

1-1 By: Zaffirini S.B. No. 2253
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on International Relations and
1-4 Trade; April 28, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 April 28, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2253 By: Seliger

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

1-10 relating to the authority of certain municipalities and counties to
1-11 regulate platting requirements near an international border.

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

1-13 SECTION 1. Section 212.012, Local Government Code, is
1-14 amended by amending Subsections (a), (c), (d), (e), and (f) and
1-15 adding Subsections (j) and (k) to read as follows:

1-16 (a) Except as provided by Subsection (c), (d), or (j), an
1-17 entity described by Subsection (b) may not serve or connect any land
1-18 with water, sewer, electricity, gas, or other utility service
1-19 unless the entity has been presented with or otherwise holds a
1-20 certificate applicable to the land issued under Section 212.0115.

1-21 (c) An entity described by Subsection (b) may serve or
1-22 connect land with water, sewer, electricity, gas, or other utility
1-23 service regardless of whether the entity is presented with or
1-24 otherwise holds a certificate applicable to the land issued under
1-25 Section 212.0115 if:

1-26 (1) the land is covered by a development plat approved
1-27 under Subchapter B or under an ordinance or rule relating to the
1-28 development plat;

1-29 (2) the land was first served or connected with
1-30 service by an entity described by Subsection (b)(1), (b)(2), or
1-31 (b)(3) before September 1, 1987; or

1-32 (3) the land was first served or connected with
1-33 service by an entity described by Subsection (b)(4), (b)(5), or
1-34 (b)(6) before September 1, 1989~~;~~ or

1-35 ~~[(4) the municipal authority responsible for~~
1-36 ~~approving plats issues a certificate stating that:~~

1-37 ~~[(A) the land:~~

1-38 ~~[(i) was sold or conveyed to the person~~
1-39 ~~requesting service by any means of conveyance, including a contract~~
1-40 ~~for deed or executory contract, before:~~

1-41 ~~[(a) September 1, 1995, in a county~~
1-42 ~~defined under Section 232.022(a)(1), or~~

1-43 ~~[(b) September 1, 2005, in a county~~
1-44 ~~defined under Section 232.022(a)(2),~~

1-45 ~~[(ii) is located in a subdivision in which~~
1-46 ~~the entity has previously provided service,~~

1-47 ~~[(iii) is located outside the limits of the~~
1-48 ~~municipality,~~

1-49 ~~[(iv) is located in a county to which~~
1-50 ~~Subchapter B, Chapter 232, applies, and~~

1-51 ~~[(v) is the site of construction of a~~
1-52 ~~residence, evidenced by at least the existence of a completed~~
1-53 ~~foundation, that was begun on or before:~~

1-54 ~~[(a) May 1, 1997, in a county defined~~
1-55 ~~under Section 232.022(a)(1), or~~

1-56 ~~[(b) September 1, 2005, in a county~~
1-57 ~~defined under Section 232.022(a)(2), or~~

1-58 ~~[(B) the land was not subdivided after September~~
1-59 ~~1, 1995, in a county defined under Section 232.022(a)(1), or~~
1-60 ~~September 1, 2005, in a county defined under Section 232.022(a)(2),~~
1-61 ~~and:~~

1-62 ~~[(i) water service is available within 750~~
1-63 ~~feet of the subdivided land, or~~

~~[(ii) 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].~~

(d) In a county to which Subchapter B, Chapter 232, applies, an entity described by Subsection (b) may 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:

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

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

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

(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:

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

(ii) September 1, 2005, in a county defined under Section 232.022(a)(2); 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 as defined by Section 232.021(6-a) that is located in a county defined by Section 232.022(a)(1) 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 September 1, 1995, in a county defined under Section 232.022(a)(1), or September 1, 2005, in a county defined under Section 232.022(a)(2), and:

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

(B) 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) An entity described by Subsection (b) may provide utility service to land described by Subsection (d)(1), (2), or (3) ~~[(c)(4)(A)]~~ only if the person requesting service:

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

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

(f) ~~[(e)]~~ A person requesting service may obtain a certificate under Subsection (d)(1), (2), or (3) ~~[(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 ~~[either]~~:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider ~~[to the person requesting service]~~ before September 1,

1995, before September 1, 1999, or before September 1, 2005, as applicable under Subsection (d)~~[, 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]; [or]~~

(2) for a certificate issued under Subsection (d)(1), 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 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), and the request for utility connection or service is to connect or serve a residence described by Subsection (d)(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, 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 [May 1, 1997, or on or before September 1, 2005, as applicable].

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

(j) Except as provided by Subsection (k), this section 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, 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.

(k) A utility may not serve 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. Section 232.021, Local Government Code, is amended by adding Subdivision (6-a) and amending Subdivision (12) to read as follows:

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

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

(B) a lot, the boundaries of which were established by a metes and bounds description in a deed of conveyance, a contract of sale, or other executory contract to convey real property that has been legally executed and recorded in the office of the county clerk before September 1, 1989, that has not been subdivided after September 1, 1989.

(12) "Subdivider" means an individual, firm, corporation, or other legal entity ~~[that owns any interest in land and]~~ that directly or indirectly subdivides land into lots for sale or lease as part of a common promotional plan in the ordinary course of business.

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

(b) If any part of a plat applies to land intended for residential housing and any part of that land lies in a floodplain, the commissioners court shall not approve 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, Water Code; and

(2) the plat evidences a restrictive covenant prohibiting [as required by this subsection. The restrictive covenant shall prohibit] 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 [qualifies for insurance under] the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code [Act of 1968 (42 U.S.C. Sections 4001 through 4127)].

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

(b) On the commissioners court's own motion or on the written request of a subdivider, an owner or resident of a lot in a subdivision, or an entity that provides a utility service, the commissioners court shall make the following determinations regarding the land in which the entity or commissioners court is interested that is located within the jurisdiction of the county:

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

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

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

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

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

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

(c) An electric, gas, water, or sewer service utility may serve or connect subdivided land with water, sewer, electricity, gas, or other utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a) 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 ~~[to the person requesting service]~~ by any means of conveyance, including a contract for deed or executory contract:

(i) before September 1, 1995; or
 (ii) before September 1, 1999, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42;

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

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

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

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

(3) [(2)] the land was not subdivided after September 1, 1995, and:

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

(B) 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.

(d) A utility may provide utility service to subdivided land described by Subsection (c)(1), (2), or (3) only if the person requesting service:

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

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

(e) A person requesting service may 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 ~~[either]~~:

(1) ~~[documentation containing:]~~
~~[(A)]~~ 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, or before September 1, 1999, as applicable under Subsection (c);

(2) [to the person requesting service:]
~~[(i) before September 1, 1995; or~~
~~[(ii) before September 1, 1999, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; and~~

~~[(B)]~~ 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[+]

~~[(i) on or before May 1, 1997; or~~
~~[(ii)] 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) [if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as

determined by Chapter 42, or

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

~~[(A) the property was sold or conveyed to that person+~~

~~[(i) before]~~ September 1, 1995,~~+~~ or
~~[(ii) before]~~ 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) or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code [if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; and

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

~~[(i) on or before May 1, 1997; or
 [(ii) on or before May 1, 2003, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42].~~

(i) The prohibition established by this section shall not prohibit a water, sewer, ~~an~~ electric, or gas utility from providing water, sewer, electric, or gas utility connection or service to a lot [being] 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, [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.

(n) Except as provided by Subsection (o), this section 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) A utility may not serve 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) that adequate sewer services have been installed to service the lot or dwelling.

SECTION 6. Subsection (f), Section 232.029, Local Government Code, is repealed.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

7-1 Act does not receive the vote necessary for immediate effect, this
7-2 Act takes effect September 1, 2009.

7-3 * * * * *