

BILL ANALYSIS

C.S.H.B. 2833
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County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, certain counties do not have the authority to adopt building codes in the unincorporated areas of the county. This lack of county regulatory power contributes to the growth of substandard housing in colonias throughout the Texas-Mexico border region.

C.S.H.B. 2833 authorizes certain counties along the Texas-Mexico border to adopt a building code applicable to new residential construction that begins after September 1, 2009, in the unincorporated area of the county. The bill authorizes the building codes adopted under the provisions of the bill to contain only the same requirements as the statutory warranty and building and performance standards that apply to residential construction and any rules governing those standards adopted by the Texas Residential Construction Commission.

C.S.H.B. 2833 requires a building code adopted by a commissioners court under the bill's provisions to require a person who builds new residential construction to meet specified requirements, including providing notice to the county, arranging for a third party inspection, and reporting the results of the inspection to the county and other parties. The bill provides for enforcement of such a building code, including referral of violations to the commission and injunctive relief. The bill makes it a Class C misdemeanor to violate its provisions. The bill prohibits a county from charging a fee to a person regulated by the code. The bill clarifies that the new authority granted does not affect existing county authority to adopt orders or ordinances under other law.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2833 amends the Local Government Code to authorize the commissioners court in a county that includes territory within 50 miles of an international border, has a population of 700,000 or more, contains a municipality with a population of 550,000 or more, and contains one or more colonias or other developments composed of substandard housing, and in a county whose commissioners court adopts a resolution stating that the county expects population expansion as a result of the recommendations of the federal Defense Base Closure and Realignment Commission, to adopt a building code applicable to new residential construction in the unincorporated area of the county that begins after September 1, 2009. The bill provides that if a municipality located within such a county has adopted a building code in the municipality's extraterritorial jurisdiction, the building code adopted by the municipality controls and a building code adopted by the county has no effect in the municipality's extraterritorial jurisdiction. The bill prohibits these provisions from being construed to require prior approval by the county before beginning new residential construction, to authorize the commissioners court of a county to adopt or enforce zoning regulations, or to affect the application of provisions related to the subdivision platting requirements in a county near an international border to land development.

The bill provides that in the event of a conflict between its provisions and provisions related to the subdivision platting requirements in a county near an international border, provisions related to the subdivision platting requirements in a county near an international border control.

C.S.H.B. 2833 authorizes an adopted building code to contain only the same requirements as the statutory warranty and building performance standards that apply to residential construction under the Texas Residential Construction Commission Act, and any rules governing those standards adopted by the Texas Residential Construction Commission. The bill requires the adopted building code to require a person who builds new residential construction to have the new residential construction inspected by a third-party inspector approved by the commission at the time and in the manner prescribed by rules adopted by the commission; before commencing new residential construction, to provide notice to the county of the location of the new residential construction on a form prescribed by the county, the date by which the new residential construction will be commenced, and the name of the third-party inspector who will inspect the new residential construction; and to submit not later than the 10th day after the date of each inspection a written report prepared by the third-party inspector of the inspection and describing the results of the inspection to the county employee or department or agency of the county designated by the commissioners court of the county and the person who purchased the new residential construction from the builder, if applicable.

C.S.H.B. 2833 authorizes the county, in order to enforce compliance with a building code adopted under the bill's provisions, to seek injunctive relief and impose certain penalties; to refer a builder registered under the Texas Residential Construction Commission Act who violates a provision of that act, or any rule adopted under that act, to the commission for disciplinary action; and to refer a third-party inspector approved by the commission under the Texas Residential Construction Commission Act who violates a provision of that act, or any rule adopted under that act, to that commission for disciplinary action. The bill authorizes the commission to take any action with regard to a builder or third-party inspector that it is authorized to take by any other law with regard to new residential construction in a county that has adopted a building code authorized under these provisions. The bill prohibits a county from charging a fee to a person regulated by a building code adopted under provisions of the bill to defray the costs of enforcing the code.

C.S.H.B. 2833 provides that the authority granted by these provisions does not affect the authority of a commissioners court to adopt an order under other law. The bill entitles the county, in a suit brought by the appropriate attorney representing the county in the district court, to appropriate injunctive relief to prevent the violation or threatened violation of a building code from continuing or occurring. The bill makes it a Class C misdemeanor to violate a restriction or prohibition imposed by a building code adopted under these provisions.

C.S.H.B. 2833 defines "new residential construction."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2833 differs from the original by placing its provisions under law related to county regulation of housing and other structures, whereas the original places its provisions under law related to the authority of a municipality and a county to regulate subdivisions in and outside of the municipality's extraterritorial jurisdiction. The substitute adds a definition for "new residential construction" that is not in the original.

C.S.H.B. 2833 differs from the original by applying its provisions to a county that has a population of 700,000 or more, contains a municipality with a population of 550,000 or more, and contains one or more colonias or other developments composed of substandard housing, and by applying its provisions to a county whose commissioners court adopts a resolution stating that the county expects population expansion as a result of the recommendations of the federal Defense Base Closure and Realignment Commission, whereas the original applies its provisions to a municipality in a county if that county does not exercise in the municipality's extraterritorial jurisdiction the authority described by the bill and the county by resolution authorizes the municipality to exercise that authority in the municipality's extraterritorial jurisdiction.

C.S.H.B. 2833 adds a provision not in the original to authorize the commissioners court in a county to adopt a building code applicable to new residential construction in the unincorporated area of the county and to set forth building code requirements. The substitute adds a provision not in the original setting forth provisions for the enforcement of building codes.

C.S.H.B. 2833 removes a provision from the original that authorizes the commissioners court of a county to regulate residential land development in the unincorporated areas of the county and that authorizes the governing body of a municipality to regulate residential land development in the municipality's extraterritorial jurisdiction so that the municipality or county may prevent the proliferation of colonias by adopting certain types of regulations.

C.S.H.B. 2833 removes a provision from the original that requires the county or municipality to issue a building permit if the person submitting the application for the permit satisfies certain requirements.

C.S.H.B. 2833 removes a provision from the original providing that a municipal ordinance prevails within the municipality's jurisdiction to the extent of a conflict if an order adopted by the county conflicts with the municipality's ordinance.

C.S.H.B. 2833 differs from the original by making it an offense to violate the building code, rather than an order or ordinance, as in the original and by omitting an exception to the penalty in the original.