

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.

Sec. 231.302. AREAS SUBJECT TO REGULATION. This subchapter applies only to the unincorporated areas of Aransas County located

1 within three miles of the shoreline of the Gulf of Mexico or a bay.

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

5 (1) the height, number of stories, and size of  
6 buildings and other structures;

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

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

10 (4) population density;

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

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

16 (7) the control, storage, preservation, and  
17 distribution of storm and flood water.

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

24 (b) For an election under this section, the ballot shall be  
25 prepared to permit voting for or against the proposition:  
26 "Approving the authority granted to the Commissioners Court of  
27 Aransas County to regulate land development in certain areas of the

1 county (insert description of general authority)."

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

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

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

22 Sec. 231.306. DISTRICTS. (a) The commissioners court may  
23 divide the area of the county subject to this subchapter into  
24 districts of a number, shape, and size the commissioners court  
25 considers best for administering this subchapter. Within each  
26 district, the commissioners court may regulate the erection,  
27 construction, reconstruction, alteration, repair, or use of

1 buildings, other structures, or land.

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

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

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

25 (1) the area of the lots covered by the proposed  
26 change; or

27 (2) the lots immediately adjacent to the rear of the

1 lots covered by the proposed change and extending 200 feet from  
2 those lots or from the street frontage of the opposite lots.

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

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

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

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

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

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

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

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

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

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

23           (c) The board shall adopt rules in accordance with any order  
24 adopted under this subchapter. Meetings of the board are held at  
25 the call of the presiding officer and at other times as determined  
26 by the board. The presiding officer or acting presiding officer may  
27 administer oaths and compel the attendance of witnesses. All

1 meetings of the board are open to the public.

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

8 Sec. 231.310. AUTHORITY OF BOARD. (a) The board of  
9 adjustment may:

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

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

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

23 (b) In exercising its authority under Subsection (a)(1),  
24 the board may reverse or affirm, in whole or in part, or modify the  
25 administrative official's order, requirement, decision, or  
26 determination from which an appeal is taken and make the correct  
27 order, requirement, decision, or determination, and for that

1 purpose the board has the same authority as the administrative  
2 official.

3 (c) The concurring vote of four members of the board is  
4 necessary to:

5 (1) reverse an order, requirement, decision, or  
6 determination of an administrative official;

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

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

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

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

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

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

23 (c) An appeal stays all proceedings in furtherance of the  
24 action that is appealed unless the official from whom the appeal is  
25 taken certifies in writing to the board facts supporting the  
26 official's opinion that a stay would cause imminent peril to life or  
27 property. In that case, the proceedings may be stayed only by a



1 restraining order granted by the board or a court of record on  
2 application, after notice to the official, if due cause is shown.

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

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

14 (1) a person aggrieved by a decision of the board;

15 (2) a taxpayer; or

16 (3) an officer, department, board, or bureau of the  
17 county or of the municipality.

18 (b) The petition must be presented within 10 days after the  
19 date the decision is filed in the board's office.

20 (c) On the presentation of the petition, the court may grant  
21 a writ of certiorari directed to the board to review the board's  
22 decision. The writ must indicate the time within which the board's  
23 return must be made and served on the petitioner's attorney, which  
24 must be after 10 days and may be extended by the court. Granting of  
25 the writ does not stay the proceedings on the decision under appeal,  
26 but on application and after notice to the board, the court may  
27 grant a restraining order if due cause is shown.

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

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

14       (f) The court may reverse or affirm, in whole or in part, or  
15 modify the decision that is appealed. The court may not assess  
16 costs against the board unless the court determines that the board  
17 acted with gross negligence, in bad faith, or with malice in making  
18 its decision.

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

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

27       Sec. 231.314. ENFORCEMENT; PENALTY; REMEDIES. (a) The

1 commissioners court may adopt orders to enforce this subchapter,  
2 any order adopted under this subchapter, or a zoning regulation.

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

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

16 (1) prevent the unlawful erection, construction,  
17 reconstruction, alteration, repair, conversion, maintenance, or  
18 use;

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

20 (3) prevent the occupancy of the building, structure,  
21 or land; or

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

24 Sec. 231.315. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If  
25 a zoning regulation adopted under this subchapter requires a  
26 greater width or size of a yard, court, or other open space,  
27 requires a lower building height or fewer stories for a building,

1 requires a greater percentage of lot to be left unoccupied, or  
2 otherwise imposes higher standards than those required under  
3 another statute or local order or regulation, the regulation  
4 adopted under this subchapter controls. If the other statute or  
5 local order or regulation imposes higher standards, that statute,  
6 order, or regulation controls.

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

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

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