

BILL ANALYSIS

Senate Research Center
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S.B. 1174
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DIGEST

Currently, in Texas, certain areas, such as the Texas Hill Country, have become popular for development, but have groundwater that cannot support growth without causing damage to the aquifer. Often because of the popularity of the area, buyers purchase property from unscrupulous business interests without the infrastructure necessary for responsible development. This bill would provide to commissioners courts the authority to require plans for water, wastewater, storm drainage, and other utilities, in areas designated as priority groundwater management areas.

PURPOSE

As proposed, S.B. 1174 provides to commissioners courts the authority to require plans for water, wastewater, storm drainage, and other utilities, in areas designated as priority groundwater management areas.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioners courts in SECTION 1 (Section 232.098(f), and Sections 232.100(a) and (c), Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 232, Local Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. ALTERNATE SUBDIVISION PLATTING REQUIREMENTS IN PRIORITY GROUNDWATER MANAGEMENT AREAS

Sec. 232.091. DEFINITIONS. Defines “common promotional plan,” “floodplain,” “lease,” “lot,” “minimum state standards,” “plat,” “priority groundwater management area,” “sell,” “sewer,” “sewer services,” “sewer facilities,” “subdivide,” “subdivider,” “subdivision,” and “utility.”

Sec. 232.092. APPLICABILITY. Provides that this subchapter applies only to land that is subdivided into four or more lots intended primarily for residential use in the jurisdiction of a county and that is located in a priority groundwater management area. Provides that this subchapter does not apply if the subdivision is incident to or the result of the conveyance of the land as a gift between persons related to each other within the third degree by affinity or consanguinity, as determined under Chapter 573, Government Code. Sets forth the instances in which land is considered in the jurisdiction of a county.

Sec. 232.093. PLAT REQUIRED. Requires a subdivider of land located in the jurisdiction of a county and located in a priority groundwater management area to have a plat of the subdivision prepared. Provides that a subdivision of a tract under this section includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract. Sets forth certain requirements for the required plat. Authorizes a subdivider to meet the requirements of Subsection (b)(12(B)) by obtaining a certificate issued by the appropriate county or state official having jurisdiction over the approval of septic systems stating that lots in the subdivision can be adequately and legally served by septic systems. Requires the subdivider of the tract to acknowledge the plat by signing the plat and attached documents and attest to the veracity and completeness of the matters asserted in the attached documents and in the plat. Requires the plat to be filed and recorded with the county clerk of the

county in which the tract is located. Provides that the plat is subject to the filing and recording provisions of Section 12.002, Property Code.

Sec. 232.094. APPROVAL BY COUNTY REQUIRED. Provides that a plat filed under Section 232.093 is not valid unless the commissioners court of the county in which the land is located approves the plat by an order entered in the minutes of the court. Requires the commissioners court to refuse to approve the plat if it does not meet the requirements prescribed by or under this subchapter or if any bond required under this subchapter is not filed with the county clerk. Prohibits the commissioners court from approving the plat if any part of a plat applies to land intended for residential housing and any part of that land lies in a floodplain, unless the plat evidences a restrictive covenant as required by this section. Requires the restrictive covenant to prohibit the construction of residential housing in any area of the subdivision that is in a floodplain unless the housing qualifies for insurance under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.). Requires the county clerk, on request, to provide the attorney general or the Texas Water Development Board certain information.

Sec. 232.095. SUBDIVISION REQUIREMENTS. Requires the commissioners court to set forth certain requirements for each subdivision, by an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county.

Sec. 232.096. WATER AND SEWER SERVICE EXTENSION. Authorizes the commissioners court to extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer facilities must be fully operable, if the commissioners court finds the extension is reasonable and not contrary to the public interest. Prohibits the commissioners court from granting an extension under Subsection (a) if it would allow an occupied residence to be without water or sewer services.

