

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 856  
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Local Government  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Beginning in the 1960s, buyers all over the world were deceived into buying land in the American Southwest with promises of future development that never materialized. As a result, El Paso County has contended with 50,000 acres carved into some 90,000 lots, all but a handful of which have no utilities or other infrastructure. The abandoned lots are undeveloped and unoccupied, and—absent a new statutory framework—the market will never work and they will remain abandoned for another 50 to 100 years.

In stark contrast to the rapid growth and economic development in the surrounding area, this concentrated mass of abandoned desert land has virtually no economic value, which causes not only real economic harm but also presents substantial environmental and safety risks. Thus, the proposed legislation seeks to make the market work to solve the problem.

S.B. 856 establishes administrative and judicial processes to place the lots back into the market and allow their productive use while safeguarding property rights. The proposal sets criteria to determine which lots are abandoned, undeveloped, and unoccupied despite being platted over 25 years ago.

S.B. 856 ensures that all property owners are provided due process, ample notice, the right to a hearing, and judicial oversight of all decisions affecting their property rights, while providing owners who can be located with the proceeds from the increased value of the lots. Then, a receiver is appointed by the court to implement the statute, including increasing the value of the lots through aggregation, with the goal of restoring some of the owners' initial investments.

The court-appointed receiver is given the authority and duty to ensure that all future development of the lots satisfies minimum modern infrastructure standards and prevent the development of colonias. The owners of the land are entitled to their share of the proceeds from the sale of lots, but if efforts to locate them fail, the funds would escheat to the State of Texas.

As proposed, S.B. 856 amends current law relating to the appointment of a receivership for and disposition of certain platted lots that are abandoned, unoccupied, and undeveloped in certain counties.

### **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. Provides that the legislature finds that:

- (1) in the decades beginning with and following the 1960s, purchasers from all over the United States and elsewhere were lured by misrepresentations into buying lots in remote areas of the state with promises of future development;
- (2) the lots in one such area comprised more than 50,000 acres that have stood virtually undeveloped for more than 25 years after being platted;

(3) carving that area into lots as small as one-quarter acre, creating highly fractionalized and uneconomic real estate conditions, defeating any reasonable possibility of developing the lots, depriving the purchasers of the value of their investments, and effectively preventing installation of streets, water, sanitation, electricity and other infrastructure;

(4) in addition, the lots had, and have, in common an absence of water and electricity, substandard, if any, thoroughfares and no reasonable prospect that the lots can be developed for residential or commercial use;

(5) over the decades, the original purchasers have abandoned the lots, the purchasers cannot be located, or the purchasers died, in many cases leaving individuals representing multiple generations of families as holders of a complicated web of undivided interests in lots they may know nothing about;

(6) the lots are so lacking in value that local governments have either removed them from the tax rolls altogether, are unable to determine who owns them, or have found it uneconomical to collect the pennies in property tax revenue they may represent;

(7) in recent years, rapid residential growth has reached the areas adjacent to the lots, creating a substantial demand for residential properties that cannot be met due to the fractionalized nature of the properties and the absence of basic infrastructure;

(8) the lots are often used for illegal dumping of waste and hazardous materials and other purposes contrary to public health and safety; and

(9) it is necessary to establish a system by which the lots may be aggregated and replatted in order to be able to return them to the market, provide for streets, water, sanitation, electricity and other infrastructure, and ensure that any future economic value that may be returned to the lots inures to the benefit of any owners and lienholders who can be located.

**SECTION 2.** Amends Chapter 232, Local Government Code, by adding Subchapter F, as follows:

**SUBCHAPTER F. ABANDONED, UNOCCUPIED, AND UNDEVELOPED PLATTED LOTS  
IN CERTAIN COUNTIES**

**Sec. 232.151. APPLICABILITY.** Provides that this subchapter applies to a county with a population of more than 800,000 that is adjacent to an international border and contains more than 30,000 acres of lots that remain substantially undeveloped despite having been platted more than 25 years ago.

**Sec. 232.152. ADMINISTRATIVE DETERMINATION.** (a) Authorizes a commissioners court, in addition to the authority granted under Section 232.045 (Applicability of Infrastructure Requirements to Lots Undeveloped for 25 Years or More), to implement an expedited process to administratively determine that a platted lot is abandoned, unoccupied, and undeveloped if the lot:

(1) has remained undeveloped for 25 years or more after the date the lot was platted;

(2) is part of a subdivision in which 50 percent or more of the lots are undeveloped or unoccupied;

(3) is part of a subdivision in which 50 percent or more of the lots are ten acres or less in size;

(4) had an assessed value of less than \$1000 as of January 1, 2021; and

(5) as of January 1, 2021, was not valued for ad valorem taxation as land for agricultural use pursuant to Subchapter C (Land Designated for Agricultural Use), Chapter 23 (Appraisal Methods and Procedures), Tax Code.

