

BILL ANALYSIS

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C.S.H.B. 3068
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International Relations & Trade
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires an owner who purchased a grandfathered colonia home to make improvements associated with the platting requirements in order to receive utility service. The law also prohibits utilities from being provided to colonia lots that were platted before 1989. These laws have created financial hardship among many owners of such homes.

C.S.H.B. 3068 revises and clarifies the grandfathering provisions regarding the sale of colonia property to authorize utility connections to be made without a re-platting of colonia land. The bill authorizes certain counties and municipalities to regulate residential land development in the unincorporated areas of the county or areas of extraterritorial jurisdiction of the municipality. This bill also provides a penalty for a violation of county or municipal land development restrictions.

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 Section 81.033(b), Local Government Code, to delete existing text prohibiting the commissioners court from exercising the powers of a municipality under Chapter 213 (Municipal Comprehensive Plans).

SECTION 2. Amends Section 212.012, Local Government Code, by amending Subsections (a), (c), (d), (e), (f), (h), and (i) and adding Subsections (j) and (k), as follows:

(a) Makes a conforming change.

(c) Deletes existing text relating to a certain certificate issued by a municipal authority responsible for approving plats stating whether land was subdivided before or after certain dates that authorize an entity described by Subsection (b) to serve or connect the land with water, sewer, electricity, gas, or other utility services (utilities) regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115 (Certification Regarding Compliance with Plat Requirements).

(d) Authorizes an entity described by Subsection (b), in a county to which Subchapter B (Subdivision Platting Requirements in County Near International Border), Chapter 232, applies, to serve or connect land that is located in the extraterritorial jurisdiction of a municipality with utilities regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, if the municipal authority responsible for approving plats issues a certificate stating that the land meets certain conditions regarding whether the land was subdivided before or after certain dates.

(e) Redesignated from existing Subsection (d). Authorizes an entity described by Subsection (b) to provide utility service to certain lands only if the person requesting service is not the land's subdivider or developer or the subdivider's or developer's agent and provides to the entity a certificate described by Subsection (d), rather than (c)(4)(A).

(f) Redesignated from existing Subsection (e). Authorizes a person requesting service to obtain a certificate under Subsection (d)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the municipal authority responsible for approving plats certain documentation set forth in this subsection. Deletes existing Subsection (f), authorizing a person requesting service to obtain a certificate under Subsection (c)(4)(B) only if the person provides to the municipal authority responsible for approving plats a certain affidavit stating regarding the sale or conveyance of the property. Makes conforming changes.

(h) Makes a conforming change.

(i) Defines “developer.” Makes conforming changes.

(j) Provides that this section does not prohibit a water or sewer utility from providing in a county defined by Section 232.022(a)(1) water or sewer utility connection or service to certain residential dwellings, except as provided by Subsection (k).

(k) Prohibits a utility from serving any subdivided land with water utility connection or service under Subsection (j) unless the entity receives a determination that adequate sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity described by Subsection (b), or the authorized agent responsible for the licensing or permitting of on-site sewage facilities pursuant to Chapter 366 (On-site Sewage Disposal Systems), Health and Safety Code.

SECTION 3. Amends Chapter 231, Local Government Code, by adding Subchapter L, as follows:

SUBCHAPTER L. ZONING AROUND FALCON LAKE

Sec. 231.251. LEGISLATIVE FINDINGS; PURPOSE. (a) Provides that the legislature finds that the area that surrounds Falcon Lake in Zapata County is frequented for recreational purposes by residents from every part of the state, orderly development and use of the area is of concern to the entire state, and buildings in the area that are frequented for resort or recreational purposes tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) Provides that the powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county land.

Sec. 231.252. AREAS SUBJECT TO REGULATION. Provides that this subchapter applies only to the unincorporated area of Zapata County located within 25,000 feet of the project boundary line for Falcon Lake and the Rio Grande.

Sec. 231.253. FALCON LAKE PLANNING COMMISSION. (a) Establishes a lake planning commission (commission) for the area subject to this subchapter, and sets forth the composition of the commission.

(b) Requires commission members to be appointed for two-year terms that expire February 1 of each odd-numbered year, except as provided by Subsection (c).

(c) Provides that the terms of the initial members of the commission expire on February 1 of the first February in an odd-numbered year following their appointment.

(d) Authorizes the Commissioners Court of Zapata County to employ staff for the commission to use in performing its functions.

Sec. 231.254. COMMISSION STUDY AND REPORT; HEARING. (a) Requires the commission at the request of the Zapata County commissioners court, or authorizes the commission on its own initiative, to conduct studies of the area subject to this subchapter and prepare reports to advise the commissioners court about matters affecting that area, including any need for zoning regulations in that area.

(b) Requires the commission, before the commission may prepare a report, to hold a public hearing in which members of the public may offer testimony regarding any subject to be included in the commission's report. Requires the commission to provide notice of the hearing as required by the Zapata County commissioners court.

