

# BILL ANALYSIS: SB 673

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## ISSUE

Local government overregulation of the housing market hurts consumers, lessens supply, and denies choices to the individual. One example of this heavy-handed approach involves municipal regulation of accessory dwelling units (ADUs), which are houses or apartments built on the same lot as a larger residential home.

Commonly, cities harshly regulate or prohibit the construction of ADUs, and this regulation puts these units out of reach for many Texans. The resulting effect of this policy is that the housing supply is artificially constrained, and the area workforce is left with higher prices and fewer choices.

By limiting or removing municipal regulation of ADUs, the Texas Legislature will provide property owners with some unique advantages. For example, property owners who choose to seize this opportunity can gain a new passive income source by renting out their ADUs. ADUs can also serve as a way for elderly family members—who typically downsize after their nest empties—to live near family, while also maintaining independence and privacy. Other property owners can benefit from increased home equity by building an improvement that adds to the value of the entire property.

## LEGISLATION

This session, policymakers have introduced Senate Bill (SB) 673 to preempt municipal regulation of ADUs and clearly define municipal authority as it relates to this segment of the housing market.

### Section 1

Creates Section 249.001, Texas Local Government Code, to define an ADU as a residential housing unit that meets the following criteria:

- Located on any lot that is not zoned or is zoned as a single-family home or duplex;
- Separate from the primary residence; and
- Capable of meeting the housing needs of at least one individual.

Establishes Section 249.002 to prohibit political subdivisions from passing or enforcing local rules and requirements that:

- Prohibits an owner of a lot described in 249.001(1) from building an ADU before, after, or concurrently with the building of the primary dwelling unit on the lot;
- Prohibits the owner from being able to lease the ADU out as a residence;
- Requires owner occupancy of the primary residence;
- Requires parking for ADUs with certain size and design characteristics;
- Requires a minimum lot size<sup>1</sup> for the ADU that is larger than the minimum lot size required by the political subdivision for a single-family home or duplex;
- Requires a setback of more than five feet for the ADU;
- Prevents someone from converting an existing structure into an ADU by requiring an excessive setback;
- Applies a political subdivision's density restrictions to ADUs;
- Limits the square footage of an ADU to less than 50% of the primary residence or 800 square feet;
- Regulates the design of the ADU, including its size, shape, mass, or configuration;
- Limits the height of an ADU to less than 14 feet;
- Imposes an impact fee, unless certain conditions exist;
- Restricts ADU occupancy on the basis of age or relationship to the property owner;
- Prohibits ADU construction through a conflict with otherwise applicable open space or permeable surface restrictions;
- Prohibits ADU construction through a conflict with current residential building codes observed by the state or other authorities; and
- Prohibits ADU construction on the basis of its physical orientation.

This section does not inhibit the political subdivision from requiring additional parking if the ADU construction eliminates existing parking spaces for the primary dwelling.

Section 249.003 authorizes political subdivisions to apply zoning requirements to ADUs in a manner similar to those established for residential properties. In addition, it permits a political subdivision to publish plans and building codes, establish design standards, and engage in limited policymaking, except as prohibited elsewhere in this bill.

Section 249.004 states that a political subdivision has 60 days to approve or deny the application for a permit for ADU construction. If no decision is made by that point, then the application is considered to be approved.

Section 249.005 states that this chapter does not supersede any historic preservation rule, deed restriction, or HOA rule that prohibits ADU construction.

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<sup>1</sup> In Texas, municipalities are permitted to regulate minimum lot sizes, which requires that "every individual parcel of land in the regulated area be equal to or greater than a specified square footage" (Furth & Gray, 2019, p. 4).

Section 249.006 allows for a property owner to bring action against a political subdivision that violates this chapter for damages resulting from the violation and appropriate equitable relief. Should the claimant prevail, the court may award reasonable attorney's fees and costs incurred by bringing the action. However, the claimant may not recover exemplary damages in the action.

## **Section 2**

This section states that the Act will take effect immediately if it receives a 2/3s vote of the elected members of each house in accordance with Article III Section 39 of the Texas Constitution. If the Act does not receive the votes for immediate effect but does receive the proper number of votes to be adopted, the Act will take effect September 1, 2025.

## **RECOMMENDATION FOR IMPROVEMENT**

- Amend Section 249.004 to lower the 60-day approval threshold to 30 days, otherwise an application is considered to be approved.

## **REFERENCES**

Furth, S., & Gray, M. (2019, May 1). *Do minimum lot-size-regulations limit housing supply in Texas?* Mercatus Center. <https://www.mercatus.org/research/research-papers/do-minimum-lot-size-regulations-limit-housing-supply-texas>

## ABOUT THE AUTHOR



**John Bonura** is a Policy Analyst for the Taxpayer Protection Project with Texas Public Policy Foundation.

Prior to joining TPPF John served in the University system as a Graduate Assistant until he was given the opportunity to teach Principles of American Government. John holds a Master of Arts in Political Science from Texas State University and a Bachelor of Arts in Political Science from Sam Houston State University.

As a proud Eagle Scout John is an avid camper and enjoys spending time in the outdoors as well as at home with his wife.

