

AN ACT

relating to the regulation of land use and the creation of regional military sustainability commissions to ensure compatible development with military installations in certain areas.

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

SECTION 1. Section 397.005, Local Government Code, is amended to read as follows:

Sec. 397.005. CONSULTATION WITH DEFENSE BASE AUTHORITIES: PROPOSED ORDINANCE, RULE, OR PLAN. (a) This subsection applies to a defense community other than a defense community described by Subsection (b). If a defense community determines that an ordinance, rule, or plan proposed by the community may impact a defense base or the military exercise or training activities connected to the base, the defense community shall seek comments and analysis from the defense base authorities concerning the compatibility of the proposed ordinance, rule, or plan with base operations. The defense community shall consider and analyze the comments and analysis before making a final determination relating to the proposed ordinance, rule, or plan.

(b) This subsection applies only to a defense community that includes a municipality with a population of more than 110,000 located in a county with a population of less than 135,000 and that has not adopted airport zoning regulations under Chapter 241. A defense community that proposes to adopt or amend an ordinance,

1 rule, or plan in an area located within eight miles of the boundary
2 line of a defense base or the military exercise or training
3 activities connected to the base shall seek comments and analysis
4 from the defense base authorities concerning the compatibility of
5 the proposed ordinance, rule, or plan with base operations.

6 (c) A defense community described by Subsection (b) shall
7 consider and analyze any comments and analysis received from the
8 defense base authorities under Subsection (b) before making a final
9 determination relating to the proposed ordinance, rule, or plan.
10 The defense community described by Subsection (b) may not make a
11 final determination under this subsection until the 31st day after
12 the date comments and analysis are requested under Subsection (b).

13 SECTION 2. Chapter 397, Local Government Code, is amended
14 by adding Section 397.006 to read as follows:

15 Sec. 397.006. CONSULTATION WITH DEFENSE BASE AUTHORITIES:
16 PROPOSED STRUCTURE. (a) This section applies only to a defense
17 community that includes a municipality with a population of more
18 than 110,000 located in a county with a population of less than
19 135,000 and that has not adopted airport zoning regulations under
20 Chapter 241.

21 (b) On receipt of an application for a permit as described
22 by Section 245.001 for a proposed structure in an area located
23 within eight miles of the boundary line of a defense base or the
24 military exercise or training activities connected to the base, the
25 defense community reviewing the application shall seek comments and
26 analysis from the defense base authorities concerning the
27 compatibility of the proposed structure with base operations.

1 (c) The defense community shall consider and analyze any
2 comments and analysis received from the defense base authorities
3 under Subsection (b) before making a final determination relating
4 to approval of the permit for the proposed structure. The defense
5 community may not make a final determination under this subsection
6 until the earlier of the date comments and analysis are received
7 from the defense base authorities or the fifth business day after
8 the date comments and analysis are requested under Subsection (b).
9 In this subsection, "business day" means any day other than a
10 Saturday, Sunday, or state or federal holiday.

11 (d) This section does not apply if a defense community is
12 required to take immediate action on an application to protect the
13 public health, safety, or welfare of residents of the defense
14 community.

15 SECTION 3. Subtitle C, Title 12, Local Government Code, is
16 amended by adding Chapter 397A to read as follows:

17 CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS

18 RELATING TO CERTAIN MILITARY INSTALLATIONS

19 SUBCHAPTER A. GENERAL PROVISIONS

20 Sec. 397A.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The
21 legislature finds that:

22 (1) the areas that surround military installations
23 will be frequented for military, national security, and
24 international training purposes by residents from many parts of the
25 state, nation, and world;

26 (2) compatible development and use of those areas is
27 of concern to the state and nation; and

1 (3) without adequate regulation, the areas will tend
2 to become incompatible with military missions and will be used in
3 ways that interfere with:

4 (A) the proper continued use of those areas as
5 secure locations for military installations and missions; and

6 (B) the effective operation of the military
7 installations and missions.

