

## **BILL ANALYSIS**

Senate Research Center

H.B. 3167  
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Business & Commerce  
5/13/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3167 amends current law relating to county and municipal approval procedure for land development applications.

### **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 212.001, Local Government Code, by amending Subdivision (2) and adding Subdivision (3) to define "plan" and redefine "plat" to include preliminary plat, general plan, final plat, and replat.

SECTION 2. Amends Subchapter A, Chapter 212, Local Government Code, by adding Section 212.0085, as follows:

Sec. 212.0085. APPROVAL PROCEDURE: APPLICABILITY. Provides that the approval procedures under this subchapter (Regulation of Subdivisions) apply to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d) (relating to authorizing a certain agreement to grant the authority to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of certain municipalities).

SECTION 3. Amends the heading to Section 212.009, Local Government Code, to read as follows:

Sec. 212.009. APPROVAL PROCEDURE: INITIAL APPROVAL.

SECTION 4. Amends Section 212.009, Local Government Code, by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1) and (b-2), as follows:

(a) Requires the municipal authority responsible for approving plats to approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed, rather than act on a plat within 30 days after the date the plat is filed. Provides that a plan or plat is approved by the municipal authority unless it is disapproved within that period and in accordance with Section 212.0091, rather than providing that a plat is considered approved by the municipal authority unless it is disapproved within that period.

(b) Makes conforming changes to this subsection.

(b-1) Provides that, notwithstanding Subsection (a) or (b), if a groundwater availability certification is required under Section 212.0101 (Additional Requirements: Use of Groundwater), the 30-day period described by those subsections begins on the date the

applicant submits the groundwater availability certification to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable.

(b-2) Authorizes the parties, notwithstanding Subsection (a) or (b), to extend the 30-day period described by those subsections for a period not to exceed 30 days if:

(1) the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and

(2) the municipal authority or governing body, as applicable, approves the extension request.

(c)-(d) Makes conforming and nonsubstantive changes to these subsections.

SECTION 5. Amends Subchapter A, Chapter 212, Local Government Code, by adding Sections 212.0091, 212.0093, 212.0095, 212.0096, 212.0097, and 212.0099, as follows:

Sec. 212.0091. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) Requires a municipal authority or governing body that conditionally approves or disapproves a plan or plat under this subchapter to provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b) Provides that each condition or reason specified in the written statement:

(1) is required to:

(A) be directly related to the requirements under this subchapter; and

(B) include a citation to the law, including a statute or municipal ordinance, that is the basis for the conditional approval or disapproval, if applicable; and

(2) is prohibited from being arbitrary.

Sec. 212.0093. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. Authorizes the applicant, after the conditional approval or disapproval of a plan or plat under Section 212.0091, to submit to the municipal authority or governing body that conditionally approved or disapproved the plan or plat a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. Prohibits the municipal authority or governing body from establishing a deadline for an applicant to submit the response.

Sec. 212.0095. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) Requires a municipal authority or governing body that receives a response under Section 212.0093 to determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plan or plat not later than the 15th day after the date the response was submitted.

(b) Provides that a municipal authority or governing body that conditionally approves or disapproves a plan or plat following the submission of a response under Section 212.0093:

(1) is required to comply with Section 212.0091; and

(2) is authorized to disapprove the plan or plat only for a specific condition or reason provided to the applicant under Section 212.0091.

(c) Requires a municipal authority or governing body that receives a response under Section 212.0093 to approve a previously conditionally approved or disapproved plan or plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(d) Provides that a previously conditionally approved or disapproved plan or plat is approved if:

(1) the applicant filed a response that meets the requirements of Subsection (c); and

(2) the municipal authority or governing body that received the response does not disapprove the plan or plat on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL PROCESS.

(a) Authorizes an applicant, notwithstanding Sections 212.009 (Approval Procedure), 212.0091, 212.0093, and 212.0095, to elect at any time to seek approval for a plan or plat under an alternative approval process adopted by a municipality if the process allows for a shorter approval period than the approval process described by Sections 212.009, 212.0091, 212.0093, and 212.0095.

