

1-1 By: Guillen, Raymond (Senate Sponsor - Lucio) H.B. No. 1604
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on
1-4 International Relations and Trade; May 21, 2011, reported
1-5 adversely, with favorable Committee Substitute by the following
1-6 vote: Yeas 4, Nays 0; May 21, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1604 By: Lucio

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

1-10 relating to the regulation of land development, including county
1-11 building code standards for new residential construction, and sales
1-12 in certain counties and municipalities; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The purpose of the changes to Section 232.037,
1-15 Local Government Code, is to allow the state and certain counties to
1-16 be affected parties in claims against unscrupulous developers who
1-17 violate subdivision platting requirements under Subchapter B,
1-18 Chapter 232, Local Government Code, because the state and counties
1-19 may reasonably be expected to mitigate or ameliorate the conditions
1-20 created by those developers.

1-21 SECTION 2. Section 232.0031, Local Government Code, is
1-22 amended to read as follows:

1-23 Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. A county
1-24 may not impose under Section 232.003 a higher standard for streets
1-25 or roads in a subdivision than the county imposes on itself for the
1-26 construction of new streets or roads with a similar type and amount
1-27 of traffic.

1-28 SECTION 3. Section 232.022(d), Local Government Code, is
1-29 amended to read as follows:

1-30 (d) This subchapter does not apply if:

1-31 (1) all [each] of the lots of the subdivision are more
1-32 than [is] 10 [or more] acres; and

1-33 (2) restrictions are included in each deed that
1-34 prohibit each lot from being further subdivided into lots intended
1-35 to be used for residential purposes and notice of the restrictions
1-36 are included in each recorded plat.

1-37 SECTION 4. Section 232.023, Local Government Code, is
1-38 amended by amending Subsection (a) and adding Subsection (a-1) to
1-39 read as follows:

1-40 (a) A subdivider of land must have a plat of the subdivision
1-41 prepared if at least one of the lots of the subdivision is five
1-42 acres or less. A commissioners court by order may require each
1-43 subdivider of land to prepare a plat if at least one of the lots of a
1-44 subdivision is more than five acres but not more than 10 acres.

1-45 (a-1) A subdivision of a tract under this section
1-46 [subsection] includes a subdivision of real property by any method
1-47 of conveyance, including a contract for deed, oral contract,
1-48 contract of sale, or other type of executory contract, regardless
1-49 of whether the subdivision is made by using a metes and bounds
1-50 description.

1-51 SECTION 5. Subchapter B, Chapter 232, Local Government
1-52 Code, is amended by adding Section 232.0315 to read as follows:

1-53 Sec. 232.0315. NOTICE OF WATER AND WASTEWATER REQUIREMENTS
1-54 BY COUNTIES. (a) This section applies only to a county that sells:

1-55 (1) under Section 34.01, Tax Code, real property
1-56 presumed to be for residential use under Section 232.022; or

1-57 (2) under Section 3, Part VI, Texas Rules of Civil
1-58 Procedure, and Chapter 34, Civil Practice and Remedies Code, real
1-59 property presumed to be for residential use under Section 232.022,
1-60 taken by virtue of a writ of execution.

1-61 (b) A county shall include in the public notice of sale of
1-62 the property and the deed conveying the property a statement
1-63 substantially similar to the following:

2-1 "THIS SALE IS BEING CONDUCTED PURSUANT TO STATUTORY OR
2-2 JUDICIAL REQUIREMENTS. _____ (NAME OF COUNTY) AND THE SHERIFF'S
2-3 DEPARTMENT ARE ACTING ONLY AS CONDUITS OF INFORMATION. BIDDERS
2-4 WILL BID ON THE RIGHTS, TITLE, AND INTERESTS, IF ANY, IN THE REAL
2-5 PROPERTY OFFERED.

2-6 "THE PROPERTY IS SOLD AS IS, WHERE IS, AND WITHOUT ANY
2-7 WARRANTY, EITHER EXPRESS OR IMPLIED. NEITHER THE COUNTY NOR THE
2-8 SHERIFF'S DEPARTMENT WARRANTS OR MAKES ANY REPRESENTATIONS ABOUT
2-9 THE PROPERTY'S TITLE, CONDITION, HABITABILITY, MERCHANTABILITY, OR
2-10 FITNESS FOR A PARTICULAR PURPOSE. BUYERS ASSUME ALL RISKS.

