

HB 3167 -- CHANGES FOR COUNTY SUBDIVISION REGULATION¹

Introduction

1. **HB 3167** -- This is a summary regarding the contents and implementation of House Bill 3167 ("HB 3167"), **effective September 1, 2019**. It was enacted overwhelmingly by the Texas Legislature during the recently completed 86th Regular Session and signed by the Governor on June 14, 2019. It includes substantive and procedural changes to the city statutes (in Chapter 312 of the Texas Local Government Code) and county statutes (in Chapter 232 of the Texas Local Government Code or "Chapter 232") pertaining to subdivision regulation.
2. **Addendum** -- A copy of HB 3167 is attached as the Addendum. The Chapter 232 county statutes added or changed by HB 3167 begin on page 8 of the Addendum and are highlighted in yellow.
3. **Synopsis** -- By way of a synopsis, HB 3167 requires the following:
 - County² action on a development plan or plat must occur within 30 days after the completed plat is submitted.
 - The county must provide the applicant with a written statement of the reasons why the development plan or plat was disapproved. The written statement must be specific. It must clearly articulate each reason for disapproval – and clearly describe the specified reasons for disapproval by showing how those reasons directly relate to the applicable legal requirements (including a citation to the law that is the basis for the disapproval). Also, each specified reason for disapproval must not be arbitrary or intended to delay approval.
 - After a development plan or plat disapproval by the county, the applicant may submit to the county a written response that addresses and solves each reason stated by the county for disapproval.
 - The county may not: (a) establish a deadline for the applicant to submit the response; or (b) request or require the applicant to waive a deadline or any approval procedure in HB 3167.
 - The county must determine whether to approve or disapprove the applicant's previously disapproved development plan or plat not later than the

¹ This summary contains confidential information and is subject to the attorney/client privilege. Bickerstaff Heath Delgado Acosta LLP 2019. Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.

² "County" means a county commissioners court, or its authorized designee when a designee is authorized by Chapter 232 regarding plat approval procedure.

15th day after the date the applicant response is submitted.

- If a county disapproves a development plan or plat (following the submission of an applicant response), the county must provide the applicant with another specific, non-arbitrary, written statement explaining the specific reasons for disapproval, including citations to the applicable law, in the manner previously discussed.
- A previously disapproved development plan or plat is automatically approved if: (a) the applicant filed an applicable response; and (b) the county does not disapprove the plan in compliance with the procedures and time-line contained in HB 3167.
- For a county violation of HB 3167, the bill authorizes: (a) the automatic approval of the proposed development plan or plat; (b) a refund of the unused application fees; and (c) a suit to be filed by applicant against the county in the district court for mandamus relief.
- Regarding a suit by applicant for wrongful county disapproval of a development plan or plat, HB 3167: (a) requires the county to prove by clear and convincing evidence that the disapproval met applicable requirements of the bill; and (b) prohibits the court from using a deferential standard of review.

Effective Date and Purpose

4. **Effective Date/Application** – HB 3167 is effective on September 1, 2019. It applies only to a subdivision plat application filed on or after September 1, 2019. Addendum, p. 13.
5. **Purpose** -- The bill analysis from the Texas House of Representatives (“House”) committee that approved HB 3167 stated in part:

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.³

The purpose of HB 3167 is to provide greater certainty and clarity in the subdivision platting

³ House Comm. on Land & Resource Management, Bill Analysis (April 18, 2019), Tex. H.B. 3167, 86th Leg., R.S. (2019).

process through implementation of new requirements regarding plat procedure, including: (a) a significant speed-up of the process; and (b) an increase in the required documents -- and the substantive content of those documents -- that cities and counties must use to approve or deny subdivision plat applications.

