

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5.30.09

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2833 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

[Signature]
SEN. KIP AVENETT

[Signature]
SEN. MARCO GARCERAN

[Signature]
SEN. ROBERT NICHOLS

[Signature]
SEN. JOHN ALBAMAN

[Signature]
On the part of the Senate
SEN. ELIOT SHAPLEIGH

[Signature]
REP. MARUS MANDROT

[Signature]
REP. ALAN RITTER

[Signature]
REP. JOE DESHOTEL

[Signature]
REP. WARREN CHISUM

[Signature]
On the part of the House
REP. PATRICIA HARLESS

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2833

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain building code standards applicable to the
3 unincorporated areas of certain counties; providing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 233, Local Government Code, is amended
6 by adding Subchapter F to read as follows:

7 SUBCHAPTER F. RESIDENTIAL BUILDING CODE STANDARDS APPLICABLE TO
8 UNINCORPORATED AREAS OF CERTAIN COUNTIES

9 Sec. 233.151. DEFINITIONS. (a) In this subchapter, "new
10 residential construction" includes:

11 (1) residential construction of a single-family house
12 or duplex on a vacant lot; and

13 (2) construction of an addition to an existing
14 single-family house or duplex, if the addition will increase the
15 square footage or value of the existing residential building by
16 more than 50 percent.

17 (b) The term does not include a structure that is
18 constructed in accordance with Chapter 1201, Occupations Code,
19 or a modular home constructed in accordance with Chapter 1202,
20 Occupations Code.

21 Sec. 233.152. APPLICABILITY. This subchapter applies only
22 to a county that has adopted a resolution or order requiring the
23 application of the provisions of this subchapter and that:

24 (1) is located within 50 miles of an international

1 border; or

2 (2) has a population of more than 100.

3 Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a)

4 New residential construction of a single-family house or duplex
5 in the unincorporated area of a county to which this subchapter
6 applies shall conform to the version of the International
7 Residential Code published as of May 1, 2008, or the version of
8 the International Residential Code that is applicable in the
9 county seat of that county.

10 (b) Standards required under this subchapter apply only to
11 new residential construction that begins after September 1,
12 2009.

13 (c) If a municipality located within a county to which
14 this subchapter applies has adopted a building code in the
15 municipality's extraterritorial jurisdiction, the building code
16 adopted by the municipality controls and building code standards
17 under this subchapter have no effect in the municipality's
18 extraterritorial jurisdiction.

19 (d) This subchapter may not be construed to:

20 (1) require prior approval by the county before the
21 beginning of new residential construction;

22 (2) authorize the commissioners court of a county to
23 adopt or enforce zoning regulations; or

24 (3) affect the application of the provisions of
25 Subchapter B, Chapter 232, to land development.

26 (e) In the event of a conflict between this subchapter and
27 Subchapter B, Chapter 232, the provisions of Subchapter B,

1 Chapter 232, control.

2 (f) A county may not charge a fee to a person subject to
3 standards under this subchapter to defray the costs of enforcing
4 the standards.

5 Sec. 233.154. INSPECTION AND NOTICE REQUIREMENTS. (a) A
6 person who builds new residential construction described by
7 Section 233.153 shall have the construction inspected to ensure
8 building code compliance in accordance with this section as
9 follows:

10 (1) for new residential construction on a vacant lot,
11 a minimum of three inspections must be performed during the
12 construction project to ensure code compliance, as applicable,
13 at the following stages of construction:

14 (A) the foundation stage, before the placement
15 of concrete;

16 (B) the framing and mechanical systems stage,
17 before covering with drywall or other interior wall covering;
18 and

19 (C) on completion of construction of the
20 residence;

21 (2) for new residential construction of an addition
22 to an existing residence as described by Section 233.151(a)(2),
23 the inspections under Subdivision (1) must be performed as
24 necessary based on the scope of work of the construction
25 project; and

26 (3) for new residential construction on a vacant lot
27 and for construction of an addition to an existing residence,

1 the builder:

2 (A) is responsible for contracting to perform
3 the inspections required by this subsection with:

4 (i) a licensed engineer;

5 (ii) a registered architect;

6 (iii) a professional inspector licensed by
7 the Texas Real Estate Commission;

8 (iv) a plumbing inspector employed by a
9 municipality and licensed by the Texas State Board of Plumbing
10 Examiners;

11 (v) a building inspector employed by a
12 political subdivision; or

13 (vi) an individual certified as a
14 residential combination inspector by the International Code
15 Council; and

16 (B) may use the same inspector for all the
17 required inspections or a different inspector for each required
18 inspection.

