

By: Hinojosa, Ellis

S.B. No. 425

A BILL TO BE ENTITLED

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AN ACT

relating to subdivision platting requirements and assistance for certain counties near an international border.

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

SECTION 1. Subsections (c), (e), and (f), Section 212.012, Local Government Code, are amended to read as follows:

(c) An entity described by Subsection (b) may 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 if:

(1) the land is covered by a development plat approved under Subchapter B or under an ordinance or rule relating to the development plat;

(2) the land was first served or connected with service by an entity described by Subsection (b)(1), (b)(2), or (b)(3) before September 1, 1987;

(3) the land was first served or connected with service by an entity described by Subsection (b)(4), (b)(5), or (b)(6) before September 1, 1989; or

(4) the municipal authority responsible for approving plats issues a certificate stating that:

(A) the land:

(i) [~~before September 1, 1995,~~] was sold or

1 conveyed to the person requesting service by any means of
2 conveyance, including a contract for deed or executory contract,
3 before:

4 (a) September 1, 1995, in a county
5 defined under Section 232.022(a)(1); or

6 (b) September 1, 2005, in a county
7 defined under Section 232.022(a)(2);

8 (ii) is located in a subdivision in which
9 the entity has previously provided service;

10 (iii) is located outside the limits of the
11 municipality;

12 (iv) is located in a county to which
13 Subchapter B, Chapter 232, applies; and

14 (v) is the site of construction of a
15 residence, evidenced by at least the existence of a completed
16 foundation, that was begun on or before:

17 (a) May 1, 1997, in a county defined
18 under Section 232.022(a)(1); or

19 (b) September 1, 2005, in a county
20 defined under Section 232.022(a)(2); or

21 (B) the land was not subdivided after September
22 1, 1995, in a county defined under Section 232.022(a)(1), or
23 September 1, 2005, in a county defined under Section 232.022(a)(2),
24 and:

25 (i) water service is available within 750
26 feet of the subdivided land; or

27 (ii) water service is available more than

1 750 feet from the subdivided land and the extension of water service
2 to the land may be feasible, subject to a final determination by the
3 water service provider.

4 (e) A person requesting service may obtain a certificate
5 under Subsection (c)(4)(A) only if the person provides to the
6 municipal authority responsible for approving plats either:

7 (1) a copy of the means of conveyance or other
8 documents that show that the land was sold or conveyed to the person
9 requesting service before September 1, 1995, or before September 1,
10 2005, as applicable, and a notarized affidavit by that person that
11 states that construction of a residence on the land, evidenced by at
12 least the existence of a completed foundation, was begun on or
13 before May 1, 1997, or on or before September 1, 2005, as
14 applicable; or

15 (2) a notarized affidavit by the person requesting
16 service that states that the property was sold or conveyed to that
17 person before September 1, 1995, or before September 1, 2005, as
18 applicable, and that construction of a residence on the land,
19 evidenced by at least the existence of a completed foundation, was
20 begun on or before May 1, 1997, or on or before September 1, 2005, as
21 applicable.

22 (f) A person requesting service may obtain a certificate
23 under Subsection (c)(4)(B) only if the person provides to the
24 municipal authority responsible for approving plats an affidavit
25 that states that the property was not sold or conveyed to that
26 person from a subdivider or the subdivider's agent after September
27 1, 1995, or after September 1, 2005, as applicable.

1 SECTION 2. Section 232.022, Local Government Code, is
2 amended by amending Subsections (a) and (c) and adding Subsection
3 (c-1) to read as follows:

4 (a) This subchapter applies only to:

5 (1) a county any part of which is located within 50
6 miles of an international border; or

7 (2) a county:

8 (A) any part of which is located within 100 miles
9 of an international border;

10 (B) that contains the majority of the area of a
11 municipality with a population of more than 250,000; and

12 (C) to which Subdivision (1) does not apply.

13 (c) Except as provided by Subsection (c-1), for [~~For~~]
14 purposes of this section, land is considered to be in the
15 jurisdiction of a county if the land is located in the county and
16 outside the corporate limits of municipalities.

