

SENATE AMENDMENTS

2nd Printing

By: King of Taylor

H.B. No. 1665

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the notification requirements regarding certain land
3 use regulations in an area near military facilities.

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

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

7 Sec. 397.005. CONSULTATION WITH OR NOTIFICATION TO DEFENSE
8 BASE AUTHORITIES: PROPOSED ORDINANCE, RULE, OR PLAN.

9 SECTION 2. Section 397.005(b), Local Government Code, is
10 amended to read as follows:

11 (b) This subsection applies only to a defense community that
12 includes a municipality with a population of more than 110,000
13 located in a county with a population of less than 135,000 and that
14 has not adopted airport zoning regulations under Chapter 241. A
15 defense community that proposes to adopt or amend an ordinance,
16 rule, or plan in an area located within eight miles of the boundary
17 line of a defense base [~~or the military exercise or training~~
18 ~~activities connected to the base~~] shall notify [~~seek comments and~~
19 ~~analysis from~~] the defense base authorities concerning the
20 compatibility of the proposed ordinance, rule, or plan with base
21 operations.

22 SECTION 3. The heading to Section 397.006, Local Government
23 Code, is amended to read as follows:

24 Sec. 397.006. CONSULTATION WITH OR NOTIFICATION TO DEFENSE

1 BASE AUTHORITIES: PROPOSED STRUCTURE.

2 SECTION 4. Section 397.006(b), Local Government Code, is
3 amended to read as follows:

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

11 SECTION 5. Sections 397.005(c) and 397.006(c), Local
12 Government Code, are repealed.

13 SECTION 6. (a) The changes in law made by this Act apply
14 only to an ordinance, rule, or plan proposed to be adopted or
15 amended under Section 397.005(b), Local Government Code, as amended
16 by this Act, or an application for a permit for a proposed structure
17 received under Section 397.006(b), Local Government Code, as
18 amended by this Act, on or after the effective date of this Act.

19 (b) An ordinance, rule, or plan proposed to be adopted or
20 amended under Section 397.005(b), Local Government Code, or an
21 application for a permit for a proposed structure received under
22 Section 397.006(b), Local Government Code, before the effective
23 date of this Act is governed by the law on the date the ordinance,
24 rule, or plan was proposed to be adopted or amended or the permit
25 application was received, and the former law is continued in effect
26 for that purpose.

27 SECTION 7. This Act takes effect immediately if it receives


1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2011.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 18 2011

BY: 


Secretary of the Senate

1 Amend H.B. No. 1665 (senate committee printing) in SECTION
2 2 of the bill as follows:

3 (1) In the recital (page 1, lines 16-17), strike "Section
4 397.005(b), Local Government Code, is amended" and substitute
5 "Section 397.005, Local Government Code, is amended by amending
6 Subsection (b) and adding Subsections (d) and (e)".

7 (2) Following amended Section 397.005(b), Local Government
8 Code (page 1, between lines 28 and 29), insert the following:

9 (d) This subsection applies to an ordinance, rule, or plan
10 regulating the planting, clearing, or harvesting of trees or
11 vegetation or other uses of trees or vegetation on a particular
12 tract of land located in the corporate boundaries or in the
13 extraterritorial jurisdiction of a municipality that is a
14 defense community and within three miles of the boundary line of
15 a defense base. Defense base authorities may submit comments
16 and analysis to a defense community that is a municipality
17 regarding the compatibility of the proposed ordinance, rule, or
18 plan or the proposed enforcement of the ordinance, rule, or plan
19 in the corporate boundaries or applicable extraterritorial
20 jurisdiction. The defense community shall consider and analyze
21 comments and analysis submitted under this subsection before
22 making a final determination relating to the proposed ordinance,
23 rule, or plan or proposed enforcement of the ordinance, rule, or
24 plan. The defense community may enforce the ordinance, rule, or
25 plan only if any comments and analysis received from defense
26 base authorities support the enforcement of the ordinance, rule,
27 or plan in the corporate boundaries or applicable
28 extraterritorial jurisdiction.

29 (e) Notwithstanding any other law, an ordinance, rule, or

1 plan regulating the planting, clearing, or harvesting of trees
2 or vegetation or other uses of trees or vegetation on a
3 particular tract of land may not be enforced in any portion of
4 the extraterritorial jurisdiction of a municipality that is not
5 located within three miles of the boundary line of a defense
6 base.

