

1-1 By: Hegar S.B. No. 2555  
1-2 (In the Senate - Filed April 23, 2009; April 23, 2009, read  
1-3 first time and referred to Committee on Intergovernmental  
1-4 Relations; May 7, 2009, reported favorably by the following vote:  
1-5 Yeas 4, Nays 0; May 7, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to granting county zoning authority in Aransas County;  
1-9 providing a criminal penalty.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 231, Local Government Code, is amended  
1-12 by adding Subchapter N to read as follows:

1-13 SUBCHAPTER N. ZONING IN ARANSAS COUNTY

1-14 Sec. 231.301. LEGISLATIVE FINDINGS; PURPOSE. (a) The  
1-15 legislature finds that:

1-16 (1) the parts of Aransas County that surround Aransas  
1-17 Bay, Copano Bay, St. Charles Bay, Mesquite Bay, Carlos Bay, and Port  
1-18 Bay are frequented for recreational purposes by residents from  
1-19 every part of the state;

1-20 (2) orderly development and use of the area is of  
1-21 concern to the entire state; and

1-22 (3) without adequate development regulations, Aransas  
1-23 County would be developed in ways that endanger and interfere with  
1-24 the proper use of the area as a place of tourism and recreation to  
1-25 the detriment of the public health, safety, peace, morals, and  
1-26 general welfare and the natural resources of the county.

1-27 (b) The powers granted under this subchapter are for the  
1-28 purpose of promoting the public health, safety, peace, morals, and  
1-29 general welfare and encouraging the recreational use of county  
1-30 parks in Aransas County.

1-31 Sec. 231.302. AREAS SUBJECT TO REGULATION. This subchapter  
1-32 applies only to the unincorporated areas of Aransas County located  
1-33 within three miles of the shoreline of the Gulf of Mexico or a bay.

1-34 Sec. 231.303. ZONING REGULATIONS GENERALLY. The  
1-35 Commissioners Court of Aransas County may, for the areas subject to  
1-36 this subchapter, regulate:

1-37 (1) the height, number of stories, and size of  
1-38 buildings and other structures;

1-39 (2) the percentage of a lot that may be occupied by  
1-40 buildings and structures;

1-41 (3) the size of yards, courts, and other open spaces;

1-42 (4) population density;

1-43 (5) the location and use of buildings, other  
1-44 structures, and land for business, industrial, residential, or  
1-45 other purposes;

1-46 (6) the placement of water and sewage facilities,  
1-47 parks, and other public requirements; and

1-48 (7) the control, storage, preservation, and  
1-49 distribution of storm and flood water.

1-50 Sec. 231.304. ELECTION TO APPROVE REGULATORY AUTHORITY  
1-51 REQUIRED. (a) The regulatory authority granted under Section  
1-52 231.303 is not effective unless it is approved by a majority of the  
1-53 county residents voting in an election held under this section. The  
1-54 commissioners court shall order the election to be held on a uniform  
1-55 election date authorized by Section 41.001, Election Code.

1-56 (b) For an election under this section, the ballot shall be  
1-57 prepared to permit voting for or against the proposition:  
1-58 "Approving the authority granted to the Commissioners Court of  
1-59 Aransas County to regulate land development in certain areas of the  
1-60 county (insert description of general authority)."

1-61 (c) The regulatory authority approved under this section  
1-62 includes the authority of the commissioners court to repeal,  
1-63 revise, or amend a regulation of land development adopted under  
1-64 this subchapter.

2-1 Sec. 231.305. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning  
2-2 regulations must be adopted in accordance with a comprehensive plan  
2-3 and must be designed to:

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

2-17 Sec. 231.306. DISTRICTS. (a) The commissioners court may  
2-18 divide the area of the county subject to this subchapter into  
2-19 districts of a number, shape, and size the commissioners court  
2-20 considers best for administering this subchapter. Within each  
2-21 district, the commissioners court may regulate the erection,  
2-22 construction, reconstruction, alteration, repair, or use of  
2-23 buildings, other structures, or land.

2-24 (b) The zoning regulations must be uniform for each class or  
2-25 kind of building in a district, but the regulations may vary from  
2-26 district to district. The regulations shall be adopted with  
2-27 reasonable consideration for, among other things, the character of  
2-28 each district and its peculiar suitability for particular uses,  
2-29 with a view of conserving the value of buildings and encouraging the  
2-30 most appropriate use of land throughout the area.