HB 3167 was developer driven. Representatives from approximately 40 real estate development interests registered to testify for the bill during the House committee hearing. The bill was opposed by some Texas cities, with approximately 8 city representatives registered to testify against the bill. The bill was not opposed at the hearing by any registered witnesses or representatives associated with the county or city support groups in Texas -- other than a single witness from the Harris County Commissioners Court.⁴

The fiscal notes issued by the Texas Legislative Budget Board indicate no fiscal implication to the State is anticipated by the enactment of HB 3167. Those notes, however, recite warnings from Harris County, the Texas Association of Counties, and the Texas Municipal League regarding potential adverse results from the bill's enactment and implementation, including the: (a) significant time restrictions placed on cities and counties during the platting process, particularly when complex development projects are being reviewed; (b) potential need for additional staff to be hired by cities and counties to review the submitted development projects, in view of the speed-up component and new county response documents required by HB 3167; and (c) the chance those increased costs will be absorbed by local taxpayers.⁵

New Rules

⁴ See House Comm. on Land & Resource Management, Witness Lists for Public Hearing and Testimony (April 4, 2019), Tex. H.B. 3167, 86th Leg., R.S. (2019).

⁵ Those fiscal notes recite the following warnings regarding HB 3167:

According to Harris County, the bill would require the county to hire an estimated 10 FTEs to ensure compliance with the additional time constraints and other requirements of the bill. The county estimates the cost for these 10 FTEs at between \$850,000 and \$900,000. Over time, these costs would be absorbed by applicants for the service or by taxpayers by way of higher fees or higher taxes.

Fiscal Notes, Tex. Leg. Budget Bd. (April 1 and 12, 2019, and May 8, 2019), Tex. H.B. 3167, 86th Leg., R.S. (2019).

According to the Texas Association of Counties (TAC), the bill would place substantial time restrictions on consideration of subdivision plats and permit vesting. TAC cannot determine these costs, but to comply with the requirements of the bill for complicated or complex projects, cities might be faced with the need for additional staffing or technology expenses.

Fiscal Notes, Tex. Leg. Budget Bd. (April 1 and 12, 2019), Tex. H.B. 3167, 86th Leg., R.S. (2019).

According to the Texas Municipal League (TML), the bill would place substantial time restrictions on consideration of subdivision plats and permit vesting. TML cannot determine these costs, but to comply with the requirements of the bill for complicated or complex projects, cities might be faced with the need for additional staffing or technology expenses.

Fiscal Note, Tex. Leg. Budget Bd. (May 8, 2019), Tex. H.B. 3167, 86th Leg., R.S. (2019).

6. **“Development Plan”** – HB 3167 contains a “Development Plan” definition and implementation for counties. It revises the language and documents typically used by counties in the platting process, and states as follows:

Sec. 232.00285. DEVELOPMENT PLAN REVIEW.

(a) In this section, “development plan” includes a preliminary plat, preliminary subdivision plan, subdivision construction plan, site plan, general plan, land development application, or site development plan.

(b) Unless explicitly authorized by another law of this state, a county may not require a person to submit a development plan during the plat approval process required by this subchapter. If a county is authorized under another law of this state to require approval of a development plan, the county must comply with the approval procedures under this subchapter during the approval process.

Addendum, p. 12-13.

This statute is problematic given the frequent use by counties of subdivision regulations which require applicants to submit, among other things, a preliminary plat and site plan during the platting process. Other laws in Chapter 232, Subchapter A require the owner of a tract of land to have a subdivision plat approved by the commissioners court when a division of land occurs as defined by those statutes – unless the plat requirement is excepted by the minimum requirements of state law or the county’s local regulations. See TEX. LOC. GOV’T CODE §§ 232.001, 232.0015, 232.002.

Chapter 232, Subchapter A does not specifically refer to preliminary plat or site plan submission procedure – but it does refer to the approval or disapproval of a subdivision plat by the commissioners court. See TEX. LOC. GOV’T CODE §§ 232.001, 232.002. In view of the new HB 3167 requirements, a county should consider discontinuing preliminary plat and site plan procedure in its local subdivision regulations due to the: (a) speed-up review provisions (the 30 day rule) required by HB 3167; and (b) ability to require a *proposed final plat* during the HB 3167 review process.

