

BILL ANALYSIS

S.B. 1360
By: Whitmire
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Chapter 241, Local Government Code, provides for zoning of two different types of areas around airports – “airport hazard areas” and “controlled compatible land use areas.” A “controlled compatible land use area” includes an area outside of airport boundaries and within a rectangle bounded by lines located no farther than 1.5 miles from the centerline of an “instrument runway” or “primary runway” and located no more than 5 miles from each end of the paved surface of an instrument or primary runway. (The term “primary runway” includes both existing and planned runways.) Compatible land use means the use of land adjacent to an airport that does not endanger the health, safety or welfare of the owners, occupants or users of the land because of levels of noise or vibrations or the risk of personal injury or property damage created by the operations of the airport, including the taking off and landing of aircraft.

The federal government has invested hundreds of millions of dollars into George Bush Intercontinental Airport (IAH) via the current Airport Improvement Program grant process. Lesser amounts of federal grants have also been invested at William P. Hobby Airport and Ellington Field. Each federal grant contains a number of grant assurances based in federal statute. The steady encroachment of incompatible residential development near IAH has reached a level where meaningful impacts to the economic vitality of the airport and the quality of life for encroaching incompatible land users must be addressed. Current state law allows zoning around airports to ensure compatible land uses. Since the Houston Airport System is considering additional capacity enhancements to IAH to accommodate growing aviation demand, the federal government is insisting upon the adoption of land use control measures to protect its investment in airport facilities both existing and new, consistent with the assurances.

However, the City of Houston’s Charter requires that if the City Council adopts a zoning ordinance, it must wait six months and then hold a binding citywide referendum. While courts have held that the word “zoning” in such a context means comprehensive city-wide zoning, this legislation would clarify that Chapter 241, Local Government Code, preempts the relevant part of the City of Houston’s Charter. Any proposed zoning ordinance would not be applied citywide but only around the perimeter of the three Houston airports, consistent with Chapter 241. Accordingly, the City of Houston would not have to conduct a citywide referendum after it adopts a “controlled compatible land use areas” zoning ordinance.

The purpose of S.B. 1360 is to exempt from the provisions of Chapter 241, Local Government Code, procedural requirements adopted or applied by a political subdivision that imposes a waiting period before the adoption of a zoning regulation or requires the submission of a zoning regulation to a binding referendum election.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

This bill amends Subsection 211.015(c), Local Government Code, to provide that this amended Subsection (c) does not apply to the adoption of airport zoning regulations under Chapter 241, Local Government Code. (Subsection (c) generally prohibits the provisions in Chapter 211, Local Government Code -- regarding Municipal Zoning Authority -- from being construed to prohibit the adoption or application of any charter provision of a home-rule municipality that

requires a waiting period prior to the adoption of zoning regulations or the submission of the initial adoption of zoning regulations to a binding referendum election, or both, provided that all procedural requirements of this chapter for the adoption of the zoning regulation are otherwise complied with). This bill amends Subsection 211.015(f), Local Government Code, to provide that this section does not authorize the repeal of an ordinance approving airport zoning regulations adopted under Chapter 241, Local Government Code. Makes conforming changes.

This bill adds the new Subsection 241.017(d), Local Government Code, that provides that a procedural requirement adopted or applied by a political subdivision, including any requirement in the charter of a home-rule municipality, that imposes a waiting period before the adoption of a zoning regulation or requires the submission of a zoning regulation to a binding referendum election does not apply to Chapter 241, Local Government Code.

Provides for an effective date of this Act (upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007).

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.