

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1364  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Historically, the Texas Constitution and the legislature have not provided counties with the necessary authority to regulate land development or to adopt/enforce meaningful building codes for unincorporated areas. This lack of authority led to unregulated construction and development of substandard housing/dwellings (colonias) along the border beginning in the 1950s.

County officials have argued over the years that the lack of ordinance-making authority places the safety and quality of life of residents at risk. Additionally, the inability of counties to have limited ordinance-making authority threatens neighborhoods and the dreams of families for a better life, and it can impede growth of cities, as well as the expansion of local economies.

S.B. 1364 would provide certain counties with the necessary permissive limited authority to regulate and plan development to help stop the proliferation of substandard residential development. As a local control initiative, it provides counties the tools to regulate development and adopt meaningful building codes for unincorporated areas in an effort to provide safe and healthy living conditions. S.B. 1364 would enable Cameron and Hidalgo counties to pass rules that affect the size of the lots; the percentage of a lot that may be occupied; and the location of buildings or other structures on a lot. Additionally, it allows counties to adopt regulations relating to the preparation of a plan for utility development, environmental effect and adaptation, utility extension, and capacity planning and providing financial analysis of said plan.

As proposed, S.B. 1364 amends current law relating to authorizing certain border counties and municipalities in those counties to regulate land development and provides a penalty.

### **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 Chapter 242, Local Government Code, by adding Subchapter B, as follows:

#### **SUBCHAPTER B. DEVELOPMENT REGULATIONS IN CERTAIN BORDER COUNTIES AND MUNICIPALITIES LOCATED IN THOSE COUNTIES**

Sec. 242.051. **APPLICABILITY.** Provides that this subchapter applies only to:

- (1) a county with a population of more than 400,000 that is located along an international border, and adjacent to another county with a population of more than 400,000; or
- (2) a municipality located in that county if the county does not exercise in the municipality's extraterritorial jurisdiction the authority described by this subchapter, and the county by resolution authorizes the municipality to exercise in the municipality's extraterritorial jurisdiction the authority described by this subchapter.

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

(1) adopting regulations relating to:

(A) maximum densities, including the size of lots;

(B) the height, number of stories, size, or number of buildings or other structures that may be located on a lot or tract;

(C) the location of buildings and other structures on a lot or tract; and

(D) the preparation of a plan for utility development, environmental effect and adaptation, utility extension, and capacity planning and providing financial analysis of said plan; and

(2) adopting building codes to promote safe and uniform building, plumbing, and electrical standards.

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

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

(d) Provides that the authority granted under this section does not authorize the commissioners court or governing 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. (a) Requires the county or municipality, as appropriate, to issue a building permit if the person submitting the application for the permit files information relating to the location of the residence, files the building plans for the residence, and complies with the applicable regulations relating to the issuance of the permit.

(b) Authorizes the county or municipality to charge a reasonable building permit fee.

(c) Requires the county or municipality to deposit fees collected under this section in an account in its general fund and dedicate the fees to the building permit program. Authorizes the funds in the account be used only for the purpose of administering the building permit program.

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

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

Sec. 242.056. INJUNCTION. Entitles the county or municipality, in a suit brought by the appropriate attorney representing the county or municipality in the district court, to appropriate injunctive relief 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. (a) Provides that a person commits an offense if the person violates a restriction or prohibition imposed by an order or ordinance adopted under this subchapter. Provides that an offense under this section is a Class C misdemeanor.

(b) Provides that it is an exception to the application of this section that:

(1) the person is an owner-occupant of a residential dwelling that is classified by the Texas Department of Housing and Community Affairs as a low-income household;

(2) the dwelling was constructed before the effective date of this subchapter;

(3) the violation related to a building standard or building code for that dwelling; and

(4) the county or municipality, as appropriate, did not make available to the person a grant or loan in an amount sufficient to cure the violation, or made available to the person a loan that was sufficient to cure the violation but that caused the housing expenses of the person to exceed 30 percent of the person's net income.

SECTION 2. 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 3. 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 4. Effective date: upon passage or September 1, 2011.