

BILL ANALYSIS

Senate Research Center

H.B. 1604
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International Relations & Trade
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is not enough regulation of subdivisions in counties. H.B. 1604 provides provisions relating to the regulation of subdivisions in counties, including certain border and economically distressed counties.

H.B. 1604 amends current law relating to the regulation of subdivisions in counties, including certain border and economically distressed counties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 4 (Section 232.033, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 232.0031, Local Government Code, as follows:

Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. Prohibits a county from imposing under Section 232.003 (Subdivision Requirements) a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of new streets or roads with a similar type and amount of traffic.

SECTION 2. Amends Section 232.022(d), Local Government Code, as follows:

(d) Provides that this subchapter does not apply if all of the lots of the subdivision are more than 10 acres. Deletes existing text providing that this subchapter does not apply if each of the lots of the subdivision is 10 or more acres.

SECTION 3. Amends Section 232.023, Local Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a subdivider of land to have a plat of the subdivision prepared if at least one of the lots of the subdivision is five acres or less. Authorizes a commissioners court by order to require each subdivider of land to prepare a plat if at least one of the lots of a subdivision is more than five acres but not more than 10 acres.

(a-1) Creates this subsection from existing text. Makes a nonsubstantive change.

SECTION 4. Amends Section 232.033, Local Government Code, by amending Subsections (a) and (h) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (a-5), as follows:

(a) Provides that brochures, publications, advertising of any form, and earnest money contracts relating to land required to be platted under this subchapter, rather than relating to subdivided land:

(1) Makes no changes to this subdivision;

(2) Makes a nonsubstantive change; and

(3) if a plat for the land has not been finally approved and recorded, must include a notice that:

(A) subject to Subsection (a-1), a contract for the sale of any portion of the land may not be entered into until the land receives final plat approval under Section 232.024 (Approval by County Required); and

(B) the land may not be possessed or occupied until:

(i) the land receives final plat approval under Section 232.024; and

(ii) all water and sewer service facilities for the lot are connected or installed in compliance with the model rules adopted under Section 16.343 (Minimum State Standards and Model Political Subdivision Rules), Water Code.

Makes nonsubstantive changes.

(a-1) Provides that this subsection applies in addition to other applicable law and prevails to the extent of a conflict with that other law. Provides that this subsection applies only to a person who is a seller or subdivider and who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state law, federal law, and the Nationwide Mortgage Licensing System and Registry. Authorizes a person to, before a plat has been finally approved and recorded for the land:

(1) enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less; and

(2) advertise in accordance with this section.

(a-2) Provides that an earnest money contract entered into under Subsection (a-1) is void if the plat for the land has not been finally approved and recorded before the 91st day after the date the earnest money contract is signed by the potential purchaser, unless the potential purchaser agrees in writing to extend the period for plat approval and recording for an additional 90-day period. Authorizes only one extension to be granted under this subsection.

(a-3) Requires the seller, if an earnest money contract is void under Subsection (a-2), to refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void under Subsection (a-2). Authorizes the potential purchaser, in a suit to recover the earnest money, to recover an amount equal to three times the amount of the earnest money required to be refunded, plus reasonable attorney's fees if the seller fails to refund the earnest money to the potential purchaser in violation of this subsection.

(a-4) Requires a person to provide written notice to the attorney general and to the local government responsible for approving the plat before entering into an earnest money contract with a potential purchaser and before a plat has been finally approved and recorded for the land as permitted under Subsection (a-1). Requires that the notice include:

(1) a statement of intent to enter into an earnest money contract under Subsection (a-1);

(2) a legal description of the land to be included in the subdivision;

(3) each county in which all or part of the subdivision is located; and

(4) the number of proposed individual lots to be included in the subdivision.

(a-5) Authorizes the attorney general to adopt rules regarding the notice to be provided under Subsection (a-4).

(h) Provides that a person who is a seller of lots for which a plat is required under this subchapter, rather than lots in a subdivision, or a subdivider or an agent of a seller or subdivider, commits an offense if the person knowingly authorizes or assists in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning any land offered for sale or lease. Makes a nonsubstantive change.

SECTION 5. Amends Subchapter B, Chapter 232, Local Government Code, by adding Section 232.0375, as follows:

Sec. 232.0375. NOTICE AND OPPORTUNITY TO CURE REQUIRED BEFORE FILING ENFORCEMENT ACTION. (a) Requires that the subdivider be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation before a civil enforcement action may be filed against a subdivider under this subchapter. Authorizes the enforcement action to proceed after the 90th day after the date of the notification.

(b) Provides that this section does not apply to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that:

(1) an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person; or

(2) a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county.

(c) Provides that this section does not apply if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

(d) Provides that this section does not apply to an action filed by a private individual.

