

1-1 By: Hinojosa S.B. No. 425
1-2 (In the Senate - Filed February 9, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Intergovernmental
1-4 Relations; April 12, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 April 12, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 425 By: Gallegos

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to subdivision platting requirements and assistance for
1-11 certain counties near an international border.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (c), (e), and (f), Section 212.012,
1-14 Local Government Code, are amended to read as follows:

1-15 (c) An entity described by Subsection (b) may serve or
1-16 connect land with water, sewer, electricity, gas, or other utility
1-17 service regardless of whether the entity is presented with or
1-18 otherwise holds a certificate applicable to the land issued under
1-19 Section 212.0115 if:

1-20 (1) the land is covered by a development plat approved
1-21 under Subchapter B or under an ordinance or rule relating to the
1-22 development plat;

1-23 (2) the land was first served or connected with
1-24 service by an entity described by Subsection (b)(1), (b)(2), or
1-25 (b)(3) before September 1, 1987;

1-26 (3) the land was first served or connected with
1-27 service by an entity described by Subsection (b)(4), (b)(5), or
1-28 (b)(6) before September 1, 1989; or

1-29 (4) the municipal authority responsible for approving
1-30 plats issues a certificate stating that:

1-31 (A) the land:

1-32 (i) ~~[before September 1, 1995,~~ was sold or
1-33 conveyed to the person requesting service by any means of
1-34 conveyance, including a contract for deed or executory contract,
1-35 before:

1-36 (a) September 1, 1995, in a county
1-37 defined under Section 232.022(a)(1); or

1-38 (b) September 1, 2005, in a county
1-39 defined under Section 232.022(a)(2);

1-40 (ii) is located in a subdivision in which
1-41 the entity has previously provided service;

1-42 (iii) is located outside the limits of the
1-43 municipality;

1-44 (iv) is located in a county to which
1-45 Subchapter B, Chapter 232, applies; and

1-46 (v) is the site of construction of a
1-47 residence, evidenced by at least the existence of a completed
1-48 foundation, that was begun on or before:

1-49 (a) May 1, 1997, in a county defined
1-50 under Section 232.022(a)(1); or

1-51 (b) September 1, 2005, in a county
1-52 defined under Section 232.022(a)(2); or

1-53 (B) the land was not subdivided after September
1-54 1, 1995, in a county defined under Section 232.022(a)(1), or
1-55 September 1, 2005, in a county defined under Section 232.022(a)(2),
1-56 and:

1-57 (i) water service is available within 750
1-58 feet of the subdivided land; or

1-59 (ii) water service is available more than
1-60 750 feet from the subdivided land and the extension of water service
1-61 to the land may be feasible, subject to a final determination by the
1-62 water service provider.

1-63 (e) A person requesting service may obtain a certificate

2-1 under Subsection (c)(4)(A) only if the person provides to the
 2-2 municipal authority responsible for approving plats either:

2-3 (1) a copy of the means of conveyance or other
 2-4 documents that show that the land was sold or conveyed to the person
 2-5 requesting service before September 1, 1995, or before September 1,
 2-6 2005, as applicable, and a notarized affidavit by that person that
 2-7 states that construction of a residence on the land, evidenced by at
 2-8 least the existence of a completed foundation, was begun on or
 2-9 before May 1, 1997, or on or before September 1, 2005, as
 2-10 applicable; or

2-11 (2) a notarized affidavit by the person requesting
 2-12 service that states that the property was sold or conveyed to that
 2-13 person before September 1, 1995, or before September 1, 2005, as
 2-14 applicable, and that construction of a residence on the land,
 2-15 evidenced by at least the existence of a completed foundation, was
 2-16 begun on or before May 1, 1997, or on or before September 1, 2005, as
 2-17 applicable.

