

## **BILL ANALYSIS**

C.S.H.B. 611  
By: Guillen  
Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that property developers are discouraged from practicing in counties near the international border due to stricter regulations than in other areas of the state. These parties further contend that this causes an increase in the price of housing in one of the fastest growing regions of the state. There is a need, the parties note, to increase development along the South Texas border, to provide jobs and housing to those who reside there, and to increase economic growth in the region. C.S.H.B. 611 seeks to address these issues by establishing certain provisions relating to the regulation of subdivisions in certain 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. 611 amends the Local Government Code to clarify that the prohibition against a county 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 applies to the county's self-imposed standard for the construction of new streets or roads.

C.S.H.B. 611 increases from 10 or more acres to more than 10 acres the minimum subdivision lot size required for an exemption from county subdivision platting requirements in a county near an international border, makes the requirement for a subdivider of land in such a county to have a subdivision plat prepared contingent on at least one of the subdivision lots being five acres or less, and authorizes a commissioners court by order to require the preparation of a plat if at least one of the lots of a subdivision is more than five acres but not more than 10 acres. The bill also authorizes a commissioners court in an economically distressed county other than a county near the international border by order to require each subdivider of land in that county to prepare a subdivision 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. 611 makes standards and requirements for brochures, publications, and advertising relating to subdivided land offered for sale in a county near an international border applicable also to earnest money contracts and to land subject to the county's platting requirements and expands those standards and requirements to require such advertising or earnest money contract, if a plat for the land has not been finally approved and recorded, to include a notice that a contract for the sale of any portion of the land may not be entered into until the land receives final plat approval by the county and that the land may not be possessed or occupied until the land receives such approval and all water and sewer service facilities for the lot are connected or installed in compliance with certain model rules relating to minimum standards for water supply and sewer services in residential areas of political subdivisions.

C.S.H.B. 611 authorizes a seller or subdivider of land in a county near an international border

who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state and 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 to advertise in accordance with applicable provisions. The bill voids such an earnest money contract if the plat for the land has not been finally approved and recorded within a specified period, unless the potential purchaser agrees in writing to a one-time 90-day extension for plat approval and recording. The bill requires the seller to refund all earnest money paid on a voided contract and authorizes the potential purchaser, if the seller fails to make a refund, to recover in a suit an amount equal to three times the amount of the required refund, plus reasonable attorney's fees. The bill requires a seller or subdivider, as applicable, before entering into an earnest money contract, to provide certain written notice to the attorney general and to the local government responsible for approving the plat. The bill requires an earnest money contract to contain a specified statement regarding the \$250 cap on the amount that the seller may collect under the contract and a required notice regarding the property's condition.

C.S.H.B. 611 expands the conditions that make it a Class A misdemeanor offense for a seller of lots in a subdivision in a county near an international border, a subdivider, or an agent of a seller or subdivider to knowingly authorize or assist in the publication, advertising, distribution, or circulation of any false statement or representation concerning any subdivided land offered for sale or lease to include a seller of lots for which a plat is required under such a county's subdivision platting requirements, rather than a seller of subdivision lots, and removes the specification that the land offered for sale or lease be subdivided land.

C.S.H.B. 611 requires that a subdivider of land subject to county platting requirements in a county near the international border or in an economically distressed county other than a county near the international border, before a civil enforcement action may be filed against 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, after which period the enforcement action may proceed. The bill makes these provisions regarding notice and an opportunity to cure before the filing of an enforcement action 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 also makes such provisions inapplicable if an enforcement action has previously been filed against the subdivider for the same or another alleged violation and inapplicable to an action filed by a private individual.

C.S.H.B. 611 authorizes a person who has purchased or is purchasing from a subdivider a lot in a residential subdivision subject to platting requirements in an economically distressed county other than a county near the international border, if the lot does not have required water and sewer services and is located in an economically distressed area, to bring suit in the district court in which the property is located or in a district court in Travis County and sets out the remedies available in such a suit.

C.S.H.B. 611 amends the Water Code to remove previous prerequisites regarding the local adoption of the Texas Water Development Board's (TWDB) model rules for ensuring minimum standards for safe and sanitary water supply and sewer services in residential areas before the TWDB could consider an application for funding from certain funds or under certain programs administered by the TWDB and instead requires a municipality to adopt the model rules if the area for which the funds are proposed to be used is located in the municipality, requires the applicant to demonstrate that the model rules have been adopted and are enforced in the extraterritorial jurisdiction by either the municipality or the county if the area is located in the municipality's extraterritorial jurisdiction, and requires the county to adopt the model rules if the area is located outside the extraterritorial jurisdiction of a municipality.

