

By: Hegar

S.B. No. 2555

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) without adequate development regulations, Aransas County would be developed in ways that endanger and interfere with the proper use of the area as a place of tourism and recreation to the detriment of the public health, safety, peace, morals, and general welfare and the natural resources of the county.

(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 only to the unincorporated areas of Aransas County located  
3 within three miles of the shoreline of the Gulf of Mexico or a bay.

4       Sec. 231.303. ZONING REGULATIONS GENERALLY. The  
5 Commissioners Court of Aransas County may, for the areas subject to  
6 this subchapter, regulate:

7           (1) the height, number of stories, and size of  
8 buildings and other structures;

9           (2) the percentage of a lot that may be occupied by  
10 buildings and structures;

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

12           (4) population density;

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

16           (6) the placement of water and sewage facilities,  
17 parks, and other public requirements; and

18           (7) the control, storage, preservation, and  
19 distribution of storm and flood water.

20       Sec. 231.304. ELECTION TO APPROVE REGULATORY AUTHORITY  
21 REQUIRED. (a) The regulatory authority granted under Section  
22 231.303 is not effective unless it is approved by a majority of the  
23 county residents voting in an election held under this section. The  
24 commissioners court shall order the election to be held on a uniform  
25 election date authorized by Section 41.001, Election Code.

26           (b) For an election under this section, the ballot shall be  
27 prepared to permit voting for or against the proposition:

1 "Approving the authority granted to the Commissioners Court of  
2 Aransas County to regulate land development in certain areas of the  
3 county (insert description of general authority)."

4 (c) The regulatory authority approved under this section  
5 includes the authority of the commissioners court to repeal,  
6 revise, or amend a regulation of land development adopted under  
7 this subchapter.

8 Sec. 231.305. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning  
9 regulations must be adopted in accordance with a comprehensive plan  
10 and must be designed to:

- 11 (1) lessen congestion in the streets and roads;
- 12 (2) secure safety from fire, panic, and other dangers;
- 13 (3) promote health and the general welfare;
- 14 (4) provide adequate light and air;
- 15 (5) prevent the overcrowding of land;
- 16 (6) avoid undue concentration of population;
- 17 (7) facilitate the adequate provision of  
18 transportation, water, sewers, parks, and other public  
19 requirements;
- 20 (8) control, store, preserve, and distribute storm and  
21 flood water; and
- 22 (9) assist in developing the regulated area into  
23 parks, playgrounds, and recreational areas.

24 Sec. 231.306. DISTRICTS. (a) The commissioners court may  
25 divide the area of the county subject to this subchapter into  
26 districts of a number, shape, and size the commissioners court  
27 considers best for administering this subchapter. Within each

1 district, the commissioners court may regulate the erection,  
2 construction, reconstruction, alteration, repair, or use of  
3 buildings, other structures, or land.

4 (b) The zoning regulations must be uniform for each class or  
5 kind of building in a district, but the regulations may vary from  
6 district to district. The regulations shall be adopted with  
7 reasonable consideration for, among other things, the character of  
8 each district and its peculiar suitability for particular uses,  
9 with a view of conserving the value of buildings and encouraging the  
10 most appropriate use of land throughout the area.

11 Sec. 231.307. PROCEDURES GOVERNING ADOPTION OF REGULATIONS  
12 AND DISTRICT BOUNDARIES. (a) The commissioners court shall  
13 establish procedures for adopting and enforcing zoning regulations  
14 and zoning district boundaries. A regulation or district boundary  
15 is not effective until it is adopted by the commissioners court  
16 after a public hearing on the matter at which parties in interest  
17 and citizens have an opportunity to be heard. Before the 15th day  
18 before the date of the hearing, the commissioners court must  
19 publish notice of the time and place of the hearing in a newspaper  
20 of general circulation in the county.

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

27 (1) the area of the lots covered by the proposed

1 change; or

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

5 Sec. 231.308. ZONING COMMISSION. (a) To exercise the  
6 powers authorized by this subchapter, the commissioners court shall  
7 appoint a zoning commission. The commission shall recommend  
8 boundaries for the original zoning districts and appropriate zoning  
9 regulations for each district. The commission must consist of  
10 seven members, each of whom must be a resident of the county.

