

By: Zaffirini

S.B. No. 1869

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of certain municipalities and counties to
3 regulate subdivisions near an international border.

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

5 SECTION 1. Section 212.012, Local Government Code, is
6 amended by amending Subsections (a), (c), (d), (e), (f), (h), and
7 (i) and adding Subsections (j) and (k) to read as follows:

8 (a) Except as provided by Subsection (c), (d), or (j)
9 [~~Subsection (e)~~], an entity described by Subsection (b) may not
10 serve or connect any land with water, sewer, electricity, gas, or
11 other utility service unless the entity has been presented with or
12 otherwise holds a certificate applicable to the land issued under
13 Section 212.0115.

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

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

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

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

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

6 ~~[(A) the land:~~

7 ~~[(i) was sold or conveyed to the person~~
8 ~~requesting service by any means of conveyance, including a contract~~
9 ~~for deed or executory contract, before:~~

10 ~~[(a) September 1, 1995, in a county~~
11 ~~defined under Section 232.022(a)(1); or~~

12 ~~[(b) September 1, 2005, in a county~~
13 ~~defined under Section 232.022(a)(2);~~

14 ~~[(ii) is located in a subdivision in which~~
15 ~~the entity has previously provided service;~~

16 ~~[(iii) is located outside the limits of the~~
17 ~~municipality;~~

18 ~~[(iv) is located in a county to which~~
19 ~~Subchapter B, Chapter 232, applies; and~~

20 ~~[(v) is the site of construction of a~~
21 ~~residence, evidenced by at least the existence of a completed~~
22 ~~foundation, that was begun on or before:~~

23 ~~[(a) May 1, 1997, in a county defined~~
24 ~~under Section 232.022(a)(1); or~~

25 ~~[(b) September 1, 2005, in a county~~
26 ~~defined under Section 232.022(a)(2); or~~

27 ~~[(B) the land was not subdivided after September~~

1 ~~1, 1995, in a county defined under Section 232.022(a)(1), or~~
2 ~~September 1, 2005, in a county defined under Section 232.022(a)(2),~~
3 ~~and:~~

4 ~~[(i) water service is available within 750~~
5 ~~feet of the subdivided land; or~~

6 ~~[(ii) water service is available more than~~
7 ~~750 feet from the subdivided land and the extension of water service~~
8 ~~to the land may be feasible, subject to a final determination by the~~
9 ~~water service provider].~~

10 (d) In a county to which Subchapter B, Chapter 232, applies,
11 an entity described by Subsection (b) may serve or connect land with
12 water, sewer, electricity, gas, or other utility service that is
13 located in the extraterritorial jurisdiction of a municipality
14 regardless of whether the entity is presented with or otherwise
15 holds a certificate applicable to the land issued under Section
16 212.0115, if the municipal authority responsible for approving
17 plats issues a certificate stating that:

18 (1) the subdivided land:

19 (A) was sold or conveyed by a subdivider or
20 developer by any means of conveyance, including a contract for deed
21 or executory contract, before:

22 (i) September 1, 1995, in a county defined
23 under Section 232.022(a)(1);

24 (ii) September 1, 1999, in a county defined
25 under Section 232.022(a)(1) if, on August 31, 1999, the subdivided
26 land was located in the extraterritorial jurisdiction of a
27 municipality as determined by Chapter 42; or

1 (iii) September 1, 2005, in a county
2 defined under Section 232.022(a)(2);

3 (B) has not been subdivided after September 1,
4 1995, September 1, 1999, or September 1, 2005, as applicable under
5 Paragraph (A);

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:

9 (i) May 1, 2003, in a county defined under
10 Section 232.022(a)(1); or

11 (ii) September 1, 2005, in a county defined
12 under Section 232.022(a)(2); and

13 (D) has had adequate sewer services installed to
14 service the lot or dwelling; or

15 (2) the subdivided land is a lot of record as defined
16 by Section 232.021(6-a) that is located in a county defined by
17 Section 232.022(a)(1) and has adequate sewer services installed
18 that are fully operable to service the lot or dwelling.