8 (b) The powers granted under this chapter are for the
9 purposes of:

10 (1) promoting the public health, safety, and general
11 welfare;

12 (2) protecting and preserving places and areas of
13 military and national security importance and significance;

14 (3) protecting critical military missions and
15 operations related to those missions; and

16 (4) ensuring state and national security.

17 (c) This chapter may not be interpreted to grant regulatory
18 powers to administer Chapter 245 or to amend a protection or benefit
19 provided by Chapter 245.

20 [Sections 397A.002-397A.050 reserved for expansion]

21 SUBCHAPTER B. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS IN

22 POPULOUS AREAS

23 Sec. 397A.051. APPLICABILITY. (a) A regulation or
24 compatible development standard adopted under this subchapter does
25 not apply to:

26 (1) a tract of land used for a single-family residence
27 that is located outside the boundaries of a platted subdivision;

1 (2) a tract of land in agricultural use;

2 (3) an activity or a structure or appurtenance on a
3 tract of land in agricultural use; or

4 (4) an area designated as part of the commission's
5 territory under Section 397A.052 that is subject to the
6 jurisdiction of a regulatory agency as defined by Section 245.001,
7 and that, on the effective date of the Act adding this chapter, is:

8 (A) within the boundaries of a project as defined
9 by Section 245.001 and any revision to the project that has accrued
10 rights under Chapter 245;

11 (B) the subject of a permit as defined by Section
12 245.001 issued by or a permit application filed with a regulatory
13 agency as defined by Section 245.001; or

14 (C) subject to a plan for development or plat
15 application filed with a regulatory agency as defined by Section
16 245.001.

17 (b) In this section:

18 (1) "Agricultural use" means use or activity involving
19 agriculture.

20 (2) "Agriculture" means:

21 (A) cultivating the soil to produce crops for
22 human food, animal feed, seed for planting, or the production of
23 fibers;

24 (B) practicing floriculture, viticulture,
25 silviculture, or horticulture;

26 (C) raising, feeding, or keeping animals for
27 breeding purposes or for the production of food, fiber, leather,

1 pelts, or other tangible products having commercial value;

2 (D) planting cover crops, including cover crops
3 cultivated for transplantation, or leaving land idle for the
4 purpose of participating in a government program or normal crop or
5 livestock rotation procedure; or

6 (E) engaging in wildlife management.

7 (c) A term used in this subchapter that is defined or used in
8 Chapter 245 has the meaning assigned by Chapter 245.

9 Sec. 397A.052. CREATION OF REGIONAL MILITARY
10 SUSTAINABILITY COMMISSION. (a) A county with unincorporated area
11 located within five miles of the boundary line of a military
12 installation, and a municipality with a population of 1.1 million
13 or more and with extraterritorial jurisdiction located within five
14 miles of the boundary line of a military installation, each of
15 which, with respect to the same military installation, constitutes
16 a defense community as defined by Section 397.001, may agree by
17 order, ordinance, or other means to establish and fund a regional
18 military sustainability commission under this subchapter in an area
19 that is located:

20 (1) in the same county as the active military
21 installation; and

22 (2) in the extraterritorial jurisdiction of the
23 municipality.

24 (b) Defense communities may not establish more than one
25 commission in a county.

26 (c) Except as provided by Subsection (d), a commission's
27 territory consists of the unincorporated area located within two

1 miles of the boundary line of a military installation designated as
2 the commission's territory when the commission is established.

3 (d) If a military installation is engaged in flight training
4 at the time a commission is established under this section, the
5 commission's territory consists of the unincorporated area located
6 within three miles of the boundary line of the military
7 installation.

8 (e) This subchapter shall be narrowly construed in
9 conformity with the findings and purposes under Section 397A.001.