Sec. 232.097. BOND REQUIREMENTS. Requires the commissioners court to require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter, unless a person has completed the installation of all water and sewer service facilities required by this subchapter by a certain date. Prohibits a person from meeting the requirements of this subsection through the use of a letter of credit unless the letter of credit is irrevocable and issued by an institution guaranteed by the Federal Deposit Insurance Corporation. Requires the subdivider to comply with the requirement before subdividing the tract. Requires the bond to be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

Sec. 232.098. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS. Requires the commissioner court, on the approval of a plat, to issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the commissioners court. Requires the commissioners court to make certain determinations regarding the land in which the entity or commissioners court is interested that is located within the jurisdiction of the county, on the written request of a subdivider, an owner or resident of a lot in a subdivision, or an entity that provides a utility service. Requires the request made under Subsection (b) to identify the land that is the subject of the request. Requires the commissioners court to issue the requesting party a written certification of its determinations under that subsection whenever a request is made under Subsection (b). Requires the commissioners court to make its determinations within 20 days after the date it receives the request under Subsection (b) and requires the commissioners court to issue the certificate by a certain date. Authorizes the commissioners court to adopt rules it considers necessary to administer its duties under this section.

Sec. 232.099. CONNECTION OF UTILITIES. Prohibits a utility from serving or connecting any subdivided land with water or sewer services unless the utility receives a certificate issued by the commissioners court under Section 232.098(a) or receives a determination from the commissioners court under Section 232.098(b)(1) that the plat has been reviewed and approved by the commissioners court, except as provided by Subsection (c) or Section 232.107(c). Prohibits a utility from serving or connecting any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Section 232.098(b)(2) that

adequate water and sewer services have been installed to service the subdivision, except as provided by Subsection (c) or Section 232.107(c). Authorizes an electric, gas, water, or sewer service utility to serve or connect subdivided land with water, sewer, electricity, gas, or other utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.098(a) or receives a determination from the commissioners court under Section 232.098(b) if the utility is provided with a certificate issued by the commissioners court that makes certain determinations. Authorizes a utility to provide utility service to subdivided land described by Subsection (c) only if the person requesting service meets certain qualifications. Authorizes a person requesting service to obtain a certificate under Subsection (c) only if the person provides to the commissioners court certain information. Requires the commissioners court, on request, to provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the commissioners court relied in determining the legality of providing service. Prohibits this section from being construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law. Provides that the prohibition established by this section shall not prohibit an electric or gas utility from providing electric or gas utility connection or service to a lot being sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider before September 1, 1999, that is located within a subdivision where the utility has previously established service and was subdivided by a plat approved before September 1, 1999. Defines “foundation.”

Sec. 232.100. SUBDIVISION REGULATION; COUNTY AUTHORITY. Requires the commissioners court for each county to adopt and enforce the model rules developed under Sections 16.343 and 35.019, Water Code. Prohibits the commissioners court from granting a variance or adopting regulations that waive any requirements of this subchapter, except as provided by Section 232.112 or by Section 16.350(d) or 35.019, Water Code. Requires the commissioners court to adopt regulations setting forth certain requirements regarding potable water, solid waste disposal, roads, sewer facilities, electric and gas service, and flood management standards. Authorizes the commissioners court to allow one or more commercial providers to provide solid waste disposal services as an alternative to having the service provided by the county, in adopting regulations under Subsection (c)(2).

Sec. 232.101. REQUIREMENTS PRIOR TO SALE OR LEASE. Prohibits a subdivider from selling or leasing land in a subdivision first platted or replatted after September 1, 1999, unless the subdivision plat is approved by the commissioner court in accordance with Section 232.094. Requires a subdivider to record with the county clerk all sales contracts, leases, and any other documents that convey an interest in the subdivided land, by a certain date. Provides that a document filed under Subsection (b) is a public record.

Sec. 232.102. SERVICES PROVIDED BY SUBDIVIDER. Requires a subdivider having an approved plat for a subdivision to perform certain actions.

Sec. 232.103. ADVERTISING STANDARDS AND OTHER REQUIREMENTS BEFORE SALE; OFFENSE. Sets forth standards for brochures, publications, and advertising of any form relating to subdivided land. Requires the subdivider to provide the purchaser with a written notice, which must be attached to the executory contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the subdivider and purchaser, and be acknowledged; sets forth a form for the notice to be substantially followed. Requires the subdivider to provide any purchaser who is sold a lot under an executory contract with an annual statement in January of each year for the term of the executory contract. Requires the statement to be postmarked not later than January 31, if the subdivider mails the statement to the purchaser. Requires certain information to be included in the statement under Subsection (c). Authorizes the purchaser to take certain actions if the subdivider fails to comply with Subsections (c) and (d). Provides that a purchaser who makes a deduction under Subsection (e) is not required to reimburse the subdivider for the amount deducted. Provides that a person who is a seller of lots in a subdivision, or a subdivider or an agent of a seller or subdivider, commits an offense if the person knowingly authorizes or assists in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning subdivided land offered for sale or lease. Provides that an offense under this section is a Class A misdemeanor.