19 (e) An entity described by Subsection (b) may provide
20 utility service to land described by Subsection (d)(1) or (2)
21 [Subsection (c)(4)(A)] only if the person requesting service:

22 (1) is not the land's subdivider or developer or the
23 subdivider's or developer's agent; and

24 (2) provides to the entity a certificate described by
25 Subsection (d) [~~(c)(4)(A)~~].

26 (f) [~~(e)~~] A person requesting service may obtain a
27 certificate under Subsection (d)(1) or (2) [~~Subsection (c)(4)(A)~~]

1 only if the person is the owner or purchaser of the subdivided land
2 and provides to the municipal authority responsible for approving
3 plats documentation containing ~~[either]:~~

4 (1) a copy of the means of conveyance or other
5 documents that show that the land was sold or conveyed by a
6 subdivider or developer ~~[to the person requesting service]~~ before
7 September 1, 1995, before September 1, 1999, or before September 1,
8 2005, as applicable under Subsection (d) ~~[, and a notarized~~
9 ~~affidavit by that person that states that construction of a~~
10 ~~residence on the land, evidenced by at least the existence of a~~
11 ~~completed foundation, was begun on or before May 1, 1997, or on or~~
12 ~~before September 1, 2005, as applicable]; ~~[or]~~~~

13 (2) for a certificate issued under Subsection (d)(1),
14 a notarized affidavit by the person requesting service that states
15 that ~~[the property was sold or conveyed to that person before~~
16 ~~September 1, 1995, or before September 1, 2005, as applicable, and~~
17 ~~that]~~ construction of a residence on the land, evidenced by at least
18 the existence of a completed foundation, was begun on or before May
19 1, 2003, in a county defined by Section 232.022(a)(1) or September
20 1, 2005, in a county defined by Section 232.022(a)(2), and the
21 request for utility connection or service is to connect or serve a
22 residence described by Subsection (d)(1)(C);

23 (3) a notarized affidavit by the person requesting
24 service that states that the subdivided land has not been further
25 subdivided after September 1, 1995, September 1, 1999, or September
26 1, 1989, as applicable under Subsection (d); and

27 (4) evidence that adequate sewer service or facilities

1 have been installed and are fully operable to service the lot or
2 dwelling from an entity described by Subsection (b) or the
3 authorized agent responsible for the licensing or permitting of
4 on-site sewage facilities under Chapter 366, Health and Safety
5 Code. [~~May 1, 1997, or on or before September 1, 2005, as~~
6 applicable.

7 ~~[(f) A person requesting service may obtain a certificate~~
8 ~~under Subsection (c)(4)(B) only if the person provides to the~~
9 ~~municipal authority responsible for approving plats an affidavit~~
10 ~~that states that the property was not sold or conveyed to that~~
11 ~~person from a subdivider or the subdivider's agent after September~~
12 ~~1, 1995, or after September 1, 2005, as applicable.]~~

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

17 (i) In this section:

18 (1) "Developer" has the meaning assigned by Section
19 232.021.

20 (2) "Foundation" means the lowest division of a
21 residence, usually consisting of a masonry slab or a pier and beam
22 structure, that is partly or wholly below the surface of the ground
23 and on which the residential structure rests.

24 (3) ~~[(2)]~~ "Subdivider" has the meaning assigned by
25 Section 232.021.

