

## **BILL ANALYSIS**

Senate Research Center  
81R12868 PAM-D

S.B. 2100  
By: Wentworth  
S/C on Base Realignment and Closure  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The area that surrounds military installations is frequented for military and national security purposes by residents from many parts of the state and nation. Orderly development, use, and sustainability of the area are of concern to the entire state. Without adequate protection regulations, the area will become congested and be used in ways that interfere with the proper use of the area as a secure location for the continuation of a military establishment.

As proposed, S.B. 2100 authorizes a county that has a population of more than one million and in which more than 80 percent of the population lives in a single municipality or is adjacent to such a county to regulate the development of unincorporated areas located within five miles of the boundary of a military installation.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 231, Local Government Code, by adding Subchapter M, as follows:

#### **SUBCHAPTER M. PROTECTION OF MILITARY INSTALLATIONS**

Sec. 231.271. **LEGISLATIVE FINDINGS; PURPOSE.** (a) Provides that the legislature finds that the area that surrounds the military installations will be frequented for military and national security purposes by residents from many parts of the state and nation; orderly development, use, and sustainability of the area is of concern to the entire state; and without adequate protection regulations, the area will tend to become congested and to be used in ways that interfere with the proper use of the area as a secure location for the continuation of a military establishment.

(b) Provides that the powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare; protecting and preserving places and areas of military and national security importance and significance; and encouraging state and national security.

Sec. 231.272. **ELIGIBLE COUNTIES.** Provides that this subchapter applies only to a county that has a population of more than one million and in which more than 80 percent of the population lives in a single municipality, or is adjacent to such a county.

Sec. 231.273. **PROTECTION REGULATIONS AND REQUIREMENTS.** (a) Authorizes, in an unincorporated area located within five miles of the boundary of a military installation, the commissioners court of the county that contains the area to:

(1) regulate the platting and clearing of a tract of land larger than two acres as provided by Subsection (b) if clearing more than 20 percent of the trees on the tract of land is proposed or the tract of land contains more than two acres indentified as a karst zone under a draft plan prepared by the United States Fish and Wildlife Service;

(2) require a person proposing to develop a tract of land in the area to provide notice to and opportunity for comment by commanders of affected military installations; and

(3) require a person selling a tract of land in the area to provide notice to prospective buyers of the land relating to potential noise and dust problems that could result from locating in close proximity to an active military installation.

(b) Requires a commissioners court adopting a regulation under Subsection (a)(1) to require a person, before submitting a plat application or clearing a tract of land, to conduct a survey, if required, as prescribed by Section 231.274, and submit the results of the survey to the Texas Parks and Wildlife Department, the United States Fish and Wildlife Service, and any military installation in the vicinity of the land.

(c) Provides that, notwithstanding Section 245.002 (Uniformity of Requirements), a regulation adopted under this section applies regardless of whether a plan for development of real property or a plat application for a tract of land has been previously filed with a regulatory agency, as that term is defined by Section 245.001 (Definitions).

(d) Provides that, in this section, multiple tracts of land are considered a tract of land for purposes of calculating the amount of acreage under Subsection (a)(1) if the tracts share common boundary, the tracts are owned by the same developer or development corporation, and commencement of development of a subsequent tract begins within two years after the commencement of development of a previously developed tract.

Sec. 231.274. SURVEY. (a) Requires a person to conduct a survey to determine whether the golden-cheeked warbler or an endangered karst invertebrate species uses a tract of land, subject to regulation under Section 231.273(a)(1), as a habitat if the tract contains more than two acres of mature Ashe juniper (cedar) in a natural mix with oak, elm, and other hardwood trees, or more than two acres of the tract is identified as a karst zone under a draft plan prepared by the United State Fish and Wildlife Service and located in a designated Zone 1 or Zone 2 of that plan.

(b) Provides that, for purposes of Subsection (a)(1), mature Ashe junipers are trees that are at least 15 feet tall with a trunk diameter of approximately five inches at four and one-half inches above the ground and have, within a two-acre area, a nearly continuous canopy cover of 35 to 100 percent.

(c) Authorizes the surveys to be conducted by the same person if more than one species survey is required under this section. Authorizes the results of more than one species survey to be submitted as one survey under Section 231.273(b).

(d) Authorizes a survey of a tract of land subject to regulation under Section 231.273(a)(1) previously conducted to be submitted under Section 231.273(b) if the survey was completed before the third anniversary of the date the survey is submitted.

Sec. 231.275. FEE. Authorizes a commissioners court acting under this subchapter to set and collect a fee to cover the costs of administering this subchapter. Prohibits fees imposed under this section from exceeding the cost of administering this subchapter.

Sec. 231.276. COMPLIANCE WITH COUNTY PLAN. Requires a county acting under this subchapter to adopt protection regulations under Section 231.273(a)(1) in accordance with a county plan for growth and development of the county and inform municipalities located in the county regarding the adoption of the regulations.

Sec. 231.277. PROCEDURE GOVERNING ADOPTION OF REGULATIONS. (a) Provides that a protection regulation adopted under Section 231.273(a)(1) is not effective until it is adopted by the commissioners court after a public hearing. Requires the commissioners court to publish notice of the hearing in a newspaper of general circulation in the county before the 15th day before the date of the hearing.

(b) Authorizes the commissioners court to establish or amend a protection regulation only by an order passed by a majority vote of the full membership of the court.

Sec. 231.278. SPECIAL EXCEPTION. (a) Authorizes a person aggrieved by a protection regulation adopted under Section 231.273(a)(1) to petition the commissioners court for a special exception to a protection regulation adopted by the commissioners court.

(b) Requires the commissioners court to adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Sec. 231.279. ENFORCEMENT; PENALTY. (a) Authorizes the commissioners court to adopt orders to enforce this subchapter or an order or protection regulation under Section 231.273(a)(1).

(b) Provides that a person commits an offense if the person violates this subchapter or an order or protection regulation adopted under Section 231.273(a)(1). Provides that an offense under this subsection is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Provides that each day that a violation occurs constitutes a separate offense. Requires the trial to be in the district court.

Sec. 231.280. COOPERATION WITH MUNICIPALITIES. Authorizes the commissioners court by order to enter into agreements with any municipality located in the county to assist in the implementation and enforcement of protection regulations adopted under Section 231.273(a)(1).

Sec. 231.281. CONFLICT WITH OTHER LAWS. (a) Provides that, except as provided by Subsection (b), if a protection regulation adopted under Section 231.273(a)(1) imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under Section 231.273(a)(1) controls. Provides that, if the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

(b) Provides that, to the extent of a conflict between this subchapter and a regulation adopted by a municipal governing body or municipal board or commission located in the county with jurisdiction over airport zoning, the municipal regulation prevails.

(c) Provides that, notwithstanding Section 83.014 (Limitation of Powers), Parks and Wildlife Code, a regulation or requirement adopted under this chapter applies regardless of whether the county is subject to a habitat conservation plan or regional habitat conservation plan.

SECTION 2. Makes application of Section 231.273, Local Government Code, as added by this Act, prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.