10 Sec. 397A.053. HEARING ON CREATION OF COMMISSION. (a) Not
11 earlier than the 60th day or later than the 30th day before the date
12 the governing body of each participating governmental entity
13 establishes a regional military sustainability commission, each
14 governing body shall hold two public hearings to consider the
15 creation of the proposed commission. Each governing body must, at
16 least seven days before each public hearing, prominently post
17 notice of the hearing in the administrative offices of the
18 governmental entity and publish notice of the hearing in a
19 newspaper of general circulation, if any, in the proposed
20 territory.

21 (b) The notice required by Subsection (a) must:

22 (1) state the date, time, and place for the public
23 hearing;

24 (2) identify the boundaries of the proposed territory,
25 including a map of the proposed territory; and

26 (3) provide a description of the proposed commission's
27 functions.

1 Sec. 397A.054. MEMBERS OF REGIONAL MILITARY SUSTAINABILITY
2 COMMISSION. (a) The regional military sustainability commission
3 is composed of not more than nine members.

4 (b) Participating governmental entities may by joint
5 agreement determine the number, qualifications, and method of
6 selecting members of a commission.

7 (c) A member of a commission may not be an elected official
8 of a participating county or municipality.

9 Sec. 397A.055. COMMISSION REVIEW OF NEW PROJECTS. (a) In
10 this section, "new project" means a project, as that term is defined
11 by Section 245.001, for which an application for a permit that will
12 establish a vesting date under Chapter 245 has not been submitted to
13 a regulatory agency before the effective date of the Act adding this
14 chapter. The term does not include a revision to a project
15 commenced before the effective date of the Act adding this chapter.

16 (b) A regional military sustainability commission shall
17 establish an advisory committee and appoint six members to the
18 committee. Three of the members appointed to the committee must
19 represent the military installation for which the commission is
20 established and three members must represent landowners in the area
21 surrounding the military installation. The committee shall advise
22 the commission on protecting the critical military missions of the
23 military installation with regard to development.

24 (c) On receipt of an application for a permit for a new
25 project in the commission's territory, the governing body of the
26 participating governmental entity shall review the application and
27 request a report from the commission regarding the proposed

1 project. The commission, with the advice of the advisory
2 committee, shall review the compatibility of the new project with
3 the military installation's military missions and related
4 operations based on the commission's compatible development
5 standards. The commission shall submit a report of its findings,
6 including a recommendation regarding compatibility, to the
7 reviewing governmental entity not later than the 30th calendar day
8 after the date the request was made. The report must include an
9 estimate of the fiscal impact on the affected property of any
10 recommendations submitted by the commission, if the fiscal impact
11 is determinable based on the project description and other
12 information provided by the developer.

13 (d) The reviewing governmental entity may not take action on
14 the permit application until it receives the report of the
15 commission. If the commission finds that the proposed new project
16 is not compatible with the military installation's missions and
17 recommends denial of the permit application, the reviewing
18 governmental entity may disapprove the permit application.

19 (e) On annexation of an area in the commission's territory
20 for full or limited purposes by a municipality, the area is removed
21 from the commission's territory. If the municipality disannexes
22 the area, the area is included in the commission's territory.

23 Sec. 397A.056. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS.

24 (a) Before exercising the duties described by Section 397A.055, a
25 regional military sustainability commission shall recommend
26 compatible development standards for the territory. The commission
27 must consider, as part of the regional compatible development

1 standards, standards required by the Federal Aviation
2 Administration regulations for military installations that service
3 aircraft and helicopters. The commission shall submit the proposed
4 compatible development standards to the participating governmental
5 entities for approval.

6 (b) Before taking action to approve or reject the compatible
7 development standards proposed by the commission, the
8 participating governmental entities shall:

9 (1) provide notice of the commission's proposed
10 compatible development standards to property owners in the
11 commission's territory, as determined by the most recent county tax
12 roll; and

13 (2) publish notice of the commission's proposed
14 compatible development standards in a newspaper of general
15 circulation, if any, in the commission's territory.

16 (c) The failure of notice to reach each property owner under
17 Subsection (b) does not invalidate compatible development
18 standards adopted under this section.

