

By: Hunter

H.B. No. 2606

A BILL TO BE ENTITLED

AN ACT

relating to granting county zoning authority in Aransas County;  
providing a criminal penalty.

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

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

SUBCHAPTER N. ZONING IN ARANSAS COUNTY

Sec. 231.301. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the parts of Aransas County that surround Aransas Bay, Copano Bay, St. Charles Bay, Mesquite Bay, Carlos Bay, and Port Bay are frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state; and

(3) buildings in the area that are frequented for resort purposes tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county parks in Aransas County.

1       Sec. 231.302. AREAS SUBJECT TO REGULATION. This subchapter  
2 applies to the areas of Aransas County located:

3           (1) outside a municipality but within two miles of a  
4 publicly owned park or recreational development; or

5           (2) within two miles of a beach, wharf, or bathhouse  
6 used by at least 500 persons annually.

7       Sec. 231.303. ZONING REGULATIONS GENERALLY. The  
8 Commissioners Court of Aransas County may, for the areas subject to  
9 this subchapter, regulate:

10           (1) the height, number of stories, and size of  
11 buildings and other structures;

12           (2) the percentage of a lot that may be occupied;

13           (3) the size of yards, courts, and other open spaces;

14           (4) population density;

15           (5) the location and use of buildings, other  
16 structures, and land for business, industrial, residential, or  
17 other purposes; and

18           (6) the placement of water and sewage facilities,  
19 parks, and other public requirements.

20       Sec. 231.304. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning  
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;

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

5           (8) assist in developing the regulated area into  
6 parks, playgrounds, and recreational areas for the residents of  
7 this state and other states and nations.

8           Sec. 231.305. DISTRICTS. (a) The commissioners court may  
9 divide the area of the county subject to this subchapter into  
10 districts of a number, shape, and size the commissioners court  
11 considers best for administering this subchapter. Within each  
12 district, the commissioners court may regulate the erection,  
13 construction, reconstruction, alteration, repair, or use of  
14 buildings, other structures, or land.

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

22           Sec. 231.306. PROCEDURES GOVERNING ADOPTION OF REGULATIONS  
23 AND DISTRICT BOUNDARIES. (a) The commissioners court shall  
24 establish procedures for adopting and enforcing zoning regulations  
25 and zoning district boundaries. A regulation or district boundary  
26 is not effective until it is adopted by the commissioners court  
27 after a public hearing on the matter at which parties in interest

1 and citizens have an opportunity to be heard. Before the 15th day  
2 before the date of the hearing, the commissioners court must  
3 publish notice of the time and place of the hearing in a newspaper  
4 of general circulation in the county.

5 (b) If a proposed change to a regulation or district  
6 boundary is protested in accordance with this subsection, the  
7 proposed change must receive, in order to take effect, the  
8 affirmative vote of at least three-fourths of all members of the  
9 commissioners court. The protest must be written and signed by the  
10 owners of at least 20 percent of either:

11 (1) the area of the lots covered by the proposed  
12 change; or

13 (2) the lots immediately adjacent to the rear of the  
14 lots covered by the proposed change and extending 200 feet from  
15 those lots or from the street frontage of the opposite lots.

16 Sec. 231.307. ZONING COMMISSION. (a) To exercise the  
17 powers authorized by this subchapter, the commissioners court shall  
18 appoint a zoning commission. The commission shall recommend  
19 boundaries for the original zoning districts and appropriate zoning  
20 regulations for each district. The commission must consist of  
21 seven members, each of whom must be a resident of the county. If the  
22 county has a board of park commissioners, the commissioners court  
23 may appoint the board to serve as the zoning commission.

24 (b) The commission shall elect a presiding officer from  
25 among its members. The presiding officer serves in that capacity  
26 for a term set by the commission. The commission may at any time  
27 choose for a particular meeting or occasion an acting presiding

1 officer as necessary from among its members. The commission may  
2 employ a secretary and acting secretary and other technical or  
3 clerical personnel.

4 (c) A member of the commission is not entitled to  
5 compensation but is entitled to expenses actually incurred while  
6 serving on the commission as provided by order of the commissioners  
7 court.

