

BILL ANALYSIS

C.S.H.B. 4144

By: Gattis

Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 211.004, Local Government Code, requires a municipality to zone in accordance with its comprehensive plan. However, there is no statutory requirement that a municipality adopt a comprehensive plan, and there is little, if any, meaningful guidance as to how a municipality creates, reviews, or amends its comprehensive plan. Currently, Chapter 211, Local Government Code, does not require or provide for public input into the creation, review, or amendment of a municipality's comprehensive plan, nor does it require a municipality to periodically review its comprehensive plan once adopted. Chapter 213, Local Government Code, requires only a single public hearing and review by the municipality's planning commission, if one exists, to adopt or amend a comprehensive plan.

C.S.H.B. 4144 requires a municipality to adopt a comprehensive plan and sets forth a process for the municipality to follow in adopting the comprehensive plan, ensures public access and input in the process, allows an affected landowner to object to a comprehensive plan, and provides a process for an affected landowner to challenge a comprehensive plan.

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. 4144 amends the Local Government Code to add provisions relating to a municipality's comprehensive planning, requiring the governing body of a municipality to adopt by resolution or ordinance a comprehensive plan for land use that details current and future land uses and serves as a basis for making planning or zoning decisions. The bill authorizes the governing body to amend the comprehensive plan for land use from time to time and requires it to review its comprehensive plan for land use not less than every three years.

C.S.H.B. 4144 authorizes land use assumptions adopted in a manner that complies with Subchapter C, Chapter 395, Local Government Code, to be incorporated in a comprehensive plan for land use. The bill requires that a map of a comprehensive plan illustrating future land use must contain the following clearly visible statement: "A comprehensive plan does not constitute zoning regulations or establish zoning district boundaries."

C.S.H.B. 4144 requires the governing body of a municipality to appoint an advisory committee to make recommendations regarding the adoption, amendment, or review of its comprehensive plan for land use, and establishes the composition of the advisory committee. The bill requires advisory committee meetings to be open to the public and conducted in accordance with Government Code provisions for open meetings. The bill requires the municipality to make available to the advisory committee professional reports concerning municipal planning and land uses, and authorizes the advisory committee to receive information from the municipality, any interested landowner, or the general public in making recommendations regarding or while reviewing a comprehensive plan for land use.

C.S.H.B. 4144 requires the advisory committee to issue a written report to the governing body of the municipality detailing its findings and recommendations as to the adoption, amendment, or review of the comprehensive plan for land use, and requires the report to be made available to

the municipality, each interested landowner, and the general public as soon as practicable after its receipt by the governing body.

C.S.H.B. 4144 prohibits the governing body of the municipality from adopting or amending the comprehensive plan for land use until it conducts at least one public hearing on the recommendations made by the advisory committee. The bill prohibits the governing body of the municipality from amending or adopting the comprehensive plan for land use before the 30th day after the date the governing body receives the advisory committee's report, unless each of the landowners affected by the plan or amendment consents to the plan or amendment. The bill authorizes a landowner to object at the public hearing to any land use applied to the landowner's tract by the comprehensive plan for land use.

C.S.H.B. 4144 authorizes a landowner to petition the commissioners court of the county to appoint three disinterested persons who reside in the municipality and county as special commissioners to assess the reasonableness of a land use applied to the landowner's tract under the comprehensive plan if the landowner objects in writing to the land use and the landowner has been unable to sell or develop the tract in conformity with the land use for a period of three years.

C.S.H.B. 4144 requires the special commissioners to swear to assess fairly and impartially the reasonableness of the land use applied to the tract by the comprehensive plan for land use; and to conduct proceedings and have the same powers as a special commissioner under Subchapter B, Chapter 21, Property Code (regarding procedure relating to the exercise of eminent domain authority). The bill requires a special commissioner to be a resident of the municipality and county in which the tract is located; be impartial and have no conflict of interest in the matter that is the subject of the petition; not be connected, employed, or affiliated with real estate development, real estate sales, or the construction industry or reside in a household with a person who is connected, employed, or affiliated with real estate development, real estate sales, or the construction industry; and not be a municipal official or employee or serve on a municipal board, or reside in a household with a person who is a municipal official or employee or serves on a municipal board. The bill authorizes the commissioners court to appoint a replacement for any special commissioner who fails or refuses to serve.

C.S.H.B. 4144 authorizes a majority of the special commissioners to determine a reasonable land use for a tract if a majority of them have determined that the land use applied to a landowner's tract by the comprehensive plan for land use is unreasonable, and to order that the comprehensive plan for land use be amended to reflect that use. The bill authorizes a landowner to file suit in the district court in the county where the tract is located to enforce such an order if the governing body of the municipality refuses to amend the comprehensive plan for land use in accordance with the order. The bill authorizes the order to be enforced by mandamus or declaratory or injunctive relief, and authorizes a prevailing landowner to recover reasonable attorney's fees, expert witness fees, and costs of court.

C.S.H.B. 4144 amends another section of the Local Government Code regarding comprehensive plans to incorporate the comprehensive plan for land use provided for under the bill and to conform with the amendments to Chapter 211, Local Government Code, made in the bill.

C.S.H.B. 4144 provides that a landowner affected by a land use under a municipality's comprehensive plan for land use may petition a commissioners court of a county to appoint special commissioners under Section 211.106, Local Government Code, as added by the provisions of the bill on or after September 1, 2009, regardless of whether the land use provisions are incorporated in a comprehensive plan that was adopted before or after that date and regardless of whether the land use provisions are incorporated in a comprehensive plan that was adopted under Chapter 213, Local Government Code, as it existed before the effective date of the provisions of the bill, or under Subchapter C, Chapter 211, Local Government Code, as added by the enactment of the bill.

C.S.H.B. 4144 repeals Section 213.005, Local Government Code.

C.S.H.B. 4144 defines "land use," "landowner," and "tract."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 4144 makes numerous conforming changes to the original to reflect the change in name of a "comprehensive plan" to "comprehensive plan for land use." The substitute renumbers provisions in the original to reflect changes in the substitute. The substitute makes clarifying changes not in the original.

C.S.H.B. 4144 adds new provisions not in the original that authorize land use assumptions adopted in a manner that complies with Subchapter C, Chapter 395, Local Government Code, to be incorporated in a comprehensive plan for land use, and to require that a map of a comprehensive plan illustrating future land use must contain the following clearly visible statement: "A comprehensive plan does not constitute zoning regulations or establish zoning district boundaries."

C.S.H.B. 4144 clarifies that it is the commissioners court of the county that a landowner may petition to appoint special commissioners to assess the reasonableness of land use applied to the landowner's tract under a comprehensive plan, under certain circumstances. The substitute requires that such special commissioners reside in the municipality, in addition to the county as in the original

C.S.H.B. 4144 authorizes the special commissioners' order to be enforced by declaratory relief, in addition to mandamus or injunctive relief as in the original, and authorizes a prevailing landowner to recover expert witness fees, in addition to reasonable attorney's fees and costs of court as in the original.

C.S.H.B. 4144 amends another section of the Local Government Code regarding comprehensive plans to incorporate the comprehensive plan for land use provided for under the bill and to conform with the amendments to Chapter 211, Local Government Code, made in the bill. The substitute adds language to ensure that an affected landowner can petition for relief immediately upon the effective date of the bill.