

BILL ANALYSIS

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S.B. 1421
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Border Affairs - Special
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DIGEST

Currently, the Texas Water Development Board is the only state agency with statutory authority to ensure the delivery of water and wastewater services to colonias, and it is the only agency with appropriated state funds to finance the construction of colonia infrastructure projects. The needs of the 392,000 colonia residents include clean water and adequate sewer systems. S.B. 1421 would establish provisions regarding the regulation of the subdivision or development of land in certain economically distressed areas, including colonias, and certain other areas, and would provide certain penalties.

PURPOSE

As proposed, S.B. 1421 regulates the subdivision or development of land in certain economically distressed areas, including colonias, and certain other areas; provides certain penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioners court in SECTION 12 (Sec. 232.092(c), Local Government Code) and to the Texas Water Development Board in SECTIONS 14 (Section 15.407(d), Water Code) and SECTION 16 (Section 16.343(a), Water Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 232.021(1), Local Government Code, to redefine "affected county."

SECTION 2. Amends Section 232.022, Local Government Code, to establish that this subchapter applies only to land that is subdivided into two, rather than four, or more lots that are intended primarily for residential use in the jurisdiction of an affected county. Deletes text regarding land outside the extraterritorial jurisdiction of municipalities. Makes a conforming change.

SECTION 3. Amends Section 232.024, Local Government Code, to authorize the commissioners court of the county in which the land is located to establish a planning commission.

SECTION 4. Amends Chapter 232B, Local Government Code, by adding Section 232.0261, as follows:

Sec. 232.0261. SPECIAL EXCEPTION OR VARIANCE TO REQUIREMENTS FOR PROVISION OF WATER AND SEWER SERVICES. Provides that the commissioners court by order, on the request of a subdivider or resident purchaser, may take certain action. Authorizes the commissioners court by order, upon request, to authorize a variance from the requirements for the provision of water and sewer services in specific cases, if the commissioners court makes certain findings. Requires the commissioners court to keep a record of its proceedings and to include documentation of the reasons for each decision made under this section. Requires the commissioners court to notify the attorney general of the special exception or variance that is granted and the reason for the general exception or variance. Requires the attorney general to notify state agencies having enforcement power over subdivisions in affected counties.

SECTION 5. Amends Sections 232.029(c) and (e), Local Government Code, to delete text regarding construction of certain residences on the land, and a notarized affidavit concerning that land. Makes a conforming change.

SECTION 6. Amends Section 232.030(b), Local Government Code, to prohibit the commissioners court from granting a variance or adopting regulations that waive requirements, except as provided by Section

232.0261, among others.

SECTION 7. Amends Chapter 232B, Local Government Code, by adding Section 232.0305, as follows:

Sec. 232.0305. COUNTY INSPECTOR. Authorizes the commissioners court to employ one or more county inspectors to ensure compliance with subdivision regulations. Authorizes the commissioners court to impose a fee on a subdivider of property for an inspection conducted in relation to that property. Authorizes the fees collected to be used only to fund the inspection system.

SECTION 8. Amends Section 232.042, Local Government Code, by amending Subsections (a), (b), and (c) and by adding Subsection (f), to authorize the commissioners court, upon request, to grant a delay or a variance from compliance with the platting requirements of Section 232.023 and the replatting requirements of Section 232.040. Authorizes the commissioners court to grant a delay of two years for compliance with Section 232.040, if the reason for the delay is to install utilities. Authorizes a person seeking to plat or replat the subdivision to apply for one renewal of a delay. Sets forth requirements for a person seeking to plat or replat. Provides that the commissioners court is authorized to grant a delay or a variance from the requirements of Section 232.040 providing certain reasons. Authorizes the commissioners court to grant a delay or variance from compliance with the platting requirements, only if the subdivision has been occupied or developed before the platting to an extent that makes compliance with certain platting provisions impractical. Requires the commissioners court to issue written findings stating the reasons why compliance is impractical.

SECTION 9. Amends Section 232.073, Local Government Code, to authorize the commissioners court of the county to establish a planning commission as provided by Subchapter D. Makes a conforming change.

SECTION 10. Amends Chapter 232C, Local Government Code, by adding Section 232.0751, as follows:

Sec. 232.0751. SPECIAL EXCEPTION OR VARIANCE TO REQUIREMENTS FOR PROVISION OF WATER AND SEWER SERVICES. Makes conforming changes.