(b) Provides that an applicant that elects to seek approval under the alternative approval process described by Subsection (a) is not:

(1) required to satisfy the requirements of Sections 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action challenging a disapproval of a plan or plat under this subchapter; and

(2) prejudiced in any manner in bringing the action described by Subdivision (1), including satisfying a requirement to exhaust any and all remedies.

Sec. 212.0097. APPROVAL PROCEDURE: WAIVER PROHIBITED. Prohibits a municipal authority responsible for approving plats or the governing body of a municipality from requesting or requiring an applicant to waive a deadline or other approval procedure under this subchapter.

Sec. 212.0099. JUDICIAL REVIEW OF DISAPPROVAL. Provides that, in a legal action challenging a disapproval of a plan or plat under this subchapter, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. Prohibits the court from using a deferential standard.

SECTION 6. Amends Section 212.014, Local Government Code, as follows:

Sec. 212.014. REPLATTING WITHOUT VACATING PRECEDING PLAT. Authorizes a replat of a subdivision or part of a subdivision to be recorded and provides that it is controlling over the preceding plat without vacation of that plat if the replat:

(1) makes no changes to this subdivision;

(2) is approved by the municipal authority responsible for approving plats, rather than is approved, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard, by the municipal authority responsible for approving plats; and

(3) makes no changes to this subdivision.

SECTION 7. Amends Section 212.015, Local Government Code, by adding Subsections (a-1), (f), and (g) and amending Subsection (b), as follows:

(a-1) Requires a public hearing, if a proposed replat described by Subsection (a) (relating to requiring a replat to conform to certain additional requirements under certain conditions) requires a variance or exception, to be held by the municipal planning commission or the governing body of the municipality.

(b) Requires notice of the hearing required under Subsection (a-1), rather than Section 212.014 (Replating Without Vacating Preceding Plat), to be given before the 15th day before the date of the hearing by certain methods.

(f) Requires the municipality, if a proposed replat described by Subsection (a) does not require a variance or exception, to, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipality or county tax roll. Provides that this subsection does not apply to a proposed replat if the municipal planning commission or the governing body of the municipality holds a public hearing and gives notice of the hearing in the manner provided by Subsection (b).

(g) Requires the notice of a replat approval required by Subsection (f) to include:

(1) the zoning designation of the property after the replat; and

(2) a telephone number and e-mail address an owner of a lot may use to contact the municipality about the replat.

SECTION 8. Amends Subchapter A, Chapter 232, Local Government Code, by adding Section 232.0023, as follows:

Sec. 232.0023. APPROVAL PROCEDURE: APPLICABILITY. Provides that the plat application approval procedures under this subchapter apply to a county regardless of whether the county has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

SECTION 9. Amends the heading to Section 232.0025, Local Government Code, to read as follows:

Sec. 232.0025. APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS AND PLANS.

SECTION 10. Amends Section 232.0025, Local Government Code, by amending Subsections (d), (f), (g), (h), and (i), and adding Subsection (d-1), as follows:

(d) Requires the commissioners court or the court's designee, except as provided by Subsection (f), to approve, approve with conditions, or disapprove a plat application not later than the 30th day after the date the completed application is received by the commissioners court or the court's designee, rather than requiring the commissioners court or the court's designee, except as provided by Subsection (f), to take final action on a plat application, including the resolution of all appeals, not later than the 60th day after the date a completed plat application is received by the commissioners court or the court's designee. Provides that an application is approved by the commissioners court or the court's designee unless the application is disapproved within that period and in accordance with Section 232.0026.

(d-1) Provides that, notwithstanding Subsection (d), if a groundwater availability certification is required under Section 232.0032 (Additional Requirements: Use of Groundwater), the 30-day period described by that subsection begins on the date the

applicant submits the groundwater availability certification to the commissioners court or the court's designee, as applicable.

(f) Redesignates existing Subdivision (2) as Subdivision (1)(B), creates Subdivision (1)(A) from existing text, and redesignates existing Subdivision (3) as Subdivision (2). Provides that the 30-day period, rather than the 60-day period, under Subsection (d):

(1) is authorized to be extended for a period not to exceed 30 days, rather than a reasonable period, if:

(A) requested and agreed to in writing by the applicant and approved by the commissioners court or the court's designee; or

(B) Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, requires the county to perform a takings impact assessment in connection with the plat application, rather than is authorized to be extended 60 additional days if Chapter 2007, Government Code, requires the county to perform a takings impact assessment in connection with a plat application; and

(2) makes no further changes to this subdivision.