11 (b) The zoning commission shall elect a presiding officer  
12 from among its members. The presiding officer serves in that  
13 capacity for a term set by the commission. The commission may at  
14 any time choose for a particular meeting or occasion an acting  
15 presiding officer as necessary from among its members. The  
16 commission may employ a secretary and acting secretary and other  
17 technical or clerical personnel.

18 (c) A member of the zoning commission is not entitled to  
19 compensation but is entitled to expenses actually incurred while  
20 serving on the commission as provided by order of the commissioners  
21 court.

22 (d) The zoning commission shall make a preliminary report  
23 and hold public hearings on that report before submitting a final  
24 report to the commissioners court. The commissioners court may not  
25 hold a public hearing or take action until it receives the final  
26 report of the zoning commission.

27 (e) Before the 10th day before the hearing date, written

1 notice of each public hearing before the zoning commission on a  
2 proposed change in a zoning classification shall be sent to:

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

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

8 (f) The notice may be served by depositing it in the United  
9 States mail, postage paid and properly addressed to the address of  
10 the property owner on file with the county tax assessor-collector.

11 Sec. 231.309. BOARD OF ADJUSTMENT. (a) The commissioners  
12 court may provide for the appointment of a board of adjustment. In  
13 the zoning regulations adopted under this subchapter, the  
14 commissioners court may authorize the board of adjustment, in  
15 appropriate cases and subject to appropriate conditions and  
16 safeguards, to make special exceptions to the terms of the zoning  
17 regulations that are consistent with the general purpose and intent  
18 of the regulations and in accordance with any applicable rules  
19 contained in the regulations.

20 (b) A board of adjustment must consist of five members to be  
21 appointed for terms of two years. The appointing authority may  
22 remove a board member for cause on a written charge after a public  
23 hearing. The appointing authority shall fill a vacancy on the board  
24 for the unexpired term.

25 (c) The board of adjustment shall adopt rules in accordance  
26 with any order adopted under this subchapter. Meetings of the board  
27 are held at the call of the presiding officer and at other times as

1 determined by the board. The presiding officer or acting presiding  
2 officer may administer oaths and compel the attendance of  
3 witnesses. All meetings of the board are open to the public.

4 (d) The board of adjustment shall keep minutes of its  
5 proceedings that indicate the vote of each member on each question  
6 or indicate that a member is absent or fails to vote. The board  
7 shall keep records of its examinations and other official actions.  
8 The minutes and records shall be filed immediately in the board's  
9 office and are public records.

10 Sec. 231.310. AUTHORITY OF BOARD. (a) The board of  
11 adjustment may:

12 (1) hear and decide an appeal that alleges error in an  
13 order, requirement, decision, or determination made by an  
14 administrative official in the enforcement of this subchapter or a  
15 zoning regulation;

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

19 (3) authorize in specific cases a variance from the  
20 terms of a zoning regulation if the variance is not contrary to the  
21 public interest and, due to special conditions, a literal  
22 enforcement of the regulation would result in unnecessary hardship,  
23 and so that the spirit of the regulation is observed and substantial  
24 justice is done.

25 (b) In exercising its authority under Subsection (a)(1),  
26 the board of adjustment may reverse or affirm, in whole or in part,  
27 or modify the administrative official's order, requirement,

1 decision, or determination from which an appeal is taken and make  
2 the correct order, requirement, decision, or determination, and for  
3 that purpose the board has the same authority as the administrative  
4 official.

5 (c) The concurring vote of four members of the board of  
6 adjustment is necessary to:

7 (1) reverse an order, requirement, decision, or  
8 determination of an administrative official;

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

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

12 Sec. 231.311. APPEAL TO BOARD. (a) Any of the following  
13 persons may appeal to the board of adjustment a decision made by an  
14 administrative official:

15 (1) a person aggrieved by the decision; or

16 (2) an officer, department, board, or bureau of the  
17 county or of a municipality affected by the decision.