(b) Provides that the county has no ownership interest in any lot that is administratively determined to be abandoned, unoccupied and undeveloped, or that is placed in a receivership under this subchapter, except for any existing or future legal interest established by other law.

Sec. 232.153. PUBLIC HEARING. (a) Requires a county, before the county is authorized to make an administrative determination that a platted lot is abandoned, unoccupied, and undeveloped, to hold a public hearing on the matter and make reasonable efforts to notify each owner and lienholder of the lot of the time and place of the hearing as provided by Section 232.154.

(b) Authorizes that the hearing be held by the commissioners court of the county or an appropriate county commission or board appointed by the commissioners court. Provides that the Texas Rules of Evidence do not apply to a hearing conducted under this section.

(c) Authorizes an owner or lienholder, at the hearing, to provide testimony and present evidence to refute any of the three required elements for a determination under Section 232.152.

(d) Authorizes the county to conduct a single hearing for multiple lots and make a determination that multiple lots are abandoned, unoccupied, and undeveloped based on the same evidence.

(e) Requires the county, after the hearing, if a lot is determined to be abandoned, unoccupied, and undeveloped, to within 14 days issue an order of its determination.

(f) Requires the county, within 14 days after the date of the order, to:

(1) post notice of the order at the County Courthouse; and

(2) publish in a newspaper of general circulation in the county in which the lot is located a notice of the determination containing:

(A) a description of the lot;

(B) the date of the hearing;

(C) a brief statement of the results of the order;

(D) instructions stating where a complete copy of the order may be obtained; and

(E) notice that the order is appealable to a district court within the county within 60 calendar days of the order.

(g) Authorizes a county, in lieu of the notice required by Subsection (f), to publish a notice in a newspaper of general circulation in the county in which the lot is located that the commissioners court has adopted an order under this subchapter and direct the public to the county's website on which the information required by Subsections (f)(2)(A) through (E) may be found.

Sec. 232.154. NOTICE OF HEARING. (a) Requires the county to:

(1) provide notice of the hearing to each record owner of the applicable lot and to each holder of a recorded lien against the applicable lot by personal delivery, by certified mail with return receipt requested to the last known address of each owner and lienholder, or by delivery to the last known address of each owner or lienholder by the United States Postal Service using signature confirmation services;

(2) publish notice of the hearing in a newspaper of general circulation in the county on or before the 10th day before the date of the hearing and on the county's website; and

(3) file in the property records of the county notice of the hearing that contains the name and last known address of the owner of the applicable lot and a description of the administrative determination proceeding, including notice that the administrative determination may result in the extinguishment of any and all rights and legal interests in the lot.

(b) Requires that notice under Subsection (a)(1) be provided to each owner and lienholder for whom an address can be reasonably ascertained from the deed of trust or other applicable instrument on file in the office of the county clerk or in the records of the office of the central appraisal district for the county. Requires that the filed notice under Subsection (a)(3) contain the name and address of each owner to the extent that that information can be reasonably ascertained from the deed of trust or other applicable instrument on file in the office of the county clerk or in the records of the office of the central appraisal district for the county.

(c) Provides that the filing of notice under Subsection (a)(3):

(1) is binding on subsequent grantees, lienholders, or other transferees of an interest in the platted lot who acquire that interest after the filing of the notice; and

(2) constitutes notice of the proceeding on any subsequent recipient of any interest in the platted lot who acquires that interest after the filing of the notice.

(d) Provides that an owner or lienholder is presumed to have received actual and constructive notice of the hearing if the commissioners court complies with this section, regardless of whether the commissioners court receives a response from the person.

Sec. 232.155. JUDICIAL REVIEW. (a) Authorizes any owner or lienholder of record of a platted lot aggrieved by an order issued under Section 232.153 to file in a district court in the county in which the property is located a verified petition alleging that the decision is illegal, in whole or in part, and stating with specificity the grounds of the alleged illegality. Requires that the petition be filed by an owner or lienholder of the lot within 60 calendar days of the order. Requires that the order, if a petition is not filed within 60 calendar days of the order, become final.

(b) Provides that, on the filing of a petition under Subsection (a), the court is authorized to issue a writ of certiorari directed to the county to review the order of the county and is required to prescribe in the writ the time within which a return on the writ must be made, and served on the relator or the relator's attorney.

