

By: Wentworth

S.B. No. 2452

A BILL TO BE ENTITLED

AN ACT

relating to granting Travis County authority to regulate certain land use and impose certain development fees; providing penalties.

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

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

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

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

SUBCHAPTER M. DEVELOPMENT REGULATIONS IN TRAVIS COUNTY

Sec. 231.281. DEFINITIONS. In this subchapter:

(1) "Infrastructure" means any of the following facilities:

(A) storm water, drainage, and flood control facilities; or

(B) roadway facilities.

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

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

1           (A) the subdivision of land;

2           (B) the construction, reconstruction,  
3 redevelopment, conversion, structural alteration, relocation, or  
4 enlargement of any structure; or

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

6           (4) "Service unit" means a standardized measure of  
7 consumption, use, generation, or discharge attributable to an  
8 individual unit of development calculated in accordance with  
9 generally accepted engineering or planning standards and based on  
10 historical data and trends for the preceding 10 years applicable to  
11 the county in which the individual unit of development is located.

12           Sec. 231.282. LEGISLATIVE FINDINGS AND PURPOSE. (a) The  
13 legislature finds that:

14           (1) the natural areas of Travis County, including the  
15 areas surrounding Lake Travis and the Pedernales and Colorado  
16 Rivers, and the numerous small lakes, tributaries, and creeks in  
17 Travis County:

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

20           (B) are critical to the bays and estuaries in the  
21 Gulf of Mexico;

22           (2) orderly development of Travis County is of concern  
23 to the entire state; and

24           (3) without adequate development regulations, Travis  
25 County will be developed in ways that endanger and interfere with  
26 the proper use of that area as a place of tourism and recreation to  
27 the detriment of the public health, safety, peace, morals, and

1 general welfare.

2 (b) The powers granted under this subchapter are for the  
3 purpose of:

4 (1) promoting the public health, safety, peace,  
5 morals, and general welfare;

6 (2) encouraging tourism and recreation; and

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

9 Sec. 231.283. AREAS SUBJECT TO REGULATION. This subchapter  
10 applies only to the unincorporated areas of Travis County.

11 Sec. 231.284. DEVELOPMENT REGULATIONS GENERALLY. (a) The  
12 Commissioners Court of Travis County by order may adopt land  
13 development regulations to promote the health, safety, peace,  
14 morals, or general welfare of the county and provide for the safe,  
15 orderly, and healthful development in the unincorporated area of  
16 the county, including regulations to establish:

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

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

22 (3) an infrastructure cost recovery fee, as described  
23 by Section 231.294.

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

27 (c) Unless otherwise authorized by state law, the

1 commissioners court may not regulate under this subchapter the use  
2 of any building or property for business, industrial, residential,  
3 or other purpose.

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

8 (b) County residents voting in an election held under this  
9 section:

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

12 (2) may approve specific regulatory authority granted  
13 under Section 231.284 without approving other specific regulatory  
14 authority granted under Section 231.284.

15 (c) The commissioners court:

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

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

25 (d) Notwithstanding Section 277.002, Election Code:

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

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

4           (e) Not later than the fifth day after the date a petition is  
5 received by the commissioners court, the county judge shall submit  
6 the petition for verification to the county clerk. The county clerk  
7 shall determine whether the petition meets the requirements  
8 prescribed by this section and Section 277.002, Election Code. Not  
9 later than the 30th day after the date the petition is submitted to  
10 the county clerk for verification, the county clerk shall certify  
11 in writing to the commissioners court whether the petition is  
12 valid. If the county clerk determines that the petition is invalid,  
13 the county clerk shall state the reasons for that determination.

14           (f) If the county clerk certifies that a petition is valid,  
15 the commissioners court shall order the election to be held on the  
16 first November uniform election date authorized by Section 41.001,  
17 Election Code, that occurs on or after the 70th day after the date  
18 the court receives the county clerk's certification.

19           (g) For an election under this section, the ballot shall be  
20 prepared to permit voting for or against the proposition:  
21 "Approving the authority granted to the Commissioners Court of  
22 Travis County to regulate land development in the unincorporated  
23 area of the county by (insert description of general authority or  
24 specific regulation, as applicable)." As applicable, the ballot  
25 shall be prepared to permit voting for or against separate  
26 propositions as provided by Subsection (b)(2).

27           (h) The approval authority granted under this section

1 includes the authority to repeal, revise, or amend a previous  
2 decision to operate under this subchapter.

3 Sec. 231.286. COMPLIANCE WITH COUNTY AND MUNICIPAL PLANS.

4 Development regulations must be:

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

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

10 Sec. 231.287. DISTRICTS. (a) The commissioners court may  
11 divide the unincorporated area of the county into districts of a  
12 number, shape, and size the commissioners court considers best for  
13 exercising the authority granted by this subchapter.

14 (b) Development regulations may vary from district to  
15 district.

