

BILL ANALYSIS

C.S.H.B. 2040
By: King, Phil
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that there are insufficient enforcement options available to certain counties when a builder fails to provide proper notice of compliance with applicable building code standards. C.S.H.B. 2040 seeks to address this issue by providing for more enforcement options for this conduct.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 2040 amends the Local Government Code to authorize a county to bring a suit for injunctive relief against a builder, refer a builder for prosecution, or take both such actions if the builder does not indicate in the builder's notice of inspection provided to the county that the inspection showed compliance with the applicable building code standards. The bill includes a builder's failure to provide such notice among the conduct constituting the offense involving a builder's failure to provide required notices. The bill establishes as an affirmative defense to prosecution for such an offense for failure to submit a proper notice of inspection that the builder's failure to submit the notice is the result of the failure of the person who performed the inspection to provide appropriate documentation to the builder for submission to the county.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2040 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 233.155, Local Government Code, is amended to read as

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 233.155, Local Government Code, is amended to read as

85R 22088

17.96.773

Substitute Document Number: 85R 19331

follows:

Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) If proper notice is not submitted in accordance with Sections 233.154(b) and (c), the county may take any or all of the following actions:

- (1) refer the inspector to the appropriate regulatory authority for discipline;
- (2) in a suit brought by the appropriate attorney representing the county in the district court, obtain appropriate injunctive relief to prevent a violation or threatened violation of a standard or notice required under this subchapter from continuing or occurring; or
- (3) refer the builder for prosecution under Section 233.157.

(b) If the notice the builder provided to the county under Section 233.154(c) does not indicate that the inspection showed substantial compliance with the applicable building code standards, the county may take either or both of the actions under Subsections (a)(2) and (3).

(c) It is an affirmative defense to suit under Subsection (a)(2) for failure to submit proper notice under Section 233.154(c) or documentation of substantial compliance under Subsection (b) if the builder's failure to submit a notice or the documentation is the result of the failure of the person who performed the inspection to provide appropriate documentation to the builder for submission to the county.

SECTION 2. Section 233.157, Local Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) A builder [~~person~~] commits an offense if:

(1) the builder [~~person~~] fails to provide proper notice in accordance with Sections 233.154(b) and (c); or

(2) as provided by Section 233.155(b), the builder does not provide notice under Section 233.154(c) that indicates that the inspection showed substantial compliance with the applicable building code standards.

(d) It is an affirmative defense to prosecution for failure to submit proper notice under Section 233.154(c) or documentation of substantial compliance under Section 233.155(b) if the builder's

follows:

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- (1) refer the inspector to the appropriate regulatory authority for discipline;
- (2) in a suit brought by the appropriate attorney representing the county in the district court, obtain appropriate injunctive relief to prevent a violation or threatened violation of a standard or notice required under this subchapter from continuing or occurring; or
- (3) refer the builder for prosecution under Section 233.157.

(b) If the notice the builder provided to the county under Section 233.154(c) does not indicate that the inspection showed compliance with the applicable building code standards, the county may take either or both of the actions under Subsections (a)(2) and (3).

SECTION 2. Section 233.157, Local Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) A builder [~~person~~] commits an offense if:

(1) the builder [~~person~~] fails to provide proper notice in accordance with Sections 233.154(b) and (c); or

(2) as provided by Section 233.155(b), the builder does not provide notice under Section 233.154(c) that indicates that the inspection showed compliance with the applicable building code standards.

(d) It is an affirmative defense to prosecution for failure to submit proper notice under Section 233.154(c) if the builder's failure to submit a notice is the result of the failure of the person who

failure to submit a notice or the documentation is the result of the failure of the person who performed the inspection to provide appropriate documentation to the builder for submission to the county.

SECTION 3. The changes in law made by this Act apply only to new residential construction that commences on or after September 1, 2017. New residential construction that commences before September 1, 2017, is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2017.

performed the inspection to provide appropriate documentation to the builder for submission to the county.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.