RESOLUTION NO. 20214

A RESOLUTION OF THE COMMISSIONERS COURT OF HUNT COUNTY, TEXAS SUPPORTING THE ENACTMENT OF PROPOSED BILL 3, WHICH WOULD GRANT COUNTIES EXPRESS AUTHORITY TO ENTER INTO AND ENFORCE RECORDED DEVELOPMENT AGREEMENTS CONCERNING CERTAIN HIGH-IMPACT DEVELOPMENT, INCLUDING DATA CENTERS, IN THE UNINCORPORATED AREA OF THE COUNTY.

WHEREAS, counties confronting high-impact development seek to negotiate voluntary commitments concerning roads, drainage, fire protection, noise, water reporting, and decommissioning, but county contract authority for such agreements rests on uncertain legal ground, and the Legislature has provided municipalities — but not counties — express development-agreement authority enforceable through a limited waiver of immunity under Section 212.172, Local Government Code; and

WHEREAS, Proposed Bill 3 would place county development agreements on sound statutory footing: agreements in writing, adopted after public hearing, recorded in the deed records so their terms run with the land and bind successor owners, with disclosure of true ownership, statutory term limits, express prohibition of coerced agreements, bounded regulatory-certainty terms that operate by force of statute, and validation of conforming agreements negotiated before enactment; and

WHEREAS, the Commissioners Court finds that enforceable, transparent, and voluntary development agreements benefit counties, residents, and developers alike, and that enactment of Proposed Bill 3 is in the best interest of the residents of this County;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF HUNT COUNTY, TEXAS, THAT:

1. The Commissioners Court supports and endorses the enactment of Proposed Bill 3 by the 90th Texas Legislature.

2. The Court respectfully requests the County's State Senator, the Honorable Angela Paxton and the County's State Representative, the Honorable Brent Money to author, sponsor, co-sponsor, and support Proposed Bill 3, and to work toward its passage.

3. The Court directs that certified copies of this Resolution be transmitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the County's state legislative delegation, the standing committees of the Senate and House with primary jurisdiction over the bill, and the Texas Association of Counties.

4. This Resolution takes effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the Commissioners Court of Hunt County, Texas, at a duly posted meeting at which a quorum was present and voting, on this the 28 day of July, 2024.

FILED FOR RECORD
at 2:00 o'clock P M

JUL 28 2026

BECKY LANDRUM
County Clerk, Hunt County, Tex.
by

County Judge

ATTEST:

County Clerk

By: ______________________________ H.B./S.B. No. ______
(90th Legislature, Regular Session)

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a county to enter into and enforce development agreements concerning certain high-impact development, including data centers, in the unincorporated area of the county; providing a limited waiver of governmental immunity.

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

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

(1) counties confront the rapid siting and construction of data centers and other high-impact development in their unincorporated areas with few regulatory tools, because a county may exercise only those powers expressly granted by the legislature;

(2) the legislature has granted counties authority to contract in furtherance of economic development, including under Section 381.004, Local Government Code, and Chapter 312, Tax Code, and has granted municipalities express authority under Section 212.172, Local Government Code, to enter into development agreements concerning land in a municipality's extraterritorial jurisdiction, enforceable through a limited waiver of governmental immunity, but no statute expressly authorizes a county to enter into and enforce an agreement securing commitments from a developer to mitigate the impacts of high-impact development;

(3) enforceable, recorded, and publicly adopted development agreements benefit counties, residents, and developers alike, by providing developers a measure of certainty and providing counties enforceable commitments concerning roads, drainage, fire protection, noise, water use reporting, and decommissioning; and

(4) express statutory authority, together with safeguards ensuring that agreements are voluntary, transparent, proportionate, and judicially enforceable, will place county development agreements on a sound legal footing.

(b) The purpose of this Act is to grant counties express authority to enter into development agreements concerning certain high-impact development in the unincorporated area of the county, to prescribe safeguards for those agreements, and to provide for their enforcement through a limited waiver of governmental immunity.

SECTION 2. Subtitle B, Title 7, Local Government Code, is amended by adding Chapter 239 to read as follows:

CHAPTER 239. COUNTY DEVELOPMENT AGREEMENTS CONCERNING

CERTAIN HIGH-IMPACT DEVELOPMENT IN UNINCORPORATED AREAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 239.001. DEFINITIONS. In this chapter:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court, and includes the bringing of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the development agreement for the arbitration proceeding.

(2) "Commissioners court" means the commissioners court of a county.

(3) "Covered development" means development described by Section 239.003.

(4) "Data center" means a facility, or a group of facilities at a single location or on contiguous or nearby parcels under common ownership or control, used primarily to house computer systems, servers, and associated equipment for the processing, storage, management, or distribution of data, including a facility used primarily for cryptocurrency mining or other high-density computing.

(5) "Development agreement" means a written contract entered into under this chapter.

(6) "Owner" means a person that owns a legal or equitable interest in the land on which a covered development is or is proposed to be located, including a person holding a contractual or option right to acquire the land, and includes a person that proposes to develop or operate the covered development and that joins in the agreement with the written consent of the owner of the land.

