

By: Rose

H.B. No. 2167

A BILL TO BE ENTITLED

AN ACT

1
2 relating to granting Hill Country counties authority to regulate
3 certain land use and impose certain development fees; providing
4 penalties.

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

6 SECTION 1. The heading to Chapter 231, Local Government
7 Code, is amended to read as follows:

8 CHAPTER 231. SPECIFIC COUNTY LAND USE PLANNING
9 [~~ZONING~~] AUTHORITY

10 SECTION 2. Chapter 231, Local Government Code, is amended
11 by adding Subchapter M to read as follows:

12 SUBCHAPTER M. DEVELOPMENT REGULATIONS IN HILL COUNTRY COUNTIES

13 Sec. 231.281. DEFINITIONS. In this subchapter:

14 (1) "Hill Country county" means Bandera, Blanco,
15 Burnet, Comal, Edwards, Gillespie, Hays, Kendall, Kerr, Kimble,
16 Llano, Mason, Medina, Real, or Uvalde County.

17 (2) "Infrastructure" means any of the following
18 facilities:

19 (A) water supply, treatment, and distribution
20 facilities;

21 (B) wastewater collection and treatment
22 facilities;

23 (C) storm water, drainage, and flood control
24 facilities; or

1 (D) roadway facilities.

2 (3) "Infrastructure cost recovery fee" means a fee
3 imposed by the county on the owner of new development to pay for or
4 recover costs of infrastructure improvements necessitated by and
5 attributable to the new development. The fee is assessed on a cost
6 per service unit basis.

7 (4) "New development" means any of the following
8 activities that increase the number of service units:

9 (A) the subdivision of land;

10 (B) the construction, reconstruction,
11 redevelopment, conversion, structural alteration, relocation, or
12 enlargement of any structure; or

13 (C) any use or extension of the use of land.

14 (5) "Service unit" means a standardized measure of
15 consumption, use, generation, or discharge attributable to an
16 individual unit of development calculated in accordance with
17 generally accepted engineering or planning standards and based on
18 historical data and trends for the preceding 10 years applicable to
19 the county in which the individual unit of development is located.

20 Sec. 231.282. LEGISLATIVE FINDINGS AND PURPOSE. (a) The
21 legislature finds that:

22 (1) the natural areas of the Hill Country counties,
23 including the areas surrounding Canyon Lake, Inks Lake, Lake
24 Buchanan, Lake Lyndon B. Johnson, Lake Marble Falls, and Medina
25 Lake, the Blanco, Colorado, Frio, Guadalupe, Llano, Medina, Nueces,
26 Pedernales, Sabinal, San Antonio, San Gabriel, and San Marcos
27 Rivers, and the numerous small lakes, tributaries, and creeks in

1 the Hill Country counties:

2 (A) are or will be frequented for recreational
3 and tourism purposes by residents from every part of the state; and

4 (B) are critical to the bays and estuaries in the
5 Gulf of Mexico;

6 (2) orderly development of the Hill Country counties
7 is of concern to the entire state; and

8 (3) without adequate development regulations, the
9 Hill Country counties will be developed in ways that endanger and
10 interfere with the proper use of that area as a place of tourism and
11 recreation to the detriment of the public health, safety, morals,
12 and general welfare.

13 (b) The powers granted under this subchapter are for the
14 purpose of:

15 (1) promoting the public health, safety, peace,
16 morals, and general welfare;

17 (2) encouraging tourism and recreation; and

18 (3) safeguarding and preventing the pollution of the
19 state's aquifers, rivers, and lakes.

20 Sec. 231.283. AREAS SUBJECT TO REGULATION. This subchapter
21 applies only to the unincorporated areas of the Hill Country
22 counties.

23 Sec. 231.284. DEVELOPMENT REGULATIONS GENERALLY. (a) The
24 commissioners court of a Hill Country county by order may adopt land
25 development regulations to promote the health, safety, morals, or
26 general welfare of the county and provide for the safe, orderly, and
27 healthful development in the unincorporated area of the county,

1 including regulations to establish:

2 (1) density of development as determined by minimum or
3 average lot size within a designated area;

4 (2) reasonable building and set-back lines on all
5 sides of any building or property used for business, industrial,
6 residential, or other purposes; and

7 (3) an infrastructure cost recovery fee, as described
8 by Section 231.294.

9 (b) A determination of the reasonableness of a set-back line
10 under Subsection (a)(2) may include consideration of an
11 incompatible land use.

12 (c) Unless otherwise authorized by state law, a
13 commissioners court may not regulate under this subchapter:

14 (1) the use of any building or property for business,
15 industrial, residential, or other purpose; or

16 (2) a plat or subdivision in an adjoining county.

17 Sec. 231.285. ELECTION TO APPROVE REGULATORY AUTHORITY
18 REQUIRED. (a) Regulatory authority granted under Section 231.284
19 is not effective until it is approved by a majority of the county
20 residents voting in an election held under this section.

