

LOCAL GOVERNMENT CODE

CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES

SUBCHAPTER B. DETERMINATION OF EXTRATERRITORIAL JURISDICTION

§ 42.021. Extent of Extraterritorial Jurisdiction

(a) The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

- (1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;
- (2) within one mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;
- (3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;
- (4) within 3 1/2 miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or
- (5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

(b) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located within five miles of those boundaries on the barrier island if the municipality has:

- (1) a population of 2,000 or more; and
- (2) territory located:
 - (A) entirely on a barrier island in the Gulf of Mexico; and
 - (B) within 30 miles of an international border.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987., Amended by HB 3325, eff. June 15, 2007.

NOTE: In border counties, for a city with a population of 5,000 or more (according to the most recent federal decennial census), the city's extraterritorial jurisdiction is extended by Local Govt. Code § 212.001 to five miles for the purposes of subdivision regulation under Subchapter A, Chapter 212, Local Government Code.

§ 212.001. Definitions

In this subchapter:

- (1) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42, except that for a municipality that has a population of 5,000 or more and is located in a county bordering the Rio Grande River, "extraterritorial jurisdiction" means the area outside the municipal limits but within five miles of those limits.
- (2) "Plat" includes a replat.

Added by Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987., Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989.

NOTE: Under Texas Government Code § 311.005 (3), "Population" means the population shown by the most recent federal decennial census.

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CHAPTER 41. MUNICIPAL BOUNDARIES

§ 41.001. Map of Municipal Boundaries and Extraterritorial Jurisdiction

(a) Each municipality shall prepare a map that shows the boundaries of the municipality and of its extraterritorial jurisdiction. A copy of the map shall be kept in the office of the secretary or clerk of the municipality. If the municipality has a municipal engineer, a copy of the map shall also be kept in the office of the engineer.

(b) If the municipality annexes territory, the map shall be immediately corrected to include the annexed territory. The map shall be annotated to indicate:

- (1) the date of annexation;
- (2) the number of the annexation ordinance, if any; and
- (3) a reference to the minutes or municipal ordinance records in which the ordinance is recorded in full.

(c) If the municipality's extraterritorial jurisdiction is expanded or reduced, the map shall be immediately corrected to indicate the change in the municipality's extraterritorial jurisdiction. The map shall be annotated to indicate:

- (1) the date the municipality's extraterritorial jurisdiction was changed;
- (2) the number of the ordinance or resolution, if any, by which the change was made; and
- (3) a reference to the minutes or municipal ordinance or resolution records in which the ordinance or resolution is recorded in full.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 970, § 1, eff. Sept. 1, 1997.

§ 41.0015. Notice of Municipal Boundary Change

(a) If an area is annexed to or disannexed from a municipality, the mayor or other presiding officer of the governing body of the municipality shall, within 30 days after the date of preclearance under Section 5, Federal Voting Rights Act (42 U.S.C. Sec. 1973c), of the annexation or disannexation, send to the county clerk of each county in which the municipality is located a certified copy of documents showing the change in boundaries.

(b) The county shall promptly correct to reflect the change in municipal boundaries any official county map kept by the county that would be affected by the change.

Added by Acts 1989, 71st Leg., ch. 1160, § 1, eff. Aug. 28, 1989.

CHAPTER 43. MUNICIPAL ANNEXATION

§ 43.907. Effect of Annexation on Colonias

(a) In this section, "colonia" means a geographic area that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood and that:

(1) has a majority population composed of individuals and families of low income and very low income, as defined by Section 2306.004, Government Code, and based on the federal Office of Management and Budget poverty index, and that meets the qualifications of an economically distressed area under Section 17.921, Water Code; or

(2) has the physical and economic characteristics of a colonia, as determined by the Texas Department of Housing and Community Affairs.

(b) A colonia that is annexed by a municipality remains eligible for five years after the effective date of the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred.

Added by Acts 1999, 76th Leg., ch. 218, § 1, eff. Sept. 1, 1999.

Renumbered from § 43.905 by Acts 2001, 77th Leg., ch. 1420, § 21.001 (84), eff. Sept. 1, 2001., Amended by SB 99, eff. June 15, 2007.

**CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE
SUBDIVISIONS IN AND OUTSIDE MUNICIPALITY'S EXTRATERRITORIAL
JURISDICTION**

Section

242.001. Regulation of Subdivisions in Extraterritorial Jurisdiction Generally.

242.0015. Arbitration Regarding Subdivision Regulation Agreement.

242.002. Regulation of Subdivisions in Populous Counties or Contiguous Counties.

§ 242.001. Regulation of Subdivisions in Extraterritorial Jurisdiction Generally

(a) This section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Subsections (b)-(g) do not apply:

- (1) within a county that contains extraterritorial jurisdiction of a municipality with a population of 1.9 million or more;
- (2) within a county within 50 miles of an international border, or to which Subchapter C, Chapter 232, applies; or
- (3) to a tract of land subject to a development agreement under Subchapter G, Chapter 212, or other provisions of this code.

(b) For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of the governmental entity authorized under Subsection (c) or (d) to regulate subdivisions in the area.

(c) Except as provided by Subsections (d)(3) and (4), a municipality and a county may not both regulate subdivisions and approve related permits in the extraterritorial jurisdiction of a municipality after an agreement under Subsection (d) is executed. The municipality and the county shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction. For a municipality in existence on September 1, 2001, the municipality and county shall enter into a written agreement under this subsection on or before April 1, 2002. For a municipality incorporated after September 1, 2001, the municipality and county shall enter into a written agreement under this subsection not later than the 120th day after the date the municipality incorporates. On reaching an agreement, the municipality and county shall certify that the agreement complies with the requirements of this chapter. The municipality and the county shall adopt the agreement by order, ordinance, or resolution. The agreement must be amended by the municipality and the county if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.009 or Chapter

232 does not affect any rights accrued under Chapter 245. The approval of the plat, any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

(d) An agreement under Subsection (c) may grant the authority to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of a municipality as follows:

- (1) the municipality may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities;
- (2) the county may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Sections 232.001-232.005, Subchapter B or C, Chapter 232, and other statutes applicable to counties;
- (3) the municipality and the county may apportion the area within the extraterritorial jurisdiction of the municipality with the municipality regulating subdivision plats and approving related permits in the area assigned to the municipality and the county regulating subdivision plats and approving related permits in the area assigned to the county; or
- (4) the municipality and the county may enter into an interlocal agreement that:

(A) establishes one office that is authorized to:

- (i) accept plat applications for tracts of land located in the extraterritorial jurisdiction;
- (ii) collect municipal and county plat application fees in a lump-sum amount; and
- (iii) provide applicants one response indicating approval or denial of the plat application; and

(B) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction.

(e) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by The Interlocal Cooperation Act, Chapter 791, Government Code.

(f) If a certified agreement between a county and municipality as required by Subsection (c) is not in effect on or before the applicable date prescribed by Section 242.0015(a), the municipality and the county must enter into arbitration as provided by Section 242.0015. If the arbitrator or arbitration panel, as applicable, has not reached a decision in the 60-day period as provided by Section 242.0015, the arbitrator or arbitration panel, as applicable, shall issue an interim decision regarding the regulation of plats and subdivisions and approval of related permits in the extraterritorial jurisdiction of the municipality. The interim decision shall provide for a single set of regulations and authorize a single entity to regulate plats and subdivisions. The interim decision remains in effect only until the arbitrator or arbitration panel reaches a final decision.

(g) If a regulation or agreement adopted under this section relating to plats and subdivisions of land or subdivision development establishes a plan for future roads that conflicts with a proposal or plan for future roads adopted by a metropolitan planning organization, the proposal or plan of the metropolitan planning organization prevails

(h) This subsection applies only to a county to which Subsections (b)-(g) do not apply, except that this subsection does not apply to a county subject to Section 242.002. For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of both the municipality and the county. If a municipal regulation and a county regulation relating to plats and subdivisions of land conflict, the more stringent regulation prevails. However, if one governmental entity requires a plat to be filed for the subdivision of a particular tract of land in the extraterritorial jurisdiction of the municipality and the other governmental entity does not require the filing of a plat for that subdivision, the authority responsible for approving plats for the governmental entity that does not require the filing shall issue on request of the subdivider a written certification stating that a plat is not required to be filed for that subdivision of the land. The certification must be attached to a plat required to be filed under this subsection.

(i) Property subject to pending approval of a preliminary or final plat application filed after September 1, 2002, that is released from the extraterritorial jurisdiction of a municipality shall be subject only to county approval of the plat application and related permits and county regulation of that plat. This subsection does not apply to the simultaneous exchange of extraterritorial jurisdiction between two or more municipalities or an exchange of extraterritorial jurisdiction that is contingent on the subsequent approval by the releasing municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, §§ 46(c), 87(n), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1428, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, § 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., chs. 736, § 2, and 1028, § 1, eff. Sept. 1, 2001.; Acts 2003, 78th Leg., ch. 523, § 1, 3(a), 4, eff. June 20, 2003.

§ 242.0015. Arbitration Regarding Subdivision Regulation Agreement.

(a) This section applies only to a county and a municipality that are required to make an agreement as described under Section 242.001(f). If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends 3.5 miles or more from the corporate boundaries of the municipality is not in effect on or before January 1, 2004, the parties must arbitrate the disputed issues. If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends less than 3.5 miles from the corporate boundaries of the municipality is not in effect on or before January 1, 2006, the parties must arbitrate the disputed issues. A party may not refuse to participate in arbitration requested under this section. An arbitration decision under this section is binding on the parties.

(b) The county and the municipality must agree on an individual to serve as arbitrator. If the county and the municipality cannot agree on an individual to serve as arbitrator, the county and the municipality shall each select an arbitrator and the arbitrators selected shall select a third

arbitrator.

(c) The third arbitrator selected under Subsection (b) presides over the arbitration panel.

(d) Not later than the 30th day after the date the county and the municipality are required to have an agreement in effect under Section 242.001(f), the arbitrator or arbitration panel, as applicable, must be selected.

(e) The authority of the arbitrator or arbitration panel is limited to issuing a decision relating only to the disputed issues between the county and the municipality regarding the authority of the county or municipality to regulate plats, subdivisions, or development plans.

(f) Each party is equally liable for the costs of an arbitration conducted under this section.

(g) The arbitrator or arbitration panel, as applicable, shall render a decision under this section not later than the 60th day after the date the arbitrator or arbitration panel is selected. If after a good faith effort the arbitrator or panel has not reached a decision as provided under this subsection, the arbitrator or panel shall continue to arbitrate the matter until the arbitrator or panel reaches a decision.

(h) A municipality and a county may not arbitrate the subdivision of an individual plat under this section.

Added by Acts 2003, 78th Leg., ch. 523, § 5, eff. June 20, 2003.

§ 242.002. Regulation of Subdivisions in Populous Counties or Contiguous Counties

(a) This section applies only to a county operating under Section 232.006.

(b) For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a subdivision plat may not be filed with the county clerk without the approval of the municipality.

(c) In the extraterritorial jurisdiction of a municipality, the municipality has exclusive authority to regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities.

(d) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, §§ 46(d), 87(o), eff. Aug. 28, 1989.; Acts 2001, 77th Leg., ch. 669, § 77, eff. Sept. 1, 2001

CHAPTER 212. MUNICIPAL REGULATION OF SUBDIVISIONS AND PROPERTY

DEVELOPMENT

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This booklet omits the following subchapters of Chapter 212:

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- SUBCHAPTER E. MORATORIUM ON PROPERTY DEVELOPMENT IN CERTAIN CIRCUMSTANCES
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SUBCHAPTER A. REGULATION OF SUBDIVISIONS

§ 212.001. Definitions

In this subchapter:

- (1) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42, except that for a municipality that has a population of 5,000 or more and is located in a county bordering the Rio Grande River, "extraterritorial jurisdiction" means the area outside the municipal limits but within five miles of those limits.
- (2) "Plat" includes a replat.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989.

§ 212.002. Rules

After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.0025. Chapter-wide Provision Relating to Regulation of Plats and Subdivisions in Extraterritorial Jurisdiction.

The authority of a municipality under this chapter relating to the regulation of plats or subdivisions in the municipality's extraterritorial jurisdiction is subject to any applicable limitation prescribed by an agreement under Section 242.001.

Added by Acts 2003, 78th Leg., ch. 523, § 6, June 20, 2003.

§ 212.003. Extension of Rules to Extraterritorial Jurisdiction

(a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 and other municipal ordinances relating to access to public roads or the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health. However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:

- (1) the use of any building or property for business, industrial, residential, or other purposes;
- (2) the bulk, height, or number of buildings constructed on a particular tract of land;
- (3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage;
- (4) the number of residential units that can be built per acre of land; or
- (5) the size, type, or method of construction of a water or wastewater facility that can be constructed to serve a developed tract of land if:

(A) the facility meets the minimum standards established for water or wastewater facilities by state and federal regulatory entities; and

(B) the developed tract of land is:

- (i) located in a county with a population of 2.8 million or more; and
- (ii) served by:

(a) on-site septic systems constructed before September 1, 2001, that fail to provide adequate services; or

(b) on-site water wells constructed before September 1, 2001, that fail to provide an adequate supply of safe drinking water.

(b) A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.

(c) The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 822, § 6, eff. Sept. 1, 1989, Acts 2001, 77th Leg., ch. 68, §1, eff. Sept. 1, 2001.; Acts 2003, 78th Leg., ch. 731, § 3, eff. Sept. 1, 2003.

NOTE: HB 3152 added the provision in subsection (a) above related to municipal restrictions on pumping, extracting, or using groundwater that is an actual or potential threat to human health. Under HB 3152, such municipal restrictions are allowed in association with a "municipal setting designation," which must be made through the procedures set out in new Subchapter W of Chapter 361, Health and Safety Code (§§ 361.801-361.808). See also new Local Govt. Code § 401.005.

§ 212.004. Plat Required

(a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. A division of land under this subsection does not include a division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated.

(b) To be recorded, the plat must:

- (1) describe the subdivision by metes and bounds;
- (2) locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part; and
- (3) state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

(c) The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds.

(d) The plat must be filed and recorded with the county clerk of the county in which the tract is located.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, § 3.02, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 1046, § 1, eff. Aug. 30, 1993.

§ 212.0045. Exception to Plat Requirement: Municipal Determination

(a) To determine whether specific divisions of land are required to be platted, a municipality

may define and classify the divisions. A municipality need not require platting for every division of land otherwise within the scope of this subchapter.

(b) In lieu of a plat contemplated by this subchapter, a municipality may require the filing of a development plat under Subchapter B if that subchapter applies to the municipality.

Added by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989.

§ 212.0046. Exception to Plat Requirement: Certain Property Abutting Aircraft Runway

An owner of a tract of land is not required to prepare a plat if the land:

- (1) is located wholly within a municipality with a population of 5,000 or less;
- (2) is divided into parts larger than 2-1/2 acres; and
- (3) abuts any part of an aircraft runway.

Added by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989.

§ 212.005. Approval by Municipality Required

The municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under this subchapter and that satisfies all applicable regulations.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 1046, § 2, eff. Aug. 30, 1993.

§ 212.006. Authority Responsible for Approval Generally

(a) The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.

(b) In a municipality with a population of more than 1.5 million, at least two members of the municipal planning commission, but not more than 25 percent of the membership of the commission, must be residents of the area outside the limits of the municipality and in which the municipality exercises its authority to approve subdivision plats.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989.

§ 212.0065. Delegation of Approval Responsibility

(a) The governing body of a municipality may delegate to one or more officers or employees of

the municipality or of a utility owned or operated by the municipality the ability to approve:

- (1) amending plats described by Section 212.016;
- (2) minor plats or replats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or
- (3) a replat under Section 212.0145 that does not require the creation of any new street or the extension of municipal facilities.

(b) The designated person or persons may, for any reason, elect to present the plat for approval to the municipal authority responsible for approving plats.

(c) The person or persons shall not disapprove the plat and shall be required to refer any plat which the person or persons refuse to approve to the municipal authority responsible for approving plats within the time period specified in Section 212.009.

Added by Acts 1989, 71st Leg., ch. 345, § 1, eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 92, § 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 566, § 1, eff. June 2, 1997; Acts 1999, 76th Leg., ch. 1130, § 2, eff. June 18, 1999.; Acts 2001, 77th Leg., ch. 402, § 13, eff. Sept. 1, 2001., Amended by HB 2281, eff. June 15, 2007.

§ 212.007. Authority Responsible for Approval: Tract in Extraterritorial Jurisdiction of More Than One Municipality

(a) For a tract located in the extraterritorial jurisdiction of more than one municipality, the authority responsible for approving a plat under this subchapter is the authority in the municipality with the largest population that under Section 212.006 has approval responsibility. The governing body of that municipality may enter into an agreement with any other affected municipality or with any other municipality having area that, if unincorporated, would be in the extraterritorial jurisdiction of the governing body's municipality delegating to the other municipality the responsibility for plat approval within specified parts of the affected area.

(b) Either party to an agreement under Subsection (a) may revoke the agreement after 20 years have elapsed after the date of the agreement unless the parties agree to a shorter period.

(c) A copy of the agreement shall be filed with the county clerk.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.008. Application for Approval

A person desiring approval of a plat must apply to and file a copy of the plat with the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.009. Approval Procedure

- (a) The municipal authority responsible for approving plats shall act on a plat within 30 days after the date the plat is filed. A plat is considered approved by the municipal authority unless it is disapproved within that period.
- (b) If an ordinance requires that a plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall act on the plat within 30 days after the date the plat is approved by the planning commission or is considered approved by the inaction of the commission. A plat is considered approved by the governing body unless it is disapproved within that period.
- (c) If a plat is approved, the municipal authority giving the approval shall endorse the plat with a certificate indicating the approval. The certificate must be signed by:
- (1) the authority's presiding officer and attested by the authority's secretary; or
 - (2) a majority of the members of the authority.
- (d) If the municipal authority responsible for approving plats fails to act on a plat within the prescribed period, the authority on request shall issue a certificate stating the date the plat was filed and that the authority failed to act on the plat within the period. The certificate is effective in place of the endorsement required by Subsection (c).
- (e) The municipal authority responsible for approving plats shall maintain a record of each application made to the authority and the authority's action taken on it. On request of an owner of an affected tract, the authority shall certify the reasons for the action taken on an application.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.010. Standards for Approval

- (a) The municipal authority responsible for approving plats shall approve a plat if:
- (1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;
 - (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;
 - (3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and
 - (4) it conforms to any rules adopted under Section 212.002.
- (b) However, the municipal authority responsible for approving plats may not approve a plat unless the plat and other documents have been prepared as required by Section 212.0105, if applicable.

§ 212.0101. Additional Requirements: Use of Groundwater

(a) If a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, the municipal authority responsible for approving plats by ordinance may require the plat application to have attached to it a statement that:

- (1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and
- (2) certifies that adequate groundwater is available for the subdivision.

(b) The Texas Commission on Environmental Quality by rule shall establish the appropriate form and content of a certification to be attached to a plat application under this section.

(c) The Texas Commission on Environmental Quality, in consultation with the Texas Water Development Board, by rule shall require a person who submits a plat under Subsection (a) to transmit to the Texas Water Development Board and any groundwater conservation district that includes in the district's boundaries any part of the subdivision information that would be useful in:

- (1) performing groundwater conservation district activities;
- (2) conducting regional water planning;
- (3) maintaining the state's groundwater database; or
- (4) conducting studies for the state related to groundwater.

Added by Acts 1999, 76th Leg., ch. 460, § 1, eff. Sept. 1, 1999., Amended by Acts 2001, 77th Leg., ch. 99, § 2(a), eff. Sept. 1, 2001., Amended by SB 662, eff. Sept. 1, 2007

§ 212.0105. Water and Sewer Requirements in Certain Counties

(a) This section applies only to a person who:

- (1) is the owner of a tract of land in a county in which a political subdivision that is eligible for and has applied for financial assistance through Subchapter K, Chapter 17, Water Code;*
- (2) divides the tract in a manner that creates any lots that are intended for residential purposes and are five acres or less; and
- (3) is required under this subchapter to have a plat prepared for the subdivision.

(b) The owner of the tract:

- (1) must:

(A) include on the plat or have attached to the plat a document containing a description of the water and sewer service facilities that will be constructed or installed to service the subdivision and a statement of the date by which the facilities will be fully operable; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat or on the document attached to the plat are in compliance with the model rules adopted under Section 16.343, Water Code; or

(2) must:

(A) include on the plat a statement that water and sewer service facilities are unnecessary for the subdivision; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that water and sewer service facilities are unnecessary for the subdivision under the model rules adopted under Section 16.343, Water Code.

(c) The governing body of the municipality may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the governing body finds the extension is reasonable and not contrary to the public interest. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services.

* Water Code, § 17.921 et seq.

Added by Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 422, § 7, eff. Sept. 1, 1991.; Acts 2005, 79th Leg., ch. 927, § 13, eff. Sept. 1, 2005.

§ 212.0106. Bond Requirements and Other Financial Guarantees in Certain Counties

(a) This section applies only to a person described by Section 212.0105(a).

(b) If the governing body of a municipality in a county described by Section 212.0105(a)(1)(A) or (B) requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Subsection

(c). The bond must:

(1) be payable to the presiding officer of the governing body or to the presiding officer's successors in office;

(2) be in an amount determined by the governing body to be adequate to ensure the proper construction or installation of the water and sewer service facilities to service the subdivision but not to exceed the estimated cost of the construction or installation of the facilities;

- (3) be executed with sureties as may be approved by the governing body;
- (4) be executed by a company authorized to do business as a surety in this state if the governing body requires a surety bond executed by a corporate surety; and
- (5) be conditioned that the water and sewer service facilities will be constructed or installed:

- (A) in compliance with the model rules adopted under Section 16.343, Water Code; and
- (B) within the time stated on the plat or on the document attached to the plat for the subdivision or within any extension of that time.

(c) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(d) If a letter of credit is used, it must:

- (1) list as the sole beneficiary the presiding officer of the governing body; and
- (2) be conditioned that the water and sewer service facilities will be constructed or installed:

- (A) in compliance with the model rules adopted under Section 16.343, Water Code; and
- (B) within the time stated on the plat or on the document attached to the plat for the subdivision or within any extension of that time.

Added by Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989.

§ 212.011. Effect of Approval on Dedication

(a) The approval of a plat is not considered an acceptance of any proposed dedication and does not impose on the municipality any duty regarding the maintenance or improvement of any dedicated parts until the appropriate municipal authorities make an actual appropriation of the dedicated parts by entry, use, or improvement.

(b) The disapproval of a plat is considered a refusal by the municipality of the offered dedication indicated on the plat.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.0115. Certification Regarding Compliance With Plat Requirements

(a) For the purposes of this section, land is considered to be within the jurisdiction of a municipality if the land is located within the limits or in the extraterritorial jurisdiction of the municipality.

(b) On the approval of a plat by the municipal authority responsible for approving plats, the authority shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the authority.

(c) On the written request of an owner of land, a purchaser of real property under contract for deed, executory contract, or other executory conveyance, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats shall make the following determinations regarding the owner's land or the land in which the entity or governing body is interested that is located within the jurisdiction of the municipality:

- (1) whether a plat is required under this subchapter for the land; and
- (2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authority.

(d) The request made under Subsection (c) must identify the land that is the subject of the request.

(e) If the municipal authority responsible for approving plats determines under Subsection (c) that a plat is not required, the authority shall issue to the requesting party a written certification of that determination. If the authority determines that a plat is required and that the plat has been prepared and has been reviewed and approved by the authority, the authority shall issue to the requesting party a written certification of that determination.

(f) The municipal authority responsible for approving plats shall make its determination within 20 days after the date it receives the request under Subsection (c) and shall issue the certificate, if appropriate, within 10 days after the date the determination is made.

(g) If both the municipal planning commission and the governing body of the municipality have authority to approve plats, only one of those entities need make the determinations and issue the certificates required by this section.

(h) The municipal authority responsible for approving plats may adopt rules it considers necessary to administer its functions under this section.

(i) The governing body of a municipality may delegate, in writing, the ability to perform any of the responsibilities under this section to one or more persons. A binding decision of the person or persons under this subsection is appealable to the municipal authority responsible for approving plats.

Added by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, § 3.03, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 567, § 1, eff. June 2, 1997.; Acts 2005, 79th Leg., ch. 978, §1, eff. Sept. 1, 2005.

§ 212.012. Connection of Utilities

(a) Except as provided by Subsection (c), an entity described by Subsection (b) may not serve or connect 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.

(b) The prohibition established by Subsection (a) applies only to:

- (1) a municipality and officials of a municipality that provides water, sewer, electricity, gas, or other utility service;
- (2) a municipally owned or municipally operated utility that provides any of those services;
- (3) a public utility that provides any of those services;
- (4) a water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides any of those services;
- (5) a county that provides any of those services; and
- (6) a special district or authority created by or under state law that provides any of those services.

(c) An entity described by Subsection (b) may 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:

- (1) the land is covered by a development plat approved under Subchapter B or under an ordinance or rule relating to the development plat;
- (2) the land was first served or connected with service by an entity described by Subsection (b)(1), (b)(2), or (b)(3) before September 1, 1987;
- (3) the land was first served or connected with service by an entity described by Subsection (b)(4), (b)(5), or (b)(6) before September 1, 1989; or
- (4) the municipal authority responsible for approving plats issues a certificate stating that:

(A) the land:

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

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

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

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

(iii) is located outside the limits of the municipality;

(iv) is located in a county to which Subchapter B, Chapter 232, applies;

and

(v) 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) May 1, 1997, in a county defined under Section 232.022(a)(1); or

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

(B) 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:

- (i) water service is available within 750 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) An entity described by Subsection (b) may provide utility service to land described by Subsection (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 (c)(4)(A).

(e) A person requesting service may obtain a certificate under Subsection (c)(4)(A) only if the person provides to the municipal authority responsible for approving plats either:

- (1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed to the person requesting service before September 1, 1995, or before September 1, 2005, 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; or
- (2) 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, 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.

(g) On request, the municipal authority responsible for approving plats shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the municipal authority relied in determining the legality of providing service.

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

(i) In this section:

- (1) "Foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.
- (2) "Subdivider" has the meaning assigned by Section 232.021.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1062, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 18.34, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, § 2, eff. Sept. 1, 1999.; Acts 2005, 79th Leg., ch. 708, § 1, eff. Sept. 1, 2005.

§ 212.013. Vacating Plat

(a) The proprietors of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat.

(b) If lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.

(c) The county clerk shall write legibly on the vacated plat the word "Vacated" and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.(d) On the execution and recording of the vacating instrument, the vacated plat has no effect.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.014. Replatting Without Vacating Preceding Plat

A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- (1) is signed and acknowledged by only the owners of the property being replatted;
- (2) is approved, after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard, by the municipal authority responsible for approving plats; and
- (3) does not attempt to amend or remove any covenants or restrictions.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.0145. Replatting Without Vacating Preceding Plat: Certain Subdivisions

(a) A replat of a part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

- (1) is signed and acknowledged by only the owners of the property being replatted; and
- (2) involves only property:
 - (A) of less than one acre that fronts an existing street;
 - (B) that is owned and used by a nonprofit corporation established to assist children in at-risk situations through volunteer and individualized attention.

(b) An existing covenant or restriction for property that is replatted under this section does not have to be amended or removed if:

- (1) the covenant or restriction was recorded more than 50 years before the date of the replat; and
- (2) the replatted property has been continuously used by the nonprofit corporation for at least 10 years before the date of the replat.

(c) Sections 212.014 and 212.015 do not apply to a replat under this section.

Added by Acts 1999, 76th Leg., ch. 1130, § 1, eff. June 18, 1999.

§ 212.015. Additional Requirements for Certain Replats

(a) In addition to compliance with Section 212.014, a replat without vacation of the preceding plat must conform to the requirements of this section if:

- (1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or
- (2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

(b) Notice of the hearing required under Section 212.014 shall be given before the 15th day before the date of the hearing by:

- (1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and
- (2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(c) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-fourths of the members present of the municipal planning commission or governing body, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the municipal planning commission or governing body, or both, prior to the close of the public hearing.

(d) In computing the percentage of land area under Subsection (c), the area of streets and alleys shall be included.

(e) Compliance with Subsections (c) and (d) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, §§ 2 to 5, eff. Aug 28, 1989; Acts 1993, 73rd Leg., ch. 1046, § 3, eff. Aug. 30, 1993.

§ 212.016. Amending Plat

(a) The municipal authority responsible for approving plats may approve and issue an amending plat, which may be recorded and is controlling over the preceding plat without vacation of that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

- (1) to correct an error in a course or distance shown on the preceding plat;
- (2) to add a course or distance that was omitted on the preceding plat;
- (3) to correct an error in a real property description shown on the preceding plat;
- (4) to indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
- (5) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- (6) to correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- (7) to correct an error in courses and distances of lot lines between two adjacent lots if:
 - (A) both lot owners join in the application for amending the plat;
 - (B) neither lot is abolished;
 - (C) the amendment does not attempt to remove recorded covenants or restrictions; and
 - (D) the amendment does not have a material adverse effect on the property rights of the other owners in the plat;
- (8) to relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
- (9) to relocate one or more lot lines between one or more adjacent lots if:
 - (A) the owners of all those lots join in the application for amending the plat;
 - (B) the amendment does not attempt to remove recorded covenants or restrictions; and
 - (C) the amendment does not increase the number of lots;
- (10) to make necessary changes to the preceding plat to create six or fewer lots in the

subdivision or a part of the subdivision covered by the preceding plat if:

- (A) the changes do not affect applicable zoning and other regulations of the municipality;
- (B) the changes do not attempt to amend or remove any covenants or restrictions; and
- (C) the area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of the municipality has approved, after a public hearing, as a residential improvement area; or

(11) to replat one or more lots fronting on an existing street if:

- (A) the owners of all those lots join in the application for amending the plat;
- (B) the amendment does not attempt to remove recorded covenants or restrictions;
- (C) the amendment does not increase the number of lots; and
- (D) the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

(b) Notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of an amending plat.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 92, § 2, eff. Aug. 28, 1995.

§ 212.017. Conflict of Interest; Penalty

(a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

- (1) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;
- (2) acts as a developer of the tract;
- (3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or \$5,000 or more of the fair market value of a business entity that:

- (A) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more; or
- (B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the municipal authority responsible for approving plats has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the municipal secretary or clerk.

(e) A member of the municipal authority responsible for approving plats commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the municipal authority responsible for approving plats unless the measure would not have passed the municipal authority without the vote of the member who violated this section.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, § 38, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, § 5.95(27), eff. Sept. 1, 1995.

§ 212.0175. Enforcement in Certain Counties; Penalty

(a) The attorney general may take any action necessary to enforce a requirement imposed by or under Section 212.0105 or 212.0106 or to ensure that water and sewer service facilities are constructed or installed to service a Subdivision in compliance with the model rules adopted under Section 16.343, Water Code.

(b) A person who violates Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat or on the document attached to the plat, as required by Section 212.0105, is subject to a civil penalty of not less than \$500 nor more than \$1,000 plus court costs and attorney's fees.

(c) An owner of a tract of land commits an offense if the owner knowingly or intentionally violates a requirement imposed by or under Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on a plat or on a document attached to a plat, as required by Section 212.0105. An offense under this subsection is a Class B misdemeanor.

(d) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Added by Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989.

§ 212.018. Enforcement in General

(a) At the request of the governing body of the municipality, the municipal attorney or any other attorney representing the municipality may file an action in a court of competent jurisdiction to:

- (1) enjoin the violation or threatened violation by the owner of a tract of land of a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter; or
- (2) recover damages from the owner of a tract of land in an amount adequate for the municipality to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter.

(b) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Added by Acts 1989, 71st Leg., ch. 1, § 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, § 3.01, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION OF PROPERTY DEVELOPMENT

§ 212.041. Municipality Covered by Subchapter

This subchapter applies only to a municipality whose governing body chooses by ordinance to be covered by this subchapter or chose by ordinance to be covered by the law codified by this subchapter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 125, § 1, eff. May 11, 1993; Acts 1993, 73rd Leg., ch. 1046, § 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 10.04, eff. Sept. 1, 1995.

§ 212.042. Application of Subchapter A

The provisions of Subchapter A that do not conflict with this subchapter apply to development plats.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.043. Definitions

In this subchapter:

- (1) "Development" means the new construction or the enlargement of any exterior dimension of any building, structure, or improvement.
- (2) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42.

§ 212.044. Plans, Rules, and Ordinances

After a public hearing on the matter, the municipality may adopt general plans, rules, or ordinances governing development plats of land within the limits and in the extraterritorial jurisdiction of the municipality to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.045. Development Plat Required

(a) Any person who proposes the development of a tract of land located within the limits or in the extraterritorial jurisdiction of the municipality must have a development plat of the tract prepared in accordance with this subchapter and the applicable plans, rules, or ordinances of the municipality.

(b) A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

- (1) each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;
- (2) each easement and right-of-way within or abutting the boundary of the surveyed property; and
- (3) the dimensions of each street, sidewalk, alley, square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park, or other part.

(c) New development may not begin on the property until the development plat is filed with and approved by the municipality in accordance with Section 212.047.

(d) If a person is required under Subchapter A or an ordinance of the municipality to file a subdivision plat, a development plat is not required in addition to the subdivision plat.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1091, § 28, eff. Sept. 1, 1989.

§ 212.046. Restriction on Issuance of Building and Other Permits by Municipality, County, or Official of Other Governmental Entity

The municipality, a county, or an official of another governmental entity may not issue a building permit or any other type of permit for development on lots or tracts subject to this

subchapter until a development plat is filed with and approved by the municipality in accordance with Section 212.047.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.047. Approval of Development Plat

The municipality shall endorse approval on a development plat filed with it if the plat conforms to:

- (1) the general plans, rules, and ordinances of the municipality concerning its current and future streets, sidewalks, alleys, parks, playgrounds, and public utility facilities;
- (2) the general plans, rules, and ordinances for the extension of the municipality or the extension, improvement, or widening of its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and
- (3) any general plans, rules, or ordinances adopted under Section 212.044.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.048. Effect of Approval on Dedication

The approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the municipality any duty regarding the maintenance or improvement of any purportedly dedicated parts until the municipality's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.049. Building Permits in Extraterritorial Jurisdiction

This subchapter does not authorize the municipality to require municipal building permits or otherwise enforce the municipality's building code in its extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

§ 212.050. Enforcement; Penalty

(a) If it appears that a violation or threat of a violation of this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter exists, the municipality is entitled to appropriate injunctive relief against the person who committed, is

committing, or is threatening to commit the violation.

(b) A suit for injunctive relief may be brought in the county in which the defendant resides, the county in which the violation or threat of violation occurs, or any county in which the municipality is wholly or partly located.

(c) In a suit to enjoin a violation or threat of a violation of this subchapter or a plan, rule, ordinance, or other order adopted under this subchapter, the court may grant the municipality any prohibitory or mandatory injunction warranted by the facts including a temporary restraining order, temporary injunction, or permanent injunction.

(d) A person commits an offense if the person violates this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter within the limits of the municipality. An offense under this subsection is a Class C misdemeanor. Each day the violation continues constitutes a separate offense.

