

By: Guillen, Raymond

H.B. No. 1604

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of subdivisions in counties, including certain border and economically distressed counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 232.0031, Local Government Code, is amended to read as follows:

Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. A county may not impose under Section 232.003 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. Section 232.022(d), Local Government Code, is amended to read as follows:

(d) This subchapter does not apply if all ~~each~~ of the lots of the subdivision are more than ~~is~~ 10 ~~or more~~ acres.

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

(a) A subdivider of land must have a plat of the subdivision prepared if at least one of the lots of the subdivision is five acres or less. A commissioners court by order may 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) A subdivision of a tract under this section

1 ~~[subsection]~~ includes a subdivision of real property by any method
2 of conveyance, including a contract for deed, oral contract,
3 contract of sale, or other type of executory contract, regardless
4 of whether the subdivision is made by using a metes and bounds
5 description.

6 SECTION 4. Section 232.033, Local Government Code, is
7 amended by amending Subsections (a) and (h) and adding Subsections
8 (a-1), (a-2), (a-3), (a-4), and (a-5) to read as follows:

9 (a) Brochures, publications, ~~and~~ advertising of any form,
10 and earnest money contracts relating to ~~subdivided~~ land required
11 to be platted under this subchapter:

12 (1) may not contain any misrepresentation; ~~and~~

13 (2) except for a for-sale sign posted on the property
14 that is no larger than three feet by three feet, must accurately
15 describe the availability of water and sewer service facilities and
16 electric and gas utilities; and

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

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

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

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

26 (ii) all water and sewer service facilities
27 for the lot are connected or installed in compliance with the model

1 rules adopted under Section 16.343, Water Code.

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

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

13 (2) advertise in accordance with this section.

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

21 (a-3) If an earnest money contract is void under Subsection
22 (a-2), the seller shall refund all earnest money paid to the
23 potential purchaser not later than the 30th day after the date the
24 earnest money contract becomes void under Subsection (a-2). If the
25 seller fails to refund the earnest money to the potential purchaser
26 in violation of this subsection, the potential purchaser, in a suit
27 to recover the earnest money, may recover an amount equal to three

1 times the amount of the earnest money required to be refunded, plus
2 reasonable attorney's fees.

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

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

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

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

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

17 (a-5) The attorney general may adopt rules regarding the
18 notice to be provided under Subsection (a-4).

19 (h) A person who is a seller of lots for which a plat is
20 required under this subchapter [~~in a subdivision~~], or a subdivider
21 or an agent of a seller or subdivider, commits an offense if the
22 person knowingly authorizes or assists in the publication,
23 advertising, distribution, or circulation of any statement or
24 representation that the person knows is false concerning any
25 [~~subdivided~~] land offered for sale or lease. An offense under this
26 section is a Class A misdemeanor.

27 SECTION 5. Subchapter B, Chapter 232, Local Government

1 Code, is amended by adding Section 232.0375 to read as follows:

2 Sec. 232.0375. NOTICE AND OPPORTUNITY TO CURE REQUIRED
3 BEFORE FILING ENFORCEMENT ACTION. (a) Before a civil enforcement
4 action may be filed against a subdivider under this subchapter, the
5 subdivider must be notified in writing about the general nature of
6 the alleged violation and given 90 days from the notification date
7 to cure the violation. After the 90th day after the date of the
8 notification, the enforcement action may proceed.

9 (b) This section does not apply to a civil enforcement
10 action if the attorney general, district attorney, or county
11 attorney asserts that:

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

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

17 (c) This section does not apply if an enforcement action has
18 previously been filed against the subdivider for the same or
19 another alleged violation.

20 (d) This section does not apply to an action filed by a
21 private individual.

22 SECTION 6. Subchapter B, Chapter 232, Local Government
23 Code, is amended by adding Section 232.045 to read as follows:

24 Sec. 232.045. EARNEST MONEY CONTRACTS. (a) An earnest
25 money contract entered into under Section 232.033(a-1) must contain
26 the following statement:

27 "NOTICE: THIS IS AN EARNEST MONEY CONTRACT ONLY. THE MAXIMUM

1 AMOUNT THAT THE SELLER MAY COLLECT UNDER THIS CONTRACT IS \$250. THE
2 SELLER MAY NOT DEMAND ANY ADDITIONAL PAYMENT UNTIL A PLAT OF THE
3 SUBDIVISION HAS BEEN APPROVED."

4 (b) An earnest money contract entered into under Section
5 232.033(a-1) must contain the notice required by Section 232.033.