2-11 "IN SOME SITUATIONS, A LOT OF FIVE ACRES OR LESS IS PRESUMED
2-12 TO BE INTENDED FOR RESIDENTIAL USE. HOWEVER, IF THE PROPERTY LACKS
2-13 WATER OR WASTEWATER SERVICE, THE PROPERTY MAY NOT QUALIFY FOR
2-14 RESIDENTIAL USE. A POTENTIAL BUYER WHO WOULD LIKE MORE INFORMATION
2-15 SHOULD MAKE ADDITIONAL INQUIRIES OR CONSULT WITH PRIVATE COUNSEL."

2-16 (c) The statement required by Subsection (b) must be:

2-17 (1) printed:
2-18 (A) in accordance with the language requirements
2-19 of Section 232.025; and

2-20 (B) in 14-point boldface type or 14-point
2-21 uppercase typewritten letters; and

2-22 (2) read aloud at the sale, in accordance with the
2-23 language requirements of Section 232.025, by an agent of the
2-24 county.

2-25 (d) A sale conducted in violation of this section is void.

2-26 SECTION 6. Section 232.037, Local Government Code, is
2-27 amended by amending Subsection (a) and adding Subsection (e) to
2-28 read as follows:

2-29 (a) The attorney general, or the district attorney,
2-30 criminal district attorney, county attorney with felony
2-31 responsibilities, or county attorney of the county may take any
2-32 action necessary in a court of competent jurisdiction on behalf of
2-33 the state, an affected county subject to this subchapter, or
2-34 affected ~~[on behalf of]~~ residents to:

2-35 (1) enjoin the violation or threatened violation of
2-36 the model rules adopted under Section 16.343, Water Code;

2-37 (2) enjoin the violation or threatened violation of a
2-38 requirement of this subchapter or a rule adopted by the
2-39 commissioners court under this subchapter;

2-40 (3) recover civil or criminal penalties, attorney's
2-41 fees, litigation costs, and investigation costs; ~~and~~

2-42 (4) require platting or replatting under Section
2-43 232.040;

2-44 (5) recover funds paid to the subdivider or an agent of
2-45 the subdivider, with interest;

2-46 (6) freeze the assets of the subdivider or an agent of
2-47 the subdivider; and

2-48 (7) void or rescind contracts.

2-49 (e) If the state or a county is a party to the claim, funds
2-50 recovered under Subsection (a)(5) must be divided between the
2-51 affected residents and the governmental entity or entities, with 50
2-52 percent of the recovery to be paid to the affected residents and the
2-53 other 50 percent to be paid to the governmental entity or entities.
2-54 Multiple governmental entities that are party to the claim must
2-55 divide money received under this subsection equally among the
2-56 entities.

2-57 SECTION 7. Section 232.072, Local Government Code, is
2-58 amended by amending Subsection (a) and adding Subsection (a-1) to
2-59 read as follows:

2-60 (a) The owner of a tract of land that divides the tract in
2-61 any manner that creates lots of five acres or less intended for
2-62 residential purposes must have a plat of the subdivision prepared.
2-63 A commissioners court by order may require each subdivider of land
2-64 to prepare a plat if at least one of the lots of a subdivision is
2-65 more than five acres but not more than 10 acres.

2-66 (a-1) A subdivision of a tract under this section includes a
2-67 subdivision of real property by any method of conveyance, including
2-68 a contract for deed, oral contract, contract of sale, or other type
2-69 of executory contract, regardless of whether the subdivision is

3-1 made by using a metes and bounds description.
3-2 SECTION 8. Subchapter C, Chapter 232, Local Government
3-3 Code, is amended by adding Section 232.0805 to read as follows:

3-4 Sec. 232.0805. SUIT BY PRIVATE PERSON IN ECONOMICALLY
3-5 DISTRESSED AREA. A person who has purchased or is purchasing a lot
3-6 in a subdivision for residential purposes that does not have water
3-7 and sewer services as required by this subchapter and is located in
3-8 an economically distressed area, as defined by Section 17.921,
3-9 Water Code, from a subdivider may bring suit in the district court
3-10 in which the property is located or in a district court in Travis
3-11 County to:

3-12 (1) declare the sale of the property void, require the
3-13 subdivider to return the purchase price of the property, and
3-14 recover from the subdivider:

3-15 (A) the market value of any permanent
3-16 improvements the person placed on the property;

3-17 (B) actual expenses incurred as a direct result
3-18 of the failure to provide adequate water and sewer facilities;

3-19 (C) court costs; and

3-20 (D) reasonable attorney's fees; or

3-21 (2) enjoin a violation or threatened violation of
3-22 Section 232.072, require the subdivider to plat or amend or replat
3-23 an existing plat under Section 232.011 or 232.081, and recover from
3-24 the subdivider:

3-25 (A) actual expenses incurred as a direct result
3-26 of the failure to provide adequate water and sewer facilities;

3-27 (B) court costs; and

3-28 (C) reasonable attorney's fees.

3-29 SECTION 9. Section 233.151, Local Government Code, is
3-30 amended to read as follows:

3-31 Sec. 233.151. DEFINITIONS. (a) In this subchapter:

3-32 (1) "New[, "new] residential construction" includes:

3-33 (A) [~~(1) residential~~] construction of a
3-34 residential dwelling [~~single-family house or duplex~~] on a vacant
3-35 lot; and

3-36 (B) [~~(2)~~] construction of an addition to an
3-37 existing residential dwelling or unit of a residential dwelling
3-38 [~~single-family house or duplex~~], if the addition will increase the
3-39 square footage or value of the existing residential dwelling or
3-40 unit, as applicable, [~~building~~] by more than 50 percent.

3-41 (2) "Residential dwelling" means a building
3-42 containing one to three individual units to be occupied for
3-43 residential purposes by one or more individuals and includes a
3-44 single-family dwelling, duplex, or triplex.

3-45 (b) The term "new residential construction" does not
3-46 include a structure that is constructed in accordance with Chapter
3-47 1201, Occupations Code, or a modular home constructed in accordance
3-48 with Chapter 1202, Occupations Code.

3-49 SECTION 10. Section 233.153, Local Government Code, is
3-50 amended to read as follows:

3-51 Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a) The
3-52 commissioners court of a county by order may require new [New]
3-53 residential construction [~~of a single-family house or duplex~~] in
3-54 the unincorporated area of the [a] county to [~~which this subchapter~~
3-55 ~~applies shall~~] conform to the version of the International
3-56 Residential Code published as of May 1, 2008, or the version of the
3-57 International Residential Code that is applicable in the county
3-58 seat of that county.

3-59 (b) Standards required under this subchapter apply only to
3-60 new residential construction that begins after September 1, 2011
3-61 [2009].

3-62 (c) If a municipality located within a county to which this
3-63 subchapter applies has adopted a building code in the
3-64 municipality's extraterritorial jurisdiction, the building code
3-65 adopted by the municipality controls and building code standards
3-66 under this subchapter have no effect in the municipality's
3-67 extraterritorial jurisdiction, provided that the municipality:

3-68 (1) actively and diligently enforces the
3-69 municipality's adopted building code within its extraterritorial

4-1 jurisdiction; and
4-2 (2) establishes a process to inform utilities
4-3 providing service in the municipality's extraterritorial
4-4 jurisdiction of the prevailing building code.

4-5 (d) This subchapter may not be construed to:
4-6 (1) ~~[require prior approval by the county before the~~
4-7 ~~beginning of new residential construction;~~

4-8 ~~[(2)] authorize the commissioners court of a county to~~
4-9 ~~adopt or enforce zoning regulations; or~~
4-10 (2) [(3)] affect the application of the provisions of
4-11 Subchapter B, Chapter 232, to land development.

4-12 (e) In the event of a conflict between this subchapter and
4-13 Subchapter B, Chapter 232, the more stringent requirements
4-14 [provisions of Subchapter B, Chapter 232,] control.