21 (b) County residents voting in an election held under this
22 section:

23 (1) may approve regulatory authority granted under
24 Section 231.284 in its entirety; or

25 (2) may approve specific regulatory authority granted
26 under Section 231.284 without approving other specific regulatory
27 authority granted under Section 231.284.

1 (c) The commissioners court of a Hill Country county:

2 (1) may, on its own motion, order and hold an election
3 in the county to approve a grant of authority under Section 231.284;
4 and

5 (2) shall order and hold an election in the county to
6 approve a grant of authority under Section 231.284 if the
7 commissioners court receives a petition requesting the election
8 signed by registered voters of the county in a number equal to 10
9 percent of the number of votes received by all candidates for
10 governor in the county in the most recent gubernatorial election.

11 (d) Notwithstanding Section 277.002, Election Code:

12 (1) a petition must include each signer's zip code with
13 the signer's residence address; and

14 (2) a signature is not considered valid if the date of
15 signing is before the 90th day before the date the petition is
16 submitted to the commissioners court.

17 (e) Not later than the fifth day after the date a petition is
18 received by the commissioners court, the county judge shall submit
19 the petition for verification to the county clerk. The county clerk
20 shall determine whether the petition meets the requirements
21 prescribed by this section and Section 277.002, Election Code. Not
22 later than the 30th day after the date the petition is submitted to
23 the county clerk for verification, the county clerk shall certify
24 in writing to the commissioners court whether the petition is
25 valid. If the county clerk determines that the petition is invalid,
26 the county clerk shall state the reasons for that determination.

27 (f) If the county clerk certifies that a petition is valid,

1 the commissioners court shall order the election to be held on the
2 first November uniform election date authorized by Section 41.001,
3 Election Code, that occurs after the 35th day after the date the
4 court receives the county clerk's certification.

5 (g) For an election under this section, the ballot shall be
6 prepared to permit voting for or against the proposition:
7 "Approving the authority granted to the commissioners court of
8 (name of county) to regulate land development in the unincorporated
9 area of the county by (insert description of general authority or
10 specific regulation, as applicable)." As applicable, the ballot
11 shall be prepared to permit voting for or against separate
12 propositions as provided by Subsection (b)(2).

13 (h) The approval authority granted under this section
14 includes the authority to repeal, revise, or amend a previous
15 decision to operate under this subchapter.

16 Sec. 231.286. COMPLIANCE WITH COUNTY AND MUNICIPAL PLANS.
17 Development regulations must be:

18 (1) adopted in accordance with any county plan for
19 growth and development of the county if a county plan has been
20 adopted by the commissioners court; and

21 (2) coordinated with the comprehensive plans of
22 municipalities located in the county.

23 Sec. 231.287. DISTRICTS. (a) The commissioners court of a
24 Hill Country county may divide the unincorporated area of the
25 county into districts of a number, shape, and size the
26 commissioners court considers best for exercising the authority
27 granted by this subchapter.

1 (b) Development regulations may vary from district to
2 district.

3 Sec. 231.288. PROCEDURE GOVERNING ADOPTION OF REGULATIONS
4 AND DISTRICT BOUNDARIES. (a) A development regulation adopted under
5 this subchapter is not effective until the regulation is adopted by
6 the commissioners court of the county after a public hearing.
7 Before the 15th day before the date of the hearing, the
8 commissioners court must publish notice of the hearing in a
9 newspaper of general circulation in the county.

10 (b) The commissioners court may establish or amend a
11 development regulation only by an order passed by a majority vote of
12 the full membership of the commissioners court.

13 Sec. 231.289. DEVELOPMENT COMMISSION. (a) The
14 commissioners court of a Hill Country county may appoint a
15 development commission to assist in the implementation and
16 enforcement of development regulations adopted under this
17 subchapter.

18 (b) The development commission must consist of:
19 (1) an ex officio chair who must be a public official,
20 other than a county commissioner, in the county; and
21 (2) four additional members who are all residents of
22 the county.

23 (c) The development commission is advisory only and may
24 recommend appropriate development regulations for the county.

25 (d) The members of the development commission are subject to
26 the same requirements relating to conflicts of interest that are
27 applicable to the commissioners court under Chapter 171.

1 Sec. 231.290. SPECIAL EXCEPTION. (a) A person aggrieved by
2 a development regulation adopted under this subchapter may petition
3 the commissioners court of the county that adopted the regulation
4 or the development commission, if the commissioners court has
5 established a development commission, for a special exception to
6 the development regulation.

7 (b) The commissioners court of each county that exercises
8 the authority granted by this subchapter shall adopt procedures
9 governing applications, notice, hearings, and other matters
10 relating to the grant of a special exception.

11 Sec. 231.291. ENFORCEMENT; PENALTY. (a) The commissioners
12 court of a Hill Country county may adopt orders to enforce this
13 subchapter or an order or development regulation adopted under this
14 subchapter.

15 (b) A person commits an offense if the person violates this
16 subchapter or an order or development regulation adopted under this
17 subchapter. An offense under this subsection is a misdemeanor
18 punishable by a fine of not less than \$500 or more than \$1,000. Each
19 day that a violation occurs constitutes a separate offense.

