

## **BILL ANALYSIS**

C.S.H.B. 1130  
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International Trade & Intergovernmental Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that, when completed, the Tornillo-Guadalupe Port of Entry will be one of the busiest international entry points in the United States, with the potential to produce substantial and rapid increases in economic activity in a wide area of southeastern El Paso County. This development has the potential to attract numerous transportation-related and border trade industries, produce major traffic increases across a wide area, and increase opportunities for job creation. The parties note, however, that no entity currently has the authority to ensure orderly development in the area.

C.S.H.B. 1130 seeks to ensure such safe and orderly development within the area surrounding the Tornillo-Guadalupe Port of Entry international bridge by setting out a series of development regulations, contingent on voter approval, with the intention of maximizing the value of the area to El Paso, the state, and the nation, as well as protecting the property and health and safety of those in and around the area.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1130 amends the Local Government Code to establish provisions relating to development regulations around the Tornillo-Guadalupe Port of Entry applicable only to a certain unincorporated areas of El Paso County and the remainder of a tract of land partly located in the applicable areas under certain circumstances, and specifically inapplicable to residential property and land in which the state has an interest. The bill authorizes the Commissioners Court of El Paso County to regulate in the applicable areas, and to the extent authorized, specified types of development in the area for specified purposes. The bill authorizes the commissioners court to divide the areas into districts in a certain manner and regulate development within each district. The bill makes the applicability of the regulatory authority of the commissioners court in those areas contingent on a majority of the voters in El Paso County voting in an election held for the purpose of approving the grant of that regulatory authority and sets out procedures for the election. The bill specifies that approval includes the authority to repeal, revise, or amend a previous decision to operate under the bill's provisions.

C.S.H.B. 1130 requires the commissioners court, in order to exercise the powers authorized by the bill's provisions, to create a commission and requires the commission to recommend boundaries for the original districts and appropriate regulations for each district. The bill sets out provisions relating to the composition and administration of the commission. The bill requires the commission to make a preliminary report regarding its recommendations and to hold public hearings on that report before submitting a final report to the commissioners court. The bill prohibits the commissioners court from holding a public hearing or taking final action until it has received the commission's final report and sets out provisions relating to a public hearing notice.

The bill requires the commissioners court to establish procedures for adopting and enforcing regulations and district boundaries, establishes that a regulation or district boundary is not effective until it is adopted by the commissioners court after a public hearing on the matter, and sets out related provisions, including provisions relating to a protest to a proposed change to a regulation or boundary written and signed by certain landowners.

C.S.H.B. 1130 authorizes the commissioners court to provide for the appointment of a board of adjustment. The bill authorizes the commissioners court, in regulations adopted under the bill's provisions, to authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the regulations that are consistent with the general purpose and intent of the regulations and in accordance with any applicable rules contained in the regulations. The bill sets out provisions relating to the composition and administration of a board of adjustment.

C.S.H.B. 1130 authorizes the board of adjustment to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the bill's provisions or a regulation adopted under such provisions; to hear and decide special exceptions to the terms of such a regulation when the regulation requires the board to do so; and to authorize in specific cases a variance from the terms of an adopted regulation under certain conditions. The bill sets out related procedural provisions and provisions relating to judicial review of a board decision.

C.S.H.B. 1130 authorizes the commissioners court to adopt orders to enforce the bill's provisions or an order or a regulation adopted under such provisions. The bill makes it a Class B misdemeanor offense to violate such provisions or such an order or regulation, specifies that each day that a violation occurs constitutes a separate offense, and requires trial to be in a county court. The bill makes a person who violates such provisions or such an order or regulation liable to the county for a civil penalty in an amount not to exceed \$1,000 for each day the violation exists. The bill authorizes the appropriate attorney representing the county in civil actions to file a civil action in court to recover the civil penalty and requires the person to reimburse the attorney for the costs of the civil action, including court costs and attorney's fees, if the attorney for the county prevails in the civil action. The bill requires the court to consider the seriousness of the violation in determining the amount of the penalty and requires a recovered penalty to be deposited in the county treasury to the credit of the general fund.

C.S.H.B. 1130 authorizes the appropriate county authority, if a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, razed, or maintained or if a building, other structure, or land is used in violation of the bill's provisions or an order or a regulation adopted under such provisions, in addition to other remedies, to institute appropriate action to prevent or remove the unlawful action or use; enjoin, restrain, correct, or abate the violation; prevent the occupancy of the building, structure, or land; or prevent any illegal act, conduct, business, or use on or about the premises.