19 (d) The compatible development standards are final after
20 approval by a majority vote of each participating governmental
21 entity. Notice of the final compatible development standards must
22 be provided to all appropriate taxing entities for filing in the
23 real property records of the county.

24 (e) The commission may include in the proposed compatible
25 development standards a recommendation to a participating
26 governmental entity to purchase property in the commission's
27 territory as practical to protect a critical military mission.

1 (f) The commission may recommend amendments to approved
2 compatible development standards. The participating governmental
3 entities may approve the commission's proposed standards under
4 procedures adopted by the entities.

5 Sec. 397A.057. COORDINATION WITH OTHER PLANS AND STUDIES.
6 The compatible development standards and regulations adopted under
7 this subchapter must be coordinated with:

8 (1) the county plan for growth and development of the
9 participating county or a county located in the regional military
10 sustainability commission's territory;

11 (2) the comprehensive plan of the participating
12 municipality; and

13 (3) the most recent Joint Land Use Study, if the
14 commission makes a finding that the conclusions of the study
15 accurately reflect circumstances in the territory.

16 Sec. 397A.058. CONFLICT WITH OTHER LAWS. Except with
17 respect to Chapter 245, if a regulation adopted under this
18 subchapter conflicts with a standard imposed under another statute
19 or local order or regulation, the more stringent standard controls.

20 Sec. 397A.059. FUNDS. (a) A participating governmental
21 entity may appropriate funds to the commission for the costs and
22 expenses required in the performance of the commission's purposes.

23 (b) A commission may apply for, contract for, receive, and
24 expend for its purposes a grant or funds from a participating
25 governmental entity, the state, the federal government, or any
26 other source.

27 Sec. 397A.060. WITHDRAWAL FROM COMMISSION. A participating

1 governmental entity may withdraw from a regional military
2 sustainability commission:

- 3 (1) by a two-thirds vote of its governing body; and
4 (2) after providing notice to the relevant military
5 installation commander not later than the 45th day before the date
6 of the vote under Subdivision (1).

7 Sec. 397A.061. EXPIRATION AFTER MILITARY INSTALLATION
8 CLOSURE. A regional military sustainability commission that has
9 territory around a military installation that is closed by the
10 federal government and the regional compatible development
11 standards for the commission's territory may continue in effect
12 until the fourth anniversary of the date the military installation
13 is closed.

14 Sec. 397A.062. JUDICIAL REVIEW OF COMMISSION OR
15 GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision
16 of this subchapter, a landowner aggrieved by a report submitted by
17 the regional military sustainability commission or by a permit
18 application decision of the participating governmental entity
19 under this subchapter may appeal all or part of the report or permit
20 application decision to a district court. The court may reverse or
21 modify, wholly or partly, the report submitted by the commission or
22 the permit application decision that is appealed.

23 [Sections 397A.063-397A.100 reserved for expansion]

24 SUBCHAPTER C. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS IN LESS
25 POPULOUS AREAS

26 Sec. 397A.101. APPLICABILITY. (a) A regulation or
27 compatible development standard adopted under this subchapter does

1 not apply to:

2 (1) an area located in a county with a population of
3 less than 5,000 that is adjacent to an international border;

4 (2) a tract of land used for a single-family residence
5 that is located outside the boundaries of a platted subdivision;

6 (3) a tract of land in agricultural use;

7 (4) an activity or a structure or appurtenance on a
8 tract of land in agricultural use; or

9 (5) any activity or a project, as that term is defined
10 by Section 245.001, that is:

11 (A) occurring or in existence on the effective
12 date of the Act adding this chapter; or

13 (B) receiving the benefits of or protected under
14 Chapter 245.

15 (b) In this section, "agricultural use" and "agriculture"
16 have the meanings assigned by Section 397A.051.

