

By: Olivo

H.B. No. 3232

A BILL TO BE ENTITLED

AN ACT

relating to common areas in certain residential subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 212, Local Government Code, is amended by adding Section 212.0155 to read as follows:

Sec. 212.0155. ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS AFFECTING COMMON AREAS. (a) This section applies to land located wholly or partly in the corporate boundaries or the extraterritorial jurisdiction of a municipality if the municipality:

(1) has a population of more than 50,000; and

(2) is located wholly or partly in a county:

(A) with a population of more than three million;

or

(B) with a population of more than 275,000 that is adjacent to a county with a population of more than three million.

(b) In this section:

(1) "Common area" means:

(A) an area that is or was zoned, restricted by covenants, or designated on a recorded plat as a common area, joint use area, or other shared community use area, including an area having a use or designation as a golf course, country club, amenity, open space, common area, sports field, green space, landscaping,

1 buffer, park, lake, trail, or pathway, or a similar use or  
2 designation;

3 (B) an area adjacent to single-family  
4 residential lots that:

5 (i) was used for at least 10 years as a  
6 common area; and

7 (ii) for which the use as a common area was  
8 not terminated more than five years before the date of the  
9 application for a platting approval;

10 (C) an area benefited by restrictive covenants  
11 that limit the development of adjacent residential single-family  
12 lots in consideration of the existence of a common area, including  
13 special setback lines, architectural restrictions, prohibition of  
14 fences, or disclosures, waivers, or releases regarding the  
15 liability of being adjacent to the common area; or

16 (D) an area determined by a court, by declaratory  
17 judgment or otherwise, to be an area that:

18 (i) was represented to residential  
19 single-family home owners, by the developer of the lots or a  
20 successor developer or by the original builder of houses on the  
21 lots, to be available for common use by the homeowners;

22 (ii) was included in any sales materials by  
23 the original developer of the lots or a successor developer or the  
24 original builder of houses on the lots to purchasers of residential  
25 single-family lots or houses as an amenity, without a prominent  
26 disclaimer that the amenity could be removed without the consent of  
27 the lot owners;

1                   (iii) generated tax benefits by being  
2 valued for ad valorem tax purposes based on a special use that  
3 resulted in a valuation less than the highest and best use if  
4 unrestricted;

5                   (iv) was an integral part of a common scheme  
6 of development for a predominantly residential single-family  
7 development project; or

8                   (v) was a community amenity that increased  
9 the initial sales price of residential lots, without which the  
10 adjacent single-family residential area would be materially  
11 adversely affected by future value reductions that would not occur  
12 if the common area, considered as a whole unit, if appropriate,  
13 remained.

14                   (2) "Dedictory instrument," "property owners'  
15 association," and "restrictive covenant" have the meanings  
16 assigned by Section 202.001, Property Code.

17                   (3) "Management certificate" means a certificate  
18 described by Section 209.004, Property Code.

19                   (4) "Restrictions," "residential real estate  
20 subdivision" or "subdivision," "owner," and "real property  
21 records" have the meanings assigned by Section 201.003, Property  
22 Code.

23                   (c) For the purposes of a particular neighborhood, the  
24 common areas may be considered collectively or separately, as  
25 appropriate under the circumstances in the judgment of the plat  
26 approving authority, notwithstanding that the common area is not  
27 contiguous, is not adjacent to, or is in separately platted or owned

1 parcels.

2 (d) For the purpose of Subsection (b)(1)(D), the court may  
3 consider the reasonable consumer expectations of the residential  
4 single-family home or lot owners whose lots are adjacent to or  
5 benefit from the common area and accept expert testimony as to the  
6 valuation effect of the loss of the common area on the adjacent  
7 residential single-family lots. The value of proposed new  
8 development in the common area is irrelevant to the effect on the  
9 adjacent single-family residential area benefited by the common  
10 area.

11 (e) In addition to any other requirement of this chapter, a  
12 development plat, replat, amending plat, or vacating plat must  
13 conform to the requirements of this section if any of the area  
14 subject to the development plat, replat, amending plat, or  
15 vacating plat is a common area. The exception in Section 212.004(a)  
16 excluding divisions of land into parts greater than five acres for  
17 platting requirements does not apply to a common area.