C.S.H.B. 1130 establishes that if a regulation adopted under the bill's provisions imposes a more stringent standard than a standard required under another statute or local order or regulation, the regulation adopted under the bill's provisions controls, or, if the other statute or local order or regulation imposes a more stringent standard, that statute, order, or regulation controls. The bill authorizes the commissioners court to require the removal, destruction, or change of any structure or use of any property that does not conform to an order or regulation adopted under the bill's provisions only if the court permits the owner's investment in the structure or property to be amortized over a period determined by the court or if the court determines the nonconforming structure or property has been permanently abandoned. The bill makes its provisions or a regulation adopted under such provisions inapplicable to structures or facilities owned or used by an electric utility or to real property, central office buildings, facilities, signs, or other structures, or equipment owned or used by a telecommunications provider. The bill establishes that its provisions do not authorize the commissioners court to require the removal or destruction of

property that exists at the time the court implements such provisions or authorize the commissioners court to restrict the right of a landowner, acting on the owner's behalf, to construct improvements for agriculture and ranching operations or to otherwise use the land for agriculture and ranching operations.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1130 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

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

**SUBCHAPTER M. DEVELOPMENT REGULATIONS AROUND THE TORNILLO-GUADALUPE PORT OF ENTRY**

**Sec. 231.271. LEGISLATIVE FINDINGS; PURPOSE.**

**Sec. 231.272. AREA SUBJECT TO REGULATION.** This subchapter applies **only** to the unincorporated area of El Paso County that is bounded **on**:

- (1) the west by the international border;**
- (2) the south by the boundary of Hudspeth County;**
- (3) the east by a line located one mile east of Interstate Highway 10; and**
- (4) the north by the boundary of the City of Socorro and a line extending east from the southeastern boundary point of the City of Socorro on Darrington Road to a point one mile east of Interstate Highway 10.**

**HOUSE COMMITTEE SUBSTITUTE**

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

**SUBCHAPTER M. DEVELOPMENT REGULATIONS AROUND THE TORNILLO-GUADALUPE PORT OF ENTRY**

**Sec. 231.271. LEGISLATIVE FINDINGS; PURPOSE.**

**Sec. 231.272. AREA SUBJECT TO REGULATION.** (a) **If authorized at an election under Section 231.273 and except as provided by Subsection (d), this subchapter applies to the unincorporated area of El Paso County that is bounded by:**

- (1) the international border;**
- (2) a line beginning on the international border one mile southeast of the Tornillo-Guadalupe Port of Entry and extending to a point one-half mile northeast of State Highway 20;**
- (3) a line parallel to and one-half mile northeast of State Highway 20; and**
- (4) a line beginning on the international border one mile northwest of the Tornillo-Guadalupe Port of Entry and extending to a point one-half mile northeast of State Highway 20.**

**(b) If authorized at an election under Section 231.273 and except as provided by Subsection (d), this subchapter applies to the unincorporated area of El Paso County that extends beyond the area described by Subsection (a) and that is bounded by:**

- (1) the international border;**
- (2) the boundary of Hudspeth County;**

(3) a line located one mile east of and parallel to Interstate Highway 10; and  
(4) a line extending one-half mile southeast of and parallel to Fabens and Island Roads and extending southwest to the international border and extending northeast to a point one mile east of Interstate Highway 10.

(c) The remainder of a tract of land that is partly located in the area described by Subsection (a) or (b) is subject to regulation under this subchapter if a majority of the area of the entire tract is located in the area described by Subsection (a) or, if authorized by Section 231.273, Subsection (b).

(d) This subchapter does not apply to:  
(1) for purposes of an area described by Subsection (b), a residential property, including a single-family or multifamily residence; and  
(2) land in which the state has an interest, including land dedicated to the permanent university fund, land dedicated to the permanent school fund, or other land appropriated for specific purposes by the constitution or laws of this state.

No equivalent provision.

Sec. 231.273. ELECTION TO APPROVE REGULATORY AUTHORITY REQUIRED. (a) The authority to regulate development under this subchapter in an area described by Section 231.272(a) or (b) applies only if a majority of the voters in El Paso County voting in an election held under this section approve the grant of authority to regulate in that area.  
(b) The Commissioners Court of El Paso County:  
(1) may, on its own motion, order and hold an election in the county to approve a grant of authority under this subchapter in an area described by Section 231.272(a) or (b); or  
(2) shall order and hold an election in the county to approve the grant of authority if the commissioners court receives a petition requesting the election signed by registered voters of the county in a number equal to 10 percent of the number of votes received by all candidates for governor in the county in the most recent gubernatorial election.  
(c) Notwithstanding Section 277.002, Election Code:  
(1) a petition must include each signer's zip code with the signer's residence address; and

(2) a signature is not considered valid if the date of signing is before the 90th day before the date the petition is submitted to the commissioners court.

