

1-1 By: Lucio S.B. No. 1363  
1-2 (In the Senate - Filed March 9, 2011; March 22, 2011, read  
1-3 first time and referred to Committee on International Relations and  
1-4 Trade; April 6, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 6, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1363 By: Lucio

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

1-10 relating to county and municipal land development regulations;  
1-11 providing a penalty.

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

1-13 SECTION 1. Section 233.151, Local Government Code, is  
1-14 amended to read as follows:

1-15 Sec. 233.151. DEFINITIONS. (a) In this subchapter:

1-16 (1) "New~~[, "new]~~ residential construction" includes:

1-17 (A) ~~[(1) residential]~~ construction of a  
1-18 residential dwelling ~~[single-family house or duplex]~~ on a vacant  
1-19 lot; and

1-20 (B) ~~[(2)]~~ construction of an addition to an  
1-21 existing residential dwelling or unit of a residential dwelling  
1-22 ~~[single-family house or duplex]~~, if the addition will increase the  
1-23 square footage or value of the existing residential dwelling or  
1-24 unit, as applicable, ~~[building]~~ by more than 50 percent.

1-25 (2) "Residential dwelling" means a building  
1-26 containing one to three individual units to be occupied for  
1-27 residential purposes by one or more individuals and includes a  
1-28 single-family dwelling, duplex, or triplex.

1-29 (b) The term "new residential construction" does not  
1-30 include a structure that is constructed in accordance with Chapter  
1-31 1201, Occupations Code, or a modular home constructed in accordance  
1-32 with Chapter 1202, Occupations Code.

1-33 SECTION 2. Section 233.153, Local Government Code, is  
1-34 amended to read as follows:

1-35 Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a) The  
1-36 commissioners court of a county by order may require new [New]  
1-37 residential construction [of a single-family house or duplex] in  
1-38 the unincorporated area of the [a] county to [which this subchapter  
1-39 applies shall] conform to the version of the International  
1-40 Residential Code published as of May 1, 2008, or the version of the  
1-41 International Residential Code that is applicable in the county  
1-42 seat of that county.

1-43 (b) Standards required under this subchapter apply only to  
1-44 new residential construction that begins after the effective date  
1-45 of the commissioners court order [September 1, 2009].

1-46 (c) If a municipality located within a county to which this  
1-47 subchapter applies has adopted a building code in the  
1-48 municipality's extraterritorial jurisdiction, the building code  
1-49 adopted by the municipality controls and building code standards  
1-50 under this subchapter have no effect in the municipality's  
1-51 extraterritorial jurisdiction, provided that the municipality  
1-52 actively and diligently enforces the municipality's adopted  
1-53 building code within its extraterritorial jurisdiction.

1-54 (d) This subchapter may not be construed to:

1-55 (1) ~~[require prior approval by the county before the~~  
1-56 ~~beginning of new residential construction;~~

1-57 ~~[(2)]~~ authorize the commissioners court of a county to  
1-58 adopt or enforce zoning regulations; or

1-59 (2) ~~[(3)]~~ affect the application of the provisions of  
1-60 Subchapter B, Chapter 232, to land development.

1-61 (e) In the event of a conflict between this subchapter and  
1-62 Subchapter B, Chapter 232, the more stringent requirements  
1-63 [provisions of Subchapter B, Chapter 232,] control.

2-1 ~~[(f) A county may not charge a fee to a person subject to~~  
2-2 ~~standards under this subchapter to defray the costs of enforcing~~  
2-3 ~~the standards.]~~

2-4 SECTION 3. Subchapter F, Chapter 233, Local Government  
2-5 Code, is amended by adding Section 233.1531 to read as follows:

2-6 Sec. 233.1531. BUILDING PERMITS. (a) The commissioners  
2-7 court of a county to which this subchapter applies may, by order,  
2-8 establish a building permit requirement to promote safe and uniform  
2-9 building, plumbing, and electrical standards and to enforce the  
2-10 building codes the county has adopted. If a commissioners court  
2-11 adopts an order to establish a building permit requirement, the  
2-12 county shall establish a mechanism by which the county issues a  
2-13 building permit if the person submitting the application for the  
2-14 permit:

2-15 (1) files information relating to the location of the  
2-16 residence;

2-17 (2) files the building plans for the residence; and

2-18 (3) complies with the applicable regulations relating  
2-19 to the issuance of the permit.

2-20 (b) A county may adopt rules it considers necessary to  
2-21 administer its duties under this section and charge a reasonable  
2-22 fee, not to exceed \$500 per application, to defray the costs of  
2-23 administering its duties under this section.