(c) Provides that the county is not required to return the original papers acted on by it, but it is sufficient for the county to return certified or sworn copies of the papers or parts of the papers as may be called for by the writ.

(d) Requires that appeal of the county's determination under this subchapter be conducted under the substantial evidence rule.

Sec. 232.156. CIVIL ACTION FOR RECEIVERSHIP. (a) Requires the county, after a final determination that a platted lot is abandoned, unoccupied, and undeveloped, to bring a civil action to have the lot placed in a receivership. Provides that, upon a final determination that a platted lot is abandoned, unoccupied, and undeveloped as provided by this subchapter, an owner or lienholder's rights and legal interests are extinguished, subject to the provisions of this subchapter regarding any net proceeds resulting from the disposition of the property, and transferred to the receiver.

(b) Provides that the only allegations required to be pleaded in an action for receivership brought under this section are the identification of the applicable lot, the relationship of the defendant to the real property, the owner was given notice of the administrative hearing, and the lot has been administratively determined to be abandoned, unoccupied, and undeveloped.

(c) Authorizes the court to appoint as receiver any person with a demonstrated record of knowledge of the problems created by abandoned, unoccupied, and undeveloped platted lots. Authorizes the court, in selecting a receiver, to also take into consideration whether the person owns property in the affected area. Prohibits the court from appointing as receiver the county, any county official or county employee or any relative of a county official or county employee within the third degree consanguinity or affinity.

(d) Requires the record owners and any lienholders of record of the lot, in a civil action under this subchapter, to be served with personal notice of the proceedings as provided by the Texas Rules of Civil Procedure. Provides that service on the record owners or lienholders constitutes notice to all unrecorded owners or lienholders.

Sec. 232.157. AUTHORITY AND DUTY OF RECEIVER. (a) Provides that, unless inconsistent with Chapter 232 (County Regulation of Subdivisions) or other law, the rules of equity govern all matters relating to the appointment, powers, duties and liabilities of a receiver and to the powers of a court regarding a receiver. Authorizes a receiver appointed by the court to:

(1) take control of the platted lot;

(2) make or have made any repairs or improvements to the platted lot to make it developable;

(3) make provisions for the platted lot to be subject to street, road, drainage, utility and other infrastructure requirements;

(4) aggregate the platted lot with other lots that have been similarly determined to be abandoned, unoccupied, and undeveloped;

(5) re-plat the platted lot; and

(6) exercise all other authority that an owner of the platted lot could have exercised, including the authority to sell the lot.

(b) Requires a person, before the person assumes the duties of a receiver, to be sworn to perform the duties faithfully.

(c) Provides that the appointed receiver is an officer of the court.

(d) Requires the court, in the event a receiver dies, resigns or becomes incapacitated, to appoint a receiver to succeed the former receiver.

(e) Requires that all funds that come into the hands of the receiver be deposited in a place in this state directed by the court. Requires that the receiver's use of the funds in connection with the receiver's duties or authority under this subchapter be subject to the approval of the court. Requires that all net proceeds from the disposition of a lot by the receiver be placed in trust and remain in trust for at least three years, unless claimed before the expiration of the trust period. Requires the court to order such additional notices to an owner or lienholder about the net proceeds as are practicable during the trust period and, upon expiration of the trust period, any money remaining in the receivership is required to escheat to the state. Provides that funds escheated to the state pursuant to this subchapter are subject to disposition pursuant to Subchapters C (Disposition of Escheated Property) and D (Recovery of Escheated Property), Chapter 71 (Escheat of Property), Property Code.

(f) Requires the receiver, when the receiver has improved the platted lot to the degree that it is developable and meets all applicable standards, or before petitioning the court for termination of the receivership, to file with the court:

(1) a summary and accounting of all costs and expenses incurred, which is authorized, at the receiver's discretion, to include a receivership fee of up to 15 percent of the costs and expenses incurred, unless the court, for good cause shown, authorizes a different limit;

(2) a statement describing the disposition of each lot, including whether the lot was aggregated with other lots;

(3) a statement of all revenues collected by the receiver in connection with the use or disposition of the lots; and

(4) to the extent required by the court, a description of any undivided interest of an owner or lienholder, whether identified or not, in the net proceeds from the disposition of the property.

(g) Requires the court to approve any sale or lease of the property by the receiver.

(h) Requires a receiver to have a lien on the property under receivership for all of the receiver's unreimbursed costs and expenses and any receivership fee as detailed in the summary and accounting under Subsection (f)(1).

SECTION 2. Effective date: September 1, 2021.