

By: Uresti

S.B. No. 2439

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of development around certain military facilities; providing a penalty.

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

SECTION 1. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 397A to read as follows:

CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS

RELATING TO MILITARY INSTALLATIONS

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

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

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

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

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

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

(b) The regulatory powers granted under this chapter are for

1 the purposes of:

2 (1) promoting the public health, safety, and general
3 welfare;

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

6 (3) protecting critical military missions and
7 operations related to those missions; and

8 (4) ensuring state and national security.

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

12 Sec. 397A.002. APPLICABILITY. (a) A regulation or
13 compatible development standard adopted under this chapter does not
14 apply to:

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

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

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

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

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

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

26 (B) receiving the benefits of or protected under
27 Chapter 245.

1 (b) In this section:

2 (1) "Agricultural use" means use or activity involving
3 agriculture.

4 (2) "Agriculture" means:

5 (A) cultivating the soil to produce crops for
6 human food, animal feed, seed for planting, or the production of
7 fibers;

8 (B) practicing floriculture, viticulture,
9 silviculture, or horticulture;

10 (C) raising, feeding, or keeping animals for
11 breeding purposes or for the production of food, fiber, leather,
12 pelts, or other tangible products having commercial value;

13 (D) planting cover crops, including cover crops
14 cultivated for transplantation, or leaving land idle for the
15 purpose of participating in a government program or normal crop or
16 livestock rotation procedure; or

17 (E) engaging in wildlife management.

18 Sec. 397A.003. CREATION OF REGIONAL MILITARY
19 SUSTAINABILITY COMMISSION. (a) A county with a population of
20 60,000 or less and a municipality that, with respect to the same
21 active military installation, constitutes a defense community, as
22 defined by Section 397.001, may agree by order, ordinance, or other
23 means to establish and fund a regional military sustainability
24 commission under this chapter in an area that is located:

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

27 (2) in the extraterritorial jurisdiction of the

1 municipality.

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

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

8 (d) A commission is a political subdivision of the state, is
9 subject to Section 245.006, and is entitled to immunity as
10 described by Chapter 101, Civil Practice and Remedies Code.

11 (e) This chapter shall be narrowly construed in conformity
12 with the findings and purposes under Section 397A.001.

13 Sec. 397A.004. HEARING ON CREATION OF COMMISSION. (a) Not
14 earlier than the 60th day or later than the 30th day before the date
15 the governing body of each participating governmental entity
16 establishes a regional military sustainability commission, each
17 governing body shall hold two public hearings to consider the
18 creation of the proposed commission. Each governing body must, at
19 least seven days before each public hearing, prominently post
20 notice of the hearing in the administrative offices of the
21 governmental entity and publish notice of the hearing in a
22 newspaper of general circulation, if any, in the proposed
23 territory.

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

25 (1) state the date, time, and place for the public
26 hearing;

27 (2) identify the boundaries of the proposed territory,

1 including a map of the proposed territory; and

2 (3) provide a description of the proposed commission's
3 authority.

4 Sec. 397A.005. GOVERNING BODY OF REGIONAL MILITARY
5 SUSTAINABILITY COMMISSION. (a) The governing body of a regional
6 military sustainability commission is composed of not more than
7 nine members.

8 (b) Participating governmental entities may by joint
9 agreement determine the number, qualifications, and method of
10 selecting members of the governing body of a commission.

11 (c) A member of a governing body of a commission may not be
12 an elected official of a participating county or municipality.

13 Sec. 397A.006. COMMISSION REVIEW OF NEW PROJECTS. (a) In
14 this section, "new project" means a project, as that term is defined
15 by Section 245.001, for which an application for a permit that will
16 establish a vesting date under Chapter 245 has not been submitted to
17 a regulatory agency before the effective date of the Act adding this
18 chapter, including a water contract, sewer contract, or master
19 plan.