(7) "Unincorporated area" means the area of a county that is outside the corporate boundaries of a municipality.

Sec. 239.002. APPLICABILITY. (a) This chapter applies to each county.

(b) A development agreement may concern only covered development located or proposed to be located wholly or partly in the unincorporated area of the county.

(c) If the land is located in more than one county, each county in which any part of the land is located may enter into a development agreement under this chapter, and two or more counties may enter into a joint development agreement or may coordinate under Chapter 791, Government Code.

Sec. 239.003. COVERED DEVELOPMENT. In this chapter, "covered development" means development in the unincorporated area of a county that is:

(1) a data center, without regard to its electrical or water demand; or

(2) other commercial or industrial development that, as proposed:

> (A) will require 75 megawatts or more of new electrical load at the point of interconnection, determined by aggregating the load of facilities that are part of a common development or that are located on contiguous parcels under common ownership or control; or
>
> (B) will require 1,000,000 gallons or more per day of new consumptive water use.

Sec. 239.004. RELATIONSHIP TO OTHER LAW; LIMITATIONS. (a) The authority granted by this chapter is in addition to the authority of a county under other law, including Section 381.004 of this code, Chapter 312, Tax Code, Chapter 242 of this code, and Chapter 791, Government Code.

(b) This chapter does not authorize a county to require a person to enter into a development agreement, and a county may not condition the approval of a development application, or the performance of a duty imposed on the county by law, on a person's agreement to enter into a development agreement.

(c) A development agreement is not a zoning regulation, and this chapter does not authorize a county to adopt zoning regulations.

(d) A development agreement may include a voluntary commitment by the owner concerning a matter the county could not regulate directly, but may not include a term that conflicts with, or purports to modify the owner's obligations under, a requirement of the Public Utility Commission of Texas, an independent organization certified under Section 39.151, Utilities Code, the Texas Commission on Environmental Quality, the Texas Water Development Board, a groundwater conservation district, or other state or federal law.

(e) A development agreement may not waive, limit, or restrict:

> (1) the authority of the county to adopt or enforce an order or regulation of general application, except as a term described by Section 239.053 provides;
>
> (2) the authority of the county or another local government to enforce state law, including the authority to bring an action under Section 7.351, Water Code;
>
> (3) the county's administration of floodplain management requirements necessary for participation in the National Flood Insurance Program; or
>
> (4) the rights of a person that is not a party to the agreement.

SUBCHAPTER B. AUTHORITY; TERMS; PROCEDURE

Sec. 239.051. AUTHORITY TO ENTER INTO DEVELOPMENT AGREEMENT. The commissioners court of a county may make a written contract with an owner concerning a covered development, in the manner and subject to the limitations provided by this chapter.

Sec. 239.052. PERMISSIBLE TERMS. A development agreement may provide for one or more of the following, without limitation on other lawful terms:

(1) the construction, improvement, maintenance, and repair of county roads and bridges affected by the covered development, including pre-construction and post-construction condition surveys, designated haul routes, compliance with weight limitations, and security for performance in the form of a bond, letter of credit, escrow, or guaranty;

(2) the design, construction, and maintenance of drainage and stormwater facilities, and engineering review of site drainage at the owner's expense;

(3) setbacks, buffers, berms, screening, and exterior lighting standards, including shielding and full-cutoff fixture requirements, in addition to any otherwise applicable requirement;

(4) limits on sound levels at receiving property lines, stated in numeric terms with a specified measurement protocol, and provisions for monitoring and complaint response;

(5) fire and life safety measures, including compliance with specified fire and energy storage safety standards, emergency access, water supply for fire suppression, contributions of equipment, training, or funding to the county, an emergency services district, or a volunteer fire department, and reasonable inspection access;

(6) reporting of water consumption, water conservation measures, and monitoring of, and mitigation for effects on, water wells on neighboring land;

(7) construction management measures, including hours of construction, dust control, staging, and workforce traffic management;

(8) a decommissioning plan for the covered development, standards for removal and site restoration, and financial assurance for decommissioning payable to or for the benefit of the county;

(9) reimbursement of the county's reasonable costs of review, inspection, and retention of third-party experts, and other payments consistent with the Texas Constitution;

(10) reporting, verification, and rights of entry on reasonable notice consistent with law;

(11) the designation of an emergency services district, municipality, or other political subdivision as a third-party beneficiary of one or more specified terms;

(12) the term of the agreement, renewal, amendment, assignment on stated conditions, notice and opportunity to cure, remedies for default, including reasonable liquidated damages for specified breaches, and dispute resolution procedures, including arbitration; and

(13) commitments of the county, including expedited processing of county applications, construction or cost-sharing of road improvements, and expressions of support for identified applications of the owner, subject to Section 239.053, to the limitations of this chapter, and to the availability of appropriated funds.

Sec. 239.053. REGULATORY-CERTAINTY TERMS. (a) A development agreement may provide that a specified county order or regulation adopted after the effective date of the agreement, including a county order suspending the acceptance, processing, or approval of development applications, does not apply to the covered development during a specified period.