17 (c-1) Land in a municipality's extraterritorial
18 jurisdiction is not considered to be in the jurisdiction of a county
19 for purposes of this section if the municipality and the county have
20 entered into a written agreement under Section 242.001 that
21 authorizes the municipality to regulate subdivision plats and
22 approve related permits in the municipality's extraterritorial
23 jurisdiction.

24 SECTION 3. The heading to Section 232.029, Local Government
25 Code, is amended to read as follows:

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

1 SECTION 4. Section 232.029, Local Government Code, is
2 amended by relettering Subsection (a) as Subsection (a-1) and
3 adding a new Subsection (a) to read as follows:

4 (a) This section applies only to a county defined under
5 Section 232.022(a)(1).

6 (a-1) Except as provided by Subsection (c) or Section
7 232.037(c), a utility may not serve or connect any subdivided land
8 with water or sewer services unless the utility receives a
9 certificate issued by the commissioners court under Section
10 232.028(a) or receives a determination from the commissioners court
11 under Section 232.028(b)(1) that the plat has been reviewed and
12 approved by the commissioners court.

13 SECTION 5. Subchapter B, Chapter 232, Local Government
14 Code, is amended by adding Section 232.0291 to read as follows:

15 Sec. 232.0291. CONNECTION OF UTILITIES IN CERTAIN COUNTIES
16 WITHIN 100 MILES OF INTERNATIONAL BORDER. (a) This section
17 applies only to a county defined under Section 232.022(a)(2).

18 (b) Except as provided by Subsection (d) or Section
19 232.037(c), a utility may not serve or connect any subdivided land
20 with water or sewer services unless the utility receives a
21 certificate issued by the commissioners court under Section
22 232.028(a) or receives a determination from the commissioners court
23 under Section 232.028(b)(1) that the plat has been reviewed and
24 approved by the commissioners court.

25 (c) Except as provided by Subsection (d) or Section
26 232.037(c), a utility may not serve or connect any subdivided land
27 with electricity or gas unless the entity receives a determination

1 from the county commissioners court under Section 232.028(b)(2)
2 that adequate water and sewer services have been installed to
3 service the subdivision.

4 (d) An electric, gas, water, or sewer service utility may
5 serve or connect subdivided land with water, sewer, electricity,
6 gas, or other utility service regardless of whether the utility
7 receives a certificate issued by the commissioners court under
8 Section 232.028(a) or receives a determination from the
9 commissioners court under Section 232.028(b) if the utility is
10 provided with a certificate issued by the commissioners court that
11 states that:

12 (1) the subdivided land:

13 (A) was sold or conveyed to the person requesting
14 service by any means of conveyance, including a contract for deed or
15 executory contract before September 1, 2005;

16 (B) is located in a subdivision in which the
17 utility has previously provided service; and

18 (C) is the site of construction of a residence,
19 evidenced by at least the existence of a completed foundation, that
20 was begun on or before September 1, 2005; or

21 (2) the subdivided land was not subdivided after
22 September 1, 2005, and:

23 (A) water service is available within 750 feet of
24 the subdivided land; or

25 (B) water service is available more than 750 feet
26 from the subdivided land and the extension of water service to the
27 land may be feasible, subject to a final determination by the water

1 service provider.

2 (e) A utility may provide utility service to subdivided land
3 described by Subsection (d)(1) only if the person requesting
4 service:

5 (1) is not the land's subdivider or the subdivider's
6 agent; and

7 (2) provides to the utility a certificate described by
8 Subsection (d)(1).

9 (f) A person requesting service may obtain a certificate
10 under Subsection (d)(1) only if the person provides to the
11 commissioners court either:

12 (1) documentation containing:

13 (A) a copy of the means of conveyance or other
14 documents that show that the land was sold or conveyed to the person
15 requesting service before September 1, 2005; and

16 (B) a notarized affidavit by that person that
17 states that construction of a residence on the land, evidenced by at
18 least the existence of a completed foundation, was begun on or
19 before September 1, 2005; or

20 (2) a notarized affidavit by the person requesting
21 service that states that:

22 (A) the property was sold or conveyed to that
23 person before September 1, 2005; and

24 (B) construction of a residence on the land,
25 evidenced by at least the existence of a completed foundation, was
26 begun on or before September 1, 2005.

