

By: M. Gonzalez of El Paso

H.B. No. 1130

Substitute the following for H.B. No. 1130:

By: Nevarez

C.S.H.B. No. 1130

A BILL TO BE ENTITLED

AN ACT

relating to development regulations for certain unincorporated areas located near the Tornillo-Guadalupe Port of Entry; providing a penalty.

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 AROUND THE

TORNILLO-GUADALUPE PORT OF ENTRY

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

(1) the Tornillo-Guadalupe Port of Entry will be one of the largest on the international border between the United States and the United Mexican States;

(2) the Tornillo-Guadalupe Port of Entry 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 Tornillo-Guadalupe Port of Entry and the surrounding area located in El Paso County will be used by residents from many parts of the state and the nation;

1 (4) the orderly development and use of the area
2 surrounding the Tornillo-Guadalupe Port of Entry is of concern to
3 the entire state; and

4 (5) without adequate development regulations, the
5 corridor will tend to become congested and to be used in a manner
6 that interferes with achieving the goals of the Tornillo-Guadalupe
7 Port of Entry described by Subdivision (2).

8 (b) The powers granted under this subchapter are for the
9 purpose of:

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

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

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

19 (1) the international border;

20 (2) a line beginning on the international border one
21 mile southeast of the Tornillo-Guadalupe Port of Entry and
22 extending to a point one-half mile northeast of State Highway 20;

23 (3) a line parallel to and one-half mile northeast of
24 State Highway 20; and

25 (4) a line beginning on the international border one
26 mile northwest of the Tornillo-Guadalupe Port of Entry and
27 extending to a point one-half mile northeast of State Highway 20.

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

5 (1) the international border;

6 (2) the boundary of Hudspeth County;

7 (3) a line located one mile east of and parallel to
8 Interstate Highway 10; and

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

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

18 (d) This subchapter does not apply to:

19 (1) for purposes of an area described by Subsection
20 (b), a residential property, including a single-family or
21 multifamily residence; and

22 (2) land in which the state has an interest, including
23 land dedicated to the permanent university fund, land dedicated to
24 the permanent school fund, or other land appropriated for specific
25 purposes by the constitution or laws of this state.

26 Sec. 231.273. ELECTION TO APPROVE REGULATORY AUTHORITY
27 REQUIRED. (a) The authority to regulate development under this

1 subchapter in an area described by Section 231.272(a) or (b)
2 applies only if a majority of the voters in El Paso County voting in
3 an election held under this section approve the grant of authority
4 to regulate in that area.

5 (b) The Commissioners Court of El Paso County:

6 (1) may, on its own motion, order and hold an election
7 in the county to approve a grant of authority under this subchapter
8 in an area described by Section 231.272(a) or (b); or

9 (2) shall order and hold an election in the county to
10 approve the grant of authority if the commissioners court receives
11 a petition requesting the election signed by registered voters of
12 the county in a number equal to 10 percent of the number of votes
13 received by all candidates for governor in the county in the most
14 recent gubernatorial election.

15 (c) Notwithstanding Section 277.002, Election Code:

16 (1) a petition must include each signer's zip code with
17 the signer's residence address; and

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

21 (d) Not later than the fifth day after the date a petition is
22 received by the commissioners court, the county judge shall submit
23 the petition for verification to the county clerk. The county clerk
24 shall determine whether the petition meets the requirements
25 prescribed by this section and Section 277.002, Election Code. Not
26 later than the 30th day after the date the petition is submitted to
27 the county clerk for verification, the county clerk shall certify

1 in writing to the commissioners court whether the petition is
2 valid. If the county clerk determines that the petition is invalid,
3 the county clerk shall state the reasons for that determination.

4 (e) If the county clerk certifies that a petition is valid,
5 the commissioners court shall order the election to be held on the
6 first November uniform election date authorized by Section 41.001,
7 Election Code, that occurs after the date the court receives the
8 county clerk's certification and allows for compliance with Section
9 3.005, Election Code.

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

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

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

25 Sec. 231.274. DEVELOPMENT REGULATIONS GENERALLY. The
26 Commissioners Court of El Paso County may regulate to the extent
27 authorized in the areas described by Section 231.272:

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

22 Sec. 231.275. COMPLIANCE WITH COMPREHENSIVE PLAN. The
23 regulations must be adopted in accordance with a comprehensive plan
24 and must be designed to:

- 25 (1) lessen congestion in the streets and roads;
- 26 (2) secure safety from fire, panic, and other dangers;
- 27 (3) promote health and the general welfare;

- 1 (4) provide adequate light and air;
- 2 (5) prevent the overcrowding of land;
- 3 (6) avoid undue concentration of population; or
- 4 (7) facilitate the adequate provision of
5 transportation, water, sewers, parks, and other public
6 requirements.

