

BILL ANALYSIS

S.B. 1412
By: Hughes
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Accessory dwelling units are independent housing units that can be detached or attached to a primary dwelling unit. Accessory dwelling units have the potential to increase housing affordability for homeowners and tenants, create a wider range of housing options within the community, enable seniors to stay near family, and facilitate better use of existing housing infrastructure in established neighborhoods. Regulation of these units can vary between local governments, with some local governments attempting to prohibit such units or putting burdens on property owners attempting to construct or erect a unit. S.B. 1412 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

S.B. 1412 amends the Local Government Code by adding Chapter 247 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 entering into a residential lease for an accessory dwelling unit;
- requires any owner occupancy of the primary dwelling unit;
- requires parking for an accessory dwelling unit on a lot that was platted before 1965, is less than 7,000 square feet, or is located within 1,320 feet of a public transit line, 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; and
 - a political subdivision may apply the political subdivision's parking regulations that are not prohibited to an accessory dwelling unit if the regulations do not require more than one parking space for each accessory dwelling unit and do not regulate the placement or adequacy of 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 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 an accessory dwelling unit to be less than 14 feet, measured from floor to ceiling;
- charges an impact fee unless the accessory dwelling unit requires either an increase in the size of the meter or connection to serve the primary dwelling unit or a new meter or connection for the accessory dwelling unit;
- charges any additional fee or any exaction, including a parkland or right-of-way dedication;
- imposes any restriction of accessory dwelling unit occupancy on the basis of age or employment relationship with the primary dwelling unit owner;
- prohibits the construction of accessory dwelling units consistent with the bill's provisions under otherwise applicable open space or permeable surface restrictions;
- prohibits construction of an accessory dwelling unit in accordance with the current residential building code adopted by the state or a housing regulatory authority of the state; or
- prohibits an accessory dwelling unit based on its orientation on the lot with respect to the primary dwelling unit if space allows for that orientation.

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.

S.B. 1412 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, 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, including municipalities' general zoning regulation authority;
- a lot that is located in an area used to implement certain water conservation plans required under applicable Water Code provisions; 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.

S.B. 1412 authorizes a political subdivision to prohibit the sale of an accessory dwelling unit separately from the primary dwelling unit unless either the accessory dwelling unit is located on a separate lot from the primary dwelling unit or the accessory dwelling unit and the primary dwelling unit are separate condominium units under the Uniform Condominium Act.

S.B. 1412 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 to which the application is submitted does not approve or deny the application on or before the 60th day after the date the applicant submits the application.

S.B. 1412 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.

S.B. 1412 authorizes a property owner to bring an action against a political subdivision that violates the bill's provisions for damages resulting from the violation and appropriate equitable relief. The bill authorizes a court to award a prevailing claimant reasonable attorney's fees and costs incurred in bringing an action but prohibits the claimant from recovering exemplary damages in the action. The bill waives governmental immunity of a political subdivision to suit and from liability to the extent of liability created by these provisions of the bill.

EFFECTIVE DATE

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