27 (g) A person requesting service may obtain a certificate

1 under Subsection (d)(2) only if the person provides to the
2 commissioners court an affidavit that states that the property was
3 not sold or conveyed to that person from a subdivider or the
4 subdivider's agent after September 1, 2005.

5 (h) On request, the commissioners court shall provide to the
6 attorney general and any appropriate local, county, or state law
7 enforcement official a copy of any document on which the
8 commissioners court relied in determining the legality of providing
9 service.

10 (i) This section may not be construed to abrogate any civil
11 or criminal proceeding or prosecution or to waive any penalty
12 against a subdivider for a violation of a state or local law,
13 regardless of the date on which the violation occurred.

14 (j) The prohibition established by this section does not
15 prohibit an electric or gas utility from providing electric or gas
16 utility connection or service to a lot:

17 (1) sold, conveyed, or purchased through a contract
18 for deed or executory contract or other device by a subdivider
19 before September 1, 2005;

20 (2) located within a subdivision where the utility has
21 previously established service; and

22 (3) subdivided by a plat approved before September 1,
23 1989.

24 (k) In this section, "foundation" means the lowest division
25 of a residence, usually consisting of a masonry slab or a pier and
26 beam structure, that is partly or wholly below the surface of the
27 ground and on which the residential structure rests.

1 SECTION 6. Section 232.031, Local Government Code, is
2 amended by amending Subsection (a) and adding Subsection (d) to
3 read as follows:

4 (a) Except as provided by Subsection (d), a [A] subdivider
5 may not sell or lease land in a subdivision first platted or
6 replatted after July 1, 1995, unless the subdivision plat is
7 approved by the commissioners court in accordance with Section
8 232.024.

9 (d) In a county defined under Section 232.022(a)(2), a
10 subdivider may not sell or lease land in a subdivision first platted
11 or replatted after September 1, 2005, unless the subdivision plat
12 is approved by the commissioners court in accordance with Section
13 232.024.

14 SECTION 7. Section 232.038, Local Government Code, is
15 amended to read as follows:

16 Sec. 232.038. SUIT BY PRIVATE PERSON IN ECONOMICALLY
17 DISTRESSED AREA. (a) Except as provided by Subsection (b), a [A]
18 person who has purchased or is purchasing a lot after July 1, 1995,
19 in a subdivision for residential purposes that does not have water
20 and sewer services as required by this subchapter and is located in
21 an economically distressed area, as defined by Section 17.921,
22 Water Code, from a subdivider, may bring suit in the district court
23 in which the property is located or in a district court in Travis
24 County to:

25 (1) declare the sale of the property void and require
26 the subdivider to return the purchase price of the property; and

27 (2) recover from the subdivider:

1 (A) the market value of any permanent
2 improvements the person placed on the property;

3 (B) actual expenses incurred as a direct result
4 of the failure to provide adequate water and sewer facilities;

5 (C) court costs; and

6 (D) reasonable attorney's fees.

7 (b) If the lot is located in a county defined under Section
8 232.022(a)(2), a person may only bring suit under Subsection (a) if
9 the person purchased or is purchasing the lot after September 1,
10 2005.

11 SECTION 8. Subsection (e), Section 232.040, Local
12 Government Code, is amended to read as follows:

13 (e) Existing utility services to a subdivision that must be
14 platted or replatted under this section may not be terminated under
15 Section 232.029 or 232.0291.

16 SECTION 9. Subsection (b), Section 232.043, Local
17 Government Code, is amended to read as follows:

18 (b) If the commissioners court makes a written finding that
19 the subdivider who created the unplatted subdivision no longer owns
20 property in the subdivision, the commissioners court may grant a
21 delay or variance under this section only if:

22 (1) a majority of the lots in the subdivision were sold
23 before:

24 (A) September 1, 1995, in a county defined under
25 Section 232.022(a)(1); or

26 (B) September 1, 2005, in a county defined under
27 Section 232.022(a)(2);

1 (2) a majority of the resident purchasers in the
2 subdivision sign a petition supporting the delay or variance;

3 (3) the person requesting the delay or variance
4 submits to the commissioners court:

5 (A) a description of the water and sewer service
6 facilities that will be constructed or installed to service the
7 subdivision;

8 (B) a statement specifying the date by which the
9 water and sewer service facilities will be fully operational; and

10 (C) a statement signed by an engineer licensed in
11 this state certifying that the plans for the water and sewer
12 facilities meet the minimum state standards;

13 (4) the commissioners court finds that the unplatted
14 subdivision at the time the delay or variance is requested is
15 developed in a manner and to an extent that compliance with specific
16 platting requirements is impractical or contrary to the health or
17 safety of the residents of the subdivision; and

18 (5) the subdivider who created the unplatted
19 subdivision has not violated local law, federal law, or state law,
20 excluding this chapter, in subdividing the land for which the delay
21 or variance is requested, if the subdivider is the person
22 requesting the delay or variance.

