

By: Howard of Fort Bend

H.B. No. 4106

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the adoption of a residential building code in certain
3 counties; providing a civil penalty.

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

5 SECTION 1. Chapter 233, Local Government Code, is amended
6 by adding Subchapter E to read as follows:

7 SUBCHAPTER E. BUILDING CODES IN CERTAIN COUNTIES

8 Sec. 233.121. DEFINITIONS. In this subchapter:

9 (1) "International Residential Code" means the
10 International Residential Code for One- and Two-Family Dwellings
11 promulgated by the International Code Council.

12 (2) "Residential" means having the character of a
13 detached one-family or two-family dwelling or a multiple
14 single-family dwelling that is not more than three stories high
15 with separate means of egress, including the accessory structures
16 of the dwelling, and that does not have the character of a facility
17 used for the accommodation of transient guests or a structure in
18 which medical, rehabilitative, or assisted living services are
19 provided in connection with the occupancy of the structure.

20 (3) "Residential building developer" means a person
21 who constructs or supervises or manages the construction of at
22 least five residential structures in a 12-month period for
23 compensation, including compensation from the sale, rental, or
24 lease of the structures. The term does not include a person who is

1 building a residence for the person's own personal dwelling or for
2 occupancy by a member of the person's family.

3 Sec. 233.122. APPLICABILITY. This subchapter applies only
4 to a county that:

5 (1) has a population of more than 350,000; and

6 (2) is contiguous to a county with a population of more
7 than 3.3 million.

8 Sec. 233.123. INTERNATIONAL RESIDENTIAL CODE. (a) To
9 protect the public health, safety, and welfare, the International
10 Residential Code, as it existed on May 1, 2006, is adopted as the
11 county residential building code.

12 (b) The International Residential Code applies to the
13 construction, alteration, remodeling, enlargement, and repair of
14 residential structures in the unincorporated area of a county.

15 (c) The commissioners court of the county may establish
16 procedures:

17 (1) to adopt local amendments to the International
18 Residential Code;

19 (2) to reject later additions made to the
20 International Residential Code; and

21 (3) for the administration and enforcement of the
22 International Residential Code.

23 (d) The commissioners court may review, consider, or reject
24 amendments made by the International Code Council to the
25 International Residential Code after May 1, 2006.

26 Sec. 233.124. BUILDING PERMIT; APPLICATION. (a) A
27 residential building developer may not construct or substantially

1 improve a building in an unincorporated area of the county unless
2 the person obtains a building permit issued under this subchapter.

3 (b) A person may apply for a building permit by providing to
4 a person designated by the commissioners court to receive permit
5 applications and fees under Section 233.127:

6 (1) a plan of the proposed building containing
7 information required by the commissioners court; and

8 (2) an application fee in an amount set by the
9 commissioners court.

10 (c) Not later than the 30th day after the date a person files
11 an application, the commissioners court shall:

12 (1) issue the permit if the plan complies with the
13 county residential building code adopted under Section 233.123; or

14 (2) deny the permit if the plan does not comply with
15 the county residential building code adopted under Section 233.123.

16 (d) If the person designated by the commissioners court
17 receives an application and fee and the commissioners court does
18 not issue the permit or deny the application on or before the 30th
19 day after the date the application and fee were received, the
20 construction or substantial improvement of the building that is the
21 subject of the application is considered approved for the purposes
22 of this subchapter.

23 Sec. 233.125. INSPECTION. (a) The county shall inspect a
24 building subject to this subchapter to determine whether the
25 building complies with the county residential building code.

26 (b) The commissioners court shall designate one or more
27 persons to serve as building inspectors. A building inspector may

1 be a person under contract with the county to perform the
2 inspection.

3 (c) A building inspector designated by the commissioners
4 court may enter the building or building site and perform an
5 inspection at a reasonable time:

6 (1) at any stage of the building's construction or
7 substantial improvement; and

8 (2) after completion of the building.

9 (d) On or before the date on which construction or
10 substantial improvement of a building subject to this subchapter is
11 completed, the owner of the building shall request in writing that
12 the county inspect the building for compliance with the county
13 residential building code.

14 (e) A building inspector designated by the commissioners
15 court shall begin an inspection of a building not later than the
16 fifth business day after the date the county receives a written
17 inspection request. If an inspection is properly requested and the
18 county does not begin the inspection within the time required by
19 this subsection, the building that is the subject of the request is
20 considered approved for the purposes of this subchapter.

21 (f) A building inspector designated by the commissioners
22 court shall issue a final certificate of occupancy to the owner of
23 the building inspected under this section if the inspector
24 determines, after an inspection of the completed building, that the
25 building complies with the county residential building code.

26 (g) If the building inspector designated by the
27 commissioners court determines, after an inspection of the

1 completed building, that the building does not comply with the
2 county residential building code:

3 (1) the county shall deny the certificate of
4 occupancy; and

5 (2) the building may not be occupied.

6 (h) The commissioners court may adopt procedures for the
7 submission of written requests for inspection.

8 Sec. 233.126. FEES. (a) The commissioners court may
9 develop a fee schedule based on building type and may impose a
10 reasonable fee for:

11 (1) an inspection;

12 (2) the issuance of a building permit; and

13 (3) the issuance of a final certificate of occupancy.

14 (b) A fee under this section must be set in an amount
15 necessary to cover the cost of administering and enforcing the
16 county residential building code. The fee for an inspection under
17 this subchapter must reflect the approximate cost of the actual
18 inspection, materials, and administrative overhead.

19 (c) A county shall adopt procedures to ensure that all fees
20 imposed under this subchapter are:

21 (1) collected and accurately accounted for audit
22 purposes; and

23 (2) used only for the administration and enforcement
24 of the county residential building code.