7. **New Speed-Up Procedure** – Chapter 232, Subchapter A currently requires a county to review and act on a subdivision plat application within 60 days (with some exceptions) from receipt of a completed application. The new rule pursuant to HB 3167 is 30 days (with some exceptions) for the county to act on a development plan or plat application, and the bill includes new requirements for applicants and county response documents, as shown below:

(30 Day Rule)

(a) The County typically must approve, approve with condition, or

disapprove a development plan or plat application not later than 30 days after receipt of the completed application – but the 30 day period applies only to a decision wholly within the control of the county. Addendum, p. 8-10.

(b) A plat application automatically is approved unless the application is disapproved within the 30 day time period. Addendum, p. 9, 11.

(c) If a groundwater availability certification is required by TEX. LOC. GOV'T CODE § 232.0032, the 30 day review period described in Item (b) above begins on the date the certificate is submitted by the applicant to the county. Addendum, p. 9.

(Extensions)

(d) The 30 day period described in Item (a) above may be extended for an additional 30 days if:

(i) requested and agreed in writing by the applicant and approved by the county; or

(ii) a takings impact assessment pursuant to Chapter 2007 of the Texas Government Code is required regarding the plat application. Addendum, p. 9-10.

(e) Should an extension of time be contemplated by the county, as described in Item (d) above, the extension determination must be made by the county not later than the 20th day after a completed plat application is received. Addendum, p. 10.

(f) The county may not require the applicant to waive the time limits or approval procedure described in Chapter 232, Subchapter A. Addendum, p. 10.

(Adverse Results to County)

(g) If the county fails to approve, approve with conditions, or disapprove a plat application as required by the time limits in HB 3167, the following adverse consequences can occur:

(i) the application is granted by operation of law;

(ii) the applicant may file suit in the district court for mandamus relief to compel the county to issue documents recognizing plat application approval; and

(iii) the county must refund the greater of the unexpended

portion of any application fee or deposit paid by the applicant.
Addendum, p. 10.

(County Response – Specific Written Statement Required)

(h) If the county conditionally approves, or disapproves, a development plan or plat application, the county must provide the applicant with a written statement that clearly articulates the reasons. Each specific condition or reason described in the county's written statement must:

- (i) be directly related to the requirements of Chapter 232, Subchapter A;
- (ii) include a citation to the law, including a statute or order, that is the basis for conditional approval or disapproval, if applicable; and
- (iii) not be arbitrary. Addendum, p. 11.

(Applicant Response)

(i) After the county's conditional approval, or disapproval, of a development plan or plat application (as described in Items (g) and (h) above), the applicant may submit a written response to the county that satisfies each condition for conditional approval, or each reason for disapproval. The county may not establish a deadline for the applicant to submit the response. Addendum, p. 11.

(County Action on Applicant Response)

(j) Once the county receives the applicant's response (as described in Item (i) above), the county shall determine whether to approve or disapprove the applicant's previously conditionally approved, or previously disapproved, development plan or plat application. Addendum, p. 11-12.

(k) This county action must occur not later than the 15th day after submission of the applicant response. Addendum, p. 12.

(l) A county that conditionally approves, or disapproves, a plat application upon the submission of an applicant response:

- (i) must provide a written statement to the applicant which complies with all specificity, citations to authority, and non-arbitrary content requirements described in Item (h) above; and

(ii) may disapprove the plat application only for a specific condition or reason provided to the applicant for the original application. Addendum, p. 12.

(m) A county that receives an applicant response (as described in Item (i) above), shall approve a previously conditionally approved or disapproved development plan or plat application if the applicant response adequately addresses each condition for the conditional approval, or each reason for the disapproval. Addendum, p. 12.