26 (j) Except as provided by Subsection (k), this section does
27 not prohibit a water or sewer utility from providing in a county

1 defined by Section 232.022(a)(1) water or sewer utility connection
2 or service to a residential dwelling that:

3 (1) is provided water or wastewater facilities under
4 or in conjunction with a federal or state funding program designed
5 to address inadequate water or wastewater facilities in colonias or
6 to residential lots located in a county described by Section
7 232.022(a)(1);

8 (2) is an existing dwelling identified as an eligible
9 recipient for funding by the funding agency providing adequate
10 water and wastewater facilities or improvements;

11 (3) when connected, will comply with the minimum state
12 standards for both water and sewer facilities and as prescribed by
13 the model subdivision rules adopted under Section 16.343, Water
14 Code; and

15 (4) is located in a project for which the municipality
16 with jurisdiction over the project or the approval of plats within
17 the project area has approved the improvement project by order,
18 resolution, or interlocal agreement under Chapter 791, Government
19 Code.

20 (k) A utility may not serve any subdivided land with water
21 utility connection or service under Subsection (j) unless the
22 entity receives a determination that adequate sewer services have
23 been installed to service the lot or dwelling from the municipal
24 authority responsible for approving plats, an entity described by
25 Subsection (b), or the authorized agent responsible for the
26 licensing or permitting of on-site sewage facilities pursuant to
27 Chapter 366, Health and Safety Code.

1 SECTION 2. Section 232.021, Local Government Code, is
2 amended by amending Subdivision (2) and adding Subdivisions (2-a),
3 (2-b), and (6-a) to read as follows:

4 (2) "Common promotional plan" means any plan or scheme
5 of operation undertaken by a single subdivider or developer or a
6 group of subdividers or developers acting in concert, either
7 personally or through an agent, to offer for sale or lease lots when
8 the land is:

9 (A) contiguous or part of the same area of land;

10 or

11 (B) known, designated, or advertised as a common
12 unit or by a common name.

13 (2-a) "Develop" means a structural improvement or
14 man-made change to a lot intended for residential use undertaken to
15 improve, enhance, or otherwise make suitable real property for
16 purposes of sale, resale, or lease.

17 (2-b) "Developer" means a person who owns any interest
18 in real property and directly or indirectly develops real property
19 in the ordinary course of business or as part of a common
20 promotional plan.

21 (6-a) "Lot of record" means:

22 (A) a lot, the boundaries of which were
23 established by a plat recorded in the office of the county clerk
24 before September 1, 1989, that has not been subdivided after
25 September 1, 1989; or

26 (B) a lot, the boundaries of which were
27 established by a metes and bounds description in a deed of

1 conveyance, a contract of sale, or other executory contract to
2 convey real property that has been legally executed and recorded in
3 the office of the county clerk before September 1, 1989, that has
4 not been subdivided after September 1, 1989.

5 SECTION 3. Section 232.024(b), Local Government Code, is
6 amended to read as follows:

7 (b) If any part of a plat applies to land intended for
8 residential housing and any part of that land lies in a floodplain,
9 the commissioners court shall not approve the plat unless:

10 (1) the subdivision is developed in compliance with
11 the minimum requirements of the National Flood Insurance Program
12 and local regulations or orders adopted under Section 16.315, Water
13 Code; and

14 (2) the plat evidences a restrictive covenant
15 prohibiting ~~[as required by this subsection. The restrictive~~
16 ~~covenant shall prohibit]~~ the construction of residential housing in
17 any area of the subdivision that is in a floodplain unless the
18 housing is developed in compliance with the minimum requirements of
19 ~~[qualifies for insurance under]~~ the National Flood Insurance
20 Program and local regulations or orders adopted under Section
21 16.315, Water Code ~~[Act of 1968 (42 U.S.C. Sections 4001 through~~
22 ~~4127)]~~.

23 SECTION 4. Section 232.028(b), Local Government Code, is
24 amended to read as follows:

25 (b) On the commissioners court's own motion or on the
26 written request of a subdivider, an owner or resident of a lot in a
27 subdivision, or an entity that provides a utility service, the

1 commissioners court shall make the following determinations
2 regarding the land in which the entity or commissioners court is
3 interested that is located within the jurisdiction of the county:

4 (1) whether a plat has been prepared and whether it has
5 been reviewed and approved by the commissioners court;

6 (2) whether water service facilities have been
7 constructed or installed to service the lot or subdivision under
8 Section 232.023 and are fully operable;

9 (3) whether sewer service facilities have been
10 constructed or installed to service the lot or subdivision under
11 Section 232.023 and are fully operable, or if septic systems are
12 used, whether the lot is served by a permitted on-site sewage
13 facility or lots in the subdivision can be adequately and legally
14 served by septic systems under Section 232.023; and

15 (4) whether electrical and gas facilities, if
16 available, have been constructed or installed to service the lot or
17 subdivision under Section 232.023.