(e) A suit under this section shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(f) It is no defense to a criminal or civil suit under this section that an agency of government other than the municipality issued a license or permit authorizing the construction, repair, or alteration of any building, structure, or improvement. It also is no defense that the defendant had no knowledge of this subchapter or of an applicable plan, rule, or ordinance.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

CHAPTER 214. MUNICIPAL REGULATION OF STRUCTURES

SUBCHAPTER G. BUILDING AND REHABILITATION CODES

Heading as amended by SB 283, eff. Sept. 1, 2003.

§ 214.211. Definitions

In this subchapter:

- (1) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings promulgated by the International Code Council.
- (2) "National Electrical Code" means the electrical code published by the National Fire Protection Association.
- (3) "Residential" means having the character of a detached one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

(4) "International Building Code" means the International Building Code promulgated by the International Code Council.

(5) "Commercial" means a building for the use or occupation of people for:

(A) a public purpose or economic gain; or

(B) a residence if the building is a multifamily residence that is not defined as residential by this section

Added by Acts 2001, 77th Leg., ch. 120, § 1, eff. Jan. 1, 2002.; Amended by Acts 2005, 79th Leg., ch. 389, § 1, eff. Jan. 1, 2006.

§ 214.212. International Residential Code

(a) To protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2001, is adopted as a municipal residential building code in this state.

(b) The International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality.

(c) A municipality may establish procedures:

(1) to adopt local amendments to the International Residential Code; and

(2) for the administration and enforcement of the International Residential Code.

(d) A municipality may review and consider amendments made by the International Code Council to the International Residential Code after May 1, 2001.

Added by Acts 2001, 77th Leg., ch. 120, § 1, eff. Jan. 1, 2002.

§ 214.213. Exceptions

(a) The International Residential Code and the International Building Code do not apply to the installation and maintenance of electrical wiring and related components.

(b) A municipality is not required to review and consider adoption of amendments to the International Residential Code or the International Building Code regarding electrical provisions.

Added by Acts 2001, 77th Leg., ch. 120, § 1, eff. Jan. 1, 2002.; Amended by Acts 2005, 79th Leg., ch. 389, § 2, eff. Jan. 1, 2006.

§ 214.214. National Electrical Code

(a) Except as provided by Subsection (c), the National Electrical Code, as it existed on May 1, 2001, is adopted as the municipal electrical construction code in this state and applies to all residential and commercial electrical construction applications.

(b) A municipality may establish procedures:

- (1) to adopt local amendments to the National Electrical Code; and
- (2) for the administration and enforcement of the National Electrical Code.

(c) The National Electrical Code applies to all commercial buildings in a municipality for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

Added by Acts 2001, 77th Leg., ch. 120, § 1, eff. Jan. 1, 2002.
Amended by Acts 2005, 79th Leg., ch. 389, § 3, eff. Jan. 1, 2006.

§ 214.215. Adoption of Rehabilitation Codes or Provisions

(a) In this section, "rehabilitation" means the alteration, remodeling, enlargement, or repair of an existing structure. (b) A municipality that adopts a building code, other than the International Residential Code adopted under Section 214.212, shall adopt one of the following:

- (1) prescriptive provisions for rehabilitation as part of the municipality's building code; or
- (2) the rehabilitation code that accompanies the building code adopted by the municipality.

(c) The rehabilitation code or prescriptive provisions do not apply to the rehabilitation of a structure to which the International Residential Code applies or to the construction of a new structure.

(d) A municipality may:

- (1) adopt the rehabilitation code or prescriptive provisions for rehabilitation recommended by the Texas Board of Architectural Examiners; or
- (2) amend its rehabilitation code or prescriptive provisions for rehabilitation.

(e) A municipality shall enforce the prescriptive provisions for rehabilitation or the rehabilitation code in a manner consistent with the enforcement of the municipality's building code.

Added by Acts 2003, 78th Leg., ch. 331, § 6.02, eff. Sept. 1, 2003.

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS

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SUBCHAPTER A. SUBDIVISION PLATTING REQUIREMENTS IN GENERAL

§ 232.001. Plat Required

(a) The owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out:

- (1) a subdivision of the tract, including an addition;
- (2) lots; or
- (3) streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts.

(a-1) A division of a tract under Subsection (a) includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(b) To be recorded, the plat must:

- (1) describe the subdivision by metes and bounds;
- (2) locate the subdivision with respect to an original corner of the original survey of which it is a part; and
- (3) state the dimensions of the subdivision and of each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

(c) The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds.

(d) The plat must be filed and recorded with the county clerk of the county in which the tract is located.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, § 3.05, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 422, § 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 129, § 1, eff. Sept. 1, 1999.

§ 232.0013. Chapter-wide Provision Relating to Regulation of Plats and Subdivisions in Extraterritorial Jurisdiction.

The authority of a county under this chapter relating to the regulation of plats or subdivisions in the extraterritorial jurisdiction of a municipality is subject to any applicable limitation prescribed by an agreement under Section 242.001 or by Section 242.002.

§ 232.0015. Exceptions to Plat Requirement

(a) To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter.

(b) Except as provided by Section 232.0013, this subchapter does not apply to a subdivision of land to which Subchapter B applies.

(c) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

- (1) the owner does not lay out a part of the tract described by Section 232.001(a)(3); and
- (2) the land is to be used primarily for agricultural use, as defined by Section 1-d, Article VIII, Texas Constitution, or for farm, ranch, wildlife management, or timber production use within the meaning of Section 1-d-1, Article VIII, Texas Constitution.

(d) If a tract described by Subsection (c) ceases to be used primarily for agricultural use or for farm, ranch, wildlife management, or timber production use, the platting requirements of this subchapter apply.

(e) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into four or fewer parts and does not lay out a part of the tract described by Section 232.001(a)(3) to have a plat of the subdivision prepared if each of the lots is to be sold, given, or otherwise transferred to an individual who is related to the owner within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code. If any lot is sold, given, or otherwise transferred to an individual who is not related to the owner within the third degree by consanguinity or affinity, the platting requirements of this subchapter apply.

(f) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

- (1) all of the lots of the subdivision are more than 10 acres in area; and
- (2) the owner does not lay out a part of the tract described by Section 232.001(a)(3).

(g) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts and does not lay out a part of the tract described by Section 232.001(a)(3) to have a plat of the subdivision prepared if all the lots are sold to veterans through the Veterans' Land Board program.

(h) The provisions of this subchapter shall not apply to a subdivision of any tract of land belonging to the state or any state agency, board, or commission or owned by the permanent school fund or any other dedicated funds of the state unless the subdivision lays out a part of the tract described by Section 232.001(a)(3).

(i) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

- (1) the owner of the land is a political subdivision of the state;
- (2) the land is situated in a flood plain; and
- (3) the lots are sold to adjoining landowners.

(j) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two parts to have a plat of the subdivision prepared if:

- (1) the owner does not lay out a part of the tract described by Section 232.001(a)(3); and
- (2) one new part is to be retained by the owner, and the other new part is to be transferred to another person who will further subdivide the tract subject to the plat approval requirements of this chapter.

(k) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

- (1) the owner does not lay out a part of the tract described by Section 232.001(a)(3); and
- (2) all parts are transferred to persons who owned an undivided interest in the original tract and a plat is filed before any further development of any part of the tract.

Added by Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 979, § 3, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 129, § 2, eff. Sept. 1, 1999.; Acts 2003, 78th Leg., ch. 523, § 8, , eff. June 20, 2003.

§ 232.002. Approval by County Required

(a) The commissioners court of the county in which the land is located must approve, by an order entered in the minutes of the court, a plat required by Section 232.001. The commissioners court may refuse to approve a plat if it does not meet the requirements prescribed by or under this chapter or if any bond required under this chapter is not filed with the county.

(b) The commissioners court may not approve a plat unless the plat and other documents have been prepared as required by Section 232.0035, if applicable.

(c) If no portion of the land subdivided under a plat approved under this section is sold or transferred before January 1 of the 51st year after the year in which the plat was approved, the approval of the plat expires, and the owner must resubmit a plat of the subdivision for approval.

A plat resubmitted for approval under this subsection is subject to the requirements prescribed by this chapter at the time the plat is resubmitted.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989.; Acts 2001, 77th Leg., ch. 884, § 1, eff. June 14, 2001.

§ 232.0021. Plat Application Fee

(a) The commissioners court may impose an application fee to cover the cost of the county's review of a subdivision plat and inspection of street, road, and drainage improvements described by the plat.

(b) The fee may vary based on the number of proposed lots in the subdivision, the acreage described by the plat, the type or extent of proposed street and drainage improvements, or any other reasonable criteria as determined by the commissioners court.

(c) The owner of the tract to be subdivided must pay the fee at the time directed by the county before the county conducts a review of the plat.

(d) The fee is subject to refund under Section 232.0025(i).

Added by Acts 2003, 78th Leg., ch. 301, § 9, eff. Sept. 1, 2003.

§ 232.0025. Timely Approval of Plats

(a) The commissioners court of a county or a person designated by the commissioners court shall issue a written list of the documentation and other information that must be submitted with a plat application. The documentation or other information must relate to a requirement authorized under this section or other applicable law. An application submitted to the commissioners court or the person designated by the commissioners court that contains the documents and other information on the list is considered complete.

(b) If a person submits a plat application to the commissioners court that does not include all of the documentation or other information required by Subsection(a), the commissioners court or the court's designee shall, not later than the 10th business day after the date the commissioners court receives the application, notify the applicant of the missing documents or other information. The commissioners court shall allow an applicant to timely submit the missing documents or other information.

(c) An application is considered complete when all documentation or other information required by Subsection (a) is received. Acceptance by the commissioners court or the court's designee of a completed plat application with the documentation or other information required by Subsection (a) shall not be construed as approval of the documentation or other information.

(d) Except as provided by Subsection (f), the commissioners court or the court's designee shall take final action on a plat application, including the resolution of all appeals, not later than the 60th day after the date a completed plat application is received by the commissioners court or the court's designee.

(e) If the commissioners court or the court's designee disapproves a plat application, the applicant shall be given a complete list of the reasons for the disapproval.

(f) The 60-day period under Subsection (d):

- (1) may be extended for a reasonable period, if agreed to in writing by the applicant and approved by the commissioners court or the court's designee;
- (2) may be extended 60 additional days if Chapter 2007, Government Code, requires the county to perform a takings impact assessment in connection with a plat application; and
- (3) applies only to a decision wholly within the control of the commissioners court or the court's designee.

(g) The commissioners court or the court's designee shall make the determination under Subsection (f)(2) of whether the 60-day period will be extended not later than the 20th day after the date a completed plat application is received by the commissioners court or the court's designee.

(h) The commissioners court or the court's designee may not compel an applicant to waive the time limits contained in this section.

(i) If the commissioners court or the court's designee fails to take final action on the plat as required by Subsection (d):

- (1) the commissioners court shall refund the greater of the unexpended portion of any plat application fee or deposit or 50 percent of a plat application fee or deposit that has been paid;
- (2) the plat application is granted by operation of law; and
- (3) the applicant may apply to a district court in the county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the plat's approval.

Added by Acts 1999, 76th Leg., ch. 129, § 3, eff. Sept. 1, 1999.

§ 232.003. Subdivision Requirements

By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

- (1) require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less than 50 feet or more than 100 feet;

- (2) require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;
- (3) require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;
- (4) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road;
- (5) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;
- (6) require that each purchase contract made between a subdivider and a purchaser of land in the subdivision contain a statement describing the extent to which water will be made available to the subdivision and, if it will be made available, how and when;
- (7) require that the owner of the tract to be subdivided execute a good and sufficient bond in the manner provided by Section 232.004;
- (8) adopt reasonable specifications that provide for drainage in the subdivision to:
 - (A) efficiently manage the flow of stormwater runoff in the subdivision; and
 - (B) coordinate subdivision drainage with the general storm drainage pattern for the area; and
- (9) require lot and block monumentation to be set by a registered professional surveyor before recordation of the plat.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 54(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 129, § 4, eff. Sept. 1, 1999.

§ 232.0031. Standard for Roads in Subdivision

A county may not impose under Section 232.003 a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of streets or roads with a similar type and amount of traffic.

Added by Acts 1999, 76th Leg., ch. 129, § 5, eff. Sept. 1, 1999.

§ 232.0032. Additional Requirements: Use of Groundwater

(a) If a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, the commissioners court of a county by order may require the plat application to have attached to it a statement that:

- (1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and
- (2) certifies that adequate groundwater is available for the subdivision.

(b) The Texas Commission on Environmental Quality by rule shall establish the appropriate form and content of a certification to be attached to a plat application under this section.

(c) The Texas Commission on Environmental Quality, in consultation with the Texas Water Development Board, by rule shall require a person who submits a plat under Subsection (a) to transmit to the Texas Water Development Board and any groundwater conservation district that includes in the district's boundaries any part of the subdivision information that would be useful in:

- (1) performing groundwater conservation district activities;
- (2) conducting regional water planning;
- (3) maintaining the state's groundwater database; or
- (4) conducting studies for the state related to groundwater.

Added by Acts 1999, 76th Leg., ch. 460, § 2, eff. Sept. 1, 1999.; Amended by Acts 2001, 77th Leg., ch. 99, § 2(b), eff. Sept. 1, 2001. Renumbered from V.T.C.A., Local Government Code § 232.0031 by Acts 2001, 77th Leg., ch. 1420, § 21.001 (85), eff. Sept. 1, 2001.; Amended by SB 662, eff. Sept. 1, 2007. Amended by SB 3, eff. Sept. 1, 2007.

§ 232.0033. Additional Requirements: Future Transportation Corridors

(a) This section applies to each county in the state. The requirements provided by this section are in addition to the other requirements of this chapter.

(b) If all or part of a subdivision for which a plat is required under this chapter is located within a future transportation corridor identified in an agreement under Section 201.619, Transportation Code:

- (1) the commissioners court of a county in which the land is located:
 - (A) may refuse to approve the plat for recordation unless the plat states that the subdivision is located within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor; and
 - (B) may refuse to approve the plat for recordation if all or part of the subdivision is located within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor; and
- (2) each purchase contract or lease between the subdivider and a purchaser or lessee of land in the subdivision must contain a conspicuous statement that the land is located

within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor.

Added by Acts 2007, 80th Leg., ch. 232, § 2, eff. Sept. 1, 2007.

§ 232.004. Bond Requirements

If the commissioners court requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Section 232.0045. The bond must:

- (1) be payable to the county judge of the county in which the subdivision will be located or to the judge's successors in office;
- (2) be in an amount determined by the commissioners court to be adequate to ensure proper construction of the roads and streets in and drainage requirements for the subdivision, but not to exceed the estimated cost of construction of the roads, streets, and drainage requirements;
- (3) be executed with sureties as may be approved by the court;
- (4) be executed by a company authorized to do business as a surety in this state if the court requires a surety bond executed by a corporate surety; and
- (5) be conditioned that the roads and streets and the drainage requirements for the subdivision will be constructed:
 - (A) in accordance with the specifications adopted by the court; and
 - (B) within a reasonable time set by the court.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 54(b), eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 129, § 6, eff. Sept. 1, 1999.

§ 232.0045. Financial Guarantee in Lieu of Bond

(a) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(b) If a letter of credit is used, it must:

- (1) list as the sole beneficiary the county judge of the county in which the subdivision is located; and
- (2) be conditioned that the owner of the tract of land to be subdivided will construct any roads or streets in the subdivision:
 - (A) in accordance with the specifications adopted by the commissioners court; and
 - (B) within a reasonable time set by the court.

§§ 232.0046, 232.0047. Repealed by Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995

§ 232.0048. Conflict of Interest; Penalty

(a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

- (1) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;
- (2) acts as a developer of the tract;
- (3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or \$5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the commissioners court of a county has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.

(e) A member of the commissioners court of a county commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court without the vote of the member who violated this section.

§ 232.0049. Repealed by Acts 1995, 74th Leg., ch. 979, § 29, eff. June 16, 1995

§ 232.005. Enforcement in General; Penalty

(a) At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may file an action in a court of competent jurisdiction to:

- (1) enjoin the violation or threatened violation of a requirement established by, or adopted by the commissioners court under a preceding section of this chapter; or
- (2) recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with a requirement established by, or adopted by the commissioners court under a preceding section of this chapter.

(b) A person commits an offense if the person knowingly or intentionally violates a requirement established by, or adopted by the commissioners court under a preceding section of this chapter. An offense under this subsection is a Class B misdemeanor. This subsection does not apply to a violation for which a criminal penalty is prescribed by Section 232.0048.

(c) A requirement that was established by or adopted under Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), or Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), before September 1, 1983, and that, after that date, continues to apply to a subdivision of land is enforceable under Subsection (a). A knowing or intentional violation of the requirement is an offense under Subsection (b).

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 54(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, § 3.04, eff. Sept. 1, 1989.

§ 232.006. Exceptions for Populous Counties or Contiguous Counties

(a) This section applies to a county:

- (1) that has a population of more than 3.3 million or is contiguous with a county that has a population of more than 3.3 million; and
- (2) in which the commissioners court by order elects to operate under this section.

(b) If a county elects to operate under this section, Section 232.005 does not apply to the county. The sections of this chapter preceding Section 232.005 do apply to the county in the same manner that they apply to other counties except that:

- (1) they apply only to tracts of land located outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42;

(2) the commissioners court of the county, instead of having the powers granted by Sections 232.003(2) and (3), may:

(A) require a right-of-way on a street or road that does not function as a main artery in the subdivision of not less than 40 feet or more than 50 feet; and

(B) require that the street cut on a main artery within the right-of-way be not less than 30 feet or more than 45 feet, and that the street cut on any other street or road within the right-of-way be not less than 25 feet or more than 35 feet; and

(3) Section 232.004(5)(B) does not apply to the county.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, § 3.06, eff. Sept. 1, 1989.; Acts 2001, 77th Leg., ch. 669, § 76, eff. Sept. 1, 2001.

§ 232.007. Manufactured Home Rental Communities

(a) In this section:

(1) "Manufactured home rental community" means a plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than 60 months without a purchase option, for the installation of manufactured homes for use and occupancy as residences.

(2) "Business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(b) A manufactured home rental community is not a subdivision, and Sections 232.001-232.006 do not apply to the community.

(c) After a public hearing and after notice is published in a newspaper of general circulation in the county, the commissioners court of a county, by order adopted and entered in the minutes of the commissioners court, may establish minimum infrastructure standards for manufactured home rental communities located in the county outside the limits of a municipality. The minimum standards may include only:

(1) reasonable specifications to provide adequate drainage in accordance with standard engineering practices, including specifying necessary drainage culverts and identifying areas included in the 100-year flood plain;

(2) reasonable specifications for providing an adequate public or community water supply, including specifying the location of supply lines, in accordance with Subchapter C, Chapter 341, Health and Safety Code;

(3) reasonable requirements for providing access to sanitary sewer lines, including specifying the location of sanitary sewer lines, or providing adequate on-site sewage facilities in accordance with Chapter 366, Health and Safety Code;

(4) a requirement for the preparation of a survey identifying the proposed manufactured home rental community boundaries and any significant features of the community,

including the proposed location of manufactured home rental community spaces, utility easements, and dedications of rights-of-way; and

(5) reasonable specifications for streets or roads in the manufactured rental home community to provide ingress and egress access for fire and emergency vehicles.

(d) The commissioners court may not adopt minimum infrastructure standards that are more stringent than requirements adopted by the commissioners court for subdivisions. The commissioners court may only adopt minimum infrastructure standards for ingress and egress access by fire and emergency vehicles that are reasonably necessary.

(e) If the commissioners court adopts minimum infrastructure standards for manufactured home rental communities, the owner of land located outside the limits of a municipality who intends to use the land for a manufactured home rental community must have an infrastructure development plan prepared that complies with the minimum infrastructure standards adopted by the commissioners court under Subsection (c).

(f) Not later than the 60th day after the date the owner of a proposed manufactured home rental community submits an infrastructure development plan for approval, the county engineer or another person designated by the commissioners court shall approve or reject the plan in writing. If the plan is rejected, the written rejection must specify the reasons for the rejection and the actions required for approval of the plan. The failure to reject a plan within the period prescribed by this subsection constitutes approval of the plan.

(g) Construction of a proposed manufactured home rental community may not begin before the date the county engineer or another person designated by the commissioners court approves the infrastructure development plan. The commissioners court may require inspection of the infrastructure during or on completion of its construction. If a final inspection is required, the final inspection must be completed not later than the second business day after the date the commissioners court or the person designated by the commissioners court receives a written confirmation from the owner that the construction of the infrastructure is complete. If the inspector determines that the infrastructure complies with the infrastructure development plan, the commissioners court shall issue a certificate of compliance not later than the fifth business day after the date the final inspection is completed. If a final inspection is not required, the commissioners court shall issue a certificate of compliance not later than the fifth business day after the date the commissioners court or the person designated by the commissioners court receives written certification from the owner that construction of the infrastructure has been completed in compliance with the infrastructure development plan.

(h) A utility may not provide utility services, including water, sewer, gas, and electric services, to a manufactured home rental community subject to an infrastructure development plan or to a manufactured home in the community unless the owner provides the utility with a copy of the certificate of compliance issued under Subsection (g). This subsection applies only to:

- (1) a municipality that provides utility services;
- (2) a municipally owned or municipally operated utility that provides utility services;
- (3) a public utility that provides utility services;

- (4) a nonprofit water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides utility services;
- (5) a county that provides utility services; and
- (6) a special district or authority created by state law that provides utility services.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 153, § 1, eff. Aug. 30, 1999.

§ 232.008. Cancellation of Subdivision

(a) This section applies only to real property located outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42.

(b) A person owning real property in this state that has been subdivided into lots and blocks or into small subdivisions may apply to the commissioners court of the county in which the property is located for permission to cancel all or part of the subdivision, including a dedicated easement or roadway, to reestablish the property as acreage tracts as it existed before the subdivision. If, on the application, it is shown that the cancellation of all or part of the subdivision does not interfere with the established rights of any purchaser who owns any part of the subdivision, or it is shown that the purchaser agrees to the cancellation, the commissioners court by order shall authorize the owner of the subdivision to file an instrument canceling the subdivision in whole or in part. The instrument must describe the subdivision or the part of it that is canceled. The court shall enter the order in its minutes. After the cancellation instrument is filed and recorded in the deed records of the county, the county tax assessor-collector shall assess the property as if it had never been subdivided.

(c) The commissioners court shall publish notice of an application for cancellation. The notice must be published in a newspaper, published in the English language, in the county for at least three weeks before the date on which action is taken on the application. The court shall take action on an application at a regular term. The published notice must direct any person who is interested in the property and who wishes to protest the proposed cancellation to appear at the time specified in the notice.

(d) If delinquent taxes are owed on the subdivided tract for any preceding year, and if the application to cancel the subdivision is granted as provided by this section, the owner of the tract may pay the delinquent taxes on an acreage basis as if the tract had not been subdivided. For the purpose of assessing the tract for a preceding year, the county tax assessor-collector shall back assess the tract on an acreage basis.

(e) On application for cancellation of a subdivision or any phase or identifiable part of a subdivision, including a dedicated easement or roadway, by the owners of 75 percent of the property included in the subdivision, phase, or identifiable part, the commissioners court by order shall authorize the cancellation in the manner and after notice and a hearing as provided by Subsections (b) and (c). However, if the owners of at least 10 percent of the property affected by the proposed cancellation file written objections to the cancellation with the court,

the grant of an order of cancellation is at the discretion of the court.

(f) To maintain an action to enjoin the cancellation or closing of a roadway or easement in a subdivision, a person must own a lot or part of the subdivision that:

- (1) abuts directly on the part of the roadway or easement to be canceled or closed; or
- (2) is connected by the part of the roadway or easement to be canceled or closed, by the most direct feasible route, to:

- (A) the nearest remaining public highway, county road, or access road to the public highway or county road; or
- (B) any uncanceled common amenity of the subdivision.

(g) A person who appears before the commissioners court to protest the cancellation of all or part of a subdivision may maintain an action for damages against the person applying for the cancellation and may recover as damages an amount not to exceed the amount of the person's original purchase price for property in the canceled subdivision or part of the subdivision. The person must bring the action within one year after the date of the entry of the commissioners court's order granting the cancellation.

(h) The commissioners court may deny a cancellation under this section if the commissioners court determines the cancellation will prevent the proposed interconnection of infrastructure to pending or existing development.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 129, § 7, eff. Sept. 1, 1999.

§ 232.0083. Cancellation of Certain Subdivision Plats if Existing Plat Obsolete

(a) This section applies only to a subdivision for which:

- (1) a plat has been filed for 75 years or more;
- (2) the most recent plat describes at least a portion of the property as acreage tracts;
- (3) a previous plat described at least a portion of the property as lots and blocks; and
- (4) the county tax assessor-collector lists the property in the subdivision on the tax rolls based on the description in the previous plat and assesses taxes on the basis of that description.

(b) A person owning real property in the subdivision may apply to the commissioners court of the county in which the property is located for permission to cancel an existing subdivision plat in whole or part and to reestablish the property using lots and blocks descriptions that, to the extent practicable, are consistent with the previous subdivision plat.

(c) After notice and hearing, the commissioners court may order the cancellation of the existing subdivision plat and the reestablishment of the property in accordance with the application submitted under Subsection (b) if the court finds that:

(1) the cancellation and reestablishment does not interfere with the established rights of:

- (A) any owner of a part of the subdivision; or
- (B) a utility company with a right to use a public easement in the subdivision; or

(2) each owner or utility whose rights may be interfered with has agreed to the cancellation and reestablishment.

(d) The commissioners court shall publish notice of an application for the cancellation and reestablishment. The notice must be published at least three weeks before the date on which action is taken on the application and must direct any person who is interested in the property and who wishes to protest the proposed cancellation and reestablishment to appear at the time specified in the notice. The notice must be published in a newspaper that has general circulation in the county.

(e) If the commissioners court authorizes the cancellation and reestablishment, the court by order shall authorize the person making the application under this section to record an instrument showing the cancellation and reestablishment. The court shall enter the order in its minutes.

Added by Acts 2007, 80th Leg., ch. 232, § 1, eff. Sept. 1, 2007.

§ 232.0085. Cancellation of Certain Subdivisions if Land Remains Undeveloped

(a) This section applies only to real property located:

- (1) outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42; and
- (2) in an affected county, as defined by Section 16.341, Water Code, that has adopted the model rules developed under Section 16.343, Water Code, and is located along an international border.

(b) The commissioners court of a county may cancel, after notice and a hearing as required by this section, a subdivision for which the plat was filed and approved before September 1, 1989, if:

- (1) the development of or the making of improvements in the subdivision was not begun before the effective date of this section; and
- (2) the commissioners court by resolution has made a finding that the land in question is likely to be developed as a colonia.

(c) The commissioners court must publish notice of a proposal to cancel a subdivision under this section and the time and place of the required hearing in a newspaper of general circulation in the county for at least 21 days immediately before the date a cancellation order is adopted under this section. The county tax assessor-collector shall, not later than the 14th day before the

date of the hearing, deposit with the United States Postal Service a similar notice addressed to each owner of land in the subdivision, as determined by the most recent county tax roll.

(d) At the hearing, the commissioners court shall permit any interested person to be heard. At the conclusion of the hearing, the court shall adopt an order on whether to cancel the subdivision. The commissioners court may adopt an order canceling a subdivision if the court determines the cancellation is in the best interest of the public. The court may not adopt an order canceling a subdivision if:

- (1) the cancellation interferes with the established rights of a person who is a nondeveloper owner and owns any part of the subdivision, unless the person agrees to the cancellation; or
- (2) the owner of the entire subdivision is able to show that:

- (A) the owner of the subdivision is able to comply with the minimum state standards and model political subdivision rules developed under Section 16.343, Water Code, including any bonding requirements; or
- (B) the land was developed or improved within the period described by Subsection (b).

(e) The commissioners court shall file the cancellation order for recording in the deed records of the county. After the cancellation order is filed and recorded, the property shall be treated as if it had never been subdivided, and the county chief appraiser shall assess the property accordingly. Any liens against the property shall remain against the property as it was previously subdivided.

(f) In this section:

- (1) "Development" means the making, installing, or constructing of buildings and improvements.
- (2) "Improvements" means water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and other utility facilities. The term does not include roadway facilities.

Added by Acts 1995, 74th Leg., ch. 277, § 2, eff. June 5, 1995.

Section 1 of the 1995 Act provides:

(a) The legislature finds that:

- (1) Certain conditions along the border of the United States and Mexico have resulted in a proliferation of substandard housing developments in which the lack of basic infrastructure has caused a serious and unacceptable health and safety risk. Prevention and remediation of these conditions and their results are of vital importance to the health, safety, and welfare of the residents of these areas.
- (2) The state has a vital role and an essential public interest in establishing procedures for effective county prevention of substandard housing developments while protecting the legitimate rights of private property ownership.

(b) The purposes of this Act are to:

- (1) provide counties with a mechanism to cancel certain subdivisions that are likely to be developed without provision of basic infrastructure;
- (2) provide adequate notice to interested parties of public hearings on this issue; and
- (3) apply model rules developed under Section 16.343, Water Code, to the affected subdivision when replatted.

§ 232.009. Revision of Plat

(a) This section applies only to real property located outside municipalities and the extraterritorial jurisdiction of municipalities with a population of 1.5 million or more, as determined under Chapter 42.

(b) A person who owns real property in a tract that has been subdivided and that is subject to the subdivision controls of the county in which the property is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat that applies to the property and that is filed for record with the county clerk.

(c) After the application is filed with the commissioners court, the court shall publish a notice of the application in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision of the plat. The notice must be published at least three times during the period that begins on the 30th day and ends on the seventh day before the date of the meeting. Except as provided by Subsection (f), if all or part of the subdivided tract has been sold to nondeveloper owners, the court shall also give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract.

(d) During a regular term of the commissioners court, the court shall adopt an order to permit the revision of the subdivision plat if it is shown to the court that:

- (1) the revision will not interfere with the established rights of any owner of a part of the subdivided land; or
- (2) each owner whose rights may be interfered with has agreed to the revision.

(e) If the commissioners court permits a person to revise a subdivision plat, the person may make the revision by filing for record with the county clerk a revised plat or part of a plat that indicates the changes made to the original plat.

(f) The commissioners court is not required to give notice by mail under Subsection (c) if the plat revision only combines existing tracts.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, § 6, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 129, § 8, eff. Sept. 1, 1999.; Acts 2003, 78th Leg., ch. 523, § 9, eff. June 20, 2003.

§ 232.0095. Alternative Procedures for Plat Revision

(a) This section applies only to real property located outside municipalities and outside the extraterritorial jurisdiction, as determined under Chapter 42, of municipalities with a population of 1.5 million or more.

(b) As an alternative to the provisions in Section 232.009 governing the revision of plats, a county by order may adopt the provisions in Sections 212.013, 212.014, 212.015, and 212.016 governing plat vacations, replatting, and plat amendment. A county that adopts the provisions in those sections may approve a plat vacation, a replat, and an amending plat in the same manner and under the same conditions, including the notice and hearing requirements, as a municipal authority responsible for approving plats under those sections.

(c) Instead of the purpose described by Section 212.016(a)(10), an amended plat may be approved and issued by the county to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:

- (1) the changes do not affect applicable county regulations, including zoning regulations if the county has authority to adopt zoning regulations; and
- (2) the changes do not attempt to amend or remove any covenants or restrictions.

Added by Acts 2003, 78th Leg., ch. 523, § 10, eff. June 20, 2003.; Amended by HB 3410, eff. June 15, 2007.

§ 232.010. Exception to Plat Requirement: County Determination

A commissioners court of the county may allow conveyance of portions of one or more previously platted lots by metes and bounds description without revising the plat.

Added by Acts 1989, 71st Leg., ch. 345, § 7, eff. Aug. 28, 1989.

§ 232.011. Amending Plat

(a) The commissioners court may approve and issue an amending plat, if the amending plat is signed by the applicants and filed for one or more of the following purposes:

- (1) to correct an error in a course or distance shown on the preceding plat;
- (2) to add a course or distance that was omitted on the preceding plat;
- (3) to correct an error in a real property description shown on the preceding plat;
- (4) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- (5) to correct any other type of scrivener or clerical error or omission of the previously approved plat, including lot numbers, acreage, street names, and identification of adjacent

recorded plats; or

(6) to correct an error in courses and distances of lot lines between two adjacent lots if:

(A) both lot owners join in the application for amending the plat;

(B) neither lot is abolished;

(C) the amendment does not attempt to remove recorded covenants or restrictions;
and

(D) the amendment does not have a material adverse effect on the property rights of the other owners of the property that is the subject of the plat.

(b) The amending plat controls over the preceding plat without the vacation, revision, or cancellation of the preceding plat.

(c) Notice, a hearing, and the approval of other lot owners are not required for the filing, recording, or approval of an amending plat.

Added by Acts 2007, 80th Leg., ch. 232, § 1, eff. Sept. 1, 2007.

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS

SUBCHAPTER B. SUBDIVISION PLATTING REQUIREMENTS IN COUNTY NEAR INTERNATIONAL BORDER

Section

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§ 232.021. Definitions

In this subchapter:

- (1) "**Board**" means the Texas Water Development Board.
- (2) "**Common promotional plan**" means any plan or scheme of operation undertaken by a single subdivider or a group of subdividers acting in concert, either personally or through an agent, to offer for sale or lease lots when the land is:
 - (A) contiguous or part of the same area of land; or
 - (B) known, designated, or advertised as a common unit or by a common name.
- (3) "**Executive administrator**" means the executive administrator of the Texas Water Development Board.
- (4) "**Floodplain**" means any area in the 100-year floodplain that is susceptible to being inundated by water from any source or that is identified by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4127).
- (5) "**Lease**" includes an offer to lease.
- (6) "**Lot**" means a parcel into which land that is intended for residential use is divided.
- (7) "**Minimum state standards**" means the minimum standards set out for:
 - (A) adequate drinking water by or under Section 16.343(b)(1), Water Code;
 - (B) adequate sewer facilities by or under Section 16.343(c)(1), Water Code; or
 - (C) the treatment, disposal, and management of solid waste by or under Chapters 361 and 364, Health and Safety Code.
- (8) "**Plat**" means a map, chart, survey, plan, or replat containing a description of the subdivided land with ties to permanent landmarks or monuments.
- (9) "**Sell**" includes an offer to sell.
- (10) "**Sewer**," "**sewer services**," or "**sewer facilities**" means treatment works as defined by Section 17.001, Water Code, or individual, on-site, or cluster treatment systems such as septic tanks and includes drainage facilities and other improvements for proper

functioning of septic tank systems.

(11) "**Subdivide**" means to divide the surface area of land into lots intended primarily for residential use.

(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 as part of a common promotional plan in the ordinary course of business.

(13) "**Subdivision**" means an area of land that has been subdivided into lots for sale or lease.

(14) "**Utility**" means a person, including a legal entity or political subdivision, that provides the services of:

- (A) an electric utility, as defined by Section 31.002, Utilities Code;
- (B) a gas utility, as defined by Section 101.003, Utilities Code; and
- (C) a water and sewer utility, as defined by Section 13.002, Water Code.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 18.35, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, § 4, eff. Sept. 1, 1999.

Historical Note: Subchapter B was added to the Local Government Code by HB 1001 in 1995. See Acts, 1995, 74th Leg., ch. 979, eff. June 16, 1995.