2-31 Sec. 231.307. PROCEDURES GOVERNING ADOPTION OF REGULATIONS  
2-32 AND DISTRICT BOUNDARIES. (a) The commissioners court shall  
2-33 establish procedures for adopting and enforcing zoning regulations  
2-34 and zoning district boundaries. A regulation or district boundary  
2-35 is not effective until it is adopted by the commissioners court  
2-36 after a public hearing on the matter at which parties in interest  
2-37 and citizens have an opportunity to be heard. Before the 15th day  
2-38 before the date of the hearing, the commissioners court must  
2-39 publish notice of the time and place of the hearing in a newspaper  
2-40 of general circulation in the county.

2-41 (b) If a proposed change to a regulation or district  
2-42 boundary is protested in accordance with this subsection, the  
2-43 proposed change must receive, in order to take effect, the  
2-44 affirmative vote of at least three-fourths of all members of the  
2-45 commissioners court. The protest must be written and signed by the  
2-46 owners of at least 20 percent of either:

- 2-47 (1) the area of the lots covered by the proposed  
2-48 change; or
- 2-49 (2) the lots immediately adjacent to the rear of the  
2-50 lots covered by the proposed change and extending 200 feet from  
2-51 those lots or from the street frontage of the opposite lots.

2-52 Sec. 231.308. ZONING COMMISSION. (a) To exercise the  
2-53 powers authorized by this subchapter, the commissioners court shall  
2-54 appoint a zoning commission. The commission shall recommend  
2-55 boundaries for the original zoning districts and appropriate zoning  
2-56 regulations for each district. The commission must consist of  
2-57 seven members, each of whom must be a resident of the county.

2-58 (b) The zoning commission shall elect a presiding officer  
2-59 from among its members. The presiding officer serves in that  
2-60 capacity for a term set by the commission. The commission may at  
2-61 any time choose for a particular meeting or occasion an acting  
2-62 presiding officer as necessary from among its members. The  
2-63 commission may employ a secretary and acting secretary and other  
2-64 technical or clerical personnel.

2-65 (c) A member of the zoning commission is not entitled to  
2-66 compensation but is entitled to expenses actually incurred while  
2-67 serving on the commission as provided by order of the commissioners  
2-68 court.

2-69 (d) The zoning commission shall make a preliminary report

3-1 and hold public hearings on that report before submitting a final  
3-2 report to the commissioners court. The commissioners court may not  
3-3 hold a public hearing or take action until it receives the final  
3-4 report of the zoning commission.

3-5 (e) Before the 10th day before the hearing date, written  
3-6 notice of each public hearing before the zoning commission on a  
3-7 proposed change in a zoning classification shall be sent to:

3-8 (1) each owner of affected property or to the person  
3-9 who renders the property for county taxes; and

3-10 (2) each owner of property that is located within 200  
3-11 feet of property affected by the change or to the person who renders  
3-12 the property for county taxes.

3-13 (f) The notice may be served by depositing it in the United  
3-14 States mail, postage paid and properly addressed to the address of  
3-15 the property owner on file with the county tax assessor-collector.

3-16 Sec. 231.309. BOARD OF ADJUSTMENT. (a) The commissioners  
3-17 court may provide for the appointment of a board of adjustment. In  
3-18 the zoning regulations adopted under this subchapter, the  
3-19 commissioners court may authorize the board of adjustment, in  
3-20 appropriate cases and subject to appropriate conditions and  
3-21 safeguards, to make special exceptions to the terms of the zoning  
3-22 regulations that are consistent with the general purpose and intent  
3-23 of the regulations and in accordance with any applicable rules  
3-24 contained in the regulations.

3-25 (b) A board of adjustment must consist of five members to be  
3-26 appointed for terms of two years. The appointing authority may  
3-27 remove a board member for cause on a written charge after a public  
3-28 hearing. The appointing authority shall fill a vacancy on the board  
3-29 for the unexpired term.

3-30 (c) The board of adjustment shall adopt rules in accordance  
3-31 with any order adopted under this subchapter. Meetings of the board  
3-32 are held at the call of the presiding officer and at other times as  
3-33 determined by the board. The presiding officer or acting presiding  
3-34 officer may administer oaths and compel the attendance of  
3-35 witnesses. All meetings of the board are open to the public.

