

By: Biedermann

H.B. No. 3883

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to development regulations for certain unincorporated  
3 areas located within the Hill Country Priority Groundwater  
4 Management Area; authorizing a fee; authorizing a civil penalty;  
5 creating a criminal offense.

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

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

9 SUBCHAPTER N. DEVELOPMENT REGULATIONS IN COUNTIES LOCATED WITHIN  
10 HILL COUNTRY PRIORITY GROUNDWATER MANAGEMENT AREA 9

11 Sec. 231.301. DEFINITIONS. In this subchapter:

12 (1) "Hill Country Priority Groundwater Management  
13 Area" means the area that the Texas Commission on Environmental  
14 Quality designated as the Hill Country Priority Groundwater  
15 Management Area under Section 35.008, Water Code, as that area  
16 existed on January 1, 2021.

17 (2) "Infrastructure" includes facilities for:

18 (A) water supply, treatment, and distribution;

19 (B) wastewater collection and treatment;

20 (C) stormwater, drainage, and flood control; and

21 (D) roadways.

22 (3) "Infrastructure cost recovery fee" means a fee  
23 imposed by a county on the owner of property undergoing new  
24 development to pay for or recover costs of the county for

1 improvements to infrastructure necessary to serve new development.

2 (4) "New development" means an activity that increases  
3 the number of service units on property, including:

4 (A) the subdivision of land; or

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

6 (5) "Service unit" means a standardized measure of  
7 consumption, use, generation, or discharge attributable to an  
8 individual unit of development calculated in accordance with  
9 generally accepted engineering or planning standards and based on  
10 historical data and trends for the preceding 10 years applicable to  
11 the county in which the individual unit of development is located.

12 Sec. 231.302. LAND DEVELOPMENT REGULATIONS IN  
13 UNINCORPORATED AREA. The commissioners court of a county that has  
14 unincorporated area located in the Hill Country Priority  
15 Groundwater Management Area by order may adopt and impose in that  
16 unincorporated area:

17 (1) reasonable lot size restrictions;

18 (2) requirements that the supplier of water to a  
19 proposed subdivision be contractually obligated to provide a  
20 sufficient supply of water to adequately serve the residents of the  
21 proposed subdivision during normal and drought conditions;

22 (3) an infrastructure cost recovery fee; and

23 (4) reasonable standards for minimum lot frontages on  
24 all proposed and existing roads.

25 Sec. 231.303. ELECTION TO APPROVE REGULATORY AUTHORITY  
26 REQUIRED. (a) Regulatory authority granted under Section 231.302  
27 is not effective until the authority is approved by a majority of

1 the county residents voting in an election held under this section.

2 (b) County residents voting in an election held under this  
3 section:

4 (1) may approve of the entire regulatory authority  
5 granted under Section 231.302; or

6 (2) may approve specific regulatory authority granted  
7 under Section 231.302 without approving other specific regulatory  
8 authority granted under that section.

9 (c) The commissioners court of a county located in the Hill  
10 Country Priority Groundwater Management Area:

11 (1) shall order and hold an election in the county to  
12 approve the grant of regulatory authority if the commissioners  
13 court receives a petition requesting the election signed by  
14 registered voters of the county in a number equal to or greater than  
15 20 percent of the number of votes received by all candidates for  
16 governor in the county in the most recent gubernatorial election.

17 (d) Notwithstanding Section 277.002, Election Code:

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

20 (2) a signature is not considered valid if the date of  
21 signing is before the 90th day before the date the petition is filed  
22 with the commissioners court.

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

1 later than the 30th day after the date the petition is submitted to  
2 the county clerk for verification, the county clerk shall certify  
3 in writing to the commissioners court whether the petition is  
4 valid. If the county clerk determines that the petition is invalid,  
5 the county clerk shall state the reasons for that determination.

6 (f) If the county clerk certifies that a petition is valid,  
7 the commissioners court shall order the election to be held on the  
8 first November uniform election date authorized by Section 41.001,  
9 Election Code, that occurs after the date the court receives the  
10 county clerk's certification and that provides sufficient time to  
11 comply with other requirements of law.

