For decades, counties pleaded with the Texas Legislature to give them more authority to control growth and protect the quality of life in rapidly urbanizing rural areas.

A law enacted by the last Legislature may do that and more, says Jeff Barton, a consultant and former Hays County commissioner.

Senate Bill 873 was designed to give larger urban counties and those bordering them the authority to require developers to grant them more rights of way and adopt minimum requirements for lot frontages on county roads.

But the law contains language that also could be used to justify everything from fire codes to tree ordinances, which are powers traditionally denied to counties in Texas, said Barton, a consultant with Doucet & Associates in Austin.

That firm recently prepared a report on the bill for the Conference of Urban Counties.

"I think it is a revolutionary, not an evolutionary, change," Barton said. "It is really a significant step. If counties use it wisely they can really make this a better state in 10 years, a little greener, with a little saner places to live in the suburbs."

Barton bases his conclusion on a single sentence in the bill, which gives county commissioners the power to "adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county."

That's the same wording as part of the Texas Local Government Code that gives cities the power to regulate their extra-territorial jurisdiction. It should give the same powers to about 30 counties – including Bexar, Comal, Guadalupe, Hays, Wilson, Cameron, Hidalgo and Webb – said Barton, who served as a Hays County commissioner from 1992 to 1998.

The new law applies to counties with a population of 700,000 or more, those adjacent to them and within the same metropolitan statistical area, or those with a population of more than 150,000 on the Mexican border.

The law specifically denies counties the right to charge impact fees to developers.
or to adopt zoning regulations, but it does let them require site development permits and drainage control and runoff water quality infrastructure, limit impervious cover, protect trees and environmental features, control signage, enact fire codes and more, Barton said.

The implied powers are largely untested. Any county that tries to use them should be prepared for a court fight, said Paul Sugg, legislative liaison for the Texas Association of Counties.

"It is broad language," Sugg said. "This is completely new territory for counties to operate under that kind of language and no one is quite sure what it means.

"Time will tell how significant (the law) is as counties take these steps and developers challenge them," he said.

The Texas Association of Builders takes a more narrow view of what powers SB 873 gives to the counties.

"The builders will oppose any effort to strengthen the language currently in place," said Jerry Valdez, an association spokesman. "Any effort to strengthen the law would be viewed by builders around the state as too stringent and detrimental to the state."

Others argue that the intent of the legislation was not as broad as Barton claims.

"That's a pretty good stretch," said Rob Edwards, legislative aide to Sen. Jon Lindsay, R-Houston, the bill's author, when told of Barton's interpretation of the law.

"I'm not sure some of the members who voted for it would necessarily agree with that," he said.

Many county officials are just starting to realize the implication of SB 873, Barton said, and few have started exercising their new powers. It is partly a case of "the dog catching the car," he added.

"They've been trying to get these powers for years and now that they have it, they don't know what to do with it," he said.

Comal County became one of the few counties to test the new law by adopting new subdivision regulations this year requiring developers to install ponds to ensure no more storm water runs off property after development than before.

Sugg said the county is probably on firm legal ground there.

"Given their recent bouts of flooding, I would say those rules go a long way toward protecting the health, safety and welfare of the county," he said.
Hays County Commissioner Russ Molenaar, who is on a committee the county formed to study the law, said he is interested in stormwater runoff rules and impervious cover regulations because flooding does so much damage in the county.

Hays Commissioner Bill Burnett wants to look at water quality rules to protect aquifers.

"It all depends on how far do you want to step out," he said. "How far do you want to test it?"

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