

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 461  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

When completed, the Tornillo-Guadalupe Port of Entry (TGPOE) will be one of the United States' busiest international entry points. TGPOE has the potential to produce substantial and rapid increases in economic activity in a wide area of southeastern El Paso County. This development will potentially attract numerous industries related to transportation and the variety of goods crossing the border, produce major traffic increases across a wide area, and be a magnet for jobs. Currently, no entity has the authority to ensure orderly development in the area.

The purpose of S.B. 461 is to ensure safe and orderly development in the zone that extends from the TGPOE international bridge north to Interstate 10 and surrounding areas. Planned development will maximize the value of the zone to El Paso, the state, and the nation, as well as protect the property, health, and safety of those in and around the zone

As proposed, S.B. 461 amends current law relating to development regulations for certain unincorporated areas located near the Tornillo-Guadalupe Port of Entry, and provides a penalty.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 231, Local Government Code, by adding Subchapter M, as follows:

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

Sec. 231.271. LEGISLATIVE FINDINGS; PURPOSE. (a) Provides that the legislature finds that:

- (1) the Tornillo-Guadalupe Port of Entry (TGPOE) will be one of the largest on the international border between the United States and the United Mexican States;
- (2) the TGPOE is essential to:
  - (A) relieving congestion associated with other crossing points on the international border; and
  - (B) facilitating trade between the United States and the United Mexican States and between this state and the United Mexican States;
- (3) the TGPOE and the surrounding area located in El Paso County will be used by residents from many parts of the state and the nation;

(4) the orderly development and use of the area surrounding the TGPOE is of concern to the entire state; and

(5) without adequate development regulations, the corridor will tend to become congested and to be used in a manner that interferes with achieving the goals of the TGPOE described by Subdivision (2).

(b) Provides that the powers granted under this subchapter are for the purpose of:

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

(2) encouraging the use of the area to facilitate trade between the United States and the United Mexican States and between this state and the United Mexican States.

Sec. 231.272. AREA SUBJECT TO REGULATION. Provides that 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.

Sec. 231.273. DEVELOPMENT REGULATIONS GENERALLY. Authorizes the Commissioners Court of El Paso County to regulate in the area 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. 231.274. COMPLIANCE WITH COMPREHENSIVE PLAN. Requires that the regulations be adopted in accordance with a comprehensive plan and be designed to:

- (1) lessen congestion in the streets and roads;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;
- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population; or
- (7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements.

Sec. 231.275. DISTRICTS. (a) Authorizes the commissioners court to divide the area described by Section 231.272 into districts of a number, shape, and size the commissioners court considers best for carrying out this subchapter. Authorizes the commissioners court, within each district, to regulate development as provided by Section 231.273.

(b) Requires that the regulations be uniform for each class or kind of building in a district, but authorizes the regulations to vary from district to district. Requires that the regulations be adopted with reasonable consideration for, among other things, the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings, protecting historic landmarks and structures, and encouraging the most appropriate use of land throughout the area.

Sec. 231.276. COMMISSION. (a) Requires the commissioners court, to exercise the powers authorized by this subchapter, to appoint a commission. Requires the commission to recommend boundaries for the original districts and appropriate regulations for each district. Provides that the commission is composed of five members, with one member appointed by each county commissioner, and one member appointed by the county judge, unless the commissioners court makes a designation under Subsection (e).

(b) Provides that 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. Provides that 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. Provides that a vacancy in the commission is filled in the same manner as the original appointment.

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

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

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

Sec. 231.277. COMMISSION REPORT; HEARING. (a) Requires the commission to make a preliminary report regarding recommendations under Section 231.276(a) and hold public hearings on that report before submitting a final report to the commissioners court. Prohibits the commissioners court from holding a public hearing or taking final action until it has received the final report of the commission.

(b) Requires that written notice of each public hearing before the commission on a proposed change in a classification in the district, before the 10th day before the hearing date, be sent to:

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

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

(c) Authorizes the notice to be served by depositing it, postage paid and properly addressed, in the United States mail.

Sec. 231.278. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) Requires the commissioners court to establish procedures for adopting and enforcing regulations and district boundaries. Provides that a regulation or district boundary is not effective until it is adopted by the commissioners court after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Requires the commissioners court, before the 15th day before the date of the hearing, to publish notice of the hearing in a newspaper of general circulation in the county.

(b) Authorizes the commissioners court to amend or reject a regulation or boundary proposed by the commission by a majority vote if no protest is made under Subsection (c), or by an affirmative vote of at least four members of the commissioners court if a protest is made under Subsection (c).

(c) Requires that a protest to a proposed change to a regulation or boundary be written and signed by the owners of at least 20 percent of certain areas.

(d) Requires the court, after the commissioners court receives a protest, to hold a public hearing. Requires the court to publish notice in the manner provided by Subsection (a).

Sec. 231.279. BOARD OF ADJUSTMENT. (a) Authorizes the commissioners court to provide for the appointment of a board of adjustment. Authorizes the commissioners court, in regulations adopted under this subchapter, 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.

(b) Requires that a board of adjustment consist of five members to be appointed for staggered terms of two years. Authorizes the appointing authority to remove a board member for cause on a written charge after a public hearing. Requires the appointing authority to fill a vacancy on the board for the unexpired term.