23 SECTION 10. Section 232.106, Local Government Code, is
24 amended to read as follows:

25 Sec. 232.106. CONNECTION OF UTILITIES. By an order adopted
26 and entered in the minutes of the commissioners court, and after a
27 notice is published in a newspaper of general circulation in the

1 county, the commissioners court may impose the requirements of
2 Section 232.029 or 232.0291.

3 SECTION 11. Subdivision (2), Section 775.001, Government
4 Code, is amended to read as follows:

5 (2) "Colonia" means a geographic area that:

6 (A) is an economically distressed area as defined
7 by Section 17.921, Water Code; and

8 (B) is:

9 (i) located in a county any part of which is
10 within 50 miles of an international border; or

11 (ii) located in a county:

12 (a) any part of which is within 100
13 miles of an international border; and

14 (b) that contains the majority of the
15 area of a municipality with a population of more than 250,000.

16 SECTION 12. Section 775.003, Government Code, is amended to
17 read as follows:

18 Sec. 775.003. COLONIA OMBUDSMAN PROGRAM. The colonia
19 initiatives coordinator may appoint a colonia ombudsman in:

20 (1) each of the six border counties that the
21 coordinator determines have the largest colonia populations; and

22 (2) each additional county any part of which is within
23 100 miles of an international border and that contains the majority
24 of the area of a municipality with a population of more than
25 250,000.

26 SECTION 13. Section 37.153, Utilities Code, is amended to
27 read as follows:

1 Sec. 37.153. REQUIRED REFUSAL OF SERVICE. A certificate
2 holder shall refuse to serve a customer in the holder's
3 certificated area if the holder is prohibited from providing the
4 service under Section 212.012, ~~[or]~~ 232.029, or 232.0291, Local
5 Government Code.

6 SECTION 14. Section 54.254, Utilities Code, is amended to
7 read as follows:

8 Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A holder of a
9 certificate of convenience and necessity, a certificate of
10 operating authority, or a service provider certificate of operating
11 authority shall refuse to serve a customer in the holder's
12 certificated area if the holder is prohibited from providing the
13 service under Section 212.012, ~~[or]~~ 232.029, or 232.0291, Local
14 Government Code.

15 SECTION 15. Subdivision (1), Section 16.341, Water Code, is
16 amended to read as follows:

- 17 (1) "Affected county" means a county:
- 18 (A) that has a per capita income that averaged 25
19 percent below the state average for the most recent three
20 consecutive years for which statistics are available and an
21 unemployment rate that averaged 25 percent above the state average
22 for the most recent three consecutive years for which statistics
23 are available; ~~[or]~~
- 24 (B) that is adjacent to an international border;
25 or
- 26 (C) that is located in whole or in part within 100
27 miles of an international border and contains the majority of the

1 area of a municipality with a population of more than 250,000.

2 SECTION 16. Section 17.923, Water Code, is amended to read
3 as follows:

4 Sec. 17.923. COUNTY ELIGIBILITY FOR FINANCIAL ASSISTANCE.
5 To be eligible for financial assistance under this subchapter, a
6 county:

7 (1) must have a per capita income that averaged 25
8 percent below the state average for the most recent three
9 consecutive years for which statistics are available and an
10 unemployment rate that averaged 25 percent above the state average
11 for the most recent three consecutive years for which statistics
12 are available; ~~or~~

13 (2) must be located adjacent to an international
14 border; or

15 (3) must be located in whole or in part within 100
16 miles of an international border and contain the majority of the
17 area of a municipality with a population of more than 250,000.

18 SECTION 17. This Act takes effect September 1, 2005.