(n) A previously disapproved development plan or plat application, or a previously conditionally approved plan or application, is automatically approved if:

(i) the applicant filed a response that adequately addresses each condition for the county's conditional approval, or each reason for the county's disapproval; and

(iii) the county does not disapprove the plan or application within the 15 day period described in Item (k) above, and in accordance with the written statement requirements of Item (h) above. Addendum, p. 12.

(Automatic Approval)

(o) A previously disapproved development plan or plat application, or a previously conditionally approved plan or application, is automatically approved if:

(i) the applicant filed a response that adequately addresses each condition for the county's conditional approval, or each reason for the county's disapproval; and

(ii) the county does not disapprove the application within the 15 day period described in Item (k) above, and in accordance with the written statement requirements of Item (h) above. Addendum, p. 12.

(Judicial Review on Disapproval)

(p) In a suit filed by applicant challenging development plan or plat disapproval:

(i) the county must prove by clear and convincing evidence that the county's plan or plat disapproval met the

requirements of the law, including HB 3167; and

(ii) the reviewing court may not use a deferential standard of review. Addendum, p. 13.

(ETJ Agreements)

(q) HB 3167 states that its procedural requirements apply to a county regardless of whether the county has entered into an interlocal agreement with a city for subdivision regulation in the city's extraterritorial jurisdiction ("ETJ") pursuant to TEX. LOC. GOV'T CODE § 242.001(d). Addendum, p. 8. Should a county have such an ETJ interlocal agreement with a city, and in that agreement yield or grant its subdivision regulation authority to the city in the ETJ (as authorized by § 242.001(d)), it is difficult to conclude that HB 3167's requirements would still apply to the county for plat applications or development plans regarding projects located in the city's regulatory area of the ETJ.

ADDENDUM

(Tex. H.B. 3167, 86th Leg., R.S. (2019); Effective September 1, 2019)

AN ACT

relating to county and municipal approval procedure for land development applications.

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

SECTION 1. Section 212.001, Local Government Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Plan" means a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan.

(3) "Plat" includes a preliminary plat, general plan, final plat, and replat.

SECTION 2. Subchapter A, Chapter 212, Local Government Code, is amended by adding Section 212.0085 to read as follows:

Sec. 212.0085. APPROVAL PROCEDURE: APPLICABILITY. The approval procedures under this subchapter apply to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

SECTION 3. The heading to Section 212.009, Local Government Code, is amended to read as follows:

Sec. 212.009. APPROVAL PROCEDURE: INITIAL APPROVAL.

SECTION 4. Section 212.009, Local Government Code, is amended by amending Subsections (a), (b), (c), and (d) and adding

1 Subsections (b-1) and (b-2) to read as follows:

2 (a) The municipal authority responsible for approving plats
3 shall approve, approve with conditions, or disapprove ~~[act-on]~~ a
4 plan or plat within 30 days after the date the plan or plat is filed.
5 A plan or plat is ~~[considered]~~ approved by the municipal authority
6 unless it is disapproved within that period and in accordance with
7 Section 212.0091.

8 (b) If an ordinance requires that a plan or plat be approved
9 by the governing body of the municipality in addition to the
10 planning commission, the governing body shall approve, approve with
11 conditions, or disapprove ~~[act-on]~~ the plan or plat within 30 days
12 after the date the plan or plat is approved by the planning
13 commission or is ~~[considered]~~ approved by the inaction of the
14 commission. A plan or plat is ~~[considered]~~ approved by the
15 governing body unless it is disapproved within that period and in
16 accordance with Section 212.0091.

17 (b-1) Notwithstanding Subsection (a) or (b), if a
18 groundwater availability certification is required under Section
19 212.0101, the 30-day period described by those subsections begins
20 on the date the applicant submits the groundwater availability
21 certification to the municipal authority responsible for approving
22 plats or the governing body of the municipality, as applicable.

