

By: Rose, Miller of Comal, Gallego

H.B. No. 3265

Substitute the following for H.B. No. 3265:

By: Coleman

C.S.H.B. No. 3265

A BILL TO BE ENTITLED

AN ACT

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

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

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

8 SUBCHAPTER M. DEVELOPMENT REGULATIONS IN HILL COUNTRY COUNTIES

9 Sec. 231.281. DEFINITIONS. In this subchapter:

10 (1) "Hill Country county" means Bandera, Blanco,  
11 Comal, Edwards, Gillespie, Hays, Kendall, or Medina County.

12 (2) "Infrastructure" means any roadway facility.

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

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

20 (A) the subdivision of land; or

21 (B) any use or extension of the use of land.

22 (5) "Service unit" means a standardized measure of  
23 consumption, use, generation, or discharge attributable to an  
24 individual unit of development calculated in accordance with

1 generally accepted engineering or planning standards and based on  
2 historical data and trends for the preceding 10 years applicable to  
3 the county in which the individual unit of development is located.

4 Sec. 231.282. LEGISLATIVE FINDINGS AND PURPOSE. (a) The  
5 legislature finds that:

6 (1) the natural areas of the Hill Country counties,  
7 including the areas surrounding Canyon Lake and Medina Lake, the  
8 Blanco, Frio, Guadalupe, Llano, Medina, Nueces, Pedernales,  
9 Sabinal, and San Marcos Rivers, and the numerous small lakes,  
10 tributaries, creeks, and springs in the Hill Country counties:

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

13 (B) are critical to the bays and estuaries in the  
14 Gulf of Mexico;

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

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

22 (b) The powers granted under this subchapter are for the  
23 purpose of:

24 (1) promoting the public health, safety, peace,  
25 morals, and general welfare;

26 (2) encouraging tourism and recreation; and

27 (3) safeguarding and preventing the pollution of the

1 state's aquifers, rivers, and lakes.

2 Sec. 231.283. AREAS SUBJECT TO REGULATION. This subchapter  
3 applies only to the unincorporated areas of the Hill Country  
4 counties.

5 Sec. 231.284. DEVELOPMENT REGULATIONS GENERALLY. (a) The  
6 commissioners court of a Hill Country county by order may adopt land  
7 development regulations to promote the health, safety, morals, or  
8 general welfare of the county and provide for the safe, orderly, and  
9 healthful development in the unincorporated area of the county,  
10 including regulations to establish:

11 (1) density of development as determined by average  
12 lot size within a designated area;

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

16 (3) an infrastructure cost recovery fee, as described  
17 by Section 231.293.

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

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

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

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

26 Sec. 231.285. ELECTION TO APPROVE REGULATORY AUTHORITY  
27 REQUIRED. (a) Regulatory authority granted under Section 231.284

1 is not effective until it is approved by a majority of the county  
2 residents voting in an election held under this section.

3 (b) County residents voting in an election held under this  
4 section:

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

7 (2) may approve specific regulatory authority granted  
8 under Section 231.284 without approving other specific regulatory  
9 authority granted under Section 231.284.

10 (c) The commissioners court of a Hill Country county may, on  
11 its own motion, order and hold an election in the county to approve  
12 a grant of authority under Section 231.284.

13 (d) For an election under this section, the ballot shall be  
14 prepared to permit voting for or against the proposition:  
15 "Approving the authority granted to the commissioners court of  
16 (name of county) to regulate land development in the unincorporated  
17 area of the county by (insert description of general authority or  
18 specific regulation, as applicable)." As applicable, the ballot  
19 shall be prepared to permit voting for or against separate  
20 propositions as provided by Subsection (b)(2).

21 (e) The approval authority granted under this section  
22 includes the authority to repeal, revise, or amend a previous  
23 decision to operate under this subchapter.

