

## **BILL ANALYSIS**

C.S.H.B. 2789  
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Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Accessory dwelling units are independent housing units that can be either detached or attached to a primary dwelling unit. Accessory dwelling units are typically used to provide housing to persons such as an extended family member or a tenant. Regulation of these units varies widely with some local governments attempting to prohibit them completely or putting undue burdens on homeowners attempting to construct or erect a unit, infringing on their property rights as they attempt to responsibly renovate their property as they see fit. These units can help fill the desperate need for housing faced by students, caregivers, extended families, teachers, first responders, traveling professionals, and empty nesters, to name a few. These units can also help alleviate long commutes, ease traffic congestion, and return precious free time to busy Texans. These units add flexibility for home seekers and property owners and provide supplemental income for homeowners struggling under the weight of growing economic burdens. C.S.H.B. 2789 seeks to address this issue by setting out provisions relating to the regulation of accessory dwelling units by political subdivisions.

### **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. 2789 amends the Local Government Code to prohibit a political subdivision from adopting or enforcing an order, ordinance, or other measure that does the following:

- prohibits an owner of a lot that is not zoned or is zoned for a single-family home or duplex from building an accessory dwelling unit before, after, or concurrently with the building of the primary dwelling unit on the lot;
- prohibits the owner from selling or entering into a residential lease of an accessory dwelling unit, except that a political subdivision may prohibit the sale of an accessory dwelling unit separately from the primary dwelling unit;
- requires any owner occupancy of the primary dwelling unit;
- requires parking for an accessory dwelling unit, except that this prohibition does not limit a political subdivision's authority to require the replacement of parking required for the primary dwelling unit if the accessory dwelling unit construction eliminates the primary dwelling unit's existing parking;
- requires a minimum lot size for an accessory dwelling unit that is larger than the minimum lot size required by the political subdivision for the following:
  - a single-family home or duplex, as applicable, in a lot zoned for that purpose; or

- an accessory dwelling unit on September 1, 2023, if the political subdivision only required a property owner to provide notice to the political subdivision of the proposed unit in order to be authorized to build the unit;
- requires side or rear building, waterway, plane, or other setbacks larger than five feet for an accessory dwelling unit;
- prevents an owner of a lot zoned for a single-family home or duplex from converting an existing structure to an accessory dwelling unit by requiring setbacks larger than the current structure's setbacks;
- applies the political subdivision's local growth restrictions or density or bulk limitations to an accessory dwelling unit;
- provides a limitation on the square footage of an accessory dwelling unit that is less than either 50 percent of the square footage of the primary dwelling unit or 800 square feet;
- regulates the design of an accessory dwelling unit, including the shape, size, massing, or distribution of square footage between floors;
- requires the height of a room in an accessory dwelling unit to be more than 14 feet, measured from floor to ceiling;
- charges an impact fee that conflicts with statutory provisions relating to financing capital improvements required by a new development in certain local governments or in any amount for an accessory dwelling unit that is less than 800 square feet;
- charges any additional fee or any exaction, including a parkland or right-of-way dedication, specific to accessory dwelling units;
- imposes any restriction of accessory dwelling unit occupancy on the basis of age or employment relationship with the primary dwelling unit owner;
- prohibits an owner of a lot that is at least 10,000 square feet and that is not zoned or is zoned for a single-family home or duplex from building two accessory dwelling units before, after, or concurrently with the primary dwelling unit; or
- prohibits the construction of accessory dwelling units consistent with the bill's provisions under otherwise applicable open space or permeable surface restrictions.

The bill defines "accessory dwelling unit" as a residential housing unit that meets the following conditions:

- is located on any lot that is not zoned or is zoned for a single-family home or duplex;
- is independent of the attached or detached primary dwelling unit; and
- is a complete and independent living facility for at least one individual.

