

BILL ANALYSIS

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C.S.S.B. 1363
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Historically, the Texas Constitution and the legislature have not provided counties with the necessary authority to regulate land development or to adopt/enforce meaningful building codes for unincorporated areas. This lack of authority led to unregulated construction and development of substandard housing/dwellings (colonias) along the border beginning in the 1950s.

County officials have argued over the years that the lack of ordinance-making authority places the safety and quality of life of residents at risk. Additionally, the inability of counties to have limited ordinance-making authority threatens neighborhoods and the dreams of families for a better life, and it can impede growth of cities, as well as the expansion of local economies.

C.S.S.B. 1363 provides certain counties with the necessary permissive limited authority to regulate and plan development to help stop the proliferation of substandard residential development.

C.S.S.B. 1363 amends current law relating to county and municipal land development regulations and provides a penalty.

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. Amends Section 233.151, Local Government Code, as follows:

- (a) Redefines "new residential construction" and defines "residential dwelling."
- (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 Buildings), Occupations Code.

SECTION 2. 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, rather than 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 the effective date of the commissioners court order, rather than September 1, 2009.

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

(d) Prohibits this subchapter from being construed to authorize the commissioners court of a county to adopt or enforce zoning regulations, or affect the application of the provisions of Subchapter B (Subdivision Platting requirements in County Area Near International Border), Chapter 232 (County Regulation of Subdivisions), to land development. Deletes existing text prohibiting this subchapter 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 3. 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, by order, to 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 program.

SECTION 4. 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, 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, are required to be performed during the construction project to ensure code compliance, as applicable, at the following stages of construction:

(A) the foundation stage, including the placement of concrete, 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, rather than residence, as described by Section 233.151(a)(1)(B) (providing that "new residential construction" includes construction of an addition to an existing residential dwelling or unit of a residential dwelling, if the addition will increase the square footage or value of the existing residential dwelling or unit, as applicable, by more than 50 percent), rather than as described by Section 233.151(a)(2) (providing that "new residential construction" includes construction of an addition to an existing single-family house or duplex, if the addition will increase the square footage or value of the existing residential building by more than 50 percent), the inspections under Subdivision (1) are required to be performed as necessary based on the scope of the 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, rather than residence, 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) may use the same inspector for all the required inspections or a different inspector for each required inspection.

Deletes existing text providing that 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.

SECTION 5. 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 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 make the determination under Subsection (a) not later than the 20th regular business day after the date it receives a request for a determination, and issue the certificate of determination of inspection, if appropriate, not later than the 10th day after the date the determination is made.

SECTION 6. Amends Section 233.155, Local Government Code, as follows:

Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) Creates this subsection from existing text. Authorizes the county, if proper notice is not submitted in accordance with Section 233.154(b) (requiring the builder, if required by a county to which this subchapter applies, before commencing new residential construction, to provide notice to the county on a form prescribed by the county including certain information) and (c) (requiring the builder, if required by the county, not later than the 10th day after the date of the final inspection under this section, to submit notice of the inspection stating whether or not the inspection showed compliance with the building code standards applicable to that phase of construction in a form required by the county to certain county officials and persons), to take any or all of certain actions.

(b) Authorizes the attorney general or the district attorney, criminal district attorney, county attorney with felony responsibility, or county attorney of the county to take any action necessary on behalf of the state or on behalf of residents, as applicable to:

(1) enjoin the violation or threatened violation of a requirement of this subchapter or an order, rule, or standard adopted by a 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 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, during the pendency of any enforcement action brought, to file a motion against the provider of utilities to halt termination of preexisting utility services. Prohibits the services from being terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to the health, safety, or welfare of the resident.

SECTION 7. 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 Sections 233.154(b) and (c).

