development as are urban counties, problems with dual regulation are not as apparent. In those counties, dual regulation of subdivisions would be allowed. In populous counties, however, regulation of subdivisions in the ETJ would become the exclusive responsibility of the county.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 14 (Section 232.0256, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading of Section 242.001, Local Government Code, to read as follows:

Sec. 242.001. REGULATION OF SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION GENERALLY.

SECTION 2. Reenacts and amends Section 242.001(a), Local Government Code, as amended by Chapters 736 and 1028, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Provides that this section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Provides that Subsections (b)-(g) do not apply to certain counties.

(b) Provides that this section takes effect only if House Bill No. 1197, Acts of the 78th Legislature, Regular Session, 2003, does not become law. Provides that if that bill becomes law, this section has no effect.

SECTION 3. Reenacts and amends Section 242.001(a), Local Government Code, as amended by Chapters 736 and 1028, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Provides that this section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Provides that Subsections (b)-(g) do not apply to certain counties.

(b) Provides that this section takes effect only if House Bill No. 1197, Acts of the 78th Legislature, Regular Session, 2003, becomes law. Provides that if that bill does not become law, this section has no effect.

SECTION 4. Reenacts and amends Section 242.001(c), Local Government Code, as amended by Chapters 736 and 1028, Acts of the 77th Legislature, Regular Session, 2001, by amending Subsections (d), (f), and (g) and adding Subsection (h) and (i), as follows:

(c) Prohibits a municipality, except as provided by Subsections (d)(3) and (4), from regulating subdivisions and approving related permits in the extraterritorial jurisdiction of a municipality. Requires the municipality and county, on reaching an agreement, to certify that the agreement complies with the requirements of this chapter. Provides that any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the county or that was previously approved under Chapter 232 does not affect an rights accrued under Chapter 245. Makes a conforming changes.

(d) Adds new criteria to existing Subdivision (4) relating to an interlocal agreement between a municipality and county.

(f) Requires the municipality and the county, if a certified agreement between a county and municipality as required by Subsection (c) is not in effect on or before the applicable date prescribed by Section 242.0015(a), to enter into arbitration as provided by Section 242.0015. Provides that if the arbitrator or arbitration panel, as applicable, has not reached a decision in the 60-day period as provided by Section 242.0015, the arbitrator or arbitration panel, as applicable, is required to issue an interim decision regarding the regulation of plats and subdivisions and approval of related permits in the extraterritorial jurisdiction of the municipality. Requires the interim decision to provide for a single set of regulations and authorize a single entity to regulate plats and subdivisions. Provides that the interim decision remains in effect only until the arbitrator or arbitration panel reaches a final decision. Deletes current text regarding this subsection applying until an agreement is reached under Subsection (d). Deletes current text regarding an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001.

(g) Provides that if a regulation or agreement adopted under this section relating to plats and subdivisions of land or subdivision development establishes a plan for future roads that conflicts with a proposal or plan for future roads adopted by a metropolitan planning organization, the proposal or plan of the metropolitan planning organization prevails. Deletes existing text.

(h) Provides that this subsection applies only to a county to which Subsections (b)-(g) do not apply, except that this subsection does not apply to a county subject to Section 242.002. Provides that for an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of both the municipality and the county. Provides that if a municipal regulation and a county regulation relating to plats and subdivisions of land conflict, the more stringent regulation prevails. Provides that however, if one governmental entity requires a plat to be filed for the subdivision of a particular tract of land in the extraterritorial jurisdiction of the municipality and the other government entity does not require the filing of a plat for that subdivision, the authority responsible for approving plats for the governmental entity that does not require the filing must issue on request of the subdivider a written certification stating that a plat is not required to be filed for that subdivision of the land. Requires the certification to be attached to a plat required to be filed under this subsection.

(i) Provides that property subject to pending approval of a preliminary or final plat application filed after September 1, 2002, that is released from the extraterritorial jurisdiction of a municipality is required to be subject only to county approval of the plat application and related permits and county regulation of that plat. Provides that this subsection does not apply to the simultaneous exchange of extraterritorial jurisdiction between two or more municipalities or an exchange of extraterritorial jurisdiction that is contingent on the subsequent approval by the releasing municipality.