Section 1 of HB 1001 states as follows:

Section 1. LEGISLATIVE FINDINGS.

(1) economically distressed subdivisions commonly called "colonias" are found throughout the affected counties;

(2) in recent years, the number of people living in these economically distressed subdivisions in the affected counties has increased;

(3) due to the implementation of the North American Free Trade Agreement (NAFTA), the General Agreement on Tariffs and Trade (GATT), other economic incentives, and the increasingly robust economic development along the Texas-Mexico border, the population in economically distressed subdivisions in the affected counties will continue to increase;

(4) the residents of the economically distressed subdivisions in the affected counties constitute an unusually mobile population, moving to all parts of the state and beyond the state to seek employment;

(5) these conditions allow unscrupulous individuals, through the use of executory contract, to take advantage of the residents of economically distressed subdivisions by charging usurious rates of interest as well as allowing unbridled discretion to evict;

(6) the vast majority of housing units in these economically distressed subdivisions lack an

adequate potable water supply and concomitant wastewater or sewer services;

(7) the lack of an adequate potable water supply and concomitant wastewater or sewer services creates a serious and unacceptable health hazard from third world illnesses for the residents of the economically distressed subdivisions in the affected counties;

(8) many of the housing units in these economically distressed subdivisions are located in isolated rural segments in the affected counties where the land is inexpensive, located in floodplains, and subject to flooding after rain, leading to the overflow of pit privies and thus to the spreading of bacteria onto the land and into the water table;

(9) the location, proliferation, and conditions, in these economically distressed subdivisions pose a clear and substantial threat to the environment of the border region, as well as to all Texas;

(10) the lack of an adequate potable water supply and concomitant wastewater or sewer services, coupled with the location of these subdivisions, erodes the economic stability of the affected counties, which are dependent upon a healthy public and a safe environment;

(11) the lack of an adequate potable water supply and concomitant wastewater or sewer services erodes the economic stability of the affected counties, which is required for the mutual development of trade, transportation, and commerce, affecting not only the border region, but all regions of the state where the trade, transportation, and commerce reach;

(12) the health risk created along the border in the affected counties, the expected increase in population during the next decade, and the mobility of the residents of these economically distressed subdivisions, coupled with the fact that the trade, transportation, and commerce along the border is the most intense in the United States, create the very substantial risk of third world epidemics spreading to the residents of this state and beyond;

(13) unless adequate remedial steps are taken immediately to alleviate the health risks to all Texans that are caused by the lack of basic services in the affected counties, the costs of containing an epidemic will be astronomical; and

(14) the need to address this public health and safety hazard is a compelling crisis that must be addressed through this legislation.

§ 232.022. Applicability

(a) This subchapter applies only to:

(1) a county any part of which is located within 50 miles of an international border; or

(2) a county:

(A) any part of which is located within 100 miles of an international border;

- (B) that contains the majority of the area of a municipality with a population of more than 250,000; and
- (C) to which Subdivision (1) does not apply.

(b) This subchapter applies only to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of the county. A lot is presumed to be intended for residential use if the lot is five acres or less. This subchapter does not apply if the subdivision is incident to the conveyance of the land as a gift between persons related to each other within the third degree by affinity or consanguinity, as determined under Chapter 573, Government Code.

(c) Except as provided by Subsection (c-1), for purposes of this section, land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities.

(d) This subchapter does not apply if each of the lots of the subdivision is 10 or more acres.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 376, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, § 5, eff. Sept. 1, 1999.; Acts 2003, 78th Leg., ch. 737, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 708, § 2, eff. Sept. 1, 2005.

§ 232.023. Plat Required

(a) A subdivider of land must have a plat of the subdivision prepared. A subdivision of a tract under this subsection includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

(b) A plat required under this section must:

- (1) be certified by a surveyor or engineer registered to practice in this state;
- (2) define the subdivision by metes and bounds;
- (3) locate the subdivision with respect to an original corner of the original survey of which it is a part;
- (4) describe each lot, number each lot in progression, and give the dimensions of each lot;
- (5) state the dimensions of and accurately describe each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part;
- (6) include or have attached a document containing a description in English and Spanish of the water and sewer facilities and roadways and easements dedicated for the provision of water and sewer facilities that will be constructed or installed to service the subdivision and a statement specifying the date by which the facilities will be fully operable;
- (7) have attached a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with the model rules adopted under Section 16.343, Water Code, and a certified

estimate of the cost to install water and sewer service facilities;

(8) provide for drainage in the subdivision to:

- (A) avoid concentration of storm drainage water from each lot to adjacent lots;
- (B) provide positive drainage away from all buildings; and
- (C) coordinate individual lot drainage with the general storm drainage pattern for the area;

(9) include a description of the drainage requirements as provided in Subdivision (8);

(10) identify the topography of the area;

(11) include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a floodplain or stating that no area is in a floodplain; and

(12) include certification that the subdivider has complied with the requirements of Section 232.032 and that:

- (A) the water quality and connections to the lots meet, or will meet, the minimum state standards;
- (B) sewer connections to the lots or septic tanks meet, or will meet, the minimum requirements of state standards;
- (C) electrical connections provided to the lot meet, or will meet, the minimum state standards; and
- (D) gas connections, if available, provided to the lot meet, or will meet, the minimum state standards.

(c) A subdivider may meet the requirements of Subsection (b)(12)(B) through the use of a certificate issued by the appropriate county or state official having jurisdiction over the approval of septic systems stating that lots in the subdivision can be adequately and legally served by septic systems.

(d) The subdivider of the tract must acknowledge the plat by signing the plat and attached documents and attest to the veracity and completeness of the matters asserted in the attached documents and in the plat.

(e) The plat must be filed and recorded with the county clerk of the county in which the tract is located. The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 6, eff. Sept. 1, 1999.

§ 232.024. Approval by County Required

(a) A plat filed under Section 232.023 is not valid unless the commissioners court of the county

in which the land is located approves the plat by an order entered in the minutes of the court. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under this subchapter or if any bond required under this subchapter is not filed with the county clerk.

(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 the plat evidences a restrictive covenant 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 qualifies for insurance under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4127).

(c) On request, the county clerk shall provide the attorney general or the Texas Water Development Board:

- (1) a copy of each plat that is approved under this subchapter; or
- (2) the reasons in writing and any documentation that support a variance granted under Section 232.042.

(d) The commissioners court of the county in which the land is located may establish a planning commission as provided by Subchapter D. The planning commission, including its findings and decisions, is subject to the same provisions applicable to the commissioners court under this subchapter, including Section 232.034 relating to conflicts of interest.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 7, eff. Sept. 1, 1999.

§ 232.025. Subdivision Requirements

By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in English and Spanish in a newspaper of general circulation in the county, the commissioners court shall for each subdivision:

- (1) require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less than 50 feet or more than 100 feet;
- (2) require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;
- (3) require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;
- (4) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road;
- (5) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;
- (6) require that each purchase contract made between a subdivider and a purchaser of land

in the subdivision contain a statement describing how and when water, sewer, electricity, and gas services will be made available to the subdivision; and
(7) require that the subdivider of the tract execute a bond in the manner provided by Section 232.027.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16 1995.

§ 232.026. Water and Sewer Service Extension

(a) The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the commissioners court finds the extension is reasonable and not contrary to the public interest.

(b) The commissioners court may not grant an extension under Subsection (a) if it would allow an occupied residence to be without water or sewer services.

(c) If the commissioners court provides an extension, the commissioners court shall notify the attorney general of the extension and the reason for the extension. The attorney general shall notify all other state agencies having enforcement power over subdivisions of the extension.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 8, eff. Sept. 1, 1999.

§ 232.027. Bond Requirements

(a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final approval of a plat under Section 232.024, the commissioners court shall require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the FDIC. The subdivider must comply with the requirement before subdividing the tract.

(b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

§ 232.028. Certification Regarding Compliance With Plat Requirements

(a) On the approval of a plat by the commissioners court, the commissioners court shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the commissioners court.

(b) 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 subdivision under Section 232.023 and are fully operable;
- (3) whether sewer service facilities have been constructed or installed to service the subdivision under Section 232.023 and are fully operable, or if septic systems are used, whether 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 subdivision under Section 232.023.

(c) The request made under Subsection (b) must identify the land that is the subject of the request.

(d) Whenever a request is made under Subsection (b), the commissioners court shall issue the requesting party a written certification of its determinations under that subsection.

(e) The commissioners court shall make its determinations within 20 days after the date it receives the request under Subsection (b) and shall issue the certificate, if appropriate, within 10 days after the date the determinations are made.

(f) The commissioners court may adopt rules it considers necessary to administer its duties under this section.

(g) The commissioners court may impose a fee for a certificate issued under this section for a subdivision part of which is located in the extraterritorial jurisdiction of a municipality and part of which is not located in the extraterritorial jurisdiction of the municipality. The amount of the fee may be the greater of \$30 or the amount of the fee imposed by the municipality for a subdivision that is located entirely in the extraterritorial jurisdiction of the municipality for a certificate issued under Section 212.0115. A person who obtains a certificate under this section is not required to obtain a certificate under Section 212.0115.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.; Amended by Acts 1999, 76th Leg., ch. 129, § 9, eff. Sept. 1, 1999.; Amended by H.B. 3834, eff. June 15, 2007.

§ 232.029. Connection of Utilities in Counties within 50 miles of International Border

(a) This section applies only to a county defined under Section 232.022(a)(1).

(a-1) Except as provided by Subsection (c) or Section 232.037(c), a utility may not serve or connect any subdivided land with water or sewer services unless 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)(1) that the plat has been reviewed and approved by the commissioners court.

(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 Section 232.028(b)(2) that adequate water and sewer services have been installed to service the 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 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) 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, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; or

(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) 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)(1).

(e) A person requesting service may obtain a certificate under Subsection (c)(1) only if the person provides to the commissioners court either:

(1) documentation containing:

(A) a copy of the means of conveyance or other documents that show that the land was sold or conveyed 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 the person 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, 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:

(A) the property was sold or conveyed to that person:

- (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) 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.

(f) A person requesting service may obtain a certificate under Subsection (c)(2) only if the person provides to the commissioners court an affidavit that states that the property was not sold or conveyed to that person from a subdivider or the subdivider's agent:

- (1) after September 1, 1995; or
- (2) after 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.

(g) On request, the commissioners court shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the commissioners court relied in determining the legality of providing service.

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

(i) The prohibition established by this section shall not prohibit an electric or gas utility from providing 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, 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.

(j) In this section, "foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.

(k) Subject to Subsections (l) and (m), a utility that does not hold a certificate issued by, or has not received a determination from, the commissioners court under Section 232.028 to serve or connect subdivided property with electricity or gas may provide that service to a single-family residential dwelling on that property if:

(1) the person requesting utility service:

- (A) is the owner and occupant of the residential dwelling; and
- (B) on or before January 1, 2001, owned and occupied the residential dwelling;

(2) the utility previously provided the utility service on or before January 1, 2001, to the property for the person requesting the service;

(3) the utility service provided as described by Subdivision (2) was terminated not earlier than five years before the date on which the person requesting utility service submits an application for that service; and

(4) providing the utility service will not result in:

- (A) an increase in the volume of utility service provided to the property; or
- (B) more than one utility connection for each single-family residential dwelling located on the property.

(l) A utility may provide service under Subsection (k) only if the person requesting the service provides to the commissioners court documentation that evidences compliance with the requirements of Subsection (k) and that is satisfactory to the commissioners court.

(m) A utility may not serve or connect subdivided property as described by Subsection (k) if, on or after September 1, 2007, any existing improvements on that property are modified.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.; Amended by Acts 1997, 75th Leg., ch. 1062, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, § 9, eff. Sept. 1, 1999.; Amended by Acts 2001, 77th Leg., ch. 984, § 1, Sept. 1, 2001.; Acts 2005, 79th Leg., ch. 708, § 3, 4, eff. Sept. 1, 2005.; Amended by H.B. 2096, eff. Sept. 1, 2007.

§ 232.0291. Connection of Utilities in Certain Counties within 100 miles of International Border

(a) This section applies only to a county defined under Section 232.022(a)(2).

(b) Except as provided by Subsection (d) or Section 232.037(c), a utility may not serve or connect any subdivided land with water or sewer services unless 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)(1) that the plat has been reviewed and approved by the commissioners court.

(c) Except as provided by Subsection (d) 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 Section 232.028(b)(2) that adequate water and sewer services have been installed to service the subdivision.

(d) 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 to the person requesting service by any means of conveyance, including a contract for deed or executory contract before September 1, 2005;
- (B) 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 on or before September 1, 2005; or

(2) the subdivided land was not subdivided after September 1, 2005, 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) A utility may provide utility service to subdivided land described by Subsection (d)(1) 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 (d)(1).

(f) A person requesting service may obtain a certificate under Subsection (d)(1) only if the person provides to the commissioners court either:

(1) documentation containing:

- (A) a copy of the means of conveyance or other documents that show that the land was sold or conveyed to the person requesting service before September 1, 2005; and
- (B) 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 September 1, 2005; or

(2) a notarized affidavit by the person requesting service that states that:

- (A) the property was sold or conveyed to that person before September 1, 2005; and
- (B) construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before September 1, 2005.

(g) A person requesting service may obtain a certificate under Subsection (d)(2) only if the person provides to the commissioners court 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, 2005.

(h) On request, the commissioners court shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the commissioners court relied in determining the legality of providing service.

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

(j) The prohibition established by this section does not prohibit an electric or gas utility from providing electric or gas utility connection or service to a lot:

- (1) sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider before September 1, 2005;
- (2) located within a subdivision where the utility has previously established service; and
- (3) subdivided by a plat approved before September 1, 1989

(k) In this section, "foundation" means the lowest division of a residence, usually consisting of

a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.

Added by Acts 2005, 79th Leg., ch. 708, § 5, eff. Sept. 1, 2005.

§ 232.030. Subdivision Regulation; County Authority

(a) The commissioners court for each county shall adopt and enforce the model rules developed under Section 16.343, Water Code.

(b) Except as provided by Section 16.350(d), Water Code, or Section 232.042 or 232.043, the commissioners court may not grant a variance or adopt regulations that waive any requirements of this subchapter.

(c) The commissioners court shall adopt regulations setting forth requirements for:

- (1) potable water sufficient in quality and quantity to meet minimum state standards;
- (2) solid waste disposal meeting minimum state standards and rules adopted by the county under Chapter 364, Health and Safety Code;
- (3) sufficient and adequate roads that satisfy the standards adopted by the county;
- (4) sewer facilities meeting minimum state standards;
- (5) electric service and gas service; and
- (6) standards for flood management meeting the minimum standards set forth by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4127).

(d) In adopting regulations under Subsection (c)(2), the commissioners court may allow one or more commercial providers to provide solid waste disposal services as an alternative to having the service provided by the county.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 10, eff. Sept. 1, 1999.

§ 232.0305. County Inspector

(a) The commissioners court may impose a fee on a subdivider of property under this subchapter for an inspection of the property to ensure compliance with the subdivision regulations adopted under this subchapter, Section 16.343, Water Code, or other law.

(b) Fees collected under this section may be used only to fund inspections conducted under this section.

Added by Acts 1999, 76th Leg., ch. 404, § 11, eff. Sept. 1, 1999.

§ 232.031. Requirements Prior to Sale or Lease

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

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

(c) A document filed under Subsection (b) is a public record.

(d) In a county defined under Section 232.022(a)(2), a subdivider may not sell or lease land in a subdivision first platted or replatted after September 1, 2005, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.; Amended by Acts 2005, 79th Leg., ch. 708, § 6, eff. September 1, 2005.

§ 232.032. Services Provided by Subdivider

A subdivider having an approved plat for a subdivision shall:

(1) furnish a certified letter from the utility provider stating that water is available to the subdivision sufficient in quality and quantity to meet minimum state standards required by Section 16.343, Water Code, and consistent with the certification in the letter, and that water of that quality and quantity will be made available to the point of delivery to all lots in the subdivision;

(2) furnish sewage treatment facilities that meet minimum state standards to fulfill the wastewater requirements of the subdivision or furnish certification by the appropriate county or state official having jurisdiction over the approval of the septic systems indicating that lots in the subdivision can be adequately and legally served by septic systems as provided under Chapter 366, Health and Safety Code;

(3) furnish roads satisfying minimum standards as adopted by the county;

(4) furnish adequate drainage meeting standard engineering practices; and

(5) make a reasonable effort to have electric utility service and gas utility service installed by a utility.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

§ 232.033. Advertising Standards and Other Requirements Before Sale; Offense

- (a) Brochures, publications, and advertising of any form relating to subdivided land:
- (1) may not contain any misrepresentation; and
 - (2) except for a for-sale sign posted on the property that is no larger than three feet by three feet, must accurately describe the availability of water and sewer service facilities and electric and gas utilities.
- (b) The subdivider shall provide a copy in Spanish of all written documents relating to the sale of subdivided land under an executory contract, including the contract, disclosure notice, and annual statement required by this section and a notice of default required by Subchapter D, Chapter 5, Property Code, if:
- (1) negotiations that precede the execution of the executory contract are conducted primarily in Spanish; or
 - (2) the purchaser requests the written documents to be provided in Spanish.
- (c) Before an executory contract is signed by the purchaser, the subdivider shall provide the purchaser with a written notice, which must be attached to the executory contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the subdivider and purchaser, be acknowledged, and read substantially similar to the following:

WARNING

**IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.
CONCERNING THE PROPERTY AT (street address or legal description and municipality)
THIS DOCUMENT STATES THE TRUE FACTS ABOUT THE LAND YOU ARE CONSIDERING PURCHASING.
CHECK OFF THE ITEMS THAT ARE TRUE:**

- The property is in a recorded subdivision.
- The property has water service that provides potable water.
- The property has sewer service or a septic system.
- The property has electric service.
- The property is not in a flood-prone area.
- The roads are paved.
- No person other than the subdivider:
 - (1) owns the property;
 - (2) has a claim of ownership to the property; or
 - (3) has an interest in the property.
- No person has a lien filed against the property.
- There are no back taxes owed on the property.

NOTICE

SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

(2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

(Date) (Signature of Subdivider)

(Date) (Signature of Purchaser)

(d) The subdivider shall provide any purchaser who is sold a lot under an executory contract with an annual statement in January of each year for the term of the executory contract. If the subdivider mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(e) The statement under Subsection (d) must include the following information:

- (1) the amount paid under the contract;
- (2) the remaining amount owed under the contract;
- (3) the annual interest rate charged under the contract during the preceding 12-month period; and
- (4) the number of payments remaining under the contract.

(f) If the subdivider fails to comply with Subsections (d) and (e), the purchaser may:

- (1) notify the subdivider that the purchaser has not received the statement and will deduct 15 percent of each monthly payment due until the statement is received; and
- (2) not earlier than the 25th day after the date the purchaser provides the subdivider notice under this subsection, deduct 15 percent of each monthly payment due until the statement is received by the purchaser.

(g) A purchaser who makes a deduction under Subsection (f) is not required to reimburse the subdivider for the amount deducted.

(h) A person who is a seller of lots in a subdivision, or a subdivider or an agent of a seller or subdivider, commits an offense if the person knowingly authorizes or assists in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning any subdivided land offered for sale or lease. An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. July 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 62, § 13.17, eff. Sept. 1, 1999.

§ 232.034. Conflict of Interest; Penalty

- (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided into tracts or lots. The term does not mean an individual lot in a subdivided tract of land.
- (b) A person has an interest in a subdivided tract if the person:
- (1) has an equitable or legal ownership interest in the tract;
 - (2) acts as a developer of the tract;
 - (3) owns voting stock or shares of a business entity that:
 - (A) has an equitable or legal ownership interest in the tract; or
 - (B) acts as a developer of the tract; or
 - (4) receives in a calendar year money or any thing of value from a business entity described by Subdivision (3).
- (c) A person also is considered to have an interest in a subdivided tract if the person is related in the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who, under Subsection (b), has an interest in the tract.
- (d) If a member of the commissioners court has an interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit with the county clerk stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.
- (e) A member of the commissioners court of a county commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.
- (f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court but for the vote of the member who violated this section.
- (g) A conviction under Subsection (e) constitutes official misconduct by the member and is grounds for removal from office.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

§ 232.035. Civil Penalties

- (a) A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be

sold in a subdivision if the subdivision has not been platted as required by this subchapter.

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

(c) A subdivider who fails to provide, in the time and manner described in the plat, for the construction or installation of water or sewer service facilities described on the plat or on the document attached to the plat or who otherwise violates this subchapter or a rule or requirement adopted by the commissioners court under this subchapter is subject to a civil penalty of not less than \$500 or more than \$1,000 for each violation and for each day of a continuing violation but not to exceed \$5,000 each day and shall also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit.

(d) Except as provided by Subsection (e), a person who violates Subsection (a) or (b) is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed or each subdivision that becomes a nuisance. The person must also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit.

(e) A person who violates Subsection (b) is not subject to a fine under Subsection (d) if the person corrects the nuisance not later than the 30th day after the date the person receives notice from the attorney general or a local health authority of the nuisance.

(f) Venue for an action under this section is in a district court of Travis County, a district court in the county in which the defendant resides, or a district court in the county in which the violation or threat of violation occurs.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 12, eff. Sept. 1, 1999.

§ 232.036. Criminal Penalties

(a) A subdivider commits an offense if the subdivider knowingly fails to file a plat required by this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A subdivider who owns a subdivision commits an offense if the subdivider knowingly fails to timely provide for the construction or installation of water or sewer service as required by Section 232.032 or fails to make a reasonable effort to have electric utility service and gas utility service installed by a utility as required by Section 232.032. An offense under this subsection is a Class A misdemeanor.

(c) If it is shown at the trial of an offense under Subsection (a) that the defendant caused five or more residences in the subdivision to be inhabited, the offense is a state jail felony.

(d) A subdivider commits an offense if the subdivider allows the conveyance of a lot in the

subdivision without the appropriate water and sewer utilities as required by Section 232.032 or without having made a reasonable effort to have electric utility service and gas utility service installed by a utility as required by Section 232.032. An offense under this section is a Class A misdemeanor. Each lot conveyed constitutes a separate offense.

(e) Venue for prosecution for a violation under this section is in the county in which any element of the violation is alleged to have occurred or in Travis County.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

§ 232.037. Enforcement

(a) The attorney general, or the district attorney, criminal district attorney, county attorney with felony responsibilities, or county attorney of the county may take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:

- (1) enjoin the violation or threatened violation of the model rules adopted under Section 16.343, Water Code;
- (2) enjoin the violation or threatened violation of a requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;
- (3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and
- (4) require platting or replatting under Section 232.040.

(b) The attorney general, at the request of the district or county attorney with jurisdiction, may conduct a criminal prosecution under Section 232.033(h) or 232.036.

(c) During the pendency of any enforcement action brought, any resident of the affected subdivision, or the attorney general, district attorney, or county attorney on behalf of a resident, may file a motion against the provider of utilities to halt termination of pre-existing utility services. The services may not be terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health, safety, or welfare of the residents.

(d) This subchapter is subject to the applicable enforcement provisions prescribed by Sections 16.352, 16.353, 16.354, and 16.3545, Water Code.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, §§ 13, 14, eff. Sept. 1, 1999.

§ 232.038. Suit by Private Person in Economically Distressed Area

(a) Except as provided by Subsection (b), a person who has purchased or is purchasing a lot after July 1, 1995, in a subdivision for residential purposes that does not have water and sewer

services as required by this subchapter and is located in an economically distressed area, as defined by Section 17.921, Water Code, from a subdivider, may bring suit in the district court in which the property is located or in a district court in Travis County to:

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

- (A) the market value of any permanent improvements the person placed on the property;
- (B) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;
- (C) court costs; and
- (D) reasonable attorney's fees; or

(2) enjoin a violation or threatened violation of Section 232.032, require the subdivider to plat or replat under Section 232.040, and recover from the subdivider:

- (A) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;
- (B) court costs; and
- (C) reasonable attorney's fees.

(b) If the lot is located in a county defined under Section 232.022(a)(2), a person may only bring suit under Subsection (a) if the person purchased or is purchasing the lot after September 1, 2005.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.; Amended by Acts 1999, 76th Leg., ch. 404, § 15, eff. Sept. 1, 1999.; Acts 2005, 79th Leg., ch. 708, §7, eff. Sept. 1, 2005. Amended by SB 781, eff. June 15, 2007.

§ 232.039. Cancellation of Subdivision

(a) A subdivider of land may apply to the commissioners court to cancel all or part of the subdivision in the manner provided by Section 232.008 after notice and hearing as provided by this section.

(b) A resident of a subdivision for which the subdivider has applied for cancellation under Subsection (a) has the same rights as a purchaser of land under Section 232.008.

(c) The notice required by Section 232.008(c) must also be published in Spanish in the newspaper of highest circulation and in a Spanish-language newspaper in the county if available.

(d) Not later than the 14th day before the date of the hearing, the county chief appraiser shall by regular and certified mail provide notice containing the information described by Section 232.008(c) to:

- (1) each person who pays property taxes in the subdivision, as determined by the most recent tax roll; and
- (2) each person with an interest in the property.

(e) The commissioners court may require a subdivider to provide the court with the name and last known address of each person with an interest in the property. For purposes of this subsection, a person residing on a lot purchased through an executory contract has an interest in the property.

(f) A person who fails to provide information requested under Subsection (e) before the 31st day after the date the request is made is liable to the state for a penalty of \$500 for each week the person fails to provide the information.

(g) The commissioners court may cancel a subdivision only after a public hearing. At the hearing, the commissioners court shall permit any interested person to be heard. At the conclusion of the hearing, the commissioners court shall adopt an order on whether to cancel the subdivision.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 16, eff. Sept. 1, 1999.

§ 232.040. Replatting

(a) A subdivision plat must accurately reflect the subdivision as it develops. If there is any change, either by the intentional act of the subdivider or by the forces of nature, including changes in the size or dimension of lots or the direction or condition of the roads, a plat must be revised in accordance with Section 232.041.

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

- (1) by a subdivider who regains possession of a lot previously exempt under Subsection (c) through the exercise of a remedy described in Section 5.061, Property Code; or
- (2) for which it is shown at a proceeding brought in the district court in which the property is located that the sale of a lot otherwise exempt under Subsection (c) was made for the purpose of evading the requirements of this subchapter.

(c) Subsection (b) does not apply if a seller other than a subdivider or agent of a subdivider resides on the lot.

(d) The attorney general or a district or county attorney with jurisdiction may bring a proceeding under Subsection (b).

(e) Existing utility services to a subdivision that must be platted or replatted under this section may not be terminated under Section 232.029 or 232.0291.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.; Amended by Acts 1999, 76th Leg., ch. 404, § 17, eff. Sept. 1, 1999.; Acts 2005, 79th Leg., ch. 708, § 8, eff. Sept. 1, 2005.

§ 232.041. Revision of Plat

(a) A person who has subdivided land that is subject to the subdivision controls of the county in which the land is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat filed for record with the county clerk.

(b) After the application is filed with the commissioners court, the court shall publish a notice of the application in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision of the plat. The notice must be published at least three times during the period that begins on the 30th day and ends on the seventh day before the date of the meeting. If all or part of the subdivided tract has been sold to nondeveloper owners, the court shall also give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract.

(c) During a regular term of the commissioners court, the court shall adopt an order to permit the revision of the subdivision plat if it is shown to the court that:

- (1) the revision will not interfere with the established rights of any owner of a part of the subdivided land; or
- (2) each owner whose rights may be interfered with has agreed to the revision.

(d) If the commissioners court permits a person to revise a subdivision plat, the person may make the revision by filing for record with the county clerk a revised plat or part of a plat that indicates the changes made to the original plat.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

§ 232.042. Variances From Replatting Requirements

(a) On request of a subdivider or resident purchaser, the commissioners court may grant a delay or a variance from compliance with Section 232.040 as provided by this section.

(b) The commissioners court may grant a delay of two years if the reason for the delay is to install utilities. A person may apply for one renewal of a delay under this subsection. To obtain an initial delay under this subsection, a subdivider must:

- (1) identify the affected utility providers;

- (2) provide the terms and conditions on which service may be provided; and
- (3) provide a certified letter from each utility provider stating that it has the right to serve the area and it will serve the area.

(c) The commissioners court may grant a delay or a variance for a reason other than a reason described by Subsection (b) if it is shown that compliance would be impractical or would be contrary to the health and safety of residents of the subdivision. The commissioners court must issue written findings stating the reasons why compliance is impractical.

(d) A delay or a variance granted by the commissioners court is valid only if the commissioners court notifies the attorney general of the delay or variance and the reasons for the delay or variance not later than the 30th day after the date the commissioners court grants the delay or variance.

(e) Until approved water and sewer services are made available to the subdivision, the subdivider of land for which a delay is granted under this section must provide at no cost to residents:

- (1) 25 gallons of potable water a day for each resident and a suitable container for storing the water; and
- (2) suitable temporary sanitary wastewater disposal facilities.

Added by Acts 1995, 74th Leg., ch. 979, § 4, eff. June 16, 1995.

Amended by Acts 1999, 76th Leg., ch. 404, § 18, eff. Sept. 1, 1999.

§ 232.043. Variances From Platting Requirements

(a) On the request of a subdivider who created an unplatted subdivision or a resident purchaser of a lot in the subdivision, the commissioners court of a county may grant:

- (1) a delay or variance from compliance with the subdivision requirements prescribed by Section 232.023(b)(8) or (9), 232.025(1), (2), (3), (4), or (5), or 232.030(c)(2), (3), (5), or (6); or
- (2) a delay or variance for an individual lot from compliance with the requirements prescribed by the model subdivision rules adopted under Section 16.343, Water Code, for:
 - (A) the distance that a structure must be set back from roads or property lines; or
 - (B) the number of single-family, detached dwellings that may be located on a lot.

(b) If the commissioners court makes a written finding that the subdivider who created the unplatted subdivision no longer owns property in the subdivision, the commissioners court may grant a delay or variance under this section only if:

- (1) a majority of the lots in the subdivision were sold before:
 - (A) September 1, 1995, in a county defined under Section 232.022(a)(1); or

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

(2) a majority of the resident purchasers in the subdivision sign a petition supporting the delay or variance;

(3) the person requesting the delay or variance submits to the commissioners court:

(A) a description of the water and sewer service facilities that will be constructed or installed to service the subdivision;

(B) a statement specifying the date by which the water and sewer service facilities will be fully operational; and

(C) a statement signed by an engineer licensed in this state certifying that the plans for the water and sewer facilities meet the minimum state standards;

(4) the commissioners court finds that the unplatted subdivision at the time the delay or variance is requested is developed in a manner and to an extent that compliance with specific platting requirements is impractical or contrary to the health or safety of the residents of the subdivision; and

(5) the subdivider who created the unplatted subdivision has not violated local law, federal law, or state law, excluding this chapter, in subdividing the land for which the delay or variance is requested, if the subdivider is the person requesting the delay or variance.

(c) If the commissioners court makes a written finding that the subdivider who created the unplatted subdivision owns property in the subdivision, the commissioners court may grant a provisional delay or variance only if the requirements of Subsection (b) are satisfied. The commissioners court may issue a final grant of the delay or variance only if the commissioners court has not received objections from the attorney general before the 91st day after the date the commissioners court submits the record of its proceedings to the attorney general as prescribed by Subsection (d).

(d) If the commissioners court grants a delay or variance under this section, the commissioners court shall:

(1) make findings specifying the reason compliance with each requirement is impractical or contrary to the health or safety of residents of the subdivision;

(2) keep a record of its proceedings and include in the record documentation of the findings and the information submitted under Subsection (b); and

(3) submit a copy of the record to the attorney general.

(e) The failure of the attorney general to comment or object to a delay or variance granted under this section does not constitute a waiver of or consent to the validity of the delay or variance granted.

(f) This section does not affect a civil suit filed against, a criminal prosecution of, or the validity

of a penalty imposed on a subdivider for a violation of law, regardless of the date on which the violation occurred.

Added by Acts 1999, 76th Leg., ch. 404, § 19, eff. Sept. 1, 1999.; Amended by Acts 2005, 79th Leg., ch. 708, § 9, eff. Sept. 1, 2005.

§ 232.044. Amending Plat

The commissioners court may approve and issue an amending plat under this subchapter in the same manner, for the same purposes, and subject to the same related provisions as provided by Section 232.011.

Added by Acts 2007, 81th Leg., eff. Sept. 1, 2007.

SUBCHAPTER C. SUBDIVISION PLATTING REQUIREMENTS IN CERTAIN ECONOMICALLY DISTRESSED COUNTIES

Section

- 232.071. Applicability.
 - 232.072. Plat Required.
 - 232.073. Approval by County Required.
 - 232.074. Bond Requirements.
 - 232.075. Water and Sewer Service Extension.
 - 232.076. Certification Regarding Compliance with Plat Requirements.
 - 232.077. Connections of Utilities in Certain Counties.
 - 232.0775. County Inspector.
 - 232.078. Conflict of Interest; Penalty.
 - 232.079. Civil Penalties.
 - 232.080. Enforcement.
-

§ 232.071. Applicability

This subchapter applies only to the subdivision of land located:

- (1) outside the corporate limits of a municipality; and
- (2) in a county:
 - (A) in which is located a political subdivision that is eligible for and has applied for financial assistance under Section 15.407, Water Code, or Subchapter K, Chapter 17, Water Code; and
 - (B) to which Subchapter B does not apply.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.; Amended by Acts 1999, 76th Leg., ch. 404, § 21, eff. Sept. 1, 1999.; Acts 2005, 79th Leg., ch. 927, § 14, eff. Sept. 1, 2005.

§ 232.072. Plat Required

(a) The owner of a tract of land that divides the tract in any manner that creates lots of five acres or less intended for residential purposes must have a plat of the subdivision prepared. A subdivision of a tract under this section includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

(b) A plat required under this section must:

- (1) include on the plat or have attached to the plat a document containing a description of the water and sewer service facilities that will be constructed or installed to service the subdivision and a statement of the date by which the facilities will be fully operable; and
- (2) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat or the document attached to the plat are in compliance with the model rules adopted under Section 16.343, Water Code.

(c) A plat required under this section must be filed and recorded with the county clerk of the county in which the tract is located. The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.

§ 232.073. Approval by County Required

(a) A plat filed under Section 232.072 is not valid unless the commissioners court of the county in which the land is located approves the plat by an order entered in the minutes of the court. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under this subchapter or if any bond required under this subchapter is not filed with the county clerk.

(b) The commissioners court of the county in which the land is located may establish a planning commission as provided by Subchapter D. The planning commission, including its findings and decisions, is subject to the same provisions applicable to the commissioners court under this subchapter, including Section 232.078 relating to conflicts of interest.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 404, § 22, eff. Sept. 1, 1999.

§ 232.074. Bond Requirements

(a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final approval of a plat under Section 232.073, the commissioners court shall require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the Federal Deposit Insurance Corporation. The subdivider must comply with the requirement before subdividing the tract.

(b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept 1, 1997.

§ 232.075. Water and Sewer Service Extension

(a) The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the commissioners court finds the extension is reasonable and not contrary to the public interest.

(b) The commissioners court may not grant an extension under Subsection (a) if it would allow an occupied residence to be without water or sewer services.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.

