

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1604
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International Relations & Trade
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is insufficient 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.

C.S.H.B. 1604 amends current law relating to the regulation of land development, including county building code standards for new residential construction, and sales in certain counties and municipalities, and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the purpose of the changes to Section 232.037, Local Government Code, is to allow the state and certain counties to be affected parties in claims against unscrupulous developers who violate subdivision platting requirements under Subchapter B (Subdivision Platting Requirements in County Near International Border), Chapter 232 (County Regulation of Land Use, Structures, Businesses, and Related Activities), Local Government Code, because the state and counties may be reasonably be expected to mitigate or ameliorate the conditions created by those developers.

SECTION 2. 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 3. Amends Section 232.022(d), Local Government Code, as follows:

(d) Provides that this subchapter does not apply if:

(1) all of the lots of the subdivision are more than 10 acres; and

(2) restrictions are included in each deed that prohibit each lot from being further subdivided into lots intended to be used for residential purposes and notice of the restrictions are included in each recorded plat.

Deletes existing text providing that this subchapter does not apply if each of the lots of the subdivision is 10 or more acres. Makes nonsubstantive changes.

SECTION 4. 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 5. Amends Subchapter B, Chapter 232, Local Government Code, by adding Section 232.0315, as follows:

Sec. 232.0315. NOTICE OF WATER AND WASTEWATER REQUIREMENTS BY COUNTIES. (a) Provides that this section applies only to a county that sells:

(1) under Section 34.01 (Sale of Property), Tax Code, real property presumed to be for residential use under Section 232.022 (Applicability); or

(2) under Section 3 (Executions), Part VI (Rules Relating to Ancillary Proceedings), Texas Rules of Civil Procedure, and Chapter 34 (Execution on Judgments), Civil Practice and Remedies Code, real property presumed to be for residential use under Section 232.022, taken by virtue of a writ of execution.

(b) Requires a county to include in the public notice of sale of the property and the deed conveying the property a statement substantially similar to the following:

"THIS SALE IS BEING CONDUCTED PURSUANT TO STATUTORY OR JUDICIAL REQUIREMENTS. ____ (NAME OF COUNTY) AND THE SHERIFF'S DEPARTMENT ARE ACTING ONLY AS CONDUITS OF INFORMATION. BIDDERS WILL BID ON THE RIGHTS, TITLE, AND INTERESTS, IF ANY, IN THE REAL PROPERTY OFFERED.

"THE PROPERTY IS SOLD AS IS, WHERE IS, AND WITHOUT ANY WARRANTY, EITHER EXPRESS OR IMPLIED. NEITHER THE COUNTY NOR THE SHERIFF'S DEPARTMENT WARRANTS OR MAKES ANY REPRESENTATIONS ABOUT THE PROPERTY'S TITLE, CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. BUYERS ASSUME ALL RISKS.

"IN SOME SITUATIONS, A LOT OF FIVE ACRES OR LESS IS PRESUMED TO BE INTENDED FOR RESIDENTIAL USE. HOWEVER, IF THE PROPERTY LACKS WATER OR WASTEWATER SERVICE, THE PROPERTY MAY NOT QUALIFY FOR RESIDENTIAL USE. A POTENTIAL BUYER WHO WOULD LIKE MORE INFORMATION SHOULD MAKE ADDITIONAL INQUIRIES OR CONSULT WITH PRIVATE COUNSEL."

(c) Requires that the statement required by Subsection (b) be:

(1) printed:

(A) in accordance with the language requirements of Section 232.025 (Subdivision Requirements); and

(B) in 14-point boldface type or 14-point uppercase typewritten letters; and

(2) read aloud at the sale, in accordance with the language requirements of Section 232.025, by an agent of the county.

(d) Provides that a sale conducted in violation of this section is void.

SECTION 6. Amends Section 232.037, Local Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Authorizes the attorney general, or the district attorney, criminal district attorney, county attorney with felony responsibilities, or county attorney of the county to take any action necessary in a court of competent jurisdiction on behalf of the state, an affected county subject to this subchapter, or affected residents to:

(1)-(2) Makes no changes to these subdivisions;

(3)-(4) Makes nonsubstantive changes;

(5) recover funds paid to the subdivider or an agent of the subdivider, with interest;

(6) freeze the assets of the subdivider or an agent of the subdivider; and

(7) void or rescind contracts.

(e) Requires that funds recovered under Subsection (a)(5) be divided between the affected residents and the governmental entity or entities, with 50 percent of the recovery to be paid to the affected residents and the other 50 percent to be paid to the governmental entity or entities, if the state or a county is a party to the claim. Requires multiple governmental entities that are party to the claim to divide money received under this subsection equally among the entities.

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 Section 232.0805, as follows:

Sec. 232.0805. 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 or replat 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 233.151, Local Government Code, as follows:

Sec. 233.151. DEFINITIONS. (a) Redefines "new residential construction" and defines "residential dwelling" in this subchapter.