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

1 (c) On receipt of an application for a permit for a new
2 project in the commission's territory, the governing body of the
3 participating governmental entity shall review the application and
4 request a report from the commission regarding the proposed
5 project. The commission, with the advice of the advisory
6 committee, shall review the compatibility of the new project with
7 the military installation's military missions and related
8 operations based on the commission's compatible development
9 standards. The commission shall submit a report of its findings,
10 including a recommendation regarding compatibility, to the
11 reviewing governmental entity not later than the 15th calendar day
12 after the date the request was made. The report must include an
13 estimate of the fiscal impact on the affected property of any
14 recommendations submitted by the commission as part of the report.

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

21 (e) On annexation of an area in the commission's territory
22 for full or limited purposes by a municipality, the commission's
23 authority over the area expires. The commission regains the
24 authority in an area if the municipality disannexes the area.

25 Sec. 397A.007. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS.

26 (a) Before exercising the authority granted by Section 397A.006, a
27 regional military sustainability commission shall recommend and

1 adopt compatible development standards for the territory. The
2 commission must consider and may adopt, as part of the regional
3 compatible development standards, the Federal Aviation
4 Administration regulations regarding height restrictions
5 surrounding a military installation that services aircraft and
6 helicopters. The commission shall submit compatible development
7 standards adopted under this section to the participating
8 governmental entities for approval.

9 (b) Before taking action to approve or reject the compatible
10 development standards proposed by the commission, the
11 participating governmental entities shall:

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

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

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

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

27 (e) The commission may include in the compatible

1 development standards a recommendation to a participating
2 governmental entity to purchase property in the commission's
3 territory as practical to protect a critical military mission.

4 (f) The commission may recommend and approve amendments to
5 approved compatible development standards. The participating
6 governmental entities may approve the commission's amended
7 standards under procedures adopted by the entities.

8 Sec. 397A.008. COORDINATION WITH OTHER PLANS AND STUDIES.

9 The compatible development standards and regulations adopted under
10 this chapter must be coordinated with:

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

14 (2) the comprehensive plan of the participating
15 municipality; and

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

19 Sec. 397A.009. CONFLICT WITH OTHER LAWS. Except with
20 respect to Chapter 245, if a regulation adopted under this chapter
21 conflicts with a standard imposed under another statute or local
22 order or regulation, the more stringent standard controls.

23 Sec. 397A.010. FUNDS. (a) A regional military
24 sustainability commission does not have power to tax.

25 (b) A participating governmental entity may appropriate
26 funds to the commission for the costs and expenses required in the
27 performance of the commission's purposes.

1 (c) A commission may apply for, contract for, receive, and
2 expend for its purposes a grant or funds from a participating
3 governmental entity, the state, the federal government, or any
4 other source.

5 Sec. 397A.011. RESTRICTIONS. (a) A regional military
6 sustainability commission shall comply with laws applicable to
7 participating governmental entities relating to:

- 8 (1) reimbursement for travel expenses;
9 (2) nepotism;
10 (3) conflicts of interest; and
11 (4) registration of lobbyists.

12 (b) To the extent of a conflict between laws applicable to
13 participating governmental entities relating to a subject
14 described by Subsection (a), the more stringent requirement
15 controls.

16 Sec. 397A.012. WITHDRAWAL FROM COMMISSION. A participating
17 governmental entity may withdraw from a regional military
18 sustainability commission:

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

23 Sec. 397A.013. EXPIRATION AFTER MILITARY INSTALLATION
24 CLOSURE. A regional military sustainability commission that
25 regulates territory around a military installation that is closed
26 by the federal government and the regional compatible development
27 standards adopted by the commission may continue in effect until

1 the fourth anniversary of the date the military installation is
2 closed.

3 Sec. 397A.014. JUDICIAL REVIEW OF COMMISSION OR
4 GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision
5 of this chapter, a landowner aggrieved by a report submitted by the
6 regional military sustainability commission or by a permit
7 application decision of the participating governmental entity
8 under this chapter may appeal all or part of the report or permit
9 application decision to a district court, county court, or county
10 court at law. The court may reverse or modify, wholly or partly,
11 the report submitted by the commission or the permit application
12 decision that is appealed.

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