4-15 ~~[(f) A county may not charge a fee to a person subject to~~
4-16 ~~standards under this subchapter to defray the costs of enforcing~~
4-17 ~~the standards.]~~

4-18 SECTION 11. Subchapter F, Chapter 233, Local Government
4-19 Code, is amended by adding Section 233.1531 to read as follows:

4-20 Sec. 233.1531. BUILDING PERMITS. (a) The commissioners
4-21 court of a county to which this subchapter applies may, by order,
4-22 establish a building permit requirement to promote safe and uniform
4-23 building, plumbing, and electrical standards and to enforce the
4-24 building codes the county has adopted. If a commissioners court
4-25 adopts an order to establish a building permit requirement, the
4-26 county shall establish a mechanism by which the county issues a
4-27 building permit if the person submitting the application for the
4-28 permit:

4-29 (1) files information relating to the location of the
4-30 residence;

4-31 (2) files the building plans for the residence; and

4-32 (3) complies with the applicable regulations relating
4-33 to the issuance of the permit.

4-34 (b) A county may adopt rules it considers necessary to
4-35 administer its duties under this section and charge a reasonable
4-36 fee, not to exceed \$500 per application, to defray the costs of
4-37 administering its duties under this section.

4-38 (c) The county shall deposit fees collected under this
4-39 section in an account in its general fund and dedicate the fees to
4-40 the building permit program. The funds in the account may be used
4-41 only for the purpose of administering the building permit program.

4-42 SECTION 12. Section 233.154(a), Local Government Code, is
4-43 amended to read as follows:

4-44 (a) A person who builds new residential construction
4-45 ~~[described by Section 233.153]~~ shall have the construction
4-46 inspected to ensure building code compliance in accordance with
4-47 this section as follows:

4-48 (1) for new residential construction on a vacant lot,
4-49 the following [a minimum of three] inspections must be performed
4-50 during the construction project to ensure code compliance, as
4-51 applicable, at the following stages of construction:

4-52 (A) the foundation stage, including [before] the
4-53 placement of concrete;

4-54 (B) the framing, electrical, plumbing, and
4-55 mechanical systems stage, before covering with drywall or other
4-56 interior wall covering; and

4-57 (C) on completion of the new residential
4-58 construction [of the residence];

4-59 (2) for new residential construction of an addition to
4-60 an existing residential dwelling ~~[residence]~~ as described by
4-61 Section 233.151(a)(1)(B) [233.151(a)(2)], the inspections under
4-62 Subdivision (1) must be performed as necessary based on the scope of
4-63 work of the construction project; and

4-64 (3) for new residential construction on a vacant lot
4-65 and for construction of an addition to an existing residential
4-66 dwelling [residence], the builder:

4-67 (A) is responsible for contracting to perform the
4-68 inspections required by this subsection with an inspector certified
4-69 by the International Code Council in the discipline [+]

5-1 ~~[(i) a licensed engineer,~~
5-2 ~~[(ii) a registered architect,~~
5-3 ~~[(iii) a professional inspector licensed by~~
5-4 ~~the Texas Real Estate Commission,~~
5-5 ~~[(iv) a plumbing inspector employed by a~~
5-6 ~~municipality and licensed by the Texas State Board of Plumbing~~
5-7 ~~Examiners,~~
5-8 ~~[(v) a building inspector employed by a~~
5-9 ~~political subdivision; or~~
5-10 ~~[(vi) an individual certified as a~~
5-11 ~~residential combination inspector by the International Code~~
5-12 ~~Council]; and~~

5-13 (B) may use the same inspector for all the
5-14 required inspections or a different inspector for each required
5-15 inspection.

5-16 SECTION 13. Subchapter F, Chapter 233, Local Government
5-17 Code, is amended by adding Section 233.1541 to read as follows:

5-18 Sec. 233.1541. OCCUPANCY OF RESIDENCE; CONNECTION OF
5-19 UTILITIES. (a) A utility may not serve or connect a residential
5-20 dwelling or unit of a residential dwelling with water, sewer,
5-21 electricity, or gas service unless the entity receives a
5-22 determination from the commissioners court that the residential
5-23 dwelling or unit:

- 5-24 (1) has been inspected in accordance with this
5-25 subchapter;
- 5-26 (2) has passed all inspections required by this
5-27 subchapter; and
- 5-28 (3) complies with applicable on-site sewage
5-29 regulations.

