

By: Hinojosa

S.B. No. 425

A BILL TO BE ENTITLED

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. Sections 212.012(c), (e), and (f), 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(a), Local Government Code, is
2 amended to read as follows:

3 (a) This subchapter applies only to:

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

6 (2) a county:

7 (A) any part of which is located within 150 miles
8 of an international border;

9 (B) that contains a municipality with a
10 population of more than 250,000; and

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

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

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

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

19 (a) This section applies only to a county defined under
20 Section 232.022(a)(1).

21 (a-1) [~~(a)~~] Except as provided by Subsection (c) or Section
22 232.037(c), a utility may not serve or connect any subdivided land
23 with water or sewer services unless the utility receives a
24 certificate issued by the commissioners court under Section
25 232.028(a) or receives a determination from the commissioners court
26 under Section 232.028(b)(1) that the plat has been reviewed and
27 approved by the commissioners court.

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

3 Sec. 232.0291. CONNECTION OF UTILITIES IN CERTAIN COUNTIES
4 WITHIN 150 MILES OF INTERNATIONAL BORDER. (a) This section applies
5 only to a county defined under Section 232.022(a)(2).

6 (b) Except as provided by Subsection (d) 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 (c) Except as provided by Subsection (d) or Section
14 232.037(c), a utility may not serve or connect any subdivided land
15 with electricity or gas unless the entity receives a determination
16 from the county commissioners court under Section 232.028(b)(2)
17 that adequate water and sewer services have been installed to
18 service the subdivision.

19 (d) An electric, gas, water, or sewer service utility may
20 serve or connect subdivided land with water, sewer, electricity,
21 gas, or other utility service regardless of whether the utility
22 receives a certificate issued by the commissioners court under
23 Section 232.028(a) or receives a determination from the
24 commissioners court under Section 232.028(b) if the utility is
25 provided with a certificate issued by the commissioners court that
26 states that:

27 (1) the subdivided land:

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

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

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

9 (2) the subdivided land was not subdivided after
10 September 1, 2005, and:

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

13 (B) water service is available more than 750 feet
14 from the subdivided land and the extension of water service to the
15 land may be feasible, subject to a final determination by the water
16 service provider.

17 (e) A utility may provide utility service to subdivided land
18 described by Subsection (d)(1) only if the person requesting
19 service:

20 (1) is not the land's subdivider or the subdivider's
21 agent; and

22 (2) provides to the utility a certificate described by
23 Subsection (d)(1).

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

27 (1) documentation containing:

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

4 (B) a notarized affidavit by that person that
5 states that construction of a residence on the land, evidenced by at
6 least the existence of a completed foundation, was begun on or
7 before September 1, 2005; or

8 (2) a notarized affidavit by the person requesting
9 service that states that:

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

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

15 (g) A person requesting service may obtain a certificate
16 under Subsection (d)(2) only if the person provides to the
17 commissioners court an affidavit that states that the property was
18 not sold or conveyed to that person from a subdivider or the
19 subdivider's agent after September 1, 2005.

20 (h) On request, the commissioners court shall provide to the
21 attorney general and any appropriate local, county, or state law
22 enforcement official a copy of any document on which the
23 commissioners court relied in determining the legality of providing
24 service.

25 (i) This section may not be construed to abrogate any civil
26 or criminal proceeding or prosecution or to waive any penalty
27 against a subdivider for a violation of a state or local law,

1 regardless of the date on which the violation occurred.

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

5 (1) sold, conveyed, or purchased through a contract
6 for deed or executory contract or other device by a subdivider
7 before September 1, 2005;

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

10 (3) subdivided by a plat approved before September 1,
11 1989.

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

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

19 (a) Except as provided by Subsection (d), a [A] subdivider
20 may not sell or lease land in a subdivision first platted or
21 replatted after July 1, 1995, unless the subdivision plat is
22 approved by the commissioners court in accordance with Section
23 232.024.

24 (d) In a county defined under Section 232.022(a)(2), a
25 subdivider may not sell or lease land in a subdivision first platted
26 or replatted after September 1, 2005, unless the subdivision plat
27 is approved by the commissioners court in accordance with Section

1 232.024.

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

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

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

15 (2) recover from the subdivider:

16 (A) the market value of any permanent
17 improvements the person placed on the property;

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

20 (C) court costs; and

21 (D) reasonable attorney's fees.

22 (b) If the lot is located in a county defined under Section
23 232.022(a)(2), a person may only bring suit under Subsection (a) if
24 the person purchased or is purchasing the lot after September 1,
25 2005.

26 SECTION 8. Section 232.040(e), Local Government Code, is
27 amended to read as follows:

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

4 SECTION 9. Section 232.043(b), Local Government Code, is
5 amended to read as follows:

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

10 (1) a majority of the lots in the subdivision were sold
11 before:

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

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

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

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

20 (A) a description of the water and sewer service
21 facilities that will be constructed or installed to service the
22 subdivision;

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

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

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

6 (5) the subdivider who created the unplatted
7 subdivision has not violated local law, federal law, or state law,
8 excluding this chapter, in subdividing the land for which the delay
9 or variance is requested, if the subdivider is the person
10 requesting the delay or variance.

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

13 Sec. 232.106. CONNECTION OF UTILITIES. By an order adopted
14 and entered in the minutes of the commissioners court, and after a
15 notice is published in a newspaper of general circulation in the
16 county, the commissioners court may impose the requirements of
17 Section 232.029 or 232.0291.

18 SECTION 11. Section 775.001(2), Government Code, is amended
19 to read as follows:

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

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

23 (B) is:

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

26 (ii) located in a county:

27 (a) any part of which is within 150

1 miles of an international border; and

2 (b) that contains a municipality with
3 a population of more than 250,000.

4 SECTION 12. Section 775.003, Government Code, is amended to
5 read as follows:

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

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

10 (2) each additional county any part of which is within
11 150 miles of an international border and that contains a
12 municipality with a population of more than 250,000.

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

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

20 SECTION 14. Section 54.254, Utilities Code, is amended to
21 read as follows:

22 Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A holder of a
23 certificate of convenience and necessity, a certificate of
24 operating authority, or a service provider certificate of operating
25 authority shall refuse to serve a customer in the holder's
26 certificated area if the holder is prohibited from providing the
27 service under Section 212.012, ~~[or]~~ 232.029, or 232.0291, Local

1 Government Code.

2 SECTION 15. 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 150
16 miles of an international border and contain a municipality with a
17 population of more than 250,000.

18 SECTION 16. This Act takes effect September 1, 2005.