18 SECTION 5. Section 232.029, Local Government Code, is
19 amended by amending Subsections (b), (c), (d), (e), and (i) and
20 adding Subsections (k) and (l) to read as follows:

21 (b) Except as provided by Subsection (c) or Section
22 232.037(c), a utility may not serve or connect any subdivided land
23 with electricity or gas unless the entity receives a determination
24 from the county commissioners court under Sections 232.028(b)(2)
25 and (3) [~~Section 232.028(b)(2)~~] that adequate water and sewer
26 services have been installed to service the lot or subdivision.

27 (c) An electric, gas, water, or sewer service utility may

1 serve or connect subdivided land with water, sewer, electricity,
2 gas, or other utility service regardless of whether the utility
3 receives a certificate issued by the commissioners court under
4 Section 232.028(a) or receives a determination from the
5 commissioners court under Section 232.028(b) if the utility is
6 provided with a certificate issued by the commissioners court that
7 states that:

8 (1) the subdivided land:

9 (A) was sold or conveyed by a subdivider or
10 developer [~~to the person requesting service~~] by any means of
11 conveyance, including a contract for deed or executory contract:

12 (i) before September 1, 1995; or

13 (ii) before September 1, 1999, if the
14 subdivided land on August 31, 1999, was located in the
15 extraterritorial jurisdiction of a municipality as determined by
16 Chapter 42;

17 (B) has not been subdivided after September 1,
18 1995, or September 1, 1999, as applicable under Paragraph (A) [~~is~~
19 ~~located in a subdivision in which the utility has previously~~
20 ~~provided service]; and~~

21 (C) is the site of construction of a residence,
22 evidenced by at least the existence of a completed foundation, that
23 was begun[+]

24 [~~(i) on or before May 1, 1997; or~~

25 [~~(ii)] on or before May 1, 2003; and~~

26 (D) has had adequate sewer services installed to
27 service the lot or dwelling; or

1 (2) the subdivided land is a lot of record and has
2 adequate sewer services installed that are fully operable to
3 service the lot or dwelling~~[, if the subdivided land on August 31,~~
4 ~~1999, was located in the extraterritorial jurisdiction of a~~
5 ~~municipality as determined by Chapter 42; or~~

6 ~~[(2) the land was not subdivided after September 1,~~
7 ~~1995, and:~~

8 ~~[(A) water service is available within 750 feet~~
9 ~~of the subdivided land; or~~

10 ~~[(B) water service is available more than 750~~
11 ~~feet from the subdivided land and the extension of water service to~~
12 ~~the land may be feasible, subject to a final determination by the~~
13 ~~water service provider].~~

14 (d) A utility may provide utility service to subdivided land
15 described by Subsection (c)(1) or (2) only if the person requesting
16 service:

17 (1) is not the land's subdivider or developer or the
18 subdivider's or developer's agent; and

19 (2) provides to the utility a certificate described by
20 Subsection (c) ~~[(c)(1)]~~.