23 (b-2) Notwithstanding Subsection (a) or (b), the parties
24 may extend the 30-day period described by those subsections for a
25 period not to exceed 30 days if:

26 (1) the applicant requests the extension in writing to
27 the municipal authority responsible for approving plats or the

1 governing body of the municipality, as applicable; and

2 (2) the municipal authority or governing body, as
3 applicable, approves the extension request.

4 | (c) If a plan or plat is approved, the municipal authority
5 giving the approval shall endorse the plan or plat with a
6 certificate indicating the approval. The certificate must be signed
7 by:

8 (1) the authority's presiding officer and attested by
9 the authority's secretary; or

10 (2) a majority of the members of the authority.

11 (d) If the municipal authority responsible for approving
12 plats fails to approve, approve with conditions, or disapprove ~~act~~
13 ~~on~~ a plan or plat within the prescribed period, the authority on
14 the applicant's request shall issue a certificate stating the date
15 the plan or plat was filed and that the authority failed to act on
16 the plan or plat within the period. The certificate is effective in
17 place of the endorsement required by Subsection (c).

18 SECTION 5. Subchapter A, Chapter 212, Local Government
19 Code, is amended by adding Sections 212.0091, 212.0093, 212.0095,
20 212.0096, 212.0097, and 212.0099 to read as follows:

21 Sec. 212.0091. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR
22 DISAPPROVAL REQUIREMENTS. (a) A municipal authority or governing
23 body that conditionally approves or disapproves a plan or plat
24 under this subchapter shall provide the applicant a written
25 statement of the conditions for the conditional approval or reasons
26 for disapproval that clearly articulates each specific condition
27 for the conditional approval or reason for disapproval.

1 **(b) Each condition or reason specified in the written**
2 **statement:**

3 **(1) must:**

4 **(A) be directly related to the requirements under**
5 **this subchapter; and**

6 **(B) include a citation to the law, including a**
7 **statute or municipal ordinance, that is the basis for the**
8 **conditional approval or disapproval, if applicable; and**

9 **(2) may not be arbitrary.**

10 **Sec. 212.0093. APPROVAL PROCEDURE: APPLICANT RESPONSE TO**
11 **CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional**
12 **approval or disapproval of a plan or plat under Section 212.0091,**
13 **the applicant may submit to the municipal authority or governing**
14 **body that conditionally approved or disapproved the plan or plat a**
15 **written response that satisfies each condition for the conditional**
16 **approval or remedies each reason for disapproval provided. The**
17 **municipal authority or governing body may not establish a deadline**
18 **for an applicant to submit the response.**

19 **Sec. 212.0095. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL**
20 **OF RESPONSE. (a) A municipal authority or governing body that**
21 **receives a response under Section 212.0093 shall determine whether**
22 **to approve or disapprove the applicant's previously conditionally**
23 **approved or disapproved plan or plat not later than the 15th day**
24 **after the date the response was submitted.**

25 **(b) A municipal authority or governing body that**
26 **conditionally approves or disapproves a plan or plat following the**
27 **submission of a response under Section 212.0093:**

1 (1) must comply with Section 212.0091; and

2 (2) may disapprove the plan or plat only for a specific
3 condition or reason provided to the applicant under Section
4 212.0091.

5 (c) A municipal authority or governing body that receives a
6 response under Section 212.0093 shall approve a previously
7 conditionally approved or disapproved plan or plat if the response
8 adequately addresses each condition of the conditional approval or
9 each reason for the disapproval.

10 (d) A previously conditionally approved or disapproved plan
11 or plat is approved if:

12 (1) the applicant filed a response that meets the
13 requirements of Subsection (c); and

14 (2) the municipal authority or governing body that
15 received the response does not disapprove the plan or plat on or
16 before the date required by Subsection (a) and in accordance with
17 Section 212.0091.

