

BILL ANALYSIS

S.B. 425
By: Hinojosa
Border and International Affairs
Engrossed

BACKGROUND AND PURPOSE

Current law regulating colonias is only applicable to counties within 50 miles of the Texas-Mexico border, yet some colonias exist outside of that region. Texas A&M University engineers approximate that close to 90 colonias exist in Nueces County alone, with living conditions in these colonias similar to that of third world countries.

Senate Bill 425 allows a county that is located within 100 miles of an international border and that contains a city with a population of more than 250,000 to regulate subdivision platting requirements and utility services and receive assistance from the state.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1 Amends Sections 212.012(c), (e), and (f), Local Government Code, to authorize the following entities:

- a municipality and officials of a municipality that provides water, sewer, electricity, gas, or other utility service;
- a municipally owned or municipally operated utility that provides any of those services;
- a public utility that provides any of those services;
- a water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides any of those services;
- a county that provides any of those services; and
- a special district or authority created by or under state law that provides any of those services

to serve or connect land with water, sewer, electricity, gas, or other utility service regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, Local Government Code, if the municipal authority responsible for approving plats issues a certificate stating that the land:

- 1) was sold or conveyed to the person requesting service by any means of conveyance, including a contract for deed or executory contract, before September 1, 1995, in a county any part of which is located within 50 miles of an international border or before September 1, 2005, in a county any part of which is located within 100 miles of an international border that contains the majority of a municipality with a population of more than 250,000;
- 2) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before May 1, 1997 under Section 232.022(a)(1), Local Government Code, or September 1, 2005, in a county defined under Section 232.022(a)(2), Local Government Code; or
- 3) was not subdivided after September 1, 1995, in a county defined under Section 232.022(a)(1), Local Government Code, or September 1, 2005, in a county defined under Section 232.022(a)(2), Local Government Code, and certain conditions exist relating to the availability of water service.

Amends Subsections (e) and (f) of Section 212.012, Local Government Code, to make conforming and nonsubstantive changes.

SECTION 2 Amends Section 232.022, Local Government, by amending Subsections (a) and (c) and adding Subsection (c-1).

Provides that Subchapter B, Chapter 232, Local Government Code, applies only to a county any part of which is located within 50 miles of an international border or any part of which is located within 100 miles if an international border that contains the majority of a municipality with a population of more than 250,000

Provides that, except as provided by Subsection (c-1), for the purposes of this section, land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of the municipalities. Subsection (c-1) provides that the land in a municipality's extraterritorial jurisdiction is not considered to be in the jurisdiction of a county for the purposes of this section if the municipality and the county have entered into a written agreement under Section 242.001, Local and Government Code, that authorizes the municipality to regulate subdivision plats and approve related permits in the municipality's extraterritorial jurisdiction.

SECTION 3 Amends the heading to Section 232.029, Local Government Code, to read as follows:

Sec. 232.029. CONNECTION OF UTILITIES IN COUNTIES WITHIN 50 MILES OF INTERNATIONAL BORDER.

SECTION 4 Amends Section 232.029, Local Government Code, by relettering Subsection (a) as Subsection (a-1) and adding a new Subsection (a) to provide that Section 232.029, Local Government Code, only applies to a county defined under Section 232.022(a)(1), Local Government Code.

SECTION 5 Amends Subchapter B, Chapter 232, by adding Section 232.0291, Local Government Code, relating to the connection of utilities in certain counties within 100 miles of the international border.

Provides that Section 232.0291, Local Government Code, applies only to a county defined under Section 232.022(a)(2), Local Government Code.

Prohibits a utility, except as provided by Subsection (d) or Section 232.037(c), Local Government Code, from serving or connecting any subdivided land with water or sewer services unless the utility receives a certificate issued by the commissioners court under Section 232.028(a), Local Government Code, or receives a determination from the commissioners court under Section 232.028(b)(1), Local Government Code, that the plat has been reviewed and approved by the commissioners court.

Prohibits a utility, except as provided by Subsection (d) or Section 232.037(c), Local Government Code, from serving or connecting any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Section 232.028(b)(2), Local Government Code, that adequate water and sewer services have been installed to service the subdivision.