12 (g) The ballot for an election under this section shall be  
13 prepared to permit voting for or against the proposition:  
14 "Approving the authority granted to the Commissioners Court of  
15 (name of county) to regulate land development in (insert  
16 description of the area subject to regulation)." The ballot shall  
17 be prepared to permit voting for or against the grants of regulatory  
18 authority proposed in the commissioners court motion under  
19 Subsection (c)(1) or the petition filed with the commissioners  
20 court under Subsection (c)(2), as applicable.

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

24 Sec. 231.304. COMPLIANCE WITH LOCAL GROWTH AND DEVELOPMENT  
25 PLANS. Development regulations must be:

26 (1) adopted in accordance with:

27 (A) any county plan for growth and development of

1 the county if a county plan has been adopted by the commissioners  
2 court; and

3 (B) any desired future conditions, as that term  
4 is defined by Section 36.001, Water Code, developed by groundwater  
5 conservation districts located in the county; and

6 (2) coordinated with:

7 (A) the comprehensive plans of municipalities  
8 located in the county; and

9 (B) the comprehensive plans of groundwater  
10 conservation districts located in the county.

11 Sec. 231.305. PROCEDURES GOVERNING ADOPTION OF  
12 REGULATIONS. (a) A development regulation adopted under this  
13 subchapter is not effective until the regulation is adopted by the  
14 commissioners court of the county after a public hearing. Before  
15 the 15th day before the date of the hearing, the commissioners court  
16 must publish notice of the hearing in a newspaper of general  
17 circulation in the county.

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

21 Sec. 231.306. DEVELOPMENT COMMISSION. (a) The  
22 commissioners court of a county authorized under this subchapter to  
23 impose development regulations may appoint a development  
24 commission to assist in the implementation and enforcement of the  
25 regulations.

26 (b) The development commission must consist of:

27 (1) an ex officio chair who must be a public official,

1 other than a county commissioner, in the county; and

2 (2) four additional members who are all residents of  
3 the county.

4 (c) The development commission is advisory only and may  
5 recommend appropriate development regulations for the county.

6 (d) The members of the development commission are subject to  
7 the same requirements relating to conflicts of interest that are  
8 applicable to the commissioners court under Chapter 171.

9 Sec. 231.307. SPECIAL EXCEPTION. (a) A person aggrieved by  
10 a development regulation adopted under this subchapter may petition  
11 the commissioners court of the county that adopted the regulation  
12 or the development commission, if the commissioners court has  
13 established a development commission, for a special exception to  
14 the development regulation.

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

19 Sec. 231.308. COOPERATION WITH OTHER POLITICAL  
20 SUBDIVISIONS. The commissioners court of a county authorized under  
21 this subchapter to impose development regulations:

22 (1) may enter into agreements with any municipality  
23 located in the county to assist in the implementation and  
24 enforcement of the regulations; and

25 (2) shall enter into agreements with any groundwater  
26 conservation district located in the county to assist in the  
27 implementation and enforcement of the regulations.

1       Sec. 231.309. LOT SIZE RESTRICTIONS IN CERTAIN AREAS. Lot  
2 size restrictions authorized under this subchapter that apply in  
3 subdivisions served by a public water supply system that uses water  
4 from the Trinity Aquifer must be adopted and imposed in accordance  
5 with any desired future conditions adopted under Chapter 36, Water  
6 Code, by a groundwater conservation district in which the  
7 subdivision is wholly or partly located.

8       Sec. 231.310. INFRASTRUCTURE COST RECOVERY FEE. (a) The  
9 commissioners court of a county may be authorized under this  
10 subchapter to impose an infrastructure cost recovery fee to provide  
11 necessary infrastructure to serve new development in the  
12 unincorporated area of the county only as provided by this section  
13 and Sections 231.311 and 231.312.

14       (b) A county may impose an infrastructure cost recovery fee  
15 under this section only to pay for or recover the costs of  
16 constructing, acquiring, or expanding infrastructure necessary to  
17 serve new development. The fee may not be:

18               (1) applied to infrastructure improvements that do not  
19 serve the new development or to which the new development does not  
20 have access; or

21               (2) imposed to pay for:

22                       (A) repairing, operating, or maintaining  
23 existing or new infrastructure improvements, including  
24 infrastructure improvements that were constructed, acquired, or  
25 expanded as necessary to serve new development; or

26                       (B) upgrading, replacing, or expanding existing  
27 development to meet stricter safety, efficiency, environmental, or

1 regulatory standards.

