

## **BILL ANALYSIS**

C.S.H.B. 1604  
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County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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

### **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. 1604 amends the Local Government Code, in a provision prohibiting a county from imposing a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of streets or roads with a similar type and amount of traffic, to specify such construction as the construction of new streets or roads with a similar type and amount of traffic.

C.S.H.B. 1604 specifies that provisions relating to subdivision platting requirements in a county near an international border are inapplicable if all of the lots of a subdivision are more than 10 acres, rather than 10 or more acres. The bill, under such provisions, makes the requirement that a subdivider of land have a plat of a subdivision prepared conditional on at least one of the lots of the subdivision being five acres or less and authorizes a commissioners court of a county 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.

C.S.H.B. 1604, in a provision prohibiting brochures, publications, and advertising from containing any misrepresentation and requiring such brochures, publications, and advertising to accurately describe the availability of water and sewer service facilities and electric and gas utilities, specifies the brochures, publications, and advertising of any form relating to land required to be platted under provisions relating to subdivision platting requirements in a county near an international border, rather than brochures, publications, and advertising of any form relating to subdivided land. The bill requires the brochures, publications, and advertising, if a plat for the land has not been finally approved and recorded, to include a notice that, subject to certain bill provisions, a contract for the sale of any portion of the land may not be entered into until the land receives final plat approval and the land may not be possessed or occupied until the land receives final plat approval and all water and sewer service facilities for the lot are connected or installed in compliance with the model rules adopted under Water Code provisions relating to economically distressed areas regarding minimum state standards and model political subdivision rules. The bill authorizes 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, before a plat has been finally approved and recorded for the land, to enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less and advertise in accordance with provisions relating to advertising standards and other

requirements before a sale, as amended by provisions of the bill. The bill establishes that such authorization applies in addition to other applicable law and that the authorization prevails to the extent of a conflict with that other law.

C.S.H.B. 1604 makes it an Class A misdemeanor for a person who is a seller of lots for which a plat is required under provisions relating to subdivision platting requirements in a county near an international border, rather than a person who is a seller of lots in a subdivision, to knowingly authorize or assist 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.

C.S.H.B. 1604, under provisions relating to subdivision platting requirements in certain economically distressed counties, authorizes a commissioners court of a county 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.

C.S.H.B. 1604 amends the Local Government Code and Water Code to require, before a civil enforcement action may be filed against a subdivider under provisions relating to subdivision platting requirements in a county near an international border, subdivision platting requirements in certain economically distressed counties, or economically distressed areas, 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. The bill authorizes the enforcement action to proceed after the 90th day after the date of the notification. The bill makes these provisions relating to notice and opportunity to cure inapplicable to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person or that a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county. The bill makes such provisions inapplicable if an enforcement action has previously been filed against the subdivider for the same or another alleged violation. The bill provides for the meaning of "subdivider" by reference.

C.S.H.B. 1604 amends the Water Code to remove provisions requiring, before an application for funds under Texas water assistance program provisions relating to facility engineering in economically distressed areas or the colonia self-help program or public funding provisions relating to assistance to economically distressed areas for water supply and sewer service projects may be considered by the Texas Water Development Board (TWDB), a political subdivision to adopt the model rules pursuant to provisions relating to minimum state standards and model political subdivision rules and an applicant that is a district, nonprofit water supply corporation, or colonia to be located in a city or county that has adopted such rules. The bill removes a provision prohibiting an applicant for such funds from receiving the funds unless the applicable political subdivision adopts and enforces the model rules. The bill instead establishes that before an application for such funds may be considered by the TWDB, if the area for which the funds are proposed to be used is located in a municipality, the municipality must adopt the model rules; if such area is located in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that model rules have been adopted and are enforced in the extraterritorial jurisdiction by either the municipality or the county; or if such area is located outside the extraterritorial jurisdiction of a municipality, the county must adopt the model rules.

C.S.H.B. 1604 makes conforming and nonsubstantive changes.

C.S.H.B. 1604 repeals Section 232.021(9) of the Local Government Code relating to the definition of "sell" applicable to provisions relating to subdivision platting requirements in a county near an international border.

#### **EFFECTIVE DATE**

September 1, 2011.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1604 omits a provision included in the original expanding the provisions under which a county is prohibited from imposing a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of certain streets or roads. The substitute omits a provision included in the original limiting such prohibition to the construction of streets or roads that were established or laid out on or after September 1, 1989. The substitute contains a provision not included in the original specifying that a county is prohibited from imposing 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.

C.S.H.B. 1604 omits a provision included in the original authorizing a person to advertise the sale of an undeveloped lot that is part of a tract of land that has not been platted and to enter into an earnest money contract with a potential purchaser of the lot under certain conditions. The substitute omits a provision included in the original requiring a person offering a lot for sale to provide a purchaser with a written notice informing the purchaser that no person may possess or occupy the lot until certain conditions are satisfied.

C.S.H.B. 1604 contains a provision not included in the original specifying under certain provisions relating to advertising standards and other requirements before a sale brochures, publications, and advertising of any form relating to land required to be platted under certain provisions, rather than brochures, publications, and advertising of any form relating to subdivided land. The substitute contains a provision not included in the original requiring such brochures, publications, and advertising to include certain notice if a plat for land has not been finally approved and recorded. The substitute contains a provision not included in the original authorizing certain persons who are sellers or subdividers and who are credentialed residential mortgage loan originators to enter into an earnest money contract and advertise in accordance with certain provisions. The substitute contains a provision not included in the original establishing that such authorization applies in addition to other law and prevails to the extent of a conflict. The substitute contains a provision not included in the original making it a Class A misdemeanor for a person who is a seller of lots for which a plat is required under certain provisions, rather than a person who is a seller of lots in a subdivision, to knowingly authorize or assist 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.

C.S.H.B. 1604 differs from the original by specifying a civil enforcement action, whereas the original refers to an enforcement action, under provisions of the bill relating to required notice and opportunity to cure before the filing of an enforcement action. The substitute differs from the original by making such provisions inapplicable to a civil enforcement action if the attorney general, district attorney, or county attorney makes certain assertions, whereas the original makes the provisions inapplicable to an enforcement action filed because an occupied dwelling allegedly lacks water or sewer service. The substitute contains a provision not included in the original making the provisions relating to required notice and opportunity to cure before the filing of an enforcement action inapplicable if an enforcement action has previously been filed against a subdivider for the same or another alleged violation.

C.S.H.B. 1604 contains provisions not included in the original establishing requirements on a municipality, applicant, and county in regard to the adoption of model rules before an application for certain funds may be considered by the Texas Water Development Board; removing requirements on a political subdivision and an applicant that is a district, nonprofit water supply corporation, or colonia in regard to the adoption of model rules before such an application may be considered; and removing a prohibition on an applicant for such funds from receiving funds unless the applicable political subdivision adopts and enforces model rules.

C.S.H.B. 1604 contains a provision not included in the original repealing a definition of "sell."