(d) Not later than the fifth day after the date a petition is received by the commissioners court, the county judge shall submit the petition for verification to the county clerk. The county clerk shall determine whether the petition meets the requirements prescribed by this section and Section 277.002, Election Code. Not later than the 30th day after the date the petition is submitted to the county clerk for verification, the county clerk shall certify in writing to the commissioners court whether the petition is valid. If the county clerk determines that the petition is invalid, the county clerk shall state the reasons for that determination.

(e) If the county clerk certifies that a petition is valid, the commissioners court shall order the election to be held on the first November uniform election date authorized by Section 41.001, Election Code, that occurs after the date the court receives the county clerk's certification and allows for compliance with Section 3.005, Election Code.

(f) For an election under this section relating to an area described by Section 231.272(a), the ballot shall be prepared to permit voting for or against the proposition: "Approving the authority granted to the Commissioners Court of El Paso County to regulate land development in (insert description of the area subject to regulation)."

(g) For an election under this section relating to an area described by Section 231.272(b), the ballot shall be prepared to permit voting for or against the proposition: "Approving the authority granted to the Commissioners Court of El Paso County to regulate land development, other than residential property, in (insert description of the area subject to regulation)."

(h) The approval authority granted under this section includes the authority to repeal, revise, or amend a previous decision to operate under this subchapter.

Sec. 231.273. DEVELOPMENT REGULATIONS GENERALLY. The Commissioners Court of El Paso County may regulate in the area described by

Sec. 231.274. DEVELOPMENT REGULATIONS GENERALLY. The Commissioners Court of El Paso County may regulate to the extent authorized in the

Section 231.272:

- (1) the height, number of stories, and size of buildings or other structures;
- (2) the percentage of a lot that may be occupied or developed;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes;
- (6) the standards applying to the construction, reconstruction, alteration, or razing of buildings or other structures;
- (7) the location, size, and other characteristics of signs;
- (8) the location, design, construction, extension, and size of water and sewage facilities, drainage facilities, and other required public facilities;
- (9) the abatement of harm from inadequate facilities described by Subdivision (8); and
- (10) the location, design, and construction of parks, playgrounds, and recreational areas.

Sec. 231.274. COMPLIANCE WITH COMPREHENSIVE PLAN.

Sec. 231.275. DISTRICTS.

Sec. 231.276. COMMISSION. (a) To exercise the powers authorized by this subchapter, the commissioners court shall **appoint** a commission. The commission shall recommend boundaries for the original districts and appropriate regulations for each district. Unless the commissioners court makes a designation under Subsection (e), the commission is composed of **five** members appointed as follows:

- (1) one member appointed by each county commissioner; and
- (2) one member appointed by the county judge.

(b) The members of a commission appointed under Subsection (a) are

**areas** described by Section 231.272:

- (1) the height, number of stories, and size of buildings or other structures;
- (2) the percentage of a lot that may be occupied or developed;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes;
- (6) the standards applying to the construction, reconstruction, alteration, or razing of buildings or other structures;
- (7) the location, size, and other characteristics of signs;
- (8) the location, design, construction, extension, and size of water and sewage facilities, drainage facilities, and other required public facilities;
- (9) the abatement of harm from inadequate facilities described by Subdivision (8); and
- (10) the location, design, and construction of parks, playgrounds, and recreational areas.

Sec. 231.275. COMPLIANCE WITH COMPREHENSIVE PLAN.

Sec. 231.276. DISTRICTS. (Substantially the same as introduced version.)

Sec. 231.277. COMMISSION. (a) To exercise the powers authorized by this subchapter, the commissioners court shall **create** a commission. The commission shall recommend boundaries for the original districts and appropriate regulations for each district. Unless the commissioners court makes a designation under Subsection (e), the commission is composed of **seven** members appointed as follows:

- (1) one member appointed by each county commissioner;
- (2) one member appointed by the county judge;
- (3) one member appointed by the board of directors of the El Paso County Tornillo Water Improvement District; and
- (4) one member appointed by the board of directors of the Lower Valley Water District.

(b) The members of a commission appointed under Subsection (a) are

appointed for two-year terms that expire February 1 of each odd-numbered year, except as provided by this subsection. The terms of the initial members of the commission appointed under Subsection (a) expire on February 1 of the first February in an odd-numbered year following their appointment. A vacancy in the commission is filled in the same manner as the original appointment.

