

BILL ANALYSIS

C.S.H.B. 2606
By: Hunter
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Aransas County has within its jurisdiction a unique and pristine inland bay system which is frequented for recreational purposes by residents from every part of the state. Currently, the county is experiencing a significant amount of land development activity which, if not done in an orderly fashion, will result in the degradation of the water quality of its bays. Furthermore, without adequate development regulations, residents of Aransas County fear the unincorporated areas of the county will be developed in ways that will interfere with the proper use of that area as a place of tourism and recreation.

C.S.H.B. 2606 sets forth provisions authorizing the Aransas County commissioners court to regulate land use so that the county can provide for the orderly development of areas located in the unincorporated areas of Aransas County. The bill requires that authority to be approved in a county election.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2606 amends the Local Government Code to authorize the Aransas County Commissioners Court to adopt zoning regulations in areas of Aransas County located in the unincorporated areas of Aransas County located within three miles of the shoreline of the Gulf of Mexico or a bay. The bill authorizes the commissioners court to regulate, in those areas, the height, number of stories, and size of buildings and other structures; the percentage of a lot that may be occupied by buildings and structures; the size of yards, courts, and other open spaces; population density; the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; the placement of water and sewage facilities, parks, and other public requirements; and the control, storage, preservation, and distribution of storm and flood water.

C.S.H.B. 2606 provides that the regulatory authority granted under the bill's provisions is not effective unless it is approved by a majority of the county residents voting in an election held on a uniform election date, and sets forth the ballot language. The bill provides that the regulatory authority approved in the election includes the authority of the commissioners court to repeal, revise, or amend a regulation of land development adopted under provisions of the bill.

C.S.H.B. 2606 requires zoning regulations to be adopted in accordance with a comprehensive plan and be designed to lessen congestion in the streets and roads; secure safety from fire, panic, and other dangers; promote health and the general welfare; provide adequate light and air; prevent overcrowding of the land; avoid undue concentration of population; facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements; control, store, preserve, and distribute storm and flood water; and assist in developing the regulated area into parks, playgrounds, and recreational areas.

C.S.H.B. 2606 authorizes the commissioners court to divide areas subject to county zoning authority into districts, and to regulate within each district the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land. The bill requires

the zoning regulations to be uniform for each class or kind of building in a district, but allows regulations to vary from district to district. The bill requires regulations to take into account the character of each district and its suitability for particular uses.

C.S.H.B. 2606 requires the commissioners court to establish procedures for adopting and enforcing zoning regulations and zoning district boundaries and provides for notice of public hearing. The bill requires that any proposed change to a regulation or district boundary that is protested must receive the affirmative vote of at least three-fourths of the members of the commissioners court before it takes effect. The bill requires such a protest to be written and signed by the owners of at least 20 percent of either the area of the lots covered by the proposed change, or the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots or from the street frontage of the opposite lots.

C.S.H.B. 2606 requires the commissioners court to appoint a zoning commission to recommend original zoning district boundaries and zoning regulations, and sets forth the composition of the commission, requirements for membership, presiding officers, compensation, and duties of the commission.

C.S.H.B. 2606 authorizes the commissioners court to provide for the appointment of a board of adjustment and to authorize the board of adjustment, under certain conditions, to make special exceptions to the terms of the zoning regulations. The bill sets forth the composition of the board, the terms of members, the filling of vacancies, provisions for removal of a board member, and sets out the duties and requirements of the board. The bill sets out the board's authority to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official, and sets out the requirements and procedure for appealing a decision made by an administrative official. The bill provides for judicial review of a board decision and sets out the requirements and procedure for such a review. The bill provides, if the commissioners court does not provide for the appointment of a board of adjustment, that a person aggrieved by a zoning regulation or a zoning district boundary adopted under the bill may petition the commissioners court for a special exception, and requires the commissioners court to adopt procedures relating to the grant of a special exception.

C.S.H.B. 2606 requires the board to adopt rules in accordance with any order adopted under provisions relating to zoning in Aransas County and authorizes the commissioners court to adopt orders to enforce those provisions, to enforce any order adopted under the provisions, and to enforce a zoning regulation. The bill makes it a misdemeanor offense punishable by fine, imprisonment, or both to violate the bill's provisions, to violate an order adopted under the bill's provisions, or to violate a zoning regulation. The bill authorizes the commissioners court to provide civil penalties for a violation.

C.S.H.B. 2606 establishes that a zoning regulation adopted under its provisions controls in a conflict with other law if that regulation imposes a higher standard, and likewise, if a conflicting statute, local order, or regulation in other law imposes higher standards, that provision of law controls. The bill provides that it does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements the bill's provisions. The bill makes its provisions inapplicable to the location, construction, maintenance, or use of central office buildings used by a person engaging in providing telephone service to the public or equipment used in connection with those buildings or as part of the telephone system, as necessary to furnish telephone service to the public.

C.S.H.B. 2606 establishes legislative findings that specified parts of Aransas County are frequented for recreational purposes by residents from every part of the state and that orderly development and use, and adequate development regulations are required to promote the public health, safety, peace, morals, and general welfare, and to encourage the recreational use of county parks in Aransas County.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2606 adds a legislative finding not in the original declaring that without adequate development regulations, Aransas County would be developed in ways that endanger, among other things, tourism, peace, and the natural resources of the county. The substitute differs from the original by applying its provisions to the unincorporated areas of Aransas County located within three miles of the shoreline of the Gulf of Mexico or a bay, whereas the original applies its provisions to areas of Aransas County located outside a municipality but within two miles of a publicly owned park or recreational development, or within two miles of a beach, wharf, or bathhouse used by at least 500 persons annually. The substitute adds a provision not in the original granting the commissioners court of Aransas County the authorization to regulate the control, storage, preservation, and distribution of storm and flood water, and adds a similar provision in regards to compliance with a comprehensive plan.

C.S.H.B. 2606 adds a provision not in the original requiring voter approval of county zoning authority and removes from the original a provision authorizing the commissioners court to appoint a board of park commissioners as the zoning commission. The substitute adds a specification not in the original regarding mailing notice of certain hearings to property owners. The substitute specifies that the date of a certain appeal hearing be not later than the 30th day after the date notice of appeal is filed, while the original prescribes a reasonable time. The substitute includes a provision not in the original authorizing a person aggrieved by a zoning regulation or boundary to petition the commissioners court, if the commissioners court has not appointed a board of adjustment, and requiring the commissioners court to adopt procedures relating to the grant of a special exception. The substitute removes imprisonment from the original as a punishment for an offense relating to zoning regulations.