

BILL ANALYSIS

C.S.H.B. 3328

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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain counties are required to enter into agreements with municipalities to govern the platting of subdivisions located in the municipality's extraterritorial jurisdiction. If the parties are unable to agree on the division of platting authority, an arbitrator may compel entry of a platting agreement, which could empower a municipality to regulate platting in its extraterritorial jurisdiction regardless of whether the property will be annexed into the municipality at any point in the future. Under those circumstances, a county may find itself on the hook for maintaining infrastructure for subdivisions it was unable to have a say in platting. This concern may be particularly more pronounced in suburban counties with a large number of smaller municipalities that may not have the staff or resources necessary to ensure subdivisions, particularly denser subdivisions, platted in the municipality's extraterritorial jurisdiction contain adequate infrastructure that the county may some day be obligated to maintain. C.S.H.B. 3328 seeks to address this issue by authorizing certain counties to amend an applicable agreement to transfer exclusive jurisdiction to the county to regulate subdivision platting for certain parcels of land.

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. 3328 amends the Local Government Code to authorize a county that has a population of more than 370,000 and contains more than eight municipalities, each with a population of less than 2,000, by order to unilaterally amend an agreement entered into with a municipality that regards the identification of the governmental entity authorized to regulate subdivision plats and approve related permits in the municipality's extraterritorial jurisdiction to transfer exclusive jurisdiction to the county to regulate subdivision platting for a parcel of land located in the county that has the following characteristics:

- the parcel is greater than 10 acres in size or is platted as part of a phased development that is greater than 10 acres in size;
- the parcel is proposed to be subdivided into residential parcels, each less than one-half acre in size;
- the parcel is not subject to an industrial district agreement; and
- the parcel is not subject to an annexation agreement with a municipality in which the municipality annexes the parcel not later than the earlier of the following:

- the 20th anniversary of the date any bond for improvements to the parcel is issued by a municipal utility district; or
- the 30th anniversary of the date the agreement is entered into.

The bill requires the county, before the county may unilaterally amend the agreement, to do the following:

- consult in person with a representative of the municipality that is a party to the agreement proposed to be amended; and
- provide the municipality with written notice of the county's intent to amend the agreement not later than the 90th day before the date the county amends the agreement.

The bill establishes that the county's authority under the adopted amendment applies only to a plat application filed on or after the date the county adopts the amendment order.

C.S.H.B. 3328 also authorizes a party to such an agreement between a municipality and such a county to submit an amendment to the agreement to binding arbitration and authorizes the other party to the agreement to submit any other amendment to the agreement for consideration in the same arbitration not later than the 30th day after the date the other party receives notice of the arbitration. The bill does not allow a party to submit an amendment to arbitration under its provisions if the amendment relates to a parcel of land for which the county has authority to unilaterally amend the agreement under the other provisions of the bill.

C.S.H.B. 3328 requires the party that initiates the arbitration, before submitting an amendment to an agreement to arbitration, to consult in person with and provide written notice not later than the 30th day before the date the arbitration is initiated to the following:

- if the party is a county, a representative of the municipality that is the other party to the agreement; or
- if the party is a municipality, a representative of the county that is the other party to the agreement and each other municipality in the county.

The bill establishes that only one arbitration may be conducted every 10 years regarding the same agreement. The bill requires the arbitrator or arbitration panel, as applicable, to be selected not later than the 30th day after the date the initiating party provides the required notice to the other party. The bill establishes that a county or municipality's authority under an amendment submitted to arbitration applies only to a plat application filed on or after the date the arbitrator or arbitration panel, as applicable, renders a decision.

C.S.H.B. 3328 further applies the following provisions that govern arbitrations to compel entry of a platting agreement to an arbitration relating to an amendment to such an agreement under the provisions of the bill:

- the county and municipality must agree on the arbitrator, and if they cannot, then the county and municipality select one arbitrator each, and the two arbitrators then select a third arbitrator;
- the third arbitrator presides over the arbitration panel;
- the arbitrator or panel may only issue a decision relating to the disputed issues between the county and the municipality regarding the authority of the county or municipality to regulate plats, subdivisions, or development plans;
- each party is equally liable for the costs of the arbitration;
- the arbitrator or panel, as applicable, must render a decision by the 60th day after the arbitrator or panel is selected, and if the arbitrator or panel, as applicable, is unable to do so after a good faith effort, the arbitrator or panel, as applicable, must continue to arbitrate the matter until a decision is reached; and
- a county and municipality cannot arbitrate the subdivision of an individual plat.

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. 3328 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.

While the introduced permitted a county to terminate a platting agreement in certain circumstances, the substitute permits a county to unilaterally amend a platting agreement in certain circumstances.

The substitute alters the county which can order a transfer exclusive jurisdiction for platting certain parcels in the extraterritorial jurisdiction of a municipality from the municipality to the county from a county with more than ten municipalities with a population of less than 2,000 to a county with more than eight municipalities with a population of less than 2,000. The substitute alters the parcel that can be the subject of a transfer of exclusive jurisdiction from a municipality to the county from any area exceeding five acres proposed to be divided into more than five parcels unless subject to an agreement with a municipality to annex the area within 25 years from the date of the subdivision application, as in the introduced, to a parcel with the following characteristics:

- greater than 10 acres in size or is platted as part of a phased development that is greater than 10 acres in size;
- proposed to be subdivided into residential parcels, each less than one-half acre in size;
- not subject to an industrial district agreement; and
- not subject to an annexation agreement with a municipality in which the municipality annexes the parcel not later than the earlier of the following:
 - the 20th anniversary of the date any bond for improvements to the parcel is issued by a municipal utility district; or
 - the 30th anniversary of the date on which the agreement is entered.

The substitute does not include provisions included in the introduced that permitted a county that terminated a platting agreement to regulate subdivisions in the extraterritorial jurisdiction of a municipality under certain zoning provisions in Sections 231.001-232.005, Subchapter B or C, Chapter 232, Local Government Code, and other statutes applicable to the county for a parcel subject to the introduced version's provisions.

The substitute adds preconditions before a county may unilaterally amend a platting agreement which were not present in the introduced, including in-person consultation with a representative of the municipality and written notice to the municipality of the county's intention to amend the platting agreement not later than the 90th day before the date the county amends the agreement.

While the introduced included language clarifying that the municipality whose platting agreement with the county was unilaterally terminated under the introduced bill's provisions has exclusive authority to regulate subdivision plats, approve related permits in its extraterritorial jurisdiction, and regulate subdivisions in its extraterritorial jurisdiction under certain zoning provisions in Sections 231.001-232.005, Subchapter B or C, Chapter 232, Local Government Code, and other statutes applicable to the municipality for a parcel not subject to the county's transferred authority under the introduced version's provisions, the substitute omits this language.

The substitute includes provisions governing amendments by arbitration between a county with a population of more than 370,000 containing more than eight municipalities with a population of less than 2,000 and a municipality for parcels not subject to the county's unilateral amendment authority that were not present in the introduced. These provisions are summarized in the analysis section above.

While the introduced applied a county's or municipality's amended authority to a plat application submitted on or after the date the county adopts the order to terminate the platting agreement, the substitute establishes that:

- the county's authority under the adopted amendment applies only to a plat application filed on or after the date the county adopts the amendment order; and
- a county's or municipality's authority under an amendment submitted to arbitration applies only to a plat application filed on or after the date the arbitrator or arbitration panel, as applicable, renders a decision.