5-30 (b) The commissioners court shall:

- 5-31 (1) make the determination under Subsection (a) not
5-32 later than the 20th regular business day after the date it receives
5-33 a request for a determination;
- 5-34 (2) issue the certificate of determination of
5-35 inspection, if appropriate, not later than the 10th day after the
5-36 date the determination is made; and
- 5-37 (3) provide a certificate of occupancy, or other
5-38 relevant authorizing certificate, to a utility as proof of
5-39 compliance with required building codes.

5-40 SECTION 14. Section 233.155, Local Government Code, is
5-41 amended to read as follows:

5-42 Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) If proper
5-43 notice is not submitted in accordance with Sections 233.154(b) and
5-44 (c), the county may take any or all of the following actions:

- 5-45 (1) refer the inspector to the appropriate regulatory
5-46 authority for discipline;
- 5-47 (2) in a suit brought by the appropriate attorney
5-48 representing the county in the district court, obtain appropriate
5-49 injunctive relief to prevent a violation or threatened violation of
5-50 a standard or notice required under this subchapter from continuing
5-51 or occurring; or
- 5-52 (3) refer the builder for prosecution under Section
5-53 233.157.

5-54 (b) The attorney general, or the district attorney,
5-55 criminal district attorney, county attorney with felony
5-56 responsibility, or county attorney of the county may take any
5-57 action necessary in a court of competent jurisdiction on behalf of
5-58 the state or on behalf of residents to:

- 5-59 (1) enjoin the violation or threatened violation of a
5-60 requirement of this subchapter or an order, rule, or standard
5-61 adopted by the commissioners court under this subchapter;
- 5-62 (2) recover civil or criminal penalties, attorney's
5-63 fees, litigation costs, and investigative costs;
- 5-64 (3) require correction of the noncomplying
5-65 conditions; and
- 5-66 (4) recover actual expenses incurred by the owner of
5-67 the residential dwelling as a result of the failure to build in
5-68 accordance with the adopted standards or take corrective actions.

5-69 (c) The attorney general, at the request of the district or

6-1 county attorney with jurisdiction, may conduct a criminal
6-2 prosecution under Section 233.157.

6-3 (d) During the pendency of any enforcement action brought,
6-4 any resident of an affected residential dwelling, or the attorney
6-5 general, district attorney, or county attorney on behalf of the
6-6 resident, may file a motion against the provider of utilities to
6-7 halt termination of pre-existing utility services. The services
6-8 may not be terminated if the court makes an affirmative finding
6-9 after hearing the motion that termination poses a threat to public
6-10 health, safety, or welfare of the resident.

6-11 (e) This section does not prohibit a utility from
6-12 disconnecting service without prior notice when a known dangerous
6-13 condition exists for as long as the condition exists. A disconnect
6-14 without notice shall be performed pursuant to rules approved by the
6-15 appropriate regulatory authority.

6-16 SECTION 15. Section 233.157, Local Government Code, is
6-17 amended to read as follows:

6-18 Sec. 233.157. OFFENSES; PENALTY; EXCEPTION. (a) A person
6-19 commits an offense if the person fails to provide proper notice in
6-20 accordance with Section 233.154 [~~Sections 233.154(b) and (c)~~].

6-21 (b) A person commits an offense if the person violates a
6-22 rule or order adopted under this subchapter.

6-23 (c) A person commits an offense if the person constructs new
6-24 residential construction that does not comply with a standard
6-25 adopted under this subchapter.

6-26 (d) Except as provided by Subsection (e), an [~~An~~] offense
6-27 under this section is a Class C misdemeanor.

6-28 (e) If it is shown at trial of an offense that the defendant
6-29 has previously been convicted of an offense three or more times
6-30 under this subchapter, the offense is a Class B misdemeanor.

6-31 (f) Venue for prosecution for a violation under this section
6-32 is in the county in which any element of the violation is alleged to
6-33 have occurred or in Travis County.

