

BILL ANALYSIS

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By: Shapleigh
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas' urban border counties are experiencing rapid population growth and concomitant commercial and residential growth. Much of this growth is taking place in the unincorporated areas of the counties. The resulting haphazard and non-cohesive patchwork of development has led to the inefficient use of land, infrastructure, and public resources, and burdened public health, education, and safety systems, in addition to other problems. Projected additional growth generated by continuing population shifts and military expansion is expected to worsen conditions and prove detrimental to the well-being of these areas and the rest of the state.

As proposed, S.B. 1241 enables specified urban border counties to plan for future economic and population growth in unincorporated areas and to enact regulations and plans regarding development and land use in such areas. The bill also authorizes the commissioners courts of such counties to appoint members of zoning commissions and boards of adjustments.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of adjustment of a county in SECTION 1 (Section 231.268, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER M. ZONING AND OTHER REGULATION IN CERTAIN COUNTIES
NEAR INTERNATIONAL BORDER

Sec. 231.261. PURPOSE. Sets forth the purposes of the powers granted under this subchapter.

Sec. 231.262. APPLICABILITY; AREA SUBJECT TO REGULATION. Applies this subchapter only to the unincorporated area of a county with a population of 650,000 or more that is located within 50 miles of an international border.

Sec. 231.263. ZONING AND OTHER REGULATIONS GENERALLY. Authorizes the commissioners court of a county to regulate land development by adopting regulations relating to matters set forth in this subsection and building codes to promote safe and uniform building, plumbing, and electrical standards.

Sec. 231.264. COMPLIANCE WITH COMPREHENSIVE PLAN. Requires that the regulations be adopted in accordance with a comprehensive plan and be designed to achieve objectives set forth in this subsection.

Sec. 231.265. DISTRICTS. (a) Authorizes the commissioners court to divide the unincorporated area of a county into districts of a number, shape, and size considered best for carrying out this subchapter. Authorizes the court to regulate the erection, construction, reconstruction, alteration, repair, or usage of buildings, other structures, or land within each district.

(b) Requires the regulations to be uniform for each class or kind of building in a district. Authorizes the regulations to vary from district to district. Requires the regulations to be adopted with reasonable consideration, among other things, for the character and peculiar suitability for particular uses of each district, with a view of encouraging the most appropriate usage of land throughout the area.

Sec. 231.266. COMMISSION. (a) Requires the commissioners court to appoint a five-member zoning commission (commission) in order to exercise the powers authorized by this subchapter. Requires the commission to recommend boundaries and appropriate regulations for each district.

(b) Requires the commissioners court to appoint a chair from the commission members, to serve in that capacity for a two-year term. Requires the commissioners court to appoint four additional members to serve staggered two-year terms and to appoint new members in the event of resignation, end of a term, or a vacancy, on the commission. Authorizes the commission to employ a secretary, acting secretary, and other technical or clerical personnel.

(c) Requires the commissioners court, in making initial appointments of commission members under Subsection (b), to designate by drawing lots staggered terms of one year or two years for members to serve, other than the chair of the commission.

(d) Provides that a commission member 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) Requires the commission to make a preliminary report and hold public hearings on it before submitting a final report to the commissioners court. Prohibits the commissioners court from taking final action or holding a public hearing until it has received the commission's final report.

(f) Requires written notice of each public hearing before the commission on a proposed change in a zoning classification in the district to be sent, before the 10th day preceding the hearing date, to certain persons set forth in this subsection.

(g) Authorizes the notice to be served, postage paid and properly addressed, by United States mail.

Sec. 231.267. 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 adopted by the commissioners court after a public hearing on the matter at which interested parties and citizens may be heard. Requires the commissioners court to publish notice of the time and place of the hearing in a newspaper of general circulation in the county before the 15th day before the date of the hearing.

(b) Requires a proposed change that is protested in accordance with this subsection to receive, in order to take effect, the affirmative vote of at least four-fifths of all members of the commissioners court. Requires that the protest be written and signed by the owners of at least 20 percent of certain lands set forth in this subsection

Sec. 231.268. BOARD OF ADJUSTMENT. (a) Authorizes the commissioners court to provide for the appointment of a board of adjustment (board). Authorizes the commissioners court, in 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 regulation terms consistent with their general purpose and intent and in accordance with any applicable rules in the regulations.

(b) Requires a board to consist of five members 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 a vacancy on the board to be filled for the unexpired term.

