

By: Wentworth

S.B. No. 2100

A BILL TO BE ENTITLED

AN ACT

relating to granting certain counties regulatory authority around
military facilities in certain circumstances; providing a penalty.

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

SECTION 1. Chapter 231, Local Government Code, is amended
by adding Subchapter M to read as follows:

SUBCHAPTER M. PROTECTION OF MILITARY INSTALLATIONS

Sec. 231.271. LEGISLATIVE FINDINGS; PURPOSE. (a) The
legislature finds that:

(1) the area that surrounds military installations
will be frequented for military and national security purposes by
residents from many parts of the state and nation;

(2) orderly development, use, and sustainability of
the area is of concern to the entire state; and

(3) 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) The powers granted under this subchapter are for the
purpose of:

(1) promoting the public health, safety, peace,
morals, and general welfare;

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

1 (3) encouraging state and national security.

2 Sec. 231.272. ELIGIBLE COUNTIES. This subchapter applies
3 only to a county that:

4 (1) has a population of more than one million and in
5 which more than 80 percent of the population lives in a single
6 municipality; or

7 (2) is adjacent to a county described by Subdivision
8 (1).

9 Sec. 231.273. PROTECTION REGULATIONS AND REQUIREMENTS. (a)
10 In an unincorporated area located within five miles of the boundary
11 of a military installation, the commissioners court of the county
12 that contains the area may:

13 (1) regulate the platting or clearing of a tract of
14 land larger than two acres as provided by Subsection (b) if:

15 (A) clearing more than 20 percent of the trees on
16 the tract of land is proposed; or

17 (B) the tract of land contains more than two
18 acres identified as a karst zone under a draft plan prepared by the
19 United States Fish and Wildlife Service;

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

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

27 (b) A commissioners court adopting a regulation under

1 Subsection (a)(1) shall require a person, before submitting a plat
2 application or clearing a tract of land, to conduct a survey, if
3 required, as prescribed by Section 231.274, and submit the results
4 of the survey to the Parks and Wildlife Department, the United
5 States Fish and Wildlife Service, and any military installation in
6 the vicinity of the land.

7 (c) Notwithstanding Section 245.002, a regulation adopted
8 under this section applies regardless of whether a plan for
9 development of real property or a plat application for a tract of
10 land has been previously filed with a regulatory agency, as that
11 term is defined by Section 245.001.

12 (d) In this section, multiple tracts of land are considered
13 a tract of land for purposes of calculating the amount of acreage
14 under Subsection (a)(1) if:

15 (1) the tracts share a common boundary;

16 (2) the tracts are owned by the same developer or
17 development corporation; and

18 (3) commencement of development of a subsequent tract
19 begins within two years after the commencement of development of a
20 previously developed tract.

21 Sec. 231.274. SURVEY. (a) A person must conduct a survey
22 to determine whether the golden-cheeked warbler or an endangered
23 karst invertebrate species uses a tract of land, subject to
24 regulation under Section 231.273(a)(1), as a habitat if:

25 (1) the tract contains more than two acres of mature
26 Ashe juniper (cedar) in a natural mix with oak, elm, and other
27 hardwood trees; or

1 (2) more than two acres of the tract is:

2 (A) identified as a karst zone under a draft plan
3 prepared by the United States Fish and Wildlife Service; and

4 (B) located in a designated Zone 1 or Zone 2 of
5 that plan.

6 (b) For purposes of Subsection (a)(1), mature Ashe junipers
7 are trees that:

8 (1) are at least 15 feet tall with a trunk diameter of
9 approximately five inches at four and one-half inches above the
10 ground; and

11 (2) have, within a two-acre area, a nearly continuous
12 canopy cover of 35 to 100 percent.

13 (c) If more than one species survey is required under this
14 section, the surveys may be conducted by the same person. The
15 results of more than one species survey may be submitted as one
16 survey under Section 231.273(b).

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

21 Sec. 231.275. FEE. A commissioners court acting under this
22 subchapter may set and collect a fee to cover the costs of
23 administering this subchapter. Fees imposed under this section may
24 not exceed the cost of administering this subchapter.

25 Sec. 231.276. COMPLIANCE WITH COUNTY PLAN. A county acting
26 under this subchapter shall:

27 (1) adopt protection regulations under Section

1 231.273(a)(1) in accordance with a county plan for growth and
2 development of the county; and

3 (2) inform municipalities located in the county
4 regarding the adoption of the regulations.

5 Sec. 231.277. PROCEDURE GOVERNING ADOPTION OF REGULATIONS.

6 (a) A protection regulation adopted under Section 231.273(a)(1) is
7 not effective until it is adopted by the commissioners court after a
8 public hearing. Before the 15th day before the date of the hearing,
9 the commissioners court must publish notice of the hearing in a
10 newspaper of general circulation in the county.

11 (b) The commissioners court may establish or amend a
12 protection regulation only by an order passed by a majority vote of
13 the full membership of the court.

14 Sec. 231.278. SPECIAL EXCEPTION. (a) A person aggrieved by
15 a protection regulation adopted under Section 231.273(a)(1) may
16 petition the commissioners court for a special exception to a
17 protection regulation adopted by the commissioners court.

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

21 Sec. 231.279. ENFORCEMENT; PENALTY. (a) The commissioners
22 court may adopt orders to enforce this subchapter or an order or
23 protection regulation adopted under Section 231.273(a)(1).

24 (b) A person commits an offense if the person violates this
25 subchapter or an order or protection regulation adopted under
26 Section 231.273(a)(1). An offense under this subsection is a
27 misdemeanor punishable by a fine of not less than \$500 or more than

1 \$1,000. Each day that a violation occurs constitutes a separate
2 offense. Trial shall be in the district court.

3 Sec. 231.280. COOPERATION WITH MUNICIPALITIES. The
4 commissioners court by order may enter into agreements with any
5 municipality located in the county to assist in the implementation
6 and enforcement of protection regulations adopted under Section
7 231.273(a)(1).

8 Sec. 231.281. CONFLICT WITH OTHER LAWS. (a) Except as
9 provided by Subsection (b), if a protection regulation adopted
10 under Section 231.273(a)(1) imposes higher standards than those
11 required under another statute or local order or regulation, the
12 regulation adopted under Section 231.273(a)(1) controls. If the
13 other statute or local order or regulation imposes higher
14 standards, that statute, order, or regulation controls.

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

19 (c) Notwithstanding Section 83.014, Parks and Wildlife
20 Code, a regulation or requirement adopted under this chapter
21 applies regardless of whether the county is subject to a habitat
22 conservation plan or regional habitat conservation plan.

23 SECTION 2. The change in law made by Section 231.273, Local
24 Government Code, as added by this Act, applies only to a project, as
25 that term is defined by Section 245.001, Local Government Code,
26 commenced under Chapter 245, Local Government Code, on or after the
27 effective date of this Act.

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.