7 Sec. 231.276. DISTRICTS. (a) The commissioners court may
8 divide the areas described by Section 231.272 into districts of a
9 number, shape, and size the commissioners court considers best for
10 carrying out this subchapter. Within each district, the
11 commissioners court may regulate development as provided by Section
12 231.274.

13 (b) The regulations must be uniform for each class or kind
14 of building in a district, but the regulations may vary from
15 district to district. The regulations shall be adopted with
16 reasonable consideration for, among other things, the character of
17 each district and its peculiar suitability for particular uses,
18 with a view of conserving the value of buildings, protecting
19 historic landmarks and structures, and encouraging the most
20 appropriate use of land throughout the area.

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

1 (1) one member appointed by each county commissioner;

2 (2) one member appointed by the county judge;

3 (3) one member appointed by the board of directors of
4 the El Paso County Tornillo Water Improvement District; and

5 (4) one member appointed by the board of directors of
6 the Lower Valley Water District.

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

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

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

26 (e) If the county has a planning commission or historic
27 commission, the commissioners court may designate either of those

1 commissions to serve as the commission required by this section.

2 Sec. 231.278. COMMISSION REPORT; HEARING. (a) The
3 commission shall make a preliminary report regarding
4 recommendations under Section 231.277(a) and hold public hearings
5 on that report before submitting a final report to the
6 commissioners court. The commissioners court may not hold a public
7 hearing or take final action until it has received the final report
8 of the commission.

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

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

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

17 (c) The notice may be served by depositing it, postage paid
18 and properly addressed, in the United States mail.

19 Sec. 231.279. PROCEDURES GOVERNING ADOPTION OF REGULATIONS
20 AND DISTRICT BOUNDARIES. (a) The commissioners court shall
21 establish procedures for adopting and enforcing regulations and
22 district boundaries. A regulation or district boundary is not
23 effective until it is adopted by the commissioners court after a
24 public hearing on the matter at which parties in interest and
25 citizens have an opportunity to be heard. Before the 15th day
26 before the date of the hearing, the commissioners court must
27 publish notice of the hearing in a newspaper of general circulation

1 in the county.

2 (b) The commissioners court may amend or reject a regulation
3 or boundary proposed by the commission:

4 (1) by a majority vote if no protest is made under
5 Subsection (c); or

6 (2) by an affirmative vote of at least four members of
7 the commissioners court if a protest is made under Subsection (c).

8 (c) A protest to a proposed change to a regulation or
9 boundary must be written and signed by the owners of at least 20
10 percent of:

11 (1) the area of the lots or land covered by the
12 proposed change; or

13 (2) the area of the lots or land immediately adjoining
14 the area covered by the proposed change and extending 200 feet from
15 that area.

16 (d) After the commissioners court receives a protest, the
17 court shall hold a public hearing. The court shall publish notice
18 in the manner provided by Subsection (a).

19 Sec. 231.280. BOARD OF ADJUSTMENT. (a) The commissioners
20 court may provide for the appointment of a board of adjustment. In
21 regulations adopted under this subchapter, the commissioners court
22 may authorize the board of adjustment, in appropriate cases and
23 subject to appropriate conditions and safeguards, to make special
24 exceptions to the terms of the regulations that are consistent with
25 the general purpose and intent of the regulations and in accordance
26 with any applicable rules contained in the regulations.

27 (b) A board of adjustment must consist of five members to be

1 appointed for staggered terms of two years. The appointing
2 authority may remove a board member for cause on a written charge
3 after a public hearing. The appointing authority shall fill a
4 vacancy on the board for the unexpired term.

5 (c) The board shall adopt rules in accordance with any order
6 adopted under this subchapter. Meetings of the board are held at
7 the call of the presiding officer and at other times as determined
8 by the board. The presiding officer or acting presiding officer may
9 administer oaths and compel the attendance of witnesses. All
10 meetings of the board shall be open to the public.

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

17 Sec. 231.281. AUTHORITY OF BOARD. (a) The board of
18 adjustment may:

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

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

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

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

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

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

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

15 (c) The concurring vote of four members of the board is
16 necessary to:

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

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

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

24 Sec. 231.282. APPEAL TO BOARD. (a) Any of the following
25 persons may appeal to the board of adjustment a decision made by an
26 administrative official:

27 (1) a person aggrieved by the decision; or

1 (2) any officer, department, board, or bureau of the
2 county or of a municipality affected by the decision.