SECTION 5. Amends Chapter 242, Local Government Code, by adding Section 242.0015, as follows:

Sec. 242.0015. ARBITRATION REGARDING SUBDIVISION REGULATION

AGREEMENT. (a) Provides that this section applies only to a county and a municipality that are required to make an agreement as described under Section 242.001(f). Provides that if a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends 3.5 miles or more from the corporate boundaries of the municipality is not in effect on or before January 1, 2004, the parties must arbitrate the disputed issues. Provides that if a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends less than 3.5 miles from the corporate boundaries of the municipality is not in effect on or before January 1, 2006, the parties must arbitrate the disputed issues. Prohibits a party from refusing to participate in arbitration requested under this section. Provides that an arbitration decision under this section is binding on the parties.

(b) Requires the county and the municipality to agree on an individual to serve as arbitrator. Provides that if the county and the municipality cannot agree on an individual to serve as arbitrator, the county and the municipality must each select an arbitrator and the arbitrators selected must select a third arbitrator.

(c) Provides that the third arbitrator selected under Subsection (b) presides over the arbitration panel.

(d) Requires the arbitrator or arbitration panel, as applicable, not later than the 30th day after the date the county and the municipality are required to have an agreement in effect under Section 242.001(f), to be selected.

(e) Provides that the authority of the arbitrator or arbitration panel is limited to issuing a decision relating only to the disputed issues between the county and the municipality regarding the authority of the county or municipality to regulate plats, subdivisions, or development plans.

(f) Provides that each party is equally liable for the costs of an arbitration conducted under this section.

(g) Requires the arbitrator or arbitration panel, as applicable, to render a decision under this section not later than the 60th day after the date the arbitrator or arbitration panel is selected. Provides that if after a good faith effort the arbitrator or panel has not reached a decision as provided under this subsection, the arbitrator or panel is required to continue to arbitrate the matter until the arbitrator or panel reaches a decision.

(h) Prohibits a municipality and a county from arbitrating the subdivision of an individual plat under this section.

SECTION 6. Amends Subchapter A, Chapter 212, Local Government Code, by adding Section 212.0025, as follows:

Sec. 212.0025. CHAPTER-WIDE PROVISION RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. Provides that the authority of a municipality under this chapter relating to the regulation of plats or subdivisions in the municipality's extraterritorial jurisdiction is subject to any applicable limitation prescribed by an agreement under Section 242.001.

SECTION 7. Amends the heading of Chapter 232, Local Government Code, to read as follows:

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS AND PROPTERY
DEVELOPMENT

SECTION 8. Amends Subchapter A, Chapter 232, Local Government Code, by adding Section 232.0013, as follows:

Sec. 232.0013. CHAPTER-WIDE PROVISION RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. Provides that the authority of a county under this chapter relating to the regulation of plats or subdivisions in the extraterritorial jurisdiction of a municipality is subject to any applicable limitation prescribed by an agreement under Section 242.001 or by Section 242.002.

SECTION 9. Amends Section 232.0015(b), Local Government Code, to provide that except as provided by Section 232.0013, this subchapter does not apply to a subdivision of land to which Subchapter B applies.

SECTION 10. Amends Section 232.022(a), Local Government Code, to provide that this subchapter applies only to certain counties including a county in which an election has been held under Section 232.0221 on the question of whether the county is required to operate under this subchapter and the majority of the votes cast in the election were in the affirmative.

SECTION 11. Amends Subchapter B, Chapter 232, Local Government Code, by adding Section 232.0221, as follows:

Sec. 232.0221. ELECTION. (a) Authorizes the commissioners court of a county to order and hold an election in the county on the question of granting the commissioners court the authority to regulate the subdivision of land under the subchapter.

(b) Requires the ballot, for an election under this section, to be prepared to permit voting for or against the proposition: "Granting name (name of county) the authority to regulate the subdivision of land in the unincorporated area of the county."

SECTION 12. Amends Subchapter B, Chapter 232, Local Government Code, by adding Section 232.0225, as follows:

Sec. 232.0225. MINIMUM STATE STANDARDS. (a) Provides that to the extent this subchapter refers to minimum state standards or refers to the application of a provision of Chapter 16, Water Code, the references apply to all counties regardless of any limitation established by Chapter 16, Water Code, including the limitation established by Section 16.343(f), Water Code.

(b) Provides that this section and the other provision of this subchapter do not authorize a county to participate in any financial assistance program or any other program authorized by Chapter 15, 16, or 17, Water Code, unless the county qualifies under the Water Code.

