

CHAPTER 523

H.B. No. 46

An Act relating to the authority of a county to adopt zoning and building construction ordinances for the areas around certain lakes; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

(1) "Lake" means an inland body of standing water (including a reservoir formed by impounding the water of a river or creek but not including an impoundment of saltwater or brackish water) that:

(A) has a storage capacity of more than one million acre-feet; and

(B) is owned in whole or part by a political subdivision of the state, including a special-purpose district or authority.

(2) "Lake area" means the area within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage capacity.

SECTION 2. LAKES COVERED. This Act applies only to a lake that has a construction completion date after the effective date of this Act.

SECTION 3. LOCAL OPTION ELECTION. (a) This Act applies only to a county in which a majority of the voters voting on the question approve this Act's grant of authority to the county. The commissioners court shall order and hold an election if the court is petitioned to do so under Section 4 of this Act. The commissioners court may not order and hold the election on its own motion.

(b) If an election is held, the ballot shall be printed to provide for voting for or against the proposition: "Granting authority to the county to adopt zoning and building construction ordinances for the areas around lakes." Each qualified voter of the county is entitled to vote in the election.

SECTION 4. PETITION AND VERIFICATION. (a) A petition for a local option election must have a statement that is worded substantially as follows and that is located on each page of the petition preceding the space reserved for signatures: "This petition is to request that an election be held in (name of county) to authorize the county to adopt zoning and building construction ordinances for the areas around lakes."

(b) A petition is valid only if it is signed by registered voters of the county in a number equal to at least 10 percent of the number of votes cast for governor in the county in the most recent general election at which that office was filled.

(c) Each signer must enter beside the signature the date on which the petition is signed. A signature may not be counted if the signer fails to do so or if the date of signing is earlier than the 90th day before the date the petition is submitted to the commissioners court.

(d) The petition must also contain the current voter registration number, printed name, and residence address, including zip code, for each signer.

(e) Not later than the fifth day after the date a petition is received in the office of the commissioners court, the commissioners court shall submit the petition for verification to the county clerk.

(f) The county clerk shall determine whether the petition meets the requirements imposed by this section. Not later than the 30th day after the date the petition is submitted to the county clerk for verification, the county clerk shall certify in writing to the commissioners court whether the petition is valid or invalid. If the county clerk determines that the petition is invalid, the clerk shall state the reasons for that determination.

(g) If the county clerk certifies that a petition is valid, the commissioners court shall order the election to be held on the next uniform election date authorized by Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), that occurs after the 35th day after the day the court receives the county clerk's certification.

SECTION 5. GRANT OF AUTHORITY. (a) To protect the public health, safety, welfare, and morals, the commissioners court may adopt ordinances that are not inconsistent with state law, that apply only to the lake area in the county, that do not regulate the use, design, or emplacement of public utility buildings, land, or facilities, and that regulate:

(1) the height, number of stories, or size of buildings in the area;

(2) the percentage of a lot in the area that may be occupied;

(3) the size of yards and other spaces in the area;

(4) the density of population in the area;

(5) the location and use of buildings and land in the area for commercial, industrial, residential, or other purposes; and

(6) the standards for the construction of buildings in the area.

(b) The commissioners court may adopt a proposed ordinance only after the court receives a lake planning commission's report prepared under Section 6(d) of this Act about the proposed ordinance.

(c) The commissioners court may not regulate new manufactured or industrialized housing, constructed to preemptive state or federal building standards, for siting or zoning purposes in any manner that is different from regulation of site-built housing.

SECTION 6. LAKE PLANNING COMMISSION. (a) A lake planning commission is established for each lake area in the county.

(b) A planning commission for a lake area in the county is composed of the following members:

(1) three residents of the county who own land in the county and who are appointed by the county judge of the county;

(2) one resident of each commissioners precinct in the county who is appointed by the county commissioner for that precinct; and

(3) the mayor of each incorporated city or town that includes any part of that lake area in the county.

(c) Except for the initial appointed members, the appointed members of a planning commission are appointed for terms of two years expiring on February 1 of each odd-numbered year. The initial appointed members are appointed for terms expiring on the first February 1 of an odd-numbered year occurring after the date of their appointment.

(d) At the request of the commissioners court, a planning commission shall, or at its own initiative a commission may, conduct studies of the lake area over which it has jurisdiction and prepare reports in which the commission advises the commissioners court about the boundaries of the original zoned districts and other regulations for the lake area and about changes to the districts or regulations.

(e) Before a planning commission may prepare a report, the commission shall hold a public hearing at which members of the public may present testimony about any subject that will be included in the commission's report. The commission shall give notice of the hearing as the commissioners court may require. Also, if a report will advise the commissioners court about a proposed action regarding the zoning classification of a parcel of land, the commission shall send a written notice to each landowner, as listed on the county tax rolls, whose land is directly affected by the proposed action or whose land is located within 200 feet of land directly affected. The notice shall inform the landowner of the time and place of the public hearing at which the landowner may present testimony to the commission about the proposed action and shall be deposited in the United States mail before the 10th day before the day of the hearing.

(f) A planning commission annually shall elect a chairman and vice-chairman from its members. The commissioners court shall employ staff for the use of a commission in performing its functions.

(g) The commissioners court may assign a planning commission other duties that the court considers appropriate and that are not inconsistent with this Act. The commissioners court shall adopt rules governing the operations of a commission.

SECTION 7. SPECIAL EXCEPTIONS. (a) The commissioners court may grant a special exception to an ordinance adopted under this Act if the court finds that the grant of the special exception will not be contrary to the public interest and that a literal enforcement of the ordinance would result in an unnecessary hardship.

(b) The commissioners court shall adopt procedures governing the application for, notice and hearings about, and other matters relating to, the grant of a special exception.

SECTION 8. CONFLICT WITH ORDINANCE. If an ordinance adopted under this Act conflicts with an action of a special purpose district or authority that owns the lake or reservoir or an incorporated city or town that applies to a lake area in the county, the municipal or special purpose district action prevails to the extent of the conflict.

SECTION 9. RULES. The commissioners court shall adopt rules necessary to carry out this Act.

SECTION 10. ENFORCEMENT. (a) The county attorney or other prosecuting attorney representing the county in the district court may file an action to enjoin the violation or threatened violation of an ordinance adopted under this Act. The court may grant appropriate relief.

(b) If an ordinance adopted under this Act defines an offense, the offense is a Class C misdemeanor. The offense is prosecuted in the same manner as an offense defined by state law.

SECTION 11. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 7, 1985, by the following vote: Yeas 122, Nays 10, 2 present, not voting; House concurred in Senate amendments to H.B. No. 46 on May

26, 1985, by the following vote: Yeas 145, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 24, 1985, by the following vote: Yeas 25, Nays 2.

Approved: June 12, 1985

Effective: Immediately