Sec. 231.255. ZONING REGULATIONS. Authorizes the Zapata County commissioners court to adopt zoning regulations for the area subject to this subchapter and in accordance with the report that regulate certain factors set forth in this subsection after having received the report from the commission under Section 231.254.

SECTION 4. Amends Section 232.021, Local Government Code, by amending Subdivision (2) and adding Subdivisions (2-a), (2-b), and (6-a), to redefine “common promotional plan” to make conforming changes, and to define “develop,” “developer,” and “lot of record.”

SECTION 5. Amends Section 232.024(b), Local Government Code, to prohibit a commissioners court, if any part of a plat applies to land intended for residential housing and any part of that land lies in a floodplain, from approving the plat unless the subdivision or plat meets certain conditions set forth in this subsection. Makes conforming changes.

SECTION 6. Amends Section 232.028(b), Local Government Code, to require a commissioners court, on its own motion, to make certain determinations set forth in this subsection. Makes conforming changes.

SECTION 7. Amends Section 232.029, Local Government Code, by amending Subsections (b), (c), (d), (e), and (i) and adding Subsections (k) and (l), as follows:

(b) 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 Sections 232.028(b)(2) and (3) that adequate water and sewer services have been installed to service the lot or subdivision.

(c) Authorizes a utility to serve or connect subdivided land with utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a) or receives a determination from the commissioners court under Section 232.028(b) if the utility is provided with a certificate issued by the commissioners court containing certain statements set forth in this subsection.

(d) Authorizes a utility to provide utility service to subdivided land described by Subsection (c)(1), (2), or (3) only if the person requesting service meets certain conditions set forth in this subsection.

(e) Authorizes a person requesting service to obtain a certificate under Subsection (c)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the commissioners court documentation containing certain information set forth in this subsection.

(i) Prohibits the prohibition established by this section (Connection of Utilities in Counties within 50 Miles of International Border) from prohibiting a utility from providing utility connection or service to a lot sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider or developer prior to July 1, 1995, or September 1, 1999, if on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality that has adequate sewer services installed that are fully operable to service the lot and was subdivided by a plat approved prior to September 1, 1989. Deletes existing text relating to the prohibition

against a utility providing a utility connection or service to a lot which is located within a subdivision where the utility has previously established service.

(k) Provides that this section does not prohibit a water or sewer utility from providing water or sewer utility connection or service to certain residential dwellings, except as provided by Subsection (l).

(l) Prohibits a utility from serving any subdivided land with water utility connection or service under Subsection (k) unless the entity receives a determination from the county commissioners court under Section 232.028(b)(3) that adequate sewer services have been installed to service the lot or dwelling.

SECTION 8. Amends Sections 232.031(a) and (b), Local Government Code, to make conforming changes.

SECTION 9. Amends Sections 232.035(a) and (b), Local Government Code, to make conforming changes.

SECTION 10. Amends Section 232.036(a), Local Government Code, to make conforming changes.

SECTION 11. Amends Section 232.038(a), Local Government Code, to make conforming changes.

SECTION 12. Amends Sections 232.040(a), (b), and (c), Local Government Code, as follows:

(a) and (b) Makes conforming changes.

(c) Provides that Subsection (b) does not apply to a seller other than a subdivider, developer, or agent of a subdivider or developer. Deletes existing text providing that Subsection (b) does not apply to such entities if they reside on the lot.

SECTION 13. Amends Chapter 242, Local Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. DEVELOPMENT REGULATIONS IN CERTAIN COUNTIES AND MUNICIPALITIES

Sec. 242.051. APPLICABILITY. Provides that this subchapter applies only to certain counties and municipalities.

Sec. 242.052. REGULATORY AUTHORITY. (a) Authorizes the commissioners court of a county (court) to which this subchapter applies to regulate, by order, residential land development in the unincorporated area of the county. Authorizes the governing body of a municipality (body) to which this subchapter applies to regulate, by ordinance, residential land development in the municipality's extraterritorial jurisdiction. Authorizes the court or body, by this authority, to prevent the proliferation of colonias by adopting certain regulations and building codes.

(b) Prohibits the court or body from regulating land development on a tract of land under the authority granted by Subsection (a)(1)(B), (a)(1)(C), or (a)(2), if that tract is appraised as agricultural or open-space land by the appraisal district.

(c) Provides that the authority granted under this section does not authorize the court or body to adopt an order regulating commercial property that is uninhabitable.

(d) Provides that the authority granted under this section does not authorize the court or body to adopt an order that limits or otherwise impairs the rights of individuals or entities in the exploration, development, or production of oil, gas, or other minerals.

Sec. 242.053. BUILDING PERMITS. Requires the county or municipality to issue a building permit to persons who meet certain criteria in submitting an application for a building permit. Authorizes the county or municipality to charge a reasonable building permit fee. Requires that the fees be deposited in the county's or municipality's general fund and dedicated to the building permit program. Authorizes the funds to be used only for the purpose of administering the building permit program.