SECTION 6. Amends Subchapter B, Chapter 232, Local Government Code, by adding Section 232.045, as follows:

Sec. 232.045. EARNEST MONEY CONTRACTS. (a) Requires that an earnest money contract entered into under Section 232.033(a-1) contain the following statement:

"NOTICE: THIS IS AN EARNEST MONEY CONTRACT ONLY. THE MAXIMUM AMOUNT THAT THE SELLER MAY COLLECT UNDER THIS CONTRACT IS \$250. THE SELLER MAY NOT DEMAND ANY ADDITIONAL PAYMENT UNTIL A PLAT OF THE SUBDIVISION HAS BEEN APPROVED."

(b) Requires that an earnest money contract entered into under Section 232.033(a-1) contain the notice required by Section 232.033 (Advertising Standards and Other Requirements Before Sale; Offense).

SECTION 7. Amends Section 232.072, Local Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes a commissioners court by order to require each subdivider of land to prepare a plat if at least one of the lots of a subdivision is more than five acres but not more than 10 acres.

(a-1) Creates this subsection from existing text. Makes no further changes.

SECTION 8. Amends Subchapter C, Chapter 232, Local Government Code, by adding Sections 232.0805 and 232.0806, as follows:

Sec. 232.0805. NOTICE AND OPPORTUNITY TO CURE REQUIRED BEFORE FILING ENFORCEMENT ACTION. (a) Defines, in this section, "subdivider."

(b) Requires that the subdivider be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation before a civil enforcement action may be filed against a subdivider under this subchapter. Authorizes the enforcement action to proceed after the 90th day after the date of the notification.

(c) Provides that this section does not apply to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that:

(1) an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person; or

(2) a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county.

(d) Provides that this section does not apply if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

(e) Provides that this section does not apply to an action filed by a private individual.

Sec. 232.0806. SUIT BY PRIVATE PERSON IN ECONOMICALLY DISTRESSED AREA. Authorizes a person who has purchased or is purchasing a lot in a subdivision for residential purposes that does not have water and sewer services as required by this subchapter and is located in an economically distressed area, as defined by Section 17.921 (Definitions), Water Code, from a subdivider to bring suit in the district court in which the property is located or in a district court in Travis County to:

(1) declare the sale of the property void, require the subdivider to return the purchase price of the property, and recover from the subdivider:

(A) the market value of any permanent improvements the person placed on the property;

(B) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(C) court costs; and

(D) reasonable attorney's fees; or

(2) enjoin a violation or threatened violation of Section 232.072 (Plat Required), require the subdivider to plat or amend an existing plat under Sections 232.011 (Amending Plat) and 232.081 (Amending Plat), and recover from the subdivider:

(A) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(B) court costs; and

(C) reasonable attorney's fees.

SECTION 9. Amends Section 16.343(g), Water Code, as follows:

(g) Provides that before an application for funds under Section 15.407 (Facility Engineering in Economically Distressed Areas) or Subchapter P (Colonia Self-Help Program), Chapter 15 (Texas Water Assistance Program), or Subchapter K (Assistance to Economically Distressed Areas for Water Supply and Sewer Service Projects), Chapter 17 (Public Funding), may be considered by the board, if the area for which the funds are proposed to be used is located:

- (1) in a municipality, the municipality must adopt the model rules pursuant to this section;
- (2) in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that the model rules have been adopted and are enforced in the extraterritorial jurisdiction by either the municipality or the county; or
- (3) outside the extraterritorial jurisdiction of a municipality, the county must adopt the model rules pursuant to this section

Deletes existing text requiring a political subdivision adopt the model rules pursuant to this section before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board. Deletes existing text requiring the applicant to be located in a city or county that has adopted such rules if the applicant is a district, nonprofit water supply corporation, or colonia. Deletes existing text prohibiting applicants for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, from receiving funds under those provisions unless the applicable political subdivision adopts and enforces the model rules.

SECTION 10. Amends Subchapter J, Chapter 16, Water Code, by adding Section 16.3541, as follows:

Sec. 16.3541. NOTICE AND OPPORTUNITY TO CURE REQUIRED BEFORE FILING ENFORCEMENT ACTION. (a) Defines, in this section, "subdivider."

- (b) Requires that the subdivider be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation before a civil enforcement action may be filed against a subdivider under this subchapter. Authorizes the enforcement action to proceed after the 90th day after the date of the notification.
- (c) Provides that this section does not apply to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that:
 - (1) an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person; or
 - (2) a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county.
- (d) Provides that this section does not apply if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

SECTION 11. Repealer: Section 232.021(9) (defining "sell"), Local Government Code.

SECTION 12. Provides that the changes in law made by this Act to Sections 232.022, 232.023, 232.033, 232.041, and 232.072, Local Government Code, apply only to a subdivision plat application submitted for approval on or after the effective date of this Act. Provides that a subdivision plat application submitted for approval before the effective date of this Act is

governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 13. Provides that this Act applies only to an enforcement action filed on or after the effective date of this Act. Provides that an enforcement action filed before the effective date of this Act is governed by the law as it existed when the action was filed, and the former law is continued in effect for that purpose.

SECTION 14. Effective date: September 1, 2011.