Sec. 232.104. CONFLICT OF INTEREST; PENALTY. Defines “subdivided tract.” Sets forth

the requirements for a person to have an interest in a subdivided tract. Provides that a person is also considered to have an interest in a subdivided tract if the person is related in the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who, under Subsection (b), has an interest in the tract. Requires a member of the commissioners court who has an interest in a subdivided tract to file, before a vote or decision regarding the approval of a plat for the tract, an affidavit with the county clerk stating the nature and extent of the interest and requires the member to abstain from further participation in the matter. Requires the affidavit to be filed with the county clerk. Provides that a member of the commissioners court of a county commits an offense if the member violates Subsection (d). Provides that an offense under this subsection is a Class A misdemeanor. Provides that the finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court but for the vote of the member who violated this section. Provides that a conviction under Subsection (e) constitutes official misconduct by the member and is grounds for removal from office.

Sec. 232.105. CIVIL PENALTIES. Prohibits a subdivider or an agent of a subdivider from causing, allowing, or permitting a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter. Prohibits a subdivider or an agent of a subdivider from causing, allowing, or permitting any part of a subdivision in an affected county over which the subdivider or an agent of the subdivider has control, or a right of ingress and egress, to become a public health nuisance as defined by Section 341.011, Health and Safety Code, notwithstanding any other remedy at law or equity. Provides that a subdivider who fails to provide, in the time and manner described in the plat, for the construction or installation of water or sewer service facilities described on the plat or on the document attached to the plat or who otherwise violates this subchapter or a rule or requirement adopted by the commissioners court under this subchapter is subject to a civil penalty of not less than \$500 or more than \$1,000 for each violation and for each day of a continuing violation but not to exceed \$5,000 each day and shall also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit. Provides that a person who violates Subsection (a) or (b) is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed or each subdivision that becomes a nuisance. Requires the person to also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit, except as provided by Subsection (e). Provides that a person who violates Subsection (b) is not subject to a fine under Subsection (d) if the person corrects the nuisance by a certain date. Provides that venue for an action under this section is in a district court of Travis County, a district court in the county in which the defendant resides, or a district court in the county in which the violation or threat of violation occurs.

Sec. 232.106. CRIMINAL PENALTIES. Provides that subdivider commits an offense if the subdivider knowingly fails to file a plat required by this subchapter. Provides that an offense under this subsection is a Class A misdemeanor. Provides that if it is shown at the trial of an offense under Subsection (a) that the defendant caused five or more residences in the subdivision to be inhabited, the offense is a state jail felony. Provides that a subdivider who owns a subdivision commits an offense if the subdivider knowingly fails to timely provide for the construction or installation of water or sewer service as required by Section 232.102 or fails to make a reasonable effort to have electric utility service and gas utility service installed by a utility as required by Section 232.102. Provides that an offense under this subsection is a Class A misdemeanor. Provides that a subdivider commits an offense if the subdivider allows the conveyance of a lot in the subdivision without the appropriate water and sewer utilities as required by Section 232.102 or fails to make a reasonable effort to have electric utility service and gas utility service installed by a utility as required by Section 232.102. Provides that an offense under this subsection is a Class A misdemeanor. Provides that each lot conveyed constitutes a separate offense. Provides that venue for prosecution for a violation under this section is in the county in which any element of the violation is alleged to have occurred or in Travis County.