18 (f) A development plat, replat, amending plat, or vacating  
19 plat may not be approved until each municipal authority reviewing  
20 the development plat, replat, amending plat, or vacating plat  
21 conducts a public hearing on the matter at which the parties in  
22 interest and citizens have an adequate opportunity to be heard,  
23 present evidence, and submit statements or petitions for  
24 consideration by the municipal authority. The number, location,  
25 and procedure for the public hearings may be designated by the  
26 municipal authority for a particular hearing. The municipal  
27 authority may abate, continue, or reschedule, as the municipal

1 authority considers appropriate, any public hearing in order to  
2 receive a full and complete record on which to make a decision. If  
3 the development plat, replat, amending plat, or vacating plat would  
4 otherwise be administratively approved, the municipal planning  
5 commission is the approving body for the purposes of this section.

6 (g) The municipal authority may not approve a development  
7 plat, replat, amending plat, or vacating plat without adequate  
8 consideration of testimony and the record from the public hearings  
9 and making the findings required by Subsection (m). Sections  
10 212.009(a) and (b) do not apply to the approval of plats under this  
11 section.

12 (h) Notice of the initial hearing required by Subsection (f)  
13 shall be given before the 15th day before the date of the hearing  
14 by:

15 (1) publishing notice in an official newspaper or a  
16 newspaper of general circulation in the county in which the  
17 municipality is located;

18 (2) providing written notice, with a copy of this  
19 section attached, by the municipal authority responsible for  
20 approving plats to:

21 (A) each property owners' association for each  
22 neighborhood benefited by the common area, as indicated in the most  
23 recently filed management certificates; and

24 (B) the owners of lots that are within 200 feet of  
25 the area subject to the development plat, replat, vacating plat, or  
26 amending plat, as indicated:

27 (i) on the most recently approved municipal

1 tax roll or, in the case of a subdivision within the  
2 extraterritorial jurisdiction of a municipality, on the most  
3 recently approved county tax roll of the property on which the  
4 replat is requested; and

5 (ii) in the most recent online records of  
6 the central appraisal district of the county in which the lots are  
7 located; and

8 (3) any other manner determined by the municipal  
9 authority to be necessary to ensure that full and fair notice is  
10 provided to all owners of residential single-family lots in the  
11 general vicinity of the area subject to the development plat,  
12 replat, amending plat, or vacating plat benefited by the common  
13 area.

14 (i) The written notice required by Subsection (h)(2) may be  
15 delivered by depositing the notice, properly addressed with postage  
16 prepaid, in the United States mail.

17 (j) The cost of providing the notices under Subsection (h)  
18 shall be paid by the plat applicant.

19 (k) If written instruments protesting the proposed  
20 development plat, replat, amending plat, or vacating plat are  
21 signed by the owners of at least 20 percent of the area of the lots  
22 or land immediately adjacent to the area covered by a proposed  
23 development plat, replat, amending plat, or vacating plat and  
24 extending 200 feet from that area and are filed with the municipal  
25 planning commission or the municipality's governing body before the  
26 conclusion of the public hearings, the proposed development plat,  
27 replat, amending plat, or vacating plat must receive, to be

1 approved, the affirmative vote of at least three-fourths of the  
2 members of the municipal planning commission or governing body.

3 (1) In computing the percentage of land area under  
4 Subsection (k), the area of streets and alleys is included.

5 (m) The municipal planning commission or the municipality's  
6 governing body may not approve a development plat, replat, amending  
7 plat, or vacating plat under this section unless it determines  
8 that:

9 (1) there is adequate public infrastructure to support  
10 the future development of the common area;

11 (2) the development of the common area will not have a  
12 materially adverse effect on traffic, parking, drainage, crime, the  
13 environment, or other health, safety, or public welfare concerns;

14 (3) the development of the common area will not have a  
15 materially adverse effect on existing single-family neighborhood  
16 values;

17 (4) the development plat, replat, amending plat, or  
18 vacating plat is consistent with all applicable land use  
19 regulations and restrictive covenants and the municipality's land  
20 use policies as described by the municipality's comprehensive plan  
21 or other appropriate public policy documents; and

22 (5) if any portion of a previous plat reflected a  
23 restriction on the common area:

24 (A) that restriction is not an implied covenant  
25 or easement benefiting adjacent residential properties; or

26 (B) if the restriction is an implied covenant or  
27 easement benefiting adjacent residential properties, the covenant

1 or easement is legally released.