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

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

(e) If the county has a planning commission or historic commission, the commissioners court may designate either of those commissions to serve as the commission required by this section.

Sec. 231.277. COMMISSION REPORT; HEARING.

Sec. 231.278. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES.

Sec. 231.279. BOARD OF ADJUSTMENT.

Sec. 231.280. AUTHORITY OF BOARD.

Sec. 231.281. APPEAL TO BOARD.

Sec. 231.282. JUDICIAL REVIEW OF BOARD DECISION.

Sec. 231.283. ENFORCEMENT; PENALTY; REMEDIES.

Sec. 231.284. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a regulation adopted under this subchapter imposes a more stringent standard than a standard

appointed for two-year terms that expire February 1 of each odd-numbered year, except as provided by this subsection. The terms of the initial members of the commission appointed under Subsection (a) expire on February 1 of the first February in an odd-numbered year following their appointment. A vacancy in the commission is filled in the same manner as the original appointment.

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

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

(e) If the county has a planning commission or historic commission, the commissioners court may designate either of those commissions to serve as the commission required by this section.

Sec. 231.278. COMMISSION REPORT; HEARING.

Sec. 231.279. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES.

Sec. 231.280. BOARD OF ADJUSTMENT.

Sec. 231.281. AUTHORITY OF BOARD.

Sec. 231.282. APPEAL TO BOARD.

Sec. 231.283. JUDICIAL REVIEW OF BOARD DECISION.

Sec. 231.284. ENFORCEMENT; PENALTY; REMEDIES.

Sec. 231.285. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a regulation adopted under this subchapter imposes a more stringent standard than a standard

required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes a more stringent standard, that statute, order, or regulation controls.

(b) The commissioners court may require the removal, destruction, or change of any structure or use of any property that does not conform to an order or a regulation adopted under this subchapter only if:

(1) the court permits the owner's investment in the structure or property to be amortized over a period determined by the court; or

(2) the court determines the nonconforming structure or property has been permanently abandoned.

(c) This subchapter or an order or a regulation adopted under this subchapter does not apply to the location, construction, maintenance, or use of central office buildings or equipment used by a person engaged in providing telephone service to the public.

(d) This subchapter does not authorize the commissioners court to:

(1) require the removal or destruction of property that exists at the time the court implements this subchapter; or

(2) restrict the right of a landowner, acting on the owner's behalf, to construct improvements for agriculture and ranching operations or to otherwise use the land for agriculture and ranching operations.

(e) For purposes of Subsection (d)(2), "agriculture and ranching operations" includes:

(1) cultivating the soil;

(2) producing crops for human food, animal feed, planting seed, or fiber;

(3) floriculture, viticulture, or horticulture;

(4) raising or keeping livestock or poultry;

or

(5) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(f) The commissioners court may take actions under Subsection (d)(2) to restrict or prohibit any commercial agricultural enterprise, such as a commercial feed lot, that are reasonably necessary to protect the public health, safety, peace, morals, and

required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes a more stringent standard, that statute, order, or regulation controls.

(b) The commissioners court may require the removal, destruction, or change of any structure or use of any property that does not conform to an order or a regulation adopted under this subchapter only if:

(1) the court permits the owner's investment in the structure or property to be amortized over a period determined by the court; or

(2) the court determines the nonconforming structure or property has been permanently abandoned.

(c) This subchapter or a regulation adopted under this subchapter does not apply to:

(1) structures or facilities owned or used by an electric utility as defined by Section 31.002, Utilities Code; or

(2) real property, central office buildings, facilities, signs, or other structures, or equipment owned or used by a telecommunications provider.

(d) This subchapter does not authorize the commissioners court to:

(1) require the removal or destruction of property that exists at the time the court implements this subchapter; or

(2) restrict the right of a landowner, acting on the owner's behalf, to construct improvements for agriculture and ranching operations or to otherwise use the land for agriculture and ranching operations.

(e) For purposes of Subsection (d)(2), "agriculture and ranching operations" includes:

(1) cultivating the soil;

(2) producing crops for human food, animal feed, planting seed, or fiber;

(3) floriculture, viticulture, or horticulture;

(4) raising or keeping livestock or poultry;

or

(5) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.



general welfare from the dangers of explosion, flooding, vermin, insects, physical injury, contagious disease, contamination of water supplies, radiation, storage of toxic materials, or other hazards.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.