(g) Requires the commissioners court or the court's designee to make the determination under Subsection (f)(1), rather than Subsection (f)(2), of whether the 30-day period, rather than 60-day period, will be extended not later than the 20th day after the date a completed plat application is received by the commissioners court or the court's designee.

(h) Prohibits the commissioners court or the court's designee from requiring, rather than from compelling, an applicant to waive the time limits or approval procedure contained in this subchapter, rather than under this section.

(i) Provides that, if the commissioners court or the court's designee fails to approve, approve with conditions, or disapprove a plat application as required by this subchapter (Subdivision Platting Requirements in General), rather than if the commissioners court or the court's designee fails to take final action on the plat as required by this Subsection (d):

(1) the commissioners court is required to refund the greater of the unexpended portion of any application fee or deposit or 50 percent of an application fee or deposit that has been paid, rather than the commissioners court is required to refund the greater of the unexpended portion of any plat application fee or deposit or 50 percent of a plat application fee or deposit that has been paid;

(2) the application, rather than the plat application, is granted by operation of law; and

(3) the applicant is authorized to apply to a district court in the county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the plat application's, rather than the plat's, approval.

SECTION 11. Amends Subchapter A, Chapter 232, Local Government Code, by adding Sections 232.0026, 232.0027, 232.0028, 232.00285, and 232.0029, as follows:

Sec. 232.0026. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) Requires a commissioners court or designee that conditionally approves or disapproves of a plat application under this subchapter to provide the applicant a written statement of the conditions for the conditional approval or the reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b) Provides that each condition or reason specified in the written statement:

(1) is required to:

(A) be directly related to the requirements of this subchapter; and

(B) include a citation to the law, including a statute or order, that is the basis for the conditional approval or disapproval, if applicable; and

(2) is prohibited from being arbitrary.

Sec. 232.0027. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. Authorizes the applicant, after the conditional approval or disapproval of a plat application under Section 232.0026, to submit to the commissioners court or designee that conditionally approved or disapproved the application a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. Prohibits the commissioners court or designee from establishing a deadline for an applicant to submit the response.

Sec. 232.0028. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) Requires a commissioners court or designee that receives a response under Section 232.0027 to determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plat application not later than the 15th day after the date the response was submitted under Section 232.0027.

(b) Provides that a commissioners court or designee that conditionally approves or disapproves a plat application following the submission of a response under Section 232.0027:

(1) is required to comply with Section 232.0026; and

(2) is authorized to disapprove the application only for a specific condition or reason provided to the applicant for the original application under Section 232.0026.

(c) Requires a commissioners court or designee that receives a response under Section 232.0027 to approve a previously conditionally approved or disapproved plat application if the applicant's response adequately addresses each condition for the conditional approval or each reason for the disapproval.

(d) Provides that a previously conditionally approved or disapproved plat application is approved if:

(1) the applicant filed a response that meets the requirements of Subsection (c); and

(2) the commissioners court or designee that received the response does not disapprove the application on or before the date required by Subsection (a) and in accordance with Section 232.0026.

Sec. 232.00285. DEVELOPMENT PLAN REVIEW. (a) Defines "development plan" for purposes of this section.

(b) Prohibits a county, unless explicitly authorized by another law of this state, from requiring a person to submit a development plan during the plat approval process required by this subchapter. Requires the county, if a county is authorized under another law of this state to require approval of a development plan, to

comply with the approval procedures under this subchapter during the approval process.

Sec. 232.0029. JUDICIAL REVIEW OF DISAPPROVAL. Provides that, in a legal action challenging a disapproval of a plat application under this subchapter, the county has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. Prohibits the court from using a deferential standard.

SECTION 12. Repealer: Section 232.0025(e) (relating to requiring the applicant, if the commissioners court or the court's designee disapproves a plat application, to be given a complete list of the reasons for the disapproval), Local Government Code.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: September 1, 2019.