2-24 (c) The county shall deposit fees collected under this  
2-25 section in an account in its general fund and dedicate the fees to  
2-26 the building permit program. The funds in the account may be used  
2-27 only for the purpose of administering the building permit program.

2-28 SECTION 4. Subsection (a), Section 233.154, Local  
2-29 Government Code, is amended to read as follows:

2-30 (a) A person who builds new residential construction  
2-31 ~~[described by Section 233.153]~~ shall have the construction  
2-32 inspected to ensure building code compliance in accordance with  
2-33 this section as follows:

2-34 (1) for new residential construction on a vacant lot,  
2-35 the following ~~[a minimum of three]~~ inspections must be performed  
2-36 during the construction project to ensure code compliance, as  
2-37 applicable, at the following stages of construction:

2-38 (A) the foundation stage, including ~~[before]~~ the  
2-39 placement of concrete;

2-40 (B) the framing, electrical, plumbing, and  
2-41 mechanical systems stage, before covering with drywall or other  
2-42 interior wall covering; and

2-43 (C) on completion of the new residential  
2-44 construction ~~[of the residence];~~

2-45 (2) for new residential construction of an addition to  
2-46 an existing residential dwelling ~~[residence]~~ as described by  
2-47 Section 233.151(a)(1)(B) ~~[233.151(a)(2)]~~, the inspections under  
2-48 Subdivision (1) must be performed as necessary based on the scope of  
2-49 work of the construction project; and

2-50 (3) for new residential construction on a vacant lot  
2-51 and for construction of an addition to an existing residential  
2-52 dwelling ~~[residence]~~, the builder:

2-53 (A) is responsible for contracting to perform the  
2-54 inspections required by this subsection with an inspector certified  
2-55 by the International Code Council in the discipline ~~[+]~~

2-56 ~~[(i) a licensed engineer,~~

2-57 ~~[(ii) a registered architect,~~

2-58 ~~[(iii) a professional inspector licensed by~~  
2-59 ~~the Texas Real Estate Commission,~~

2-60 ~~[(iv) a plumbing inspector employed by a~~  
2-61 ~~municipality and licensed by the Texas State Board of Plumbing~~  
2-62 ~~Examiners,~~

2-63 ~~[(v) a building inspector employed by a~~  
2-64 ~~political subdivision; or~~

2-65 ~~[(vi) an individual certified as a~~  
2-66 ~~residential combination inspector by the International Code~~  
2-67 ~~Council]; and~~

2-68 (B) may use the same inspector for all the  
2-69 required inspections or a different inspector for each required

3-1 inspection.  
3-2 SECTION 5. Subchapter F, Chapter 233, Local Government  
3-3 Code, is amended by adding Section 233.1541 to read as follows:

3-4 Sec. 233.1541. OCCUPANCY OF RESIDENCE; CONNECTION OF  
3-5 UTILITIES. (a) A utility may not serve or connect a residential  
3-6 dwelling or unit of a residential dwelling with water, sewer,  
3-7 electricity, or gas service unless the entity receives a  
3-8 determination from the commissioners court that the residential  
3-9 dwelling or unit:

3-10 (1) has been inspected in accordance with this  
3-11 subchapter;

3-12 (2) has passed all inspections required by this  
3-13 subchapter; and

3-14 (3) complies with applicable on-site sewage  
3-15 regulations.

3-16 (b) The commissioners court shall:

3-17 (1) make the determination under Subsection (a) not  
3-18 later than the 20th regular business day after the date it receives  
3-19 a request for a determination; and

3-20 (2) issue the certificate of determination of  
3-21 inspection, if appropriate, not later than the 10th day after the  
3-22 date the determination is made.

3-23 SECTION 6. Section 233.155, Local Government Code, is  
3-24 amended to read as follows:

3-25 Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) If proper  
3-26 notice is not submitted in accordance with Sections 233.154(b) and  
3-27 (c), the county may take any or all of the following actions:

3-28 (1) refer the inspector to the appropriate regulatory  
3-29 authority for discipline;

3-30 (2) in a suit brought by the appropriate attorney  
3-31 representing the county in the district court, obtain appropriate  
3-32 injunctive relief to prevent a violation or threatened violation of  
3-33 a standard or notice required under this subchapter from continuing  
3-34 or occurring; or

3-35 (3) refer the builder for prosecution under Section  
3-36 233.157.