C.S.H.B. 2789 subjects an accessory dwelling unit to a political subdivision's height limitations, front setback limitations, site plan review, and other zoning requirements that are generally applicable to residential construction for the area in which the accessory dwelling unit is built, except as provided by the bill's provisions. The bill authorizes a political subdivision to publish accessory dwelling unit plans, building codes, and design standards that are permitted in the political subdivision and authorizes the standards to include height, setback, landscape, aesthetics standards, and maximum size of an accessory dwelling unit, subject to the bill's prohibitions against certain regulations. The bill authorizes a political subdivision to authorize an accessory dwelling unit on a lot with the following characteristics:

- a lot that contains a structure subject to a historic preservation law, subject to a political subdivision's authority to regulate under other law;
- a lot that is located in an area used to implement certain water conservation plans; or
- a lot that is located in an area subject to certain standards imposed by the Texas Water Development Board.

The bill authorizes a political subdivision to apply the political subdivision's regulations on short-term rental units to an accessory dwelling unit.

C.S.H.B. 2789 requires a political subdivision that requires a permit to construct an accessory dwelling unit to do the following:

- process the application for the permit ministerially without discretionary review or a hearing;

- consider only whether the application satisfies the applicable building codes, design standards, and fire codes; and
- approve or deny the application not later than the 60th day after the date the applicant submits the completed application.

The permit application is considered approved if the political subdivision does not approve or deny the application within this time frame.

C.S.H.B. 2789 expressly does not supersede, preempt, or apply to a historic preservation rule, deed restriction, or homeowners association rule that limits or prohibits the construction of an accessory dwelling unit. The bill authorizes a person to submit a complaint to the attorney general of a suspected violation of the bill's provisions, and if the attorney general determines that a political subdivision has committed such a violation, the political subdivision is prohibited from adopting a property tax rate for the following property tax year that exceeds the political subdivision's no-new-revenue tax rate for that following tax year.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 2789 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.

The substitute includes provisions absent in the introduced that include as prohibited regulations a regulation that does the following:

- requires a minimum lot size for an accessory dwelling unit that is larger than the minimum lot size required by the political subdivision for an accessory dwelling unit on September 1, 2023, if the political subdivision only required a property owner to provide notice to the political subdivision of the proposed unit in order to be authorized to build the unit; and
- requires the height of a room in an accessory dwelling unit to be more than 14 feet, measured from floor to ceiling.

The introduced and the substitute differ with respect to prohibited regulations as follows:

- whereas the introduced included as a prohibited regulation a regulation that prohibits the owner from renting an accessory dwelling unit, the substitute includes as such a regulation a regulation that prohibits the owner from entering into a residential lease of an accessory dwelling unit;
- whereas the introduced included as a prohibited regulation a regulation that provides limitations on the square footage of an accessory dwelling unit with the exception that the political subdivision may prohibit the accessory dwelling unit from being larger than the primary dwelling unit if the limitation does not require the accessory dwelling unit to be smaller than 1,100 square feet, the substitute includes as such a regulation a regulation that provides a limitation on the square footage of an accessory dwelling unit that is less than either 50 percent of the square footage of the primary dwelling unit or 800 square feet; and
- whereas the introduced included as a prohibited regulation a regulation that charges an impact fee in any amount for an accessory dwelling unit that is less than 750 square feet, the substitute includes as such a regulation a regulation that charges an impact fee in any amount for an accessory dwelling unit that is less than 800 square feet.

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

- authorize a political subdivision to apply the political subdivision's regulations on short-term rental units to an accessory dwelling unit; and

- authorize a political subdivision to prohibit the sale of an accessory dwelling unit separately from the primary dwelling unit.

Whereas the introduced provided for the permit application approval time frame to begin when the political subdivision receives the completed application, the substitute provides for such time frame to begin when the applicant submits the completed application.

Whereas the introduced established that the bill's provisions expressly do not limit the applicability of a historic preservation rule, deed restriction, or homeowners association rule that limits or prohibits the construction of an accessory dwelling unit, the substitute establishes that such provisions expressly do not supersede, preempt, or apply to such a historic preservation rule, deed restriction, or homeowners association rule.