19 (b) If required by a county to which this subchapter
20 applies, before commencing new residential construction, the
21 builder shall provide notice to the county on a form prescribed
22 by the county of:

23 (1) the location of the new residential construction;

24 (2) the approximate date by which the new residential
25 construction will be commenced; and

26 (3) the version of the International Residential Code
27 that will be used to construct the new residential construction

1 before commencing construction.

2 (c) If required by the county, not later than the 10th day
3 after the date of the final inspection under this section, the
4 builder shall submit notice of the inspection stating whether or
5 not the inspection showed compliance with the building code
6 standards applicable to that phase of construction in a form
7 required by the county to:

8 (1) the county employee, department, or agency
9 designated by the commissioners court of the county to receive
10 the information; and

11 (2) the person for whom the new residential
12 construction is being built, if different from the builder.

13 Sec. 233.155. ENFORCEMENT OF STANDARDS. If proper notice
14 is not submitted in accordance with Sections 233.154(b) and (c),
15 the county may take any or all of the following actions:

16 (1) refer the inspector to the appropriate regulatory
17 authority for discipline;

18 (2) in a suit brought by the appropriate attorney
19 representing the county in the district court, obtain
20 appropriate injunctive relief to prevent a violation or
21 threatened violation of a standard or notice required under this
22 subchapter from continuing or occurring;

23 (3) refer the builder for prosecution under Section
24 233.157.

25 Sec. 233.156. EXISTING AUTHORITY UNAFFECTED. The
26 authority granted by this subchapter does not affect the
27 authority of a commissioners court to adopt an order under other

1 law.

2 Sec. 233.157. PENALTY. (a) A person commits an offense
3 if the person fails to provide proper notice in accordance with
4 Sections 233.154(b) and (c).

5 (b) An offense under this section is a Class C
6 misdemeanor.

7 (c) An individual who fails to provide proper notice in
8 accordance with Sections 233.154(b) and (c) is not subject to a
9 penalty under this subsection if:

10 (1) the new residential construction is built by the
11 individual or the individual acts as the individual's own
12 contractor; and

13 (2) the individual intends to use the residence as the
14 individual's primary residence.

15 SECTION 2. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas
18 Constitution. If this Act does not receive the vote necessary
19 for immediate effect, this Act takes effect September 1, 2009.

House Bill 2833
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 233, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. RESIDENTIAL BUILDING CODES IN CERTAIN COUNTIES

Sec. 233.151. DEFINITION. In this subchapter, "new residential construction" includes:

(1) residential construction on a vacant lot; and

(2) construction of an addition to an existing residence, if the addition will increase the square footage or value of the existing residential building by more than 50 percent.

Sec. 233.152. APPLICABILITY. ~~This subchapter applies only to:~~

(1) a county that:

(A) includes territory located within 50 miles of an international border;

(B) has a population of 700,000 or more;

(C) contains a municipality with a population of 550,000 or more; and

(D) contains one or more colonnades or other developments composed of substandard housing; and

(2) a county whose commissioners court adopts a resolution stating that the county expects population expansion as a result of the recommendations of the federal Defense Base Closure and Realignment Commission.

Sec. 233.153. REGULATORY AUTHORITY. (a) The commissioners court of a county may adopt a building

SENATE VERSION

SECTION 1. Chapter 233, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. RESIDENTIAL BUILDING CODE STANDARDS APPLICABLE TO UNINCORPORATED AREAS OF COUNTIES

Sec. 233.151. DEFINITIONS. In this subchapter, "new residential construction" includes:

(1) residential construction of a single-family house or duplex on a vacant lot; and

(2) construction of an addition to an existing single-family house or duplex, if the addition will increase the square footage or value of the existing residential building by more than 50 percent.

Sec. 233.152. BUILDING CODE STANDARDS APPLICABLE.

CONFERENCE

SECTION 1. Similar to Senate version except as follows:

SUBCHAPTER F. APPLICABLE TO UNINCORPORATED CERTAIN AREAS OF COUNTIES.

Sec. 233.151. DEFINITIONS. Same as Senate version except adds the following text:

(b) The term does not include a structure that is constructed in accordance with Chapter 1201, Occupations Code, or a modular home constructed in accordance with Chapter 1202, Occupations Code.

Sec. 233.152. APPLICABILITY. This subchapter applies only to a county that has adopted a resolution or order requiring the application of the provisions of this subchapter and that:

(1) is located within 50 miles of an international border;

or

(2) has a population of more than 100.

Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. Same as Senate version except makes

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code applicable to new residential construction in the unincorporated area of the county.

(b) A building code adopted under this subchapter applies only to new residential construction that begins after September 1, 2009.

(c) If a municipality located within a county to which this subchapter applies has adopted a building code in the municipality's extraterritorial jurisdiction, the building code adopted by the municipality controls and a building code adopted by the county has no effect in the municipality's extraterritorial jurisdiction.

