

SUBJECT: Harris County authority to file civil lawsuits for flood plain violations

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 9 ayes — Walker, Crabb, Bosse, F. Brown, Hardcastle, Howard, Krusee, Mowery, B. Turner

0 nays

WITNESSES: None

BACKGROUND: Water Code, sec. 16.322, provides a civil penalty of \$100 per violation per day for violations of regulations aimed at compliance with the National Flood Insurance Program (NFIP). Water Code, sec. 16.323 allows counties containing two or more municipalities with populations of 250,000 or more (Tarrant) to sue for injunctive relief instead of, or in addition to, levying civil penalties for violations of regulations based on NFIP policies.

DIGEST: HB 1098 would allow counties with more than 2.8 million residents (Harris) to sue for injunctive relief in a district court for violations of regulations based on flood plain management policies of the National Flood Insurance Program. Injunctive relief would consist of measures restraining violators from continuing the violation. These measures would include orders to remove illegal improvements and restore areas to their original condition. The district court could award the type of injunctive relief warranted by the particular facts involved.

HB 1098 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: HB 1098 would provide Harris County with an effective deterrent to use against persons violating flood plain regulations, by authorizing the county to file civil lawsuits to stop them. This bill would provide an incentive to builders to comply with the law.

Harris County has had very serious flooding problems in recent years and currently has a backlog of cases filed against developers who have built illegally in flood plains. This bill is aimed at deterring future illegal

development and at saving Harris County considerable time and money in its efforts to enforce flood plain regulations. It also could reduce the future flood violation caseload of the County Attorney's Office by one-third to one-half the current amount.

The authority to sue for injunctive relief has been requested specifically by Harris County to deal with local circumstances. There is no need for a statewide law on this issue because other counties in the state have not asked for this authority.

**OPPONENTS
SAY:**

HB 1098 is narrowly focused on Harris County without considering the enforcement needs of other areas of the state. All counties and other political subdivisions statewide should have the option to sue for injunctive relief against violations of flood plain regulations.

NOTES:

The companion bill, SB 142 by Brown, passed the Senate on the Local and Uncontested Calendar on March 25 and was reported favorably, without amendment, by the House Land and Resource Management Committee on April 21, making it eligible to be considered in lieu of HB 1098.

A similar bill, HB 665 by Denny, passed the House on March 25 and has been referred to the Senate Committee on Natural Resources. HB 665 would give the authority to sue for injunctive relief to counties with populations of 270,000 or more that are adjacent to two or more counties each of which has a population of one million or more (Denton).

HB 218 by Brimer, enacted by the 75th Legislature, authorized the civil penalties available to all counties under sec. 16.322, Water Code, and the injunctive relief for Tarrant County under sec. 16.323, Water code.