2-18 (f) A person requesting service may obtain a certificate
 2-19 under Subsection (c)(4)(B) only if the person provides to the
 2-20 municipal authority responsible for approving plats an affidavit
 2-21 that states that the property was not sold or conveyed to that
 2-22 person from a subdivider or the subdivider's agent after September
 2-23 1, 1995, or after September 1, 2005, as applicable.

2-24 SECTION 2. Section 232.022, Local Government Code, is
 2-25 amended by amending Subsections (a) and (c) and adding Subsection
 2-26 (c-1) to read as follows:

2-27 (a) This subchapter applies only to:
 2-28 (1) a county any part of which is located within 50
 2-29 miles of an international border; or

2-30 (2) a county:
 2-31 (A) any part of which is located within 100 miles
 2-32 of an international border;

2-33 (B) that contains the majority of the area of a
 2-34 municipality with a population of more than 250,000; and

2-35 (C) to which Subdivision (1) does not apply.

2-36 (c) Except as provided by Subsection (c-1), for [~~For~~]
 2-37 purposes of this section, land is considered to be in the
 2-38 jurisdiction of a county if the land is located in the county and
 2-39 outside the corporate limits of municipalities.

2-40 (c-1) Land in a municipality's extraterritorial
 2-41 jurisdiction is not considered to be in the jurisdiction of a county
 2-42 for purposes of this section if the municipality and the county have
 2-43 entered into a written agreement under Section 242.001 that
 2-44 authorizes the municipality to regulate subdivision plats and
 2-45 approve related permits in the municipality's extraterritorial
 2-46 jurisdiction.

2-47 SECTION 3. The heading to Section 232.029, Local Government
 2-48 Code, is amended to read as follows:

2-49 Sec. 232.029. CONNECTION OF UTILITIES IN COUNTIES WITHIN 50
 2-50 MILES OF INTERNATIONAL BORDER.

2-51 SECTION 4. Section 232.029, Local Government Code, is
 2-52 amended by relettering Subsection (a) as Subsection (a-1) and
 2-53 adding a new Subsection (a) to read as follows:

2-54 (a) This section applies only to a county defined under
 2-55 Section 232.022(a)(1).

2-56 (a-1) Except as provided by Subsection (c) or Section
 2-57 232.037(c), a utility may not serve or connect any subdivided land
 2-58 with water or sewer services unless the utility receives a
 2-59 certificate issued by the commissioners court under Section
 2-60 232.028(a) or receives a determination from the commissioners court
 2-61 under Section 232.028(b)(1) that the plat has been reviewed and
 2-62 approved by the commissioners court.

2-63 SECTION 5. Subchapter B, Chapter 232, Local Government
 2-64 Code, is amended by adding Section 232.0291 to read as follows:

2-65 Sec. 232.0291. CONNECTION OF UTILITIES IN CERTAIN COUNTIES
 2-66 WITHIN 100 MILES OF INTERNATIONAL BORDER. (a) This section
 2-67 applies only to a county defined under Section 232.022(a)(2).

2-68 (b) Except as provided by Subsection (d) or Section
 2-69 232.037(c), a utility may not serve or connect any subdivided land

3-1 with water or sewer services unless the utility receives a
 3-2 certificate issued by the commissioners court under Section
 3-3 232.028(a) or receives a determination from the commissioners court
 3-4 under Section 232.028(b)(1) that the plat has been reviewed and
 3-5 approved by the commissioners court.

3-6 (c) Except as provided by Subsection (d) or Section
 3-7 232.037(c), a utility may not serve or connect any subdivided land
 3-8 with electricity or gas unless the entity receives a determination
 3-9 from the county commissioners court under Section 232.028(b)(2)
 3-10 that adequate water and sewer services have been installed to
 3-11 service the subdivision.

