

## **BILL ANALYSIS**

Senate Research Center  
85R19331 PAM-F

H.B. 2040  
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Business & Commerce  
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Engrossed

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

Subchapter F, Chapter 233, Local Government Code, gives counties the authority to mandate that all homes in the unincorporated areas be built to code and get a minimum of three independent third-party code inspections.

Additionally, the county can mandate that the builder provide notice of whether the home complied with the mandated code requirements and inspections.

A gap, however, exists in the county's enforcement of code mandates. This gap occurs in the way the county's enforcement powers read under Section 233.155, Local Government Code. Under that existing statute, counties can obtain injunctive relief to prevent a violation or threatened violation, or refer a builder for prosecution, but only if the builder does not provide proper notice of whether or not the home complied with the mandated code inspections.

Therefore, under the existing statute, a builder can provide proper notice to the county that the home failed to comply with the code inspections and the county cannot use its enforcement powers, due to the fact that the builder provided proper notice under the law.

What this bill does:

- H.B. 2040 will simply close that gap and allow the county to use its current enforcement authority if a builder does not provide notice that the home shows substantial compliance with the code.
- H.B. 2040 further provides the builder an affirmative defense if a failure to provide proper notice is due to a failure of the code inspector to provide the builder with proper documentation.

H.B. 2040 amends current law relating to the building code standards for new residential construction in the unincorporated area of certain counties and affects the prosecution of a criminal offense.

### **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 233.155, Local Government Code, as follows:

Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) Creates this subsection from existing text and makes a nonsubstantive change.

(b) Authorizes the county, if the notice the builder provided to the county under Section 233.154(c) (relating to requiring the builder to submit certain notice of the inspection) does not indicate that the inspection showed compliance with the applicable building code standards, to take either or both of the actions under

Subsections (a)(2) (relating to authorizing the county to obtain certain appropriate injunctive relief) and (3) (relating to authorizing the county to refer the builder for prosecution under Section 233.157 (Penalty)).

SECTION 2. Amends Section 233.157, Local Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that a builder, rather than a person, commits an offense if:

(1) creates this subdivision from existing text and makes a conforming change; or

(2) as provided by Section 233.155(b), the builder does not provide notice under Section 233.154(c) that indicates that the inspection showed compliance with the applicable building code standards.

(d) Provides that it is an affirmative defense to prosecution for failure to submit proper notice under Section 233.154(c) if the builder's failure to submit a notice is the result of the failure of the person who performed the inspection to provide appropriate documentation to the builder for submission to the county.

SECTION 3. Makes application of this Act prospective to September 1, 2017.

SECTION 4. Effective date: September 1, 2017.