18 Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL
19 PROCESS. (a) Notwithstanding Sections 212.009, 212.0091, 212.0093,
20 and 212.0095, an applicant may elect at any time to seek approval
21 for a plan or plat under an alternative approval process adopted by
22 a municipality if the process allows for a shorter approval period
23 than the approval process described by Sections 212.009, 212.0091,
24 212.0093, and 212.0095.

25 (b) An applicant that elects to seek approval under the
26 alternative approval process described by Subsection (a) is not:

27 (1) required to satisfy the requirements of Sections

1 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action
2 challenging a disapproval of a plan or plat under this subchapter;
3 and

4 (2) prejudiced in any manner in bringing the action
5 described by Subdivision (1), including satisfying a requirement to
6 exhaust any and all remedies.

7 Sec. 212.0097. APPROVAL PROCEDURE: WAIVER PROHIBITED. A
8 municipal authority responsible for approving plats or the
9 governing body of a municipality may not request or require an
10 applicant to waive a deadline or other approval procedure under
11 this subchapter.

12 Sec. 212.0099. JUDICIAL REVIEW OF DISAPPROVAL. In a legal
13 action challenging a disapproval of a plan or plat under this
14 subchapter, the municipality has the burden of proving by clear and
15 convincing evidence that the disapproval meets the requirements of
16 this subchapter or any applicable case law. The court may not use a
17 deferential standard.

18 SECTION 6. Section 212.014, Local Government Code, is
19 amended to read as follows:

20 Sec. 212.014. REPLATTING WITHOUT VACATING PRECEDING PLAT.
21 A replat of a subdivision or part of a subdivision may be recorded
22 and is controlling over the preceding plat without vacation of that
23 plat if the replat:

24 (1) is signed and acknowledged by only the owners of
25 the property being replatted;

26 (2) is approved~~[, after a public hearing on the matter~~
27 ~~at which parties in interest and citizens have an opportunity to be~~

1 ~~heard,~~] by the municipal authority responsible for approving plats;
2 and

3 (3) does not attempt to amend or remove any covenants
4 or restrictions.

5 SECTION 7. Section 212.015, Local Government Code, is
6 amended by adding Subsections (a-1), (f), and (g) and amending
7 Subsection (b) to read as follows:

8 (a-1) If a proposed replat described by Subsection (a)
9 requires a variance or exception, a public hearing must be held by
10 the municipal planning commission or the governing body of the
11 municipality.

12 (b) Notice of the hearing required under Subsection (a-1)
13 ~~[Section 212.014]~~ shall be given before the 15th day before the date
14 of the hearing by:

15 (1) publication in an official newspaper or a
16 newspaper of general circulation in the county in which the
17 municipality is located; and

18 (2) by written notice, with a copy of Subsection (c)
19 attached, forwarded by the municipal authority responsible for
20 approving plats to the owners of lots that are in the original
21 subdivision and that are within 200 feet of the lots to be
22 replatted, as indicated on the most recently approved municipal tax
23 roll or in the case of a subdivision within the extraterritorial
24 jurisdiction, the most recently approved county tax roll of the
25 property upon which the replat is requested. The written notice may
26 be delivered by depositing the notice, properly addressed with
27 postage prepaid, in a post office or postal depository within the

1 boundaries of the municipality.

2 (f) If a proposed replat described by Subsection (a) does
3 not require a variance or exception, the municipality shall, not
4 later than the 15th day after the date the replat is approved,
5 provide written notice by mail of the approval of the replat to each
6 owner of a lot in the original subdivision that is within 200 feet
7 of the lots to be replatted according to the most recent
8 municipality or county tax roll. This subsection does not apply to
9 a proposed replat if the municipal planning commission or the
10 governing body of the municipality holds a public hearing and gives
11 notice of the hearing in the manner provided by Subsection (b).