6 SECTION 7. Section 232.072, Local Government Code, is
7 amended by amending Subsection (a) and adding Subsection (a-1) to
8 read as follows:

9 (a) The owner of a tract of land that divides the tract in
10 any manner that creates lots of five acres or less intended for
11 residential purposes must have a plat of the subdivision prepared.
12 A commissioners court by order may require each subdivider of land
13 to prepare a plat if at least one of the lots of a subdivision is
14 more than five acres but not more than 10 acres.

15 (a-1) A subdivision of a tract under this section includes a
16 subdivision of real property by any method of conveyance, including
17 a contract for deed, oral contract, contract of sale, or other type
18 of executory contract, regardless of whether the subdivision is
19 made by using a metes and bounds description.

20 SECTION 8. Subchapter C, Chapter 232, Local Government
21 Code, is amended by adding Sections 232.0805 and 232.0806 to read as
22 follows:

23 Sec. 232.0805. NOTICE AND OPPORTUNITY TO CURE REQUIRED
24 BEFORE FILING ENFORCEMENT ACTION. (a) In this section,
25 "subdivider" has the meaning assigned by Section 232.021.

26 (b) Before a civil enforcement action may be filed against a
27 subdivider under this subchapter, the subdivider must be notified

1 in writing about the general nature of the alleged violation and
2 given 90 days from the notification date to cure the violation.
3 After the 90th day after the date of the notification, the
4 enforcement action may proceed.

5 (c) This section does not apply to a civil enforcement
6 action if the attorney general, district attorney, or county
7 attorney asserts that:

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

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

13 (d) This section does not apply if an enforcement action has
14 previously been filed against the subdivider for the same or
15 another alleged violation.

16 (e) This section does not apply to an action filed by a
17 private individual.

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

26 (1) declare the sale of the property void, require the
27 subdivider to return the purchase price of the property, and

1 recover from the subdivider:

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

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

6 (C) court costs; and

7 (D) reasonable attorney's fees; or

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

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

14 (B) court costs; and

15 (C) reasonable attorney's fees.

16 SECTION 9. Section 16.343(g), Water Code, is amended to
17 read as follows:

18 (g) Before an application for funds under Section 15.407 or
19 Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be
20 considered by the board, if the area for which the funds are
21 proposed to be used is located:

22 (1) in a municipality, the municipality must adopt the
23 model rules pursuant to this section;

24 (2) in the extraterritorial jurisdiction of a
25 municipality, the applicant must demonstrate that the model rules
26 have been adopted and are enforced in the extraterritorial
27 jurisdiction by either the municipality or the county; or

1 (3) outside the extraterritorial jurisdiction of a
2 municipality, the county must adopt the model rules pursuant to
3 this section [~~a political subdivision must adopt the model rules~~
4 ~~pursuant to this section. If the applicant is a district, nonprofit~~
5 ~~water supply corporation, or colonia, the applicant must be located~~
6 ~~in a city or county that has adopted such rules. Applicants for~~
7 ~~funds under Section 15.407 or Subchapter P, Chapter 15, or~~
8 ~~Subchapter K, Chapter 17, may not receive funds under those~~
9 ~~provisions unless the applicable political subdivision adopts and~~
10 ~~enforces the model rules~~].

11 SECTION 10. Subchapter J, Chapter 16, Water Code, is
12 amended by adding Section 16.3541 to read as follows:

13 Sec. 16.3541. NOTICE AND OPPORTUNITY TO CURE REQUIRED
14 BEFORE FILING ENFORCEMENT ACTION. (a) In this section,
15 "subdivider" has the meaning assigned by Section 232.021, Local
16 Government Code.

17 (b) Before a civil enforcement action may be filed against a
18 subdivider under this subchapter, the subdivider must be notified
19 in writing about the general nature of the alleged violation and
20 given 90 days from the notification date to cure the violation.
21 After the 90th day after the date of the notification, the
22 enforcement action may proceed.

23 (c) This section does not apply to a civil enforcement
24 action if the attorney general, district attorney, or county
25 attorney asserts that:

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

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

4 (d) This section does not apply if an enforcement action has
5 previously been filed against the subdivider for the same or
6 another alleged violation.

7 SECTION 11. Section 232.021(9), Local Government Code, is
8 repealed.

9 SECTION 12. The changes in law made by this Act to Sections
10 232.022, 232.023, 232.033, 232.041, and 232.072, Local Government
11 Code, apply only to a subdivision plat application submitted for
12 approval on or after the effective date of this Act. A subdivision
13 plat application submitted for approval before the effective date
14 of this Act is governed by the law in effect when the application
15 was submitted, and the former law is continued in effect for that
16 purpose.

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

22 SECTION 14. This Act takes effect September 1, 2011.