(b) Provides that the term "new residential construction" does not include a structure that is constructed in accordance with Chapter 1201 (Manufactured Housing), Occupations Code, or a modular home constructed in accordance with Chapter 1202 (Industrialized Housing and Building), Occupations Code.

SECTION 10. Amends Section 233.153, Local Government Code, as follows:

Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a) Authorizes the commissioners court of a county by order to require new residential construction in the unincorporated area of the county to conform to the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county. Deletes existing text requiring new residential construction of a single-family house or duplex in the unincorporated area of a county to which this subchapter applies to conform to the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county.

(b) Provides that standards required under this subchapter apply only to new residential construction that begins after September 1, 2011, rather than after September 1, 2009.

(c) Provides that the building code adopted by the municipality controls and building code standards have no effect in the municipality's extraterritorial jurisdiction if a municipality located within a county to which this subchapter applies has adopted a building code in the municipality's extraterritorial jurisdiction, provided that the municipality:

(1) actively and diligently enforces the municipality's adopted building code within its extraterritorial jurisdiction; and

(2) establishes a process to inform utilities providing service in the municipality's extraterritorial jurisdiction of the prevailing building code.

(d) Deletes existing text prohibiting this chapter from being construed to require prior approval by the county before the beginning of new residential construction. Makes nonsubstantive changes.

(e) Provides that, in the event of a conflict between this subchapter and Subchapter B, Chapter 232, the more stringent requirements control, rather than the provisions of Subchapter B, Chapter 232 control.

Deletes existing Subsection (f) prohibiting a county from charging a fee to a person subject to standards under this subchapter to defray the costs of enforcing the standards.

SECTION 11. Amends Subchapter F, Chapter 233, Local Government Code, by adding Section 233.1531, as follows:

Sec. 233.1531. BUILDING PERMITS. (a) Authorizes the commissioners court of a county to which this subchapter applies to, by order, establish a building permit requirement to promote safe and uniform building, plumbing, and electrical standards and to enforce the building codes the county has adopted. Requires the county, if a commissioners court adopts an order to establish a building permit requirement, to establish a mechanism by which the county issues a building permit if the person submitting the application for the permit:

- (1) files information relating to the location of the residence;
- (2) files the building plans for the residence; and
- (3) complies with the applicable regulations relating to the issuance of the permit.

(b) Authorizes a county to adopt rules it considers necessary to administer its duties under this section and charge a reasonable fee, not to exceed \$500 per application, to defray the costs of administering its duties under this section.

(c) Requires the county to deposit fees collected under this section in an account in its general fund and dedicate the fees to the building permit program. Authorizes the funds in the account to be used only for the purpose of administering the building permit program.

SECTION 12. Amends Section 233.154(a), Local Government Code, as follows:

(a) Requires a person who builds new residential construction, rather than a person who builds new residential construction described by Section 233.153 (Building Code Standards Applicable), to have the construction inspected to ensure building code compliance in accordance with this section as follows:

(1) for new residential construction on a vacant lot, the following inspections, rather than a minimum of three inspections, must be performed during the construction project to ensure code compliance, as applicable, at the following stages of construction:

- (A) the foundation stage, including, rather than before, the placement of concrete;
- (B) the framing, electrical, plumbing, and mechanical systems stage, before covering with drywall or other interior wall covering; and
- (C) on completion of the new residential construction;

(2) for new residential construction of an addition to an existing residential dwelling as described by Section 233.151(a)(1)(B) (relating to defining "new residential construction"), rather than an addition to an existing residence as described by Section 233.151(a)(2) (relating to defining "new residential construction"), the inspections under Subdivision (1) must be performed as necessary based on the scope of work of the construction project; and

(3) for new residential construction on a vacant lot and for construction of an addition to an existing residential dwelling, the builder:

(A) is responsible for contracting to perform the inspections required by this subsection with an inspector certified by the International Code Council in the discipline; and

(B) Makes no changes to this paragraph.

Deletes existing text requiring a person who builds new residential construction described by Section 233.153 (Building Code Standards Applicable) to have the construction inspected to ensure building code compliance in accordance with this section. Deletes existing text providing that, for new residential construction on a vacant lot and for construction of an addition to an existing residence, the builder is responsible for contracting to perform the inspections required by this subsection with a licensed engineer, a registered architect, a professional inspector licensed by the Texas Real Estate Commission, a plumbing inspector employed by a municipality and licensed by the Texas State Board of Plumbing Examiners, a building inspector employed by a political subdivision, or an individual certified as a residential combination inspector by the international Code Council. Makes nonsubstantive changes.

SECTION 13. Amends Subchapter F, Chapter 233, Local Government Code, by adding Section 233.1541, as follows:

Sec. 233.1541. OCCUPANCY OF RESIDENCE; CONNECTION OF UTILITIES. (a) Prohibits a utility from serving or connecting a residential dwelling or unit of a residential dwelling with water, sewer, electricity, or gas service unless the entity receives a determination from the commissioners court that the residential dwelling or unit:

(1) has been inspected in accordance with this subchapter;

(2) has passed all inspections required by this subchapter; and

(3) complies with applicable on-site sewage regulations.