21 (e) A person requesting service may obtain a certificate
22 under Subsection (c)(1) or (2) only if the person is the owner or
23 purchaser of the subdivided land and provides to the commissioners
24 court documentation containing ~~[either]~~:

25 (1) ~~[documentation containing:~~
26 ~~[(A)]~~ a copy of the means of conveyance or other
27 documents that show that the land was sold or conveyed by a

1 subdivider or developer before September 1, 1995, before September
2 1, 1999, or before September 1, 1989, as applicable under
3 Subsection (c);

4 (2) [~~to the person requesting service:~~

5 [~~(i) before September 1, 1995; or~~

6 [~~(ii) before September 1, 1999, if the~~
7 ~~subdivided land on August 31, 1999, was located in the~~
8 ~~extraterritorial jurisdiction of a municipality as determined by~~
9 ~~Chapter 42; and~~

10 [~~(B)~~] a notarized affidavit by that person
11 requesting service under Subsection (c)(1) that states that
12 construction of a residence on the land, evidenced by at least the
13 existence of a completed foundation, was begun[+]

14 [~~(i) on or before May 1, 1997; or~~

15 [~~(ii)~~] on or before May 1, 2003, and the
16 request for utility connection or service is to connect or serve a
17 residence described by Subsection (c)(1)(C);

18 (3) [~~, if the subdivided land on August 31, 1999, was~~
19 ~~located in the extraterritorial jurisdiction of a municipality as~~
20 ~~determined by Chapter 42; or~~

21 [~~(2)~~] a notarized affidavit by the person requesting
22 service that states that the subdivided land has not been further
23 subdivided after[+]

24 [~~(A) the property was sold or conveyed to that~~
25 ~~person:~~

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

27 [~~(ii) before~~] September 1, 1999, or

1 September 1, 1989, as applicable under Subsection (c); and

2 (4) evidence that adequate sewer service or facilities
3 have been installed and are fully operable to service the lot or
4 dwelling from an entity described by Section 232.021(14) or the
5 authorized agent responsible for the licensing or permitting of
6 on-site sewage facilities under Chapter 366, Health and Safety Code
7 ~~[if the subdivided land on August 31, 1999, was located in the~~
8 ~~extraterritorial jurisdiction of a municipality as determined by~~
9 ~~Chapter 42; and~~

10 ~~[(B) construction of a residence on the land,~~
11 ~~evidenced by at least the existence of a completed foundation, was~~
12 ~~begun:~~

13 ~~[(i) on or before May 1, 1997; or~~

14 ~~[(ii) on or before May 1, 2003, if the~~
15 ~~subdivided land on August 31, 1999, was located in the~~
16 ~~extraterritorial jurisdiction of a municipality as determined by~~
17 ~~Chapter 42].~~

18 (i) The prohibition established by this section shall not
19 prohibit a water, sewer, [an] electric, or gas utility from
20 providing water, sewer, electric, or gas utility connection or
21 service to a lot ~~[being]~~ sold, conveyed, or purchased through a
22 contract for deed or executory contract or other device by a
23 subdivider or developer prior to July 1, 1995, or September 1, 1999,
24 if on August 31, 1999, the subdivided land was located in the
25 extraterritorial jurisdiction of a municipality that has adequate
26 sewer services installed that are fully operable to service the lot
27 ~~[which is located within a subdivision where the utility has~~

1 ~~previously established service]~~ and was subdivided by a plat
2 approved prior to September 1, 1989.

3 (k) Except as provided by Subsection (l), this section does
4 not prohibit a water or sewer utility from providing water or sewer
5 utility connection or service to a residential dwelling that:

6 (1) is provided water or wastewater facilities under
7 or in conjunction with a federal or state funding program designed
8 to address inadequate water or wastewater facilities in colonias or
9 to residential lots located in a county described by Section
10 232.022(a)(1);

11 (2) is an existing dwelling identified as an eligible
12 recipient for funding by the funding agency providing adequate
13 water and wastewater facilities or improvements;

14 (3) when connected, will comply with the minimum state
15 standards for both water and sewer facilities and as prescribed by
16 the model subdivision rules adopted under Section 16.343, Water
17 Code; and

18 (4) is located in a project for which the municipality
19 with jurisdiction over the project or the approval of plats within
20 the project area has approved the improvement project by order,
21 resolution, or interlocal agreement under Chapter 791, Government
22 Code, if applicable.