SECTION 11. Amends Chapter 232C, Local Government Code, by adding Section 232.0775, to make conforming changes.

SECTION 12. Amends Chapter 232, Local Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. COUNTY PLANNING COMMISSION

Sec. 232.091. APPLICABILITY. Sets forth counties to which this chapter applies.

Sec. 232.092. ESTABLISHMENT OF PLANNING COMMISSION. Authorizes the commissioners court by order to establish a planning commission, to promote the general public welfare. Authorizes the commissioners court to authorize the planning commission to act on behalf of the commissioners court in matters regarding certain duties, authority, and enforcement provisions. Requires the commissioners court by order to adopt reasonable rules and procedures necessary to administer this subchapter, if a planning commission is established.

Sec. 232.093. APPOINTMENT OF MEMBERS OF PLANNING COMMISSION. Authorizes the commissioners court to appoint a five member planning commission, the members of which are appointed for staggered two-year terms. Requires members of the planning commission to be citizens and reside in the United States. Requires the commissioners court to file a certificate of appointment for each member with the county clerk. Requires the commissioners court to fill any vacancy on the commission.

Sec. 232.094. OFFICERS, QUORUM, AND MEETINGS. Requires the planning commission to elect a presiding officer and assistant presiding officer at the first meeting of each calendar year. Provides that the presiding officer presides over meetings and executes all required documentation. Provides that the assistant presiding officer represents the presiding officer in the presiding officer's absence. Establishes that there is no limit on the number of terms a member may serve on the commission. Requires the minutes of the planning commission's proceedings to be filed with the county clerk or person designated by the commissioners court. Provides that the minutes of the

meetings are a public record. Authorizes the planning commission to adopt rules necessary to administer this subchapter.

Sec. 232.095. CONFLICT OF INTEREST. Sets forth requirements for a member who has a substantial interest in a subdivided tract. Requires the affidavit required by Subsection (a) (1) to be filed with the official minutes of the planning commission. Defines “substantial interest.”

SECTION 13. Amends Chapter 232, Local Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. ADDITIONAL SUBDIVISION ENFORCEMENT PROVISIONS

Sec. 232.111. ATTORNEY GENERAL INTERPRETATION OF CERTAIN SUBDIVISION PLATTING AND DEVELOPMENT REQUIREMENTS. Authorizes the attorney general to investigate violations of or enforce the provisions of certain model subdivision rules and subdivision platting requirements. Authorizes the attorney general upon request to issue an opinion on an interpretation of law relating to certain model subdivision rules and subdivision platting requirements. Requires a state agency to act in conformity with the attorney general’s opinion, if an opinion is issued. Authorizes the attorney general to cooperate with certain entities to enforce the model subdivision rules and subdivision platting requirements.

SECTION 14. Amends Section 15.407, Water Code, by adding Subsections (c) and (d), relettering existing subsections, and adding a new Subsection (j), to provide that the selection process used to procure necessary engineering services is subject to review by and approval of the executive administrator. Authorizes the executive administrator to assist a political subdivision in the selection of the provider of engineering services necessary for facility engineering in economically distressed areas. Requires the Texas Water Development Board (TWDB) to adopt rules governing the procurement of facility engineering services by a political subdivision awarded funds under this subchapter, and may adopt rules necessary to carry out the board’s powers and duties under this subchapter. Authorizes TWDB to terminate the contract with the political subdivision and may perform or contract for facility engineering in the economically distressed areas, if problems occur regarding inadequate or incomplete planning activities being completed in a timely manner.

SECTION 15. Amends Section 16.341(1), Water Code, to redefine “affected county.”

SECTION 16. Amends Section 16.343(a), Water Code, to require TWDB, rather than the Texas Natural Resource Conservation Commission (TNRCC), to prepare and adopt model rules to assure minimum standards for safe and sanitary water supply and sewer services in certain areas, after consultation with the attorney general and TNRCC.

SECTION 17. Amends Section 16.345(b), Water Code, to authorize an affected county or another political subdivision to issue certain bonds. Makes conforming changes.