SECTION 13. Amends Section 232.025, Local Government Code, to provide that by an order adopted and entered in the minutes of the commissioners court, and after a notice is published in English and Spanish in a newspaper of general circulation in the county, the commissioners court shall for each subdivision adopt reasonable specifications that provide for drainage in the subdivision to efficiently manage the flow of stormwater runoff in the subdivision; and coordinate subdivision drainage with the general storm drainage pattern for the area; and require lot and block monumentation to be set by a registered professional surveyor before recordation of the plat.

SECTION 14. Subchapter B, Chapter 232, Local Government Code, by adding Section 232.0255 and 232.0256, as follows:

Sec. 232.0255. STANDARD FOR ROADS IN SUBDIVISION. Prohibits a county from imposing under Section 232.025 a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of streets or roads with a similar type and amount of traffic.

Sec. 232.0256. ADDITIONAL REQUIREMENTS: USE OF GROUNDWATER. (a) Authorizes the commissioners court of a county by order to require a plat application to have a certain statement attached to it, if a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land.

(b) Requires TCEQ by rule to establish the appropriate form and content of a certification to be attached to a plat application under this section.

SECTION 15. Amends Section 232.038, Local Government Code, as follows:

Sec. 232.038. New heading: SUIT BY PRIVATE PERSON. (a) Provides that this section only applies to certain individuals.

(b) Authorizes a person described by Subsection (a) to bring certain suits in the district court in which property is located. Deletes reference to a district court in Travis County.

SECTION 16. Amends Chapter 232, Local Government Code, by adding Subchapter F, as follows:

SUBCHAPTER F. REGULATION OF LAND DEVELOPMENT

Sec. 232.151. SCOPE OF REGULATORY AUTHORITY. Authorizes the commissioners court of a county that is granted authority in accordance with this subchapter to regulate, by order, land development in the unincorporated area of the county in a certain manner.

Sec. 232.152. COMPLIANCE WITH CERTAIN LAWS. Requires a county adopting a regulation under this subchapter relating to the location, design, construction, installation, size, or extension of an on-site sewage disposal system to be an authorized agent and adopt certain regulations.

Sec. 232.153. ELECTION TO GRANT REGULATORY AUTHORITY. Authorizes the commissioners court of a county to order and hold an election in the unincorporated area of the county on the question of granting the commissioners court the authority to regulate land development in the unincorporated area of the county. Provides that only voters who reside in the unincorporated area of the county are eligible to vote in an election under this subchapter.

Sec. 232.154. BALLOT PROPOSITION. Requires the ballot for an election under this subchapter be prepared to permit voting for or against the proposition: "Granting (name of county) the authority to regulate land development in the unincorporated area of the county."

Sec. 232.155. EFFECT OF ELECTION. Authorizes the commissioners court of a county to adopt a regulation under this subchapter if a majority of the votes received on the question at the election approve the grant of authority.

SECTION 17. Amends Section 395.001(7), Local Government Code, to redefine "political subdivision."

SECTION 18. Amends Section 395.011(b), Local Government Code, to remove the term "corporate" in relation to boundaries.

SECTION 19. Amends Sections 395.016(c) and (d), Local Government Code, as follows:

(c) Prohibits an impact fee from being collected on certain service units for new development which is platted in accordance with Subchapter A, Chapter 212, or Subchapter A or B, Chapter 232, or the subdivision or platting procedures of any other

political subdivision before the adoption of an impact fee.

(d) Makes conforming changes.

SECTION 20. Amends Section 13.002(26), Water Code, to redefine “affected county.”

SECTION 21. Amends Section 13.2501, Water Code, to replace Section 232.0047 with Section 232.029, Local Government Code, in relation to conditions requiring refusal of service.

SECTION 22. Amends Section 26.001 (26), Water Code, to make a conforming change.

SECTION 23. Provides that if any provision of this Act or its application to any county, municipality, or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 24. Makes application of the changes in law made by this Act to Chapters 212, 232, and 242, Local Government Code, prospective, except as provided by Section 242.001(i), Local Government Code, as added by this Act.

SECTION 25. Provides that the changes in law made by this Act to Chapter 232, Local Government Code, and other statutes apply only to a tract of land subdivided on or after September 1, 2003. Provides that a tract of land subdivided before that date is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 26. Effective date: upon passage or September 1, 2003.