ADOPTED

MAY 20 2011

Atty. Gen.
Secretary of the Senate

Jose Luis, Jr.
BY: *J. J. Aring*

FLOOR AMENDMENT NO. 2

1 Amend H.B. 1665 (senate committee report) by adding the
2 following appropriately numbered SECTION and renumbering the
3 subsequent SECTIONS of the bill accordingly:

4 SECTION ____ (a) Subtitle B, Title 2, Utilities Code, is
5 amended by adding Chapter 44 to read as follows:

6 CHAPTER 44. CERTAIN WIND-POWERED ELECTRIC GENERATION FACILITIES

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 44.001. APPLICABILITY OF CHAPTER. This chapter
9 applies to the construction or expansion of a wind-powered electric
10 generation facility if:

11 (1) the construction or expansion includes a
12 meteorological tower or a structure that will extend 200 feet or
13 higher above ground level; and

14 (2) any part of the construction or expansion will
15 occur within 25 miles of the boundaries of a federally owned or
16 operated radar installation or military installation included on
17 the notification list described by Section 44.052.

18 [Sections 44.002-44.050 reserved for expansion]

19 SUBCHAPTER B. REQUEST FOR NOTIFICATION

20 Sec. 44.051. REQUEST FOR NOTIFICATION. A federally owned or
21 operated radar installation or military installation may request
22 that the commission notify the installation of a planned
23 construction or expansion project if any part of the construction
24 or expansion will occur within 25 miles of the boundaries of the
25 installation.

26 Sec. 44.052. NOTIFICATION LIST. (a) The commission shall
27 create and maintain a list of federally owned or operated radar
28 installations and military installations that have requested
29 notification from the commission under Section 44.051.

1 (b) The commission shall publish the notification list
2 required by this section on its Internet website and provide a copy
3 of the list to each person who requests a copy.

4 Sec. 44.053. PROCEDURES RELATING TO LIST. The commission
5 may establish procedures to enable federally owned or operated
6 radar installations and military installations to request
7 notification and to be included on the notification list required
8 by Section 44.052, including procedures relating to the information
9 an installation must provide to the commission.

10 [Sections 44.054-44.100 reserved for expansion]

11 SUBCHAPTER C. NOTIFICATION OF CONSTRUCTION OR EXPANSION

12 Sec. 44.101. NOTIFICATION TO COMMISSION. (a) A person who
13 intends to begin a construction or expansion project to which this
14 chapter applies shall provide written notice to the commission of
15 the planned construction or expansion not later than the 120th day
16 before the date the construction or expansion begins.

17 (b) The notice required under Subsection (a) must include:

18 (1) the name of the person planning the construction
19 or expansion;

20 (2) the location of the planned construction or
21 expansion;

22 (3) a detailed description of any construction or
23 expansion that will extend 200 feet or higher above ground level,
24 including the final proposed height of that construction or
25 expansion; and

26 (4) the name and location of each federally owned or
27 operated radar installation or military installation included on
28 the notification list described by Section 44.052 and whose
29 boundaries are within 25 miles of any part of the planned
30 construction or expansion.

31 (c) The commission may charge a fee in an amount provided by

1 commission rule to a person who provides written notice of a
2 construction or expansion project to the commission under this
3 section. The amount of the fee may not exceed an amount reasonably
4 necessary to recover the cost of administering this chapter.

5 (d) The commission may establish an expedited process to
6 allow a person who provides written notice to the commission of a
7 construction or expansion project under this section to alter the
8 notice to reflect a change in the information required to be
9 included in the notice.

10 Sec. 44.102. NOTIFICATION BY COMMISSION. Not later than
11 the 25th day after the date the commission receives notice of a
12 proposed construction or expansion project under Section 44.101,
13 the commission shall provide a copy of the notice to:

14 (1) any federally owned or operated radar installation
15 or military installation that the commission determines is included
16 on the notification list described by Section 44.052 and that has
17 boundaries within 25 miles of the proposed project;

18 (2) each county or municipality that the commission
19 determines has boundaries within 25 miles of a federally owned or
20 operated radar installation or military installation described by
21 Subdivision (1);

22 (3) the office of the governor;

23 (4) the Texas Military Preparedness Commission;

24 (5) the office of the comptroller of public accounts;

25 (6) the State Energy Conservation Office;

26 (7) the General Land Office; and

27 (8) the Energy Siting Clearinghouse of the United
28 States Department of Defense.

29 Sec. 44.103. ELECTRONIC REPORTING TO COMMISSION;
30 ELECTRONIC TRANSMISSION OF INFORMATION BY COMMISSION. (a) The
31 commission shall encourage the use of electronic submission through

1 the Internet, to the extent practicable, for submitting the notice
2 required by Section 44.101. The commission may adjust fees
3 assessed under this chapter as necessary to encourage electronic
4 submission. An electronic report must be submitted in a format
5 prescribed by the commission.

6 (b) The commission may transmit electronically the notice
7 required by Section 44.102.

