

BILL ANALYSIS

Senate Research Center

H.B. 3461
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Intergovernmental Relations
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 3461 is designed to provide fairness and due process to property owners and commercial developers that currently exist for residential developers under Chapter 212, Subchapter E, Local Government Code, related to moratoriums. This legislation will also provide clear guidance and flexibility to municipalities with respect to adopting moratoria affecting commercial development.

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 212.131, Local Government Code, by amending Subdivision (3) to redefine "property development" and adding Subdivision (4) to define "commercial property."

SECTION 2. Amends Subchapter E, Chapter 212, Local Government Code, by amending Sections 212.132, 212.133, 212.135, 212.136, and 212.137 and adding Sections 212.1351, 212.1352, 212.1361, 212.1362, and 212.139, as follows

Sec. 212.132. **APPLICABILITY.** Provides that this subchapter applies to a moratorium imposed on property developed affecting not only residential property, but also commercial property, or both residential and commercial property.

Sec. 212.133. **PROCEDURE FOR ADOPTING MORATORIUM.** Makes conforming changes.

Sec. 212.135. New heading: **JUSTIFICATION FOR MORATORIUM: SHORTAGE OF ESSENTIAL PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED.** Makes a nonsubstantive change.

Sec. 212.1351. **JUSTIFICATION FOR MORATORIUM: SIGNIFICANT NEED FOR PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED.** Creates this section from existing text of Section 212.315(b). Makes conforming and nonsubstantive changes.

Sec. 212.1352. **JUSTIFICATION FOR COMMERCIAL MORATORIUM IN CERTAIN CIRCUMSTANCES; WRITTEN FINDINGS REQUIRED.** (a) Requires a municipality, if it adopts a moratorium on commercial property development that is not based on a demonstrated shortage of essential public facilities, it issue written findings based on reasonably available information that the moratorium is justified by demonstrating that applying existing commercial development ordinances or regulations and other applicable laws is inadequate to prevent the new development from being detrimental to the public health, safety, or welfare of the residents of the municipality.

(b) Requires the written findings to include summaries of certain information.

Sec. 212.136. **EXPIRATION OF MORATORIUM; EXTENSION.** Makes conforming changes.

Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED. Creates this section from existing text. Requires a municipality proposing an extension of a moratorium under this subchapter to publish notice in a newspaper of general circulation in the municipality not later than the 15th day before the date of the hearing required by this subchapter, rather than Subsection (a).

Sec. 212.1362. EXPIRATION OF MORATORIUM ON COMMERCIAL PROPERTY IN CERTAIN CIRCUMSTANCES; EXTENSION. (a) Provides that a moratorium on commercial property adopted under Section 212.1352 expires on the 90th day after the date the moratorium is adopted unless the municipality extends the moratorium through certain means.

(b) Prohibits the municipality from adopting a moratorium on commercial property under Section 212.1352 that exceeds an aggregate of 180 days. Prohibits the municipality from adopting a moratorium on commercial property under Section 212.1352 before the second anniversary of the expiration date of a previous moratorium if the subsequent moratorium addresses the same harm, affects the same type of commercial property, or affects the same geographical area identified by the previous moratorium.

Sec. 212.137. WAIVER PROCEDURES REQUIRED. Deletes existing text pertaining to claiming a vested right under Chapter 245 (Issuance of Local Permits) or common law. Makes a nonsubstantive change.

Sec. 212.139. LIMITATION ON MORATORIUM. (a) Provides that a moratorium adopted under this subchapter does not affect an application for a project in progress under Chapter 245.

(b) Prohibits a municipality from adopting a certain moratoriums under this subchapter.

SECTION 3. (a) Makes application of this Act prospective.

(b) Requires a municipality, if a moratorium affecting commercial property was adopted by a municipality before the effective date of this Act and, under the terms of the moratorium, remains in effect later than the 120th day after the effective date of this Act, to comply with Section 212.136, Local Government Code, as amended by this Act, or Section 212.1362(a), Local Government Code, as added by this Act, as applicable, to continue the moratorium in effect later than the 120th day after the effective date of this Act.

SECTION 4. Effective date: September 1, 2005.