C.S.H.B. 611 requires that a subdivider of land in an economically distressed area with inadequate water supply or sewer services and inadequate financial resources to provide needed supply or services, before a civil enforcement action may be filed against 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, after which period the enforcement action may proceed. The bill makes these provisions regarding notice and an opportunity to cure before the filing of an enforcement action 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 also makes such provisions inapplicable if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

C.S.H.B. 611 repeals Section 232.021(9), Local Government Code.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 611 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 232.0031, Local Government Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 232.022(d), Local Government Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 232.023, Local Government Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 232.033, Local Government Code, is amended by amending Subsections (a) and (h) and adding Subsections (a-1), (a-2), (a-3), (a-4), and <b>(a-5)</b> to read as follows: (a) Brochures, publications, <del>[and]</del> advertising of any form, <u>and earnest money contracts</u> relating to <del>[subdivided]</del> land <u>required to be platted under this subchapter</u> : (1) may not contain any misrepresentation; <del>[and]</del> (2) except for a for-sale sign posted on the property that is no larger than three feet by	SECTION 4. Section 232.033, Local Government Code, is amended by amending Subsections (a) and (h) and adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows: (a) Brochures, publications, <del>[and]</del> advertising of any form, <u>and earnest money contracts</u> relating to <del>[subdivided]</del> land <u>required to be platted under this subchapter</u> : (1) may not contain any misrepresentation; <del>[and]</del> (2) except for a for-sale sign posted on the property that is no larger than three feet by

three feet, must accurately describe the availability of water and sewer service facilities and electric and gas utilities; and  
(3) if a plat for the land has not been finally approved and recorded, must include a notice that:

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

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

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

(ii) all water and sewer service facilities for the lot are connected or installed in compliance with the model rules adopted under Section 16.343, Water Code.

(a-1) This subsection applies in addition to other applicable law and prevails to the extent of a conflict with that other law. This subsection applies only to 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. A person may, before a plat has been finally approved and recorded for the land:

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

(2) advertise in accordance with this section.

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

(a-3) If an earnest money contract is void under Subsection (a-2), the seller shall refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void under Subsection (a-2). If the seller fails to refund the earnest money to

three feet, must accurately describe the availability of water and sewer service facilities and electric and gas utilities; and  
(3) if a plat for the land has not been finally approved and recorded, must include a notice that:

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

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

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

(ii) all water and sewer service facilities for the lot are connected or installed in compliance with the model rules adopted under Section 16.343, Water Code.

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

(2) advertise in accordance with this section.

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

(a-3) If an earnest money contract is void under Subsection (a-2), the seller shall refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void under Subsection (a-2). If the seller fails to refund the earnest money to

the potential purchaser in violation of this subsection, the potential purchaser, in a suit to recover the earnest money, may recover an amount equal to three times the amount of the earnest money required to be refunded, plus reasonable attorney's fees.

(a-4) Before entering into an earnest money contract under Subsection (a-1), a person must provide written notice to the attorney general and to the local government responsible for approving the plat. The notice must include:

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

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

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

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

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

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

SECTION 5. Subchapter B, Chapter 232, Local Government Code, is amended.

SECTION 6. Subchapter B, Chapter 232, Local Government Code, is amended.

SECTION 7. Section 232.072, Local Government Code, is amended.

SECTION 8. Subchapter C, Chapter 232, Local Government Code, is amended.

the potential purchaser in violation of this subsection, the potential purchaser, in a suit to recover the earnest money, may recover an amount equal to three times the amount of the earnest money required to be refunded, plus reasonable attorney's fees.

(a-4) Before entering into an earnest money contract under Subsection (a-1), a person must provide written notice to the attorney general and to the local government responsible for approving the plat. The notice must include:

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

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

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

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

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

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Section 16.343(g), Water Code, is amended.

SECTION 9. Same as introduced version.

SECTION 10. Subchapter J, Chapter 16, Water Code, is amended.

SECTION 10. Same as introduced version.

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

SECTION 11. Same as introduced version.

SECTION 12. The changes in law made by this Act to Sections 232.022, 232.023, 232.033, 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. 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 12. Same as introduced version.

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

SECTION 13. Same as introduced version.

SECTION 14. This Act takes effect September 1, 2013.

SECTION 14. Same as introduced version.