(b) Requires the commissioners court to:

(1) make the determination under Subsection (a) not later than the 20th regular business day after the date it receives a request for a determination;

(2) issue the certification of determination of inspection, if appropriate, not later than the 10th day after the date the determination is made; and

(3) provide a certificate of occupancy, or other relevant authorizing certificate, to a utility as proof of compliance with required building codes.

SECTION 14. Amends Section 233.155, Local Government Code, as follows:

Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) Creates this subsection from existing text. Makes a nonsubstantive change.

(b) Authorizes the attorney general, or the district attorney, criminal district attorney, county attorney with felony responsibilities, or county attorney of the county to take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:

(1) enjoin the violation or threatened violation of a requirement of this subchapter or an order, rule, or standard adopted by the commissioners court under this subchapter;

(2) recover civil or criminal penalties, attorney's fees, litigation costs, and investigative costs;

(3) require correction of the noncomplying conditions; and

(4) recover actual expenses incurred by the owner of the residential dwelling as a result of the failure to build in accordance with the adopted standards or to take corrective actions.

(c) Authorizes the attorney general, at the request of the district or county attorney with jurisdiction, to conduct a criminal prosecution under Section 233.157.

(d) Authorizes any resident of an affected residential dwelling, or the attorney general, district attorney, or county attorney on behalf of the resident, to file a motion against the provider of utilities to halt termination of pre-existing utility services during the pendency of any enforcement action brought. Prohibits the services from being terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health, safety, or welfare of the resident.

(e) Provides that this section does not prohibit a utility from disconnecting services without prior notice when a known dangerous conditions exists for as long as the condition exists. Requires that a disconnect without notice be performed pursuant to rules approved by the appropriate regulatory authority.

SECTION 15. Amends Section 233.157, Local Government Code, as follows:

Sec. 233.157. New heading: OFFENSES; PENALTY; EXCEPTION. (a) Provides that a person commits an offense if the person fails to provide proper notice in accordance with Section 233.154 (Inspection and Notice Requirements), rather than in accordance with Sections 233.154(b) (relating to inspection and notice requirements) and (c) (relating to inspection and notice requirements).

(b) Provides that a person commits an offense if the person violates a rule or order adopted under this subchapter.

(c) Provides that a person commits an offense if the person constructs new residential construction that does not comply with a standard adopted under this subchapter.

(d) Provides that except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(e) Provides that if it is shown at trial of an offense that the defendant has previously been convicted of an offense three or more times under this subchapter, the offense is a Class B misdemeanor.

(f) Provides that venue for prosecution for a violation under this section is in the county in which any element of the violation is alleged to have occurred or in Travis County.

(g) Provides that it is an exception to the application of this section:

(1) that the residential dwelling or unit was constructed before the effective date of this subchapter or

(2) that:

(A) the person is an owner-occupant of a residential dwelling or unit of a residential dwelling that is classified by the Texas Department of Housing and Community Affairs as a low-income household;

(B) the violation related to a building standard or building code for that dwelling or unit; and

(C) the county:

(i) did not make available to the person a grant or loan in an amount sufficient to cure the violation; or

(ii) made available to the person a loan that was sufficient to cure the violation but that caused the housing expenses of the person to exceed 30 percent of the person's net income.

Deletes existing Subsection (c) providing that an individual who fails to provide proper notice in accordance with Sections 233.154(b) and (c) is not subject to a penalty under this subsection if the new residential construction is built by the individual or the individual acts as the individual's own contractor, and the individual intends to use the residence as the individual's primary residence.

SECTION 16. Amends Subchapter F, Chapter 233, Local Government Code, by adding Section 233.158, as follows:

Sec. 233.158. PROHIBITION ON USE OF STATE MONEY TO REMEDIATE OR SUBSIDIZE SUBSTANDARD HOUSING. Prohibits a county from applying for or receiving state money to remediate or mitigate deficiencies in substandard housing that are associated with new residential construction commenced on or after September 1, 2011, unless the county has adopted an order under Section 233.153(a) and is enforcing the provisions of this subchapter.

SECTION 17. 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:

(A) the county must adopt and enforce the model rules pursuant to this section; and

(B) the applicant must demonstrate that the county has complied with Paragraph (A).

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 18. Provides that Section 232.0315, Local Government Code, as added by this Act, applies only to a sale for which public notice is required on or after the effective date of this Act. Provides that a sale for which public notice is required before the effective date of this Act is covered by the law in effect when the public notice was provided, and the former law is continued in effect for that purpose.

SECTION 19. Provides that the changes in law made by this Act to Sections 232.022, 232.023, 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 20. Provides that a county is not required to adopt an order to be eligible for state money as required by Section 233.158, Local Government Code, as added by this Act, until September 1, 2012.

SECTION 21. Effective date: September 1, 2011.