(c) Requires the board to adopt rules in accordance with orders adopted under this subchapter. Provides that board meetings are held at the chair's call and at other times as determined by the board. Authorizes the chair or acting chair to administer oaths and compel witnesses attendance, and requires all board meetings to be open to the public.

(d) Requires the board to keep minutes of its proceedings indicating each member's vote on each question, a member's absence, or a member's failure to vote and records of its examinations and other official actions. Requires such minutes and records to be filed immediately in the board's office, and provides that they are public records.

Sec. 231.269. AUTHORITY OF BOARD. (a) Sets forth the authorized actions of the board.

(b) Authorizes the board, in exercising authority under Subsection (a)(1) (regarding the authority to hear and decide an appeal alleging error in an action taken by an administrative official (official) in enforcing this subchapter), to reverse, affirm, or modify, in whole or in part, an official's order, requirement, decision, or determination from which an appeal is taken and to make the correct action. Provides that, for that purpose, the board has the same authority as the official.

(c) Requires the concurring vote of four members of the board to take certain actions set forth in this subsection regarding the appeal of an action taken by an official.

Sec. 231.270. APPEAL TO BOARD. (a) Sets forth the persons authorized to appeal a decision made by an official to the board.

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

(c) Provides that an appeal stays all proceedings in furtherance of an appealed action unless the official from whom the appeal is taken certifies to the board in writing facts supporting the official's opinion that a stay would cause imminent peril to life or property. Authorizes the proceedings in such a case to be stayed only by a board restraining order 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, to give public notice of the hearing, and give due notice to the interested parties. Authorizes a party to appear at the appeal hearing in person, by agent, or by attorney. Requires the board to decide the appeal within a reasonable time.

Sec. 231.271. JUDICIAL REVIEW OF BOARD DECISION. (a) Authorizes certain persons set forth in this subsection to present to a court of record a verified petition stating that the board's decision of adjustment is illegal in whole or part and specifying the grounds of the illegality.

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

(c) Authorizes the court, on presentation of the petition, to grant a writ of certiorari to the board in order to review the appealed decision. Requires the writ to indicate the time within which the board's return is required to be made and served on the petitioner's attorney, requiring it to be after 10 days. Authorizes the court to extend that time. Provides that the granting of the writ does not stay the appeal proceedings, but authorizes the court, on application and after notice to the board, to grant a restraining order if due cause is shown.

(d) Requires the board's return to be verified and to concisely state any pertinent and material facts showing the grounds of the appealed decision. Provides that the board is not required to return the original documents on which it acted, but is authorized to return certified or sworn copies of the documents, in part or in full, as required by the writ.

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

(f) Authorizes the court to reverse, affirm, or modify, in whole or in part, the appealed decision. 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. 231.272. ENFORCEMENT; PENALTY; REMEDIES. (a) Authorizes the commissioners court to adopt orders enforcing this subchapter or an order or a regulation adopted under this subchapter.

(b) Provides that a person commits an misdemeanor offense punishable by fine, imprisonment, or both, as provided by the commissioners court's order, if the person violates this subchapter or an order or a regulation adopted under this subchapter. Requires the trial to be in a county court.

(c) Provides that such a violator is liable to the county for a civil penalty in an amount not exceeding an amount provided by the commissioners court's order. Authorizes the appropriate attorney to file a civil action to recover the penalty. Requires the court to consider the seriousness of the violation in determining the penalty amount. Requires a penalty recovered under this subsection to be deposited in the county treasury to the credit of the general fund.

(d) Authorizes the appropriate county authority to institute appropriate actions to pursue certain remedial objectives set forth in this subsection, in addition to other remedies, if a building, land, or other structure is erected, constructed, reconstructed, altered, repaired, razed, converted, maintained, or otherwise used in violation of this subchapter or an order or a regulation adopted under this subchapter.

Sec. 231.273. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) Provides that a regulation adopted under this subchapter controls if it requires a lower building height or fewer number of stories for a building, requires a greater percentage of a lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation. Provides that the other statute, local order, or regulation controls if it imposes higher standards.

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

Sec. 231.274. CUMULATIVE AUTHORITY. (a) Provides that the powers granted under this subchapter are cumulative of and in addition to the powers granted to counties under this chapter or other law regulating the subdivision of land.

(b) Provides that the powers granted under this subchapter do not affect or impair the commissioners court's authority to adopt orders or regulations under any other law.

SECTION 2. Effective date: upon passage or September 1, 2007.