2 (n) For the purpose of the findings required by Subsection  
3 (m), the municipal authority may assume as the municipal authority  
4 determines to be appropriate the development of the common area  
5 will be for:

6 (1) any currently permitted use under applicable  
7 zoning or restrictive covenants; or

8 (2) residential single-family development consistent  
9 with the residential single-family development in the neighborhood  
10 benefited by the common area.

11 (o) The application for a development plat, replat,  
12 amending plat, or vacating plat under this section is not complete  
13 and may not be submitted for review for administrative completeness  
14 unless the tax certificates required by Section 12.002(e), Property  
15 Code, are attached, notwithstanding that the application is for a  
16 type of plat other than a plat specified in that section.

17 (p) A plan for development or plat application for a common  
18 area is not considered to provide fair notice of the project and  
19 nature of the permit sought unless it contains the following  
20 information, complete in all material respects:

21 (1) street layout;

22 (2) lot and block layout;

23 (3) number of residential units;

24 (4) square footage of nonresidential development, by  
25 type of development;

26 (5) drainage, detention, and retention plans;

27 (6) screening plan for adjacent residential



1 properties, including landscaping or fencing; and

2 (7) an analysis of the effect of the project on values  
3 in the adjacent residential neighborhoods.

4 (g) The municipal authority with authority over platting  
5 may adopt rules requiring more detailed information for plans for  
6 development or plat applications for a common area than the  
7 information required by Subsection (p).

8 (r) A municipal authority with authority over platting may  
9 require as a condition for approval of a plat for a common area  
10 that:

11 (1) the area be platted as a restricted reserve for the  
12 proposed use; and

13 (2) the plat be incorporated into the plat for any  
14 adjacent residential lots.

15 SECTION 2. Subchapter A, Chapter 232, Local Government  
16 Code, is amended by adding Section 232.0033 to read as follows:

17 Sec. 232.0033. ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS  
18 AFFECTING COMMON AREAS. (a) This section applies to land located  
19 wholly or partly:

20 (1) in the extraterritorial jurisdiction of a  
21 municipality that:

22 (A) has a population of more than 50,000; and

23 (B) is located wholly or partly in a county:

24 (i) with a population of more than three  
25 million; or

26 (ii) with a population of more than 275,000  
27 that is adjacent to a county with a population of more than three

1 million; or

2 (2) in the unincorporated area of a county described  
3 by Subdivision (1)(B).

4 (b) In this section:

5 (1) "Common area" means:

6 (A) an area that is or was zoned, restricted by  
7 covenants, or designated on a recorded plat as a common area, joint  
8 use area, or other shared community use area, including an area  
9 having a use or designation as a golf course, country club, amenity,  
10 open space, common area, sports field, green space, landscaping,  
11 buffer, park, lake, trail, or pathway, or a similar use or  
12 designation;

13 (B) an area adjacent to single-family  
14 residential lots that:

15 (i) was used for at least 10 years as a  
16 common area; and

17 (ii) for which the use as a common area was  
18 not terminated more than five years before the date of the  
19 application for a platting approval;

20 (C) an area benefited by restrictive covenants  
21 that limit the development of adjacent residential single-family  
22 lots in consideration of the existence of a common area, including  
23 special setback lines, architectural restrictions, prohibition of  
24 fences, or disclosures, waivers, or releases regarding the  
25 liability of being adjacent to the common area; or

26 (D) an area determined by a court, by declaratory  
27 judgment or otherwise, to be an area that:

1                   (i) was represented to residential  
2 single-family home owners, by the developer of the lots or a  
3 successor developer or by the original builder of houses on the  
4 lots, to be available for common use by the homeowners;