16 Sec. 231.288. PROCEDURE GOVERNING ADOPTION OF REGULATIONS  
17 AND DISTRICT BOUNDARIES. (a) A development regulation adopted  
18 under this subchapter is not effective until the regulation is  
19 adopted by the commissioners court after a public hearing. Before  
20 the 15th day before the date of the hearing, the commissioners court  
21 must publish notice of the hearing in a newspaper of general  
22 circulation in the county.

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

26 Sec. 231.289. DEVELOPMENT COMMISSION. (a) The  
27 commissioners court may appoint a development commission to assist

1 in the implementation and enforcement of development regulations  
2 adopted under this subchapter.

3 (b) The development commission is advisory only and may  
4 recommend appropriate development regulations for the county.

5 (c) The members of the development commission are subject to  
6 the same requirements relating to conflicts of interest that are  
7 applicable to the commissioners court under Chapter 171.

8 Sec. 231.290. SPECIAL EXCEPTION. (a) A person aggrieved by  
9 a development regulation adopted under this subchapter may petition  
10 the commissioners court or the development commission, if the  
11 commissioners court has established a development commission, for a  
12 special exception to the development regulation.

13 (b) The commissioners court shall adopt procedures  
14 governing applications, notice, hearings, and other matters  
15 relating to the grant of a special exception.

16 Sec. 231.291. ENFORCEMENT; PENALTY. (a) The commissioners  
17 court may adopt orders to enforce this subchapter or an order or  
18 development regulation adopted under this subchapter.

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

24 Sec. 231.292. COOPERATION WITH MUNICIPALITIES. The  
25 commissioners court by order may enter into agreements with any  
26 municipality located in the county to assist in the implementation  
27 and enforcement of development regulations adopted under this

1 subchapter.

2 Sec. 231.293. CONFLICT WITH OTHER LAWS. If a development  
3 regulation adopted under this subchapter imposes higher standards  
4 than those required under another statute or local order or  
5 regulation, the regulation adopted under this subchapter controls  
6 in the area subject to regulation. If the other statute or local  
7 order or regulation imposes higher standards, that statute, order,  
8 or regulation controls.

9 Sec. 231.294. INFRASTRUCTURE COST RECOVERY FEE. (a)  
10 Travis County may impose an infrastructure cost recovery fee to  
11 provide necessary infrastructure to serve new development in the  
12 unincorporated area of the county as provided by this section and  
13 Sections 231.295 and 231.296.

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

17 (1) applied to infrastructure improvements that do not  
18 serve the new development; or

19 (2) imposed to pay for:

20 (A) repairing, operating, or maintaining  
21 existing or new infrastructure improvements; or

22 (B) upgrading, replacing, or expanding existing  
23 development to meet stricter safety, efficiency, environmental, or  
24 regulatory standards.

25 (c) Before the county may impose the fee to recover costs of  
26 roadway improvements, an infrastructure development plan must be  
27 prepared.



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

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

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

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

15       (h) The infrastructure improvement for which the fee is  
16 imposed must be completed not later than the 10th anniversary of the  
17 date the fee is paid. The time prescribed for completion may be  
18 extended by a majority vote of the commissioners court if the  
19 commissioners court makes a finding that the infrastructure  
20 improvement is exceptionally complicated or intensive and  
21 reasonably requires additional time. Any portion of the fee that  
22 remains after the time prescribed expires shall be refunded to the  
23 owner of the development.

24       Sec. 231.295. PROCEDURES FOR ASSESSING INFRASTRUCTURE COST  
25 RECOVERY FEES GENERALLY. (a) The Commissioners Court of Travis  
26 County shall hold a public hearing to consider the infrastructure  
27 improvements and the infrastructure cost recovery fee. On or

1 before the date the notice of hearing is published, the  
2 commissioners court shall make available to the public a  
3 description of any proposed infrastructure improvements and a  
4 description of any proposed fee.

5 (b) On or before the 30th day before the date of the hearing,  
6 the commissioners court shall publish notice of the hearing in one  
7 or more newspapers of general circulation in the county.

8 (c) The notice under Subsection (b) shall include:

9 (1) a relevant heading;

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

11 (3) a statement that the hearing is open to public  
12 comment; and

13 (4) a general statement of the subject matter of the  
14 hearing.

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

19 Sec. 231.296. CERTIFICATION OF COMPLIANCE REQUIRED. (a)  
20 If Travis County imposes an infrastructure improvement cost  
21 recovery fee, the county shall submit a written certification  
22 verifying compliance with this subchapter to the attorney general  
23 each year not later than the last day of the county's fiscal year.  
24 The certification must be signed by the county judge.

25 (b) If the county fails to submit a certification for a  
26 fiscal year as required by this section, the county is liable to the  
27 state for a civil penalty in an amount equal to 10 percent of the

1 amount of the fee assessed in that fiscal year. A penalty collected  
2 under this subsection shall be deposited to the credit of the  
3 housing trust fund.

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