

By: Miller of Comal

H.B. No. 2317

A BILL TO BE ENTITLED

AN ACT

relating to granting Hill Country counties regulatory authority and the authority to impose development fees for roadway infrastructure; providing penalties.

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

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

SUBCHAPTER M. DEVELOPMENT REGULATIONS IN HILL COUNTRY COUNTIES

Sec. 231.281. DEFINITIONS. In this subchapter:

(1) "Hill Country county" means Bandera, Comal, Gillespie, or Kendall County.

(2) "New development" means any development activity that increases the volume of traffic on a county road or requires the determination of water availability for a proposed development.

(3) "Roadway infrastructure" means any roadway facility, including drainage appurtenances.

(4) "Roadway infrastructure cost recovery fee" means a fee imposed by the county on the owner of new development to pay for or recover costs of roadway infrastructure improvements necessitated by and attributable to the new development. The fee is based on the projected traffic volume created after completion of the new development.

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

1 (1) the natural areas of the Hill Country counties,
2 including the areas surrounding Canyon Lake and Medina Lake, the
3 Blanco, Guadalupe, Medina, Pedernales, and Sabinal Rivers, and the
4 numerous small lakes, tributaries, creeks, and springs in the Hill
5 Country counties:

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

8 (B) are critical to the bays and estuaries in the
9 Gulf of Mexico;

10 (2) the groundwater supply available in the Hill
11 Country counties is limited;

12 (3) farm and heritage ranch lands in the Hill Country
13 counties provide valuable ecosystem services;

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

16 (5) without adequate development planning, the Hill
17 Country counties will be developed in ways that:

18 (A) endanger and interfere with the proper use of
19 that area as a place of tourism and recreation to the detriment of
20 the public health, safety, morals, or general welfare;

21 (B) could inhibit the recharge of an aquifer
22 located in the Hill Country counties or deplete an aquifer below a
23 sustainable level;

24 (C) could create flood conditions because of the
25 lack of impervious cover limitations; and

26 (D) could undermine the protection and
27 enhancement of farm and ranch lands.

1 (b) The powers granted under this subchapter are for the
2 purposes of:

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

5 (2) encouraging tourism and recreation;

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

8 (4) providing for the recharge of the state's
9 aquifers;

10 (5) ensuring the availability of a sustainable water
11 source; and

12 (6) encouraging the provision of valuable ecosystem
13 services through farm and ranch lands.

14 Sec. 231.283. AREAS SUBJECT TO REGULATION. This subchapter
15 applies only to the unincorporated areas of the Hill Country
16 counties.

17 Sec. 231.284. DEVELOPMENT REGULATIONS GENERALLY. (a) The
18 commissioners court of a Hill Country county by order may adopt land
19 development regulations in the unincorporated area of the county
20 to:

21 (1) regulate density of development, as determined by
22 average lot size within a designated development area, to:

23 (A) promote water resource planning;

24 (B) provide for the recharge of the state's
25 aquifers; and

26 (C) ensure the availability of a sustainable
27 water source;

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

4 (3) adopt a roadway infrastructure cost recovery fee,
5 as described by Section 231.290.

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

9 (c) Unless otherwise authorized by state law, a
10 commissioners court may not:

11 (1) adopt or enforce zoning regulations under the
12 authority granted by this subchapter; or

13 (2) regulate under this subchapter:

14 (A) the use of any building or property for
15 business, industrial, residential, or other purposes; or

16 (B) a plat or subdivision in an adjoining county.

17 Sec. 231.285. ELECTION TO APPROVE REGULATORY AUTHORITY
18 REQUIRED. (a) Regulatory authority granted under Section 231.284
19 is not effective until it is approved by a majority of the voters
20 voting at an election held under this section.

21 (b) The commissioners court of a Hill Country county may, on
22 its own motion, order and hold an election in the county to approve
23 a grant of authority under Section 231.284.

24 (c) 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 (name of county) to regulate land development in the unincorporated

1 area of the county by (insert description of general authority
2 granted under Section 231.284)."

3 (d) The approval authority granted under this section
4 includes the authority to repeal a previous decision to operate
5 under this subchapter.

6 Sec. 231.286. PROCEDURE GOVERNING ADOPTION OF REGULATIONS.

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

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

16 Sec. 231.287. SPECIAL EXCEPTION. (a) A person aggrieved by
17 a development regulation adopted under this subchapter may petition
18 the commissioners court of the county that adopted the regulation
19 for a special exception to the development regulation.

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

24 Sec. 231.288. ENFORCEMENT; PENALTY. (a) The commissioners
25 court of a Hill Country county may adopt orders to enforce this
26 subchapter or an order or development regulation adopted under this
27 subchapter.

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

6 Sec. 231.289. CONFLICT WITH OTHER LAWS. If a development
7 regulation adopted under this subchapter imposes higher standards
8 than those required under another statute or local order or
9 regulation, the regulation adopted under this subchapter controls
10 in the area subject to regulation. If the other statute or local
11 order or regulation imposes higher standards, that statute, order,
12 or regulation controls.

13 Sec. 231.290. ROADWAY INFRASTRUCTURE COST RECOVERY FEE. (a)
14 A Hill Country county may impose a roadway infrastructure cost
15 recovery fee to provide necessary roadway infrastructure
16 improvements to serve new development in the unincorporated area of
17 the county as provided by this section and Section 231.291.

18 (b) The county may impose the fee only to pay for or recover
19 the costs of constructing, acquiring, or expanding roadway
20 infrastructure necessary to serve new development, including the
21 costs of relocating utilities to construct, acquire, or expand
22 roadway infrastructure. The fee may only be:

23 (1) applied to roadway infrastructure that serves the
24 new development; and

25 (2) imposed to pay for:

26 (A) constructing new roadway infrastructure that
27 is necessary to serve new development;

1 (B) repairing, operating, or maintaining
2 existing or new roadway infrastructure that is necessary to serve
3 the new development;

4 (C) upgrading, replacing, or expanding existing
5 roadway infrastructure to meet stricter safety, efficiency,
6 environmental, or regulatory standards as necessary to serve the
7 new development; or

8 (D) relocating utilities as necessary for
9 roadway infrastructure under Paragraph (A), (B), or (C).

10 (c) Any interest earned on the fee is considered part of the
11 fee and is subject to the same restrictions as the fee under this
12 section.

13 (d) The county may assess the fee before or at the time a
14 subdivision plat is recorded. The fee may be collected at the time
15 the county issues a building permit, unless the county and the owner
16 of the development enter into an agreed payment plan.

17 (e) The county may reduce or waive the assessment of the fee
18 if the new development qualifies as affordable housing under 42
19 U.S.C. Section 12745.

20 (f) After the fee has been assessed, the fee may not be
21 increased unless additional development is proposed.

22 (g) The roadway infrastructure improvement for which the
23 fee is imposed must be completed not later than the 10th anniversary
24 of the date the fee is paid. The time prescribed for completion may
25 be extended by the commissioners court if the commissioners court
26 makes a finding that the roadway infrastructure improvement is
27 exceptionally complicated or intensive and reasonably requires

1 additional time. An extension granted under this subsection may
2 not exceed the 20th anniversary of the date the fee is paid. Any
3 portion of the fee that remains after the time prescribed expires
4 shall be refunded to the owner of the development.

5 Sec. 231.291. PROCEDURES FOR ASSESSING ROADWAY
6 INFRASTRUCTURE COST RECOVERY FEES GENERALLY. (a) The
7 commissioners court of a Hill Country county shall hold a public
8 hearing to consider the roadway infrastructure improvements and the
9 roadway infrastructure cost recovery fee. On or before the date the
10 notice of hearing is published, the commissioners court shall make
11 available to the public a description of any proposed roadway
12 infrastructure improvements and a description of any proposed fee.

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

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

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

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

20 (1) a relevant heading;

21 (2) the time, date, and location of the hearing;

22 (3) a statement that the hearing is open to public
23 comment; and

24 (4) a general statement of the subject matter of the
25 hearing.

26 (d) Not later than the 30th day after the date of the
27 hearing, the commissioners court by order shall adopt or reject the

1 proposed assessment of the fee. An order approving the assessment
2 of the fee may not be adopted as an emergency measure.

3 Sec. 231.292. PROVISIONS CUMULATIVE. The authority granted
4 to a county under this subchapter is in addition to the authority
5 granted to a county under other law to regulate land development.

6 SECTION 2. This Act takes effect September 1, 2011.