(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 of 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 of a residential dwelling was constructed before the effective date of the commissioners court order under Section 233.153(a); 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 did not make available to the person a grant or loan in an amount sufficient to cure the violation, or made available to the person a loan that was sufficient to cure the violation but that caused the housing expense 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 Section 233.154(b) and (c) is not subject to a penalty under this subsection if the new residential construction is build 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 8. 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 a resolution under Section 233.153(a) and is enforcing the provisions of this subchapter.

SECTION 9. Amends Chapter 242, Local Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. DEVELOPMENT REGULATIONS IN CERTAIN COUNTIES AND MUNICIPALITIES

Sec. 242.051. **APPLICABILITY.** Provides that this subchapter applies only to a county that includes territory located within 50 miles of an international border, or a municipality located in that county if the county does not exercise in the municipality's extraterritorial jurisdiction the authority described by this subchapter, and the county by resolution authorizes the municipality to exercise in the municipality's extraterritorial jurisdiction the authority described by this subchapter.

Sec. 242.052. **REGULATORY AUTHORITY.** (a) Authorizes the commissioners court of a county to which this subchapter applies to, by order, regulate residential land development in the unincorporated area of the county. Authorizes the governing body of a municipality to which this subchapter applies to, by ordinance, regulate residential land development in the municipality's extraterritorial jurisdiction. Authorizes the commissioners court or governing body, by this authority, to prevent the proliferation of colonias by:

(1) adopting regulations relating to:

(A) maximum densities, including the size of lots;

(B) the height, number of stories, size, or number of buildings or other structures that may be located on a lot or tract;

(C) the location of buildings and other structures on a lot or tract; and

(D) the preparation of a plan for utility development, environmental effect and adaptation, utility extension, and capacity planning and providing financial analysis of said plan; and

(2) adopting and enforcing building codes as authorized for counties under Subchapter F (Residential Building Code Standards Applicable to Unincorporated Areas of Certain Counties), Chapter 233, to promote safe and uniform building, plumbing, and electrical standards.

(b) Prohibits the commissioners court or governing body, if a tract of land is appraised as agricultural or open-space land by the appraisal district, from regulating land development on that tract under the authority granted by Subsection (a)(1)(B), (a)(1)(C), or (a)(2).

(c) Provides that the authority granted under this section does not authorize the commissioners court or governing body to adopt an order regulating commercial property that is uninhabitable.

(d) Provides that the authority granted under this section does not authorize the commissioners court or governing body to adopt an order that limits or otherwise impairs the rights of individuals or entities in the exploration, development, or production of oil, gas, or other minerals.

Sec. 242.053. **MUNICIPAL ORDINANCE PREVAILS OVER COUNTY ORDER.** Provides that if an order adopted by the county under this subchapter conflicts with an ordinance of a municipality, the municipal ordinance prevails within the municipality's jurisdiction to the extent of the conflict.

Sec. 242.054. **EXISTING AUTHORITY UNAFFECTED.** Provides that the authority granted by this subchapter does not affect the authority of the commissioners court or governing body to adopt an order or ordinance under other law.

Sec. 242.055. **INJUNCTION.** Entitles the county or municipality, in a suit brought by the appropriate attorney representing the county or municipality in the district court, to

appropriate injunctive relief to prevent the violation or threatened violation of the entity's order or ordinance adopted under this subchapter from continuing or occurring.

Sec. 242.056. PENALTY. Provides that a person commits an offense if the person violates a restriction or prohibition imposed by an order or ordinance adopted under this subchapter. Provides that an offense under this section is a Class C misdemeanor.

SECTION 10. Amends the heading to Chapter 242, Local Government Code, to read as follows:

CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE
SUBDIVISIONS AND PROPERTY DEVELOPMENT

SECTION 11. Amends Chapter 242, Local Government Code, by designating Sections 242.001, 242.0015, and 242.002 as Subchapter A and adding a heading for Subchapter A, to read as follows:

SUBCHAPTER A. AUTHORITY TO REGULATE SUBDIVISIONS IN AND OUTSIDE
MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION

SECTION 12. Provides that a county is not required to adopt a resolution 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 13. Effective date: September 1, 2011.