(c) Requires the board to adopt rules in accordance with any order adopted under this subchapter. Provides that meetings of the board are held at the call of the presiding officer and at other times as determined by the board. Authorizes the presiding officer or acting presiding officer to administer oaths and compel the

attendance of witnesses. Requires that all meetings of the board be open to the public.

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

Sec. 231.280. AUTHORITY OF BOARD. (a) Authorizes the board of adjustment to:

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

(2) hear and decide special exceptions to the terms of a regulation adopted under this subchapter when the regulation requires the board to do so; and

(3) authorize in specific cases a variance from the terms of a regulation adopted under this subchapter if:

(A) the variance is not contrary to the public interest;

(B) a literal enforcement of the regulation, due to special conditions, would result in unnecessary hardship; and

(C) the granting of the variance would allow the spirit of the regulation to be observed and substantial justice to be done.

(b) Authorizes the board, in exercising its authority under Subsection (a)(1), to reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(c) Provides that the concurring vote of four members of the board is necessary to:

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

(2) decide in favor of an applicant on a matter on which the board is required to pass under a regulation adopted under this subchapter; or

(3) authorize a variance in a regulation adopted under this subchapter.

Sec. 231.281. APPEAL TO BOARD. (a) Authorizes certain persons to appeal to the board of adjustment a decision made by an administrative official.

(b) Requires the appellant to file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. Requires that the appeal be filed within a reasonable time as determined by board rule. Requires the official from whom the appeal is taken, on receiving the notice, to immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) Provides that an appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause

imminent peril to life or property. Authorizes the proceedings, in that case, to be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

d) Requires the board to set a reasonable time for the appeal hearing and to give public notice of the hearing and due notice to the parties in interest. Authorizes a party to appear at the appeal hearing in person or by agent or attorney. Requires the board to decide the appeal within a reasonable time.

Sec. 231.282. JUDICIAL REVIEW OF BOARD DECISION. (a) Authorizes any of certain persons to present to a court of record a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality.

(b) Requires that the petition be presented within 10 days after the date the decision is filed in the board's office.

(c) Authorizes the court, on the presentation of the petition, to grant a writ of certiorari directed to the board to review the board's decision. Requires that the writ indicate the period within which the board's reply is required to be made and served on the petitioner's attorney, which must be after the 10th day after the date the petition is presented to the board under Subsection (b). Authorizes the court to extend the period for reply described by this subsection. Provides that a grant of the writ does not stay the proceedings on the decision under appeal. Authorizes the court, on application and after notice to the board, to grant a restraining order if due cause is shown.

(d) Requires that the board's reply be verified and concisely state any pertinent and material facts that show the grounds of the decision under appeal. Provides that the board is not required to return the original documents on which the board acted but authorizes the board to return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) Authorizes the court, if at the hearing the court determines that testimony is necessary for the proper disposition of the matter, to take evidence or appoint a referee to take evidence as directed. Requires the referee to report the evidence to the court with the referee's findings of fact and conclusions of law. Provides that the referee's report constitutes a part of the proceedings on which the court is required to make its decision.

(f) Authorizes the court to reverse or affirm, in whole or in part, or modify the decision that is appealed. Prohibits the court from assessing costs against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

Sec. 231.283. ENFORCEMENT; PENALTY; REMEDIES. (a) Authorizes the commissioners court to adopt orders to enforce this subchapter or an order or a regulation adopted under this subchapter.

(b) Provides that a person commits an offense if the person violates this subchapter or an order or a regulation adopted under this subchapter, and an offense under this subsection is a Class B misdemeanor. Provides that each day that a violation occurs constitutes a separate offense. Requires that trial be in a county court.

(c) Provides that a person who violates this subchapter or an order or a regulation adopted under this subchapter is liable to the county for a civil penalty in an amount not to exceed \$1,000 for each day the violation exists. Authorizes the appropriate attorney representing the county in civil actions to file a civil action in court to recover the civil penalty. Requires the person, if the attorney for the

county prevails in the civil action, to reimburse the attorney for the costs of the civil action, including court costs and attorney's fees. Requires the court, in determining the amount of the penalty, to consider the seriousness of the violation. Requires that a penalty recovered under this subsection be deposited in the county treasury to the credit of the general fund.

(d) 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 this subchapter or an order or a regulation adopted under this subchapter, in addition to other remedies, to institute appropriate action to:

- (1) prevent or remove the unlawful action or use, including an unlawful erection, construction, reconstruction, alteration, repair, conversion, razing, or maintenance;
- (2) enjoin, restrain, correct, or abate the violation;
- (3) prevent the occupancy of the building, structure, or land; or
- (4) prevent any illegal act, conduct, business, or use on or about the premises.

Sec. 231.284. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) Provides that, 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. Provides that, if the other statute or local order or regulation imposes a more stringent standard, that statute, order, or regulation controls.

(b) 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 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) Provides that 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) Provides that 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) Defines "agriculture and ranching operations" for purposes of Subsection (d)(2).

(f) Authorizes the commissioners court to 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 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. Effective date: upon passage or September 1, 2013.