5                   (ii) was included in any sales materials by  
6 the original developer of the lots or a successor developer or the  
7 original builder of houses on the lots to purchasers of residential  
8 single-family lots or houses as an amenity, without a prominent  
9 disclaimer that the amenity could be removed without the consent of  
10 the lot owners;

11                   (iii) generated tax benefits by being  
12 valued for ad valorem tax purposes based on a special use that  
13 resulted in a valuation less than the highest and best use if  
14 unrestricted;

15                   (iv) was an integral part of a common scheme  
16 of development for a predominantly residential single-family  
17 development project; or

18                   (v) was a community amenity that increased  
19 the initial sales price of residential lots, without which the  
20 adjacent single-family residential area would be materially  
21 adversely affected by future value reductions that would not occur  
22 if the common area, considered as a whole unit, if appropriate,  
23 remained.

24                   (2) "Dedictory instrument," "property owners'  
25 association," and "restrictive covenant" have the meanings  
26 assigned by Section 202.001, Property Code.

27                   (3) "Management certificate" means a certificate

1 described by Section 209.004, Property Code.

2 (4) "Restrictions," "residential real estate  
3 subdivision" or "subdivision," "owner," and "real property  
4 records" have the meanings assigned by Section 201.003, Property  
5 Code.

6 (c) For the purposes of a particular neighborhood, the  
7 common areas may be considered collectively or separately, as  
8 appropriate under the circumstances in the judgment of the  
9 commissioners court, notwithstanding that the common area is not  
10 contiguous, is not adjacent to, or is in separately platted or owned  
11 parcels.

12 (d) For the purpose of Subsection (b)(1)(D), the court may  
13 consider the reasonable consumer expectations of the residential  
14 single-family home or lot owners whose lots are adjacent to or  
15 benefit from the common area and accept expert testimony as to the  
16 valuation effect of the loss of the common area on the adjacent  
17 residential single-family lots. The value of proposed new  
18 development in the common area is irrelevant to the effect on the  
19 adjacent single-family residential area benefited by the common  
20 area.

21 (e) In addition to any other requirement of this chapter, a  
22 plat, replat, plat revision, amending plat, or vacating or  
23 cancellation plat must conform to the requirements of this section  
24 if any of the area subject to the plat, replat, plat revision,  
25 amending plat, or vacating or cancellation plat is a common area.  
26 The exceptions in Sections 232.0015(e), (f), (g), (j), and (k) do  
27 not apply to a common area. Section 232.007 does not apply to a

1 common area.

2 (f) The plat, replat, plat revision, amending plat, or  
3 vacating or cancellation plat may not be approved until the  
4 commissioners court conducts a public hearing on the matter at  
5 which the parties in interest and citizens have an adequate  
6 opportunity to be heard, present evidence, and submit statements or  
7 petitions for consideration by the commissioners court. The  
8 number, location, and procedure for the public hearings may be  
9 designated by the commissioners court for a particular hearing.  
10 The commissioners court may abate, continue, or reschedule, as the  
11 commissioners court considers appropriate, any public hearing in  
12 order to receive a full and complete record on which to make a  
13 decision.

14 (g) The commissioners court may not approve a plat, replat,  
15 plat revision, amending plat, or vacating or cancellation plat  
16 without adequate consideration of testimony and the record from the  
17 public hearings and making the findings required by Subsection (m).  
18 Sections 232.0025(b), (d), (f), (g), (h), and (i) do not apply to  
19 this section.

20 (h) Notice of the initial hearing required by Subsection (f)  
21 shall be given before the 15th day before the date of the hearing  
22 by:

23 (1) publishing notice in an official newspaper or a  
24 newspaper of general circulation in the county;

25 (2) providing written notice, with a copy of this  
26 section attached, by the commissioners court to:

27 (A) each property owners' association for each

1 neighborhood benefited by the common area, as indicated in the most  
2 recently filed management certificates; and

3 (B) the owners of lots that are within 200 feet of  
4 the area subject to the plat, replat, plat revision, amending plat,  
5 or vacating or cancellation plat, as indicated:

6 (i) on the most recently approved county  
7 tax roll; or

8 (ii) in the most recent online records of  
9 the central appraisal district of the county in which the lots are  
10 located; and

11 (3) any other manner determined by the commissioners  
12 court to be necessary to ensure that full and fair notice is  
13 provided to all owners of residential single-family lots in the  
14 general vicinity of the area subject to the plat, replat, plat  
15 revision, amending plat, or vacating or cancellation plat benefited  
16 by the common area.