3-36 (d) The board of adjustment shall keep minutes of its  
3-37 proceedings that indicate the vote of each member on each question  
3-38 or indicate that a member is absent or fails to vote. The board  
3-39 shall keep records of its examinations and other official actions.  
3-40 The minutes and records shall be filed immediately in the board's  
3-41 office and are public records.

3-42 Sec. 231.310. AUTHORITY OF BOARD. (a) The board of  
3-43 adjustment may:

3-44 (1) hear and decide an appeal that alleges error in an  
3-45 order, requirement, decision, or determination made by an  
3-46 administrative official in the enforcement of this subchapter or a  
3-47 zoning regulation;

3-48 (2) hear and decide special exceptions to the terms of  
3-49 a zoning regulation when the regulation requires the board to do so;  
3-50 and

3-51 (3) authorize in specific cases a variance from the  
3-52 terms of a zoning regulation if the variance is not contrary to the  
3-53 public interest and, due to special conditions, a literal  
3-54 enforcement of the regulation would result in unnecessary hardship,  
3-55 and so that the spirit of the regulation is observed and substantial  
3-56 justice is done.

3-57 (b) In exercising its authority under Subsection (a)(1),  
3-58 the board of adjustment may reverse or affirm, in whole or in part,  
3-59 or modify the administrative official's order, requirement,  
3-60 decision, or determination from which an appeal is taken and make  
3-61 the correct order, requirement, decision, or determination, and for  
3-62 that purpose the board has the same authority as the administrative  
3-63 official.

3-64 (c) The concurring vote of four members of the board of  
3-65 adjustment is necessary to:

3-66 (1) reverse an order, requirement, decision, or  
3-67 determination of an administrative official;

3-68 (2) decide in favor of an applicant on a matter on  
3-69 which the board is required to pass under a zoning regulation; or

4-1 (3) authorize a variation in a zoning regulation.  
4-2 Sec. 231.311. APPEAL TO BOARD. (a) Any of the following  
4-3 persons may appeal to the board of adjustment a decision made by an  
4-4 administrative official:

- 4-5 (1) a person aggrieved by the decision; or
- 4-6 (2) an officer, department, board, or bureau of the
- 4-7 county or of a municipality affected by the decision.

4-8 (b) The appellant must file with the board of adjustment and  
4-9 the official from whom the appeal is taken a notice of appeal  
4-10 specifying the grounds for the appeal. The appeal must be filed  
4-11 within a reasonable time as determined by board rule. On receiving  
4-12 the notice, the official from whom the appeal is taken shall  
4-13 immediately transmit to the board all the papers constituting the  
4-14 record of the action that is appealed.

4-15 (c) An appeal stays all proceedings in furtherance of the  
4-16 action that is appealed unless the official from whom the appeal is  
4-17 taken certifies in writing to the board of adjustment facts  
4-18 supporting the official's opinion that a stay would cause imminent  
4-19 peril to life or property. In that case, the proceedings may be  
4-20 stayed only by a restraining order granted by the board or a court  
4-21 of record on application, after notice to the official, if due cause  
4-22 is shown.

4-23 (d) The board of adjustment shall set the date of the appeal  
4-24 hearing not later than the 30th day after the date notice of appeal  
4-25 is filed and shall give public notice of the hearing and due notice  
4-26 to the parties in interest. A party may appear at the appeal  
4-27 hearing in person or by agent or attorney. The board shall decide  
4-28 the appeal within a reasonable time.

4-29 Sec. 231.312. JUDICIAL REVIEW OF BOARD DECISION. (a) Any  
4-30 of the following persons may present to a court of record a verified  
4-31 petition stating that the decision of the board of adjustment is  
4-32 illegal in whole or in part and specifying the grounds of the  
4-33 illegality:

- 4-34 (1) a person aggrieved by a decision of the board;
- 4-35 (2) a taxpayer; or
- 4-36 (3) an officer, department, board, or bureau of the
- 4-37 county or of the municipality.

4-38 (b) The petition must be presented within 10 days after the  
4-39 date the decision is filed in the board of adjustment's office.

4-40 (c) On the presentation of the petition, the court may grant  
4-41 a writ of certiorari directed to the board of adjustment to review  
4-42 the board's decision. The writ must indicate the time within which  
4-43 the board's return must be made and served on the petitioner's  
4-44 attorney, which must be after 10 days and may be extended by the  
4-45 court. Granting of the writ does not stay the proceedings on the  
4-46 decision under appeal, but on application and after notice to the  
4-47 board, the court may grant a restraining order if due cause is  
4-48 shown.

