

By: Shapleigh

S.B. No. 1241

A BILL TO BE ENTITLED

AN ACT

relating to authorizing certain counties near the international border to regulate land development; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 231, Local Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. ZONING AND OTHER REGULATION IN CERTAIN COUNTIES NEAR INTERNATIONAL BORDER

Sec. 231.261. PURPOSE. The powers granted under this subchapter are for the purpose of:

- (1) preventing the proliferation of colonias;
- (2) promoting the public health, safety, peace, morals, and general welfare;
- (3) protecting and preserving places and areas of historical, cultural, environmental, or agricultural significance;
- (4) encouraging recreation and education; and
- (5) encouraging efficient use of land for business and commerce.

Sec. 231.262. APPLICABILITY; AREA SUBJECT TO REGULATION.

(a) This subchapter applies only to a county with a population of 650,000 or more that is located within 50 miles of an international border.

(b) This subchapter applies only to the unincorporated area of the county.

1 Sec. 231.263. ZONING AND OTHER REGULATIONS GENERALLY. The
2 commissioners court of the county may regulate land development by:

3 (1) adopting regulations relating to:

4 (A) maximum densities, including the size of
5 lots;

6 (B) the height, number of stories, and size of
7 buildings or other structures;

8 (C) the percentage of a lot that may be occupied;

9 (D) the location of buildings and other
10 structures on a lot or tract;

11 (E) the location and use of buildings, other
12 structures, and land for business, industrial, residential, or
13 other purposes;

14 (F) the construction, reconstruction,
15 alteration, or razing of buildings or other structures; and

16 (G) the placement of water and sewage facilities,
17 parks, and other public requirements; and

18 (2) adopting building codes to promote safe and
19 uniform building, plumbing, and electrical standards.

20 Sec. 231.264. COMPLIANCE WITH COMPREHENSIVE PLAN. The
21 regulations must be adopted in accordance with a comprehensive plan
22 and must be designed to:

23 (1) lessen congestion in the streets and roads;

24 (2) secure safety from fire, panic, and other dangers;

25 (3) promote health and the general welfare;

26 (4) provide adequate light and air;

27 (5) prevent the overcrowding of land;

1 (6) avoid undue concentration of population; or

2 (7) facilitate the adequate provision of
3 transportation, water, sewers, parks, and other public
4 requirements.

5 Sec. 231.265. DISTRICTS. (a) The commissioners court may
6 divide the unincorporated area of the county into districts of a
7 number, shape, and size the court considers best for carrying out
8 this subchapter. Within each district, the commissioners court may
9 regulate the erection, construction, reconstruction, alteration,
10 repair, or use of buildings, other structures, or land.

11 (b) The regulations must be uniform for each class or kind
12 of building in a district, but the regulations may vary from
13 district to district. The regulations shall be adopted with
14 reasonable consideration, among other things, for the character of
15 each district and its peculiar suitability for particular uses,
16 with a view of encouraging the most appropriate use of land
17 throughout the area.

18 Sec. 231.266. COMMISSION. (a) To exercise the powers
19 authorized by this subchapter, the commissioners court shall
20 appoint a five member zoning commission. The zoning commission
21 shall recommend boundaries for the original districts and
22 appropriate regulations for each district.

23 (b) The commissioners court shall appoint a chair from the
24 members of the zoning commission. The chair serves in that capacity
25 for a two-year term. The commissioners court shall appoint four
26 additional members for staggered two-year terms. In the event of
27 resignation, end of term, or a vacancy, the commissioners court

1 shall appoint new members. The zoning commission may employ a
2 secretary, an acting secretary, and other technical or clerical
3 personnel.

4 (c) In making initial appointments of zoning commission
5 members under Subsection (b), other than the chair, the
6 commissioners court shall designate by drawing lots staggered terms
7 of one year or two years for members to serve.

8 (d) A member of the zoning commission is not entitled to
9 compensation but is entitled to expenses actually incurred while
10 serving on the commission as provided by order of the commissioners
11 court.

12 (e) The zoning commission shall make a preliminary report
13 and hold public hearings on that report before submitting a final
14 report to the commissioners court. The commissioners court may not
15 take final action or hold a public hearing until it has received the
16 final report of the zoning commission.

17 (f) Before the 10th day before the hearing date, written
18 notice of each public hearing before the zoning commission on a
19 proposed change in a zoning classification in the district shall be
20 sent to:

21 (1) each owner of affected property or to the person
22 who renders the property for county taxes; and

23 (2) each owner of property that is located within 200
24 feet of property affected by the change or to the person who renders
25 the property for county taxes.

26 (g) The notice may be served by depositing it, postage paid
27 and properly addressed, in the United States mail.

