

## **BILL ANALYSIS**

C.S.S.B. 2253  
By: Zaffirini  
Border & Intergovernmental Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Since 1989, the legislature has passed legislation pertaining to the regulation of colonias, with the intention of stopping the proliferation of colonias by unscrupulous developers in border and economically distressed counties. The most significant changes for border counties occurred in 1995, when the legislature enacted provisions that tightened restrictions on existing colonias and prohibited the sale of any residential lot without adequate water and sewer facilities.

With limited enforcement tools available, restrictions on the connection of utilities provided a solution to enforcement by the local government. However, many of these restrictions have resulted in an undue hardship on the purchasers of the properties that the laws were meant to protect and have resulted in further victimization, rather than simply preventing more victims of unscrupulous developers.

Currently, colonias are limited to providing only electricity or gas services to lots platted before 1989. Therefore, individual lots are required to now be re-platted before water or sewer services are connected. The result is not only an undue financial burden to re-plat the entire tract of land, but also the limitation of the ability to systematically phase in water and sewer services to areas that need it most.

C.S.S.B. 2253 amends current law relating to the authority of certain municipalities and counties to regulate platting requirements near an international border.

C.S.S.B. 2253 also establishes a county development permit in order to enable border counties to take a proactive role in the prevention of colonias and to provide an enforcement tool to ensure that new construction or substantial improvement is undertaken in a manner conforming with existing state laws or county orders governing land use and development activities, such as platting requirements, water and sewer facilities, floodplain management, building set-backs, and dwelling limitations.

### **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 Section 212.012, Local Government Code, by amending Subsections (a), (c), (d), (e), and (f) and adding Subsections (j) and (k), as follows:

(a) Prohibits an entity described by Subsection (b) (providing that the prohibition established by Subsection (a) applies only to certain entities), except as provided by Subsection (c), (d), or (j), from serving or connecting any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115 (Certification Regarding Compliance with Plat Requirements).

(c) Deletes existing text authorizing an entity described by Subsection (b) 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 if the municipal authority responsible for approving plats issues a certificate stating that the land meets certain conditions. Makes nonsubstantive changes.

(d) Authorizes an entity described by Subsection (b), in a county to which Subchapter B (Subdivision Platting Requirements in County Near International Border), Chapter 232 (County Regulation of Subdivisions), applies, to serve or connect land with water, sewer, electricity, gas, or other utility service that is located in the extraterritorial jurisdiction of a municipality regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, if the municipal authority responsible for approving plats issues a certificate stating that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider by any means of conveyance, including a contract for deed or executory contract before a certain date in a certain county;

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

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before a certain date in a certain county; and

(D) has had adequate sewer services installed to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366 (On-Site Sewage Disposal Systems), Health and Safety Code;

(2) the subdivided land is a lot of record as defined by Section 232.021(6-a) that is located in a county defined by Section 232.022(a)(1) (relating to Subchapter B only applying to a county any part of which is located within 50 miles of an international border) and has adequate sewer services installed that are fully operable to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code; or

(3) the land was not subdivided after a certain date, in a certain county, 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.

(e) Authorizes an entity described by Subsection (b) to provide utility service to land described by Subsection (d)(1), (2), or (3), rather than Subsection (c)(4)(A) (relating to the authorization of an entity to serve certain utilities under certain conditions), only if the person requesting service is not the land's subdivider or the subdivider's agent, and provides to the entity a certificate described by Subsection (d), rather than Subsection (c)(4)(A).

(f) Authorizes a person requesting service to obtain a certificate under Subsection (d)(1), (2), or (3), rather than Subsection (c)(4)(A), only if the person is the owner or purchaser of the subdivided land and provides to the municipal authority responsible for approving plats documentation containing:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider before September 1, 1995, before September 1, 1999, or before September 1, 2005, as applicable under Subsection (d), rather than sold or conveyed to the person requesting service before the certain dates as applicable, 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 May, 1, 1997, or on or before September 1, 2005, as applicable;

(2) for a certificate issued under Subsection (d)(1), a notarized affidavit by the person requesting service 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 May 1, 2003, in a county defined by Section 232.022(a)(1) or September 1, 2005, in a county defined by Section 232.022(a)(2) (relating to Subchapter B applying only to a certain county), and the request for utility connection or service is to connect or serve a residence described by Subsection (d)(1)(C), rather than a notarized affidavit by the person requesting service that states that the property was sold or conveyed to that person before September 1, 1995, or before September 1, 2005, as applicable and that construction of a residence on the land, evidenced by at least the existence of a complete foundation, was begun on or before May 1, 1997, on or before September 1, 2005, as applicable;

(3) a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Subsection (d); and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Subsection (b) or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

Deletes existing Subsection (f) relating to the authorization of a person requesting service to obtain a certificate under Subsection (c)(4)(B) (relating to a certificate stating that the land was not subdivided after certain dates) only under a certain condition. Makes nonsubstantive changes.

(j) Provides that this section, except as provided by Subsection (k), does not prohibit a water or sewer utility from providing in a county defined by Section 232.022(a)(1) water or sewer utility connection or service to a residential dwelling that:

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

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

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343 (Minimum State Standards and Model Political Subdivision Rules), Water Code; and

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

(k) Prohibits a utility from serving any subdivided land with water utility connection or service under Subsection (j) unless the entity receives a determination that adequate

sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity described by Subsection (b), or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

SECTION 2. Amends Section 232.021, Local Government Code, by adding Subdivision (6-a) and amending Subdivision (12), as follows:

(6-a) Defines "lot of record."