Sec. 232.107. ENFORCEMENT. Authorizes the attorney general or the district attorney, criminal district attorney, county attorney with felony responsibilities, or county attorney of an affected county to take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents, to enjoin violations, recover penalties, or require platting. Authorizes the attorney general, at the request of the district or county attorney with jurisdiction, to conduct a criminal prosecution under Section 232.103(g) or 232.106. Authorizes any resident of the affected subdivision, or the attorney general, district attorney, or county attorney on behalf

of the resident, to file a motion against the provider of utilities to halt termination of pre-existing utility services, during the pendency of any enforcement action brought. Prohibits the services from being terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health, safety, or welfare of the residents. Authorizes any resident of the affected subdivision, or the attorney general, district attorney, or county attorney on behalf of the resident, to file a motion against the provider of utilities to halt termination of pre-existing utility services, during the pendency of any enforcement action brought. Prohibits the services from being terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health, safety, or welfare of the residents. Provides that this subsection does not prohibit a provider of utilities from terminating services under other law to a resident who has failed to timely pay for services.

Sec. 232.109. CANCELLATION OF SUBDIVISION. Authorizes a subdivider of land in an affected county to apply to the commissioners court to cancel all or part of the subdivision in the manner provided by Section 232.008 after notice and hearing as provided by this section. Provides that a resident of a subdivision for which the subdivider has applied for cancellation under Subsection (a) has the same rights as a purchaser of land under Section 232.008. Requires the county chief appraiser to provide notice containing the information described by Section 232.008(c) to certain people by regular and certified mail by a certain date. Authorizes the commissioners court to require a subdivider to provide the court with the name and last known address of each person with an interest in the property. Provides that for purposes of this subsection, a person residing on a lot purchased through an executory contract has an interest in the property. Provides that a person who fails to provide information requested under Subsection (d) before the 31st day after the date the request is made is liable to the state for a penalty of \$500 for each week the person fails to provide the information. Authorizes the commissioners court to cancel a subdivision only after a public hearing. Requires the commissioners court, at the hearing, to permit any interested person to be heard. Requires the commissioners court, at the conclusion of the hearing, to adopt an order on whether to cancel the subdivision.

Sec. 232.110. REPLATTING. Requires a subdivision plat to accurately reflect the subdivision as it develops. Requires a plat to be revised in accordance with Section 232.111, if there is any change. Prohibits a lot in a subdivision from being sold if the lot lacks water and sewer services as required by this subchapter, unless the lot is platted or replatted as required by this subchapter, except as provided by Subsection (c). Prohibits a subdivider or agent of a subdivider from transferring a lot through an executory contract or other similar conveyance to evade the requirements of this subchapter. Provides that the prohibition in this subsection includes the sale of certain lots. Sets forth conditions under which Subsection (b) does not apply. Authorizes the attorney general or a district or county attorney with jurisdiction to bring a proceeding under Subsection (b). Prohibits existing utility services to a subdivision that must be platted or replatted under this subsection from being terminated under Section 232.099.

Sec. 232.111. REVISION OF PLAT. Authorizes a person who has subdivided land that is subject to the subdivision controls of the county in which the land is located to apply in writing to the commissioners court of the county for permission to revise the subdivision plat filed for record with the county clerk. Requires the commissioners court, after the application is filed, to publish a notice of the application in a newspaper of general circulation in the county. Requires notices to be sent to adjacent landowners or homeowners association by certified mail. Requires the notice to include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision of the plat. Requires the notice to be published at least three times during a certain period. Requires the court, if all or part of the subdivided tract has been sold to nondeveloper owners, to give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract. Requires the commissioners court, during a regular term of the court, to adopt an order to permit the revision of the subdivision plat if it is shown to the court certain conditions exist. Authorizes a person, whom the commissioners court permits to revise a subdivision plat, to make the revision by filing for record with the county clerk a revised plat or part of a plat that indicates the changes made to the original plat.

Sec. 232.112. VARIANCES. Authorizes the commissioners court, on request of a subdivider or resident purchaser, to grant a delay or a variance from compliance with Section 232.110 as provided by this section. Authorizes the commissioners court to grant a delay of two years if the

reason for the delay is to install utilities. Authorizes a person to apply for one renewal of a delay under this subsection. Requires the subdivider to perform certain actions in order to obtain an initial delay under this subsection. Authorizes the commissioners court to grant a delay or a variance for a reason other than a reason described by Subsection (b) if it is shown that compliance would be impractical or would be contrary to the health and safety of residents of the subdivision. Requires the commissioners court to issue written findings stating the reasons why compliance is impractical.

SECTION 2. Makes application of this Act prospective to September 1, 1999.
Effective date: 90 days after adjournment.