1 Sec. 231.267. PROCEDURES GOVERNING ADOPTION OF REGULATIONS
2 AND DISTRICT BOUNDARIES. (a) The commissioners court shall
3 establish procedures for adopting and enforcing regulations and
4 district boundaries. A regulation or district boundary is not
5 effective until it is adopted by the commissioners court after a
6 public hearing on the matter at which parties in interest and
7 citizens have an opportunity to be heard. Before the 15th day
8 before the date of the hearing, the commissioners court must
9 publish notice of the time and place of the hearing in a newspaper
10 of general circulation in the county.

11 (b) If a proposed change to a regulation or boundary is
12 protested in accordance with this subsection, the proposed change
13 must receive, in order to take effect, the affirmative vote of at
14 least four-fifths of all members of the commissioners court. The
15 protest must be written and signed by the owners of at least 20
16 percent of either:

17 (1) the area of the lots covered by the proposed
18 change; or

19 (2) the area included in the lots or parcels of land
20 adjoining the area affected by the proposed change.

21 Sec. 231.268. BOARD OF ADJUSTMENT. (a) The commissioners
22 court may provide for the appointment of a board of adjustment. In
23 the regulations adopted under this subchapter, the commissioners
24 court may authorize the board of adjustment, in appropriate cases
25 and subject to appropriate conditions and safeguards, to make
26 special exceptions to the terms of the regulations that are
27 consistent with the general purpose and intent of the regulations

1 and in accordance with any applicable rules contained in the
2 regulations.

3 (b) A board of adjustment must consist of five members to be
4 appointed for staggered terms of two years. The appointing
5 authority may remove a board member for cause on a written charge
6 after a public hearing. A vacancy on the board shall be filled for
7 the unexpired term.

8 (c) The board shall adopt rules in accordance with any order
9 adopted under this subchapter. Meetings of the board are held at
10 the call of the chair and at other times as determined by the board.
11 The chair or acting chair may administer oaths and compel the
12 attendance of witnesses. All meetings of the board shall be open to
13 the public.

14 (d) The board shall keep minutes of its proceedings that
15 indicate the vote of each member on each question or indicate that a
16 member is absent or fails to vote. The board shall keep records of
17 its examinations and other official actions. The minutes and
18 records shall be filed immediately in the board's office and are
19 public records.

20 Sec. 231.269. AUTHORITY OF BOARD. (a) The board of
21 adjustment may:

22 (1) hear and decide an appeal that alleges error in an
23 order, requirement, decision, or determination made by an
24 administrative official in the enforcement of this subchapter or a
25 regulation adopted under this subchapter;

26 (2) hear and decide special exceptions to the terms of
27 a regulation adopted under this subchapter when the regulation

1 requires the board to do so; and

2 (3) authorize in specific cases a variance from the
3 terms of a regulation adopted under this subchapter if the variance
4 is not contrary to the public interest and, due to special
5 conditions, a literal enforcement of the regulation would result in
6 unnecessary hardship, and so that the spirit of the regulation is
7 observed and substantial justice is done.

8 (b) In exercising its authority under Subsection (a)(1),
9 the board may reverse or affirm, in whole or in part, or modify the
10 administrative official's order, requirement, decision, or
11 determination from which an appeal is taken and make the correct
12 order, requirement, decision, or determination, and for that
13 purpose the board has the same authority as the administrative
14 official.

15 (c) The concurring vote of four members of the board is
16 necessary to:

17 (1) reverse an order, requirement, decision, or
18 determination of an administrative official;

19 (2) decide in favor of an applicant on a matter on
20 which the board is required to pass under a regulation adopted under
21 this subchapter; or

22 (3) authorize a variation in a regulation adopted
23 under this subchapter.

24 Sec. 231.270. APPEAL TO BOARD. (a) Any of the following
25 persons may appeal to the board of adjustment a decision made by an
26 administrative official:

27 (1) a person aggrieved by the decision; or

1 (2) any officer, department, board, or bureau of the
2 county or of a municipality affected by the decision.

3 (b) The appellant must file with the board and the official
4 from whom the appeal is taken a notice of appeal specifying the
5 grounds for the appeal. The appeal must be filed within a
6 reasonable time as determined by board rule. On receiving the
7 notice, the official from whom the appeal is taken shall
8 immediately transmit to the board all the papers constituting the
9 record of the action that is appealed.

10 (c) An appeal stays all proceedings in furtherance of the
11 action that is appealed unless the official from whom the appeal is
12 taken certifies in writing to the board facts supporting the
13 official's opinion that a stay would cause imminent peril to life or
14 property. In that case, the proceedings may be stayed only by a
15 restraining order granted by the board or a court of record on
16 application, after notice to the official, if due cause is shown.