§ 232.076. Certification Regarding Compliance With Plat Requirements

(a) On the approval of a plat by the commissioners court, the commissioners court shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the commissioners court.

(b) On its 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:

- (1) determine whether a plat is required under this subchapter for an identified tract of land that is located within the jurisdiction of the county; and
- (2) if a plat is required for the identified tract, determine whether a plat has been reviewed

and approved by the commissioners court.

(c) The request made under Subsection (b) must adequately identify the land that is the subject of the request.

(d) Whenever a request is made under Subsection(b), the commissioners court shall issue the requesting party a written certification of its determinations.

(e) The commissioners court shall make its determinations within 20 days after the date it receives the request under Subsection (b) and shall issue the certificate, if appropriate, within 10 days after the date the determinations are made.

(f) The commissioners court may adopt rules it considers necessary to administer its duties under this section.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.

§ 232.077. Connection of Utilities in Certain Counties

(a) This section applies only to a tract of land for which a plat is required under this subchapter.

(b) An entity described by Subsection (c) may not serve or connect 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 232.076 stating that a plat has been reviewed and approved for the land.

(c) The prohibition established by Subsection (b) applies only to:

- (1) a municipality, and officials of the municipality, that provides water, sewer, electricity, gas, or other utility service;
- (2) a municipally owned or municipally operated utility that provides any of those services;
- (3) a public utility that provides any of those services;
- (4) a water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides any of those services;
- (5) a county that provides any of those services; and
- (6) a special district or authority created by or under state law that provides any of those services.

(d) The prohibition established by Subsection (b) applies only to land that an entity described by Subsection (c) first serves or first connects with services:

- (1) between September 1, 1989, and June 16, 1995; or
- (2) after the effective date of this subchapter.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 62, § 18.36, eff. Sept. 1, 1999.

§ 232.0775. County Inspector

(a) The commissioners court may impose a fee on a subdivider of property under this subchapter for an inspection of the property to ensure compliance with the subdivision regulations adopted under this subchapter, Section 16.343, Water Code, or other law.

(b) Fees collected under this section may be used only to fund inspections conducted under this section.

Added by Acts 1999, 76th Leg., ch. 404, § 23, eff. Sept. 1, 1999.

§ 232.078. Conflict of Interest; Penalty

(a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided into tracts or lots. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has an interest in a subdivided tract if the person:

- (1) has an equitable or legal ownership interest in the tract;
- (2) acts as a developer of the tract;
- (3) owns voting stock or shares of a business entity that:

- (A) has an equitable or legal ownership interest in the tract; or
- (B) acts as a developer of the tract; or

(4) receives in a calendar year money or any thing of value from a business entity described by Subdivision (3).

(c) A person also is considered to have an interest in a subdivided tract if the person is related in the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who, under Subsection (b), has an interest in the tract.

(d) If a member of the commissioners court has an interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit with the county clerk stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.

(e) A member of the commissioners court of a county commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court but for the vote of the member who violated this section.

(g) A conviction under Subsection (e) constitutes official misconduct by the member and is grounds for removal from office.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.

§ 232.079. Civil Penalties

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

(b) A subdivider who fails to provide, in the time and manner described in the plat, for the construction or installation of water or sewer service facilities described on the plat or on the document attached to the plat or who otherwise violates this subchapter or a rule or requirement adopted by the commissioners court under this subchapter is subject to a civil penalty of not less than \$500 or more than \$1,000 for each violation and for each day of a continuing violation but not to exceed \$5,000 each day and shall also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit.

(c) Venue for an action under this section is in a district court of Travis County, a district court in the county in which the defendant resides, or a district court in the county in which the violation or threat of violation occurs.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.

§ 232.080. Enforcement

(a) The attorney general, or the district attorney, criminal district attorney, or county attorney, may take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:

- (1) enjoin the violation or threatened violation of applicable model rules adopted under Section 16.343, Water Code;
- (2) enjoin the violation or threatened violation of a requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;
- (3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and
- (4) require platting as required by this subchapter.

(b) During the pendency of any enforcement action brought, any resident of the affected subdivision, or the attorney general, district attorney, or county attorney on behalf of a resident, may file a motion against the provider of utilities to halt termination of preexisting utility services. The services may not be terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health or to the health, safety, or

welfare of the residents. This subsection does not prohibit a provider of utilities from terminating services under other law to a resident who has failed to timely pay for services.

(c) This subchapter is subject to the applicable enforcement provisions prescribed by Sections 16.352, 16.353, 16.354, and 16.3545, Water Code.

Added by Acts 1997, 75th Leg., ch. 377, § 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 404, § 24, eff. Sept. 1, 1999.

§ 232.081. Amending Plat

The commissioners court may approve and issue an amending plat under this subchapter in the same manner, for the same purposes, and subject to the same related provisions as provided by Section 232.011.

Added by Acts 2007, 80th Leg., eff. Sept. 1, 2007.

SUBCHAPTER D. COUNTY PLANNING COMMISSION

Section

- 232.091. Applicability.
 - 232.092. Establishment and Abolition of Planning Commission.
 - 232.093. Appointment of Members of Planning Commission.
 - 232.094. Financial Disclosure.
 - 232.095. Officers, Quorum, and Meetings.
 - 232.096. Timely Approval of Plats.
 - 232.097. Reasons for Disapproval of Plat Required.
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§ 232.091. Applicability

This subchapter applies only to a county:

- (1) authorized to establish a planning commission under Subchapter B or C; and
- (2) in which the commissioners court by order elects to operate under this subchapter.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

§232.092. Establishment and Abolition of Planning Commission

(a) To promote the general public welfare, the commissioners court of a county by order may:

- (1) establish a planning commission under this section; and
- (2) abolish a planning commission established under this section.

(b) The commissioners court may authorize the planning commission to act on behalf of the commissioners court in matters relating to:

- (1) the duties and authority of the commissioners court under Subchapter A, B, or C; and
- (2) land use, health and safety, planning and development, or other enforcement provisions specifically authorized by law.

(c) If the commissioners court establishes a planning commission, the commissioners court by order shall adopt reasonable rules and procedures necessary to administer this subchapter.

(d) This subchapter does not grant a commissioners court or a planning commission the power to regulate the use of property for which a permit has been issued to engage in a federally licensed activity.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

§ 232.093. Appointment of Members of Planning Commission

(a) The commissioners court may appoint a planning commission consisting of five members. Members are appointed for staggered terms of two years.

(b) A person appointed as a member of the planning commission must be a citizen of the United States and reside in the county.

(c) The commissioners court shall file with the county clerk a certificate of appointment for each commission member.

(d) The commissioners court shall fill any vacancy on the commission.

(e) Before a planning commission member undertakes the duties of the office, the member must:

- (1) take the official oath; and
- (2) swear in writing that the member will promote the interest of the county as a whole and not only a private interest or the interest of a special group or location in the county.

(f) A member of the planning commission serves at the pleasure of the commissioners court and is subject to removal as provided by Chapter 87.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

§ 232.094. Financial Disclosure

(a) A member of the planning commission shall file a financial disclosure report in the same manner as required for county officers under Subchapter B, Chapter 159.

(b) If the commissioners court of the county in which the planning commission member serves has not adopted a financial disclosure reporting system under Subchapter B, Chapter 159, the planning commission member shall file a financial disclosure report in the same manner as required for county officers under Subchapter A, Chapter 159.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

§ 232.095. Officers, Quorum, and Meetings

(a) At the first meeting of each calendar year, the planning commission shall elect a presiding officer and assistant presiding officer. The presiding officer presides over the meetings and executes all documentation required on behalf of the planning commission. The assistant presiding officer represents the presiding officer during the presiding officer's absence.

(b) There is no limitation on the number of terms a member may serve on the commission.

(c) Minutes of the planning commission's proceedings must be filed with the county clerk or other county officer or employee designated by the commissioners court. The minutes of the planning commission's proceedings are a public record.

(d) The planning commission is subject to Chapters 551 and 552, Government Code.

(e) The planning commission may adopt rules necessary to administer this subchapter. Rules adopted under this subsection are subject to approval by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

§ 232.096. Timely Approval of Plats

(a) The planning commission shall issue a written list of the documentation and other information that must be submitted with a plat application. The documentation or other information must relate to a requirement authorized by law. An application submitted to the planning commission that contains the documents and other information on the list is considered complete.

(b) If a person submits an incomplete plat application to the planning commission, the planning commission or its designee shall, not later than the 15th business day after the date the planning commission or its designee receives the application, notify the applicant of the missing documents or other information. The planning commission or its designee shall allow an

applicant to timely submit the missing documents or other information.

(c) An application is considered complete on the date all documentation and other information required by Subsection (a) is received by the planning commission.

(d) If the approval of the plat is within the exclusive jurisdiction of the planning commission, the planning commission shall take final action on a plat application, including the resolution of all appeals, not later than the 60th day after the date a completed plat application is received by the planning commission.

(e) The time period prescribed by Subsection (d) may be extended for:

- (1) a reasonable period if requested by the applicant; and
- (2) an additional 60 days if the county is required under Chapter 2007, Government Code, to perform a takings impact assessment in connection with a plat submitted for approval.

(f) The planning commission may not compel an applicant to waive the time limits prescribed by this section.

(g) If the planning commission fails to take final action on the completed plat application as required by this section, the applicant may apply to a district court in the county in which the land is located for a mandamus order to compel the planning commission to approve or disapprove the plat. A planning commission subject to a mandamus order under this subsection shall make a decision approving or disapproving the plat not later than the 20th business day after the date a copy of the mandamus order is served on the presiding officer of the planning commission. If the planning commission approves the plat, the planning commission, within the 20-day period prescribed by this subsection, shall:

- (1) refund the greater of the unexpended portion of any plat application fee or deposit or 50 percent of a plat application fee or deposit that has been paid;
- (2) determine the appropriate amount of any bond or other financial guarantee required in connection with the plat approval; and
- (3) issue documents recognizing the plat's approval.

(h) Except as provided by this subsection, an approval of a plat by the planning commission is final on the 31st day after the date the planning commission votes to approve the plat. On the request of a county commissioner, the commissioners court shall review a plat approved by the planning commission not later than the 30th day after the date the planning commission votes to approve the plat. The commissioners court may disapprove the plat if the plat fails to comply with state law or rules adopted by the county or the planning commission. If the commissioners court fails to take action within the 30-day period prescribed by this subsection, the decision of the planning commission is final.

(i) In this section, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

§ 232.097. Reasons for Disapproval of Plat Required

If the planning commission refuses to approve a plat, the planning commission shall provide to the person requesting approval a notice specifying the reason for the disapproval.

Added by Acts 1999, 76th Leg., ch. 404, § 25, eff. Sept. 1, 1999.

SUBCHAPTER E. INFRASTRUCTURE PLANNING PROVISIONS IN CERTAIN URBAN COUNTIES

Section

232.100. Applicability.

232.101. Rules.

232.102. Major Thoroughfare Plan.

232.103. Lot Frontages.

232.104. Set-Backs.

232.105. Developer.

232.106. Connection of Utilities.

232.107. Provisions Cumulative.

232.108. Plat Requirements.

232.109. Fire Suppression System.

§ 232.100. Repealed by Acts 2007, 80th Leg., eff. Sept. 1, 2007

§232.101. Rules

(a) By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

(b) Unless otherwise authorized by state law, a commissioners court shall not regulate under this section:

- (1) the use of any building or property for business, industrial, residential, or other purposes;
- (2) the bulk, height, or number of buildings constructed on a particular tract of land;
- (3) the size of a building that can be constructed on a particular tract of land, including without limitation and* restriction on the ratio of building floor space to the land square

footage;

(4) the number of residential units that can be built per acre of land;

(5) a plat or subdivision in an adjoining county; or

(6) road access to a plat or subdivision in an adjoining county.

(c) The authority granted under Subsection (a) is subject to the exemptions to plat requirements provided for in Section 232.0015.

*Probably should read "any." Compare Local Govt. Code § 212.003(a)(3).; Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.; Amended by S.B. 1867, eff. Sept. 1, 2007.

§ 232.102. Major Thoroughfare Plan

By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

(1) require a right-of-way on a street or road that functions as a major thoroughfare of a width of not more than 120 feet; or

(2) require a right-of-way on a street or road that functions as a major thoroughfare of a width of more than 120 feet, if such requirement is consistent with a transportation plan adopted by the metropolitan planning organization of the region.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.103. Lot Frontages

By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt reasonable standards for minimum lot frontages on existing county roads and establish reasonable standards for the lot frontages in relation to curves in the road.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001..

§ 232.104. Set-Backs

By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may establish reasonable building and set-back lines as provided by Chapter 233 without the limitation period provided by Section 233.004(c).*

*Redesignated as 233.034(c) by HB 2812, eff. Sept. 1, 2001.; Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.105. Developer Participation Contracts

(a) Without complying with the competitive sealed bidding procedure of Chapter 262, a commissioners court may make a contract with a developer of a subdivision or land in the unincorporated area of the county to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 262 applies to the contract if the contract would otherwise be governed by that chapter.

(b) Under the contract, the developer shall construct the improvements, and the county shall participate in the cost of the improvements.

(c) The contract must establish the limit of participation by the county at a level not to exceed 30 percent of the total contract price. In addition, the contract may also allow participation by the county at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the county, including but not limited to increased capacity of improvements to anticipate other future development in the area. The county is liable only for the agreed payment of its share, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by an order of the commissioners court.

(d) The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

(e) In the order adopted by the commissioners court under Subsection (c), the county may include additional safeguards against undue loading of cost, collusion, or fraud.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.106. Connection of Utilities

By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may impose the requirements of Section 232.029 or 232.0291.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.; Amended by Acts 2005, 79th Leg., ch. 708, § 10, eff. Sept. 1, 2005

§ 232.107. Provisions Cumulative

The authorities under this subchapter are cumulative of and in addition to the authorities granted under this chapter and all other laws to counties to regulate the subdivision of land.

Added by Acts 2001, 77th Leg., ch. 736, § 1, eff. Sept. 1, 2001.

§ 232.108. Plat Requirements

(a) The commissioners court, in addition to having the authority to adopt rules under Section 232.101 and other authority granted by this chapter, may impose the plat requirements prescribed by Section 232.023. If the commissioners court imposes the plat requirements prescribed by Section 232.023, any rules adopted under Section 232.101 must be consistent with those requirements.

(b) If a county imposing the plat requirements prescribed by Section 232.023 is not described by Section 232.022(a):

- (1) the document required by Section 232.023(b)(6) is not required to be in Spanish; and
- (2) the plat requirements related to drainage shall be those authorized by Section 232.003(8) rather than those authorized by Section 232.023(b)(8).

Added by SB 1867, eff. Sept. 1, 2007.

§ 232.109. Fire Suppression System

In a subdivision that is not served by fire hydrants as part of a centralized water system certified by the Texas Commission on Environmental Quality as meeting minimum standards for water utility service, the commissioners court may require a limited fire suppression system that requires a developer to construct:

- (1) for a subdivision of fewer than 50 houses, 2,500 gallons of storage; or
- (2) for a subdivision of 50 or more houses, 2,500 gallons of storage with a centralized water system or 5,000 gallons of storage.

Added by SB 1867, eff. Sept. 1, 2007.

CHAPTER 233. COUNTY REGULATION OF HOUSING AND OTHER STRUCTURES

SUBCHAPTER B. BUILDING AND SETBACK LINES

Section

233.031. Authority Limited to Unincorporated Areas; Conflict With Municipal Authority.

233.032. Powers and Duties of Commissioners Court.

233.033. Hearing; Adoption of Lines.

233.034. Notice; Limitations Period.

233.035. Board of Building Line Adjustment.

233.036. Enforcement.

233.037. Appeal.

§ 233.031. Authority Limited to Unincorporated Areas; Conflict With Municipal Authority

- (a) The authority under this subchapter to establish building and set-back lines applies only to areas outside the corporate limits of municipalities.
- (b) If the lines conflict with lines adopted by a municipality, the municipal lines prevail if they are in the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1, § 54(d), eff. Aug. 28, 1989.
Renumbered from V.T.C.A.A. Local Gov't Code § 233.001 and amended by Acts 2001, 77th Leg., ch. 1420, § 12.002 (3), eff. Sept. 1, 2001.

§ 233.032. Powers and Duties of Commissioners Court

- (a) If the commissioners court of a county determines that the general welfare will be promoted, the court may:
 - (1) establish by order building or set-back lines on the public roads, including major highways and roads, in the county; and
 - (2) prohibit the location of a new building within those building or set-back lines.
- (b) A building or set-back line established under this subchapter may not extend:
 - (1) more than 25 feet from the edge of the right-of-way on all public roads other than major highways and roads; or
 - (2) more than 50 feet from the edge of the right-of-way of major highways and roads.
- (c) The commissioners court may designate the public roads that are major highways and roads.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1, § 54(d), eff. Aug. 28, 1989.
Renumbered from V.T.C.A.A., Local Gov't Code § 233.002, and Amended by Acts 2001, 77th Leg., ch. 1420, § 12.002 (3), eff. Sept. 1, 2001

§ 233.033. Hearing; Adoption of Lines

- (a) Before the establishment or change of building or set-back lines, the commissioners court must hold at least one public hearing on the establishment or change. The court shall publish notice of the time and place of the hearing in a newspaper of general circulation in the county before the 15th day before the date of the hearing. The court may adjourn the hearing from time

to time.

(b) The commissioners court may establish or change a building or set-back line only by an order passed by at least a majority vote of the full membership of the court.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 1, § 54(d), eff. Aug. 28, 1989.

Renumbered from V.T.C.A., Local Gov't Code § 233.003, and Amended by Acts 2001, 77th Leg., ch. 1420, § 12.002 (3), eff. Sept. 1, 2001

§ 233.034. Notice; Limitations Period

(a) An owner of real property that fronts along a road that has a building or set-back line established under this subchapter is charged with notice of the building or set-back line order.

(b) The commissioners court shall show in a general manner each building or set-back line established under this subchapter on a map. The map shall be filed with the county clerk.

(c) If the county does not begin the construction of the improvement or widening of a road along which a building or set-back line has been established within four years after the date the building or set-back line is established, the building or set-back line becomes void, unless the county and the affected property owners agree to extend the time period for the improvements or widening.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Amended by Acts 1989, 71st Leg., ch. 1, § 54(d), eff. Aug. 28, 1989.

Renumbered from V.T.C.A., Local Gov't Code § 233.034, and Amended by Acts 2001, 77th Leg., ch. 1420, § 12.002 (3), eff. Sept. 1, 2001

§ 233.035. Board of Building Line Adjustment

(a) The commissioners court may appoint a board of building line adjustment consisting of five freeholders of the county. Members must be appointed for staggered terms of two years, with two members' terms expiring in one year and three members' terms expiring the next year. However, in making the initial appointments, the commissioners court shall designate two members for one-year terms and three members for two-year terms. The court may remove a member for cause on a written charge after a public hearing. The court shall fill a vacancy on the board for the unexpired term of the member whose term becomes vacant.

(b) The board shall elect its own chairman and shall adopt rules of procedure. The meetings of the board are open to the public. The board shall keep minutes of its proceedings that shall be filed in the board's office. The minutes of board meetings constitute a public record.

(c) Subject to appropriate conditions and safeguards, the board may modify or vary the regulations affecting building or set-back lines in a case in which unnecessary hardship may result from a literal enforcement of those regulations, in order to do substantial justice and to

observe the purpose of the regulations in protecting the public welfare and safety.

(d) The board shall hear and decide an appeal in a case in which, because of exceptional narrowness, shallowness, shape, topography, existing building development, or another exceptional and extraordinary situation or condition of a specific piece of property, the strict application of a building line established under this subchapter would result in peculiar and exceptional difficulties or hardships to the owner of the property. On appeal, the board may authorize a variance from the strict application of the regulation, under conditions imposed by the board, to relieve the hardship or difficulty if that relief can be granted without substantially impairing the intent and purpose of the building line or set-back line.

(e) With appropriate safeguards, the board shall authorize the construction of an improvement or a structure that may encroach on a building or set-back line. However, if the county proceeds with projected improvements of the affected road within the time provided by Section 233.034(c), the owner of the improvement or structure must remove it at no expense to the county.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Renumbered from V.T.C.A., Local Gov't Code § 233.005, and Amended by Acts 2001, 77th Leg., ch. 1420, § 12.002 (3), eff. Sept. 1, 2001.

§ 233.036. Enforcement

If a structure is erected, constructed, or reconstructed in violation of a building or set-back line established under this subchapter, the commissioners court, the district or county attorney, or an owner of real property in the county may institute an injunction, mandamus, abatement, or other appropriate action to prevent, abate, remove, or enjoin the unlawful erection, construction, or reconstruction.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Renumbered from V.T.C.A., Local Gov't Code § 233.005, and Amended by Acts 2001, 77th Leg., ch. 1420, § 12.002 (3), eff. Sept. 1, 2001.

§ 233.037. Appeal

(a) An owner of property who is aggrieved by an action or order adopted by the board of building line adjustment may appeal to the commissioners court. The person must bring the appeal within 30 days after the date the action or order was adopted.

(b) A property owner in the county who is aggrieved by a final order of the board or of the commissioners court may appeal to the district court or to another court with proper jurisdiction. The appellant must bring the appeal within 30 days after the date on which the final order in question was adopted. The appellant must execute an appeal bond in an amount fixed by the court.

SUBCHAPTER C. FIRE CODE IN UNINCORPORATED AREA

Sections

- 233.061. Authority to Adopt and Enforce Fire Code.
 - 233.0615. Definitions; Substantial Improvement; Construction
 - 233.062. Application and Content of Fire Code.
 - 233.063. Building Permit; Application.
 - 233.064. Inspections.
 - 233.065. Fees.
 - 233.066. Injunction.
 - 233.067. Civil Penalty.
-

§ 233.061. Authority to Adopt and Enforce Fire Code

- (1) The commissioners court of a county with a population of over 250,000 or a county adjacent to a county with a population of over 250,000 may adopt a fire code and rules necessary to administer and enforce the fire code.
- (2) The commissioners court, or any municipality in the county, may contract with one another for the administration and enforcement of the fire code.

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 598, § 1, eff. June 11, 1997.

Renumbered from V.T.C.A., Local Gov't Code § 235.001, by Acts 2001, 77th Leg., ch. 1420, § 12.003 (4), eff. Sept. 1, 2001.

§ 233.0615. Definitions; Substantial Improvement; Construction

(a) In this subchapter:

- (1) "Building" includes an establishment or multifamily dwelling.
- (2) "Substantial improvement" means:
 - (A) the repair, restoration, reconstruction, improvement, or remodeling of a building for which the cost exceeds 50 percent of the building's value according to the certified tax appraisal roll for the county for the year preceding the year in which the work was begun; or
 - (B) a change in occupancy classification involving a change in the purpose or level of activity in a building, including the renovation of a warehouse into a loft apartment

(b) For purposes of this subchapter, substantial improvement begins on the date that the reappear, restoration, reconstruction, improvement, or remodeling or the change in occupancy classification begins or on the date materials are first delivered for that purpose.

(c) For purposes of this subchapter, construction begins on the date that ground is broken for a building, or if no ground is broken, on the date that:

- (1) the first materials are added to the original property; or
- (2) foundation pilings are installed on the original property; or
- (3) a manufactured building or relocated structure is placed on a foundation on the original property.

Added by Acts 2005, 79th Leg., ch. 331, § 1, eff. June 17, 2005.

§ 233.062. Application and Content of Fire Code

(a) The fire code applies only to the following buildings constructed in an unincorporated area of the county:

- (1) a commercial establishment;
- (2) a public building; and
- (3) a multifamily residential dwelling consisting of four or more units.

(b) The fire code does not apply to an industrial facility having a fire brigade that conforms to requirements of the Occupational Health and Safety Administration.

(c) The fire code must:

- (1) conform to:
 - (A) the International Fire Code, as published by the International Code Council, as the code existed on May 1, 2005; or
 - (B) the Uniform Fire Code, as published by the National Fire Protection Association, as the code existed on May 1, 2005; or
- (2) establish protective measures that exceed the standards of the codes described by Subdivision (1).

(d) The commissioners court may adopt later editions of a fire code listed in Subsection (c).

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991.
Renumbered from V.T.C.A., Local Gov't Code § 235.002, and Amended by Acts 2001, 77th Leg., ch. 1420, § 12.003 (4), eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 331, § 2, eff. June 17, 2005.

§ 233.063. Building Permit; Application

(a) A person may not construct or substantially improve a building described by Section 233.062(a) in an unincorporated area of the county unless the person obtains a building permit issued in accordance with this subchapter.

(b) A person may apply for a building permit by providing to the commissioners court:

- (1) a plan of the proposed building containing information required by the commissioners court; and
- (2) an application fee in an amount set by the commissioners court.

(c) Within 30 days after the date the commissioners court receives an application and fee in accordance with Subsection (b), the commissioners court shall:

- (1) issue the permit if the plan complies with the fire code; or
- (2) deny the permit if the plan does not comply with the fire code.

(d) If the commissioners court receives an application and fee in accordance with Subsection (b) and the commissioners court does not issue the permit or deny the application within 30 days after receiving the application and fee, the construction or substantial improvement of the building that is the subject of the application is approved for the purposes of this subchapter.

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991.

Amended by HB 2812, eff. Sept. 1, 2001.

Amended by SB 736, eff. Sept. 1, 2005.

§ 233.064. Inspections

(a) The county shall inspect a building subject to this subchapter to determine whether the building complies with the fire code.

(b) The commissioners court may provide that a county employee or an employee of another governmental entity under intergovernmental contract may perform the inspection.

(c) A building inspector may enter and perform the inspection at a reasonable time at any stage of the building's construction or substantial improvement and after completion of the building.

(d) On or before the date that construction or substantial improvement of a building subject to this subchapter is completed, the owner of the building shall request in writing that the county inspect the building for compliance with the fire code.

(e) The county shall begin the inspection of the building within five business days after the date of the receipt of the written inspection request. If an inspection is properly requested and the county does not begin the inspection within the time permitted by this subsection, the building that is the subject of the request is considered approved for the purposes of this subchapter.

(f) The county shall issue a final certificate of compliance to the owner of a building inspected

under this section if the inspector determines, after an inspection of the completed building, that the building complies with the fire code.

(g) If the inspector determines, after an inspection of the completed building, that the building does not comply with the fire code:

- (1) the county shall deny the certificate of compliance; and
- (2) the building may not be occupied.

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991.

Amended by HB 2812, eff. Sept. 1, 2001.

Amended by SB 736, eff. Sept. 1, 2005.

§ 233.065. Fees

(a) The commissioners court may develop a fee schedule based on building type and may set and charge fees for an inspection and the issuance of a building permit and final certificate of compliance under this subchapter.

(b) The fees must be set in amounts necessary to cover the cost of administering and enforcing this subchapter.

(c) The county shall deposit fees received under this subchapter in a special fund in the county treasury, and money in that fund may be used only for the administration and enforcement of the fire code.

(d) The fee for a fire code inspection under this subchapter must be reasonable and reflect the approximate cost of the inspection personnel, materials, and administrative overhead.

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991.

Amended by HB 2812, eff. Sept. 1, 2001.

Amended by SB 736, eff. Sept. 1, 2005.

§ 233.066. Injunction

The appropriate attorney representing the county in the district court may seek injunctive relief to prevent the violation or threatened violation of the fire code.

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991.

Amended by HB 2812, eff. Sept. 1, 2001.

§ 233.067. Civil Penalty

(a) The appropriate attorney representing the county in civil cases may file a civil action in a

court of competent jurisdiction to recover from a person who violates the fire code a civil penalty in an amount not to exceed \$200 for each day on which the violation exists. In determining the amount of the penalty, the court shall consider the seriousness of the violation.

(b) The county shall deposit amounts collected under this section in the fund and for the purposes described by Section 233.065(c).

Added by Acts 1989, 71st Leg., ch. 296, § 1, eff. Jan. 1, 1991.

Amended by HB 2812, 2001.

CHAPTER 240. MISCELLANEOUS REGULATORY AUTHORITY OF COUNTIES

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 240.901. Land Use Regulation for Flood Control in Coastal Counties

(a) This state recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomical for the private insurance industry alone to make flood insurance available to those in need of protection on reasonable terms and conditions. Recognizing the burden on the nation's resources, congress enacted the National Flood Insurance Act of 1968, under which flood insurance can be made available through the coordinated efforts of the federal government and the private insurance industry by pooling risks and by the positive cooperation of state and local governments. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under the federal program, thus procuring coverage for the citizens of this state who desire to participate, to promote the public interest by providing appropriate protection against the perils of flood losses, and to encourage sound land use by minimizing exposure of property to flood losses.

(b) A county bordering on the Gulf of Mexico or on the tidewater limits of the gulf may determine the boundaries of any flood-prone area of the county. The suitability of that determination is conclusively established when the commissioners court of the county adopts a resolution finding that the area is a flood-prone area.

(c) The commissioners court may adopt and enforce rules that regulate the management and use of land, structures, and other development in a flood-prone area of the county in order to reduce the extent of damage caused by flooding. The matters to which the rules may apply include:

- (1) the floodproofing of structures located or to be constructed in the area;
- (2) the minimum elevation of a structure permitted to be constructed or improved in the area;
- (3) specifications for drainage;
- (4) the prohibition of the connection of land with water, sewer, electricity, and gas utility service, if a structure or other development on the land is not in compliance with a rule adopted by the commissioners court; and
- (5) any other action feasible to minimize flooding and rising water damage.

(d) In this section, "flood-prone area" means an area that is subject to damage from rising water or flooding from the Gulf of Mexico or its tidal waters, including lakes, bays, inlets, and lagoons.

(e) Rules and regulations adopted by counties under this section shall comply with rules and regulations promulgated by the Commissioner of the General Land Office under Sections 16.320 and 16.321, Water Code.

(f) If the commissioners court prohibits the connection of land with water, sewer, electricity, and gas utility service under Subsection (c)(4), a person may not provide utility services that connect the land with utility services without written certification from the county that the property complies with rules adopted under this section.

(g) A commissioners court may authorize procedures for filing a notice in the real property records of the county in which a property is located that identifies any condition on the property that the county determines violates the rules adopted under this section or a permit issued under this section. The notice is not a final legal determination and is meant only to provide notice of the county's determination that a violation of the rules or a permit exists on the property. The notice must include a description legally sufficient for identification of the property and the name of the owner of the property.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Amended by Acts 1991, 72nd Leg., ch. 295, § 40, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 461, § 1, eff. Sept. 1, 1997.

LOCAL GOVERNMENT CODE CHAPTER 245

CHAPTER 245. ISSUANCE OF LOCAL PERMITS

§ 245.001. Definitions

In this chapter:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

(2) "Political subdivision" means a political subdivision of the state, including a county, a school district, or a municipality.

(3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

(4) "Regulatory agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999.

Amended by SB 848, eff. Sept. 1, 2005.

§ 245.002. Uniformity of Requirements

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

- (1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or
- (2) a plan for development of real property or plat application is filed with a regulatory agency

(a-1) Rights to which a permit applicatn is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicat delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

- (1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application
- (2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and
- (3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

(f) This chapter does not prohibit a regulatory agency from requiring compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed even though the application is filed after the date an applicant accrues rights under Subsection (a-1).

(g) Notwithstanding Section 245.003, the change in law made to Subsection (a) and the addition of Subsections (a-1), (e), and (f) by S.B. No. 848, Acts of the 79th Legislature, Regular Session, 2005, apply only to a project commenced on or after the effective date of that Act.

Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999.

Amended by SB 848, eff. Sept. 1, 2005.

NOTE: In addition to amending § 245.004, HB 2130 (effective Sept. 1, 2003) forbids a water district or authority governing groundwater within five counties from requiring a permit for certain projects in progress. The full text of Section 2 of HB 2130 reads:

SECTION 2. This section applies only to a project, as defined by Chapter 245, Local Government Code, in progress on the date a water district or authority with regional management and regulatory authority over groundwater withdrawals within all or part of at least five counties adopts any rule requiring a permit or authorization for a project to improve or develop land. A project is considered in progress if a permit or other form of authorization establishing vested rights for the project pursuant to Chapter 245, Local Government Code, was in effect in the area of the authority's jurisdiction as of the rule's adoption date, whether before, on, or after the effective date of this Act. A district or authority may not impose permit requirements on or otherwise regulate a project in progress as described by this section. This section supersedes any other applicable law to the extent of any conflict.

§ 245.003. Applicability of Chapter

This chapter applies only to a project in progress on or commenced after September 1, 1997. For purposes of this chapter a project was in progress on September 1, 1997, if:

- (1) before September 1, 1997:

- (A) regulatory agency approved or issued one or more permits for the project; or
 - (B) an application for a permit for the project was filed with a regulatory agency; and
- (2) on or after September 1, 1997, a regulatory agency enacts, enforces, or otherwise imposes:
- (A) an order, regulation, ordinance, or rule that in effect retroactively changes the duration of a permit for the project;
 - (B) a deadline for obtaining a permit required to continue or complete the project that was not enforced or did not apply to the project before September 1, 1997; or
 - (C) any requirement for the project that was not applicable to or enforced on the project before September 1, 1997.

Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999.

§ 245.004. Exemptions

This chapter does not apply to:

- (1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:
 - (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or
 - (B) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;
- (2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;
- (3) regulations that specifically control only the use of land in a municipality that does not have zoning and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, or building size;
- (4) regulations for sexually oriented businesses;
- (5) municipal or county ordinances, rules, regulations, or other requirements affecting colonias;
- (6) fees imposed in conjunction with development permits;
- (7) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;

(8) regulations for utility connections;

(9) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;

(10) construction standards for public works located on public lands or easements; or

(11) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:

(A) affect landscaping or tree preservation or open space or park dedication, lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project; or

(B) change development permitted by a restrictive covenant required by a municipality.

Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999.

Amended by HB 2130, eff. Sept. 1, 2003.

Amended by SB 574, eff. Sept. 1, 2005

NOTE: See the note following § 245.006 (below) for further limits on the applicability of Chapter 245.

§ 245.005. Dormant Projects

(a) After the first anniversary of the effective date of this chapter, a regulatory agency may enact an ordinance, rule, or regulation that places an expiration date on a permit if as of the first anniversary of the effective date of this chapter: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project. Any ordinance, rule, or regulation enacted pursuant to this subsection shall place an expiration date of no earlier than the fifth anniversary of the effective date of this chapter.

(b) A regulatory agency may enact an ordinance, rule, or regulation that places an expiration date of not less than two years on a individual permit if no progress has been made towards completion of the project. Notwithstanding any other provision of this chapter, any ordinance, rule, or regulation enacted pursuant to this section shall place an expiration date on a project of no earlier than the fifth anniversary of the date the first permit application was filed for the project if no progress has been made towards completion of the project. Nothing in this subsection shall be deemed to affect the timing of a permit issued solely under the authority of Chapter 366, Health and Safety Code, by the Texas Commission on Environmental Quality or its authorized agent.

(c) Progress towards completion of the project shall include any one of the following:

(1) an application for a final plat or plan is submitted to a regulatory agency;

- (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999.

Amended by SB 574, eff. Sept. 1, 2005

§ 245.006. Enforcement of Chapter

- (a) This chapter may be enforced only through mandamus or declaratory or injunctive relief.
- (b) A political subdivision's immunity from suit is waived in regard to an action under this chapter.

Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999.