18 (b) The appellant must file with the board of adjustment and  
19 the official from whom the appeal is taken a notice of appeal  
20 specifying the grounds for the appeal. The appeal must be filed  
21 within a reasonable time as determined by board rule. On receiving  
22 the notice, the official from whom the appeal is taken shall  
23 immediately transmit to the board all the papers constituting the  
24 record of the action that is appealed.

25 (c) An appeal stays all proceedings in furtherance of the  
26 action that is appealed unless the official from whom the appeal is  
27 taken certifies in writing to the board of adjustment facts



1 supporting the official's opinion that a stay would cause imminent  
2 peril to life or property. In that case, the proceedings may be  
3 stayed only by a restraining order granted by the board or a court  
4 of record on application, after notice to the official, if due cause  
5 is shown.

6 (d) The board of adjustment shall set the date of the appeal  
7 hearing not later than the 30th day after the date notice of appeal  
8 is filed and shall give public notice of the hearing and due notice  
9 to the parties in interest. A party may appear at the appeal  
10 hearing in person or by agent or attorney. The board shall decide  
11 the appeal within a reasonable time.

12 Sec. 231.312. JUDICIAL REVIEW OF BOARD DECISION. (a) Any  
13 of the following persons may present to a court of record a verified  
14 petition stating that the decision of the board of adjustment is  
15 illegal in whole or in part and specifying the grounds of the  
16 illegality:

- 17 (1) a person aggrieved by a decision of the board;  
18 (2) a taxpayer; or  
19 (3) an officer, department, board, or bureau of the  
20 county or of the municipality.

21 (b) The petition must be presented within 10 days after the  
22 date the decision is filed in the board of adjustment's office.

23 (c) On the presentation of the petition, the court may grant  
24 a writ of certiorari directed to the board of adjustment to review  
25 the board's decision. The writ must indicate the time within which  
26 the board's return must be made and served on the petitioner's  
27 attorney, which must be after 10 days and may be extended by the

1 court. Granting of the writ does not stay the proceedings on the  
2 decision under appeal, but on application and after notice to the  
3 board, the court may grant a restraining order if due cause is  
4 shown.

5 (d) The board of adjustment's return must be verified and  
6 must concisely state any pertinent and material facts that show the  
7 grounds of the decision under appeal. The board is not required to  
8 return the original documents on which the board acted but may  
9 return certified or sworn copies of the documents or parts of the  
10 documents as required by the writ.

11 (e) If at the hearing the court determines that testimony is  
12 necessary for the proper disposition of the matter, it may take  
13 evidence or appoint a referee to take evidence as directed. The  
14 referee shall report the evidence to the court with the referee's  
15 findings of fact and conclusions of law. The referee's report  
16 constitutes a part of the proceedings on which the court shall make  
17 its decision.

18 (f) The court may reverse or affirm, in whole or in part, or  
19 modify the decision that is appealed. The court may not assess  
20 costs against the board of adjustment unless the court determines  
21 that the board acted with gross negligence, in bad faith, or with  
22 malice in making its decision.

23 Sec. 231.313. SPECIAL EXCEPTION. (a) If the commissioners  
24 court does not provide for the appointment of a board of adjustment  
25 under Section 231.309, a person aggrieved by a zoning regulation or  
26 a zoning district boundary adopted under this subchapter may  
27 petition the commissioners court.

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

4       Sec. 231.314. ENFORCEMENT; PENALTY; REMEDIES. (a) The  
5 commissioners court may adopt orders to enforce this subchapter,  
6 any order adopted under this subchapter, or a zoning regulation.

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

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

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

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

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

26               (4) prevent any illegal act, conduct, business, or use  
27 on or about the premises.

1       Sec. 231.315. CONFLICT WITH OTHER LAWS; EXCEPTIONS.

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

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

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

21       (d) This subchapter, or an order or zoning regulation  
22 adopted under this subchapter, does not apply to the facilities or  
23 operations of an electric utility as defined by Section 31.002,  
24 Utilities Code, or a gas utility as defined by Section 101.003 or  
25 121.001, Utilities Code.

26       SECTION 2. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2009.