

By: Guillen, Raymond

H.B. No. 1604

Substitute the following for H.B. No. 1604:

By: Gooden

C.S.H.B. No. 1604

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. A county
8 may not impose under Section 232.003 a higher standard for streets
9 or roads in a subdivision than the county imposes on itself for the
10 construction of new streets or roads with a similar type and amount
11 of traffic.

12 SECTION 2. Section 232.022(d), Local Government Code, is
13 amended to read as follows:

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

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

19 (a) A subdivider of land must have a plat of the subdivision
20 prepared if at least one of the lots of the subdivision is five
21 acres or less. A commissioners court by order may require each
22 subdivider of land to prepare a plat if at least one of the lots of a
23 subdivision is more than five acres but not more than 10 acres.

24 (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 Subsection
8 (a-1) to read as follows:

9 (a) Brochures, publications, and advertising of any form
10 relating to ~~[subdivided]~~ land required to be platted under this
11 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 (h) A person who is a seller of lots for which a plat is
15 required under this subchapter [~~in a subdivision~~], or a subdivider
16 or an agent of a seller or subdivider, commits an offense if the
17 person knowingly authorizes or assists in the publication,
18 advertising, distribution, or circulation of any statement or
19 representation that the person knows is false concerning any
20 [~~subdivided~~] land offered for sale or lease. An offense under this
21 section is a Class A misdemeanor.

22 SECTION 5. Subchapter B, Chapter 232, Local Government
23 Code, is amended by adding Section 232.0375 to read as follows:

24 Sec. 232.0375. NOTICE AND OPPORTUNITY TO CURE REQUIRED
25 BEFORE FILING ENFORCEMENT ACTION. (a) Before a civil enforcement
26 action may be filed against a subdivider under this subchapter, the
27 subdivider must be notified in writing about the general nature of

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

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

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

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

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

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

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

24 (a-1) A subdivision of a tract under this section includes a
25 subdivision of real property by any method of conveyance, including
26 a contract for deed, oral contract, contract of sale, or other type
27 of executory contract, regardless of whether the subdivision is

1 made by using a metes and bounds description.

2 SECTION 7. Subchapter C, Chapter 232, Local Government
3 Code, is amended by adding Section 232.0805 to read as follows:

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

7 (b) Before a civil enforcement action may be filed against a
8 subdivider under this subchapter, the subdivider must be notified
9 in writing about the general nature of the alleged violation and
10 given 90 days from the notification date to cure the violation.
11 After the 90th day after the date of the notification, the
12 enforcement action may proceed.

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

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

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

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

24 SECTION 8. Section 16.343(g), Water Code, is amended to
25 read as follows:

26 (g) Before an application for funds under Section 15.407 or
27 Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be

1 considered by the board, if the area for which the funds are
2 proposed to be used is located:

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

5 (2) in the extraterritorial jurisdiction of a
6 municipality, the applicant must demonstrate that the model rules
7 have been adopted and are enforced in the extraterritorial
8 jurisdiction by either the municipality or the county; or

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

19 SECTION 9. Subchapter J, Chapter 16, Water Code, is amended
20 by adding Section 16.3541 to read as follows:

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

25 (b) Before a civil enforcement action may be filed against a
26 subdivider under this subchapter, the subdivider must be notified
27 in writing about the general nature of the alleged violation and

1 given 90 days from the notification date to cure the violation.
2 After the 90th day after the date of the notification, the
3 enforcement action may proceed.

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

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

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

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

15 SECTION 10. Section 232.021(9), Local Government Code, is
16 repealed.

17 SECTION 11. The changes in law made by this Act to Sections
18 232.022, 232.023, 232.033, and 232.072, Local Government Code,
19 apply only to a subdivision plat application submitted for approval
20 on or after the effective date of this Act. A subdivision plat
21 application submitted for approval before the effective date of
22 this Act is governed by the law in effect when the application was
23 submitted, and the former law is continued in effect for that
24 purpose.

25 SECTION 12. This Act applies only to an enforcement action
26 filed on or after the effective date of this Act. An enforcement
27 action filed before the effective date of this Act is governed by

1 the law as it existed when the action was filed, and the former law
2 is continued in effect for that purpose.

3 SECTION 13. This Act takes effect September 1, 2011.