(12) Redefines "subdivider."

SECTION 3. Amends Section 232.024(b), Local Government Code, as follows:

(b) Prohibits the commissioners court, if any part of a plat applies to land intended for residential housing and any part of that land lies in a floodplain, from approving the plat unless:

(1) the subdivision is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315 (Political Subdivisions; Compliance with Federal Requirements), Water Code; and

(2) the plat evidences a restrictive covenant prohibiting, rather than a restrictive covenant as required by this subsection, the construction of residential housing in any area of the subdivision that is in a floodplain unless the housing is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code. Deletes existing text requiring that the restrictive covenant prohibit the construction unless the housing qualifies for insurance under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4127).

SECTION 4. Amends Section 232.028(b), Local Government Code, as follows:

(b) Requires the commissioners court, on the commissioners court's own motion or on the written request of a certain person or entity, to make certain determinations regarding the land in which the entity or commissioners court is interested that is located within the jurisdiction of the county.

SECTION 5. Amends Section 232.029, Local Government Code, by amending Subsections (b), (c), (d), (e), and (i) and adding Subsections (n) and (o), as follows:

(b) Prohibits a utility, except as provided by Subsections (c) and (k) (relating to the authorization of a utility, under certain conditions, to provide service) or Section 232.037(c) (relating to the authorization of any resident under certain conditions to file a motion), from serving or connecting any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Sections 232.028(b)(2) and (3), rather than Section 232.028(b)(2), that adequate water and sewer services have been installed to service the lot or subdivision.

(c) Authorizes certain utilities to serve or connect subdivided land with certain utility services regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a) (relating to the requiring the commissioners court to issue an approval) or receives a determination from the commissioners court under Section 232.028(b) if the utility is provided with a certificate issued by the commissioners court that states that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider, rather than to the person requesting service, by any means of conveyance, including a contract for deed or executory contract before a certain date;

(B) has not been subdivided after September 1, 1995, or September 1, 1999, as applicable under Paragraph (A), rather than located in a subdivision in which the utility has previously provided service;

(C) 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, 2003, rather than on or before May 1, 1997; and

(D) has had adequate sewer services installed to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code;

(2) the subdivided land is a lot of record and has adequate sewer services installed that are fully operable to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code, rather than if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42 (Extraterritorial Jurisdiction of Municipalities); or

(3) Creates this subsection from existing text relating to certain characteristics of the subdivided land. Makes a nonsubstantive change.

(d) Authorizes a utility to provide utility service to subdivided land described by Subsection (c)(1), (2), or (3) only if the person requesting service is not the land's subdivider or the subdivider's agent, and provides to the utility a certificate described by Subsection (c), rather than (c)(1).

(e) Authorizes a person requesting service to obtain a certificate under Subsection (c)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the commissioners court documentation containing:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider or developer before September 1, 1995, or before September 1, 1999, as applicable under Subsection (c);

(2) a notarized affidavit by that person requesting service under Subsection (c)(1) 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 May 1, 2003, and the request for utility connection or service is to connect or serve a residence described by Subsection (c)(1)(C);

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

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Section 232.021(14) (relating to the definition of "utility") or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code. Deletes existing text requiring a person to provide to the commissioners court certain documentation that certain actions were taken or occurred on or before certain dates. Makes nonsubstantive and conforming changes.

(i) Requires that the prohibition established by this section not prohibit a water, sewer, electric, or gas utility from providing water, sewer, 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 prior to July 1, 1995, or September 1, 1999, if on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality that has adequate sewer services installed that are fully operable to service the lot, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code, rather than which is located within a subdivision where the utility has previously established service, and was subdivided by a plat approved prior to September 1, 1989. Makes nonsubstantive and conforming changes.

(n) Provides that this section, except as provided by Subsection (o), does not prohibit a water or sewer utility from providing water or sewer utility connection or service to a residential dwelling that:

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

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

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

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

(o) Prohibits a utility from serving any subdivided land with water utility connection or service under Subsection (n) unless the entity receives a determination from the county commissioners court under Section 232.028(b)(3) (relating to whether sewer service facilities have been constructed or installed for a certain service) that adequate sewer services have been installed to service the lot or dwelling.

SECTION 6. Repealer: Section 232.029(f) (relating to authorizing a person requesting service to obtain a certain certificate under certain conditions), Local Government Code.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2009.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The committee substitute varies from the original in that it limits the road requirements in counties to 18 feet. The substitute also allows for the advertising of properties where the plat has not yet been approved.

Section 9 of the substitute, relating to a county development permit defines "development or develop" for the section to mean a new construction or substantial improvement of any structure;

Adds a section to Chapter 232, Local Government Code to require a county development permit for new structures and modifications to existing structures on tracts of land that are more than five acres but not more than 10 acres. Directs county commissioners courts to oversee the development process or designate another entity for that purpose. Requires that a development

permit is to be issued only if a person has complied with all state laws and rules, orders, or regulations requirements relating to flood insurance, utility connections, and water and sewer facilities or will comply through development. Allows commissioners courts to charge reasonable fees to cover the administrative costs of the development permit process and outlines procedures to be followed when a development permit application is denied or an applicant has a grievance. Specifies that an application is considered complete when all applicable information and fees are received by the county. Specifies that a person commits an offense if they fail to obtain a development permit in accordance with this section or knowingly fails to comply with rules, regulations or orders adopted in accordance with this section, including knowingly violating the prohibition on occupancy. Specifies that the county is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this section from occurring or continuing to occur.