24 Sec. 231.286. COMPLIANCE WITH COUNTY AND MUNICIPAL PLANS.  
25 Development regulations must be:

26 (1) adopted in accordance with any county plan for  
27 growth and development of the county if a county plan has been

1 adopted by the commissioners court; and

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

4 Sec. 231.287. PROCEDURE GOVERNING ADOPTION OF REGULATIONS.

5 (a) A development regulation adopted under this subchapter is not  
6 effective until the regulation is adopted by the commissioners  
7 court of the county after a public hearing. Before the 15th day  
8 before the date of the hearing, the commissioners court must  
9 publish notice of the hearing in a newspaper of general circulation  
10 in the county.

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

14 Sec. 231.288. DEVELOPMENT COMMISSION. (a) The  
15 commissioners court of a Hill Country county may appoint a  
16 development commission to assist in the implementation and  
17 enforcement of development regulations adopted under this  
18 subchapter.

19 (b) The development commission must consist of:

20 (1) an ex officio chair who must be a public official,  
21 other than a county commissioner, in the county; and

22 (2) four additional members who are all residents of  
23 the county.

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

26 (d) The members of the development commission are subject to  
27 the same requirements relating to conflicts of interest that are

1 applicable to the commissioners court under Chapter 171.

2 Sec. 231.289. SPECIAL EXCEPTION. (a) A person aggrieved by  
3 a development regulation adopted under this subchapter may petition  
4 the commissioners court of the county that adopted the regulation  
5 or the development commission, if the commissioners court has  
6 established a development commission, for a special exception to  
7 the development regulation.

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

12 Sec. 231.290. ENFORCEMENT; PENALTY. (a) The commissioners  
13 court of a Hill Country county may adopt orders to enforce this  
14 subchapter or an order or development regulation adopted under this  
15 subchapter.

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

21 Sec. 231.291. COOPERATION WITH MUNICIPALITIES. The  
22 commissioners court of a Hill Country county by order may enter into  
23 agreements with any municipality located in the county to assist in  
24 the implementation and enforcement of development regulations  
25 adopted under this subchapter.

26 Sec. 231.292. CONFLICT WITH OTHER LAWS. If a development  
27 regulation adopted under this subchapter imposes higher standards

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

6 Sec. 231.293. INFRASTRUCTURE COST RECOVERY FEE. (a) A Hill  
7 Country county may impose an infrastructure cost recovery fee to  
8 provide necessary infrastructure to serve new development in the  
9 unincorporated area of the county as provided by this section and  
10 Sections 231.294 and 231.295.

11 (b) The county may impose the fee only to pay for or recover  
12 the costs of constructing, acquiring, or expanding infrastructure  
13 necessary to serve new development. The fee may only be:

14 (1) applied to infrastructure improvements that serve  
15 the new development or to which the new development has access; and

16 (2) imposed to pay for:

17 (A) repairing, operating, or maintaining  
18 existing or new infrastructure improvements that are necessary to  
19 serve the new development; or

20 (B) upgrading, replacing, or expanding existing  
21 infrastructure to meet stricter safety, efficiency, environmental,  
22 or regulatory standards as necessary to serve the new development.

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

1 projects a minimum of a 25 percent increase in road traffic  
2 attributable to the new development.

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

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

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

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

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



1       Sec. 231.294. PROCEDURES FOR ASSESSING INFRASTRUCTURE COST  
2 RECOVERY FEES GENERALLY. (a) The commissioners court of a Hill  
3 Country county shall hold a public hearing to consider the  
4 infrastructure improvements and the infrastructure cost recovery  
5 fee. On or before the date the notice of hearing is published, the  
6 commissioners court shall make available to the public a  
7 description of any proposed infrastructure improvements and a  
8 description of any proposed fee.

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

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

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

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

16             (1) a relevant heading;

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

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

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

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

26       Sec. 231.295. CERTIFICATION OF COMPLIANCE REQUIRED. (a) A  
27 Hill Country county that imposes an infrastructure improvement cost

1 recovery fee shall submit a written certification verifying  
2 compliance with this subchapter to the attorney general each year  
3 not later than the last day of the county's fiscal year. The  
4 certification must be signed by the county judge.

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

11 SECTION 2. This Act takes effect September 1, 2009.