2 (c) Before a county may impose an infrastructure cost  
3 recovery fee to recover costs of roadway improvements, the county  
4 must prepare an infrastructure development plan. The plan must  
5 include a road traffic study conducted by a qualified engineer. The  
6 county may not impose the fee to recover costs of roadway  
7 improvements unless the road traffic study projects a minimum of a  
8 25 percent increase in road traffic attributable to the new  
9 development.

10 (d) Any interest earned on an infrastructure cost recovery  
11 fee is considered part of the fee and is subject to the same  
12 restrictions under this section.

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

18 (f) A county may reduce or waive the assessment of an  
19 infrastructure cost recovery fee if the new development qualifies  
20 as affordable housing under 42 U.S.C. Section 12745.

21 (g) After an infrastructure cost recovery fee has been  
22 assessed, the fee may not be increased unless additional service  
23 units are added. If additional service units are added, the fee may  
24 be assessed only at a rate that reflects the cost per service unit  
25 of the total fee originally imposed.

26 (h) The infrastructure improvement for which an  
27 infrastructure cost recovery fee is imposed must be completed not



1 later than the first anniversary of the date the fee is paid. The  
2 time prescribed for completion may be extended by a majority vote of  
3 the commissioners court if the commissioners court makes a finding  
4 that the infrastructure improvement is exceptionally complicated  
5 or intensive and reasonably requires additional time. An extension  
6 granted under this subsection may not exceed the second anniversary  
7 of the date the fee is paid. Any portion of the fee that remains  
8 after the time prescribed expires shall be refunded to the owner of  
9 the development. To the extent an agreement between the owner of  
10 new development and the county conflicts with this subsection, the  
11 agreement prevails.

12 Sec. 231.311. PROCEDURES FOR ASSESSING INFRASTRUCTURE COST  
13 RECOVERY FEES. (a) On or before the date of publication of notice  
14 of a public hearing under Section 231.305 to consider the  
15 imposition of an infrastructure cost recovery fee, the  
16 commissioners court shall make available to the public a  
17 description of any proposed infrastructure improvements and a  
18 description of the proposed fee.

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

21 (1) publish notice of the hearing in at least one  
22 newspaper of general circulation in the county; and

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

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

26 (1) a relevant heading;

27 (2) the time, date, and location for the hearing;

1           (3) a statement that the hearing is open to public  
2 comment; and

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

5           (d) Not later than the 30th day after the date of the public  
6 hearing, the commissioners court by order shall adopt or reject the  
7 proposed assessment of the fee. An order approving the assessment  
8 of the fee may not be adopted as an emergency measure.

9           Sec. 231.312. CERTIFICATION OF COMPLIANCE REQUIRED; CIVIL  
10 PENALTY. (a) The commissioners court of a county that imposes an  
11 infrastructure improvement cost recovery fee under this subchapter  
12 shall submit a written certification verifying compliance with this  
13 subchapter to the attorney general each year not later than the last  
14 day of the county's fiscal year. The certification must be signed  
15 by the county judge.

16           (b) A county that fails to submit a certification for a  
17 fiscal year as required by this section is liable to the state for a  
18 civil penalty in an amount equal to 10 percent of the amount of the  
19 fees assessed in that fiscal year. A penalty collected under this  
20 subsection shall be deposited to the credit of the housing trust  
21 fund.

22           Sec. 231.313. ENFORCEMENT; CRIMINAL OFFENSE. (a) The  
23 commissioners court of a county authorized under this subchapter to  
24 impose development regulations may adopt orders to enforce those  
25 regulations.

26           (b) A person commits an offense if the person violates an  
27 order or development regulation adopted under this subchapter. An

1 offense under this subsection is a misdemeanor punishable by a fine  
2 of not less than \$500 or more than \$1,000. Each day that a violation  
3 occurs constitutes a separate offense.

4 Sec. 231.314. CONFLICT WITH OTHER LAWS. If a development  
5 regulation adopted under this subchapter imposes higher standards  
6 than those required under another statute or local order or  
7 regulation, the regulation adopted under this subchapter controls  
8 in the area subject to regulation. If the other statute or local  
9 order or regulation imposes higher standards, that statute, order,  
10 or regulation controls.

11 SECTION 2. This Act takes effect September 1, 2021.