25 Sec. 233.127. AUTHORITY TO CONTRACT WITH THIRD PARTY. (a)
26 The commissioners court shall contract with a person to administer
27 and enforce the county residential building code.

1 (b) In contracting with a third party under Subsection (a),
2 the commissioners court shall:

3 (1) set requirements for the demonstration of
4 professional qualification to administer and enforce the county
5 residential building code through inspections; and

6 (2) adopt any other procedures necessary to ensure the
7 selection of qualified personnel for the purpose of administering
8 and enforcing the county residential building code.

9 (c) The commissioners court may deny a building permit or
10 certificate of occupancy if a residential building developer does
11 not comply with any procedures approved by the commissioners court
12 for the administration and enforcement of the county residential
13 building code by a third party chosen under this section.

14 (d) This section does not limit or otherwise interfere with
15 a county's ability to contract with a third party for the
16 performance of services that a county is authorized to undertake on
17 its own behalf under another law.

18 Sec. 233.128. ENFORCEMENT OF MUNICIPAL BUILDING CODE.

19 (a) The commissioners court may contract with a municipality to
20 administer and enforce that municipality's municipal building code
21 in the municipality's extraterritorial jurisdiction if:

22 (1) the residential structure to be built by the
23 residential building developer will be located in the county and
24 the extraterritorial jurisdiction of the municipality; and

25 (2) the municipal building code meets or exceeds the
26 minimum requirements of the county residential building code
27 adopted under this subchapter.

1 (b) If the commissioners court acts under this section, the
2 commissioners court shall contract with a person for the
3 administration and enforcement of the municipal building code.

4 Sec. 233.129. ENFORCEMENT OF COUNTY RESIDENTIAL BUILDING
5 CODE IN EXTRATERRITORIAL JURISDICTION. If a residential building
6 developer is building a residential structure in the
7 extraterritorial jurisdiction of a municipality and the
8 municipality does not have a municipal building code or does not
9 have procedures in place for the administration and enforcement of
10 its building code, the commissioners court may contract with a
11 person to enforce the county residential building code against the
12 residential building developer.

13 Sec. 233.130. DENIAL OF PERMIT. (a) A residential building
14 developer whose building permit application is denied may not begin
15 construction of a residential structure until the developer
16 receives a building permit for that structure.

17 (b) A residential building developer may resubmit an
18 application for a building permit after attempting to cure any
19 defects from a previously denied application.

20 Sec. 233.131. INJUNCTION; CIVIL PENALTY. (a) The attorney
21 representing the county in district court may institute a civil
22 suit against a residential building developer who violates or
23 threatens to violate this subchapter or an order issued or a rule
24 adopted under this subchapter for:

25 (1) a permanent or temporary injunction, a temporary
26 restraining order, or another appropriate remedy; or

27 (2) the assessment and recovery of a civil penalty as

1 provided by Subsection (b).

2 (b) A residential building developer who violates this
3 subchapter is liable to the county for a civil penalty in an amount
4 not to exceed:

5 (1) \$500 for selling a residential structure before
6 receiving a certificate of occupancy; or

7 (2) \$50 for any other violation of this subchapter or
8 an order issued or a rule adopted under this subchapter.

9 (c) Each day that a violation occurs or continues
10 constitutes a separate violation for purposes of imposing a civil
11 penalty.

12 (d) The attorney representing the county in district court
13 may recover reasonable expenses incurred in obtaining injunctive
14 relief or a civil penalty under this section, including
15 investigation and court costs, reasonable attorney's fees, witness
16 fees, and other expenses.

17 (e) A civil penalty and reasonable expenses recovered in an
18 action brought under this section shall be deposited in a special
19 fund in the county treasury and may be used only for the
20 administration and enforcement of this subchapter.

21 SECTION 2. Section 262.024(a), Local Government Code, is
22 amended to read as follows:

23 (a) A contract for the purchase of any of the following
24 items is exempt from the requirement established by Section 262.023
25 if the commissioners court by order grants the exemption:

26 (1) an item that must be purchased in a case of public
27 calamity if it is necessary to make the purchase promptly to relieve

1 the necessity of the citizens or to preserve the property of the
2 county;

3 (2) an item necessary to preserve or protect the
4 public health or safety of the residents of the county;

5 (3) an item necessary because of unforeseen damage to
6 public property;

7 (4) a personal or professional service;

8 (5) any individual work performed and paid for by the
9 day, as the work progresses, provided that no individual is
10 compensated under this subsection for more than 20 working days in
11 any three month period;

12 (6) any land or right-of-way;

13 (7) an item that can be obtained from only one source,
14 including:

15 (A) items for which competition is precluded
16 because of the existence of patents, copyrights, secret processes,
17 or monopolies;

18 (B) films, manuscripts, or books;

19 (C) electric power, gas, water, and other utility
20 services; and

21 (D) captive replacement parts or components for
22 equipment;

23 (8) an item of food;

24 (9) personal property sold:

25 (A) at an auction by a state licensed auctioneer;

26 (B) at a going out of business sale held in
27 compliance with Subchapter F, Chapter 17, Business & Commerce Code;

1 or

2 (C) by a political subdivision of this state, a
3 state agency of this state, or an entity of the federal government;

4 or

5 (10) any work performed under a contract for:

6 (A) community and economic development made by a
7 county under Section 381.004; or

8 (B) the administration and enforcement of a
9 county residential building code adopted for a county under
10 Subchapter E, Chapter 233.

11 SECTION 3. This Act takes effect September 1, 2007.