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

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

17 (d) The board shall set a reasonable time for the appeal
18 hearing and shall give public notice of the hearing and due notice
19 to the parties in interest. A party may appear at the appeal
20 hearing in person or by agent or attorney. The board shall decide
21 the appeal within a reasonable time.

22 Sec. 231.283. JUDICIAL REVIEW OF BOARD DECISION. (a) Any
23 of the following persons may present to a court of record a verified
24 petition stating that the decision of the board of adjustment is
25 illegal in whole or in part and specifying the grounds of the
26 illegality:

27 (1) a person aggrieved by a decision of the board;

1 (2) a taxpayer; or

2 (3) an officer, department, board, or bureau of the
3 county or of the municipality affected by the decision.

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

6 (c) On the presentation of the petition, the court may grant
7 a writ of certiorari directed to the board to review the board's
8 decision. The writ must indicate the period within which the
9 board's reply must be made and served on the petitioner's attorney,
10 which must be after the 10th day after the date the petition is
11 presented to the board under Subsection (b). The court may extend
12 the period for reply described by this subsection. A grant of the
13 writ does not stay the proceedings on the decision under appeal. On
14 application and after notice to the board, the court may grant a
15 restraining order if due cause is shown.

16 (d) The board's reply must be verified and must concisely
17 state any pertinent and material facts that show the grounds of the
18 decision under appeal. The board is not required to return the
19 original documents on which the board acted but may return
20 certified or sworn copies of the documents or parts of the documents
21 as required by the writ.

22 (e) If at the hearing the court determines that testimony is
23 necessary for the proper disposition of the matter, the court may
24 take evidence or appoint a referee to take evidence as directed.
25 The referee shall report the evidence to the court with the
26 referee's findings of fact and conclusions of law. The referee's
27 report constitutes a part of the proceedings on which the court

1 shall make its decision.

2 (f) The court may reverse or affirm, in whole or in part, or
3 modify the decision that is appealed. The court may not assess
4 costs against the board unless the court determines that the board
5 acted with gross negligence, in bad faith, or with malice in making
6 its decision.

7 Sec. 231.284. ENFORCEMENT; PENALTY; REMEDIES. (a) The
8 commissioners court may adopt orders to enforce this subchapter or
9 an order or a regulation adopted under this subchapter.

10 (b) A person commits an offense if the person violates this
11 subchapter or an order or a regulation adopted under this
12 subchapter. An offense under this subsection is a Class B
13 misdemeanor. Each day that a violation occurs constitutes a
14 separate offense. Trial shall be in a county court.

15 (c) A person who violates this subchapter or an order or a
16 regulation adopted under this subchapter is liable to the county
17 for a civil penalty in an amount not to exceed \$1,000 for each day
18 the violation exists. The appropriate attorney representing the
19 county in civil actions may file a civil action in court to recover
20 the civil penalty. If the attorney for the county prevails in the
21 civil action, the person shall reimburse the attorney for the costs
22 of the civil action, including court costs and attorney's fees. In
23 determining the amount of the penalty, the court shall consider the
24 seriousness of the violation. A penalty recovered under this
25 subsection shall be deposited in the county treasury to the credit
26 of the general fund.

27 (d) If a building or other structure is erected,

1 constructed, reconstructed, altered, repaired, converted, razed,
2 or maintained or if a building, other structure, or land is used in
3 violation of this subchapter or an order or a regulation adopted
4 under this subchapter, the appropriate county authority, in
5 addition to other remedies, may institute appropriate action to:

6 (1) prevent or remove the unlawful action or use,
7 including an unlawful erection, construction, reconstruction,
8 alteration, repair, conversion, razing, or maintenance;

9 (2) enjoin, restrain, correct, or abate the violation;

10 (3) prevent the occupancy of the building, structure,
11 or land; or

12 (4) prevent any illegal act, conduct, business, or use
13 on or about the premises.

14 Sec. 231.285. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If
15 a regulation adopted under this subchapter imposes a more stringent
16 standard than a standard required under another statute or local
17 order or regulation, the regulation adopted under this subchapter
18 controls. If the other statute or local order or regulation imposes
19 a more stringent standard, that statute, order, or regulation
20 controls.

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

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

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

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

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

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

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

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

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

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

20 (1) cultivating the soil;

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

23 (3) floriculture, viticulture, or horticulture;

24 (4) raising or keeping livestock or poultry; or

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

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