

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1412
By: Hughes
Local Government
4/19/2023
Committee Report (Substituted)

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 are 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.

(Original Author's/Sponsor's Statement of Intent)

C.S.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 entering into a residential lease for an accessory dwelling unit;
- (3) requires any owner occupancy of the primary dwelling unit;
- (4) requires parking for an accessory dwelling unit on a lot that:
 - (A) was platted before 1965;
 - (B) is less than 7,000 square feet; or
 - (C) is located within 1,320 feet of a public transit line;
- (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) a single-family home or duplex, as applicable, in a lot zoned for that purpose; or
 - (B) 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;
- (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 a limitation on the square footage of an accessory dwelling unit that is less than:

(A) 50 percent of the square footage of the primary dwelling unit;
or

(B) 800 square feet;

(10) regulates the design of an accessory dwelling unit, including the shape, size, massing, or distribution of square footage between floors;

(11) requires the height of an accessory dwelling unit to be less than 14 feet, measured from floor to ceiling;

(12) charges an impact fee unless the accessory dwelling unit requires:

(A) an increase in the size of the meter or connection to serve the primary dwelling unit; or

(B) a new meter or connection for the accessory dwelling unit;

(13) charges any additional fee or any exaction, including a parkland or right-of-way dedication;

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

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

(16) prohibits construction of an accessory dwelling unit in accordance with the current residential building code adopted by this state or a housing regulatory authority of this state; or

(17) 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.

(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, 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.

(d) Authorizes a political subdivision to apply the political subdivision's regulations on short-term rental units to an accessory dwelling unit.

(e) Authorizes a political subdivision to prohibit the sale of an accessory dwelling unit separately from the primary dwelling unit unless:

(1) the accessory dwelling unit is located on a separate lot from the primary dwelling unit; or

(2) the accessory dwelling unit and the primary dwelling unit are separate condominium units under Chapter 82 (Uniform Condominium Act), Property Code.

(f) Authorizes a political subdivision to apply the political subdivision's parking regulations that are not prohibited under Section 247.002(a)(4) to an accessory dwelling unit if the regulations do not:

(1) require more than one parking space for each accessory dwelling unit; and

(2) regulate the placement or adequacy of parking.

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 applicant submits the completed application.

(b) Provides that a permit application described by Subsection (a) is considered approved if the political subdivision does not approve or deny the application on or before the 60th day after the date the applicant submits the application.

Sec. 247.005. EFFECT ON OTHER RESTRICTIONS AND RULES. Provides that this chapter 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.

Sec. 247.006. PROPERTY OWNER ACTION. (a) Authorizes a property owner to bring an action against a political subdivision that violates this chapter for damages resulting from the violation and appropriate equitable relief.

(b) Authorizes a court to award a prevailing claimant reasonable attorney's fees and costs incurred in bringing an action under this section. Provides that the claimant is prohibited from recovering exemplary damage in the action.

(c) Provides that governmental immunity of a political subdivision to suit and from liability is waived to the extent of liability created by this section.

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