3-37 (b) The attorney general or the district attorney, criminal  
3-38 district attorney, county attorney with felony responsibility, or  
3-39 county attorney of the county may take any action necessary on  
3-40 behalf of the state or on behalf of residents, as applicable, to:

3-41 (1) enjoin the violation or threatened violation of a  
3-42 requirement of this subchapter or an order, rule, or standard  
3-43 adopted by a commissioners court under this subchapter;

3-44 (2) recover civil or criminal penalties, attorney's  
3-45 fees, litigation costs, and investigative costs;

3-46 (3) require correction of the noncomplying  
3-47 conditions; and

3-48 (4) recover actual expenses incurred by the owner of  
3-49 the residential dwelling as a result of the failure to build in  
3-50 accordance with the adopted standards or take corrective actions.

3-51 (c) The attorney general, at the request of the district or  
3-52 county attorney with jurisdiction, may conduct a criminal  
3-53 prosecution under Section 233.157.

3-54 (d) During the pendency of any enforcement action brought,  
3-55 any resident of an affected residential dwelling, or the attorney  
3-56 general, district attorney, or county attorney on behalf of the  
3-57 resident, may file a motion against the provider of utilities to  
3-58 halt termination of preexisting utility services. The services may  
3-59 not be terminated if the court makes an affirmative finding after  
3-60 hearing the motion that termination poses a threat to the health,  
3-61 safety, or welfare of the resident.

3-62 SECTION 7. Section 233.157, Local Government Code, is  
3-63 amended to read as follows:

3-64 Sec. 233.157. OFFENSES; PENALTY; EXCEPTION. (a) A person  
3-65 commits an offense if the person fails to provide proper notice in  
3-66 accordance with Section 233.154 [~~Sections 233.154(b) and (c)~~].

3-67 (b) A person commits an offense if the person violates a  
3-68 rule or order adopted under this subchapter.

3-69 (c) A person commits an offense if the person constructs new

4-1 residential construction that does not comply with a standard  
 4-2 adopted under this subchapter.

4-3 (d) Except as provided by Subsection (e), an [An] offense  
 4-4 under this section is a Class C misdemeanor.

4-5 (e) If it is shown at trial of an offense that the defendant  
 4-6 has previously been convicted of an offense three or more times  
 4-7 under this subchapter, the offense is a Class B misdemeanor.

4-8 (f) Venue for prosecution for a violation of this section is  
 4-9 in the county in which any element of the violation is alleged to  
 4-10 have occurred or in Travis County.

4-11 (g) It is an exception to the application of this section:

4-12 (1) that the residential dwelling or unit of a  
 4-13 residential dwelling was constructed before the effective date of  
 4-14 the commissioners court order under Section 233.153(a); or

4-15 (2) that:

4-16 (A) the person is an owner-occupant of a  
 4-17 residential dwelling or unit of a residential dwelling that is  
 4-18 classified by the Texas Department of Housing and Community Affairs  
 4-19 as a low-income household;

4-20 (B) the violation related to a building standard  
 4-21 or building code for that dwelling or unit; and

4-22 (C) the county:

4-23 (i) did not make available to the person a  
 4-24 grant or loan in an amount sufficient to cure the violation; or

4-25 (ii) made available to the person a loan  
 4-26 that was sufficient to cure the violation but that caused the  
 4-27 housing expenses of the person to exceed 30 percent of the person's  
 4-28 net income

4-29 ~~[(c) An individual who fails to provide proper notice in~~  
 4-30 ~~accordance with Sections 233.154(b) and (c) is not subject to a~~  
 4-31 ~~penalty under this subsection if:~~

4-32 ~~[(1) the new residential construction is built by the~~  
 4-33 ~~individual or the individual acts as the individual's own~~  
 4-34 ~~contractor; and~~

4-35 ~~[(2) the individual intends to use the residence as~~  
 4-36 ~~the individual's primary residence].~~

4-37 SECTION 8. Subchapter F, Chapter 233, Local Government  
 4-38 Code, is amended by adding Section 233.158 to read as follows:

4-39 Sec. 233.158. PROHIBITION ON USE OF STATE MONEY TO  
 4-40 REMEDiate OR SUBSIDIZE SUBSTANDARD HOUSING. A county may not apply  
 4-41 for or receive state money to remediate or mitigate deficiencies in  
 4-42 substandard housing that are associated with new residential  
 4-43 construction commenced on or after September 1, 2011, unless the  
 4-44 county has adopted a resolution under Section 233.153(a) and is  
 4-45 enforcing the provisions of this subchapter.

4-46 SECTION 9. Chapter 242, Local Government Code, is amended  
 4-47 by adding Subchapter B to read as follows:

4-48 SUBCHAPTER B. DEVELOPMENT REGULATIONS IN CERTAIN COUNTIES AND  
 4-49 MUNICIPALITIES

4-50 Sec. 242.051. APPLICABILITY. This subchapter applies only  
 4-51 to:

4-52 (1) a county that includes territory located within 50  
 4-53 miles of an international border; or

4-54 (2) a municipality located in that county if:

4-55 (A) the county does not exercise in the  
 4-56 municipality's extraterritorial jurisdiction the authority  
 4-57 described by this subchapter; and

4-58 (B) the county by resolution authorizes the  
 4-59 municipality to exercise in the municipality's extraterritorial  
 4-60 jurisdiction the authority described by this subchapter.