Amended by SB 574, eff. Sept. 1, 2005

§ 245.007. Construction and Renovation Work on County-Owned Buildings and Facilities in Certain Counties

- (a) This section applies only to a building or facility that is owned by a county with a population of 3.3 million or more and is located within the boundaries of another political subdivision.
- (b) A political subdivision may not require a county to notify the political subdivision or obtain a building permit for any new construction or any renovation of a building or facility owned by the county if the construction or renovation work is supervised and inspected by an engineer or architect licensed in this state.
- (c) This section does not exempt a county from complying with the building standards of the political subdivision during the construction or renovation of the building or facility.

Addedd by HB 960, eff. Sept. 1, 2005

NOTE: Chapter 245 was added by Section 2 of Acts 1999, 76th Leg., ch. 73, eff. May 11, 1999. It

restored requirements that had been inadvertently repealed in 1997. Other sections of the 1999 act contain significant provisions regarding its interpretation and applicability and are therefore set out below.

SECTION 1. FINDINGS; INTENT. (a) The legislature finds that the former Subchapter I, Chapter 481, Government Code, relating to state and local permits, originally enacted by Section 1, Chapter 374, Acts of the 70th Legislature, Regular Session, 1987, and subsequently amended by Section 3.01, Chapter 4, Acts of the 71st Legislature, Regular Session, 1989, Section 2, Chapter 118, Acts of the 71st Legislature, Regular Session, 1989, and Section 1, Chapter 794, Acts of the 74th Legislature, Regular Session, 1995, was inadvertently repealed by Section 51(b), Chapter 1041, Acts of the 75th Legislature, Regular Session, 1997.

(b) The legislature finds that the repeal of former Subchapter I, Chapter 481, Government Code, which became effective September 1, 1997, resulted in the reestablishment of administrative and legislative practices that often result in unnecessary governmental regulatory uncertainty that inhibits the economic development of the state and increases the cost of housing and other forms of land development and often resulted in the repeal of previously approved permits causing decreased property and related values, bankruptcies, and failed projects.

(c) The legislature finds that the restoration of requirements relating to the processing and issuance of permits and approvals by local governmental regulatory agencies is necessary to minimize to the extent possible the effect of the inadvertent repeal of the former Subchapter I, Chapter 481, Government Code, and to safeguard the general economy and welfare of the state and to protect property rights.

(d) It is the intent of the legislature that no project, permit, or series of permits that was protected by former Subchapter I, Chapter 481, Government Code, be prejudiced by or required or allowed to expire because of the repeal of former Subchapter I or an action taken by a regulatory agency after the repeal.

SECTION 3. EFFECT OF PRIOR LAW. (a) The repeal of Subchapter I, Chapter 481, Government Code, By Section 51(b), Chapter 1041, Acts of the 75th Legislature, Regular Session, 1997, and any actions taken by a regulatory agency for the issuance of a permit, as those terms are defined by Section 2245.001, Local Government Code, as added by Section 2 of this Act, after that repeal and before the effective date of this Act, shall not cause or require the expiration or termination of a project, permit, or series of permits to which Section 2 of this Act applies. An action by a regulatory agency that violates this section is void to the extent necessary to give effect to this section.

(b) This Act does not affect the rights or remedies of any person or entity under a final judgment rendered by a court before the effective date of this Act, or in any litigation pending in a court on the effective date of this Act, involving an interpretation of Subchapter I, Chapter 481, Government Code, as it existed before its repeal by the 75th Legislature.

SECTION 4. CONSTRUCTION OF ACT. Nothing in this Act shall be construed to apply to a condition or provision of an ordinance, rule, or regulation that is enacted by a regulatory agency, as that term is defined by Section 245.001, Local Government Code, as added by Section 2 of this Act, which is specifically required by uniformly applicable regulations adopted by a state agency after the effective date of this Act.

SECTION 5. EFFECT ON COASTAL ZONE MANAGEMENT ACT. Nothing in this Act shall be construed to:

1) limit or otherwise affect the authority of a municipality, a county, another political subdivision, the state, or an agency of the state, with respect to the implementation or enforcement of an ordinance, a rule, or a statutory standard of a program, plan, or ordinance that was adopted under the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments to Subtitle E, Title 2, Natural Resources Code; or (2) apply to a permit, order, rule, regulation, or other action issued, adopted, or undertaken by a municipality, a county, another political subdivision, the state or an agency of the state in connection with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code.

PROPERTY CODE

CHAPTER 5. CONVEYANCES

SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

Section

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 - 5.083. Right to Cancel Contract for Proper Platting.
 - 5.084. Right to Deduct.
 - 5.085. Fee Simple Title Required; Maintenance of Fee Simple Title.
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SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

NOTE: SB 198, generally effective Sept. 1, 2001, substantially changed Subchapter D, adding amended versions of many provisions formerly in Subchapter E. See the note following § 5.080 for details regarding how the amendments "phase-in" to apply to particular transactions and contracts.

§ 5.061. Definition

In this subchapter, "default" means the failure to:

- (1) make a timely payment; or
- (2) comply with a term of an executory contract.

Added by Acts 1995, 74th Leg., ch. 994, § 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code § 5.065 and amended by Act 2001, 77th Leg., ch. 693, § 1, eff. Sept. 1, 2001.

§ 5.062. Applicability

(a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

- (1) a lot measuring one acre or less is presumed to be residential property; and
- (2) an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease, is considered an executory contract for conveyance of real property.

(b) This subchapter does not apply to the following transactions under an executory contract:

- (1) the sale of state land or a sale of land; or
- (2) a sale of land by:

- (A) the Veterans' Land Board;
- (B) this state or a political subdivision of this state; or
- (C) an instrumentality, public corporation, or other entity created to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code.

(c) This subchapter does not apply to an executory contract that provides for the delivery of a deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.

(d) Section 5.066 and Sections 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property:

- (1) is related to the seller of the property within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and
- (2) has waived the applicability of those sections in a written agreement.

(e) Sections 5.066, 5.067, 5.071, 5.075, 5.081, and 5.082 do not apply to an executory contract described by Subsection (a)(2).

(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory contract to purchase the property covered by the executory contract for longer than three years:

- (1) Sections 5.063-5.065;
- (2) Section 5.073, except for Section 5.073(a)(2); and
- (3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

Amended by HB 1823, eff. Sept. 1, 2005.

§ 5.0621. Construction with Other Law

(a) Except as provided by Subsection (b), the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement.

(b) After a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92 no longer applies to the lease.

§ 5.063. Notice

(a) Notice under Section 5.064 must be in writing and must be delivered by registered or certified mail, return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

(b) The notice must also:

- (1) identify and explain the remedy the seller intends to enforce;
- (2) if the purchaser has failed to make a timely payment, specify:

- (A) the delinquent amount, itemized into principal and interest;
- (B) any additional charges claimed, such as late charges or attorney's fees; and
- (C) the period to which the delinquency and additional charges relate; and

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

§ 5.064. Seller's Remedies on Default

A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property only if:

(1) the seller notifies the purchaser of:

- (A) the seller's intent to enforce a remedy under this section; and
- (B) the purchaser's right to cure the default within the 30-day period described by Section 5.065;

- (2) the purchaser fails to cure the default within the 30-day period described by Section 5.065; and
- (3) Section 5.066 does not apply.

Amended by SB 1527, eff. Sept. 1, 2003. See note under § 5.065 regarding applicability of change made by SB 1527 reducing the cure period from 60 days to 30 days.

§ 5.065. Right to Cure Default

Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 30th day after the date notice is given under that section.

Amended by SB 1527, eff. Sept. 1, 2003.

NOTE: The change in law made by SB 1527, reducing from 60 days to 30 days the time period allowed for curing a default, applies only to an executory contract for conveyance signed on or after September 1, 2003. An executory contract for conveyance signed before September 1, 2003, is covered by the law in effect when the contract was signed, and the former law is continued in effect for that purpose. From Sept. 1, 1969, through August 31, 2001, the former law provided for a cure period ranging from 15 to 60 days (depending upon what portion of the purchase price had been paid). From Sept. 1, 2001, through August 31, 2003, former § 5.065 provided for a cure period of 60 days. Note also that SB 1527 does not change the requirement in Property Code § 5.066 that when the purchaser has paid 40 percent or more of the amount due or the equivalent of 48 monthly payments, the purchaser gets a 60-day period to cure a default followed by a foreclosure-like sale.

§ 5.066. Equity Protection; Sale of Property

(a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration.

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date notice is given to cure the default. The notice must be provided as prescribed by Section 5.063 except that the notice must substitute the following statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A

TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A PUBLIC AUCTION.

- (c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.
- (d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:
- (1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and
 - (2) warrant that the property is free from any encumbrance.
- (e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.
- (f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts. A purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.
- (g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064.

§ 5.067. Placement of Lien for Utility Service

Notwithstanding any terms of a contract to the contrary, the placement of a lien for the reasonable value of improvements to residential real estate for purposes of providing utility service to the property shall not constitute a default under the terms of an executory contract for the purchase of the real property.

§ 5.068. Foreign Language Requirement

If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller shall provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual

accounting statements, and a notice of default required by this subchapter.

§ 5.069. Seller's Disclosure of Property Condition

(a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

- (1) a survey, which was completed within the past year, or plat of a current survey of the real property;
- (2) a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement, that affects title to the real property; and
- (3) a written notice, which must be attached to the contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the seller and purchaser and read substantially similar to the following:

WARNING

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

SELLER'S DISCLOSURE NOTICE CONCERNING THE PROPERTY AT (street address or legal description and city) THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE PROPERTY YOU ARE CONSIDERING PURCHASING.

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

- The property is in a recorded subdivision.
- The property has water service that provides potable water.
- The property has sewer service.
- The property has been approved by the appropriate municipal, county, or state agency for installation of a septic system.
- The property has electric service.
- The property is not in a floodplain.
- The roads to the boundaries of the property are paved and maintained by:
 - the seller;
 - the owner of the property on which the road exists;
 - the municipality;
 - the county; or
 - the state.

No individual or entity other than the seller:

- (1) owns the property;

- (2)has a claim of ownership to the property; or
- (3)has an interest in the property.

____ No individual or entity has a lien filed against the property.

____ There are no restrictive covenants, easements, or other title exceptions or encumbrances that prohibit construction of a house on the property.

NOTICE: SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

(2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

(Date) (Signature of Seller)

(Date) (Signature of Purchaser)

(b) If the property is not located in a recorded subdivision, the seller shall provide the purchaser with a separate disclosure form stating that utilities may not be available to the property until the subdivision is recorded as required by law.

(c) If the seller advertises property for sale under an executory contract, the advertisement must disclose information regarding the availability of water, sewer, and electric service.

(d) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(e) Subsection (d) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

§ 5.070. Seller's Disclosure of Tax Payments and Insurance Coverage

(a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

- (1) a tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08, Tax Code; and
- (2) a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates:

- (A) the name of the insurer and the insured;
- (B) a description of the property insured; and
- (C) the amount for which the property is insured.

- (b) The seller's failure to provide information required by this section:

- (1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and
- (2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

- (c) Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

§ 5.071. Seller's Disclosure of Financing Terms

Before an executory contract is signed by the purchaser, the seller shall provide to the purchaser a written statement that specifies:

- (1) the purchase price of the property;
- (2) the interest rate charged under the contract;
- (3) the dollar amount, or an estimate of the dollar amount if the interest rate is variable, of the interest charged for the term of the contract;
- (4) the total amount of principal and interest to be paid under the contract;
- (5) the late charge, if any, that may be assessed under the contract; and
- (6) the fact that the seller may not charge a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

§ 5.072. Oral Agreements Prohibited

- (a) An executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.
- (b) The rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into

the contract.

(c) An executory contract may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract.

(d) The seller shall include in a separate document or in a provision of the contract a statement printed in 14-point boldfaced type or 14-point uppercase typewritten letters that reads substantially similar to the following:

THIS EXECUTORY CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(Date) (Signature of Seller)

(Date) (Signature of Purchaser)

(e) The seller's failure to provide the notice required by this section:

- (1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and
- (2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(f) Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

§ 5.073. Contract Terms, Certain Waivers Prohibited

(a) A seller may not include as a term of the executory contract a provision that:

- (1) imposes an additional late-payment fee that exceeds the lesser of:
 - (A) eight percent of the monthly payment under the contract; or
 - (B) the actual administrative cost of processing the late payment;

- (2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire

protection improvements, on the property; or

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

(4) forfeits an option fee or other option payment paid under the contract for a late payment; or

(5) increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92.

(b) A provision of the executory contract that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

Amended by HB 1823, eff. Sept. 1, 2005.

§ 5.074. Purchaser's Right to Cancel Contract Without Cause

(a) In addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract for any reason by sending by telegram or certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the 14th day after the date of the contract.

(b) If the purchaser cancels the contract as provided by Subsection (a), the seller shall, not later than the 10th day after the date the seller receives the purchaser's notice of cancellation:

(1) return to the purchaser the executed contract and any property exchanged or payments made by the purchaser under the contract; and

(2) cancel any security interest arising out of the contract.

(c) The seller shall include in immediate proximity to the space reserved in the executory contract for the purchaser's signature a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date). THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

(d) The seller shall provide a notice of cancellation form to the purchaser at the time the purchaser signs the executory contract that is printed in 14-point boldface type or 14-point uppercase typewritten letters and that reads substantially similar to the following:

NOTICE OF CANCELLATION

(date of contract)

YOU MAY CANCEL THE EXECUTORY CONTRACT FOR ANY REASON WITHOUT

ANY PENALTY OR OBLIGATION BY (date).

(1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

(2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

(A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

(B) CANCEL ANY SECURITY INTEREST ARISING OUT OF THE CONTRACT.

I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

(Date) (Purchaser's Signature)

I HEREBY CANCEL THIS CONTRACT.

(Date) (Purchaser's Signature)

(e)The seller may not request the purchaser to sign a waiver of receipt of the notice of cancellation form required by this section.

§ 5.075. Purchaser's Right to Pledge Interest in Property on Contracts Entered Into Before September 1, 2001

(a) On an executory contract entered into before September 1, 2001, a purchaser may pledge the interest in the property, which accrues pursuant to Section 5.066, only to obtain a loan for improving the safety of the property or any improvements on the property.

(b) Loans that improve the safety of the property and improvements on the property include loans for:

- (1) improving or connecting a residence to water service;
- (2) improving or connecting a residence to a wastewater system;
- (3) building or improving a septic system;
- (4) structural improvements in the residence; and
- (5) improved fire protection.

§ 5.076. Recording Requirements

- (a) Except as provided by Subsection (b), the seller shall record the executory contract, including the attached disclosure statement required by Section 5.069, as prescribed by Title 3 on or before the 30th day after the date the contract is executed.
 - (b) Section 12.002(c) does not apply to an executory contract filed for record under this section.
 - (c) If the executory contract is terminated for any reason, the seller shall record the instrument that terminates the contract.
 - (d) The county clerk shall collect the filing fee prescribed by Section 118.011, Local Government Code.
-

§ 5.077. Annual Accounting Statement

- (a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.
- (b) The statement must include the following information:
 - (1) the amount paid under the contract;
 - (2) the remaining amount owed under the contract;
 - (3) the number of payments remaining under the contract;
 - (4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;
 - (5) the amounts paid to insure the property on the purchaser's behalf if collected by the seller;
 - (6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and
 - (7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).
- (c) A seller who conducts less than two transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:
 - (1) liquidated damages in the amount of \$100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and
 - (2) reasonable attorney's fees.
- (d) A seller who conducts two or more transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:
 - (1) liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and

(2) reasonable attorney's fees.

Amended by HB 1823, eff. Sept. 1, 2005

§ 5.078. Disposition of Insurance Proceeds

(a) The named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property shall inform the insurer, not later than the 10th day after the date the coverage is obtained or the contract executed, whichever is later, of:

- (1) the executory contract for conveyance and the term of the contract; and
- (2) the name and address of the other party to the contract.

(b) An insurer who disburses proceeds under an insurance policy, binder, or other coverage relating to property that has been damaged shall issue the proceeds jointly to the purchaser and the seller designated in the contract.

(c) If proceeds under an insurance policy, binder, or other coverage are disbursed, the purchaser and seller shall ensure that the proceeds are used to repair, remedy, or improve the condition on the property.

(d) The failure of a seller or purchaser to comply with Subsection (c) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

§ 5.079. Title Transfer

(a) The seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

(b) A seller who violates Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of:

- (A) \$250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) \$500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

§ 5.080. Liability for Disclosures

For purposes of this subchapter, a disclosure required by this subchapter that is made by a seller's agent is a disclosure made by the seller.

§ 5.081. Right to Convert Contract

(a) A purchaser, at any time and without paying penalties or charges of any kind, is entitled to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with this section.

(b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Subject to Subsection (d), if the purchaser delivers to the seller of property covered by an executory contract a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the contract and that contains the same interest rate, due dates, and late fees as the contract:

(1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and

(2) the purchaser shall simultaneously execute a deed of trust that:

(A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property;

(B) secures the purchaser's payment and performance under the promissory note and

deed of trust; and

(C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, the seller shall:

- (1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection (c); or
- (2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under Subsection (c).

(e) A seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

(f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract:

- (1) is considered completed; and
- (2) has no further effect.

(g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section constitutes compliance with this section.

Added by HB 1823, eff. Sept. 1, 2005.

§ 5.082. Request for Balance and Trustee

(a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

- (1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and
- (2) if applicable, the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081.

(b) On or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), the seller shall provide to the purchaser a written statement of the requested information.

(c) If the seller does not timely respond to a request made under this section, the purchaser may:

- (1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and

(2) if applicable, select a trustee for a deed of trust under Section 5.081.

(d) For purposes of Subsection (c)(2), a purchaser must select a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under Subsection (c)(1), the seller may contest that amount by sending a written objection to the purchaser. An objection under this subsection must:

- (1) be sent to the purchaser by regular and certified mail;
- (2) include the amount the seller claims is the amount owed under the contract; and
- (3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

Added by HB 1823, eff. Sept. 1, 2005.

§ 5.083. Right to Cancel Contract for Improper Platting

(a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. A purchaser canceling and rescinding a contract under this subsection must:

- (1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or
- (2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested.

(b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall:

- (1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or
- (2) return to the purchaser all payments of any kind made to the seller under the contract and reimburse the purchaser for:

- (A) any payments the purchaser made to a taxing authority for the property; and
- (B) the value of any improvements made to the property by the purchaser.

(c) A purchaser may not exercise the purchaser's right to cancel and rescind an executory contract under this section if, on or before the 90th day after the date the purchaser receives the seller's notice under Subsection (b)(1), the seller:

- (1) properly subdivides or plats the property; and

(2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law.

(d) The seller may not terminate the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Added by HB 1823, eff. Sept. 1, 2005.

§ 5.084. Right to Deduct

If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may deduct the amount owed to the purchaser by the seller from any amounts owed to the seller by the purchaser under the terms of an executory contract.

Added by HB 1823, eff. Sept. 1, 2005.

§ 5.085. Fee Simple Title Required; Maintenance of Fee Simple Title

(a) A potential seller may not execute an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances.

(b) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. This subsection does not apply to a lien or encumbrance placed on the property that is:

- (1) placed on the property because of the conduct of the purchaser;
- (2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements; or
- (3) placed on the property by the seller prior to the execution of the contract in exchange for a loan used only to purchase the property if:

(A) the seller, not later than the third day before the date the contract is executed, notifies the purchaser in a separate written disclosure:

- (i) of the name, address, and phone number of the lienholder or, if applicable, servicer of the loan;
- (ii) of the loan number and outstanding balance of the loan;
- (iii) of the monthly payments due on the loan and the due date of those payments; and
- (iv) in 14-point type that, if the seller fails to make timely payments to the

lienholder, the lienholder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale;

(B) the lien:

(i) is attached only to the property sold to the purchaser under the contract; and
(ii) secures indebtedness that, at no time, is or will be greater in amount than the amount of the total outstanding balance owed by the purchaser under the executory contract;

(C) the lienholder:

(i) does not prohibit the property from being encumbered by an executory contract; and
(ii) consents to verify the status of the loan on request of the purchaser and to accept payments directly from the purchaser if the seller defaults on the loan; and

(D) the following covenants are placed in the executory contract:

(i) a covenant that obligates the seller to make timely payments on the loan and to give monthly statements to the purchaser reflecting the amount paid to the lienholder, the date the lienholder receives the payment, and the information described by Paragraph (A);
(ii) a covenant that obligates the seller, not later than the third day the seller receives or has actual knowledge of a document or an event described by this subparagraph, to notify the purchaser in writing in 14-point type that the seller has been sent a notice of default, notice of acceleration, or notice of foreclosure or has been sued in connection with a lien on the property and to attach a copy of all related documents received to the written notice; and
(iii) a covenant that warrants that if the seller does not make timely payments on the loan or any other indebtedness secured by the property, the purchaser may, without notice, cure any deficiency with a lienholder directly and deduct from the total outstanding balance owed by the purchaser under the executory contract, without the necessity of judicial action, 150 percent of any amount paid to the lienholder.

(c) A violation of this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and
(2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller:

(A) the return of all payments of any kind made to the seller under the contract; and
(B) reimbursement for:

- (i) any payments the purchaser made to a taxing authority for the property; and
- (ii) the value of any improvements made to the property by the purchaser.

(d) A seller is not liable under this section if:

- (1) a lien is placed on the property by a person other than the seller; and
- (2) not later than the 30th day after the date the seller receives notice of the lien, the seller takes all steps necessary to remove the lien and has the lien removed from the property.

Added by HB 1823, eff. Sept. 1, 2005.

NOTE ON APPLICABILITY OF SUBCHAPTER D OF CHAPTER 5, TEXAS PROPERTY CODE:

Under Senate Bill 198, generally effective Sept. 1, 2001, Subchapter D incorporates amended versions of a number of provisions regarding executory contracts that were initially adopted in 1995 as Subchapter E of Chapter 5 of the Texas Property Code. Under former § 5.091, Subchapter E applied in Texas counties within 200 miles of the Texas-Mexico border having low per-capita income and a high unemployment rate. SB 198 makes the new Subchapter D sections applicable statewide. The following provisions from Section 3 of SB 198 clarify how the 2001 amendments "phase in" to apply to particular transactions and contracts.

(a) This Act takes effect September 1, 2001.

(b) The changes in law made by Sections 5.063, 5.064, 5.065, and 5.066, Property Code, as amended and redesignated by this Act, apply only to a purchaser who defaults under Subchapter D, Chapter 5, Property Code, as amended by this Act, on or after September 1, 2001, regardless of when the contract was entered into. A purchaser who is in default before September 1, 2001, is covered by the law in effect when the default occurred, and the former law is continued in effect for that purpose.

(c) The changes in law made by Sections 5.068 and 5.069, Property Code, as amended and redesignated by this Act, and Section 5.070, Property Code, as added by this Act, apply only to transactions involving executory contracts for conveyance for which negotiations begin on or after September 1, 2001. For purposes of this subsection, negotiations begin on the date an offer to enter into an executory contract for conveyance is made. Transactions involving executory contracts for conveyance for which negotiations begin before September 1, 2001, are covered by the law in effect when the negotiations began, and the former law is continued in effect for that purpose.

(d) The change in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Section 5.071, Property Code, as amended and redesignated by this Act, and Section 5.080, Property Code, as redesignated by this Act, applies only to transactions involving executory contracts for conveyance for which negotiations begin on or after September 1, 2001. For purposes of this subsection, negotiations begin on the date an offer to enter into an executory contract for conveyance is made.

(e) The change in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Section 5.072, Property Code, as added by this Act, Section 5.074, Property Code, as redesignated by this Act, and Sections 5.073 and 5.076, Property Code, as amended and redesignated by this Act, applies only to a contract entered into on or after September 1, 2001.

(f) The change in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Section 5.075, Property Code, as amended and redesignated by this Act, applies to a purchaser on or after September 1, 2001, who accrues interest as provided by that section regardless of when the interest accrued.

(g) The changes in law made by the amendment of Section 5.091 and the repeal of Section 5.092, Property Code, by this Act and the application of Subsections (a) and (b), Section 5.077, Property Code, as amended and redesignated by this Act, and Subsection (a), Section 5.079, Property Code, as redesignated by this Act, apply to an executory contract on or after September 1, 2001, regardless of when the contract was entered into.

(h) The change in law made by Subsection (c), Section 5.077, and Subsection (b), Section 5.079, Property Code, as amended and redesignated by this Act, applies only to a violation that occurs on or after September 1, 2001. A violation that occurs before September 1, 2001, is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

(i) The change in law made by Section 5.078, Property Code, as added by this Act, applies to an executory contract regardless of when the contract was entered into. A named insured who currently holds an insurance policy binder or other coverage relating to property subject to an executory contract shall notify the insurer as provided by Subsection (a), Section 5.078, Property Code, not later than January 1, 2002.

CHAPTER 12. RECORDING OF INSTRUMENTS

§ 12.002. Subdivision Plat; Penalty

(a) The county clerk or a deputy of the clerk with whom a plat or replat of a subdivision of real property is filed for recording shall determine whether the plat or replat is required by law to be approved by a county or municipal authority or both. The clerk or deputy may not record a plat or replat unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or 232.023, Local Government Code, if applicable. If a plat or replat does not indicate whether land covered by the plat or replat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person filing the plat or replat for recording to file with the clerk an affidavit stating that information.

(b) A person may not file for record or have recorded in the county clerk's office a plat or replat

of a subdivision of real property unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Section 212.0105 or 232.023, Local Government Code, if applicable.

(c) Except as provided by Subsection (d), a person who subdivides real property may not use the subdivision's description in a deed of conveyance, a contract for a deed, or a contract of sale or other executory contract to convey that is delivered to a purchaser unless the plat or replat of the subdivision is approved and is filed for record with the county clerk of the county in which the property is located and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or 232.023, Local Government Code, if applicable.

(d) Except in the case of a subdivision located in a county to which Subchapter B, Chapter 232, Local Government Code, applies, Subsection (c) does not apply to using a subdivision's description in a contract to convey real property before the plat or replat of the subdivision is approved and is filed for record with the county clerk if:

- (1) the conveyance is expressly contingent on approval and recording of the final plat; and
- (2) the purchaser is not given use or occupancy of the real property conveyed before the recording of the final plat.

Note: Subsection (e) below was amended by HB 3101, Sec. 1, effective September 1, 2005, without reference to the conflicting amendment of another (e) made by HB 2491, Sec. 26, effective September 1, 2005.

(e) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a subdivision of real property unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if more than one person acquired the real property from a decedent under a will or by inheritance and those persons owning an undivided interest in the property obtained approval to subdivide the property to provide each person with a divided interest and a separate title to the property.

Note: Subsection (e) below was amended by HB 2491, Sec. 26, effective September 1, 2005, without reference to the conflicting amendment of another (e) made by HB 3101, Sec. 1, effective September 1, 2005.

(e) A person may not file for record or have recorded in the county clerk's office a plat or replat

of a subdivision of real property unless the plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. This subsection does not apply if:

- (1) more than one person acquired the real property from a decedent under a will or by inheritance and those persons owning an undivided interest in the property obtained approval to subdivide the property to provide each person with a divided interest and a separate title to the property; or
- (2) a taxing unit acquired the real property for public use through eminent domain proceedings or voluntary sale.

(f) A person commits an offense if the person violates Subsection (b), (c), or (e). An offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$1,000, by confinement in the county jail for a term not to exceed 90 days, or by both the fine and confinement. Each violation constitutes a separate offense and also constitutes prima facie evidence of an attempt to defraud.

(g) This section does not apply to a partition by a court.

Acts 1983, 68th Leg., p. 3489, ch. 576, § 1, eff. Jan. 1, 1984.
Amended by Acts 1987, 70th Leg., ch. 149, § 22, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, § 3.09, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 570, § 1, eff. June 15, 1991; Acts 1997, 75th Leg., ch. 583, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, § 27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 812, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1382, § 8, eff. June 19, 1999; Acts 2005, 79th Leg., ch. 1154, § 1, eff. Sept. 1, 2005. Amended by HB 989, eff. Sept. 1, 2007.

CHAPTER 203. ENFORCEMENT OF LAND USE RESTRICTIONS IN CERTAIN COUNTIES

§ 203.001. Applicability of Chapter

This chapter applies only to a county with a population of more than 200,000.

Added by Acts 1987, 70th Leg., ch. 712, § 1, eff. June 18, 1987.
Amended by Acts 1997, 75th Leg., ch. 274, § 2, eff. May 26, 1997.

§ 203.002. Definition

In this chapter, "restriction" means a limitation that affects the use to which real property may be put, fixes the distance at which buildings or other structures must be set back from property, street, or lot lines, affects the size of lots, or affects the size, type, or number of buildings or other structures that may be built on the property.

Added by Acts 1987, 70th Leg., ch. 712, § 1, eff. June 18, 1987.

§ 203.003. County Attorney Authorized to Enforce Restrictions

- (a) The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plan, plat, replat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded.
- (b) The county attorney may not enforce a restriction relating to race or any other restriction that violates the state or federal constitution.

Added by Acts 1987, 70th Leg., ch. 712, § 1, eff. June 18, 1987.

§ 203.004. Administrative Fee

- (a) A complaint filed in connection with Section 203.003 must be accompanied by an administrative fee prescribed by the county commissioners court. The amount of the fee may not exceed the administrative costs to be incurred by the county in pursuing the matter.
- (b) The administrative fee shall be deposited in a special county fund. The fund may be used only to administer this chapter.
- (c) The commissioners court may waive the administrative fee if the complainant files with the complaint a hardship affidavit in a form approved by the commissioners court.

Added by Acts 1987, 70th Leg., ch. 712, § 1, eff. June 18, 1987.

§ 203.005. Court Costs and Attorney's Fees

- (a) The county may be awarded court costs and attorney's fees in a successful action under this chapter.
- (b) If the court costs and attorney's fees awarded to the county, together with the administrative fee collected under Section 203.004, exceed the county's expenses in a successful action under this chapter, any portion of the excess that does not exceed the amount of the administrative fee collected by the county shall be refunded to the complainant.

Added by Acts 1987, 70th Leg., ch. 712, § 1, eff. June 18, 1987.

CHAPTER 7. ENFORCEMENT (*SELECTED EXCERPTS*)
SUBCHAPTER A. GENERAL PROVISIONS

§ 7.001. Definitions In this chapter:

- (1) "Commission" means the Texas Natural Resource Conservation Commission.
- (2) "Permit" includes a license, certificate, registration, approval, or other form of authorization. This definition does not apply to Subchapter G.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.002. Enforcement Authority

The commission may initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions. The commission or the executive director may institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of the commission.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

NOTE: § 5.013, referred to in § 7.002, states:

§ 5.013. General Jurisdiction of Commission

(a) The commission has general jurisdiction over:

- (1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;
- (2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;
- (3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;
- (4) the determination of the feasibility of certain federal projects;
- (5) the adoption and enforcement of rules and performance of other acts relating to the safe

- construction, maintenance, and removal of dams;
- (6) conduct of the state's hazardous spill prevention and control program;
 - (7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;
 - (8) the administration of a portion of the state's injection well program;
 - (9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;
 - (10) the state's responsibilities relating to regional waste disposal;
 - (11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, Health and Safety Code;
 - (12) the administration of the national flood insurance program;
 - (13) administration of the state's water rate program under Chapter 13 of this code; and
 - (14) any other areas assigned to the commission by this code and other laws of this state.

(b) The rights, powers, duties, and functions delegated to the Texas Department of Water Resources by this code or by any other law of this state that are not expressly assigned to the board are vested in the commission.

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

Amended by Acts 1985, 69th Leg., ch. 795, § 1.001, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 14, § 284(75), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.005, eff. Aug. 12, 1991.

Amended by Acts 2001, 77th Leg., ch. 376, § 3.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 965, § 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1067, § 22, eff. Sept. 1, 2003.

SUBCHAPTER B. CORRECTIVE ACTION AND INJUNCTIVE RELIEF

§ 7.032. Injunctive Relief

(a) The executive director may enforce a commission rule or a provision of a permit issued by the commission by injunction or other appropriate remedy.

(b) If it appears that a violation or threat of violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute has occurred or is about to occur, the executive director may have a suit instituted in district court for injunctive relief to restrain the violation or threat of violation.

(c) The suit may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(d) In a suit brought under this section to enjoin a violation or threat of violation described by Subsection (b), the court may grant the commission, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including a temporary restraining order and, after notice and hearing, a temporary injunction or permanent injunction.

(e) On request of the executive director, the attorney general or the prosecuting attorney in a county in which the violation occurs shall initiate a suit in the name of the state for injunctive relief. The suit may be brought independently of or in conjunction with a suit under Subchapter D.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

SUBCHAPTER D. CIVIL PENALTIES

§ 7.101. Violation

A person may not cause, suffer, allow, or permit a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.102. Maximum Penalty

A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 376, §3.03, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, §3.

Amended by Acts 2003, 78th Leg., ch. 1276, § 14.A844, eff. Sept. 1, 2003. Amended SB 12, eff. June 8, 2007.

§ 7.103. Continuing Violations

If it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty not less than \$100 nor greater than \$25,000 for each subsequent day and for each subsequent violation. Each day of a continuing violation is a separate violation.

§ 7.104. No Penalty for Failure to Pay Certain Fees

A civil penalty may not be assessed for failure to:

- (1) pay a fee under Section 371.062, Health and Safety Code; or
- (2) file a report under Section 371.024, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.105. Civil Suit

(a) On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief under Section 7.032, to recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) The commission, through the executive director, shall refer a matter to the attorney general's office for enforcement through civil suit if a person:

- (1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law;
- (2) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 26 occurring at the same wastewater management system or other point of discharge within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
- (3) is alleged to be operating a new solid waste facility, as defined in Section 361.003, Health and Safety Code, without a permit in violation of state law;
- (4) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 361, Health and Safety Code, occurring at the same facility within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
- (5) is alleged to be constructing or operating a facility at a new plant site without a permit required by Chapter 382, Health and Safety Code, in violation of state law; or
- (6) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 382, Health and Safety Code, for violations occurring at the same plant site within the two years immediately preceding the date of the first alleged violation currently under investigation at that site.

(c) The suit may be brought in Travis County, in the county in which the defendant resides, or in

the county in which the violation or threat of violation occurs.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.106. Resolution Through Administrative Order

The attorney general's office and the executive director may agree to resolve any violation, before or after referral, by an administrative order issued under Subchapter C by the commission with the approval of the attorney general.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.107. Division of Civil Penalty

Except in a suit brought for a violation of Chapter 28 of this code or of Chapter 401, Health and Safety Code, a civil penalty recovered in a suit brought under this subchapter by a local government shall be equally divided between:

- (1) the state; and
- (2) the local government that brought the suit.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.108. Attorney's Fees

If the state prevails in a suit under this subchapter it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

SUBCHAPTER E. CRIMINAL OFFENSES AND PENALTIES

§ 7.143. Violation of Minimum State Standards or Model Political Subdivision Rules

(a) A person commits an offense if the person knowingly or intentionally violates a rule adopted under Subchapter J, Chapter 16.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.173. Violation Relating to Sewage Disposal

(a) A person commits an offense if the person violates a rule adopted by the commission under Chapter 366, Health and Safety Code, or an order or resolution adopted by an authorized agent under Subchapter C, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 824, § 1, eff. Sept. 1, 1999.

