

BILL ANALYSIS

C.S.H.B. 3167
By: Oliverson
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the process for plat and land development application approval by political subdivisions. It has been suggested that some political subdivisions circumvent statutory timelines for approving an application by simply denying the application with generic comments that do not fully address specific deficiencies with the application. C.S.H.B. 3167 seeks to provide greater certainty and clarity for the process by setting out provisions relating to county and municipal approval procedures for land development applications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3167 amends the Local Government Code to replace the requirement for the municipal authority responsible for approving plats to act on a plat within 30 days after the date the plat is filed with a requirement for such authority to approve or disapprove a plan within 30 days after the date the plan is filed. The bill makes conforming and related changes and defines "plan" as a subdivision development plan, including a preliminary plat, preliminary subdivision plan, subdivision construction plan, site development plan, and final plat. The bill, with respect to the approval of a plan by a municipal authority or governing body:

- requires a municipal authority or governing body that disapproves a plan to provide the applicant a written statement of the reasons for disapproval that clearly articulates each specific reason for disapproval;
- requires each specified reason to be directly related to applicable requirements, to include a citation to the law that is the basis for the disapproval if applicable, and to not be arbitrary or intended to delay approval;
- authorizes the applicant, after the disapproval of a plan, to submit to the municipal authority or governing body that disapproved the plan a written response that remedies each reason for disapproval provided;
- prohibits the municipal authority or governing body from establishing a deadline for an applicant to submit the response;
- requires a municipal authority or governing body that receives a response to determine

whether to approve or disapprove the applicant's previously disapproved plan not later than the 15th day after the date the response was submitted;

- requires a municipal authority or governing body that disapproves a plan following the submission of a response to comply with the requirement for the provision of a written statement of the reasons for disapproval;
- authorizes the municipal authority or governing body to disapprove the plan only for a specific reason provided to the applicant for the original plan;
- requires a municipal authority or governing body that receives a response from the applicant that remedies each reason for disapproval to approve a previously disapproved plan if the response adequately addresses each reason for the disapproval; and
- considers a previously disapproved plan approved if the applicant filed an applicable response and the municipal authority or governing body that received the response does not disapprove the plan as provided by the bill.

The bill prohibits a municipal authority responsible for approving plans or the governing body of a municipality from requesting or requiring an applicant to waive a deadline or other approval procedure under provisions relating to municipal regulation of subdivisions. The bill establishes that the municipality, in a legal action challenging a disapproval of a plan under such provisions, has the burden of proving by clear and convincing evidence that the disapproval meets applicable requirements, and prohibits the court from using a deferential standard. The bill applies the approval procedures under such provisions to a municipality regardless of whether the municipality has entered into an interlocal agreement.

C.S.H.B. 3167 sets out provisions relating to approval procedures for land development applications, applies such provisions to a municipality regardless of whether the municipality has entered into an interlocal agreement, and defines "development application" as an application for approval of proposed land development required by a municipality and excludes from the term an application for the approval of a plat or other plan governed by provisions relating to municipal regulation of subdivisions. The bill requires a municipality that adopts a regulation requiring municipal approval for proposed land development to determine whether to approve or disapprove a development application not later than the 30th day after the date the application is filed with the municipality. The bill considers an application to be approved by the municipality unless the municipality disapproves of the application in that period. The bill, with respect to approval of a development application by a municipality:

- requires a municipality that disapproves of an application to provide the applicant a written statement of the reasons for disapproval that clearly articulates each specific reason for the disapproval;
- requires each specified reason to be directly related to the requirements of the regulation requiring the approval, to include a citation to the law that is the basis for the disapproval if applicable, and to not be arbitrary or intended to delay approval;
- authorizes the applicant, after the disapproval of an application, to submit to the municipality a written response that remedies each reason for disapproval provided;
- prohibits the municipality from establishing a deadline for an applicant to submit the response;
- requires a municipality that receives a response to determine whether to approve or disapprove the applicant's previously disapproved application not later than the 15th day after the date the response was submitted;
- requires a municipality that disapproves an application following the submission of a response to comply with the requirement for the provision of a written statement of the reasons for disapproval;
- authorizes the municipality to disapprove the application only for a specific reason

provided to the applicant for the original application;

- requires a municipality that receives a response to approve a previously disapproved application if the response adequately addresses each reason for the disapproval; and
- considers a previously disapproved application to be approved if the applicant filed an applicable response and the municipality does not disapprove the application as provided by the bill.

The bill prohibits a municipality from requesting or requiring an applicant to waive a deadline or other approval procedure under applicable provisions. The bill establishes that, in a legal action challenging a disapproval of an application, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets applicable requirements, and prohibits the court from using a deferential standard.

C.S.H.B. 3167 replaces the requirement that a commissioners court or the court's designee take final action on a plat application, including the resolution of all appeals, not later than the 60th day after the date a completed plat application is received by the commissioners court or the court's designee with the requirement that a commissioners court or the court's designee approve or disapprove a plan application not later than the 30th day after the date the completed application is received by the commissioners court or the court's designee. The bill makes conforming and related changes and defines "plan" for these purposes the same as for provisions relating to municipal regulation of subdivisions. The bill considers an application to be approved by the commissioners court or the court's designee unless the application is disapproved within such period. The bill, with respect to the approval of a plan application by a commissioners court or designee:

- requires a court or designee that disapproves of a plan application to provide the applicant a written statement of the specific reasons for disapproval that clearly articulates each specific reason for disapproval;
- requires each specified reason to be directly related to applicable requirements, to include a citation to the law that is the basis for the disapproval, if applicable, and to not be arbitrary or intended to delay approval;
- authorizes an applicant, after the disapproval of a plan application, to submit to the court or designee that disapproved the application a written response that remedies each reason for disapproval provided;
- prohibits the court or designee from establishing a deadline for an applicant to submit the response;
- requires a court or designee that receives a response to determine whether to approve or disapprove the applicant's previously disapproved plan application not later than the 15th day after the date the response was submitted;
- requires a court or designee that disapproves a plan application following the submission of a response to comply with the requirement for the provision of a written statement of the specific reasons for disapproval;
- authorizes the court or designee to disapprove the application only for a specific reason provided to the applicant for the original application;
- requires the court or designee that receives a response to approve a previously disapproved plan application if the applicant's response adequately addresses each reason for the disapproval; and
- considers a previously disapproved plan application to be approved if the applicant filed an applicable response and the court or designee does not disapprove the application as provided by the bill.

The bill establishes that, in a legal action challenging a disapproval of a plan application, the

county has the burden of proving by clear and convincing evidence that the disapproval meets applicable requirements, and prohibits the court from using a deferential standard. The bill applies the plan application approval procedures to a county regardless of whether the county has entered into an interlocal agreement.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3167 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes language replacing municipal and county approval of a plat with approval of a plan, defining "plan," and making conforming and related changes. The substitute differs from the original in certain respects to approval procedures as follows:

- revising the contents of the written statement of disapproval;
- including a prohibition against the establishment of a deadline for an applicant to submit a response that remedies reasons for disapproval;
- changing the deadline to approve a previously disapproved plan;
- including provisions relating to judicial review of a disapproval; and
- including a certain prohibition on a waiver of certain municipal deadlines and procedures.

The substitute includes provisions relating to the approval of a development application by a municipality that adopts a regulation requiring municipal approval for proposed land development. The substitute does not include provisions relating to the approval of a development application by a political subdivision that adopts a permit regulation requiring regulatory agency approval for proposed land development.