Section 232.029(d), Local Government Code, authorizes an electric, gas, water, or sewer service utility to serve or connect subdivided land with water, sewer, electricity, gas, or other utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a), Local Government Code, or receives a determination from the commissioners court under Section 232.028(b), Local Government Code, if the utility is provided with a certificate issued by the commissioners court that states 1) the subdivided land was sold or conveyed to the person requesting service by any means of

conveyance, including a contract for deed or executory contract before September 1, 2005, is located in a subdivision in which the utility has previously provided service, and is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before September 1, 2005; or 2) the subdivided land was not subdivided after September 1, 2005, and water service is available within 750 feet of the subdivided land or water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

Authorizes a utility to provide service to subdivided land described by Section 232.0291(d)(1), Local Government Code, only if the person requesting the service is not the land's subdivider or the subdivider's agent and provides to the utility a certificate described by the above referenced subsection.

A person requesting service may obtain a certificate under Section 232.0291(d)(1), Local Government Code, only if the person provides to the commissioners court either 1) documentation containing a copy of the means of conveyance or other documents that show that the land was sold or conveyed to the person requesting service before September 1, 2005, and a notarized affidavit by that person that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before September 1, 2005; or, 2) a notarized affidavit by the person requesting service that states that the property was sold or conveyed to that person before September 1, 2005, and construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before September 1, 2005.

A person requesting service may obtain a certificate under Section 232.0291(d)(2), Local Government Code, only if the person provides to the commissioners court an affidavit that states that property was not sold or conveyed to that person from a subdivider or the subdivider's agent after September 1, 2005.

Requires the commissioners court, on request, to provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the commissioners court relied in determining the legality of providing service.

Section 232.0291, Local Government Code, may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law, regardless of the date on which the violation occurred.

The prohibition established by Section 232.0291, Local Government Code, does not prohibit an electric or gas utility from providing electric or gas utility connection or service to a lot sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider before September 1, 2005, located within a subdivision where the utility has previously established service, and subdivided by a plat approved before September 1, 1989.

Defines "foundation".

SECTION 6 Amends Section 232.031, Local Government Code, by amending Subsection (a) to make an exception as provided by Subsection (d) in the Section and adding Subsection (d) to prohibit a subdivider, in a county defined under Section 232.022(a)(2), Local and Government Code, from selling or leasing land in a subdivision first platted or replatted after September 1, 2005, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024, Local Government Code.

- SECTION 7 Amends Section 232.038, Local Government Code, to add an exception as provided by Subsection (b) of the Section and to authorize a person, if the lot is located in a county defined under Section 232.022(a)(2), Local Government Code, to only bring suit under Subsection (a) of the Section if the person purchased or is purchasing the lot after September 1, 2005.
- SECTION 8 Amends Section 232.040(e), Local Government Code, to provide that existing utility services to a subdivision that must be platted or replatted under this Section may not be terminated under Section 232.0291, Local Government Code.
- SECTION 9 Amends Section 232.043(b), Local Government Code, to authorize the commissioners court, if the commissioners court makes a written finding that the subdivider who created the unplatted subdivision no longer owns property in the subdivision, to grant a delay or variance under this section only if a majority of lots in the subdivision were sold before September 1, 1995, in a county defined under Section 232.022(a)(1), Local Government Code, or September 1, 2005, in a county defined under Section 232.022(a)(2), Local Government Code, and other stipulations are met.
- SECTION 10 Amends Section 232.106, Local Government Code, to authorize the commissioners court to, by an adopted order and entered into the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, impose the requirements of Section 232.0291, Local Government Code.
- SECTION 11 Amends Section 775.001(2), Government Code, to redefine "colonia".
- SECTION 12 Amends Section 775.003, Government Code, to authorize the colonia initiatives coordinator to appoint a colonia ombudsman in each additional county any part of which is within 100 miles of an international border and that contains a municipality with a population of more than 250,000.
- SECTION 13 Amends Section 37.153, Utilities Code, to require a certificate holder to refuse to serve a customer in the holder's certificated area if the holder is prohibited from providing the service under Section 232.0291, Local Government Code.
- SECTION 14 Amends Section 54.254, Utilities Code, to require a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority, to refuse to serve a customer in the holder's certificated area if the holder is prohibited from providing the service under Section 232.0291, Local Government Code.
- SECTION 15 Amends Section 16.341(1), Water Code, to redefine "affected county."
- SECTION 16 Amends Section 17.923, Water Code, to require that to be eligible for financial assistance under Subchapter K, Chapter 17, Water Code, a county must meet at least one condition, one of those being that it is located in whole or in part within 100 miles of an international border and contain a municipality with a population of more than 250,000.
- SECTION 17 The Act takes effect September 1, 2005.

EFFECTIVE DATE

September 1, 2005