

BILL ANALYSIS

Senate Research Center
81R23029 NC-F

S.B. 2555
By: Hegar
Intergovernmental Relations
5/4/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Aransas County has within its jurisdiction a unique and pristine inland bay system which is frequented for recreational purposes by residents from every part of the state. Currently, the county is experiencing a significant amount of land development activity which, if not done in an orderly fashion, could result in the degradation of the water quality of its bays. Furthermore, without adequate development regulations, residents of Aransas County fear the unincorporated areas of the county will be developed in ways that will interfere with the proper use of that area as a place for tourism and recreation.

As proposed, S.B. 2555 sets forth provisions authorizing the Aransas County Commissioners Court to regulate land use so that the county can provide for the orderly development of areas located in the unincorporated areas of Aransas County. This bill also requires that authority to be approved in a county election.

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 N, as follows:

SUBCHAPTER N. ZONING IN ARANSAS COUNTY

Sec. 231.301. **LEGISLATIVE FINDINGS; PURPOSE.** (a) Sets forth legislative findings.

(b) Provides that the powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county parks in Aransas County.

Sec. 231.302. **AREAS SUBJECT TO REGULATION.** Provides that this subchapter applies only to the unincorporated areas of Aransas County located within three miles of the shoreline of the Gulf of Mexico or a bay.

Sec. 231.303. **ZONING REGULATIONS GENERALLY.** Authorizes the Commissioners Court of Aransas County, for the areas subject to this subchapter, to regulate certain buildings and structures.

Sec. 231.304. **ELECTION TO APPROVE REGULATORY AUTHORITY REQUIRED.** (a) Provides that the regulatory authority granted under Section 231.303 is not effective unless it is approved by a majority of the county residents voting in an election held under this section. Requires the commissioners court to order the election to be held on a uniform election date authorized by Section 41.001 (Uniform Election Dates), Election Code.

(b) Requires that the ballot, for an election under this section, be prepared to permit voting for or against the proposition: "Approving the authority granted to

the Commissioners Court of Aransas County to regulate land development in certain areas of the county (insert description of general authority)."

(c) Provides that the regulatory authority approved under this section includes the authority of the commissioners court to repeal, revise, or amend a regulation of land development adopted under this subchapter.

Sec. 231.305. COMPLIANCE WITH COMPREHENSIVE PLAN. Requires that zoning regulations be adopted in accordance with a comprehensive plan and be designed to meet certain development criteria.

Sec. 231.306. DISTRICTS. (a) Authorizes the commissioners court to divide the area of the county subject to this subchapter into districts of a number, shape, and size the commissioners court considers best for administering this subchapter. Authorizes the commissioners court, within each district, to regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) Requires that the zoning 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 and encouraging the most appropriate use of land throughout the area.

Sec. 231.307. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) Requires the commissioners court to establish procedures for adopting and enforcing zoning regulations and zoning 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 time and place of the hearing in a newspaper of general circulation in the county.

(b) Requires that the proposed change, if a proposed change to a regulation or district boundary is protested in accordance with this subsection, to receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. Requires that the protest be written and signed by the owners of at least 20 percent of either the area of the lots covered by the proposed change; or the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots or from the street frontage of the opposite lots.

Sec. 231.308. ZONING COMMISSION. (a) Requires the commissioners court, to exercise the powers authorized by this subchapter, to appoint a zoning commission (commission). Requires the commission to recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. Requires the commission to consist of seven members, each of whom must be a resident of the county.

(b) 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 at any time to choose for a particular meeting or occasion an acting presiding officer as necessary from among its members. Authorizes the commission to employ a secretary and acting secretary and other technical or clerical personnel.

(c) Provides that 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.

(d) Requires the commission to make a preliminary report 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 take action until it receives the final report of the commission.

(e) Requires that written notice of each public hearing before the zoning commission on a proposed change in a zoning classification be sent before the 10th day before the hearing date to each owner of affected property or to the person who renders the property for county taxes, and 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.

(f) Authorizes the notice to be served by depositing it in the United States mail, postage paid and properly addressed to the address of the property owner on file with the county tax assessor-collector.

Sec. 231.309. BOARD OF ADJUSTMENT. (a) Authorizes the commissioners court to provide for the appointment of a board of adjustment (board). Authorizes the commissioners court, in the zoning regulations adopted under this subchapter, to authorize the board, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning 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 a board to consist of five members appointed for 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. Provides that all meetings of the board are 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. 231.310. AUTHORITY OF BOARD. (a) Authorizes the board 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 this subchapter or a zoning regulation; hear and decide special exceptions to the terms of a zoning regulation when the regulation requires the board to do so; and authorize in specific cases a variance from the terms of a zoning regulation if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.

(b) Authorizes the board, in exercising its authority under Subsection (a)(1) (relating to the board's authorization to hear and decide an appeal that alleges certain errors made by an administrative official in the enforcement of this subchapter or a zoning regulation), 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 reverse an order, requirement, decision, or determination of an administrative

official; decide in favor of an applicant on a matter on which the board is required to pass under a zoning regulation; or authorize a variation in a zoning regulation.

Sec. 231.311. APPEAL TO BOARD. (a) Authorizes certain persons to appeal to the board a decision made by an administrative official, including a person aggrieved by the decision; or an officer, department, board, or bureau of the county or of a municipality affected by the decision.

(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 the date of the appeal hearing not later than the 30th day after the date notice of appeal is filed and is required 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. 231.312. JUDICIAL REVIEW OF BOARD DECISION. (a) Authorizes 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 time within which the board's return is required to be made and served on the petitioner's attorney, which is required to be made after 10 days and is authorized to be extended by the court. Provides that the granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board, the court is authorized to grant a restraining order if due cause is shown.

(d) Requires that the board's return 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 is authorized 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. 231.313. SPECIAL EXCEPTION. (a) Authorize a person aggrieved by a zoning regulation or a zoning district boundary adopted under this subchapter, if the commissioners court does not provide for the appointment of a board of adjustment under Section 231.309, to petition the commissioners court.

(b) Requires the commissioners court to adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Sec. 231.314. ENFORCEMENT; PENALTY; REMEDIES. (a) Authorizes the commissioners court to adopt orders to enforce this subchapter, any order adopted under this subchapter, or a zoning regulation.

(b) Provides that a person commits an offense if the person violates this subchapter, an order adopted under this subchapter, or a zoning regulation. Provides that an offense under this subsection is a misdemeanor, punishable by fine, as provided by the commissioners court. Authorizes the commissioners court to also provide civil penalties for a violation.

(c) Authorizes the appropriate county authority, if a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter, in addition to other remedies, to institute appropriate action to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; 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.

Sec. 231.315. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) Provides that if a zoning regulation adopted under subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those 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 higher standards, that statute, order, or regulation controls.

(b) Provides that this subchapter does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements this subchapter.

(c) Provides that this subchapter, an order adopted under this subchapter, or a zoning regulation does not apply to the location, construction, maintenance, or use of central office buildings used by a person engaging in providing telephone service to the public or equipment used in connection with those buildings or as part of the telephone system, as necessary to furnish telephone service to the public.

SECTION 2. Effective date: upon passage or September 1, 2009.