

BILL ANALYSIS

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S.B. 1786
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas' continued population growth has resulted in increased amounts of residential construction; increased construction has resulted in backlogs at local planning and building departments in fast growth regions of the state. Homebuilders and remodelers have frequently been stranded waiting for a city to review plans, plats, and permits, and for building code inspectors to visit projects and approve in-process and completed work. As projects stand idle waiting for reviews and inspections, homeowners suffer due to lengthy delays in moving into their homes while watching their actual and opportunity costs increase. The combination of these adverse events is a damper on economic development.

When cities are unable to meet statutory deadlines, rather than delay construction projects and homeowner dreams, requiring cities to accept certified, independent third-party reviews and inspections by licensed, qualified professionals will help reduce the backlogs. Some cities, such as El Paso, exclusively use third-party reviews and inspections, negating the necessity of trying to time hiring with building booms and droughts while allowing economic development to continue unabated.

S.B. 1786 seeks to allow builders and developers the ability to utilize licensed, qualified professionals to independently review and inspect development plans, plats, permits, and projects when projects become delayed by a city's planning and building department.

As proposed, S.B. 1786 amends current law relating to approval procedures for property development review by a municipality.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 2 (Section 212.029, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 212.0065(c), Local Government Code, as follows:

(c) Provides that a person or persons are prohibited from disapproving the plat and are required to refer any plat which the person or persons refuse to approve to the municipal authority responsible for approving plats within the time period specified in Section 212.023, rather than 212.009 (Approval Procedure: Initial Approval).

SECTION 2. Amends Chapter 212, Local Government Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. APPROVAL PROCEDURES FOR PROPERTY DEVELOPMENT REVIEW

Sec. 212.021. DEFINITIONS. Defines "development application," "development inspection," "development permit," "municipal authority," "plan," "plat," and "property development review."

Sec. 212.028. DELEGATION OF APPROVAL RESPONSIBILITY TO THIRD-PARTY REVIEWER. (a) Authorizes the appropriate municipal authority, except as provided by Subsection (b), to delegate to a third-party reviewer the ability to approve a development application or conduct a development inspection.

(b) Requires the governing body of a municipality, if the municipality fails to complete at least 80 percent of the total number of development applications and requests for development inspections the municipality receives in a calendar year in accordance with the deadlines prescribed by this subchapter for two consecutive years, to delegate to third-party reviewers the ability to approve all development applications and conduct all development inspections for the five calendar years following that second consecutive year.

(c) Requires a third-party reviewer to process a development application or complete a development inspection in accordance with the deadlines and other approval procedures prescribed by this subchapter as if the reviewer is the municipal authority.

(d) Authorizes a municipality to audit the work of a third-party reviewer with a third-party auditor. Requires the auditor to be an architect, engineer, or other appropriate professional who is licensed, certified, or regulated by this state.

(e) Requires that a development application or development inspection that is begun by a third-party reviewer be completed by the reviewer regardless of whether the governing body of the municipality elects to discontinue delegation authorized by Subsection (a) or the mandatory period of delegation prescribed by Subsection (b) expires.

Sec. 212.029. THIRD-PARTY AUDITOR TRAINING. (a) Requires the Texas Department of Housing and Community Affairs (TDHCA), in coordination with the Texas Department of Licensing and Regulation and other appropriate state agencies, to:

(1) develop requirements for certifying, insuring, and auditing third-party reviewers; and

(2) develop and offer training programs for third-party reviewers that establish best practices.

(b) Authorizes TDHCA to adopt rules necessary to implement this section.

SECTION 3. Transfers Sections 212.0085, 212.009, 212.0091, 212.0093, 212.0095, 212.0096, 212.0097, and 212.0099, Local Government Code, to Subchapter A-1, Chapter 212, Local Government Code, as added by this Act, redesignates them as Sections 212.022, 212.023, 212.024, 212.025, 212.026, 212.027, 212.030, and 212.031, respectively, and amends them, as follows:

Sec. 212.022. New heading: APPLICABILITY OF SUBCHAPTER. Creates this section from existing text.

Sec. 212.023. New heading: INITIAL APPROVAL. (a) Requires a municipal authority to approve, approve with conditions, or disapprove a plan or plat, approve or disapprove a development permit, or complete a development inspection not later than the 30th day after the date the plan, plat, or permit application is filed or the inspection is requested. Provides that a plan, plat, or development permit is approved by the municipal authority unless it is disapproved within that period and in accordance with this subchapter. Provides that a development inspection requirement is waived unless the inspection is completed within that period and in accordance with this subchapter. Deletes existing text requiring the municipal authority responsible for approving plats to approve, approve with conditions, or disapprove a plan or plat within 30 days after the date the plan or plat is filed. Deletes existing text providing that a plan or plat is approved by the municipal

authority unless it is disapproved within that period and in accordance with Section 212.0091.