3-12 (d) An electric, gas, water, or sewer service utility may
 3-13 serve or connect subdivided land with water, sewer, electricity,
 3-14 gas, or other utility service regardless of whether the utility
 3-15 receives a certificate issued by the commissioners court under
 3-16 Section 232.028(a) or receives a determination from the
 3-17 commissioners court under Section 232.028(b) if the utility is
 3-18 provided with a certificate issued by the commissioners court that
 3-19 states that:

3-20 (1) the subdivided land:

3-21 (A) was sold or conveyed to the person requesting
 3-22 service by any means of conveyance, including a contract for deed or
 3-23 executory contract before September 1, 2005;

3-24 (B) is located in a subdivision in which the
 3-25 utility has previously provided service; and

3-26 (C) is the site of construction of a residence,
 3-27 evidenced by at least the existence of a completed foundation, that
 3-28 was begun on or before September 1, 2005; or

3-29 (2) the subdivided land was not subdivided after
 3-30 September 1, 2005, and:

3-31 (A) water service is available within 750 feet of
 3-32 the subdivided land; or

3-33 (B) water service is available more than 750 feet
 3-34 from the subdivided land and the extension of water service to the
 3-35 land may be feasible, subject to a final determination by the water
 3-36 service provider.

3-37 (e) A utility may provide utility service to subdivided land
 3-38 described by Subsection (d)(1) only if the person requesting
 3-39 service:

3-40 (1) is not the land's subdivider or the subdivider's
 3-41 agent; and

3-42 (2) provides to the utility a certificate described by
 3-43 Subsection (d)(1).

3-44 (f) A person requesting service may obtain a certificate
 3-45 under Subsection (d)(1) only if the person provides to the
 3-46 commissioners court either:

3-47 (1) documentation containing:

3-48 (A) a copy of the means of conveyance or other
 3-49 documents that show that the land was sold or conveyed to the person
 3-50 requesting service before September 1, 2005; and

3-51 (B) a notarized affidavit by that person that
 3-52 states that construction of a residence on the land, evidenced by at
 3-53 least the existence of a completed foundation, was begun on or
 3-54 before September 1, 2005; or

3-55 (2) a notarized affidavit by the person requesting
 3-56 service that states that:

3-57 (A) the property was sold or conveyed to that
 3-58 person before September 1, 2005; and

3-59 (B) construction of a residence on the land,
 3-60 evidenced by at least the existence of a completed foundation, was
 3-61 begun on or before September 1, 2005.

3-62 (g) A person requesting service may obtain a certificate
 3-63 under Subsection (d)(2) only if the person provides to the
 3-64 commissioners court an affidavit that states that the property was
 3-65 not sold or conveyed to that person from a subdivider or the
 3-66 subdivider's agent after September 1, 2005.

3-67 (h) On request, the commissioners court shall provide to the
 3-68 attorney general and any appropriate local, county, or state law
 3-69 enforcement official a copy of any document on which the

4-1 commissioners court relied in determining the legality of providing
4-2 service.

4-3 (i) This section may not be construed to abrogate any civil
4-4 or criminal proceeding or prosecution or to waive any penalty
4-5 against a subdivider for a violation of a state or local law,
4-6 regardless of the date on which the violation occurred.

4-7 (j) The prohibition established by this section does not
4-8 prohibit an electric or gas utility from providing electric or gas
4-9 utility connection or service to a lot:

4-10 (1) sold, conveyed, or purchased through a contract
4-11 for deed or executory contract or other device by a subdivider
4-12 before September 1, 2005;

4-13 (2) located within a subdivision where the utility has
4-14 previously established service; and

4-15 (3) subdivided by a plat approved before September 1,
4-16 1989.

4-17 (k) In this section, "foundation" means the lowest division
4-18 of a residence, usually consisting of a masonry slab or a pier and
4-19 beam structure, that is partly or wholly below the surface of the
4-20 ground and on which the residential structure rests.

4-21 SECTION 6. Section 232.031, Local Government Code, is
4-22 amended by amending Subsection (a) and adding Subsection (d) to
4-23 read as follows:

4-24 (a) Except as provided by Subsection (d), a [A] subdivider
4-25 may not sell or lease land in a subdivision first platted or
4-26 replatted after July 1, 1995, unless the subdivision plat is
4-27 approved by the commissioners court in accordance with Section
4-28 232.024.