8 [Sections 44.104-44.150 reserved for expansion]

9 SUBCHAPTER D. FEDERAL AVIATION ADMINISTRATION DETERMINATION

10 Sec. 44.151. FEDERAL AVIATION ADMINISTRATION
11 DETERMINATION. A person may not begin construction or expansion of
12 a wind-powered electric generation facility to which this chapter
13 applies until the person files with the commission a copy of a
14 Determination of No Hazard to Air Navigation issued by the Federal
15 Aviation Administration under 14 C.F.R. Part 77 for the proposed
16 construction or expansion.

17 Sec. 44.152. EXCEPTION IN CASE OF EMERGENCY. (a) Section
18 44.151 does not apply to the emergency construction or expansion of
19 a wind-powered electric generation facility to which this chapter
20 applies that is prompted by an emergency involving essential public
21 services, public health, or public safety.

22 (b) A person who begins emergency construction or expansion
23 under Subsection (a) shall file the copy of the determination
24 required by Section 44.151 in a manner determined by the
25 commission.

26 Sec. 44.153. ADMINISTRATIVE PENALTY. The commission may
27 implement penalties and other enforcement actions under Chapter 15
28 against a person who does not comply with this subchapter or a rule
29 or order adopted under this subchapter.

30 Sec. 44.154. RULES. The commission may adopt rules and
31 conduct proceedings necessary to administer and enforce this

1 subchapter.

2 [Sections 44.155-44.200 reserved for expansion]

3 SUBCHAPTER E. PROCEDURES AND DELEGATION

4 Sec. 44.201. CONSULTATION CONCERNING PROCEDURES. The
5 commission shall consult with the office of the governor, the Texas
6 Military Preparedness Commission, the office of the comptroller of
7 public accounts, the State Energy Conservation Office, and the
8 General Land Office in developing and amending procedures to
9 implement and administer this chapter.

10 Sec. 44.202. DELEGATION. (a) For an area in the Electric
11 Reliability Council of Texas power region, the commission may
12 delegate a duty assigned to the commission under this chapter to an
13 independent organization certified under Section 39.151.

14 (b) For an area in this state outside the Electric
15 Reliability Council of Texas power region, the commission may
16 delegate a duty assigned to the commission under this chapter to an
17 appropriate electric utility that provides electric service to a
18 wind-powered electric generation facility or to the area in which
19 construction of a wind-powered electric generation facility is
20 planned.

21 (b) As soon as practicable after the effective date of this
22 Act and not later than January 1, 2012, the Public Utility
23 Commission of Texas shall adopt procedures necessary to implement
24 Chapter 44, Utilities Code, as added by this section.

25 (c) This section applies only to construction or expansion
26 of a wind-powered electric generation facility that begins on or
27 after the effective date of this Act. Construction or expansion of
28 a wind-powered electric generation facility that began before the
29 effective date of this Act is governed by the law in effect on the
30 date the construction or expansion began, and that law is continued
31 in effect for that purpose.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 21, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1665 by King, Susan (Relating to the notification requirements regarding certain land use regulations in an area near military facilities.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would require 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 to notify the defense base authorities regarding the compatibility of the proposal with base operations. The bill would only apply 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. Based on the applicability criteria, the provisions would apply only to Dyess Air Force Base.

The bill would add Chapter 44 to the Utilities Code related to the construction or expansion of a wind-powered electric generation facility as defined by the provisions of the bill. The bill would include requirements and procedures for notification requests, lists and construction or expansion of a wind-powered electric generation facility. The bill would include procedures and requirements for the Public Utility Commission. The commission would be authorized to implement penalties and other enforcement actions against a person that does not comply with this subchapter and to adopt rules and conduct proceedings necessary to administer and enforce this subchapter. The commission would be required to consult with the Office of the Governor, the Texas Military Preparedness Commission, the Office of the Comptroller of Public Accounts, the State Energy Conservation Office, and the General Land Office in developing and amending procedures.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, KM, SZ, TP

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 4, 2011

TO: Honorable Leticia Van de Putte, Chair, Senate Committee on Veteran Affairs & Military Installations

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **HB1665** by King, Susan (Relating to the notification requirements regarding certain land use regulations in an area near military facilities.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, KM, SZ, TP

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 7, 2011

TO: Honorable Rene Oliveira, Chair, House Committee on Land & Resource Management

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1665 by King, Susan (Relating to the notification requirements regarding certain land use regulations in an area near military facilities.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

Because the bill would not have statewide impact on units of local government of the same type or class, no comment from this office is required by the rules of the House/Senate as to its probable fiscal implication on units of local government.

Source Agencies:

LBB Staff: JOB, SZ, TP