23 (l) A utility may not serve any subdivided land with water
24 utility connection or service under Subsection (k) unless the
25 entity receives a determination from the county commissioners court
26 under Section 232.028(b)(3) that adequate sewer services have been
27 installed to service the lot or dwelling.

1 SECTION 6. Sections 232.031(a) and (b), Local Government
2 Code, are amended to read as follows:

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

8 (b) Not later than the 30th day after the date a lot is sold,
9 a subdivider or developer shall record with the county clerk all
10 sales contracts, including the attached disclosure statement
11 required by Section 232.033, leases, and any other documents that
12 convey an interest in the subdivided land.

13 SECTION 7. Sections 232.035(a) and (b), Local Government
14 Code, are amended to read as follows:

15 (a) A subdivider or developer or an agent of a subdivider or
16 developer may not cause, suffer, allow, or permit a lot to be sold
17 in a subdivision if the subdivision has not been platted as required
18 by this subchapter.

19 (b) Notwithstanding any other remedy at law or equity, a
20 subdivider or developer or an agent of a subdivider or developer may
21 not cause, suffer, allow, or permit any part of a subdivision over
22 which the subdivider or developer or an agent of the subdivider or
23 developer has control, or a right of ingress and egress, to become a
24 public health nuisance as defined by Section 341.011, Health and
25 Safety Code.

26 SECTION 8. Section 242.036(a), Local Government Code, is
27 amended to read as follows:

1 (a) A subdivider or developer commits an offense if the
2 subdivider or developer knowingly fails to file a plat or replat
3 required by this subchapter. An offense under this subsection is a
4 Class A misdemeanor.

5 SECTION 9. Section 232.038(a), Local Government Code, is
6 amended to read as follows:

7 (a) Except as provided by Subsection (b), a person who has
8 purchased or is purchasing a lot after July 1, 1995, in a
9 subdivision for residential purposes that does not have water and
10 sewer services as required by this subchapter and is located in an
11 economically distressed area, as defined by Section 17.921, Water
12 Code, from a subdivider or developer, may bring suit in the district
13 court in which the property is located or in a district court in
14 Travis County to:

15 (1) declare the sale of the property void and require
16 the subdivider or developer to return the purchase price of the
17 property; and

18 (2) recover from the subdivider or developer:

19 (A) the market value of any permanent
20 improvements the person placed on the property;

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

23 (C) court costs; and

24 (D) reasonable attorney's fees.

25 SECTION 10. Sections 232.040(a), (b), and (c), Local
26 Government Code, are amended to read as follows:

27 (a) A subdivision plat must accurately reflect the

1 subdivision as it develops. If there is any change, either by the
2 intentional act of the subdivider or developer or by the forces of
3 nature, including changes in the size or dimension of lots or the
4 direction or condition of the roads, a plat must be revised in
5 accordance with Section 232.041.

6 (b) Except as provided by Subsection (c), a lot in a
7 subdivision may not be sold if the lot lacks water and sewer
8 services as required by this subchapter unless the lot is platted or
9 replatted as required by this subchapter. A subdivider or
10 developer or agent of a subdivider or developer may not transfer a
11 lot through an executory contract or other similar conveyance to
12 evade the requirements of this subchapter. The prohibition in this
13 subsection includes the sale of a lot:

14 (1) by a subdivider or developer who regains
15 possession of a lot previously exempt under Subsection (c) through
16 the exercise of a remedy described in Section 5.061, Property Code;
17 or

18 (2) for which it is shown at a proceeding brought in
19 the district court in which the property is located that the sale of
20 a lot otherwise exempt under Subsection (c) was made for the purpose
21 of evading the requirements of this subchapter.

22 (c) Subsection (b) does not apply to [~~if~~] a seller other
23 than a subdivider, developer, or agent of a subdivider or developer
24 [~~resides on the lot~~].

25 SECTION 11. Section 232.029(f), Local Government Code, is
26 repealed.

27 SECTION 12. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2007.