4-29 (d) In a county defined under Section 232.022(a)(2), a
4-30 subdivider may not sell or lease land in a subdivision first platted
4-31 or replatted after September 1, 2005, unless the subdivision plat
4-32 is approved by the commissioners court in accordance with Section
4-33 232.024.

4-34 SECTION 7. Section 232.038, Local Government Code, is
4-35 amended to read as follows:

4-36 Sec. 232.038. SUIT BY PRIVATE PERSON IN ECONOMICALLY
4-37 DISTRESSED AREA. (a) Except as provided by Subsection (b), a [A]
4-38 person who has purchased or is purchasing a lot after July 1, 1995,
4-39 in a subdivision for residential purposes that does not have water
4-40 and sewer services as required by this subchapter and is located in
4-41 an economically distressed area, as defined by Section 17.921,
4-42 Water Code, from a subdivider, may bring suit in the district court
4-43 in which the property is located or in a district court in Travis
4-44 County to:

4-45 (1) declare the sale of the property void and require
4-46 the subdivider to return the purchase price of the property; and

4-47 (2) recover from the subdivider:

4-48 (A) the market value of any permanent
4-49 improvements the person placed on the property;

4-50 (B) actual expenses incurred as a direct result
4-51 of the failure to provide adequate water and sewer facilities;

4-52 (C) court costs; and

4-53 (D) reasonable attorney's fees.

4-54 (b) If the lot is located in a county defined under Section
4-55 232.022(a)(2), a person may only bring suit under Subsection (a) if
4-56 the person purchased or is purchasing the lot after September 1,
4-57 2005.

4-58 SECTION 8. Subsection (e), Section 232.040, Local
4-59 Government Code, is amended to read as follows:

4-60 (e) Existing utility services to a subdivision that must be
4-61 platted or replatted under this section may not be terminated under
4-62 Section 232.029 or 232.0291.

4-63 SECTION 9. Subsection (b), Section 232.043, Local
4-64 Government Code, is amended to read as follows:

4-65 (b) If the commissioners court makes a written finding that
4-66 the subdivider who created the unplatted subdivision no longer owns
4-67 property in the subdivision, the commissioners court may grant a
4-68 delay or variance under this section only if:

4-69 (1) a majority of the lots in the subdivision were sold

5-1 before:

5-2 (A) September 1, 1995, in a county defined under
5-3 Section 232.022(a)(1); or

5-4 (B) September 1, 2005, in a county defined under
5-5 Section 232.022(a)(2);

5-6 (2) a majority of the resident purchasers in the
5-7 subdivision sign a petition supporting the delay or variance;

5-8 (3) the person requesting the delay or variance
5-9 submits to the commissioners court:

5-10 (A) a description of the water and sewer service
5-11 facilities that will be constructed or installed to service the
5-12 subdivision;

5-13 (B) a statement specifying the date by which the
5-14 water and sewer service facilities will be fully operational; and

5-15 (C) a statement signed by an engineer licensed in
5-16 this state certifying that the plans for the water and sewer
5-17 facilities meet the minimum state standards;

5-18 (4) the commissioners court finds that the unplatted
5-19 subdivision at the time the delay or variance is requested is
5-20 developed in a manner and to an extent that compliance with specific
5-21 platting requirements is impractical or contrary to the health or
5-22 safety of the residents of the subdivision; and

5-23 (5) the subdivider who created the unplatted
5-24 subdivision has not violated local law, federal law, or state law,
5-25 excluding this chapter, in subdividing the land for which the delay
5-26 or variance is requested, if the subdivider is the person
5-27 requesting the delay or variance.