17 (i) The written notice required by Subsection (h)(2) may be  
18 delivered by depositing the notice, properly addressed with postage  
19 prepaid, in the United States mail.

20 (j) The cost of providing the notices under Subsection (h)  
21 shall be paid by the plat applicant.

22 (k) If written instruments protesting the proposed plat,  
23 replat, plat revision, amending plat, or vacating or cancellation  
24 plat are signed by the owners of at least 20 percent of the area of  
25 the lots or land immediately adjacent to the area covered by a  
26 proposed plat, replat, plat revision, amending plat, or vacating  
27 or cancellation plat and extending 200 feet from that area and are

1 filed with the commissioners court before the conclusion of the  
2 public hearings, the proposed plat, replat, plat revision, amending  
3 plat, or vacating or cancellation plat must receive, to be  
4 approved, the affirmative vote of at least three-fourths of the  
5 members of the commissioners court.

6 (l) In computing the percentage of land area under  
7 Subsection (k), the area of streets and alleys is included.

8 (m) The commissioners court may not approve a plat, replat,  
9 plat revision, amending plat, or vacating or cancellation plat  
10 under this section unless it determines that:

11 (1) there is adequate public infrastructure to support  
12 the future development of the common area;

13 (2) the development of the common area will not have a  
14 materially adverse effect on traffic, parking, drainage, crime, the  
15 environment, or other health, safety, or public welfare concerns;

16 (3) the development of the common area will not have a  
17 materially adverse effect on existing single-family neighborhood  
18 values;

19 (4) the plat, replat, plat revision, amending plat, or  
20 vacating or cancellation plat is consistent with all applicable  
21 land use regulations and restrictive covenants and, if applicable,  
22 the county's land use policies as described by the county's  
23 comprehensive plan or other appropriate public policy documents;  
24 and

25 (5) if any portion of a previous plat reflected a  
26 restriction on the common area:

27 (A) that restriction is not an implied covenant

1 or easement benefiting adjacent residential properties; or

2 (B) if the restriction is an implied covenant or  
3 easement benefiting adjacent residential properties, the covenant  
4 or easement is legally released.

5 (n) For the purpose of the findings required by Subsection  
6 (m), the commissioners court may assume the development of the  
7 common area will be for:

8 (1) any currently permitted use under applicable  
9 zoning or restrictive covenants; or

10 (2) residential single-family development consistent  
11 with the residential single-family development in the neighborhood  
12 benefited by the common area.

13 (o) The application for a plat, replat, plat revision,  
14 amending plat, or vacating or cancellation plat under this section  
15 is not complete and may not be submitted for review for  
16 administrative completeness unless the tax certificates required  
17 by Section 12.002(e), Property Code, are attached, notwithstanding  
18 that the application is for a type of plat other than a plat  
19 specified in that section.

20 (p) A plan for development or plat application for a common  
21 area is not considered to provide fair notice of the project and  
22 nature of the permit sought unless it contains the following  
23 information, complete in all material respects:

24 (1) street layout;

25 (2) lot and block layout;

26 (3) number of residential units;

27 (4) square footage of nonresidential development, by



1 type of development;

2 (5) drainage, detention, and retention plans;

3 (6) screening plan for adjacent residential  
4 properties, including landscaping or fencing; and

5 (7) an analysis of the effect of the project on values  
6 in the adjacent residential neighborhoods.

7 (q) The commissioners court may adopt rules requiring more  
8 detailed information for plans for development or plat applications  
9 for a common area than the information required by Subsection (p).

10 (r) The commissioners court may require as a condition for  
11 approval of a plat for a common area that:

12 (1) the area be platted as a restricted reserve for the  
13 proposed use; and

14 (2) the plat be incorporated into the plat for any  
15 adjacent residential lots.