(d) This subchapter may not be construed to:

(1) require prior approval by the county before beginning new residential construction;

(2) authorize the commissioners court of a county to adopt or enforce zoning regulations; or

(3) affect the application of the provisions of Subchapter B, Chapter 232, to land development.

(e) In the event of a conflict between this subchapter and Subchapter B, Chapter 232, the provisions of Subchapter B, Chapter 232, control.

SENATE VERSION

(a) New residential construction of a single-family house or duplex in the unincorporated area of a county shall conform to the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county.

(b) Standards required under this subchapter apply only to new residential construction that begins after September 1, 2009.

(c) If a municipality has adopted a building code in the municipality's extraterritorial jurisdiction, the building code adopted by the municipality controls and building code standards under this subchapter have no effect in the municipality's extraterritorial jurisdiction.

(d) This subchapter may not be construed to:

(1) require prior approval by the county before the beginning of new residential construction;

(2) authorize the commissioners court of a county to adopt or enforce zoning regulations; or

(3) affect the application of the provisions of Subchapter B, Chapter 232, to land development.

(e) In the event of a conflict between this subchapter and Subchapter B, Chapter 232, the provisions of Subchapter B, Chapter 232, control.

(f) A county may not charge a fee to a person subject to standards under this subchapter to defray the costs of enforcing the standards

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non-substantive clarifying changes.

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Sec. 233.154. BUILDING CODE REQUIREMENTS.

(a) A building code adopted under Section 233.153 may contain only the same requirements as the statutory warranty and building and performance standards that apply to residential construction under Chapter 430, Property Code, and any rules governing those standards adopted by the Texas Residential Construction Commission under Title 16, Property Code.

(b) A building code adopted under Section 233.153 shall require a person who builds new residential construction to:

(1) have the new residential construction inspected by a third-party inspector approved by the Texas Residential Construction Commission at the time and in the manner prescribed by rules adopted by the commission;

(2) before commencing new residential construction, provide notice to the county of:

(A) the location of the new residential construction on a form prescribed by the county;

(B) the date by which the new residential construction will be commenced; and

(C) the name of the third-party inspector who will inspect the new residential construction as required by Subdivision (1); and

(3) submit not later than the 10th day after the date of each inspection required by Subdivision (1) a written report prepared by the third-party inspector of the inspection and describing the results of the inspection to:

(A) the county employee or department or agency of the county designated by the commissioners court of the

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county, and
(B) the person who purchased the new residential
construction from the builder, if applicable.

Sec. 233.153. INSPECTION AND NOTICE
REQUIREMENTS.

(a) A person who builds new residential construction
described by Section 233.152 shall have the construction
inspected to ensure building code compliance in
accordance with this section as follows:

(1) for new residential construction on a vacant lot, a
minimum of three inspections must be performed during
the construction project to ensure code compliance, as
applicable, at the following stages of construction:

(A) the foundation stage, before the placement of
concrete;

(B) the framing and mechanical systems stage, before
covering with drywall or other interior wall covering;
and

(C) on completion of construction of the residence;

(2) for new residential construction of an addition to an
existing residence as described by Section 233.151(2),
the inspections under Subdivision (1) must be performed
as necessary based on the scope of work of the
construction project; and

(3) for new residential construction on a vacant lot and
for construction of an addition to an existing residence,
the builder:

(A) is responsible for contracting to perform the
inspections required by this subsection with:

(i) a licensed engineer;

Sec. 233.154. INSPECTION AND NOTICE
REQUIREMENTS. Same as Senate version except
makes non-substantive clarifying changes.

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- (ii) a registered architect;
(iii) a professional inspector licensed by the Texas Real Estate Commission;
(iv) a plumbing inspector employed by a municipality and licensed by the Texas State Board of Plumbing Examiners;
(v) a building inspector employed by a political subdivision; or
(vi) an individual certified as a residential combination inspector by the International Code Council; and
(B) may use the same inspector for all the required inspections or a different inspector for each required inspection.
(b) If required by a county, before commencing new residential construction, the builder shall provide notice to the county on a form prescribed by the county of:
- (1) the location of the new residential construction;
 - (2) the approximate date by which the new residential construction will be commenced; and
 - (3) the version of the International Residential Code that will be used to construct the new residential construction before commencing construction.
- (c) If required by the county, not later than the 10th day after the date of the final inspection under this section, the builder shall submit notice of the inspection stating whether or not the inspection showed compliance with the building code standards applicable to that phase of construction in a form required by the county to:
- (1) the county employee, department, or agency