5-28 SECTION 10. Section 232.106, Local Government Code, is
5-29 amended to read as follows:

5-30 Sec. 232.106. CONNECTION OF UTILITIES. By an order adopted
5-31 and entered in the minutes of the commissioners court, and after a
5-32 notice is published in a newspaper of general circulation in the
5-33 county, the commissioners court may impose the requirements of
5-34 Section 232.029 or 232.0291.

5-35 SECTION 11. Subdivision (2), Section 775.001, Government
5-36 Code, is amended to read as follows:

5-37 (2) "Colonia" means a geographic area that:

5-38 (A) is an economically distressed area as defined
5-39 by Section 17.921, Water Code; and

5-40 (B) is:
5-41 (i) located in a county any part of which is
5-42 within 50 miles of an international border; or

5-43 (ii) located in a county:
5-44 (a) any part of which is within 100
5-45 miles of an international border; and

5-46 (b) that contains the majority of the
5-47 area of a municipality with a population of more than 250,000.

5-48 SECTION 12. Section 775.003, Government Code, is amended to
5-49 read as follows:

5-50 Sec. 775.003. COLONIA OMBUDSMAN PROGRAM. The colonia
5-51 initiatives coordinator may appoint a colonia ombudsman in:

5-52 (1) each of the six border counties that the
5-53 coordinator determines have the largest colonia populations; and

5-54 (2) each additional county any part of which is within
5-55 100 miles of an international border and that contains the majority
5-56 of the area of a municipality with a population of more than
5-57 250,000.

5-58 SECTION 13. Section 37.153, Utilities Code, is amended to
5-59 read as follows:

5-60 Sec. 37.153. REQUIRED REFUSAL OF SERVICE. A certificate
5-61 holder shall refuse to serve a customer in the holder's
5-62 certificated area if the holder is prohibited from providing the
5-63 service under Section 212.012, ~~or~~ 232.029, or 232.0291, Local
5-64 Government Code.

5-65 SECTION 14. Section 54.254, Utilities Code, is amended to
5-66 read as follows:

5-67 Sec. 54.254. REQUIRED REFUSAL OF SERVICE. A holder of a
5-68 certificate of convenience and necessity, a certificate of
5-69 operating authority, or a service provider certificate of operating

6-1 authority shall refuse to serve a customer in the holder's
6-2 certificated area if the holder is prohibited from providing the
6-3 service under Section 212.012, ~~[or]~~ 232.029, or 232.0291, Local
6-4 Government Code.

6-5 SECTION 15. Subdivision (1), Section 16.341, Water Code, is
6-6 amended to read as follows:

6-7 (1) "Affected county" means a county:

6-8 (A) that has a per capita income that averaged 25
6-9 percent below the state average for the most recent three
6-10 consecutive years for which statistics are available and an
6-11 unemployment rate that averaged 25 percent above the state average
6-12 for the most recent three consecutive years for which statistics
6-13 are available; ~~[or]~~

6-14 (B) that is adjacent to an international border;
6-15 or

6-16 (C) that is located in whole or in part within 100
6-17 miles of an international border and contains the majority of the
6-18 area of a municipality with a population of more than 250,000.

6-19 SECTION 16. Section 17.923, Water Code, is amended to read
6-20 as follows:

6-21 Sec. 17.923. COUNTY ELIGIBILITY FOR FINANCIAL ASSISTANCE.
6-22 To be eligible for financial assistance under this subchapter, a
6-23 county:

6-24 (1) must have a per capita income that averaged 25
6-25 percent below the state average for the most recent three
6-26 consecutive years for which statistics are available and an
6-27 unemployment rate that averaged 25 percent above the state average
6-28 for the most recent three consecutive years for which statistics
6-29 are available; ~~[or]~~

6-30 (2) must be located adjacent to an international
6-31 border; or

6-32 (3) must be located in whole or in part within 100
6-33 miles of an international border and contain the majority of the
6-34 area of a municipality with a population of more than 250,000.

6-35 SECTION 17. This Act takes effect September 1, 2005.

6-36 * * * * *