4-61 Sec. 242.052. REGULATORY AUTHORITY. (a) The  
 4-62 commissioners court of a county to which this subchapter applies  
 4-63 may, by order, regulate residential land development in the  
 4-64 unincorporated area of the county. The governing body of a  
 4-65 municipality to which this subchapter applies may, by ordinance,  
 4-66 regulate residential land development in the municipality's  
 4-67 extraterritorial jurisdiction. By this authority, the  
 4-68 commissioners court or governing body may prevent the proliferation  
 4-69 of colonias by:

5-1 (1) adopting regulations relating to:  
 5-2 (A) maximum densities, including the size of  
 5-3 lots;  
 5-4 (B) the height, number of stories, size, or  
 5-5 number of buildings or other structures that may be located on a lot  
 5-6 or tract;  
 5-7 (C) the location of buildings and other  
 5-8 structures on a lot or tract; and  
 5-9 (D) the preparation of a plan for utility  
 5-10 development, environmental effect and adaptation, utility  
 5-11 extension, and capacity planning and providing financial analysis  
 5-12 of said plan; and

5-13 (2) adopting and enforcing building codes as  
 5-14 authorized for counties under Subchapter F, Chapter 233, to promote  
 5-15 safe and uniform building, plumbing, and electrical standards.

5-16 (b) If a tract of land is appraised as agricultural or  
 5-17 open-space land by the appraisal district, the commissioners court  
 5-18 or governing body may not regulate land development on that tract  
 5-19 under the authority granted by Subsection (a)(1)(B), (a)(1)(C), or  
 5-20 (a)(2).

5-21 (c) The authority granted under this section does not  
 5-22 authorize the commissioners court or governing body to adopt an  
 5-23 order regulating commercial property that is uninhabitable.

5-24 (d) The authority granted under this section does not  
 5-25 authorize the commissioners court or governing body to adopt an  
 5-26 order that limits or otherwise impairs the rights of individuals or  
 5-27 entities in the exploration, development, or production of oil,  
 5-28 gas, or other minerals.

5-29 Sec. 242.053. MUNICIPAL ORDINANCE PREVAILS OVER COUNTY  
 5-30 ORDER. If an order adopted by the county under this subchapter  
 5-31 conflicts with an ordinance of a municipality, the municipal  
 5-32 ordinance prevails within the municipality's jurisdiction to the  
 5-33 extent of the conflict.

5-34 Sec. 242.054. EXISTING AUTHORITY UNAFFECTED. The authority  
 5-35 granted by this subchapter does not affect the authority of the  
 5-36 commissioners court or governing body to adopt an order or  
 5-37 ordinance under other law.

5-38 Sec. 242.055. INJUNCTION. The county or municipality, in a  
 5-39 suit brought by the appropriate attorney representing the county or  
 5-40 municipality in the district court, is entitled to appropriate  
 5-41 injunctive relief to prevent the violation or threatened violation  
 5-42 of the entity's order or ordinance adopted under this subchapter  
 5-43 from continuing or occurring.

5-44 Sec. 242.056. PENALTY. A person commits an offense if the  
 5-45 person violates a restriction or prohibition imposed by an order or  
 5-46 ordinance adopted under this subchapter. An offense under this  
 5-47 section is a Class C misdemeanor.

5-48 SECTION 10. The heading to Chapter 242, Local Government  
 5-49 Code, is amended to read as follows:

5-50 CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE  
 5-51 SUBDIVISIONS AND PROPERTY DEVELOPMENT [~~IN AND OUTSIDE~~  
 5-52 ~~MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION]~~

5-53 SECTION 11. Chapter 242, Local Government Code, is amended  
 5-54 by designating Sections 242.001, 242.0015, and 242.002 as  
 5-55 Subchapter A and adding a heading for Subchapter A to read as  
 5-56 follows:

5-57 SUBCHAPTER A. AUTHORITY TO REGULATE SUBDIVISIONS IN AND OUTSIDE  
 5-58 MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION

5-59 SECTION 12. A county is not required to adopt a resolution  
 5-60 to be eligible for state money as required by Section 233.158, Local  
 5-61 Government Code, as added by this Act, until September 1, 2012.

5-62 SECTION 13. This Act takes effect September 1, 2011.

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