§ 7.1735. Violation Relating to Maintenance of Sewage Disposal System.

(a) A person commits an offense if the person knowingly violates an order or resolution adopted by an authorized agent under Section 366.0515, Health and Safety Code.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2005, 79th Leg., ch. 1129, § 3, eff. Sept. 1, 2005.

§ 7.174. Violation of Sewage Disposal System Permit Provision

(a) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person before the owner of the system obtains a permit to construct, alter, repair, or extend the on-site sewage disposal system as required by Subchapter D, Chapter 366, Health and Safety Code.

(b) Except as provided by this subsection, an offense under this section is a Class C misdemeanor. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable under Section 7.187(1)(A) or Section 7.187(2)(A) or both.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.175. Emergency Repair Not an Offense

An emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(C), Health and Safety Code, is not an offense under Section 7.172, 7.173, or 7.174 if a written statement describing the need for the repair is

provided to the commission or its authorized agent not later than 72 hours after the repair is begun.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.186. Separate Offenses

Each day a person engages in conduct proscribed by this subchapter constitutes a separate offense.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.187. Penalties

A person convicted of an offense under this subchapter is punishable by:

(1) a fine, as imposed under the section creating the offense, of:

- (A) not more than \$1,000;
- (B) not less than \$1,000 or more than \$50,000;
- (C) not less than \$1,000 or more than \$100,000;
- (D) not less than \$1,000 or more than \$250,000;
- (E) not less than \$2,000 or more than \$500,000;
- (F) not less than \$5,000 or more than \$1,000,000;
- (G) not less than \$10,000 or more than \$1,500,000; or
- (H) not more than twice the amount of the required fee;

(2) confinement for a period, as imposed by the section creating the offense, not to exceed:

- (A) 30 days;
- (B) 90 days;
- (C) 180 days;
- (D) one year;
- (E) two years;
- (F) five years;
- (G) 10 years;
- (H) 15 years;
- (I) 20 years; or
- (J) 30 years; or

(3) both fine and confinement, as imposed by the section creating the offense.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.188. Repeat Offenses

If it is shown at the trial of the defendant that the defendant has previously been convicted of the same offense under this subchapter, the maximum punishment is doubled with respect to both the fine and confinement, unless the section creating the offense specifies otherwise.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.189. Venue

Venue for prosecution of an alleged violation under this subchapter is in:

- (1) the county in which the violation is alleged to have occurred;
- (2) the county where the defendant resides;
- (3) if the alleged violation involves the transportation of a discharge, waste, or pollutant, any county to which or through which the discharge, waste, or pollutant was transported; or
- (4) Travis County.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997

§ 7.190. Disposition of Fines

A fine recovered through a prosecution brought under this subchapter shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, the court may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

SUBCHAPTER H. SUIT BY OTHERS**§ 7.351. Civil Suits**

(a) If it appears that a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a

violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

(b) If it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 193, § 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, § 14A.845, eff. Sept. 1, 2003.

§ 7.352. Resolution Required

In the case of a violation of Chapter 26 of this code or Chapter 382, Health and Safety Code, a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.353. Commission Necessary Party

In a suit brought by a local government under this subchapter, the commission is a necessary and indispensable party.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

CHAPTER 15. TEXAS WATER ASSISTANCE PROGRAM

SUBCHAPTER P. COLONIA SELF-HELP PROGRAM

Section

15.951. Definitions.

15.952. Creation of Account.

15.953. Use of Account.

15.954. Eligible Nonprofit Organizations.

15.955. Grant Application.

15.956. Board Considerations in Evaluating Grant Application.

- 15.957. Action on Grant Application.
 - 15.958. Rules.
 - 15.959. Co-administration.
-

§ 15.951. Definitions

In this subchapter:

- (1) "Account" means the colonia self-help account.
- (2) "Colonia" means a geographic area that:
 - (A) is an economically distressed area as defined by Section 17.921;
 - (B) is located in a county any part of which is within 50 miles of an international border; and
 - (C) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.
- (3) "Program" means the colonia self-help program established under this subchapter.
- (4) "Retail public utility" has the meaning assigned by Section 13.002.
- (5) "Self-help project" means a project in which the people who will benefit from the project actively participate.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001. Amended by SB 99, eff. June 15, 2007.

§ 15.952. Creation of Account

- (a) The colonia self-help account is an account in the water assistance fund that may be used by the board only for the purposes of this subchapter.
- (b) The account consists of:
 - (1) money transferred by the legislature directly to the account;
 - (2) money transferred at the board's discretion from the fund; and
 - (3) gifts, grants, or donations to the account.
- (c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 608, § 6, eff. June 20, 2003.

§ 15.953. Use of Account

- (a) The board may use funds in the account only to reimburse nonprofit organizations eligible

under Section 15.954 for expenses incurred in a self-help project that results in the provision of adequate water or wastewater services to a colonia. Expenses that may be reimbursed include:

- (1) construction expenses;
- (2) facility planning expenses;
- (3) platting expenses;
- (4) surveying expenses;
- (5) engineering expenses;
- (6) equipment expenses; and
- (7) other expenses necessary to provide water or wastewater services to the colonia, as determined appropriate by the board.

(b) The board may award a grant under the program directly to a nonprofit organization to reimburse the organization for expenses incurred in a self-help project described by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001.

§ 15.954. Eligible Nonprofit Organizations

To be eligible to receive a grant under the program, an organization must:

- (1) apply for the grant;
- (2) qualify for an exemption from federal income taxes under Section 501(c)(3), Internal Revenue Code of 1986, as amended; and
- (3) as of January 1, 2001, have a demonstrated record of completing in coordination with a retail public utility construction of self-help projects described by Section 15.953(a).

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001.

§15.955. Grant Application

An eligible nonprofit organization must apply to the board for a grant under the program before incurring any expense associated with a self-help project described by Section 15.953(a). The application must include:

- (1) the name of the nonprofit organization, the names of the organization's principal officers, and verification of the organization's 501(c)(3) status;
- (2) a description of the project area, the anticipated number of water and wastewater connections to be made, and the anticipated number of colonia residents to be served;
- (3) a description of the existing water and wastewater facilities in the colonia;
- (4) a description of the project and the aspect of the project for which the grant will be used;
- (5) a description of the anticipated participation in the project by residents of the colonia;

- (6) the estimated total cost of both the project and the aspect of the project for which the grant will be used;
- (7) the amount of the grant that is requested from the account and the sources of funding for the entire project;
- (8) from a retail public utility authorized to provide water or wastewater services to the colonia, a resolution in which the retail public utility:
 - (A) agrees to inspect the project during and after construction to ensure the adequacy of the project; and
 - (B) commits to provide the water or wastewater services that the project intends to use; and
- (9) any other information required by the board.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001.

§ 15.956. Board Considerations in Evaluating Grant Application

In evaluating an application for a grant under the program, the board shall consider:

- (1) the number, quality, and character of projects previously completed by the applicant; and
- (2) the capability of the retail public utility to provide water or wastewater services to the colonia on completion of the project.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001.

§ 15.957. Action on Grant Application

(a) Not later than the 60th day after the date the board receives a complete application for a grant under the program, the board by written resolution shall:

- (1) approve the application; or
- (2) disapprove the application.

(b) On approval of an application, the board shall authorize the executive administrator of the board to execute a contract with the applicant for a grant to reimburse eligible expenses. The contract may provide a budget, schedule, terms for payment of funds, and any other terms the board or its executive administrator considers appropriate.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001.

§ 15.958. Rules

The board shall adopt rules necessary to administer the program established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001.

§ 15.959. Co-administration

The program shall be co-administered by the office of the secretary of state until the second anniversary of the date on which the program begins operations under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1234, § 23, eff. Sept. 1, 2001..

CHAPTER 16. PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT

SUBCHAPTER I. FLOOD INSURANCE

(Selected Excerpts)

§ 16.313. Definitions

In this subchapter:

- (1) "Political subdivision" means any political subdivision or body politic and corporate of the State of Texas and includes any county, river authority, conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; "political subdivision" also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operations under the Home Rule Amendment of the Constitution or under the General Law.
- (2) "National Flood Insurance Act" means the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the director of the Federal Emergency Management Agency.
- (3) "Director" means the director of the Federal Emergency Management Agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Amended by Acts 2001, 77th Leg., ch. 258, § 1, eff. Sept. 1, 2001.

§ 16.3145. National Flood Insurance Program Orders or Ordinances

The governing body of each city and county shall adopt ordinances or orders, as appropriate,

necessary for the city or county to be eligible to participate in the National Flood Insurance Program.

Added by Acts 1999, 76th Leg., ch. 1360, § 1, eff. Aug. 30, 1999.

§ 16.315. Political Subdivisions; Compliance with Federal Requirements

All political subdivisions are hereby authorized to take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program, including but not limited to:

- (1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;
- (2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;
- (3) assisting in minimizing damage caused by floods;
- (4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;
- (5) engaging in floodplain management, adopting and enforcing permanent land use and control measures that are not less stringent than those established under the National Flood Insurance Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;
- (6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;
- (7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:
 - (a) identifying and publishing information with respect to all flood areas, including coastal areas; and
 - (b) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;
- (8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;
- (9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;
- (10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;

- (11) requesting aid pursuant to the entire authorization from the board;
- (12) satisfying criteria adopted and promulgated by the board pursuant to the National Flood Insurance Program;
- (13) adopting permanent land use and control measures with enforcement provisions that are not less stringent than the criteria for land management and use adopted by the director;
- (14) adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;
- (15) participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and
- (16) collecting reasonable fees to cover the cost of administering a local floodplain management program.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, § 1.051, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 258, § 2, eff. Sept. 1, 2001. Amended by SB 3, eff. Sept. 1, 2007 and also by SB 1436, eff. Sept. 1, 2007..

§ 16.319. Qualification

Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Federal Emergency Management Agency and by:

- (1) evidencing to the director a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and
- (2) giving to the director satisfactory assurance that measures will have been adopted for the political subdivision that will be not less stringent than the comprehensive criteria for land management and use developed by the Federal Emergency Management Agency.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., 1st c. s., p. 58, ch. 4, § 3, eff. Sept. 1, 1977; Acts 2001, 77th Leg., ch. 258, § 4, eff. Sept. 1, 2001. Amended by SB 3, eff. Sept. 1, 2007.

§ 16.322. Civil Penalty

A person who violates this subchapter or a rule adopted or ordered issued under this subchapter is subject to a civil penalty of not more than \$100 for each act of violation and for each day of violation.

Added by Acts 1997, 75th Leg., ch. 1346, § 1, eff. Sept. 1, 1997.

§ 16.3221. Criminal Penalty

- (a) A person commits an offense if the person violates this subchapter.
- (b) An offense under this section is a Class C misdemeanor.
- (c) Each violation of this subchapter and each day of a continuing violation is a separate offense.

Added by Acts 2001, 77th Leg., ch. 258, § 5, eff. Sept. 1, 2001.

§ 16.323. Enforcement by Political Subdivision

(a) If it appears that a person has violated, is violating, or is threatening to violate this subchapter or a rule adopted or order issued under this subchapter, a political subdivision may institute a civil suit in the appropriate court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation, including an order directing the person to remove illegal improvements and restore preexisting conditions;
- (2) the assessment and recovery of the civil penalty provided by Section 16.322; or
- (3) both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated, is violating, or is threatening to violate this subchapter or a rule adopted or order issued under this subchapter, the court shall grant the injunctive relief that the facts warrant.

Added by Acts 1977, 75th Leg., ch. 1346, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 124, § 1, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 258, § 6, eff. Sept. 1, 2001

§ 16.324. County Authority to Set Fee

The commissioners court of a county may set a reasonable fee for the county's issuance of a permit authorized by this subchapter for which a fee is not specifically prescribed. The fee must be set and itemized in the county's budget as part of the budget preparation process.

Added by Acts 2001, 77th Leg., ch 951, § 2, eff. Sept. 1, 2001.

SUBCHAPTER J. ECONOMICALLY DISTRESSED AREAS

§ 16.341. Definitions

In this subchapter:

Note: Subsection (1) below was amended by HB 467, Sec. 2, effective September 1, 2005,

without reference to the conflicting amendment of another (b) made by SB 425, Sec. 15, effective September 1, 2005.

(1) "Affected county" means a county that has an economically distressed area which has a median household income that is not greater than 75 percent of the median state household.

Note: Subsection (1) below was amended by HB 425, Sec. 15, effective September 1, 2005, without reference to the conflicting amendment of another (b) made by SB 467, Sec. 2, effective September 1, 2005.

(1) "Affected county" means a county:

(A) that has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or

(B) that is adjacent to an international border; or

(C) that is located in whole or in part within 100 miles of an international border and contains the majority of the area of a municipality with a population of more than 250,000.

(2) "Economically distressed area" has the meaning assigned by Section 17.921

(3) "Political subdivision" means an affected county, a municipality located in an affected county, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, located in an affected county, or a nonprofit water supply corporation created and operating under Chapter 67, located in an affected county, that receives funds for facility engineering under Section 15.407 or financial assistance under Subchapter K, Chapter 17, or an economically distressed area in an affected county for which financial assistance is received under Subchapter C, Chapter 15.

(4) "Sewer services" or "sewer facilities" means treatment works as defined by Section 17.001 of this code or individual, on-site, or cluster treatment systems such as septic tanks and includes drainage facilities and other improvements for proper functioning of septic tank systems.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by Acts 1999, 76th Leg., ch. 62, § 18.59, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, § 33, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 708, § 15, Sept. 1, 2005; Acts 2005, 79th Leg., ch. 927, § 2, eff. Sept. 1, 2005.

§ 16.342. Rules

(a) The board shall adopt rules that are necessary to carry out the program provided by Subchapter K, Chapter 17, of this code and rules:

(1) incorporating existing minimum state standards and rules for water supply and sewer services established by the commission; and

(2) requiring compliance with existing rules of any state agency relating to septic tanks and

other waste disposal systems.

(b) In developing rules under this section, the board shall examine other existing laws relating to counties and municipalities.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by Acts 1995, 74th Leg., ch. 76, § 11.289, eff. Sept. 1, 1995.

§ 16.343. Minimum State Standards and Model Political Subdivision Rules

(a) The board shall, after consultation with the attorney general and the commission, prepare and adopt model rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions, including rules of any state agency relating to septic tanks and other waste disposal systems, are met.

(b) The model rules must:

(1) assure that adequate drinking water is available to the residential areas in accordance with Chapter 341, Health and Safety Code, and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Supply Systems adopted by the commission and other law and rules applicable to drinking water; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005.

(c) The model rules must:

(1) assure that adequate sewer facilities are available to the residential areas through either septic tanks or an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the commission or private sewage facilities in accordance with Chapter 366, Health and Safety Code, and the Construction Standards for On-Site Sewerage Facilities adopted by the commission and other law and rules applicable to sewage facilities; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005.

(d) The model rules must prohibit the establishment of residential developments with lots of five acres or less in the political subdivision without adequate water supply and sewer services. Also, the model rules must prohibit more than one single-family, detached dwelling to be located on each lot.

(e) The model rules must provide criteria governing the distance that structures must be set back from roads or property lines to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

(g) Before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board, a political subdivision must adopt the model rules pursuant to this section. If the applicant is a district, nonprofit water supply corporation, or colonia, the applicant must be located in a city or county that has adopted such rules. Applicants for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may not receive funds under those provisions unless the applicable political subdivision adopts and enforces the model rules.

*NOTE: Subsection (f) was Repealed by HB 467, Section 15, eff. Sept. 1, 2005

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by Acts 1991, 72nd Leg., ch. 14, § 284(71), (78), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 422, § 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 648, § 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 11.290, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, § 15, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, § 34, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1234, § 27, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 927, § 3, 15, eff. Sept. 1, 2005.

§ 16.344. Oversight

(a) The board shall monitor the performance of a political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code to ensure that the project approved in the application and plans is constructed in the manner described in the application and plans and that the terms and conditions that govern the financial assistance are satisfied.

(b) A political subdivision that receives financial assistance shall submit to the board monthly or as often as otherwise required by board rules an account of expenditures for the project during the preceding month or other required period.

(c) A political subdivision that receives financial assistance shall furnish at the board's request additional information necessary for the board to monitor compliance with the approved application and plan for financial assistance and the terms and conditions of the financial assistance.

(d) Notwithstanding Section 16.343(g) or Section 16.350(a), a political subdivision may temporarily continue to receive funds under Subchapter K, Chapter 17, if the political subdivision submits a request for temporary continuation of funding and the board determines that:

- (1) the political subdivision's initial funding application and any amendments for a designated area were reviewed and approved by the board before January 1, 2007;
- (2) withholding funds would result in an undue hardship for occupants of the property to be served by unreasonably delaying the provision of adequate water or wastewater services;
- (3) withholding funds would result in inefficient use of local, state, or federal funds under the program;
- (4) the political subdivision has committed to take the necessary and appropriate actions to correct any deficiencies in adoption or enforcement of the model rules within the time designated by the board, but not later than the 90th day after the date the board makes the

determinations under this subsection;

(5) the political subdivision has sufficient safeguards in place to prevent the proliferation of colonias; and

(6) during the 30 days after the date the board receives a request under this subsection, the board, after consulting with the attorney general, secretary of state, and commission, has not received an objection from any of those entities to the request for temporary continuation of funding.

(e) In applying Subsection (d) to applications for increased financial assistance, the board shall only consider areas that were included in the initial application, except that the board may reconsider the eligibility of areas that were the subject of a facility plan in the initial application and that may be determined to be eligible based on criteria in effect September 1, 2005.

(f) The political subdivision shall take necessary and appropriate actions to correct any deficiencies in its adoption and enforcement of the model rules within the time period required by the board, not to exceed the 90-day period described by Subsection (d)(4), and provide evidence of compliance to the board. The board shall discontinue funding unless the board makes a determination based on the evidence provided that the political subdivision has demonstrated sufficient compliance to continue funding.

(g) Except as provided by Subsections (d)-(f), if the board determines that a county or city that is required to adopt and enforce the model rules is not enforcing the model rules, the board shall discontinue funding for all projects within the county or city that are funded under Subchapter K, Chapter 17.

(h) The board may not accept or grant applications for temporary funding under Subsection (d) after June 1, 2009.

(i) Subsections (d), (e), (f), (g), and (h) and this subsection expire September 1, 2009.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by SB 3, eff. Sept. 1, 2007.

§ 16.345. Authority to Participate in Program

(a) A political subdivision may exercise any authority necessary to participate in a program under Section 15.407 of this code or Subchapter K, Chapter 17, of this code and carry out the terms and conditions under which the funds or the financial assistance is provided.

(b) In addition to any other authority to issue bonds or other obligations or incur any debt, an affected county or another political subdivision, other than a nonprofit water supply corporation, eligible for financial assistance under Subchapter K, Chapter 17, of this code may issue bonds payable from and secured by a pledge of the revenues derived or to be derived from the operation of water supply or sewer service systems for the purpose of acquiring, constructing, improving, extending, or repairing water supply or sewer facilities. The bonds shall be issued in accordance with and an affected county or another political subdivision may exercise the powers

granted by:

- (1) Subchapter B, Chapter 1502, Government Code;
- (2) Chapter 1201, Government Code;
- (3) Chapter 1371, Government Code; and
- (4) other laws of the state.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by Acts 1999, 76th Leg., ch. 404, § 35, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1064, § 44, eff. Sept. 1, 1999.

§ 16.346. Examination of Ability of a District to Provide Services and Financing

(a) In connection with an application under Subchapter K, Chapter 17, of this code, the board may consider and make any necessary investigations and inquiries as to the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution to provide, in lieu of financial assistance under the application, water supply and sewer services in the area covered by the application through issuance of district bonds to be sold on the regular bond market.

(b) In carrying out its authority under this section, the board may require the applicant to provide necessary information to assist the board in making a determination as to the feasibility of creating a district to provide the services and financing covered by the application.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13.

§ 16.347. Requirement of Imposition of Distressed Areas Water Financing Fee

(a) In this section:

- (1) "Distressed areas water financing fee" means a fee imposed by a political subdivision on undeveloped property.
- (2) "Undeveloped property" means a tract, lot, or reserve in an area in a political subdivision to be served by water supply or sewer services financed in whole or in part with financial assistance from the board under Subchapter K, Chapter 17, of this code for which a plat has been filed under Subchapter A, Chapter 212, or Chapter 232, Local Government Code.

(b) The board may require, as a condition for granting an application for financial assistance under Subchapter K, Chapter 17, of this code to a political subdivision in which a plat is required to be filed under Subchapter A, Chapter 12, or Chapter 232, Local Government Code, that the applicant impose a distressed areas water financing fee on undeveloped property in the political subdivision if the board determines that imposition of the fee would:

- (1) reduce the amount of any financial assistance that the board may provide to accomplish the purposes of the political subdivision under the application; or

(2) assist the political subdivision to more effectively retire any debt undertaken by the political subdivision in connection with financial assistance made available by the board to the political subdivision.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13.

§ 16.348. Setting of Fee by Political Subdivision; Lien; Delinquent Fees

(a) Before a political subdivision may set the amount of or impose a fee under Section 16.347 of this code, the political subdivision shall hold a hearing on the matter.

(b) Notice of the hearing shall be published in a newspaper of general circulation in the political subdivision once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing. The political subdivision shall send, not later than the 30th day before the date of the hearing, notice of the hearing by certified mail, return receipt requested, to each owner of undeveloped property in the political subdivision. The tax assessor and collector of the political subdivision shall certify to the political subdivision the names of the persons owning undeveloped land in the political subdivision as reflected by the most recent certified tax roll of the political subdivision. Notice of the hearing also must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any hearings. To be effective, the written request must be received by the political subdivision not later than the 60th day before the date of the hearing. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the political subdivision, and a brief property description.

(c) The amount of a distressed areas water financing fee imposed by a political subdivision pursuant to this section must be reasonably related to that portion of the total amount required to be paid annually in repayment of financial assistance that can be attributed to undeveloped property in the area to be served by water supply and sewer services provided with that financial assistance.

(d) The distressed areas water financing fee or the lien securing the fee is not effective or enforceable until the governing body of the political subdivision has filed for recordation with the county clerk in each county in which any part of the political subdivision is located and the county clerk has recorded and indexed a duly affirmed and acknowledged notice of imposition of the distressed areas water financing fee containing the following information:

- (1) the name of the political subdivision;
- (2) the date of imposition by the political subdivision of the distressed areas water financing fee;
- (3) the year or years to which the distressed areas water financing fee applies; and
- (4) a complete and accurate legal description of the boundaries of the political subdivision.

(e) On January 1 of each year, a lien attaches to undeveloped property to secure payment of any fee imposed under this section and the interest, if any, on the fee. The lien shall be treated as if it were a tax lien and has the same priority as a lien for taxes of the political subdivision.

(f) If a distressed areas water financing fee imposed under Section 16.347 of this code is not paid in a timely manner, the political subdivision may file suit to foreclose the lien securing payment of the fee and interest. The political subdivision may recover, in addition to the fee and interest, reasonable costs, including attorney's fees, incurred by the political subdivision in enforcing the lien not to exceed 15 percent of the delinquent fee and interest. A suit authorized by this subsection must be filed not later than the fourth anniversary of the date the fee became due. A fee delinquent for more than four years and interest on the fee are considered paid unless a suit is filed before the expiration of the four-year period.

(g) A person owning undeveloped property for which a distressed areas water financing fee is assessed under this section may not construct or add improvements to the property if the fee is delinquent.

(h) A political subdivision shall, on the written request of any person and within five days after the date of the request, issue a certificate stating the amount of any unpaid distressed areas water financing fees, including interest on the fees, that have been imposed or assessed against a tract of property located in the political subdivision. The political subdivision may charge a fee not to exceed \$10 for each certificate. A certificate issued through fraud or collusion is void.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13.

§ 16.349. Fees

(a) A political subdivision that receives financial assistance may charge persons in an economically distressed area in which water supply and sewer services are furnished an amount for those services that is not less than the amount provided in the application for financial assistance.

(b) Except as provided by Subsection (c), the amount charged under Subsection (a) of this section may be equal to or less than the rates paid for water supply and sewer services by residents of the political subdivision.

(c) A political subdivision holding a certificate of convenience and necessity described by Section 13.242, that extends service to an economically distressed area outside the boundaries of the political subdivision, may not charge the residents of the area rates that exceed the lesser of:

- (1) the cost of providing service to the area; or
- (2) the rates charged other residents of the political subdivision plus 15 percent.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by Acts 1995, 74th Leg., ch. 979, § 16, eff. June 16, 1995.

§ 16.350. Eligible Counties and Municipalities to Adopt Rules

(a) A county or municipality that applies for or receives funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code must adopt and enforce the model rules developed under Section 16.343 of this code to be eligible to participate in this program. The county or municipality by order or ordinance shall adopt and enter the model rules in the minutes of a meeting of its governing body and shall publish notice of that action in a newspaper with general circulation in the county or municipality. A municipality is eligible to participate in this program only if the county in which the project is located adopts and enforces the model rules.

(b) Rules adopted by the commissioners court under this section must apply to all the unincorporated area of the county.

(c) A municipality may adopt rules relating to water supply and sewer services within its corporate boundaries and extraterritorial jurisdiction that are more strict than those prepared under Section 16.343 of this code.

(d) A county or municipality that receives funds or financial assistance under Section 15.407 of this code or Subchapter K, Chapter 17, of this code may grant an exemption for a subdivision from the requirements of the model rules only if the county or municipality supplies the subdivision with water supply and sewer services that meet the standards of the model rules.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13. Amended by Acts 1991, 72nd Leg., ch. 422, § 6, eff. Sept. 1, 1991.

§ 16.351. Contract Preference

A political subdivision that receives financial assistance under Subchapter K, Chapter 17, of this code shall give preference in the award of political subdivision contracts to acquire, construct, extend, or provide water supply and sewer services or facilities to a bidder that agrees to use labor from inside the political subdivision to the extent possible.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13.

§ 16.352. Enforcement of Rules

A person who violates a rule adopted by a municipality or county under this subchapter or under Subchapter B or C, Chapter 232, Local Government Code, is liable to the municipality or county for a civil penalty of not less than \$500 and not more than \$1,000 for each violation and for each day of a violation. The maximum civil penalty that may accrue each day is \$5,000. The appropriate attorney representing the municipality or county may sue to collect the penalty. The recovered penalty shall be deposited in the general fund of the municipality or county.

Added by Acts 1999, 76th Leg., ch. 404, § 36, eff. Sept. 1, 1999.

§ 16.353. Injunction

(a) In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, the state or the political subdivision an appropriate prohibitory or mandatory order, including a temporary restraining order or a temporary or permanent injunction, enjoining a violation of this subchapter, the rules described by Section 16.352, or Subchapter B or C, Chapter 232, Local Government Code.

(b) An injunction issued under this section may be issued without the requirement of a bond or other undertaking.

Added by Acts 1999, 76th Leg., ch. 404, § 36, eff. Sept. 1, 1999.

§ 16.3535. Damages

In addition to any other remedy, the attorney general, the municipal attorney of the municipality in which a violation under Section 16.352 occurs, or the county or district attorney of the county in which a violation under Section 16.352 occurs may apply to a district court for, and the district court may grant, monetary damages to cover the cost of enforcing this subchapter, rules adopted under this subchapter, or Subchapter B or C, Chapter 232, Local Government Code.

Added by Acts 1999, 76th Leg., ch. 404, § 36, eff. Sept. 1, 1999.

§ 16.354. Attorney General Enforcement

In addition to the ability of any political subdivision to enforce this subchapter, the attorney general may file suit to:

- (1) enforce a rule adopted under Section 16.350;
- (2) recover a civil penalty under Section 16.352;
- (3) obtain injunctive relief under Section 16.353;
- (4) recover damages under Section 16.3535;
- (5) enforce a political subdivision's rules, recover any penalty, recover any damages, and obtain any injunctive relief; or
- (6) recover attorney's fees, investigative costs, and court costs.

Added by Acts 1999, 76th Leg., ch. 404, § 36, eff. Sept. 1, 1999.

§ 16.3545. Venue

A suit brought under this subchapter for injunctive relief or the recovery of a civil penalty or damages may be brought in a district court in:

- (1) the county in which the defendant resides;
- (2) the county in which the alleged violation or threat of violation occurs; or
- (3) Travis County.

Added by Acts 1999, 76th Leg., ch. 404, § 36, eff. Sept. 1, 1999.

§ 16.355. Authority Over Facilities

A political subdivision may construct, contract for construction, operate, or contract with any person for operation of any water supply or sewer services or facilities provided by the political subdivision with financial assistance obtained under Subchapter K, Chapter 17, of this code.

Added by Acts 1989, 71st Leg., ch. 624, § 2.13.

§ 16.356. Use of Revenue From Operation of Water Supply or Sewer Service Projects

(a) A political subdivision that receives financial assistance from the economically distressed areas program under Subchapter K, Chapter 17, may not use any revenue received from fees collected from a water supply or sewer service constructed in whole or in part from funds from the economically distressed areas program account for purposes other than utility purposes. The annual financial statement prepared by a municipality under Section 103.001, Local Government Code, must include a specific report on compliance with this section.

(b) At the request of the board or on the attorney general's own initiative, the attorney general may file suit to enjoin an actual or threatened violation of this section.

Added by Acts 1999, 76th Leg., ch. 404, § 37, eff. Sept. 1, 1999.

CHAPTER 17. PUBLIC FUNDING**SUBCHAPTER K. ASSISTANCE TO ECONOMICALLY DISTRESSED AREAS FOR
WATER SUPPLY AND SEWER SERVICE PROJECTS****§ 17.921. Definitions**

In this subchapter:

- (1) "Economically distressed area" means an area in which:
 - (A) Water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;
 - (B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and
 - (C) an established residential subdivision was located on June 1, 2005, as determined by the board.
- (2) "Financial assistance" means the funds provided by the board to political subdivisions for water supply and sewer services under this subchapter.
- (3) "Political subdivision" means a county, municipality, a nonprofit water supply corporation created and operating under Chapter 67, or district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.
- (4) "Water conservation" means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- (5) "Sewer services" and "sewer facilities" mean treatment works or individual, on-site, or cluster treatment systems such as septic tanks and include drainage facilities and other improvements for proper functioning of the sewer services and other facilities.
- (6) "Economically distressed areas account" means the economically distressed areas account in the Texas Water Development Fund or the economically distressed areas program account in the Texas Water Development Fund II.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.881 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 979, § 20, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 62, § 18.62, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, § 38, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 927, § 5, eff. Sept. 1, 2005

§ 17.922. Financial Assistance

- (a) The economically distressed areas account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services, including providing funds from the account for the state's participation in federal programs that provide assistance to political subdivisions.
- (b) To the extent practicable, the board shall use the funds in the economically distressed areas account in conjunction with the other financial assistance available through the board to encourage the use of cost-effective water supply and wastewater systems, including regional systems, to maximize the long-term economic development of counties eligible for financial assistance under the economically distressed areas program. Any savings derived from the

construction of a regional system that includes or serves an economically distressed area project shall be factored into the board's determination of financial assistance for the economically distressed area in a manner that assures the economically distressed area receives appropriate benefits from the savings. In no event shall financial assistance provided from the economically distressed areas account be used to provide water supply or wastewater service to any area that is not an economically distressed area.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.882 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 844, § 6, eff. Aug. 30, 1993; Acts 2005, 79th Leg., ch. 927, § 6, eff. Sept. 1, 2005.

§ 17.923. County Eligibility for Financial Assistance

Note: Section 17.923 below was amended by SB 425, Sec. 16, effective September 1, 2005, without reference to the conflicting repeal of another Section 17.923 made by HB 467, Sec. 15, effective September 1, 2005

To be eligible for financial assistance under this subchapter, a county:

- (1) must have a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available;
- (2) must be located adjacent to an international border; or (3) must be located in whole or in part within 100 miles of an international border and contain the majority of the area of a municipality with a population of more than 250,000.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.883 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990; Amended by Acts 2005, 79th Leg., ch. 708, § 16, eff. Sept. 1, 2005.

§ 17.924. Repealed by HB 467, Section 15, eff. Sept. 1, 2005

§ 17.925. Repealed by HB 467, Section 15, eff. Sept. 1, 2005

§ 17.926. Repealed by HB 467, Section 15, eff. Sept. 1, 2005

§ 17.927. Application for Financial Assistance

(a) A political subdivision may apply to the board for financial assistance under this subchapter by submitting an application together with a plan for providing water supply and sewer services to an economically distressed area for which the financial assistance is to be used.

(b) The application and plan must include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision was created and operates ;
- (3) a project plan, prepared and certified by an engineer registered to practice in this state, that must:

- (A) describe the proposed planning, design, and construction activities necessary to provide water supply and sewer services that meet minimum state standards; and
- (B) identify the households to which the water supply and sewer services will be provided

- (4) a budget that estimates the total cost of providing water supply and sewer services to the economically distressed area and a proposed schedule and method for repayment of financial assistance consistent with board rules and guidelines;
- (5) a description of the existing water supply and sewer facilities located in the area to be served by the proposed project, including a statement prepared and certified by an engineer registered to practice in this state that the facilities do not meet minimum state standards;
- (6) documentation that the appropriate political subdivision has adopted the model rules developed under Section 16.343;
- (7) information identifying the median household income for the area to be served by the proposed project; and
- (8) the total amount of assistance requested from the economically distressed areas account.

(c) Before the board approves the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125.

(d) Before considering an application, the board may require the applicant to:

- (1) provide documentation to the executive administrator sufficient to allow review of the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;
- (2) provide a written determination by the commission on the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;
- (3) request that the comptroller perform a financial management review of the applicant and, if the review is performed, provide the board with the results of the review; or
- (4) provide any other information required by the board or the executive administrator.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.887 by Acts 1990, 71st Leg., 6th C.S., ch.

12, § 2(36), eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 14, § 284(79), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, § 16.01, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 404, § 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 720, § 2, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 927, § 7, eff. Sept. 1, 2005.

§ 17.928. Findings Regarding Permits

(a) The board shall not release funds for the construction of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

- (1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water that the water supply project will provide; or
- (2) that an applicant proposing groundwater development has the right to use water that the water supply project will provide.

(b) The board may release funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for treatment works, the board may not deliver funds for the treatment works until the applicant has received a permit for construction and operation of the treatment works and approval of the plans and specifications from the commission or unless such a permit is not required by the commission.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.888 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990; Amended by Acts 2001, 77th Leg., ch. 1234, § 33, eff. Sept. 1, 2001.

§ 17.929. Considerations in Passing on Application

(a) In passing on an application for financial assistance, the board shall consider:

- (1) the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications;
- (2) the availability to the area to be served by the project of revenue or financial assistance from alternative sources for the payment of the cost of the proposed project;
- (3) the financing of the proposed water supply and sewer project including consideration of:
 - (A) the budget and repayment schedule submitted under Section 17.927(b)(4);
 - (B) other items included in the application relating to financing; and
 - (C) other financial information and data available to the board;

(4) whether the county and other appropriate political subdivisions have adopted model rules pursuant to Section 16.343 and the manner of enforcement of model rules; and

(5) the feasibility of achieving cost savings by providing a regional facility for water supply or wastewater service and the feasibility of financing the facility by using funds from the economically distressed areas account or any other financial assistance.