20 Sec. 231.292. COOPERATION WITH MUNICIPALITIES. The
21 commissioners court of a Hill Country county by order may enter into
22 agreements with any municipality located in the county to assist in
23 the implementation and enforcement of development regulations
24 adopted under this subchapter.

25 Sec. 231.293. CONFLICT WITH OTHER LAWS. If a development
26 regulation adopted under this subchapter imposes higher standards
27 than those required under another statute or local order or

1 regulation, the regulation adopted under this subchapter controls
2 in the area subject to regulation. If the other statute or local
3 order or regulation imposes higher standards, that statute, order,
4 or regulation controls.

5 Sec. 231.294. INFRASTRUCTURE COST RECOVERY FEE. (a) A Hill
6 Country county may impose an infrastructure cost recovery fee to
7 provide necessary infrastructure to serve new development in the
8 unincorporated area of the county as provided by this section and
9 Sections 231.295 and 231.296.

10 (b) The county may impose the fee only to pay for or recover
11 the costs of constructing, acquiring, or expanding infrastructure
12 necessary to serve new development. The fee may not be:

13 (1) applied to infrastructure improvements that do not
14 serve the new development or to which the new development does not
15 have access; or

16 (2) imposed to pay for:

17 (A) repairing, operating, or maintaining
18 existing or new infrastructure improvements; or

19 (B) upgrading, replacing, or expanding existing
20 development to meet stricter safety, efficiency, environmental, or
21 regulatory standards.

22 (c) Before the county may impose the fee to recover costs of
23 roadway improvements, an infrastructure development plan must be
24 prepared. The plan must include a road traffic study conducted by a
25 qualified engineer. The county may not impose the fee to recover
26 costs of roadway improvements unless the road traffic study
27 projects a minimum of a 25 percent increase in road traffic

1 attributable to the new development.

2 (d) Any interest earned on the fee is considered part of the
3 fee and is subject to the same restrictions under this section.

4 (e) The county may assess the fee before or at the time a
5 subdivision plat is recorded. The fee may be collected at the time
6 the county issues a building permit or a certificate of occupancy,
7 unless the county and the owner of the development enter into an
8 agreed payment plan.

9 (f) The county may reduce or waive the assessment of the fee
10 if the new development qualifies as affordable housing under 42
11 U.S.C. Section 12745.

12 (g) After the fee has been assessed, the fee may not be
13 increased unless additional service units are added. If additional
14 service units are added, the fee may be assessed only at the cost
15 per service unit originally imposed.

16 (h) The infrastructure improvement for which the fee is
17 imposed must be completed not later than the first anniversary of
18 the date the fee is paid. The time prescribed for completion may be
19 extended by a majority vote of the commissioners court if the
20 commissioners court makes a finding that the infrastructure
21 improvement is exceptionally complicated or intensive and
22 reasonably requires additional time. An extension granted under
23 this subsection may not exceed the second anniversary of the date
24 the fee is paid. Any portion of the fee that remains after the time
25 prescribed expires shall be refunded to the owner of the
26 development.

27 Sec. 231.295. PROCEDURES FOR ASSESSING INFRASTRUCTURE COST

1 RECOVERY FEES GENERALLY. (a) The commissioners court of a Hill
2 Country county shall hold a public hearing to consider the
3 infrastructure improvements and the infrastructure cost recovery
4 fee. On or before the date the notice of hearing is published, the
5 commissioners court shall make available to the public a
6 description of any proposed infrastructure improvements and a
7 description of any proposed fee.

8 (b) On or before the 30th day before the date of the hearing,
9 the commissioners court shall:

10 (1) publish notice of the hearing in one or more
11 newspapers of general circulation in the county; and

12 (2) send written notice by certified mail to the owner
13 of the new development for which a fee is proposed.

14 (c) The notice under Subsection (b)(1) shall include:

15 (1) a relevant heading;

16 (2) the time, date, and location for the hearing;

17 (3) a statement that the hearing is open to public
18 comment; and

19 (4) a general statement of the subject matter of the
20 hearing.

21 (d) Not later than the 30th day after the date of the public
22 hearing, the commissioners court by order shall adopt or reject the
23 proposed assessment of the fee. An order approving the assessment
24 of the fee may not be adopted as an emergency measure.

25 Sec. 231.296. CERTIFICATION OF COMPLIANCE REQUIRED. (a) A
26 Hill Country county that imposes an infrastructure improvement cost
27 recovery fee shall submit a written certification verifying

1 compliance with this subchapter to the attorney general each year
2 not later than the last day of the county's fiscal year. The
3 certification must be signed by the county judge.

4 (b) A county that fails to submit a certification for a
5 fiscal year as required by this section is liable to the state for a
6 civil penalty in an amount equal to 10 percent of the amount of the
7 fee assessed in that fiscal year. A penalty collected under this
8 subsection shall be deposited to the credit of the housing trust
9 fund.

10 SECTION 3. This Act takes effect September 1, 2009.