

CHAPTER 969

S.B. No. 753

AN ACT

relating to the authority of a county to adopt zoning and building construction ordinances for the areas around Lake Tawakoni and Lake Ray Roberts; providing a criminal penalty.

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

SECTION 1. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

- (1) those parts of a county that surround Lake Tawakoni and Lake Ray Roberts will be frequented for recreational purposes by residents from every part of the state;
- (2) orderly development and use of the area is of concern to the entire state; and
- (3) buildings in the area that will be frequented for resort or recreational purposes will tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this Act are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging recreation.

SECTION 2. DEFINITION. In this Act, "lake area" means the area within 5,000 feet of the project boundary line for Lake Tawakoni or Lake Ray Roberts, which is defined as the 447 foot elevation take line for Lake Tawakoni and the 645 foot elevation take line for Lake Ray Roberts.

SECTION 3. APPLICATION TO LAKE TAWAKONI AND LAKE RAY ROBERTS. This Act applies only to Lake Tawakoni and Lake Ray Roberts.

SECTION 4. 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 5 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 in the county around (name of the appropriate lake)." Each qualified voter of each affected precinct is entitled to vote in the election.

SECTION 5. 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 in the county around (name of the appropriate lake)."

(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 each affected precinct in the most recent gubernatorial general election.

(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 enter the date 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 authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the date the court receives the county clerk's certification and that allows for compliance with the time requirements prescribed by Chapter 3, Election Code.

SECTION 6. GRANT OF AUTHORITY. (a) The commissioners court may adopt ordinances that are not inconsistent with state law, that apply only to the lake area in the county, 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 the lake planning commission's report prepared under Subsection (d) of Section 7 of this Act about the proposed ordinance.

(c) Notwithstanding any other provisions of this Act, counties shall have no authority to adopt ordinances in conflict with Article 5.43-4, Insurance Code, or any rule or rules promulgated thereunder. An ordinance adopted in conflict with said code provisions is null and void.

(d) Nothing in this Act shall be construed to authorize a commissioners court to issue any order or regulation in conflict with a city ordinance or state agency rule or regulation pertaining to the regulation of billboards or outdoor advertising. An order or regulation issued in conflict with a city ordinance or state agency rule or regulation shall be null and void.

(e) 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 7. LAKE PLANNING COMMISSION. (a) A lake planning commission is established for the lake area in the county.

(b) The planning commission is composed of:

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

(2) one resident of each commissioners precinct that is affected who is appointed by the county commissioner for that precinct; if only one precinct is affected, the commissioner shall appoint two; and

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

(c) Except for the initial appointed members, the appointed members of the 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, the planning commission shall, on its own initiative the commission may, conduct studies of the lake area in the county 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 the planning commission may prepare a report, the commission must 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 must 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 must 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 must 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 must be deposited in the United States mail before the 10th day before the date of the hearing.

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

(g) The commissioners court may assign the 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 the commission.

SECTION 8. SPECIAL EXCEPTIONS. (a) The planning commission may recommend, subject to approval by the commissioners court, a special exception to an ordinance adopted under this Act if the commission 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 planning commission shall adopt procedures governing the application for, notice and hearings about, and other matters relating to the grant of a special exception.

SECTION 9. CONFLICT BETWEEN ORDINANCES. If an ordinance adopted under this Act conflicts with an action of an incorporated city or town that applies to the lake area in the county, the municipal action prevails to the extent of the conflict, provided that the affected lake area is within the limits of the incorporated city or town.

SECTION 10. RULES. The commissioners court shall adopt rules necessary to carry out this Act.

SECTION 11. ENFORCEMENT. (a) The county attorney or other prosecuting attorney representing the county in the district court is entitled to appropriate injunctive relief to prevent a violation or threatened violation of an ordinance adopted under this Act from continuing or occurring.

(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 12. 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 the Senate on April 15, 1987, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on June 1, 1987, by the following vote: Yeas 31, Nays 0. Passed the House, with amendments, on May 29, 1987, by the following vote: Yeas 147, Nays 0, one present not voting.

Approved June 19, 1987.

Effective June 19, 1987.