(b) At the time an application for financial assistance is considered, the board also must find that the area to be served by a proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.889 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990.

Amended by Acts 1993, 73rd Leg., ch. 844, § 7, eff. Aug. 30, 1993; Acts 2005, 79th Leg., ch. 927, § 8, eff. Sept. 1, 2005.

§ 17.930. Approval or Disapproval of Application

(a) The board may issue a decision to approve an application contingent on changes being made to the plan submitted with the application.

(b) After making the considerations provided by Section 17.929, the board by resolution shall:

- (1) approve the plan and application as submitted;
- (2) approve the plan and application subject to the requirements identified by the board or commission for the applicant to obtain the managerial, financial, and technical capabilities to operate the system and any other requirements, including training under Subchapter M, the board considers appropriate;
- (3) deny the application and identify the requirements or remedial steps the applicant must complete before the applicant may be reconsidered for financial assistance;
- (4) if the board finds that the applicant will be unable to obtain the managerial, financial, or technical capabilities to build and operate a system, deny the application and issue a determination that a service provider other than the applicant is necessary or appropriate to undertake the proposed project; or
- (5) deny the application.

(c) The board shall notify the applicant in writing of its decision.

(d) The board may require the applicant to provide local funds in an amount approved by the board under this subchapter, and the board shall provide the remaining funds from the economically distressed areas account.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.890 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 844, § 8, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 404, § 40, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 720, § 3, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 927, § 9, eff. Sept. 1, 2005.

§ 17.931. Application Amendment

(a) A political subdivision may request the board in writing to approve a change to or a modification of the budget or project plan included in its application.

(b) A change or modification may not be implemented unless the board provides its written approval.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.891 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990.

§ 17.932. Method of Financial Assistance

(a) The board may provide financial assistance to political subdivisions by using money in the economically distressed areas account to purchase political subdivision bonds.

(b) The board may make financial assistance available to political subdivisions in any other manner that it considers feasible, including:

(1) contracts or agreements with a political subdivision for acceptance of financial assistance that establish any repayment based on the political subdivision's ability to repay the assistance and that establish requirements for acceptance of the assistance; or

(2) contracts or agreements for providing financial assistance in any federal or federally assisted project or program.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.892 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990.

§ 17.933. Terms of Financial Assistance

(a) The board may use money in the economically distressed areas account to provide financial assistance to a political subdivision in the form of a loan, including a loan with zero interest, grant, or other type of financial assistance to be determined by the board taking into consideration the information provided by Section 17.927(b)(7).

(b) In providing financial assistance to an applicant under this subchapter, the board may not provide to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance plus interest on any amount that must be repaid, unless the Texas Department of Health issues a finding that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board and the applicant shall provide to the Texas Department of Health information necessary to make a determination, and the board and the Texas Department of Health may enter into necessary memoranda of understanding to carry out this subsection.

(b-1) In providing financial assistance in the form of a loan under this subchapter to a conservation and reclamation district created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, the board shall make the loan to the district without charging interest.

(c) The total amount of financial assistance provided by the board to political subdivisions under this subchapter from state-issued bonds for which repayment is not required may not exceed at any time 90 percent of the total principal amount of issued and unissued bonds authorized under Article III, of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

(d) In determining the amount and form of financial assistance and the amount and form of repayment, if any, the board shall consider:

- (1) rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services;
- (2) sources of funding available to the political subdivision from federal and private funds and from other state funds;
- (3) any local funds of the political subdivision to be served by the project if the economically distressed area to be served by the board's financial assistance is within the boundary of the political subdivision; and
- (4) the just, fair, and reasonable charges for water and wastewater service as provided in this code.

(e) In making its determination under Subsection (d)(1) of this section, the board may consider any study, survey, data, criteria, or standard developed or prepared by any federal, state, or local agency, private foundation, banking or financial institution, or other reliable source of statistical or financial data or information.

(f) The board may provide financial assistance money under this subchapter for treatment works as defined by Section 17.001 of this code only if the board determines that it is not feasible in the area covered by the application to use septic tanks as the method for providing sewer services under the applicant's plan.

(g) Repealed by Acts 2005, 79th Leg., ch. 927, § 15.

Added by Acts 1989, 71st Leg., ch. 624, § 2.21. Renumbered from § 17.893 by Acts 1990, 71st Leg., 6th C.S., ch. 12, § 2(36), eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 422, § 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 844, § 9, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 11.291, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, § 21, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 404, § 41, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 74, § 1, eff. May 16, 2003; Acts 2005, 79th Leg., ch. 927, § 15, eff. Sept. 1, 2005.

Amended by SB 1084, eff. May 16, 2003.

§ 17.934. Sewer Connections

(a) Notwithstanding any other law, a political subdivision that is located in a county in which a political subdivision has received financial assistance under this subchapter or under Subchapter F, Chapter 15, of this code may:

- (1) provide for a sanitary sewer system; and
- (2) require property owners to connect to the sewer system.

(b) The board may require, as a condition for granting an application for financial assistance under this subchapter to a political subdivision for construction of sewer services, that the applicant exercise its authority under this section.

Added by Acts 1991, 72nd Leg., ch. 422, § 1, eff. Sept. 1, 1991.

§ 17.935. Grant Standards

The Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) does not apply to financial assistance provided under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 422, § 3, eff. Sept. 1, 1991.

§ 17.936. Recovery of Economically Distressed Area Impact Fees

(a) It is the intent of the legislature that a private developer not unduly benefit from the expenditure by the state of public funds on infrastructure for public benefit.

(b) In this section:

(1) "Capital improvement costs" includes:

- (A) the construction contract price;
- (B) surveying and engineering fees;
- (C) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees;
- (D) fees actually paid or contracted to be paid to an independent, qualified engineer or financial consultant who is:

- (i) preparing or updating the capital improvements plan; and
- (ii) not an employee of the subdivision; and

(E) projected interest charges and other finance costs that are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements plan and that are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan of the subdivision.

(2) "Economically distressed areas program impact fees" means the pro rata share of the capital improvement costs attributable to each lot in an economically distressed area.

(c) This section applies only to property located in:

- (1) the unincorporated area of an affected county, as defined by Section 16.341; and
- (2) an economically distressed area, as defined by Section 16.341.

(d) The provider of water or wastewater utility service to an economically distressed area may recover from a developer or owner of an undeveloped lot economically distressed areas program impact fees as provided by rules adopted by the board.

Added by Acts 1995, 74th Leg., ch. 979, § 22, eff. June 16, 1995.

SUBCHAPTER M. REQUIRED TRAINING FOR APPLICANTS FOR AND RECIPIENTS OF ECONOMICALLY DISTRESSED AREAS PROGRAM FINANCIAL ASSISTANCE

§ 17.991. Definitions

In this subchapter:

- (1) "Operating entity" means the governing body of a political subdivision responsible for providing water supply and sewer services and the management of its water and sewer system, as defined by rules of the board.
- (2) "Political subdivision" has the meaning assigned by Section 17.921.

Added by SB 649, eff. Sept. 1, 2001.

§ 17.992. Training For Applicants

The board may require the operating entity of a political subdivision that applies for financial assistance under Subchapter K to complete a training program approved by the board if the board determines that training is necessary.

Added by SB 649, eff. Sept. 1, 2001.

§ 17.993. Training for Operating Entities

(a) The commission or the board may evaluate whether an operating entity needs training if the operating entity:

- (1) requests financial assistance or an amendment to the project plan or budget;
- (2) requests more time to meet its obligations under a repayment schedule;
- (3) does not provide required documentation; or
- (4) has a history of compliance problems, as determined by the commission.

(b) The board or the commission may determine that training is necessary if, after an examination and evaluation of the operating entity's managerial, financial, and technical capabilities, the board or commission finds that the operating entity's managerial, financial, or technical capabilities are inadequate to ensure the project will meet program requirements or remain financially viable.

(c) The commission by rule shall establish a pre-enforcement threshold of noncompliance at which the commission may notify the board that an operating entity needs training.

(d) If the commission assesses a penalty against an operating entity in an enforcement action, the enforcement order must contain a provision requiring that the operating entity receive training as ordered by the board. The commission shall notify the board when the commission assesses a penalty against an operating entity.

Added by Acts 2001, 77th Leg., ch. 720, § 1, eff. Sept. 1, 2001; Amended by Acts 2005, 79th Leg., ch. 927, § 12, eff. Sept. 1, 2005.

§ 17.994. Training Requirements

(a) The board by order shall require an operating entity to undergo appropriate training if the board:

- (1) determines that training is necessary under Section 17.992 or 17.993(a) or (b); or
- (2) receives notice from the commission that the commission finds that training is necessary under Section 17.993.

(b) The board shall refer the operating entity to an appropriate individual, association, business organization, or governmental entity for training required by the order.

(c) The person providing the training shall conduct an assessment of the operating entity for which training is ordered, determine who needs training, and devise a training program to address the deficiencies identified in the assessment.

(d) The person providing the training shall present a proposed training program to the board for approval. If the training program is approved by the board, the person shall conduct the required training.

(e) On completion of the training, the person who provided the training shall issue a certificate of completion to the participants in the training and to the board.

(f) A political subdivision shall reimburse a participant in training for reasonable expenses

incurred in completing the training.

(g) Not later than January 15 each year, each person who provides training under this section shall report to the board a list of political subdivisions for which the person provided training required under this section during the previous calendar year.

Added by Acts 2001, 77th Leg., ch. 720, § 1, eff. Sept. 1, 2001.

HEALTH AND SAFETY CODE

CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES

SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

§341.011. Nuisance

Each of the following is a public health nuisance:

- (1) a condition or place that is a breeding place for flies and that is in a populous area;
- (2) spoiled or diseased meats intended for human consumption;
- (3) a restaurant, food market, bakery, other place of business, or vehicle in which food is

prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

(10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989; Amended by Acts 2003, 78th Leg., ch. 130, § 1, eff. May 27, 2003.

§ 341.012. Abatement of Nuisance

(a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, § 1, eff. Sept. 1, 1993.

CHAPTER 366. ON-SITE SEWAGE DISPOSAL SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER E. REGISTRATION OF INSTALLERS

366.071. Occupational Licensing and Registration.

SUBCHAPTER A. GENERAL PROVISIONS

§ 366.001. Policy and Purpose

It is the public policy of this state and the purpose of this chapter to:

- (1) eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems;
- (2) authorize the commission or authorized agent to impose and collect a permit fee for:
 - (A) construction, installation, alteration, repair, or extension of on-site sewage disposal systems; and
 - (B) tests, designs, and inspections of those systems;
- (3) authorize the commission or authorized agent to impose a penalty for a violation of this chapter or a rule adopted under this chapter;
- (4) authorize the commission to license or register certain persons; and
- (5) allow the individual owner of a disposal system to install and repair the system in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Amended by Acts 2001, 77th Leg., ch. 880, § 21, eff. Sept. 1, 2001.

§ 366.002. Definitions

In this chapter:

- (1) "Authorized agent" means a local governmental entity authorized by the commission to implement and enforce rules under this chapter.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (5) "Local governmental entity" means a municipality, county, river authority, or special district, including an underground water district, soil and water conservation district, or public health district.
- (6) "Nuisance" means:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage disposal system, or a blatant discharge from an on-site sewage disposal system.

(7) "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on a site on which any part of the system is located.

(8) "Owner" means a person who owns a building or other property served by an on-site sewage disposal system.

(9) "Sewage" means waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.038, eff. Aug. 12, 1991. Acts 1993, 73rd Leg., ch. 589, §§ 1 to 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1127, § 1, eff. Sept. 1, 1997; Amended by Acts 2001, 77th Leg., ch. 880, § 25 (2), eff. Sept. 1, 2001.

§ 366.003. Immunity

The commission, an authorized agent, or a designated representative is not liable for damages resulting from the commission's or authorized agent's approval of the installation and operation of an on-site sewage disposal system.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.004. Compliance Required

A person may not construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that does not comply with this chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.005. Notice of Utility Service Connections

(a) An electric utility shall compile a list weekly for each county in this state of the addresses located in an unincorporated area of the county at which the electric utility has made new electric service connections during the preceding week. The electric utility shall submit the list to the county judge of the county, or to a county officer or employee designated by the county judge, who shall forward the list to each authorized agent having jurisdiction over an area in which an address on the list is included. The authorized agent may use the list for the purpose of implementing and enforcing rules under this chapter. This section does not apply to a reconnection of service to a location previously served.

(b) An electric utility may not be held liable for a claim arising from the provision of information under this section.

(c) Information provided by a utility under this section is confidential and not subject to disclosure under Chapter 552, Government Code, or otherwise, except as provided by this section.

(d) The county judge shall forward the list compiled under Subsection (a) to each appraisal district and each emergency communication district in the county.

(e) In this section:

- (1) "Appraisal district" means a district established under Section 6.01, Tax Code.
- (2) "Electric utility" means an investor-owned utility, electric cooperative corporation, river authority, or municipally owned utility that provides distribution service to retail customers of electricity.
- (3) "Emergency communication district" means a district established under Chapter 772.

Added by Acts 1997, 75th Leg., ch. 1127, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 15, § 1, eff. May 3, 1999; Acts 1999, 76th Leg., ch. 333, § 1, eff. Sept. 1, 1999.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION AND AUTHORIZED AGENTS

§ 366.011. General Supervision and Authority

The commission or authorized agents:

- (1) have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and
- (2) shall administer this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.012. Rules Concerning On-Site Sewage Disposal Systems

(a) To assure the effective and efficient administration of this chapter, the commission shall:

(1) adopt rules governing the installation of on-site sewage disposal systems, including rules concerning the:

- (A) review and approval of on-site sewage disposal systems; and
- (B) temporary waiver of a permit for an emergency repair; and

(2) adopt rules under this chapter that:

- (A) encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal; and
- (B) address the separation of graywater, as defined by Section 341.039, in a residence served by an on-site sewage disposal system.

(b) In rules adopted under this chapter, the commission shall include definitions and detailed descriptions of good management practices and procedures for the construction of on-site sewage disposal systems that:

- (1) justify variation in field size or in other standard requirements;
- (2) promote the use of good management practices or procedures in the construction of on-site sewage disposal systems;
- (3) require the use of one or more specific management practices or procedures as a condition of approval of a standard on-site sewage disposal system if, in the opinion of the commission or authorized agent, site conditions or other problems require the use of additional management practices or procedures to ensure the proper operation of an on-site sewage disposal system; and
- (4) make available general, operational information to the public.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 880, §22, eff. Sept. 1, 2001; Amended by Acts 2003, 78th Leg., ch. 689, § 3, eff. Sept. 1, 2003.

§ 366.013. Installation and Use of Water Softeners and Reverse Osmosis Systems.

(a) Except as provided by Subsection (b), an owner may install or use a water softener that discharges effluent into an on-site sewage disposal system only if the installed water softener:

- (1) conserves water by design;
- (2) regenerates using a demand-initiated regeneration control device, commonly known as a DIR device; and
- (3) is clearly labeled as being equipped with a DIR device, with the label affixed to the

outside of the system so that it may be inspected and easily read.

(b) An owner may use a water softener that discharges effluent into an on-site sewage disposal system and that does not meet the requirements of Subsection (a) if the water softener was installed before September 1, 2003. The owner must replace the water softener with a water softener that meets the requirements of Subsection (a) if the owner:

- (1) replaces the water softener; or
- (2) installs a new on-site sewage disposal system for the building or other property served by the existing system.

(c) An owner may install and use a point-of-use reverse osmosis system that discharges effluent into an on-site sewage disposal system.

(d) An owner may install and use a point-of-entry reverse osmosis system that discharges effluent into an on-site sewage disposal system if the calculated volume of effluent:

- (1) does not cause hydraulic overloading; or
- (2) has been adequately addressed in the design of the on-site sewage disposal system.

(e) This section does not apply to an aerobic, nonstandard, or proprietary on-site sewage treatment system unless the water softener drain line to the system bypasses the treatment system and flows into the pump tank or directly into the discharge method.

(f) The commission by rule shall adopt and implement standards for the use of water softeners and reverse osmosis systems in a building or other property served by an on-site sewage disposal system.

Added by Acts 2001, 77th Leg., ch. 880, § 23, eff. Sept. 1, 2003.

§ 366.014. Designated Person

Subject to the requirements of Section 366.071(b), the commission or an authorized agent may designate a person to:

- (1) review permit applications, site evaluations, or planning materials; or
- (2) inspect on-site sewage disposal systems.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, § 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, § 59, eff. Sept. 1, 1997; Amended by Acts 2001, 77th Leg., ch. 880, § 23, eff. Sept. 1, 2001.

§ 366.015. Repealed by Acts 1997, 75th Leg., ch. 1072, § 60(b)(3), eff. Sept. 1, 1997

§ 366.016. Emergency Orders

The commission or authorized agent may issue an emergency order concerning an on-site sewage disposal system under Section 5.517, Water Code.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, § 38, eff. Sept. 1, 1997.

§ 366.017. Required Repairs; Penalty

(a) The commission or authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property:

- (1) not later than the 30th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has not been notified of the malfunctioning system during the preceding 12 months;
- (2) not later than the 20th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system once during the preceding 12 months; or
- (3) not later than the 10th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system at least twice during the preceding 12 months.

(b) The property owner must take adequate measures as soon as practicable to abate an immediate health hazard.

(c) The property owner may be assessed an administrative or a civil penalty under Chapter 7, Water Code, for each day that the on-site sewage disposal system remains unrepaired.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, § 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1127, § 3, eff. Sept. 1, 1997.

SUBCHAPTER C. DESIGNATION OF LOCAL GOVERNMENTAL ENTITY AS AUTHORIZED AGENT

§ 366.031. Designation

(a) The commission shall designate a local governmental entity as an authorized agent if the governmental entity:

- (1) notifies the commission that the entity wants to regulate the use of on-site sewage disposal systems in its jurisdiction;
- (2) in accordance with commission procedures, holds a public hearing and adopts an order or resolution that complies with Section 366.032; and

(3) submits the order or resolution to the commission.

(b) The commission in writing may approve the local governmental entity's order or resolution, and the designation takes effect only when the order or resolution is approved.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.032. Order or Resolution; Requirements

(a) The local governmental entity's order or resolution must:

- (1) incorporate the commission's rules on abatement or prevention of pollution and the prevention of injury to the public health;
- (2) meet the commission's minimum requirements for on-site sewage disposal systems; and
- (3) include a written enforcement plan.

(b) If the order or resolution adopts more stringent standards for on-site sewage disposal systems than this chapter or the commission's standards and provides greater public health and safety protection, the authorized agent's order or resolution prevails over this chapter or the standards.

(c) An authorized agent must obtain commission approval of substantive amendments to the agent's order or resolution.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.033. Delegation to Local Governmental Entities

The commission shall delegate to local governmental entities responsibility for the implementation and enforcement of applicable rules.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.034. Investigation of Authorized Agents

(a) The commission shall:

- (1) conduct not more often than once a year an investigation of each authorized agent to determine the authorized agent's compliance with this chapter; and
- (2) prepare an annual report concerning the status of the local governmental entity's

regulatory program.

(b) If the commission determines that an authorized agent does not consistently enforce the commission's minimum requirements for on-site sewage disposal systems, the commission shall hold a hearing and determine whether to continue the designation as an authorized agent.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.035. Mandatory Application for and Maintenance of Designation

A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas must take all actions necessary to receive and maintain a designation as an authorized agent of the commission.

Added by Acts 1991, 72nd Leg., ch. 14, § 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.036. County Map

(a) If the commission designates a local governmental entity as its authorized agent and if the entity intends to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas, the commissioners court of the county in which the entity is located shall prepare a map of the county area outside the limits of municipalities. The entity shall give to the commissioners court a written notice of the entity's intention to apply for the assistance. The map must show the parts of the area in which the different types of on-site sewage disposal systems may be appropriately located and the parts in which the different types of systems may not be appropriately located.

(b) The commissioners court shall file the map in the office of the county clerk.

(c) The commissioners court, at least every five years, shall review the map and make changes to it as necessary to keep the map accurate.

Added by Acts 1991, 72nd Leg., ch. 14, § 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

SUBCHAPTER D. PERMITS; FEES

§ 366.051. Permits

(a) A person must hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system.

(b) If the on-site sewage disposal system is located in the jurisdiction of an authorized agent, the permit is issued by the authorized agent; otherwise, the permit is issued by the commission.

(c) A person may not begin to construct, alter, repair, or extend an on-site sewage disposal system that is owned by another person unless the owner or owner's representative shows proof of a permit and approved plan from the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.0512. Multiple Treatment Systems

A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

- (1) is located on a tract of land of at least 100 acres in size;
- (2) produces not more than 5,000 gallons a day on an annual average basis;
- (3) is used only on a seasonal or intermittent basis; and
- (4) is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

Added by Acts 2001, 77th Leg., ch 965, § 20.03, eff. Sept. 1, 2001.

§ 366.0515. Maintenance Contract and Performance Bond.

(a) Except as provided by Subsection (g) , an authorized agent or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the system's owner contracting for the maintenance of the system.

(b) Except as provided by Subsection (a), an authorized agent by order or resolution or the commission by rule may condition approval of a permit for an on-site sewage disposal system on the system's owner contracting for the maintenance of the system. If a maintenance contract is required, the owner of the on-site sewage disposal system must submit to the permitting authority:

- (1) a signed contract for the maintenance of the on-site sewage disposal system; and
- (2) if the on-site sewage disposal system is located in a county with a population of more than 2.8 million, a performance bond obtained from the person with whom the owner of the on-site sewage disposal system has contracted for maintenance of the system.

(c) A performance bond required by Subsection (b) must be:

- (1) solely for the protection of the owner of the on-site sewage disposal system;
- (2) conditioned on the faithful performance of the maintenance of the on-site sewage

disposal system in accordance with plans, specifications, laws, regulations, and ordinances of the state and the authorized agent;

(3) in an amount reasonably related to the cost that the owner of the on-site sewage disposal system would incur if the maintenance company did not adhere to maintenance standards or comply with applicable statutes, rules, or ordinances;

(4) executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) in a form approved by the permitting authority; and

(6) payable to the owner of the on-site sewage disposal system.

(d) If the owner of the on-site sewage disposal system enters into a new maintenance contract or revises the original maintenance contract, the owner must submit a copy of the new or revised maintenance contract and a new performance bond to the permitting authority not later than the 30th day after the date on which the original contract terminates or is modified.

(e) The permitting authority may establish and collect a reasonable fee to cover the cost of administering the performance bond program.

(f) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(g) The owner of a single-family residence shall maintain the system directly or through a maintenance contract. If an authorized agent or the commission determines that an owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly has violated this chapter or a rule adopted or order or permit issued under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the violation, shall correct the violation or enter into a contract for the maintenance of the system. If before the third anniversary of the date of the determination the owner is determined to have committed another violation of this chapter or a rule adopted under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the subsequent violation, shall enter into a contract for the maintenance of the system. An owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly and who violates this chapter or a rule adopted or order or permit issued under this chapter is also subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty may not exceed \$100.

(k) If, under Subsection (b), an authorized agent or the commission conditions approval of a permit for an on-site sewage disposal system using aerobic treatment on the system's owner contracting for the maintenance of the system, the order, resolution, or rule may require the maintenance company to:

(1) inspect the system at specified intervals;

(2) submit a report on each inspection to the authorized agent or commission; and

(3) provide a copy of each report submitted under Subdivision (2) to the system's owner.

(l) A maintenance company that violates a provision of an order, resolution, or rule described by Subsection (k) is subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty for the first violation of that order, resolution, or rule is \$200, and the amount of the penalty for each subsequent violation is \$500.

(m) If a maintenance company violates an order, resolution, or rule described by Subsection (k) three or more times, the commission, in the manner provided by Subchapter G, Chapter 7, Water Code, may revoke the license or registration of the maintenance company or any person employed by the maintenance company issued under:

- (1) Section 26.0301, Water Code;
- (2) Chapter 37, Water Code; or
- (3) Section 366.071 of this code.

Added by Acts 1997, 75th Leg., ch. 1127, § 4, eff. Sept. 1, 1997; Amended by Acts 2005, 79th Leg., ch. 1129, § 1, eff. Sept. 1, 2005. Amended by HB 2482, eff. Sept. 1, 2007. Sections 366.0515 (h), (i), (j), (n) and (o) are repealed.

§ 366.052. Permit Not Required for On-Site Sewage Disposal on Certain Single Residences

(a) Sections 366.051, 366.053, 366.054, and 366.057 do not apply to an on-site sewage disposal system of a single residence that is located on a land tract that is 10 acres or larger in which the field line or sewage disposal line is not closer than 100 feet of the property line.

(b) Effluent from the on-site sewage disposal system on a single residence:

- (1) must be retained in the specified limits;
- (2) may not create a nuisance; and
- (3) may not pollute groundwater.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.053. Permit Application

(a) Application for a permit must:

- (1) be made on a form provided by the commission or authorized agent; and
- (2) include information required by the commission or authorized agent to establish that the individual sewage disposal system complies with this chapter and rules adopted under this

chapter.

(b) The commission shall adopt rules and procedures for the submission, review, and approval or rejection of permit applications.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.054. Notice From Installer

An installer may not begin construction, alteration, repair, or extension of an on-site sewage disposal system unless the installer notifies the commission or authorized agent of the date on which the installer plans to begin work on the system.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.055. Inspections

(a) The commission or authorized agent shall review a proposal for an on-site sewage disposal system and make inspections of the system as necessary to ensure that the on-site sewage disposal system is in substantial compliance with this chapter and the rules adopted under this chapter.

(b) An on-site sewage disposal system may not be used unless it is inspected and approved by the commission or the authorized agent.

(c) A holder of a permit issued under this chapter shall notify the commission, the authorized agent, or a designated representative not later than the fifth working day before the proposed date of the operation of an installation that the installation is ready for inspection.

(d) The inspection shall be made on a date and time mutually agreed on by the holder of a permit and the commission, the authorized agent, or a designated representative.

(e) An installation inspection shall be made not later than the second working day, excluding holidays, after the date on which notification that the installation is completed and ready for inspection is given to the commission, the authorized agent, or a designated representative.

(f) The owner, owner's representative, or occupant of the property on which the installation is located shall give the commission, the authorized agent, or a designated representative reasonable access to the property at reasonable times to make necessary inspections.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.056. Approval of On-Site Sewage Disposal System

(a) The commission or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.

(b) If a system is not approved under this section, the on-site sewage disposal system may not be used until all deficiencies are corrected and the system is reinspected and approved by the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.057. Permit Issuance

(a) The commission shall issue or authorize the issuance of permits and other documents.

(b) A permit and approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system must be issued in the name of the person who owns the system and must identify the specific property location or address for the specific construction, alteration, extension, repair, or operation proposed by the person.

(c) The commission may not issue a permit to construct, alter, repair, or extend an on-site sewage disposal system if the issuance of a permit conflicts with other applicable laws or public policy under this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995.

§ 366.058. Permit Fee

(a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. The commission may also use the fee to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission at its discretion may provide variances to the uniform application of the permit fee.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, § 60, eff. Sept. 1, 1997; Amended by Acts 2001, 77th Leg., ch. 965, § 3.08, eff. Sept. 1, 2001.

§ 366.059. Permit Fee Paid to Department or Authorized Agent

(a) The permit fee shall be paid to the authorized agent or the commission, whichever performs the permitting function.

(b) The commission may assess a reasonable and appropriate charge-back fee, not to exceed \$500, to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. The commission shall base the amount of a charge-back fee under this subsection on the actual cost of issuing a permit under this section. The commission may assess a charge-back fee to a local governmental entity under this subsection if the local governmental entity is an authorized agent that:

- (1) has repealed the order, ordinance, or resolution that established the entity as an authorized agent; or
- (2) has had its authorization as an authorized agent revoked by the commission.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

(d) The commission may not assess a charge-back fee to a local governmental entity if the local governmental entity has repealed the order, ordinance, or resolution that established the entity as an authorized agent or has lost its designation as an authorized agent due to material change in the commission's rules under this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, § 61, eff. Sept. 1, 1997; Amended by Acts 2001, 77th Leg., ch. 965, § 3.09, eff. Sept. 1, 2001.

SUBCHAPTER E. REGISTRATION OF INSTALLERS

§ 366.071. Occupational Licensing and Registration

(a) A person who constructs, installs, alters, extends, services, maintains, or repairs an on-site sewage disposal system or any part of an on-site sewage disposal system for compensation must hold a license or registration issued by the commission under Chapter 37, Water Code.

(b) A person designated by an authorized agent under Section 366.014 must hold a license issued by the commission under Chapter 37, Water Code.

(c) A person who conducts preconstruction site evaluations, including visiting a site and performing a soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage disposal system must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas Board of Professional Engineers as an engineer.

(d) The commission may implement a program under Chapter 37, Water Code, to register

persons who service or maintain on-site sewage disposal systems for compensation.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, § 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, § 11.113, eff. Sept. 1, 1995; Amended by Acts 2001, 77th Leg., ch. 880, § 24; Acts 2005, 79th Leg., ch. 1129, § 2, eff. Sept. 1, 2006; Acts 2005, 79th Leg., ch. 1129, § 4, eff. Sept. 1, 2005. Amended by HB 2482, eff. Sept. 1, 2007. Sections (h), (i), (j), (n) and (o) are repealed.

Note on Applicability of HB 3111 to a license or registration: The change in law made by this Act applies only to an application for the issuance or renewal of a license or registration that is made on or after January 1, 2002. An application made before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Revised: January 14 2008

**MISCELLANEOUS
GOVERNMENT CODE
CHAPTER 405. SECRETARY OF STATE**

§ 405.021 REPORT ON STATE-FUNDED PROJECTS SERVING

(a) In this section, "colonia" means a geographic area that:

- (1) is an economically distressed area as defined by Section 17.921, Water Code;
- (2) is located in a county any part of which is within 62 miles of an international border; and
- (3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(c) The secretary of state shall compile information received from the Office of Rural Community Affairs, the Texas Water Development Board, the Texas Transportation Commission, the Texas Department of Housing and Community Affairs, the Department of State Health Services, the Texas Commission on Environmental Quality, the Health and Human Services Commission, the Texas Cooperative Extension, councils of governments, an institution

of higher education that receives funding from the state for projects that provide assistance to colonias, and any other agency considered appropriate by the secretary of state for purposes of the classification system.

(d) The secretary of state shall compile information on colonias that is received from the colonia ombudspersons under Section 775.004.

(e) The secretary of state shall:

(1) with the assistance of the office of the attorney general, prepare a report on the progress of state-funded projects in providing water or wastewater services, paved roads, and other assistance to colonias; and

(2) submit the report to the presiding officer of each house of the legislature not later than:

(A) December 1 of each even-numbered year, if funds are appropriated specifically for the purpose of preparing and submitting the report; or

(B) if funds are not appropriated as described by Paragraph (A), December 1, 2010, and December 1 of every fourth year following that date.

Added by Acts of 2005, 79th Leg., Ch. 828, Â§ 1, eff. Sept. 1, 2005; Amended by Acts 2007, 80th Leg., R.S., Ch. 341, Â§ 1, eff. June 15, 2007.

CHAPTER 775. COORDINATION OF COLONIA INITIATIVES

§ 775.001. Definitions

In this chapter:

(1) "Agency" means a state office, institution, or other state governmental entity.

(2) "Colonia" means a geographic area that:

(A) is an economically distressed area as defined by Section 17.921, Water Code, and consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood; and

(B) is:

(i) located in a county any part of which is within 50 miles of an international border; or

(ii) located in a county:

(a) any part of which is within 100 miles of an international border; and

(b) that contains the majority of the area of a municipality with a

population of more than 250,000.

(3) "Nonborder colonia" has the meaning assigned by Section 15.001, Water Code.

Added by Acts 1999, 76th Leg., ch. 404, § 44, eff. Sept. 1, 1999; Amended by Acts 2001, 77th Leg., ch. 1367, § 11.05, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 708, § 11, eff. Sept. 1, 2005. Amended by SB 99, eff. June 15, 2007.

NOTE: Section 15.001(13), Water Code, as amended by SB 322, eff. Sept. 1, 2001, and renumbered by HB 3506, eff. Sept. 1, 2003, provides:

"Nonborder colonia" means a residential community:

- (A) located in an unincorporated area of a county all parts of which are at least 150 miles from the international border of this state;
- (B) in which water or wastewater services are inadequate to meet minimal needs of residential users as defined by board rules; and
- (C) in which the average household income is less than the average household income for the county in which the community is located.

§ 775.002. Interagency Coordination of Colonia Initiatives

(a) The governor may designate an agency to act as the state's colonia initiatives coordinator.

(b) If appointed under Subsection (a), the colonia initiatives coordinator shall coordinate colonia initiatives within the agency and with the other agencies and local officials involved in colonia projects in the state.

(c) The colonia initiatives coordinator shall work with the other agencies and local officials involved in colonia projects in the state to:

- (1) coordinate efforts to address colonia issues;
- (2) identify nonprofit self-help groups to help with colonia initiatives;
- (3) set goals for each state fiscal year for colonia initiatives in the state, including goals to:
 - (A) address easement problems; and
 - (B) ensure that water and wastewater connections are extended from distribution lines to houses located in colonias;
- (4) ensure that the goals set under this subsection are met each state fiscal year; and
- (5) coordinate state outreach efforts to nonborder colonias and to political subdivisions capable of providing water and wastewater service to nonborder colonias.

(d) The following agencies shall designate an officer or employee of the agency to serve as the agency's liaison for colonia initiatives:

- (1) the office of the attorney general;
- (2) the Department of State Health Services;
- (3) the Texas Department of Housing and Community Affairs;
- (4) the Texas Commission on Environmental Quality;
- (5) the Texas Water Development Board;
- (6) the Office of Rural Community Affairs;
- (7) the Office of State-Federal Relations;
- (8) the Texas Department of Insurance; and
- (9) the Texas Department of Transportation.

(f) In coordinating colonia initiatives under this section, the coordinator shall consider the advice and recommendations of the Colonia Resident Advisory Committee established under Section 2306.584.

(e) Each agency's liaison for colonia initiatives under Subsection (d) must be a deputy executive director or a person of equivalent or higher authority at the agency. This subsection does not authorize the creation of a new position for colonia coordination at a state agency.

Added by Acts 1999, 76th Leg., ch. 404, § 44, eff. Sept. 1, 1999; Amended by Acts 2001, 77th Leg., ch. 1367, § 11.06, eff. Sept. 1, 2001; Amended by Acts 2005, 79th Leg., ch. 351, § 1, eff. June 17, 2005.

§ 775.003. Colonia Ombudsperson Program

The colonia initiatives coordinator shall appoint a colonia ombudsperson in:

- (1) each of the six border counties that the coordinator determines have the largest colonia populations; and
- (2) each additional county any part of which is within 100 miles of an international border and that contains the majority of the area of a municipality with a population of more than 250,000.

Added by Acts 1999, 76th Leg., ch. 404, § 44, eff. Sept. 1, 1999; Amended by Acts 2005, 79th Leg., ch. 708, § 12, eff. Sept. 1, 2005. Amended by SB 99 eff. June 1, 2007.

Note: Sec. 775.004 was added by SB 827, Sec. 3, effective September 1, 2005, without reference to the conflicting addition of another Sec. 775.004 made by SB 1202, Sec. 2, effective June 17, 2005.

