

BILL ANALYSIS

C.S.H.B. 866
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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the 86th Regular Session, the legislature passed H.B. 3167, which was filed in response to concerns raised by stakeholders that some local governments were failing to adhere to the state's established statutory timelines for approving certain types of land development applications. The bill, as enacted, was intended to provide certainty and clarity regarding these timelines. Since the bill's enactment, however, there have been indications that numerous cities and counties are not fully complying with the law. Some cities and counties have enacted new policies and criteria for land development applications that fail to adhere to the enacted bill's intent. C.S.H.B. 866 seeks to address these issues by revising provisions relating to the plat approval process in order to provide more certainty and make the process more efficient.

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. 866 amends the Local Government Code to revise provisions relating to municipal and county plat approval. These changes apply only to a plat application filed on or after the bill's effective date.

Provisions Applicable to Both a Municipality and a County

C.S.H.B. 866 establishes that a plat is considered filed on the date the applicant submits the plat, along with a completed plat application and the application fees and other requirements prescribed for plat approval, to whichever of the following entities is applicable:

- the governing body of the municipality or the municipal authority responsible for approving plats; or
- the commissioners court or the county authority responsible for approving plats.

C.S.H.B. 866 establishes an alternative review process that applies if a municipality or county fails to approve, approve with conditions, or disapprove an applicant's plat or, if applicable, an applicant's written response to a conditionally approved or disapproved plat application earlier than the 15th day after the deadline prescribed for that action under applicable law. Under this alternative process, the applicant may have the plat reviewed by the following persons:

- a person with the authority to review plats for the municipality or county;
- a person with the authority to review plats for a political subdivision other than the municipality or county if the municipality or county approves the reviewer; or
- a licensed engineer.

The bill prohibits a person from reviewing a plat if the person is the applicant or the person prepared the plat that is the subject of the application. The bill establishes that the person who performs the review has the authority to approve, approve with conditions, or disapprove a plat as if the person were delegated such authority by the applicable municipality or county. The bill requires the person to ensure the plat satisfies all applicable regulations and to provide notice of the review to the municipality or county not later than the 15th day after the date of the review. The bill authorizes the municipality or county to prescribe a reasonable format for the notice and prohibits the municipality or county from collecting an additional fee related to the review.

C.S.H.B. 866 establishes that provisions relating to subdivision platting may not be construed to restrict a municipality or county from establishing a submittal calendar to be used by an applicant to facilitate compliance with the standard plat approval process.

C.S.H.B. 866 repeals provisions establishing that, if a groundwater availability certification is required, the 30-day period for municipal or county action on a plat application begins on the date the applicant submits the certification to the applicable municipal or county entity.

Provisions Only Applicable to a Municipality

C.S.H.B. 866 makes the following changes with respect to the authority of a municipality's governing body to delegate the ability to approve certain plats to one or more officers or employees of the municipality or of a utility owned or operated by the municipality:

- extends the delegating authority to a municipal planning commission;
- expands the plats that may be considered by a designated person from only certain amending plats, minor plats, and replats to any plats;
- expands the delegated abilities to include the ability to approve a plat with conditions or disapprove a plat;
- removes the existing prohibition against a designated person disapproving a plat and the requirement for the person to refer any plat which the person refuses to approve to the municipal authority responsible for approving plats within the applicable time period; and
- establishes that an applicant has the right to appeal to the municipality's governing body or the municipal planning commission if the designated person disapproves a plat.

C.S.H.B. 866 authorizes the 30-day period for municipal action on a plat application to be extended more than once, provided that the existing conditions for agreement of the parties are met.

C.S.H.B. 866 removes, from provisions relating to municipal regulation of subdivisions, the term "plan," defined as a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.

Provisions Only Applicable to a County

C.S.H.B. 866 authorizes a county commissioners court or the court's designee to designate to one or more county officers or employees the authority to approve, approve with conditions, or

disapprove a plat. The bill establishes that an applicant has the right to appeal to the commissioners court or the court's designee if the designated person or persons disapprove a plat.

C.S.H.B. 866 authorizes the 30-day period for a county to take action on a plat application to be extended for a purpose unrelated to the Private Real Property Rights Preservation Act more than once if requested and agreed to in writing by the applicant and approved by the commissioners court or the county authority responsible for approving plats.

Listing of Repealed Provisions

C.S.H.B. 866 repeals the following provisions of the Local Government Code:

- Section 212.009(b-1); and
- Section 232.0025(d-1).

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 866 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Although the introduced and substitute both relate to municipal and county plat approval, they do not share any common provisions.

Provisions of the Introduced

The introduced included provisions that are not in the substitute prohibiting a municipal planning commission, the governing body of a municipality, or a county commissioners court or the court's designee from taking the following actions, as applicable depending on the entity, unless specifically authorized by another state law:

- requiring a person to do the following:
 - fulfill any prerequisites or conditions or obtain any approvals before the person files a copy of a plan or plat with the municipal planning commission or governing body; or
 - submit or obtain approval of any documentation or other information or fulfill any other prerequisites or conditions before the person submits a plat application to the commissioners court or the court's designee;
- delaying the starting date for calculating any applicable timeframe to approve or disapprove a plan, plat, or plat application by not considering the date the plan, plat, or application was filed as the starting date; or
- refusing to accept, acknowledge, process, or act on a filed copy of the plan or plat or on a submitted or received plat application.

Provisions of the Substitute

The substitute includes provisions absent from the introduced that do the following:

- remove the term "plan" from provisions relating to municipal regulation of subdivisions;

- provide for a municipality's or county's authority to establish a submittal calendar to be used by an applicant to facilitate compliance with the plat approval process;
- specify the date on which a plat is considered filed;
- expand the authority of a municipality's governing body to delegate plat approval responsibility, extend that authority to a municipal planning commission and to a commissioners court or the court's designee, and provide for an applicant's right to appeal a disapproval by a designated person;
- provide for multiple extensions of the period for municipal or county action on a plat application under certain circumstances;
- establish an alternative review process when a municipality or county does not take action regarding a plat application by a certain date; and
- repeal provisions specifying the date on which the 30-day period for action on a plat application begins if a groundwater availability certification is required.