(b) Requires the governing body, if an ordinance requires that a plan, plat, or development permit be approved by the governing body of the municipality in addition to any other municipal authority, rather than the planning commission, to approve, approve with conditions, or disapprove the plan or plat, or approve or disapprove the permit, as applicable, not later than the 30th day after the date the plan, plat, or permit is approved by the other authority or is approved by the inaction of that authority. Provides that a plan, plat, or development permit is approved by the governing body unless it is disapproved within that period and in accordance with this subchapter. Makes conforming changes.

(c) Redesignates existing Subsection (b-1) as Subsection (c). Provides that the 30-day period described by Subsection (a) or (b) to approve, approve with conditions, or disapprove a plat, notwithstanding those subsections, if a groundwater availability certification is required under Section 212.0101 (Additional Requirements: Use of Groundwater), begins on the date the applicant submits the groundwater availability certification to the applicable municipal authority. Makes conforming changes.

(d) Redesignates existing Subsection (b-2) as Subsection (d). Authorizes the parties, notwithstanding Subsection (a) or (b), to extend the 30-day period described by those subsections for a period not to exceed 30 days if the applicant requests the extension in writing to the applicable municipal authority and the authority approves the extension request. Makes conforming changes.

(e) Redesignates existing Subsection (c) as Subsection (e).

(f) Redesignates existing Subsection (d) as Subsection (f). Requires the authority on the applicant's request, if the municipal authority fails to approve, approve with conditions, or disapprove a plan or plat within the prescribed period, to issue a certificate stating the date the plan or plat was filed and that the authority failed to act on the plan or plat within the period. Provides that the certificate is effective in place of the endorsement required by Subsection (e), rather than Subsection (c).

(g) Redesignates existing Subsection (e) as Subsection (g). Requires the municipal authority to maintain a record of each development application and request for a development inspection made to the authority and the authority's action taken on it. Requires the authority, on request of an owner of an affected tract, to certify the reasons for the action taken on an application. Makes a conforming change.

Sec. 212.024. New heading: **CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS.** (a) Requires a municipal authority, rather than a governing body, that conditionally approves or disapproves a plan or plat, or disapproves a development permit, under this subchapter to provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval, as applicable, that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b) Provides that condition or reason specified in the written statement:

(1) is required to:

(A) be directly related to the requirements prescribed by law for the applicable development project; and

(B) makes no changes to this paragraph; and

(2) makes no changes to this subdivision.

Makes conforming changes.

Sec. 212.025. New heading: **APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL**. Authorizes the applicant, after the conditional approval or disapproval of a plan or plat, or disapproval of a development permit, under Section 212.024, to submit to the municipal authority that conditionally approved or disapproved the plan, plat, or permit a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. Prohibits the municipal authority from establishing a deadline for an applicant to submit the response. Makes conforming changes.

Sec. 212.026. New heading: **APPROVAL OR DISAPPROVAL OF RESPONSE**. (a) Requires a municipal authority that receives a response under Section 212.025 to determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plan or plat, or disapproved development permit, not later than the 15th day after the date the response was submitted. Makes conforming changes.

(b) Provides that a municipal authority that conditionally approves or disapproves a plan or plat, or disapproves a development permit, following the submission of a response under Section 212.025:

(1) is required to comply with Section 212.024; and

(2) is authorized to disapprove the plan, plat, or permit only for a specific condition or reason provided to the applicant under Section 212.024.

Makes conforming changes.

(c) Requires a municipal authority that receives a response under Section 212.025 to approve a previously conditionally approved or disapproved plan or plat, or disapproved development permit, if the response adequately addresses each condition of the conditional approval or each reason for the disapproval. Makes conforming changes.

(d) Makes conforming changes to this subsection.

Sec. 212.027. New heading: **ALTERNATIVE APPROVAL PROCESS**. (a)-(b) Makes conforming changes to these subsections.

Sec. 212.030. New heading: **WAIVER PROHIBITED**. Prohibits a municipal authority, rather than a municipal authority responsible for approving plats or the governing body of a municipality, from requesting or requiring an applicant to waive a deadline or other approval procedure under this subchapter.

Sec. 212.031. **JUDICIAL REVIEW OF DISAPPROVAL**. Provides that the municipality, in a legal action challenging a disapproval of a plan, plat, or development permit under this subchapter, has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law.

SECTION 4. Amends Section 212.0155(e), Local Government Code, to make a conforming change.

SECTION 5. Amends Section 242.001(c), Local Government Code, to make a conforming change.

SECTION 6. Amends Section 242.003(c), Local Government Code, to make a conforming change.

SECTION 7. Repealer: Section 214.904 (Time for Issuance of Municipal Building Permit), Local Government Code.

SECTION 8. Provides that the requirement that a municipality process a certain percentage of development applications and development inspections in a calendar year as prescribed by Section 212.028(b), Local Government Code, as added by this Act, applies only to a calendar year that begins on or after the effective date of this Act.

SECTION 9. Requires TDHCA, not later than the effective date of this Act, to comply with the requirements of Section 212.029, Local Government Code, as added by this Act.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: January 1, 2024.