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Sec. 233.155. BUILDING CODE ENFORCEMENT. (a) To enforce compliance with a building code adopted under Section 233.153, the county may take any or all of the following actions:
(1) exercise the enforcement authority under Sections 233.157 and 233.158;
(2) refer a builder registered under Title 16, Property Code, who violates a provision of that title, or any rule adopted under that title, to the Texas Residential Construction Commission for disciplinary action; and
(3) refer a third-party inspector approved by the Texas Residential Construction Commission under Title 16, Property Code, who violates a provision of that title, or any rule adopted under that title, to that commission for disciplinary action.
(b) Notwithstanding any other law, including Section 430.005, Property Code, the Texas Residential Construction Commission may take any action with regard to a builder or third-party inspector that it is authorized to take by any other law, including taking disciplinary action under Chapter 418, Property Code, or imposing an administrative penalty under Chapter 419, Property Code, with regard to new residential

designated by the commissioners court of the county to receive the information; and
(2) the person for whom the new residential construction is being built, if different from the builder.

Sec. 233.154. ENFORCEMENT OF STANDARDS. If proper notice is not submitted in accordance with Sections 233.153(b) and (c), the county may take any or all of the following actions:

(1) refer the inspector to the appropriate regulatory authority for discipline;

Sec. 233.155. ENFORCEMENT OF STANDARDS.
Substantially the same as Senate version.

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construction in a county that has adopted a building code authorized under this subchapter.

(c) A county may not charge a fee to a person regulated by a building code adopted under this subchapter to defray the costs of enforcing the code.

Sec. 233.157. INJUNCTION. The county, in a suit brought by the appropriate attorney representing the county in the district court, is entitled to appropriate injunctive relief to prevent the violation or threatened violation of a building code adopted under this subchapter from continuing or occurring.

Sec. 233.156. EXISTING AUTHORITY UNAFFECTED. The authority granted by this subchapter does not affect the authority of a commissioners court to adopt an order under other law.

Sec. 233.158. PENALTY; EXCEPTION. A person commits an offense if the person violates a restriction or prohibition imposed by a building code adopted under this subchapter.

An offense under this section is a Class C misdemeanor.

SENATE VERSION

(2) in a suit brought by the appropriate attorney representing the county in the district court, obtain appropriate injunctive relief to prevent a violation or threatened violation of a standard or notice required under this subchapter from continuing or occurring;

(3) refer the builder for prosecution under Section 233.156.

Sec. 233.155. EXISTING AUTHORITY UNAFFECTED. The authority granted by this subchapter does not affect the authority of a commissioners court to adopt an order under other law.

Sec. 233.156. PENALTY. (a) A person commits an offense if the person fails to provide proper notice in accordance with Sections 233.153(b) and (c).

(b) An offense under this section is a Class C misdemeanor.

CONFERENCE

Sec. 233.156. EXISTING AUTHORITY UNAFFECTED. Substantially the same as Senate version.

Sec. 233.157. PENALTY. Substantially the same as Senate version except adds the following subsection:

(c) An individual who fails to provide proper notice in accordance with Sections 233.154(b) and (c) is not subject to a penalty under this subsection if:

(1) the new residential construction is built by the individual or the individual acts as the individual's own contractor; and

(2) the individual intends to use the residence as the

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individual's primary residence.

Sec. 233.157. PRIOR APPROVAL FOR OWNER-BUILT RESIDENCES. (a) This section applies only to a county located within 50 miles of an international border.

No equivalent provision.

(b) For new residential construction that is built by a person who owns the residence, acts as the person's own contractor, and intends to use the residence as the person's primary residence for at least one year after the completion or substantial completion of the new residential construction, the county may require prior approval before the beginning of the new residential construction through a form prescribed by the county.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

Same as House version.

SECTION 2. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2833** by Marquez (Relating to certain building code standards applicable to the unincorporated areas of certain counties; providing a penalty.), **Conference Committee Report**

No fiscal implication to the State is anticipated.

The bill would amend the Local Government Code by adding Subchapter F to Chapter 233 to establish certain standards and procedures that residential construction in the unincorporated area of a county located within 50 miles of an international border or that has a population of more than 100 must meet if the county has adopted a resolution or order requiring the provisions of the subchapter be applied. An exception would apply to construction in the extraterritorial jurisdiction of a municipality if the municipality has adopted a building code.

The bill would provide certain actions that the county would be authorized to take to enforce compliance with the requirements of the bill. A county would not be allowed to charge a fee regarding enforcement of standards. If a person fails to comply with requirements under the provisions of the bill relating to inspection and notice requirements, the offense would be a Class C misdemeanor. Provisions of the bill would apply only to new residential construction begun after September 1, 2009.

Local Government Impact

A county would incur costs associated with enforcement that would depend on the number of residential construction projects to which the provisions of the bill would apply and which authorized actions may be pursued for each noncompliant project.

Source Agencies:

LBB Staff: JOB, DB

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2833 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

Marese Margrey
(name)

5/30/09
(date)