Sec. 242.054. MUNICIPAL ORDINANCE PREVAILS OVER COUNTY ORDER. Provides that a municipal ordinance prevails within the municipality's jurisdiction to the extent of a conflict that occurs with an order adopted by the county under this subchapter.

Sec. 242.055. EXISTING AUTHORITY UNAFFECTED. Provides that the authority granted by this subchapter does not affect the authority of the court or body to adopt an order or ordinance under other law.

Sec. 242.056. INJUNCTION. Entitles the county or municipality to appropriate injunctive relief, in a suit brought by the appropriate attorney representing the county or municipality in the district court, to prevent the violation or threatened violation of the entity's order or ordinance adopted under this subchapter from continuing or occurring.

Sec. 242.057. PENALTY; EXCEPTION. Provides that a person commits a Class C misdemeanor offense if the person violates a restriction or prohibition imposed by an order or ordinance adopted under this subchapter. Sets forth exceptions to the application of this section.

SECTION 14. Amends the heading to Chapter 242, Local Government Code, to read as follows:

CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE
SUBDIVISIONS AND PROPERTY DEVELOPMENT

SECTION 15. Amends Chapter 242, Local Government Code, by designating Sections 242.001, 242.0015, and 242.002 as Subchapter A, and adding a heading for Subchapter A, to read as follows:

SUBCHAPTER A. AUTHORITY TO REGULATE SUBDIVISIONS IN AND OUTSIDE
MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION

SECTION 16. Amends Subchapter B, Chapter 412, Local Government Code, by adding Section 412.017, as follows:

Sec. 412.017. WATER SUPPLY AND SEWAGE SYSTEM FOR CERTAIN BORDER COUNTIES. (a) Provides that this section applies only to a county that is located adjacent to an international border and in which a military installation is located.

(b) Authorizes the commissioners court of a county to which this section applies to acquire, construct, or operate a water supply system or sewage system to serve unincorporated areas of the county and areas initially included in a municipality on or after September 1, 2007, in which the municipality does not provide water or sewer services.

(c) Authorizes the county to enter a management or lease agreement with another public or private entity for the operation of a county water or sewage system acquired or constructed under this section.

(d) Authorizes the county to apply for and receive grants or other assistance from a state or federal governmental entity to implement this section.

(e) Authorizes the county to own, operate, or maintain a water or sewer utility in the same manner as a municipality under Chapter 402 (Municipal Utilities).

(f) Prohibits a county from constructing, operating, or maintaining a water supply system or sewage system in an area previously served by the county's water supply or sewage system after the area is annexed by a municipality and the municipality begins providing to the area water or sewer services previously provided by the county.

SECTION 17. Amends Section 16.344, Water Code, by adding Subsections (d), (e), (f), (g), (h), and (i), as follows:

(d) Authorizes a political subdivision to continue temporarily to receive funds under Subchapter K (Assistance to Economically Distressed Areas for Water Supply and Sewer Service Projects), Chapter 17, if the political subdivision submits a request for temporary continuation of funding and the Texas Water Development Board (board) makes certain determinations set forth in this subsection, notwithstanding Section 16.343(g) or 16.350(a) (requiring a political subdivision, or county or municipality that applies for or receives funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code, to adopt the model rules pursuant to Section 16.343 before a fund application may be considered by the board).

(e) Requires the board, in applying Subsection (d) to applications for increased financial assistance, to consider only areas that were included in the initial application, except that it is authorized to reconsider the eligibility of areas that were the subject of a facility plan in the initial application and may be determined to be eligible based on criteria in effect September 1, 2005.

(f) Requires the political subdivision to take necessary and appropriate actions to correct any deficiencies in its adoption and enforcement of the model rules within the time period required by the board, not to exceed the 90-day period described by Subsection (d)(4), and provide evidence of compliance to the board. Requires the board to discontinue funding unless it makes a determination based on the evidence provided that the political subdivision has demonstrated sufficient compliance to continue funding.

(g) Requires the board, if the board determines that a county or city that is required to adopt and enforce the model rules is not enforcing the model rules, to discontinue funding for all projects within the county or city that are funded under Subchapter K, Chapter 17, except as provided by Subsections (d)-(f).

(h) Prohibits the board from accepting or granting applications for temporary funding under Subsection (d) after June 1, 2009.

(i) Provides that Subsections (d), (e), (f), (g), and (h) and this subsection expire September 1, 2009.

SECTION 18. Repealer: Section 232.029(f) (authorizing a person to obtain a certificate authorizing utilities to serve certain lands that were not subdivided after September 1, 1995, only if the person provides to the commissioners court an affidavit that states that the property was not sold or conveyed to that person from a subdivider or the subdivider's agent after certain dates), Local Government Code.

SECTION 19. Effective date: upon passage or September 1, 2007.