§ 775.004. Information on Colonias

(a) The colonia ombudspersons shall gather information about the colonias in the counties for which the ombudspersons were appointed and provide the information to the secretary of state, to assist the secretary of state in preparing the report required under Section 405.021.

(b) To the extent possible, the ombudspersons shall gather information regarding:

- (1) the platting of each colonia;
- (2) the infrastructure of each colonia;
- (3) the availability of health care services;
- (4) the availability of financial assistance; and
- (5) any other appropriate topic as requested by the secretary of state.

(c) The ombudspersons shall provide the information to the secretary of state not later than September 1 of each even-numbered year.

Note: Sec. 775.004 was added by SB 1202, Sec. 2, effective June 17, 2005, without reference to the conflicting addition of another Sec. 775.004 made by SB 827, Sec. 3, effective September 1, 2005.

Added by Acts 2005, 79th Leg., ch. 828, § 3, eff. Sept. 1, 2005; Amended by SB 99, eff. June 15, 2007.

Sec. 775.005. Development of Strategy to Assist Colonia Residents

(a) To improve services delivered to colonia residents, the colonia initiatives coordinator shall work with the Colonia Resident Advisory Committee established under Section 2306.584.

(b) The coordinator may establish an advisory committee similar to the Colonia Resident Advisory Committee to supplement the efforts of the Colonia Resident Advisory Committee by providing representation for colonia residents in counties that are not represented by a member of the Colonia Resident Advisory Committee.

(c) The coordinator shall consider the advice of the Colonia Resident Advisory Committee and any committee established under Subsection (b) regarding the needs of colonia residents.

(d) Based on the advice received under Subsection (c) and any recommendations received from the agencies listed in Section 775.002(d), the coordinator shall define and develop a strategy to address the needs of colonia residents and make recommendations to the legislature based on that strategy. The coordinator shall recommend appropriate programs, grants, and activities to the legislature.

Added by Acts 2005, 79th Leg., ch. 351, § 2, eff. June 17, 2005. Amended by HB 3167 eff. Sept. 1, 2007.

*For test of section as added by Acts 2005, see § 775.004, post.

CHAPTER 1403. GENERAL OBLIGATION BONDS FOR CERTAIN BORDER COLONIA PROJECTS

§ 1403.001. Definitions

In this subchapter:

- (1) "Authority" means the Texas Public Finance Authority.
- (2) "Commission" means the Texas Transportation Commission.

Added by Acts 2001, 77th Leg., ch. 950, § 1.

§ 1403.002. General Obligation Bonds and Notes for Border Colonia Roadway Projects

- (a) As provided by Section 49-1, Article III, Texas Constitution, the authority shall, in accordance with requests from the office of the governor:
 - (1) issue general obligation bonds and notes in an aggregate amount not to exceed \$175 million, as authorized by the office of the governor under Subsection (b); and
 - (2) as directed by the Texas Department of Transportation, distribute the proceeds from the sale of the bonds and notes to counties to provide financial assistance for colonia access roadway projects to serve border colonias.
- (b) The office of the governor shall determine the amount of bonds or notes to be issued at any one time by the authority under Subsection (a)(1) and the times at which the bonds or notes are issued.
- (c) The commission shall establish a program to administer the use of the proceeds of the bonds and notes. The Texas Department of Transportation shall administer the program in cooperation with the office of the governor, the secretary of state, the Texas A&M University Center for Housing and Urban Development.
- (d) The commission, in cooperation with the office of the governor, shall:
 - (1) define by rule "border colonia" as a geographic area that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood and subject to any other criteria considered appropriate by the commission and the office of the governor;
 - (2) establish by rule criteria for selecting which areas and which colonia access roadway projects are eligible for assistance under this chapter;
 - (3) determine the counties and the colonia access roadway projects that are to receive financial assistance and the amount of assistance given to a county or project;
 - (4) establish by rule minimum road standards a county's colonia access roadway proposal must meet to be awarded a grant;
 - (5) establish by rule grant application procedures; and
 - (6) establish by rule financial reporting requirements for counties that receive assistance for colonia access roadway projects to serve border colonias.
- (e) The issuance of general obligation bonds under this chapter shall comply with and is subject to Subtitle A, of this title, Chapter 1231, and applicable provisions of Chapters 1232 and 1371.
- (f) In connection with bonds or notes issued under this section, the authority may enter into one

or more credit agreements at any time for a period and on conditions the authority approves. For purposes of this subsection, "credit agreement" includes:

- (1) an interest rate swap agreement;
- (2) an interest rate lock agreement;
- (3) a currency swap agreement;
- (4) a forward payment conversion agreement;
- (5) an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates;
- (6) an agreement to exchange cash flows or a series of payments;
- (7) an option, put, or call to hedge payment, currency, rate, spread, or other exposure; or
- (8) another agreement that enhances the marketability, security, or creditworthiness of bonds or notes.

Added by Acts 2001, 77th Leg., ch. 950, § 1 eff. Nov. 6, 2001.

§ 1403.003. Set-Aside for Colonias Located in Rural Border Counties

(a) "In this section:

(1) "Border colonia" means a border colonia as defined by commission rule under Section 1403.002.

(2) "Rural border county" means a county that:

- (A) has a population of less than 55,000; and
- (B) is adjacent to an international border.

(3) "Set-aside" means a reservation of a portion of the proceeds from the sale of general obligation bonds and notes under this chapter to provide financial assistance for specific colonia access roadway projects proposed by rural border counties.

(b) The authority shall set aside an amount equal to 10 percent of the proceeds from each sale of general obligation bonds and notes under this chapter to provide financial assistance for colonia access roadway projects designed to pave roads serving border colonias located in rural border counties.

(c) The authority, as directed by the Texas Department of Transportation, shall provide a grant from the set-aside on a priority basis to a rural border county that proposes to pave for the first time a road serving a border colonia located in that county.

Added by Acts 2003 78th Leg., ch. 320, § 1, eff. June 18, 2003.

§ 1403.004. Use of Grants for Project Materials or Equipment

A grant under this chapter may be used to purchase any materials or to lease any equipment as

reasonably necessary to accomplish the goal of the project. Materials purchased as permitted by this section must be used solely in connection with the project. Equipment leased as permitted by this section must be used substantially in connection with the project throughout the period of the applicable lease.

Added by Acts 2003 78th Leg., ch. 320, § 1, eff. June 18, 2003.

CHAPTER 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

§ 2306.0985. Recovery of Funds From Certain Subdivisions

(a) It is the intent of the legislature that a private developer not unduly benefit from the expenditure by the state of public funds on infrastructure for public benefit.

(b) This section applies only to property located in:

- (1) the unincorporated area of an affected county, as defined by Section 16.341, Water Code; and
- (2) an economically distressed area, as defined by Section 16.341, Water Code.

(c) As a condition for the receipt of state funds, and to the extent permitted by law, federal funds, the department may require a political entity with authority to tax and place a lien on property to place a lien or assessment on property that benefits from the expenditure of state or federal funds for water, wastewater, or drainage improvements affecting the property. The lien or assessment may not exceed an amount equal to the cost of making the improvements as those costs relate to the property. The lien or assessment expires 10 years after the date the improvements are completed.

(d) If property subject to a lien or assessment under Subsection (c) is sold, the seller must pay to the political entity from the proceeds of the sale an amount equal to the value of the lien or assessment. This subsection does not apply if:

- (1) the reason for the sale is:
 - (A) the disposition of the estate following the death of the owner of the property; or
 - (B) the owner because of physical condition must reside in a continuous care facility and no longer resides on the property; or

- (2) the owner of the property is a person of low or moderate income.

(e) If property subject to a lien or assessment under Subsection (c) is repossessed by the holder of a note or a contract for deed, the holder must pay to the political entity an amount equal to the value of the lien or assessment before taking possession of the property.

(f) Subject to rules adopted by the department, a political entity shall collect payments made

under this section and remit the funds for deposit in the treasury to the credit of a special account in the general revenue fund that may be appropriated only to the department for use in administering a program under Section 2306.098.

(g) After public notice and comment, the department shall adopt rules to administer this section. The department may provide by rule for the reduction or waiver of a fee authorized by this section.

Added by Acts 1995, 74th Leg., ch. 979, § 28, eff. June 16, 1995.

SUBCHAPTER Z. COLONIAS

Section

- 2306.581. Definition.
 - 2306.582. Colonia Self-Help Centers: Establishment.
 - 2306.583. Self-Help Centers: Designation.
 - 2306.584. Colonia Resident Advisory Committee.
 - 2306.585. Duties of Colonia Resident Advisory Committee.
 - 2306.586. Self-Help Center; Purpose and Services.
 - 2306.587. Operation of Self-Help Center; Monitoring.
 - 2306.588. Department Liaison to Self-Help Centers.
 - 2306.589. Colonia Set-Aside Fund.
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§ 2306.581. Definition

In this subchapter:

(1) "Colonia" means a geographic area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the department.

(2) "Community action agency" means a political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. Section 9902.

§ 2306.582. Colonia Self-Help Centers: Establishment

(a) The department shall establish colonia self-help centers in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties. If the department determines it necessary and appropriate, the department may establish a self-help center in any other county if the county is designated as an economically distressed area under Chapter 17, Water Code, for purposes of eligibility to receive funds from the Texas Water Development Board.

(b) The department shall attempt to secure contributions, services, facilities, or operating support from the commissioners court of the county in which the self-help center is located to support the operation of the self-help center.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995.

§ 2306.583. Self-Help Centers: Designation

(a) The department shall designate a geographic area for the services provided by each self-help center.

(b) In consultation with the colonia resident advisory committee and the appropriate self-help center, the department shall designate five colonias in each service area to receive concentrated attention from that center.

(c) In consultation with the colonia resident advisory committee and the appropriate self-help center, the department may change the designation of colonias made under Subsection (b).

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995; Amended by Acts 2001, 77th Leg., ch. 1367, § 2.04, eff. Sept. 1, 2001.

§ 2306.584. Colonia Resident Advisory Committee

(a) The department shall appoint not fewer than five persons who are residents of colonias to serve on the Colonia Resident Advisory Committee. The members of the advisory committee shall be selected from lists of candidates submitted to the department by local nonprofit organizations and the commissioners court of a county in which a self-help center is located.

(b) The department shall appoint one committee member to represent each of the counties in which self-help centers are located. Each committee member:

- (1) must be a resident of a colonia in the county the member represents; and
- (2) may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract under this subchapter.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995; Amended by Acts 2001, 77th Leg., ch. 1234, § 36, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, § 1.27, eff. Sept. 1, 2001.

§ 2306.585. Duties of Colonia Resident Advisory Committee

- (a) The Colonia Resident Advisory Committee shall advise the department regarding:
 - (1) the needs of colonia residents;
 - (2) appropriate and effective programs that are proposed or are operated through the self-help centers; and
 - (3) activities that may be undertaken through the self-help centers to better serve the needs of colonia residents.
- (b) The advisory committee shall meet before the 30th day preceding the date on which a contract is scheduled to be awarded for the operation of a self-help center and may meet at other times.
- (c) The advisory committee shall advise the colonia initiatives coordinator as provided by Section 775.005.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995; Amended by Acts 2001, 77th Leg., ch. 1234, § 36, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, § 1.27, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 351, § 3, eff. June 17, 2005; Amended by HB 3167, eff. Sept. 1, 2007.

§ 2306.586. Self-Help Center: Purpose and Services

- (a) The purpose of a self-help center is to assist individuals and families of low income and very low income to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated service area or in another area the department has determined is suitable.
- (b) A self-help center shall set a goal to improve the living conditions of residents in the colonias designated under Section 2306.583(a)(2) within a two-year period after a contract is awarded under this subchapter.
- (c) A self-help center may serve individuals and families of low income and very low income by:
 - (1) providing assistance in obtaining loans or grants to build a home;
 - (2) teaching construction skills necessary to repair or build a home;
 - (3) providing model home plans;
 - (4) operating a program to rent or provide tools for home construction and improvement for

- the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;
- (5) helping to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets, and utilities;
 - (6) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;
 - (7) providing credit and debt counseling related to home purchase and finance;
 - (8) applying for grants and loans to provide housing and other needed community improvements;
 - (9) providing other services that the self-help center, with the approval of the department, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;
 - (10) providing assistance in obtaining loans or grants to enable an individual or a family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and
 - (11) providing monthly programs to educate individuals and families on their rights and responsibilities as property owners.

(d) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(e) Through a self-help center, a colonia resident may apply for any direct loan or grant program operated by the department.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 402, § 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, § 2.05, eff. Sept. 1, 2001.

§ 2306.587. Operation of Self-Help Center; Monitoring

(a) To operate a self-help center, the department shall, subject to the availability of revenue for that purpose, enter into a four-year contract directly with a local nonprofit organization, including a local community action agency that qualifies as an eligible entity under 42 U.S.C. Section 9902, or a local housing authority that has demonstrated the ability to carry out the functions of a self-help center under this subchapter.

(b) The department is solely responsible for contract oversight and for the monitoring of self-help centers under this subchapter.

(c) The department and the self-help centers may apply for and receive public or private gifts or grants to enable the centers to achieve their purpose.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995; Amended by Acts 2001, 77th Leg., ch. 1367, § 2.06, eff. Sept. 1, 2001.

§ 2306.588. Department Liaison to Self-Help Centers

(a) The department shall designate appropriate staff in the department to act as liaison to the self-help centers to assist the centers in obtaining funding to enable the centers to carry out the centers' programs.

(b) The department shall make a reasonable effort to secure an adequate level of funding to provide the self-help centers with funds for low-interest mortgage financing, grants for self-help programs, a revolving loan fund for septic tanks, a tool-lending program, and other activities the department determines are necessary.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995.

§ 2306.589. Colonia Set-Aside Fund

(a) The department shall establish a fund in the department designated as the colonia set-aside fund. The department may contribute money to the fund from any available source of revenue that the department considers appropriate to implement the purposes of this subchapter, except that the department may not use federal community development block grant money authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) unless the money is specifically appropriated by the legislature for that purpose.

(b) The department by rule shall provide that an application for assistance in paying for residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system may be submitted after construction of a water supply or sewer service system begins. The department shall approve or disapprove a timely application before construction of the water supply or sewer service is completed in order to eliminate delay in hookups once construction is completed. The department and the Texas Water Development Board shall coordinate the application process for hookup funds under this subsection and under Subchapter L, Chapter 15, Water Code, and shall share information elicited by each agency's application procedure in order to avoid duplication of effort and to eliminate the need for applicants to complete different forms with similar information.

(c) The department may use money in the colonia set-aside fund for specific activities that assist colonias, including:

- (1) the operation and activities of the self-help centers established under this subchapter;
- (2) reimbursement of colonia resident advisory committee members for their reasonable expenses in the manner provided by Chapter 2110 or the General Appropriations Act; and
- (3) funding for the provision of water and sewer service connections in accordance with Subsection (b).

(d) The department may review and approve an application for funding from the colonia set-

aside fund that advances the policy and goals of the state in addressing problems in the colonias.

Added by Acts 1995, 74th Leg., ch. 1016, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1405, § 1, eff. Sept. 1, 1997.

Amended by SB 322, eff. Sept. 1, 2001. Section 1.28 of SB 322 changed in subsection (c)(2) above the phrase "colonia advisory committee members" to "colonia resident advisory committee members and colonia initiatives advisory committee members."

See, however, the note following Govt. Code § 2306.583, above.

Amended by SB 264, eff. Sept. 1, 2003.

§ 2306.590, 2306.591. Repealed by SB 264, Section 31, eff. Sept. 1, 2003

SUBCHAPTER FF. OWNER-BUILDER LOAN PROGRAM

§ 2306.751. Definition

In this subchapter, "owner-builder" means a person, other than a person who owns or operates a construction business:

(1) who:

- (A) owns or purchases a piece of real property through a warranty deed or a warranty deed and deed of trust; or
- (B) is purchasing a piece of real property under a contract for deed entered into before January 1, 1999; and

(2) who undertakes to make improvements to that property.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999.

§ 2306.752. Owner-Builder Loan Program

(a) To provide for the development of affordable housing in this state, the department, through the colonia self-help centers established under Subchapter Z or a nonprofit organization certified by the department as a nonprofit owner-builder housing program, shall make loans for owner-builders to enable them to:

- (1) purchase or refinance real property on which to build new residential housing;
- (2) build new residential housing; or
- (3) improve existing residential housing.

(b) The department may adopt rules necessary to accomplish the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999.

§ 2306.753. Owner-Builder Eligibility

(a) Subject to this section, the department shall establish eligibility requirements for an owner-builder to receive a loan under this subchapter. The eligibility requirements must establish a priority for loans made under this subchapter to owner-builders with an annual income, as determined under Subsection (b)(1), of less than \$17,500.

(b) To be eligible for a loan under this subchapter, an owner-builder:

(1) may not have an annual income that exceeds 60 percent, as determined by the department, of the greater of the state or local median family income, when combined with the income of any person who resides with the owner-builder;

(2) must have resided in this state for the preceding six months;

(3) must have successfully completed an owner-builder education class under Section 2306.756; and

(4) must agree to:

(A) provide at least 60 percent of the labor necessary to build the proposed housing by working through a state-certified owner-builder housing program; or

(B) provide an amount of labor equivalent to the amount required under Paragraph (A) in connection with building housing for others through a state-certified nonprofit owner-builder housing program.

(c) The department may select nonprofit owner-builder housing programs to certify the eligibility of owner-builders to receive a loan under this subchapter. A nonprofit housing assistance organization selected by the department shall use the eligibility requirements established by the department to certify the eligibility of an owner-builder for the program.

(d) At least two-thirds of the dollar amount of loans made under this subchapter in each fiscal year must be made to borrowers whose property is located in a county that is eligible to receive financial assistance under Subchapter K, Chapter 17, Water Code.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999; Amended by Acts 2001, 77th Leg., ch. 1367, § 2.08, eff. Sept. 1, 2001.

§ 2306.754. Amount of Loan; Loan Terms

(a) The department may establish the minimum amount of a loan under this subchapter, but a loan may not exceed \$30,000.

(b) If it is not possible for an owner-builder to purchase necessary real property and build adequate housing for \$30,000, the owner-builder must obtain the amount necessary that exceeds \$30,000 from one or more local governmental entities, nonprofit organizations, or private

lenders. The total amount of loans made by the department and other entities to an owner-builder under this subchapter may not exceed \$60,000.

(c) A loan made by the department under this subchapter:

- (1) may not exceed a term of 30 years;
- (2) may bear interest at a fixed rate of not more than three percent or bear interest in the following manner:

- (A) no interest for the first two years of the loan;
- (B) beginning with the second anniversary of the date the loan was made, interest at the rate of one percent a year;
- (C) beginning on the third anniversary of the date the loan was made and ending on the sixth anniversary of the date the loan was made, interest at a rate that is one percent greater than the rate borne in the preceding year; and
- (D) beginning on the sixth anniversary of the date the loan was made and continuing through the remainder of the loan term, interest at the rate of five percent; and

- (3) may be secured by a lien on the real property, including a lien that is subordinate to a lien that secures a loan made under Subsection (b) and that is greater than the department's lien.

(d) If an owner-builder is purchasing real property under a contract for deed, the department may not disburse any portion of a loan made under this subchapter until the owner-builder:

- (1) fully completes the owner-builder's obligation under the contract and receives a deed to the property; or
- (2) refinances the owner-builder's obligation under the contract and converts the obligation to a note secured by a deed of trust.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999; Amended by Acts 2001, 77th Leg., ch. 1367, § 2.09, eff. Sept. 1, 2001.

§ 2306.755. Nonprofit Owner-Builder Housing Programs

(a) The department may certify nonprofit owner-builder housing programs operated by a tax-exempt organization listed under Section 501(c)(3), Internal Revenue Code of 1986, to:

- (1) qualify potential owner-builders for loans under this subchapter;
- (2) provide owner-builder education classes under Section 2306.756;
- (3) assist owner-builders in building housing; and
- (4) originate or service loans made under this subchapter.

(b) The department by rule shall adopt procedures for the certification of nonprofit owner-builder housing programs under this section.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999; Amended by Acts 2001, 77th Leg., ch. 1367, § 2.10, eff. Sept. 1, 2001.

§ 2306.756. Owner-Builder Education Classes

(a) A state-certified nonprofit owner-builder housing program shall offer owner-builder education classes to potential owner-builders. A class under this section must provide information on:

- (1) the financial responsibilities of an owner-builder under this subchapter, including the consequences of an owner-builder's failure to meet those responsibilities;
- (2) the building of housing by owner-builders;
- (3) resources for low-cost building materials available to owner-builders; and
- (4) resources for building assistance available to owner-builders.

(b) A nonprofit owner-builder housing program may charge a potential owner-builder who enrolls in a class under this section a reasonable fee not to exceed \$50 to offset the program's costs in providing the class.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999.

§ 2306.757. Loan Priority for Waiver of Local Government Fees

In making loans under this subchapter, the department shall give priority to loans to owner-builders who will reside in counties or municipalities that agree in writing to waive capital recovery fees, building permit fees, inspection fees, or other fees related to the building of the housing to be built with the loan proceeds.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999.

§ 2306.758. Funding

(a) The department shall solicit gifts and grants to make loans under this subchapter.

(b) The department may also make loans under this subchapter from:

- (1) available funds in the housing trust fund established under Section 2306.201;
- (2) federal block grants that may be used for the purposes of this subchapter; and
- (3) the owner-builder revolving loan fund established under Section 2306.7581.

(c) In a state fiscal year, the department may use not more than 10 percent of the revenue available for purposes of this subchapter to enhance the ability of tax-exempt organizations

described by Section 2306.755(a) to implement the purposes of this chapter.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999; Amended by Acts 2001, 77th Leg., ch. 1367, § 11, eff. Sept. 1, 2001.

§ 2306.7581. Owner-Builder Revolving Loan Fund

(a) The department shall establish an owner-builder revolving loan fund in the department for the sole purpose of funding loans under this subchapter.

(a-1) Each state fiscal year the department shall transfer at least \$3 million to the owner-builder revolving fund from money received under the federal HOME Investment Partnerships program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), from money in the housing trust fund, or from money appropriated by the legislature to the department. This subsection expires August 31, 2010.

(b) The department shall deposit money received in repayment of a loan under this subchapter to the owner-builder revolving loan fund.

Added by Acts 2001, 77th Leg., ch. 1367, § 2.12, eff. Sept. 1, 2001.

§ 2306.759. Reporting Duties

The department shall:

(1) prepare a report that evaluates the repayment history of owner-builders who receive loans under this subchapter, including for each owner-builder:

- (A) the owner-builder's income;
- (B) the date on which the owner-builder completed building or improving the residential housing for which the loan was made;
- (C) the county in which the residential housing is located;
- (D) the identity of the owner-builder housing program through which the housing was constructed; and
- (E) a description of the type of construction or improvement made; and

(2) deliver a copy of the report to the governor, the lieutenant governor, and the speaker of the house of representatives not later than November 15, 2000.

Added by Acts 1999, 76th Leg., ch. 1548, § 1, eff. Aug. 30, 1999.

§ 2306.760. Repealed by SB 322, eff. Sept. 1, 2001.

SUBCHAPTER GG. COLONIA MODEL SUBDIVISION PROGRAM

§ 2306.781. Definition

In this subchapter, "program" means the colonia model subdivision program established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1367, § 2.13, eff. Sept. 1, 2001.

§ 2306.782. Establishment of Program

The department shall establish the colonia model subdivision program to promote the development of new, high-quality, residential subdivisions that provide:

- (1) alternatives to substandard colonias; and
- (2) housing options affordable to individuals and families of extremely low and very low income who would otherwise move into substandard colonias.

Added by Acts 2001, 77th Leg., ch. 1367, § 2.13, eff. Sept. 1, 2001.

§ 2306.783. Colonia Model Subdivision Revolving Loan Fund

(a) The department shall establish a colonia model subdivision revolving loan fund in the department. Money in the fund may be used only for purposes of the program.

(a-1) The department may transfer money into the colonia model subdivision revolving fund using any available source of revenue.

(a-2) On application, the department may provide a loan under this subchapter through an eligible political subdivision using money from the portion of community development block grant that is set aside under federal law to provide financial assistance to colonias. In a state fiscal year, the department may not provide loans under this subchapter using more than \$2 million from the set-aside for colonias.

(a-3) Subsections (a-1) and (a-2) and this subsection expire August 31, 2010.

(b) The department shall deposit money received in repayment of loans under this subchapter to the colonia model subdivision revolving loan fund.

Added by Acts 2001, 77th Leg., ch. 1367, § 3, eff. Sept. 1, 2001.

§ 2306.784. Subdivision Compliance

Any subdivision created with assistance from the colonia model subdivision revolving loan fund must fully comply with all state and local laws, including any process established under state or local law for subdividing real property.

Added by SB 322, eff. Sept. 1, 2001.

§ 2306.785. Program Loans

(a) The department may make loans under the program only to:

- (1) colonia self-help centers established under Subchapter Z; and
- (2) community housing development organizations certified by the department.

(b) A loan made under the program may be used only for the payment of:

- (1) costs associated with the purchase of real property;
- (2) costs of surveying, platting, and subdividing or resubdividing real property;
- (3) fees, insurance costs, or recording costs associated with the development of the subdivision;
- (4) costs of providing proper infrastructure necessary to support residential uses;
- (5) real estate commissions and marketing fees; and
- (6) any other costs as the department by rule determines to be reasonable and prudent to advance the purposes of this subchapter.

(c) A loan made by the department under the program may not bear interest and may not exceed a term of 36 months.

(d) The department may offer a borrower under the program one loan renewal for each subdivision.

Added by Acts 2001, 77th Leg., ch. 1367, § 2.13, eff. Sept. 1, 2001.

§ 2306.786. Administration of Program; Rules

(a) In administering the program, the department by rule shall adopt:

- (1) any subdivision standards in excess of local standards the department considers necessary;
- (2) loan application procedures;
- (3) program guidelines; and
- (4) contract award procedures.

(b) The department shall adopt rules to:

- (1) ensure that a borrower under the program sells real property under the program only to an individual borrower, nonprofit housing developer, or for-profit housing developer for the purposes of constructing residential dwelling units; and
- (2) require a borrower under the program to convey real property under the program at a cost that is affordable to:

- (A) individuals and families of extremely low income; or
- (B) individuals and families of very low income.

Added by Acts 2001, 77th Leg., ch. 1367, § 2.13, eff. Sept. 1, 2001.

TAX CODE

CHAPTER 11. TAXABLE PROPERTY AND EXEMPTIONS

§ 11.185. Colonia Model Subdivision Program

(a) An organization is entitled to an exemption from taxation of unimproved real property it owns if the organization:

- (1) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);
- (2) purchased the property or is developing the property with proceeds of a loan made by the Texas Department of Housing and Community Affairs under the colonia model subdivision program under Subchapter GG, Chapter 2306, Government Code; and
- (3) owns the property for the purpose of developing a model colonia subdivision.

(b) Property may not be exempted under Subsection (a) after the fifth anniversary of the date the organization acquires the property.

(c) An organization entitled to an exemption under Subsection (a) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, or sale of property. To qualify for an exemption under this subsection, property must be used exclusively by the charitable organization, except that another individual or organization may use the property for activities incidental to the charitable organization's use that benefit the beneficiaries of the charitable organization.

(d) For the purposes of Subsection (e), the chief appraiser shall determine the market value of property exempted under Subsection (a) and shall record the market value in the appraisal records.

(e) If the organization that owns improved or unimproved real property that has been exempted under Subsection (a) sells the property to a person other than a person described by Section 2306.786(b)(1), Government Code, a penalty is imposed on the property equal to the amount of

the taxes that would have been imposed on the property in each tax year that the property was exempted from taxation under Subsection (a), plus interest at an annual rate of 12 percent computed from the dates on which the taxes would have become due.

Added by Acts 2001, 77th Leg., ch. 1367, § 2.14, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Tax Code § 11.184 by Acts 2003, 78th Leg., ch. 1275, § 2 (121), eff. Sept. 1, 2003.

CHAPTER 573. DEGREES OF RELATIONSHIPS; NEPOTISM PROHIBITIONS

SUBCHAPTER B. RELATIONSHIPS BY CONSANGUINITY OR BY AFFINITY

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993.

§ 573.021. Method of Computing Degree of Relationship

The degree of a relationship is computed by the civil law method.

§ 573.022. Determination of Consanguinity

(a) Two individuals are related to each other by consanguinity if:

- (1) one is a descendant of the other; or
- (2) they share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

§ 573.023. Computation of Degree of Consanguinity

(a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

- (1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and
- (2) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree by consanguinity are the individual's:

- (1) parent or child (relatives in the first degree);
 - (2) brother, sister, grandparent, or grandchild (relatives in the second degree); and
 - (3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).
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§ 573.024. Determination of Affinity

(a) Two individuals are related to each other by affinity if:

- (1) they are married to each other; or
- (2) the spouse of one of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(c) Subsection (b) applies to a member of the board of trustees of or an officer of a school district only until the youngest child of the marriage reaches the age of 21 years.

Amended by Acts 1995, 74th Leg., ch. 260, § 32, eff. May 30, 1995.

§ 573.025. Computation of Degree of Affinity

(a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are:

- (1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and
 - (2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).
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TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

CHAPTER 37. CERTIFICATES OF CONVENIENCE AND NECESSITY

SUBCHAPTER D. REGULATION OF SERVICES, AREAS, AND FACILITIES

§ 37.151. Provision of Service

Except as provided by this section, Section 37.152, and Section 37.153, a certificate holder shall:

- (1) serve every consumer in the utility's certificated area; and
- (2) provide continuous and adequate service in that area.

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997.

§ 37.152. Grounds for Reduction of Service

(a) Unless the commission issues a certificate that the present and future convenience and necessity will not be adversely affected, a certificate holder may not discontinue, reduce, or impair service to any part of the holder's certificated service area except for:

- (1) nonpayment of charges;
- (2) nonuse; or
- (3) another similar reason that occurs in the usual Course of business.

(b) A discontinuance, reduction, or impairment of service must be in compliance with and subject to any condition or restriction the commission prescribes.

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997.

§ 37.153. Required Refusal of Service

A certificate holder shall refuse to serve a customer in the holder's certificated area if the holder is prohibited from providing the service under Section 212.012, 232.029, or 232.0291, Local Government Code.

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997; Amended by Acts 2005, 79th Leg., ch. 708, § 13, eff. Sept 1, 2005.

SUBTITLE A. PROVISIONS APPLICABLE TO ALL UTILITIES

CHAPTER 15. JUDICIAL REVIEW, ENFORCEMENT, AND PENALTIES

§ 15.028. Civil Penalty Against Public Utility, Pay Telephone Service Provider, or Affiliate

(a) A public utility, customer-owned pay telephone service provider under Section 55.178, or affiliate is subject to a civil penalty if the utility, provider, or affiliate knowingly violates this title, fails to perform a duty imposed on it, or fails or refuses to obey an order, rule, direction, or requirement of the commission or a decree or judgment of a court.

(b) A civil penalty under this section shall be in an amount of not less than \$1,000 and not more than \$5,000 for each violation.

(c) A public utility or affiliate commits a separate violation each day it continues to violate Subsection (a).

(d) The attorney general shall file in the name of the commission a suit on the attorney general's own initiative or at the request of the commission to recover the civil penalty under this section.

Acts 1997, 75th Leg., ch. 166, § 1, eff. Sept. 1, 1997.

CHAPTER 13. WATER RATES AND SERVICES

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

[regarding provision of potable water service or sewer service for compensation]

§ 13.250. Continuous and Adequate Service; Discontinuance, Reduction, or Impairment of Service

(a) Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

- (1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;
- (2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission-ordered arrangement between the two service providers;
- (3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the commission prescribes.

(d) Except as provided by this subsection, a retail public utility that has not been granted a certificate of public convenience and necessity may not discontinue, reduce, or impair retail water or sewer service to any rate payer without approval of the regulatory authority. Except as provided by this subsection, a utility or water supply corporation that is allowed to operate without a certificate of public convenience and necessity under Section 13.242(c) may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without the approval of the regulatory authority. Subject to rules of the regulatory authority, a retail public utility, utility, or water supply corporation described in this subsection may discontinue, reduce, or impair retail water or sewer service for:

- (1) nonpayment of charges;
- (2) nonuse; or
- (3) other similar reasons in the usual course of business.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

Added by Acts 1985, 69th Leg., ch. 795, § 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, § 16, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1102, § 5, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, § 27, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, § 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 652, § 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 400, § 5, eff. Sept. 1, 1995.

§ 13.2501. Conditions Requiring Refusal of Service

The holder of a certificate of public convenience and necessity shall refuse to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047,* Local Government Code.

*See now Local Govt. Code § 232.029.

Added by Acts 1987, 70th Leg., ch. 1102, § 6, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 46(f), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, § 3.13, eff. Sept. 1, 1989.

CHAPTER 49. PROVISIONS APPLICABLE TO ALL DISTRICTS

SUBCHAPTER H. POWERS AND DUTIES

49.211. Powers [of Various Districts]

(a) A district shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created or the purposes authorized by the constitution, this code, or any other law.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation or the purposes authorized by this code or any other law.

(c) A district that is authorized by law to engage in drainage or flood control activities may adopt:

(1) a master drainage plan, including rules relating to the plan and design criteria for drainage channels, facilities, and flood control improvements;

(2) rules for construction activity to be conducted within the district that:

(A) reasonably relate to providing adequate drainage or flood control; and

(B) use generally accepted engineering criteria; and

(3) reasonable procedures to enforce rules adopted by the district under this subsection.

(d) If a district adopts a master drainage plan under Subsection (c)(1), the district may adopt rules relating to review and approval of proposed drainage plans submitted by property developers. The district, by rule, may require that a property developer who proposes to subdivide land located in the district, and who is otherwise required to obtain approval of the plat of the proposed subdivision from a municipality or county, submit for district approval a drainage report for the subdivision. The drainage report must include a map containing a description of the land to be subdivided. The map must show an accurate representation of:

(1) any existing drainage features, including drainage channels, streams, flood control improvements, and other facilities;

(2) any additional drainage facilities or connections to existing drainage facilities proposed by the property developer's plan for the subdivision; and

(3) any other parts of the property developer's plan for the subdivision that may affect drainage.

(e) The district shall review each drainage report submitted to the district under this section and shall approve a report if it shows compliance with: (1) the requirements of this section; (2) the district's master drainage plan adopted under Subsection (c)(1); and (3) the rules adopted by the district under Subsections (c)(2) and (d).

(f) On or before the 30th day after the date a drainage report is received, the district shall send notice of the district's approval or disapproval of the drainage report to: (1) the property developer; and (2) each municipal or county authority with responsibility for approving the plat of the proposed subdivision.

(g) If the district disapproves a drainage report, the district shall include in the notice of disapproval a written statement: (1) explaining the reasons for the rejection; and (2) recommending changes, if possible, that would make a revised version of the drainage report acceptable for approval.

Added by Acts 1995, 74th Leg., ch. 715, § 2, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, § 11, eff. Sept. 1, 1997.

Amended by HB 919, eff. June 20, 2003.

NOTE: The section above applies to a "district," which is defined by Water Code § 49.001 to mean any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law, any conservation and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes), or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that this chapter applies to that district.