17 (d) The board shall set a reasonable time for the appeal
18 hearing and shall give public notice of the hearing and due notice
19 to the parties in interest. A party may appear at the appeal
20 hearing in person or by agent or attorney. The board shall decide
21 the appeal within a reasonable time.

22 Sec. 231.271. JUDICIAL REVIEW OF BOARD DECISION. (a) Any
23 of the following persons may present to a court of record a verified
24 petition stating that the decision of the board of adjustment is
25 illegal in whole or in part and specifying the grounds of the
26 illegality:

27 (1) a person aggrieved by a decision of the board;

1 (2) a taxpayer; or

2 (3) an officer, department, board, or bureau of the
3 county or of the municipality.

4 (b) The petition must be presented within 10 days after the
5 date the decision is filed in the board's office.

6 (c) On the presentation of the petition, the court may grant
7 a writ of certiorari directed to the board to review the board's
8 decision. The writ must indicate the time within which the board's
9 return must be made and served on the petitioner's attorney, which
10 must be after 10 days and may be extended by the court. Granting of
11 the writ does not stay the proceedings on the decision under appeal,
12 but on application and after notice to the board the court may grant
13 a restraining order if due cause is shown.

14 (d) The board's return must be verified and must concisely
15 state any pertinent and material facts that show the grounds of the
16 decision under appeal. The board is not required to return the
17 original documents on which the board acted but may return
18 certified or sworn copies of the documents or parts of the documents
19 as required by the writ.

20 (e) If at the hearing the court determines that testimony is
21 necessary for the proper disposition of the matter, the court may
22 take evidence or appoint a referee to take evidence as directed.
23 The referee shall report the evidence to the court with the
24 referee's findings of fact and conclusions of law. The referee's
25 report constitutes a part of the proceedings on which the court
26 shall make its decision.

27 (f) The court may reverse or affirm, in whole or in part, or

1 modify the decision that is appealed. The court may not assess
2 costs against the board unless the court determines that the board
3 acted with gross negligence, in bad faith, or with malice in making
4 its decision.

5 Sec. 231.272. ENFORCEMENT; PENALTY; REMEDIES. (a) The
6 commissioners court may adopt orders to enforce this subchapter or
7 an order or a regulation adopted under this subchapter.

8 (b) A person commits an offense if the person violates this
9 subchapter or an order or a regulation adopted under this
10 subchapter. An offense under this subsection is a misdemeanor
11 punishable by fine, imprisonment, or both, as provided by order by
12 the commissioners court. Trial shall be in a county court.

13 (c) A person who violates this subchapter or an order or a
14 regulation adopted under this subchapter is liable to the county
15 for a civil penalty in an amount not to exceed an amount as provided
16 by order as provided by the commissioners court. The appropriate
17 attorney representing the county in civil actions may file a civil
18 action to recover the civil penalty. In determining the amount of
19 the penalty, the court shall consider the seriousness of the
20 violation. A penalty recovered under this subsection shall be
21 deposited in the county treasury to the credit of the general fund.

22 (d) If a building or other structure is erected,
23 constructed, reconstructed, altered, repaired, razed, converted,
24 or maintained or if a building, other structure, or land is used in
25 violation of this subchapter or an order or a regulation adopted
26 under this subchapter, the appropriate county authority, in
27 addition to other remedies, may institute appropriate action to:

1 (1) prevent the unlawful erection, construction,
2 reconstruction, alteration, repair, razing, conversion,
3 maintenance, or use;

4 (2) restrain, correct, or abate the violation;

5 (3) prevent the occupancy of the building, structure,
6 or land; or

7 (4) prevent any illegal act, conduct, business, or use
8 on or about the premises.

9 Sec. 231.273. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If
10 a regulation adopted under this subchapter requires a lower
11 building height or fewer number of stories for a building, requires
12 a greater percentage of a lot to be left unoccupied, or otherwise
13 imposes higher standards than those required under another statute
14 or local order or regulation, the regulation adopted under this
15 subchapter controls. If the other statute or local order or
16 regulation imposes higher standards, that statute, order, or
17 regulation controls.

18 (b) This subchapter does not authorize the commissioners
19 court to require the removal or destruction of property that exists
20 at the time the court implements this subchapter.

21 Sec. 231.274. CUMULATIVE AUTHORITY. (a) The powers
22 granted under this subchapter are cumulative of and in addition to
23 the powers granted to counties under this chapter or other law to
24 regulate the subdivision of land.

25 (b) The powers granted under this subchapter do not affect
26 or impair the authority of the commissioners court to adopt an order
27 or regulation under any other law.

1 SECTION 2. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2007.