17 Sec. 397A.102. CREATION OF REGIONAL MILITARY
18 SUSTAINABILITY COMMISSION. (a) A county with a population of
19 60,000 or less and a municipality that, with respect to the same
20 active military installation, constitutes a defense community, as
21 defined by Section 397.001, may agree by order, ordinance, or other
22 means to establish and fund a regional military sustainability
23 commission under this subchapter in an area that is located:

24 (1) in the same county as the active military
25 installation; and

26 (2) in the extraterritorial jurisdiction of the
27 municipality.

1 (b) Defense communities may not establish more than one
2 commission in a county.

3 (c) A commission's territory consists of the unincorporated
4 area located within five miles of the boundary line of a military
5 installation designated as the commission's territory when the
6 commission is established.

7 (d) This subchapter shall be narrowly construed in
8 conformity with the findings and purposes under Section 397A.001.

9 Sec. 397A.103. HEARING ON CREATION OF COMMISSION. (a) Not
10 earlier than the 60th day or later than the 30th day before the date
11 the governing body of each participating governmental entity
12 establishes a regional military sustainability commission, each
13 governing body shall hold two public hearings to consider the
14 creation of the proposed commission. Each governing body must, at
15 least seven days before each public hearing, prominently post
16 notice of the hearing in the administrative offices of the
17 governmental entity and publish notice of the hearing in a
18 newspaper of general circulation, if any, in the proposed
19 territory.

20 (b) The notice required by Subsection (a) must:

21 (1) state the date, time, and place for the public
22 hearing;

23 (2) identify the boundaries of the proposed territory,
24 including a map of the proposed territory; and

25 (3) provide a description of the proposed commission's
26 functions.

27 Sec. 397A.104. MEMBERS OF REGIONAL MILITARY SUSTAINABILITY

1 COMMISSION. (a) The regional military sustainability commission
2 is composed of not more than nine members.

3 (b) Participating governmental entities may by joint
4 agreement determine the number, qualifications, and method of
5 selecting members of a commission.

6 (c) A member of a commission may not be an elected official
7 of a participating county or municipality.

8 Sec. 397A.105. COMMISSION REVIEW OF NEW PROJECTS. (a) In
9 this section, "new project" means a project, as that term is defined
10 by Section 245.001, for which an application for a permit that will
11 establish a vesting date under Chapter 245 has not been submitted to
12 a regulatory agency before the effective date of the Act adding this
13 chapter, including a water contract, sewer contract, or master
14 plan.

15 (b) A regional military sustainability commission shall
16 establish an advisory committee and appoint six members to the
17 committee. Three of the members appointed to the committee must
18 represent the military installation for which the commission is
19 established and three members must represent landowners in the area
20 surrounding the military installation. The committee shall advise
21 the commission on protecting the critical military missions of the
22 military installation with regard to development.

23 (c) On receipt of an application for a permit for a new
24 project in the commission's territory, the governing body of the
25 participating governmental entity shall review the application and
26 request a report from the commission regarding the proposed
27 project. The commission, with the advice of the advisory

1 committee, shall review the compatibility of the new project with
2 the military installation's military missions and related
3 operations based on the commission's compatible development
4 standards. The commission shall submit a report of its findings,
5 including a recommendation regarding compatibility, to the
6 reviewing governmental entity not later than the 15th calendar day
7 after the date the request was made. The report must include an
8 estimate of the fiscal impact on the affected property of any
9 recommendations submitted by the commission as part of the report.

10 (d) The reviewing governmental entity may not take action on
11 the permit application until it receives the report of the
12 commission. If the commission finds that the proposed new project
13 is not compatible with the military installation's missions and
14 recommends denial of the permit application, the reviewing
15 governmental entity may disapprove the permit application.

16 (e) On annexation of an area in the commission's territory
17 for full or limited purposes by a municipality, the area is removed
18 from the commission's territory. If the municipality disannexes
19 the area, the area is included in the commission's territory.

