

By: Coleman

H.B. No. 3492

A BILL TO BE ENTITLED

AN ACT

relating to authorizing counties to adopt buffer zone regulations and comprehensive plans and assess a roadway cost recovery fee; providing a penalty.

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

SECTION 1. . Subtitle B, Title 7, Local Government Code, is amended by adding Chapter 236 to read as follows:

CHAPTER 236. COUNTY BUFFER ZONE REGULATIONS

Sec. 236.001. DEFINITIONS. In this chapter:

(1) "Agricultural use" means a use or activity involving

(A) cultivating the soil to produce crops for human food, animal feed, seed for planting, or the production of fibers;

(B) practicing floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food, fiber, leather, pelts, or other tangible products having commercial value, with the exception of concentrated animal feeding operations;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a government program or normal crop or livestock rotation procedure; or

1 (E) wildlife management.

2 (2) "Buffer zone" means the distance between a
3 structure, device, item, equipment, or enclosure used for an
4 activity at the site of an industrial use and the nearest property
5 boundary of a residential and civic use.

6 (3) "Industrial use" means an industrial use or
7 activity, including manufacturing, light or heavy industry,
8 trucking depots, marinas, airports, confined animal feeding,
9 resource extraction, construction materials processing, or
10 warehousing.

11 (4) "Residential and civic use" means a residential
12 area or structure, hospital, elder-care facility, school, day-care
13 facility, church, or similar land use that the commissioners court
14 finds to be incompatible with an industrial use.

15 Sec. 236.002. BUFFER ZONE REGULATIONS. (a) Except as
16 provided by Subsection (b), the commissioners court of a county may
17 adopt regulations under this chapter to establish and ensure
18 compliance with requirements for a buffer zone between an
19 industrial use and a residential or civic use.

20 (b) Buffer zone regulations adopted under this section must
21 be consistent with a county comprehensive plan adopted under
22 Section 236.003.

23 (c) A commissioners court may not regulate under this
24 chapter:

25 (1) agricultural uses or an activity or a structure or
26 appurtenance related to an agricultural use.

27 (2) an activity described by Section 81.051, Natural

1 Resources Code; or

2 (4) an interstate gas pipeline facility as defined by
3 49 U.S.C. Section 60101.

4 Sec. 236.003. COMPREHENSIVE PLAN. (a) The commissioners
5 court may adopt a comprehensive plan for the unincorporated area of
6 the county.

7 (b) The purpose of the comprehensive plan is to:

8 (1) promote the public health, safety, morals, or
9 general welfare of the county and the orderly development of the
10 unincorporated area of the county; and

11 (2) facilitate the planning of adequate
12 transportation, water, sewers, schools, parks, and other public
13 facilities.

14 (c) The comprehensive plan shall:

15 (1) designate industrial areas and residential and
16 civic areas;

17 (2) establish standard buffer zones reasonable and
18 appropriate to protect public health, safety, morals, or general
19 welfare and orderly development; and

20 (3) allow an industrial use in a residential and civic
21 area and a residential and civic use in an industrial area if the
22 site of the use includes the standard buffer zone.

23 (d) Development of a county comprehensive plan must be
24 coordinated with the comprehensive plans of municipalities to the
25 extent that the municipal comprehensive plans include
26 extraterritorial jurisdiction in the county.

27 (e) The commissioners court shall establish a technical

1 advisory committee to develop and recommend standard buffer zones
2 to the court. The commissioners court shall appoint the members of
3 the committee. The committee must include industry
4 representatives.

5 Sec. 236.004. PROCEDURE GOVERNING ADOPTION OF
6 COMPREHENSIVE PLAN AND REGULATIONS. (a) The commissioners court may
7 adopt or amend a comprehensive plan or buffer zone regulation only
8 after holding a public hearing. Before the 15th day before the date
9 of the hearing, the commissioners court must publish notice of the
10 hearing in a newspaper of general circulation in the county.

11 (c) The commissioners court may adopt or amend a
12 comprehensive plan or buffer zone regulation only by an order
13 passed by a majority vote of the full membership of the court.

14 Sec. 236.005. INCENTIVES. The commissioners court may
15 provide incentives to a person who develops land in the
16 unincorporated area of the county in compliance with the county
17 comprehensive plan adopted under Section 236.003.

18 Sec. 236.006. SPECIAL EXCEPTION. (a) A person aggrieved by
19 a buffer zone regulation adopted under this chapter may petition
20 the commissioners court for a special exception to the regulation.

21 (b) The commissioners court may grant a special exception
22 that allows for the reduction or elimination of a buffer zone or
23 related requirement if the person demonstrates that the reduction
24 or elimination adequately protects the public health, safety,
25 morals, or general welfare and orderly development. The
26 commissioners court may condition a special exception on mitigation
27 of any adverse effects on public health, safety, morals, or general

1 welfare and orderly development.

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

5 Sec. 236.007. ENFORCEMENT; PENALTY. (a) The commissioners
6 court may adopt orders to enforce this chapter or buffer zone
7 regulations adopted under this chapter.

8 (b) A person commits an offense if the person violates an
9 order or regulation adopted under this chapter. An offense under
10 this subsection is a misdemeanor punishable by a fine of not less
11 than \$500 or more than \$1,000. Each day that a violation occurs
12 constitutes a separate offense. Trial shall be in the district
13 court.

14 Sec. 236.008. EXISTING AUTHORITY UNAFFECTED. The authority
15 granted by this chapter is cumulative does not affect the authority
16 of the commissioners court to adopt an order to regulate land
17 development under other law.

18 Sec. 236.009. CONFLICT WITH OTHER LAWS. If a buffer zone
19 regulation adopted under this chapter imposes higher standards than
20 those required under another statute or local order or regulation,
21 the regulation adopted under this chapter controls. If the other
22 statute or local order or regulation imposes higher standards, that
23 statute, order, or regulation controls.

24 SECTION 2. Subtitle B, Title 7, Local Government Code, is
25 amended by adding Chapter 237 to read as follows:

26 CHAPTER 237. ROADWAY COST RECOVERY FEES.

27 Sec. 237.001. DEFINITIONS. In this subchapter:

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

3 (A) the subdivision of land; or

4 (B) any use or extension of the use of land.

5 (2) "Roadway cost recovery fee" means a fee assessed
6 on property undergoing new development to pay for or recover costs
7 born by a county to improve roadway infrastructure used or required
8 by the new development.

9 (3) "Service unit" means a standardized motor vehicle
10 trip generation measure attributable to an individual unit of
11 development calculated in accordance with generally accepted
12 engineering or planning standards.

13 Sec. 237.002. ADOPTION OF REGULATIONS. (a) After a public
14 hearing, the commissioners court may adopt regulations
15 establishing a roadway cost recovery fee for new development in the
16 unincorporated area.

17 (b) At least 30 days before the public hearing, the
18 commissioners court shall publish in a newspaper of general
19 circulation in the county a notice that includes:

20 (1) the time, date, and location of the hearing; and

21 (2) a general description of the regulation and the
22 roadway infrastructure expansion plan required by Section 237.003.

23 (c) The commissioners court may adopt or amend a regulation
24 under this section only by affirmative vote of a majority of the
25 members of the commissioners court.

26 Sec. 237.003. REQUIREMENTS FOR A ROADWAY COST RECOVERY FEE.

27 (a) A roadway cost recovery fee may be assessed only to pay for or

1 recover the costs of constructing, acquiring, expanding, or
2 improving roadway infrastructure necessary to serve new
3 development, including relocating.

4 (b) Before adopting a regulation under Section 237.002, the
5 county must approve a roadway infrastructure expansion plan based
6 on appropriate data compiled by and a traffic study prepared by a
7 qualified engineer according to this section.

8 (c) The plan shall include:

9 (1) a description of the existing roadway network
10 serving the unincorporated area and the capacity and level of
11 service of the network;

12 (2) the total number of service units of new
13 development that is projected to be developed in the area served by
14 the network;

15 (3) the improvements to the network that are needed to
16 expand its capacity to accommodate the projected new development at
17 an appropriate level of service consistent with reasonable safety,
18 efficiency, environmental, and regulatory standards; and

19 (4) an estimate of the cost to make those
20 improvements.

21 (d) A roadway cost recovery fee must be reasonably
22 calculated to ensure that each individual unit of new development
23 in the unincorporated area bears its proportional share, on a
24 service unit basis, of the cost of constructing, acquiring,
25 expanding, or improving roadway infrastructure necessary to serve
26 new development.

27 Sec. 237.004. ASSESSMENT, COLLECTION, AND REFUND OF A

1 ROADWAY RECOVERY FEE.

2 (a) The county may assess the fee before or when a
3 subdivision plat or permit is approved and collect the fee when the
4 county issues a permit or a certificate of occupancy, unless the
5 county and a property owner agree otherwise.

6 (b) After the fee has been assessed, the fee may not be
7 increased unless additional service units are added.

8 (c) On request of the owner of property for which a fee has
9 been paid, the county shall refund the fee or any part of it that is
10 not spent within 10 years after the date of payment. Any refund
11 shall bear interest calculated from the date of payment to the date
12 of refund at the statutory rate set forth in Section 302.002,
13 Finance Code.

14 SECTION 3. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2011.