16 SECTION 3. Subchapter A, Chapter 5, Property Code, is  
17 amended by adding Section 5.016 to read as follows:

18 Sec. 5.016. SELLER'S DISCLOSURE OF POSSIBLE COMMON AREA  
19 TERMINATION. (a) An initial seller of residential real property or  
20 unimproved real property to be used for residential purposes that  
21 is adjacent to any common area, as defined by Section 212.0155(b) or  
22 232.0033(b), Local Government Code, shall give to the initial  
23 purchaser of the property a written notice substantially similar to  
24 the following:

25 NOTICE OF POSSIBLE COMMON AREA TERMINATION:

26 PROPERTY LOCATED AT [STREET ADDRESS AND CITY]

27 You are purchasing property located adjacent to a common area

1 intended for general use within this residential community.  
2 Although you may be paying a premium for your property because of  
3 the existence of the common area, the common area may be terminated  
4 in the future. Even if the common area is not terminated, any  
5 amenity provided on the common area is not required to be continued.

6 SELLER DISCLOSES THE FOLLOWING INFORMATION ABOUT THE COMMON AREA:

7 RESTRICTIVE COVENANTS:

8 THE COMMON AREA [IS/IS NOT] RESTRICTED.

9 THE RESTRICTIVE COVENANTS ARE LOCATED AT [INSERT RECORDING  
10 REFERENCE].

11 A COMPLETE COPY OF THESE RESTRICTIVE COVENANTS HAS BEEN  
12 PROVIDED TO YOU.

13 THE RESTRICTIVE COVENANTS TERMINATE [INSERT DATE] AND [DO/DO  
14 NOT] AUTOMATICALLY RENEW FOR PERIODS OF [INSERT TIME PERIODS].

15 THE RESTRICTIVE COVENANTS MAY BE TERMINATED [WITH/WITHOUT]  
16 YOUR CONSENT.

17 THE RESTRICTIVE COVENANTS MAY BE MODIFIED [WITH/WITHOUT]  
18 YOUR CONSENT.

19 PLAT:

20 THE PLAT FOR THE COMMON AREA [DOES/DOES NOT] IDENTIFY THE  
21 COMMON AREA USE ON THE FACE OF THE PLAT.

22 THE PLAT FOR THE COMMON AREA IS LOCATED AT [INSERT RECORDING  
23 REFERENCE].

24 A COMPLETE COPY OF THIS PLAT HAS BEEN PROVIDED TO YOU.

25 The termination of the common area may have a material, adverse  
26 impact on the value of your property.

27 Date: \_\_\_\_\_

1 \_\_\_\_\_

2 Signature of Seller

3 Date: \_\_\_\_\_

4 \_\_\_\_\_

5 Signature of Purchaser

6 [acknowledgements of Seller and Purchaser signatures]

7 [legal description of the property purchased]

8 (b) The notice must be signed by the seller and must state  
9 that the information provided in the notice is to the best of the  
10 seller's knowledge and belief accurate as of the date the notice is  
11 provided. If the information required to be disclosed is not known  
12 to the seller, the seller shall indicate that fact in the notice  
13 when initially provided and shall update the notice when the  
14 information is available.

15 (c) The notice must be delivered by the seller to the  
16 purchaser on or before the effective date of an executory contract  
17 binding the purchaser to purchase the property. If a contract is  
18 entered into without the seller providing the notice as required by  
19 this section, the purchaser may terminate the contract for any  
20 reason before the transfer of the property occurs and receive a  
21 refund of all earnest money and all expenses directly incurred by  
22 the purchaser in reliance on the purchase contract before the date  
23 the notice is provided.

24 (d) The notice must be signed by the purchaser and recorded  
25 in the real property records of the county in which the property is  
26 located at the closing of the purchase of the property.

27 (e) If the initial seller has not provided the required

1 notice and a subsequent seller becomes aware that there is no  
2 recorded notice regarding the property, the subsequent seller shall  
3 provide the notice and cause the notice to be recorded on the  
4 transfer of the property. The subsequent seller is not subject to  
5 the penalties of Subsection (c).