20 Sec. 397A.106. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS.

21 (a) Before exercising the duties described by Section 397A.105, a
22 regional military sustainability commission shall recommend
23 compatible development standards for the territory. The commission
24 must consider, as part of the regional compatible development
25 standards, the Federal Aviation Administration regulations
26 regarding height restrictions surrounding a military installation
27 that services aircraft and helicopters. The commission shall

1 submit the proposed compatible development standards to the
2 participating governmental entities for approval.

3 (b) Before taking action to approve or reject the compatible
4 development standards proposed by the commission, the
5 participating governmental entities shall:

6 (1) provide notice of the commission's proposed
7 compatible development standards to property owners in the
8 commission's territory, as determined by the most recent county tax
9 roll; and

10 (2) publish notice of the commission's proposed
11 compatible development standards in a newspaper of general
12 circulation, if any, in the commission's territory.

13 (c) The failure of notice to reach each property owner under
14 Subsection (b) does not invalidate compatible development
15 standards adopted under this section.

16 (d) The compatible development standards are final after
17 approval by a majority vote of each participating governmental
18 entity. Notice of the final compatible development standards must
19 be provided to all appropriate taxing entities for filing in the
20 real property records of the county.

21 (e) The commission may include in the proposed compatible
22 development standards a recommendation to a participating
23 governmental entity to purchase property in the commission's
24 territory as practical to protect a critical military mission.

25 (f) The commission may recommend amendments to approved
26 compatible development standards. The participating governmental
27 entities may approve the commission's proposed standards under

1 procedures adopted by the entities.

2 Sec. 397A.107. COORDINATION WITH OTHER PLANS AND STUDIES.

3 The compatible development standards and regulations adopted under
4 this subchapter must be coordinated with:

5 (1) the county plan for growth and development of the
6 participating county or a county located in the regional military
7 sustainability commission's territory;

8 (2) the comprehensive plan of the participating
9 municipality; and

10 (3) the most recent Joint Land Use Study, if the
11 commission makes a finding that the conclusions of the study
12 accurately reflect circumstances in the territory.

13 Sec. 397A.108. CONFLICT WITH OTHER LAWS. Except with
14 respect to Chapter 245, if a regulation adopted under this
15 subchapter conflicts with a standard imposed under another statute
16 or local order or regulation, the more stringent standard controls.

17 Sec. 397A.109. FUNDS. (a) A participating governmental
18 entity may appropriate funds to the commission for the costs and
19 expenses required in the performance of the commission's purposes.

20 (b) A commission may apply for, contract for, receive, and
21 expend for its purposes a grant or funds from a participating
22 governmental entity, the state, the federal government, or any
23 other source.

24 Sec. 397A.110. WITHDRAWAL FROM COMMISSION. A participating
25 governmental entity may withdraw from a regional military
26 sustainability commission:

27 (1) by a two-thirds vote of its governing body; and

1 (2) after providing notice to the relevant military
2 installation commander not later than the 45th day before the date
3 of the vote under Subdivision (1).

4 Sec. 397A.111. EXPIRATION AFTER MILITARY INSTALLATION
5 CLOSURE. A regional military sustainability commission that has
6 territory around a military installation that is closed by the
7 federal government and the regional compatible development
8 standards for the commission's territory may continue in effect
9 until the fourth anniversary of the date the military installation
10 is closed.

11 Sec. 397A.112. JUDICIAL REVIEW OF COMMISSION OR
12 GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision
13 of this subchapter, a landowner aggrieved by a report submitted by
14 the regional military sustainability commission or by a permit
15 application decision of the participating governmental entity
16 under this subchapter may appeal all or part of the report or permit
17 application decision to a district court, county court, or county
18 court at law. The court may reverse or modify, wholly or partly,
19 the report submitted by the commission or the permit application
20 decision that is appealed.

21 SECTION 4. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 2919 was passed by the House on May 14, 2009, by the following vote: Yeas 135, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2919 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2919 on May 31, 2009, by the following vote: Yeas 134, Nays 5, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2919

I certify that H.B. No. 2919 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 29, Nays 2; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2919 on May 31, 2009, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor