

## **BILL ANALYSIS**

C.S.H.B. 2214

By: Guillen

International Trade & Intergovernmental Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the ability to advertise for development is different depending on whether the development is inside or outside of city limits. These parties find the difference in the ability to advertise about a development limiting because advertisements can help gauge demand for financing, which brings about greater development and leads to a more competitive market. C.S.H.B. 2214 seeks to create uniformity among advertising requirements for developers.

### **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**

C.S.H.B. 2214 amends the Local Government Code to authorize a person who is a seller of lots in a subdivision or subdivider and who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state law, federal law, and the Nationwide Mortgage Licensing System and Registry, before a plat has been finally approved and recorded, to enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less and to advertise in accordance with advertising standards for land in certain counties near an international border that is required to be platted. The bill establishes that an earnest money contract is void if the plat for the land has not been finally approved and recorded before the 91st day after the date the earnest money contract is signed by the potential purchaser, unless the potential purchaser agrees in writing to extend the period for plat approval and recording for an additional 90-day period. The bill authorizes the granting of only one such extension.

C.S.H.B. 2214 requires the seller, if an earnest money contract is void, to refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void. The bill authorizes the potential purchaser, if the seller fails to refund the earnest money in violation of that requirement, to recover, in a suit to recover the earnest money, an amount equal to three times the amount of earnest money required to be refunded plus reasonable attorney's fees.

C.S.H.B. 2214 requires a person, before entering into an earnest money contract, to provide written notice to the attorney general and to the local government responsible for approving the plat and establishes the information required to be included in the notice. The bill requires an

earnest money contract to contain a specified statement relating to the maximum amount that may be collected under the contract. The bill establishes that its provisions regarding earnest money contracts apply in addition to other applicable law and prevail to the extent of a conflict with that other law.

C.S.H.B. 2214 specifies that the prohibition against certain forms of information and advertising containing any misrepresentation and the requirement that such information accurately describe the availability of water and sewer service facilities and electric and gas utilities relating to land in certain counties near an international border is in regard to land that is required to be platted instead of subdivided land generally. The bill applies that prohibition and requirement to an earnest money contract and further requires a brochure, publication, advertising of any form, and such a contract, if a plat for the land has not been finally approved and recorded, to include notice that a contract for the sale of any portion of the land may not be entered into until the land receives final plat approval and that the land may not be possessed or occupied until the land receives final plat approval and all water and sewer facilities for the lot are connected or installed in compliance with the model rules adopted by the Texas Water Development Board regarding minimum standards for water supply and sewer services in residential areas of political subdivisions. The bill changes from a person who is a seller of lots in a subdivision to a person who is a seller of lots in certain counties near an international border for which a plat is required the party to whom the Class A misdemeanor offense of knowingly authorizing or assisting in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning land offered for sale or lease is applicable.

C.S.H.B. 2214 repeals Section 232.021(9), Local Government Code.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2214 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Sections 232.033(a) and (h), Local Government Code, are amended.

SECTION 2. Subchapter B, Chapter 232, Local Government Code, is amended by adding Section 232.045 to read as follows:

Sec. 232.045. EARNEST MONEY CONTRACTS. (a) This section applies in addition to other applicable law and prevails to the extent of a conflict with that other law. This section applies only to a person who is a seller or subdivider and who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state law, federal law, and the Nationwide Mortgage Licensing System and Registry. A person

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subchapter B, Chapter 232, Local Government Code, is amended by adding Section 232.045 to read as follows:

Sec. 232.045. EARNEST MONEY CONTRACTS. (a) This section applies in addition to other applicable law and prevails to the extent of a conflict with that other law. This section applies only to a person who is a seller or subdivider and who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state law, federal law, and the Nationwide Mortgage Licensing System and Registry. A person

may, before a plat has been finally approved and recorded:

(1) enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less; and

(2) advertise in accordance with Section 232.033.

(b) An earnest money contract is void if the plat for the land has not been finally approved and recorded before the 91st day after the date the earnest money contract is signed by the potential purchaser, unless the potential purchaser agrees in writing to extend the period for plat approval and recording for an additional 90-day period. Only one extension may be granted under this subsection.

(c) If an earnest money contract is void under Subsection (b), the seller shall refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void. If the seller fails to refund the earnest money to the potential purchaser in violation of this subsection, the potential purchaser, in a suit to recover the earnest money, may recover an amount equal to three times the amount of the earnest money required to be refunded, plus reasonable attorney's fees.

(d) Before entering into an earnest money contract, a person must provide written notice to the attorney general and to the local government responsible for approving the plat. The notice must include:

(1) a statement of intent to enter into an earnest money contract under this section;

(2) a legal description of the land to be included in the subdivision;

(3) each county in which all or part of the subdivision is located; and

(4) the number of proposed individual lots to be included in the subdivision.

(e) An earnest money contract must contain the following statement:

"NOTICE: THIS IS AN EARNEST MONEY CONTRACT ONLY. THE MAXIMUM AMOUNT THAT THE SELLER MAY COLLECT UNDER THIS CONTRACT IS \$250. THE SELLER MAY NOT DEMAND ANY ADDITIONAL PAYMENT UNTIL A PLAT OF THE SUBDIVISION HAS BEEN APPROVED AND FILED BY THE

may, before a plat has been finally approved and recorded:

(1) enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less; and

(2) advertise in accordance with Section 232.033.

(b) An earnest money contract is void if the plat for the land has not been finally approved and recorded before the 91st day after the date the earnest money contract is signed by the potential purchaser, unless the potential purchaser agrees in writing to extend the period for plat approval and recording for an additional 90-day period. Only one extension may be granted under this subsection.

(c) If an earnest money contract is void under Subsection (b), the seller shall refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void. If the seller fails to refund the earnest money to the potential purchaser in violation of this subsection, the potential purchaser, in a suit to recover the earnest money, may recover an amount equal to three times the amount of the earnest money required to be refunded, plus reasonable attorney's fees.

(d) Before entering into an earnest money contract, a person must provide written notice to the attorney general and to the local government responsible for approving the plat. The notice must include:

(1) a statement of intent to enter into an earnest money contract under this section;

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COUNTY CLERK."

CLERK."

SECTION 3. Section 232.021(9), Local Government Code, is repealed.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.