12 (g) The notice of a replat approval required by Subsection
13 (f) must include:

14 (1) the zoning designation of the property after the
15 replat; and

16 (2) a telephone number and e-mail address an owner of a
17 lot may use to contact the municipality about the replat.

18 SECTION 8. Subchapter A, Chapter 232, Local Government
19 Code, is amended by adding Section 232.0023 to read as follows:

20 Sec. 232.0023. APPROVAL PROCEDURE: APPLICABILITY. The plat
21 application approval procedures under this subchapter apply to a
22 county regardless of whether the county has entered into an
23 interlocal agreement, including an interlocal agreement between a
24 municipality and county under Section 242.001(d).

25 SECTION 9. The heading to Section 232.0025, Local
26 Government Code, is amended to read as follows:

27 Sec. 232.0025. APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS

1 AND PLANS.

2 SECTION 10. Section 232.0025, Local Government Code, is
3 amended by amending Subsections (d), (f), (g), (h), and (i), and
4 adding Subsection (d-1) to read as follows:

5 (d) Except as provided by Subsection (f), the commissioners
6 court or the court's designee shall approve, approve with
7 conditions, or disapprove ~~[take final action on]~~ a plat
8 application~~[, including the resolution of all appeals,]~~ not later
9 than the 30th ~~[60th]~~ day after the date the ~~[a]~~ completed ~~[plat]~~
10 application is received by the commissioners court or the court's
11 designee. An application is approved by the commissioners court or
12 the court's designee unless the application is disapproved within
13 that period and in accordance with Section 232.0026.

14 (d-1) Notwithstanding Subsection (d), if a groundwater
15 availability certification is required under Section 232.0032, the
16 30-day period described by that subsection begins on the date the
17 applicant submits the groundwater availability certification to
18 the commissioners court or the court's designee, as applicable.

19 (f) The 30-day ~~[60-day]~~ period under Subsection (d):

20 (1) may be extended for a ~~[reasonable]~~ period not to
21 exceed 30 days, if:

22 (A) requested and agreed to in writing by the
23 applicant and approved by the commissioners court or the court's
24 designee; or

25 (B) ~~[(2) may be extended 60 additional days if]~~
26 Chapter 2007, Government Code, requires the county to perform a
27 takings impact assessment in connection with the ~~[a]~~ plat

1 application; and

2 (2) ~~(3)~~ applies only to a decision wholly within the
3 control of the commissioners court or the court's designee.

4 (g) The commissioners court or the court's designee shall
5 make the determination under Subsection (f)(1) ~~(f)(2)~~ of whether
6 the 30-day ~~60-day~~ period will be extended not later than the 20th
7 day after the date a completed plat application is received by the
8 commissioners court or the court's designee.

9 (h) The commissioners court or the court's designee may not
10 require ~~compel~~ an applicant to waive the time limits or approval
11 procedure contained in this subchapter ~~[section]~~.

12 (i) If the commissioners court or the court's designee fails
13 to approve, approve with conditions, or disapprove a plat
14 application ~~[take final action on the plat]~~ as required by this
15 subchapter ~~[Subsection (d)]~~:

16 (1) the commissioners court shall refund the greater
17 of the unexpended portion of any ~~[plat]~~ application fee or deposit
18 or 50 percent of an ~~[a plat]~~ application fee or deposit that has
19 been paid;

20 (2) the ~~[plat]~~ application is granted by operation of
21 law; and

22 (3) the applicant may apply to a district court in the
23 county where the tract of land is located for a writ of mandamus to
24 compel the commissioners court to issue documents recognizing the
25 plat application's ~~[plat's]~~ approval.

26 SECTION 11. Subchapter A, Chapter 232, Local Government
27 Code, is amended by adding Sections 232.0026, 232.0027, 232.0028,

1 232.00285, and 232.0029 to read as follows:

2 Sec. 232.0026. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR
3 DISAPPROVAL REQUIREMENTS. (a) A commissioners court or designee
4 that conditionally approves or disapproves of a plat application
5 under this subchapter shall provide the applicant a written
6 statement of the conditions for the conditional approval or the
7 reasons for disapproval that clearly articulates each specific
8 condition for the conditional approval or reason for disapproval.