4-49 (d) The board of adjustment's return must be verified and  
4-50 must concisely state any pertinent and material facts that show the  
4-51 grounds of the decision under appeal. The board is not required to  
4-52 return the original documents on which the board acted but may  
4-53 return certified or sworn copies of the documents or parts of the  
4-54 documents as required by the writ.

4-55 (e) If at the hearing the court determines that testimony is  
4-56 necessary for the proper disposition of the matter, it may take  
4-57 evidence or appoint a referee to take evidence as directed. The  
4-58 referee shall report the evidence to the court with the referee's  
4-59 findings of fact and conclusions of law. The referee's report  
4-60 constitutes a part of the proceedings on which the court shall make  
4-61 its decision.

4-62 (f) The court may reverse or affirm, in whole or in part, or  
4-63 modify the decision that is appealed. The court may not assess  
4-64 costs against the board of adjustment unless the court determines  
4-65 that the board acted with gross negligence, in bad faith, or with  
4-66 malice in making its decision.

4-67 Sec. 231.313. SPECIAL EXCEPTION. (a) If the commissioners  
4-68 court does not provide for the appointment of a board of adjustment  
4-69 under Section 231.309, a person aggrieved by a zoning regulation or

5-1 a zoning district boundary adopted under this subchapter may  
5-2 petition the commissioners court.

5-3 (b) The commissioners court shall adopt procedures  
5-4 governing applications, notice, hearings, and other matters  
5-5 relating to the grant of a special exception.

5-6 Sec. 231.314. ENFORCEMENT; PENALTY; REMEDIES. (a) The  
5-7 commissioners court may adopt orders to enforce this subchapter,  
5-8 any order adopted under this subchapter, or a zoning regulation.

5-9 (b) A person commits an offense if the person violates this  
5-10 subchapter, an order adopted under this subchapter, or a zoning  
5-11 regulation. An offense under this subsection is a misdemeanor,  
5-12 punishable by fine, as provided by the commissioners court. The  
5-13 commissioners court may also provide civil penalties for a  
5-14 violation.

5-15 (c) If a building or other structure is erected,  
5-16 constructed, reconstructed, altered, repaired, converted, or  
5-17 maintained or if a building, other structure, or land is used in  
5-18 violation of this subchapter, an order adopted under this  
5-19 subchapter, or a zoning regulation, the appropriate county  
5-20 authority, in addition to other remedies, may institute appropriate  
5-21 action to:

5-22 (1) prevent the unlawful erection, construction,  
5-23 reconstruction, alteration, repair, conversion, maintenance, or  
5-24 use;

5-25 (2) restrain, correct, or abate the violation;

5-26 (3) prevent the occupancy of the building, structure,  
5-27 or land; or

5-28 (4) prevent any illegal act, conduct, business, or use  
5-29 on or about the premises.

5-30 Sec. 231.315. CONFLICT WITH OTHER LAWS; EXCEPTIONS.

5-31 (a) If a zoning regulation adopted under this subchapter requires  
5-32 a greater width or size of a yard, court, or other open space,  
5-33 requires a lower building height or fewer stories for a building,  
5-34 requires a greater percentage of lot to be left unoccupied, or  
5-35 otherwise imposes higher standards than those required under  
5-36 another statute or local order or regulation, the regulation  
5-37 adopted under this subchapter controls. If the other statute or  
5-38 local order or regulation imposes higher standards, that statute,  
5-39 order, or regulation controls.

5-40 (b) This subchapter does not authorize the commissioners  
5-41 court to require the removal or destruction of property that exists  
5-42 at the time the court implements this subchapter.

5-43 (c) This subchapter, an order adopted under this  
5-44 subchapter, or a zoning regulation does not apply to the location,  
5-45 construction, maintenance, or use of central office buildings used  
5-46 by a person engaging in providing telephone service to the public or  
5-47 equipment used in connection with those buildings or as part of the  
5-48 telephone system, as necessary to furnish telephone service to the  
5-49 public.

5-50 SECTION 2. This Act takes effect immediately if it receives  
5-51 a vote of two-thirds of all the members elected to each house, as  
5-52 provided by Section 39, Article III, Texas Constitution. If this  
5-53 Act does not receive the vote necessary for immediate effect, this  
5-54 Act takes effect September 1, 2009.

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