SECTION 18. Amends Section 16.347(b), Water Code, to require an applicant that is operating under Chapter 232B or C, Local Government Code, to impose a county inspection fee authorized under Section 232.0305 or 232.0775. Makes conforming and nonsubstantive changes.

SECTION 19. Amends Chapter 16J, Water Code, by adding Sections 16.352-16.3545, as follows:

Sec. 16.352. ENFORCEMENT OF RULES. Provides that a person who violates rules is liable to the municipality or county for a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation and for each day of a violation. Provides that the maximum daily fine that may accrue is \$50,000. Authorizes the appropriate attorney representing the municipality or county to sue so as to collect the penalty. Require the recovered penalty to be deposited in the general fund of the municipality or county.

Sec. 16.353. INJUNCTION. Authorizes the attorney general to apply for an injunction enjoining a violation of certain rules, including a temporary restraining order or a temporary or permanent injunction, in addition to any other remedy. Authorizes an injunction issued under this section to be issued without the requirement of a bond or other undertaking.

Sec. 16.354. ATTORNEY GENERAL ENFORCEMENT. Sets forth provisions for which an

attorney general is authorized to file a suit, in addition to the ability of any political subdivision to enforce this subchapter.

Sec. 16.3545. VENUE. Sets forth the district courts in which a suit brought under this subchapter for injunctive relief or the recovery of a civil penalty may be brought.

SECTION 20. Amends Chapter 16J, Water Code, by adding Section 16.356, as follows:

Sec. 16.356. DATABASE. Requires TWDB, in conjunction with the Texas Department of Housing and Community Affairs, to develop a database to compile information regarding the status of ongoing infrastructure improvement projects related to water and sewer services in economically distressed areas. Requires the political subdivision administering an infrastructure improvement project to provide monthly status reports to TWDB in order to update the database. Requires TWDB to make database information available to the public.

SECTION 21. Amends Section 17.923, Water Code, to make conforming changes.

SECTION 22. Amends Title 7, Government Code, by adding Chapter 775, as follows:

CHAPTER 775. COORDINATION OF COLONIA INITIATIVES

Sec. 775.001. DEFINITIONS. Defines “agency” and “colonia.”

Sec. 775.002. INTERAGENCY COORDINATION OF COLONIA INITIATIVES. Requires the secretary of state to designate an employee to act as the agency’s colonia initiatives coordinator (coordinator). Requires the coordinator to coordinate colonia initiatives within the agency and with the other agencies and local officials involved in colonia projects in the state. Sets forth requirements for the coordinator in conjunction with other agencies and officials involved in the colonia project.

Sec. 775.003. COLONIA OMBUDSMAN PROGRAM. Requires the coordinator to appoint a colonia ombudsman in each of the six border counties that the coordinator determines have the largest colonia population. Requires the state and counties that have a colonia ombudsman to evenly divide the cost of operating the colonia ombudsman program. Sets forth requirements for a colonia ombudsman. Requires a colonia ombudsman to report monthly to the coordinator on the ombudsman’s actions. Authorizes the ombudsman to provide information to other agencies relating to colonia issues in the county in which the ombudsman is stationed.

SECTION 23. Amends Section 3, Article 6243-101, V.T.C.S. (The Plumbing License Law), to set forth geographic areas regarding plumbing work done through an organization certified by TWDB that participates in a self-help project maintained by the Texas Department of Housing and Community Affairs or TWDB.

SECTION 24. Repealer: Section 232.029(i), Local Government Code (regarding the definition of “foundation”).

SECTION 25. Requires the database required by Section 16.356, Water Code, to be developed, by TWDB, in conjunction with Texas Department of Housing and Community Affairs, on or before January 1, 2000.

SECTION 26. Requires the secretary of state to designate an employee to act as the agency’s colonia initiatives coordinator as provided by Section 775.002, Government Code, on or before November 1, 1999. Requires the coordinator to appoint the colonia ombudsman provided in Section 775.003, Government Code, on or before January 1, 2000.

SECTION 27. Provides that changes in law made to Section 15.407, Water Code, apply only to an application for assistance under that section that is pending before or submitted to TWDB on or after September 1, 1999, and a contract under that section regardless of the date the contract was made.

SECTION 28. Makes application of this Act prospective.

SECTION 29. Effective date: September 1, 1999.

SECTION 30. Emergency clause.