(b) A term described by Subsection (a) is valid only if:

(1) the specified period does not exceed 10 years from the effective date of the agreement;

(2) the agreement contains enforceable commitments of the owner under Section 239.052 addressing at least three of the following subjects: roads and bridges; drainage; fire and life safety; sound levels; water use reporting; and decommissioning with financial assurance; and

(3) the agreement is adopted in compliance with Section 239.055.

(c) A term described by Subsection (a) does not apply to:

(1) an order or regulation necessary to address an imminent threat to public health or safety;

(2) floodplain management requirements necessary for participation in the National Flood Insurance Program; or

(3) a requirement of state or federal law.

(d) A term described by Subsection (a) that satisfies Subsection (b) operates, by force of this section and not by contract alone, as a statutory limitation on the application of the specified order or regulation to the covered development during the specified period.

Sec. 239.054. TERM. (a) The initial term of a development agreement may not exceed 15 years.

(b) A development agreement may be renewed or extended by written amendment adopted in compliance with Section 239.055, except that the total duration of the agreement, including all renewals and extensions, may not exceed 30 years.

(c) Notwithstanding Subsections (a) and (b), a term providing for decommissioning, site restoration, financial assurance, or the maintenance and repair of county roads and bridges may remain in effect for the period the covered development exists.

Sec. 239.055. PROCEDURE; DISCLOSURE TO OWNER; TRANSPARENCY. (a) A commissioners court may approve a development agreement or a material amendment to a development agreement only by order adopted at an open meeting held after a public hearing. Notice of the hearing must be published in a newspaper of general circulation in the county and posted on the county's Internet website not later than the 15th day before the date of the hearing.

(b) Before executing a development agreement, the county must provide the owner a written disclosure that includes a statement that the owner is not required to enter into the agreement, a general description of the county's authority with respect to the covered development in the absence of an agreement, and a statement regarding the county's waiver of immunity to suit under Section 239.101. If the disclosure is not provided, the owner may void the agreement by written notice to the county given not later than the 180th day after the date the agreement is executed; after that date, the failure to provide the disclosure does not affect the validity of the agreement.

(c) A development agreement and each amendment to a development agreement is public information, may not be made confidential by its terms, and shall be posted on the county's Internet website not later than the 10th day after the date of execution.

Sec. 239.056. RECORDING; BINDING EFFECT. (a) A development agreement and each amendment to a development agreement shall be recorded in the real property records of each county in which any part of the land subject to the agreement is located, not later than the 30th day after the date of execution.

(b) A development agreement binds and benefits the parties and their successors and assigns, and a term of the agreement that burdens or benefits the land constitutes a covenant running with the land.

(c) A recorded development agreement is notice to each subsequent purchaser or holder of an interest in the land of the terms of the agreement.

Sec. 239.057. AMENDMENT AND TERMINATION. A development agreement may be amended or terminated only by written agreement of the parties. A material amendment must be adopted in the manner provided by Section 239.055. The agreement may authorize administrative amendments of a nonmaterial nature to be approved in the manner stated in the agreement.

SUBCHAPTER C. ENFORCEMENT

Sec. 239.101. ENFORCEMENT; LIMITED WAIVER OF IMMUNITY. (a) A development agreement is enforceable by the parties and, to the extent provided by the agreement, by a political subdivision designated under Section 239.052(11) as a third-party beneficiary of specified terms.

(b) A county that enters into a development agreement waives immunity from suit for the purpose of adjudicating a claim for breach of the agreement.

(c) In an adjudication brought against a county for breach of a development agreement, the relief awarded may include only actual damages, specific performance, or injunctive relief, and may not include consequential damages, exemplary damages, or, except as expressly provided by the agreement on a mutual basis, attorney's fees.

(d) The waiver provided by this section extends only to a claim for breach of the development agreement and does not waive immunity for any other claim.

Sec. 239.102. REMEDIES AGAINST OWNER. In an adjudication brought by a county or a designated third-party beneficiary for breach of a development agreement, the court or arbitrator may award actual damages, liquidated damages as provided by the agreement, specific performance, and injunctive relief, and may order the application of any security or financial assurance as provided by the agreement. Except as the agreement provides for arbitration, venue is in a district court of a county in which any part of the land is located.

Sec. 239.103. NO OTHER THIRD-PARTY RIGHTS. Except as provided by Section 239.101(a), this chapter does not create rights in a person that is not a party to a development agreement.

SECTION 3. (a) Chapter 239, Local Government Code, as added by this Act, applies to a development agreement entered into on or after the effective date of this Act.

(b) An agreement between a county and an owner concerning covered development that was entered into before the effective date of this Act and that complies with Chapter 239, Local Government Code, as added by this Act, is validated, is enforceable, and may be adjudicated subject to the terms and conditions of that chapter.

(c) Subsection (b) does not apply to an agreement that is the subject of litigation pending on the effective date of this Act.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.