6 SECTION 4. Section 82.051, Property Code, is amended by  
7 adding Subsection (f) to read as follows:

8 (f) This chapter does not permit development of a common  
9 area, as defined by Section 212.0155(b) or 232.0033(b), Local  
10 Government Code, without a plat if the plat is otherwise required by  
11 applicable law. A municipality or county may require as a condition  
12 to the development of a previously platted or unplatted common area  
13 that the common area be platted or replatted.

14 SECTION 5. Subchapter F, Chapter 23, Tax Code, is amended by  
15 adding Section 23.88 to read as follows:

16 Sec. 23.88. CHANGE OF USE AS COMMON AREA. (a) If land that  
17 has been appraised under this chapter based on its use as a common  
18 area, as defined by Section 212.0155(b) or 232.0033(b), Local  
19 Government Code, is diverted to a different use, an additional tax  
20 is imposed on the land equal to the difference between the taxes  
21 imposed on the land for each of the five years preceding the year in  
22 which the change of use occurs and the tax that would have been  
23 imposed had the land not been used as a common area in each of those  
24 years, plus interest at an annual rate of seven percent calculated  
25 from the dates on which the differences would have become due.

26 (b) A tax lien attaches to the land on the date the change of  
27 use occurs to secure payment of the additional tax and interest

1 imposed by this section and any penalties incurred. The lien exists  
2 in favor of all taxing units for which the additional tax is  
3 imposed.

4 (c) The additional tax imposed by this section does not  
5 apply to a year for which the tax has already been imposed.

6 (d) If the change of use applies to only part of a parcel  
7 that has been appraised as provided by this chapter, the additional  
8 tax applies only to that part of the parcel and equals the  
9 difference between the taxes imposed on that part of the parcel and  
10 the taxes that would have been imposed had that part not been used  
11 as a common area.

12 (e) A determination that a change in use of the land has  
13 occurred is made by the chief appraiser. The chief appraiser shall  
14 deliver a notice of the determination to the owner of the land as  
15 soon as possible after making the determination and shall include  
16 in the notice an explanation of the owner's right to protest the  
17 determination. If the owner does not file a timely protest or if  
18 the final determination of the protest is that the additional taxes  
19 are due, the assessor for each taxing unit shall prepare and deliver  
20 a bill for the additional taxes plus interest as soon as  
21 practicable. The taxes and interest are due and become delinquent  
22 and incur penalties and interest as provided by law for ad valorem  
23 taxes imposed by the taxing unit if not paid before the next  
24 February 1 that is at least 20 days after the date the bill is  
25 delivered to the owner of the land.

26 (f) The sanctions provided by Subsection (a) do not apply if  
27 the change of use occurs as a result of a sale for right-of-way, a

1 condemnation, or a transfer of the property to the state or a  
2 political subdivision of the state for use for a public purpose.

3 (g) The sanctions provided by Subsection (a) only apply to a  
4 change in the use of land if the land is located:

5 (1) in a municipality or the extraterritorial  
6 jurisdiction of a municipality that:

7 (A) has a population of more than 50,000; and

8 (B) is located wholly or partly in a county:

9 (i) with a population of more than three  
10 million; or

11 (ii) with a population of more than 275,000  
12 that is adjacent to a county with a population of more than three  
13 million; or

14 (2) in the unincorporated area of a county described  
15 by Subdivision (1)(B).

16 SECTION 6. The change in law made by Sections 212.0155 and  
17 232.0033, Local Government Code, as added by this Act, applies only  
18 to approval of a plat filed on or after the effective date of this  
19 Act. A plat filed before the effective date of this Act is governed  
20 by the law in effect immediately before that date, and that law is  
21 continued in effect for that purpose.

22 SECTION 7. The change in law made by Section 5.016, Property  
23 Code, as added by this Act, applies only to an executory contract  
24 that binds a purchaser to purchase real property on or after January  
25 1, 2008. An executory contract that binds a purchaser to purchase  
26 real property before that date is subject to the law in effect  
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 SECTION 8. Section 23.88, Tax Code, as added by this Act,  
3 applies only to a change in the use of real property that occurs on  
4 or after January 1, 2008. A change in the use of real property that  
5 occurs before that date is governed by the law in effect immediately  
6 before the effective date of this Act, and that law is continued in  
7 effect for that purpose.

8 SECTION 9. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2007.