

BILL ANALYSIS

Senate Research Center
88R9602 SCL-D

S.B. 1412
By: Hughes
Local Government
3/31/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1412 would prohibit political subdivisions from preventing residential property owners from building or erecting accessory dwelling units (ADUs) by right.

Texas' median home price dropped last year from \$349,900 to \$331,000 thanks to the pandemic and economic pressures; however, houses should be priced below \$300,000 to be considered "affordable." Comparing the salary required to buy a median-priced home (\$115,973) with the median household income (\$67,404) in Texas illustrates the conundrum: housing is generally unaffordable, even for hard-working Texans.

The Texas spirit of independence and personal private property rights are constrained when hard-working Texans who invest in residential property are prevented from maximizing their investment and utilizing their property to its highest and best use. That highest and best use may include building accessory dwelling units, or "casitas," "cottages," and "granny flats," as they're sometimes known.

City centers and other densely populated areas are not growing any more land. ADUs 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. ADUs can alleviate long commutes, ease traffic congestion, help clean the air, and return precious free time to busy Texans. ADUs add flexibility for home seekers and property owners and provide supplemental income for homeowners struggling with growing economic burdens.

ADUs are independent housing units and can be either detached or attached to the primary home. The popularity of their practicality and affordability has been increasing during the last decade: Portland, Oregon, and Los Angeles routinely see more than 10 percent of all housing permits issued for ADUs; in Vancouver, it's almost 10 percent of housing permits. Some Texas home builders are now incorporating ADUs into floor plans for new construction.

Not all communities are fans of accessory dwelling units—this bill is not a one-size-fits-all mandate. S.B. 1412 will not infringe on homeowners associations, historic districts, and deed restrictions that prohibit ADUs. If circumstances dictate that health and safety would be adversely impacted by building an ADU, it will not be forced.

Municipalities and other political subdivisions are not without a voice in this effort to increase the supply of safe, affordable housing. Height, setback, and zoning requirements applicable to the primary dwelling apply to any ADU built on the same lot. Landscape, aesthetic, and size restrictions are permitted.

According to Maslow's hierarchy, Texas' continued economic, job, and population growth are unsustainable without meeting the most basic needs. Bringing jobs to Texas requires workers, and workers need housing. Heads need beds. The Texas Miracle is jeopardized without solving that part of the equation.

As proposed, S.B. 1412 amends current law relating to regulation of accessory dwelling units by political subdivisions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 7, Local Government Code, by adding Chapter 247, as follows:

CHAPTER 247. REGULATION OF ACCESSORY DWELLING UNITS BY POLITICAL SUBDIVISIONS

Sec. 247.001. DEFINITION. Defines "accessory dwelling unit."

Sec. 247.002. CERTAIN REGULATIONS PROHIBITED. (a) Prohibits a political subdivision from adopting or enforcing an order, ordinance, or other measure that:

- (1) prohibits an owner of a lot described by Section 247.001(1) from building an accessory dwelling unit before, after, or concurrently with the building of the primary dwelling unit on the lot;
- (2) prohibits the owner from selling or renting an accessory dwelling unit;
- (3) requires any owner occupancy of the primary dwelling unit;
- (4) requires parking for an accessory dwelling unit;
- (5) requires a minimum lot size for an accessory dwelling unit that is larger than the minimum lot size required by the political subdivision for a single-family home or duplex, as applicable, in a lot zoned for that purpose;
- (6) requires side or rear building, waterway, plane, or other setbacks larger than five feet for an accessory dwelling unit;
- (7) 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;
- (8) applies the political subdivision's local growth restrictions or density or bulk limitations to an accessory dwelling unit;
- (9) provides limitations on the square footage of an accessory dwelling unit, except that the political subdivision is authorized to 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;
- (10) regulates the design of an accessory dwelling unit, including the shape, size, massing, or distribution of square footage between floors;
- (11) charges an impact fee:
 - (A) in any amount for an accessory dwelling unit that is less than 750 square feet; or

(B) that conflicts with Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments);

(12) charges any additional fee or any exaction, including a parkland or right-of-way dedication, specific to accessory dwelling units;

(13) imposes any restriction of accessory dwelling unit occupancy on the basis of age or employment relationship with the primary dwelling unit owner;

(14) prohibits an owner of a lot that is at least 10,000 square feet that is described by Section 247.001(1) from building two accessory dwelling units before, after, or concurrently with the primary dwelling unit; or

(15) prohibits the construction of accessory dwelling units consistent with this chapter under otherwise applicable open space or permeable surface restrictions.

(b) Provides that Subsection (a)(4) 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.

Sec. 247.003. AUTHORIZED REGULATION. (a) Provides that 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 an accessory dwelling unit is built, except as provided by this chapter, apply to the accessory dwelling unit.

(b) Authorizes a political subdivision to publish accessory dwelling unit plans, building codes, and design standards that are permitted in the political subdivision. Authorizes standards, subject to Section 247.002, to include height, setback, landscape, aesthetics standards, and maximum size of an accessory dwelling unit.

(c) Authorizes a political subdivision to authorize an accessory dwelling unit on a lot that:

(1) contains a structure subject to a historic preservation law, subject to a political subdivision's authority to regulate under other law, including Section 211.003 (Zoning Regulations Generally);

(2) is located in an area used to implement a water conservation plan described by Section 11.1271 (Additional Requirements: Water Conservation Plans) or 13.146 (Water Conservation Plan), Water Code; or

(3) is located in an area subject to a standard imposed by the Texas Water Development Board as described by Section 3000.002(c) (relating to certain exceptions to the prohibition on certain regulations regarding building products, materials, or methods), Government Code.

Sec. 247.004. PERMIT APPROVAL REQUIREMENTS. (a) Requires a political subdivision that requires a permit to construct an accessory dwelling unit to:

(1) process the application for the permit ministerially without discretionary review or a hearing;

(2) consider only whether the application satisfies the applicable building codes, design standards, and fire codes; and

(3) approve or deny the application not later than the 60th day after the date the political subdivision receives the completed application.

(b) Provides that a permit application described by Subsection (a) 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 political subdivision receives the application.

Sec. 247.005. **APPLICABILITY TO OTHER RESTRICTIONS AND RULES.** Provides that this chapter does 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.

Sec. 247.006. **ENFORCEMENT.** (a) Authorizes a person to submit a complaint to the attorney general of a suspected violation of this chapter.

(b) Prohibits a political subdivision, if the attorney general determines that a political subdivision has violated this chapter, notwithstanding any other law, from adopting an ad valorem tax rate for the following ad valorem tax year that exceeds the political subdivision's no-new-revenue tax rate for that following tax year.

SECTION 2. Effective date: upon passage or September 1, 2023.