6-34 (g) It is an exception to the application of this section:

6-35 (1) that the residential dwelling or unit was
6-36 constructed before the effective date of this subchapter; or

6-37 (2) that:

6-38 (A) the person is an owner-occupant of a
6-39 residential dwelling or unit of a residential dwelling that is
6-40 classified by the Texas Department of Housing and Community Affairs
6-41 as a low-income household;

6-42 (B) the violation related to a building standard
6-43 or building code for that dwelling or unit; and

6-44 (C) the county:

6-45 (i) did not make available to the person a
6-46 grant or loan in an amount sufficient to cure the violation; or

6-47 (ii) made available to the person a loan
6-48 that was sufficient to cure the violation but that caused the
6-49 housing expenses of the person to exceed 30 percent of the person's
6-50 net income.

6-51 [~~(c) An individual who fails to provide proper notice in
6-52 accordance with Sections 233.154(b) and (c) is not subject to a
6-53 penalty under this subsection if:~~

6-54 (1) the new residential construction is built by the
6-55 individual or the individual acts as the individual's own
6-56 contractor; and

6-57 (2) the individual intends to use the residence as
6-58 the individual's primary residence.]

6-59 SECTION 16. Subchapter F, Chapter 233, Local Government
6-60 Code, is amended by adding Section 233.158 to read as follows:

6-61 Sec. 233.158. PROHIBITION ON USE OF STATE MONEY TO
6-62 REMEDiate OR SUBSIDIZE SUBSTANDARD HOUSING. A county may not apply
6-63 for or receive state money to remediate or mitigate deficiencies in
6-64 substandard housing that are associated with new residential
6-65 construction commenced on or after September 1, 2011, unless the
6-66 county has adopted an order under Section 233.153(a) and is
6-67 enforcing the provisions of this subchapter.

6-68 SECTION 17. Section 16.343(g), Water Code, is amended to
6-69 read as follows:

7-1 (g) Before an application for funds under Section 15.407 or
7-2 Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be
7-3 considered by the board, if the area for which the funds are
7-4 proposed to be used is located:

7-5 (1) in a municipality, the municipality must adopt and
7-6 enforce the model rules pursuant to this section;

7-7 (2) in the extraterritorial jurisdiction of a
7-8 municipality, the applicant must demonstrate that the model rules
7-9 have been adopted and are enforced in the extraterritorial
7-10 jurisdiction by either the municipality or the county; or

7-11 (3) outside the extraterritorial jurisdiction of a
7-12 municipality:

7-13 (A) the county must adopt and enforce the model
7-14 rules pursuant to this section; and

7-15 (B) the applicant must demonstrate that the
7-16 county has complied with Paragraph (A) [a political subdivision
7-17 must adopt the model rules pursuant to this section. If the
7-18 applicant is a district, nonprofit water supply corporation, or
7-19 colonia, the applicant must be located in a city or county that has
7-20 adopted such rules. Applicants for funds under Section 15.407 or
7-21 Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may not
7-22 receive funds under those provisions unless the applicable
7-23 political subdivision adopts and enforces the model rules].

7-24 SECTION 18. Section 232.0315, Local Government Code, as
7-25 added by this Act, applies only to a sale for which public notice is
7-26 required on or after the effective date of this Act. A sale for
7-27 which public notice is required before the effective date of this
7-28 Act is covered by the law in effect when the public notice was
7-29 provided, and the former law is continued in effect for that
7-30 purpose.

7-31 SECTION 19. The changes in law made by this Act to Sections
7-32 232.022, 232.023, and 232.072, Local Government Code, apply only to
7-33 a subdivision plat application submitted for approval on or after
7-34 the effective date of this Act. A subdivision plat application
7-35 submitted for approval before the effective date of this Act is
7-36 governed by the law in effect when the application was submitted,
7-37 and the former law is continued in effect for that purpose.

7-38 SECTION 20. A county is not required to adopt an order to be
7-39 eligible for state money as required by Section 233.158, Local
7-40 Government Code, as added by this Act, until September 1, 2012.

7-41 SECTION 21. This Act takes effect September 1, 2011.

7-42 * * * * *