9 (b) Each condition or reason specified in the written
10 statement:

11 (1) must:

12 (A) be directly related to the requirements of
13 this subchapter; and

14 (B) include a citation to the law, including a
15 statute or order, that is the basis for the conditional approval or
16 disapproval, if applicable; and

17 (2) may not be arbitrary.

18 Sec. 232.0027. APPROVAL PROCEDURE: APPLICANT RESPONSE TO
19 CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional
20 approval or disapproval of a plat application under Section
21 232.0026, the applicant may submit to the commissioners court or
22 designee that conditionally approved or disapproved the
23 application a written response that satisfies each condition for
24 the conditional approval or remedies each reason for disapproval
25 provided. The commissioners court or designee may not establish a
26 deadline for an applicant to submit the response.

27 Sec. 232.0028. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL

1 OF RESPONSE. (a) A commissioners court or designee that receives a
2 response under Section 232.0027 shall determine whether to approve
3 or disapprove the applicant's previously conditionally approved or
4 disapproved plat application not later than the 15th day after the
5 date the response was submitted under Section 232.0027.

6 (b) A commissioners court or designee that conditionally
7 approves or disapproves a plat application following the submission
8 of a response under Section 232.0027:

9 (1) must comply with Section 232.0026; and

10 (2) may disapprove the application only for a specific
11 condition or reason provided to the applicant for the original
12 application under Section 232.0026.

13 (c) A commissioners court or designee that receives a
14 response under Section 232.0027 shall approve a previously
15 conditionally approved or disapproved plat application if the
16 applicant's response adequately addresses each condition for the
17 conditional approval or each reason for the disapproval.

18 (d) A previously conditionally approved or disapproved plat
19 application is approved if:

20 (1) the applicant filed a response that meets the
21 requirements of Subsection (c); and

22 (2) the commissioners court or designee that received
23 the response does not disapprove the application on or before the
24 date required by Subsection (a) and in accordance with Section
25 232.0026.

26 Sec. 232.00285. DEVELOPMENT PLAN REVIEW. (a) In this
27 section, "development plan" includes a preliminary plat,

1 preliminary subdivision plan, subdivision construction plan, site
2 plan, general plan, land development application, or site
3 development plan.

4 (b) Unless explicitly authorized by another law of this
5 state, a county may not require a person to submit a development
6 plan during the plat approval process required by this subchapter.
7 If a county is authorized under another law of this state to require
8 approval of a development plan, the county must comply with the
9 approval procedures under this subchapter during the approval
10 process.

11 Sec. 232.0029. JUDICIAL REVIEW OF DISAPPROVAL. In a legal
12 action challenging a disapproval of a plat application under this
13 subchapter, the county has the burden of proving by clear and
14 convincing evidence that the disapproval meets the requirements of
15 this subchapter or any applicable case law. The court may not use a
16 deferential standard.

17 SECTION 12. Section 232.0025(e), Local Government Code, is
18 repealed.

19 SECTION 13. The change in law made by this Act applies only
20 to a plat application filed on or after the effective date of this
21 Act. A development or plan application filed before the effective
22 date of this Act is governed by the law in effect immediately before
23 the effective date of this Act, and that law is continued in effect
24 for that purpose.

25 SECTION 14. This Act takes effect September 1, 2019.

H.B. No. 3167

President of the Senate

Speaker of the House

I certify that H.B. No. 3167 was passed by the House on May 2, 2019, by the following vote: Yeas 119, Nays 18, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3167 was passed by the Senate on May 21, 2019, by the following vote: Yeas 27, Nays 3, 1 present, not voting.

Secretary of the Senate

APPROVED: _____

Date

Governor