8 (d) The zoning commission shall make a preliminary report  
9 and hold public hearings on that report before submitting a final  
10 report to the commissioners court. The commissioners court may not  
11 hold a public hearing or take action until it receives the final  
12 report of the zoning commission.

13 (e) Before the 10th day before the hearing date, written  
14 notice of each public hearing before the zoning commission on a  
15 proposed change in a zoning classification shall be sent to:

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

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

21 (f) The notice may be served by depositing it, postage paid  
22 and properly addressed, in the United States mail.

23 Sec. 231.308. BOARD OF ADJUSTMENT. (a) The commissioners  
24 court may provide for the appointment of a board of adjustment. In  
25 the zoning regulations adopted under this subchapter, the  
26 commissioners court may authorize the board of adjustment, in  
27 appropriate cases and subject to appropriate conditions and

1 safeguards, to make special exceptions to the terms of the zoning  
2 regulations that are consistent with the general purpose and intent  
3 of the regulations and in accordance with any applicable rules  
4 contained in the regulations.

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

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

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

22 Sec. 231.309. AUTHORITY OF BOARD. (a) The board of  
23 adjustment may:

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

1           (2) hear and decide special exceptions to the terms of  
2 a zoning regulation when the regulation requires the board to do so;  
3 and

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

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

17          (c) The concurring vote of four members of the board is  
18 necessary to:

19           (1) reverse an order, requirement, decision, or  
20 determination of an administrative official;

21           (2) decide in favor of an applicant on a matter on  
22 which the board is required to pass under a zoning regulation; or

23           (3) authorize a variation in a zoning regulation.

24          Sec. 231.310. 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) an 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. 231.311. 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, it may take  
22 evidence or appoint a referee to take evidence as directed. The  
23 referee shall report the evidence to the court with the referee's  
24 findings of fact and conclusions of law. The referee's report  
25 constitutes a part of the proceedings on which the court shall make  
26 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. 231.312. ENFORCEMENT; PENALTY; REMEDIES. (a) The  
6 commissioners court may adopt orders to enforce this subchapter,  
7 any order adopted under this subchapter, or a zoning regulation.

8 (b) A person commits an offense if the person violates this  
9 subchapter, an order adopted under this subchapter, or a zoning  
10 regulation. An offense under this subsection is a misdemeanor,  
11 punishable by fine, imprisonment, or both, as provided by the  
12 commissioners court. The commissioners court may also provide  
13 civil penalties for a violation.

14 (c) If a building or other structure is erected,  
15 constructed, reconstructed, altered, repaired, converted, or  
16 maintained or if a building, other structure, or land is used in  
17 violation of this subchapter, an order adopted under this  
18 subchapter, or a zoning regulation, the appropriate county  
19 authority, in addition to other remedies, may institute appropriate  
20 action to:

21 (1) prevent the unlawful erection, construction,  
22 reconstruction, alteration, repair, conversion, maintenance, or  
23 use;

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

25 (3) prevent the occupancy of the building, structure,  
26 or land; or

27 (4) prevent any illegal act, conduct, business, or use

1 on or about the premises.

2 Sec. 231.313. CONFLICT WITH OTHER LAWS; EXCEPTIONS.

3 (a) If a zoning regulation adopted under this subchapter requires  
4 a greater width or size of a yard, court, or other open space,  
5 requires a lower building height or fewer stories for a building,  
6 requires a greater percentage of lot to be left unoccupied, or  
7 otherwise imposes higher standards than those required under  
8 another statute or local order or regulation, the regulation  
9 adopted under this subchapter controls. If the other statute or  
10 local order or regulation imposes higher standards, that statute,  
11 order, or regulation controls.

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

15 (c) This subchapter, an order adopted under this  
16 subchapter, or a zoning regulation does not apply to the location,  
17 construction, maintenance, or use of central office buildings used  
18 by a person engaging in providing telephone service to the public or  
19 equipment used in connection with those buildings or as part of the  
20 telephone system, as necessary to furnish telephone service to the  
21 public.

22 SECTION 2. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2009.