

House Bill 2919
Senate Amendments
Section-by-Section Analysis

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

(c) A defense community described by Subsection (b)

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

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

Sec. 397.006. CONSULTATION WITH DEFENSE BASE AUTHORITIES: PROPOSED STRUCTURE.

(a) This section 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.

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

(c) The defense community shall consider and analyze any comments and analysis received from the defense base authorities under Subsection (b) before making a

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final determination relating to approval of the permit for the proposed structure. The defense community may not make a final determination under this subsection until the earlier of the date comments and analysis are received from the defense base authorities or the fifth business day after the date comments and analysis are requested under Subsection (b). In this subsection, "business day" means any day other than a Saturday, Sunday, or state or federal holiday.

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

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

Same as House version.

The following rows were presented as similar to language in the engrossed version of Senate Bill 2223, relating to authorizing the creation of regional military sustainability commissions around military installations and as bracketed to Bexar, Comal, and Kendall Counties.

No equivalent provision.

SECTION __. Subtitle C, Title 12, Local Government

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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 the purposes of:

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

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

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

(4) ensuring state and national security.

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

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

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

(2) a tract of land in agricultural use;

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

(4) an area designated as part of the commission's territory under Section 397A.003 that is subject to the jurisdiction of a regulatory agency as defined by Section 245.001, and that, on the effective date of the Act adding this chapter, is:

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

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

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

(b) In this section:

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

(2) "Agriculture" means:

(A) cultivating the soil to produce crops for human food,

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animal feed, seed for planting, or the production of fibers;

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

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

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

(E) engaging in wildlife management.

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

Sec. 397A.003. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a)

A county with unincorporated area located within five miles of the boundary line of a military installation, and a municipality with a population of 1.1 million or more and with extraterritorial jurisdiction located within five miles of the boundary line of a military installation, each of which, with respect to the same military installation, constitutes a defense community as defined by Section 397.001, may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this chapter in an area that is located:

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

and

(2) in the extraterritorial jurisdiction of the municipality.

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

(c) Except as provided by Subsection (d), a commission's territory consists of the unincorporated area located within two miles of the boundary line of a military installation designated as the commission's territory when the commission is established.

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

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

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

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

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circulation, if any, in the proposed territory.

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

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

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

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

Sec. 397A.005. GOVERNING BODY OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a)

The governing body of a regional military sustainability commission is composed of not more than nine members.

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

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

Sec. 397A.006. COMMISSION REVIEW OF NEW PROJECTS. (a) In this section, "new project" means a

project, as that term is defined by Section 245.001, for which an application for a permit that will establish a vesting date under Chapter 245 has not been submitted to a regulatory agency before the effective date of the Act adding this chapter. The term does not include a revision to a project commenced before the effective date of the Act adding this chapter.

(b) A regional military sustainability commission shall establish an advisory committee and appoint six

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members to the committee. Three of the members appointed to the committee must represent the military installation for which the commission is established and three members must represent landowners in the area surrounding the military installation. The committee shall advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) On receipt of an application for a permit for a new project in the commission's territory, the governing body of the participating governmental entity shall review the application and request a report from the commission regarding the proposed project. The commission, with the advice of the advisory committee, shall review the compatibility of the new project with the military installation's military missions and related operations based on the commission's compatible development standards. The commission shall submit a report of its findings, including a recommendation regarding compatibility, to the reviewing governmental entity not later than the 30th calendar day after the date the request was made. The report must include an estimate of the fiscal impact on the affected property of any recommendations submitted by the commission, if the fiscal impact is determinable based on the project description and other information provided by the developer.

(d) The reviewing governmental entity may not take action on the permit application until it receives the report of the commission. If the commission finds that

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the proposed new project is not compatible with the military installation's missions and recommends denial of the permit application, the reviewing governmental entity may disapprove the permit application.

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

Sec. 397A.007. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS. (a) Before exercising the authority granted by Section 397A.006, a regional military sustainability commission shall recommend and adopt compatible development standards for the territory. The commission must consider and may adopt, as part of the regional compatible development standards, standards required by the Federal Aviation Administration regulations for military installations that service aircraft and helicopters. The commission shall submit compatible development standards adopted under this section to the participating governmental entities for approval.

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

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

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

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

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

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

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

Sec. 397A.008. COORDINATION WITH OTHER PLANS AND STUDIES. The compatible development standards and regulations adopted under this chapter must be coordinated with:

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

(2) the comprehensive plan of the participating

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municipality; and

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

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

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

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

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

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

(1) reimbursement for travel expenses;

(2) nepotism;

(3) conflicts of interest; and

(4) registration of lobbyists.

(b) To the extent of a conflict between laws applicable to participating governmental entities relating to a subject described by Subsection (a), the more stringent

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requirement controls.

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

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

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

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

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

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The following rows were presented as identical to language in the engrossed version of Senate Bill 2439, relating to the regulation of development around certain military facilities; providing a penalty.

No equivalent provision.

SECTION __. 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.

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

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

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

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

(4) ensuring state and national security.

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

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

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

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

(3) a tract of land in agricultural use;

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

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

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

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

(b) In this section:

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

(2) "Agriculture" means:

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

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

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

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

(E) engaging in wildlife management.

Sec. 397A.003. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a)

A county with a population of 60,000 or less and a municipality that, with respect to the same active military installation, constitutes a defense community, as defined by Section 397.001, may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this chapter in an area that is located:

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

(2) in the extraterritorial jurisdiction of the municipality.

(b) Defense communities may not establish more than

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one commission in a county.

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

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

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

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

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

- (1) state the date, time, and place for the public hearing;
- (2) identify the boundaries of the proposed territory, including a map of the proposed territory; and
- (3) provide a description of the proposed commission's

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authority.

Sec. 397A.005. GOVERNING BODY OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a)

The governing body of a regional military sustainability commission is composed of not more than nine members.

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

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

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

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

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to development.

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

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

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

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Sec. 397A.007. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS. (a) Before exercising the authority granted by Section 397A.006, a regional military sustainability commission shall recommend and adopt compatible development standards for the territory. The commission must consider and may adopt, as part of the regional compatible development standards, the Federal Aviation Administration regulations regarding height restrictions surrounding a military installation that services aircraft and helicopters. The commission shall submit compatible development standards adopted under this section to the participating governmental entities for approval.

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

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

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

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

(d) The compatible development standards are final after approval by a majority vote of each participating

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governmental entity. Notice of the final compatible development standards must be provided to all appropriate taxing entities for filing in the real property records of the county.

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

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

Sec. 397A.008. COORDINATION WITH OTHER PLANS AND STUDIES. The compatible development standards and regulations adopted under this chapter must be coordinated with:

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

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

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

Sec. 397A.009. CONFLICT WITH OTHER LAWS. Except with respect to Chapter 245, if a regulation adopted under this chapter conflicts with a standard imposed under another statute or local order or

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regulation, the more stringent standard controls.

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

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

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

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

(1) reimbursement for travel expenses;

(2) nepotism;

(3) conflicts of interest; and

(4) registration of lobbyists.

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

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

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

(2) after providing notice to the relevant military installation commander not later than the 45th day before

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the date of the vote under Subdivision (1).
Sec. 397A.013. EXPIRATION AFTER MILITARY
INSTALLATION CLOSURE. A regional military
sustainability commission that regulates territory around
a military installation that is closed by the federal
government and the regional compatible development
standards adopted by the commission may continue in
effect until the fourth anniversary of the date the military
installation is closed.

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