

BILL ANALYSIS

C.S.H.B. 4108

By: Guillen

Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Constituents say that some property owners are unable to sell their property due to restrictions imposed by subdivision platting requirements. C.S.H.B. 4108 makes several changes to the statutes governing county regulation of subdivisions with the goal of providing counties greater flexibility in individual situations while also ensuring that certain standards are met to protect the environment and public health.

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

Exemption From TWDB Model Rules For Certain Subdivisions

C.S.H.B. 4108 amends the Water Code to expand the authority of a county or municipality that receives certain funds or financial assistance relating to water development in an economically distressed area to grant certain subdivisions an exemption from the requirements of the model rules developed by the Texas Water Development Board (TWDB) regarding minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions by including among those subdivisions a subdivision that involves four or fewer lots that:

- front an existing street that meets the standards adopted by the county or municipality and does not require the creation of any new street; and
- have access to an existing water supply and sewer service that meets the standards of the model rules and does not require the extension of water or sewer facilities.

Provisions Relating to Subdivision Platting Requirements in a County Near an International Border

C.S.H.B. 4108 amends the Local Government Code to exempt from provisions relating to subdivision platting requirements in a county near an international border a subdivision that has received an exemption from the requirements of the TWDB's model rules from a county that receives certain funds or financial assistance relating to water development in an economically distressed area.

C.S.H.B. 4108 allows a county to not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if the lots are sold to adjoining landowners or the owner does not lay out a part of the tract for streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts. The bill authorizes a county, in its sole discretion and on a determination that good cause exists, to grant an exception to the applicable plat requirements for an individual lot for which the county makes the following determinations:

- the lot is located within 700 feet of a connection to a municipal water service;
- the lot is adjacent to a public road;
- the lot has sufficient space to accommodate a sewer service facility that complies with TWDB's model rules; and
- a civil engineer registered to practice in Texas has certified the lot has adequate drainage and is not in a floodplain.

C.S.H.B. 4108 revises the bond requirement exemption for a person who has completed the installation of all required water and sewer service facilities on the date the person applies for final plat approval to also require completed installation of all required roads and streets on such date. The bill requires a bond for construction of roads and streets to meet the bond requirements under provisions relating to subdivision platting requirements in general. The bill authorizes a commissioners court, in its sole discretion, to allow a person to stop maintaining a bond for construction of sewer service facilities if the person has completed the installation of all required water facilities, roads, and streets and the person delivers to the commissioners court an affidavit from each owner of a lot that does not have an installed sewer service facility. The bill requires the affidavit to include certain language providing for the affidavit signer's acknowledgment of their potential ineligibility for water or electricity service unless they install a septic facility on the lot and the voluntary assumption by the affidavit signer of all financial responsibility for the hiring of a licensed installer to install an on-site sewage facility that complies with law and rules applicable to sewage facilities, including certain specified laws and rules.

C.S.H.B. 4108 establishes that a person who holds a real estate broker's or sales agent's license under The Real Estate License Act acting in the person's capacity as a real estate broker or sales agent is not an agent of a seller or subdivider for purposes of the following:

- provisions relating to advertising standards and other requirements before a sale of subdivided land and a related offense; and
- provisions establishing civil penalties for certain conduct by a subdivider or an agent of a subdivider relating to the sale of a lot in a subdivision that has not been platted as required by law or a subdivision that becomes a public health nuisance.

Provisions Relating to Subdivision Platting Requirements in Certain Economically Distressed Counties

C.S.H.B. 4108 requires a court having jurisdiction of an enforcement action relating to subdivision platting requirements in economically distressed counties to dismiss the action if the defendant shows good cause for the dismissal and remedies the violation that is the subject of the enforcement action not later than the 45th day after the date the defendant receives notice of the action.

Acreage Specification Adjustments

C.S.H.B. 4108 makes minor acreage specification adjustments throughout provisions relating to county regulation of subdivisions by replacing certain references as follows:

- more than 10 acres with 10 or more acres;
- five acres or less with less than five acres;
- more than five acres with five acres or more; and
- not more than 10 acres with less than 10 acres.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF ORIGINAL TO SUBSTITUTE

While C.S.H.B. 4108 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.

Exemption From TWDB Model Rules For Certain Subdivisions

The substitute includes a provision absent in the introduced that provides for the authority of a county or municipality that receives certain funds or financial assistance relating to a water development in an economically distressed area to grant an exemption from the requirements of the TWDB's model rules regarding minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions for a subdivision that involves four or fewer lots that:

- front an existing street that meets the standards adopted by the county or municipality and does not require the creation of any new street; and
- have access to an existing water supply and sewer service that meets the standards of the model rules and does not require the extension of water or sewer facilities.

Provisions Relating to Subdivision Platting Requirements in a County Near an International Border

The substitute includes a provision absent in the introduced that exempts from provisions relating to subdivision platting requirements in a county near an international border a subdivision that has received an exemption from the requirements of the TWDB's model rules from a county that receives certain funds or financial assistance relating to water development in an economically distressed area.

The substitute includes a provision absent in the introduced that prohibits a county from requiring the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if the lots are sold to adjoining landowners or the owner does not lay out a part of the tract for streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.

The substitute omits provisions present in the introduced that established that provisions relating to subdivision platting requirements in a county near an international border do not apply if all lots of the subdivision are no less than .50 acres and the county determines that:

- there is access to municipal water within 700 feet of the property line;
- the property abuts a road and there are no landlocked partitions;
- there is adequate space on the partitioned property to accommodate a septic tank or access to a sewer system; and
- a civil engineer has certified that the property is not in a flood plain and adequate drainage exists for the partitioned lots.

However, the substitute includes provisions absent from the introduced that instead authorize a county, in its sole discretion and on a determination that good cause exists, to grant an exception to the applicable plat requirements for an individual lot for which the county makes the following determinations:

- the lot is located within 700 feet of a connection to a municipal water service;
- the lot is adjacent to a public road;
- the lot has sufficient space to accommodate a sewer service facility that complies with the TWDB's model rules; and
- a civil engineer registered to practice in Texas has certified the lot has adequate drainage and is not in a floodplain.

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

- further condition the exemption from bond requirements for a person who has completed the installation of all required water and sewer service facilities on the date the person

applies for final plat approval on that person also having completed installation of all required roads and streets on such date; and

- require a bond for construction of roads and streets to meet bond requirements under provisions relating to subdivision platting requirements in general.

Whereas the introduced established that applicable bond requirements do not apply if a purchase contract includes a written agreement that the purchaser assumes the responsibility of sewer facilities and the agreement includes a statement regarding the assumption by the buyer of all financial responsibility for ensuring sewer facility compliance with certain law and rules, the substitute does the following:

- authorizes a commissioners court, in its sole discretion, to allow a person to stop maintaining a bond for construction of sewer service facilities if the person has completed the installation of all required water facilities, roads, and streets and the person delivers to the commissioners court an affidavit from each owner of a lot that does not have an installed sewer service facility; and
- requires the affidavit to include certain language providing for the affidavit signer's acknowledgment of their potential ineligibility for water or electricity service unless they install a septic facility on the lot and the voluntary assumption by the affidavit signer of all financial responsibility for the hiring of a licensed installer to install an on-site sewage facility that complies with applicable law and rules.

Whereas the introduced only referenced the TWDB's model rules and Local Government Code provisions relating to county regulation of subdivisions in the agreement language, the substitute specifies in the affidavit language that the laws and rules with which an installed sewage facility must comply include all laws and rules applicable to such facilities, including those referenced in the introduced and certain Health and Safety Code provisions and construction standards.

Whereas the introduced removed an agent of a seller or subdivider from the application of an offense relating to advertising standards for the sale or lease of subdivided land and removed an agent of a subdivider from the application of certain prohibitions, the violation of which results in liability for a civil penalty, relating to the sale of a lot in a subdivision that has not been platted as required by law or a subdivision that becomes a public health nuisance. The substitute includes instead provisions establishing that a person who holds a real estate broker's or sales agent's license under The Real Estate License Act acting in the person's capacity as a real estate broker or sales agent is not an agent of a seller or subdivider for purposes of the following:

- provisions relating to advertising standards and other requirements before a sale of subdivided land and the related offense; and
- provisions relating to the applicable civil penalties.

The substitute omits the provision present in the introduced that did the following with regard to the civil penalty for a subdivider who fails to provide, in the time and manner described in the plat, for the construction or installation of water or sewer service facilities described on the plat or on the document attached to the plat or who otherwise violates an applicable statute, rule, or requirement:

- changed the range of the penalty for each violation and for each day of a continuing violation from not less than \$500 or more than \$1,000 to not less than \$250 or more than \$500; and
- decreased the maximum daily penalty from \$5,000 to \$2,500.

Provisions Relating to Subdivision Platting Requirements in Certain Economically Distressed Counties

The substitute includes a provision absent in the introduced that requires a court having jurisdiction of an enforcement action relating to subdivision platting requirements in certain economically distressed counties to dismiss the action if the defendant shows good cause for the dismissal and remedies the violation that is the subject of the enforcement action not later than the 45th day after the date the defendant receives notice of the action.

Acreage Specification Adjustments

The substitute includes provisions absent in the introduced that make minor acreage

specification adjustments throughout provisions relating to county regulation of subdivisions.