

House Bill 1665
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

(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 notify [~~seek comments and analysis from~~] the defense base authorities concerning the compatibility of the proposed ordinance, rule, or plan with base operations.

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Section 397.005, Local Government Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(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 notify [~~seek comments and analysis from~~] the defense base authorities concerning the compatibility of the proposed ordinance, rule, or plan with base operations.

(d) This subsection applies to an ordinance, rule, or plan regulating the planting, clearing, or harvesting of trees or vegetation or other uses of trees or vegetation on a particular tract of land located in the corporate boundaries or in the extraterritorial jurisdiction of a municipality that is a defense community and within three miles of the boundary line of a defense base. Defense base authorities may submit comments and analysis to a defense community that is a municipality regarding the compatibility of the proposed ordinance, rule, or plan or the proposed enforcement of the ordinance, rule, or plan in the corporate boundaries or applicable extraterritorial jurisdiction. The defense community shall consider and

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analyze comments and analysis submitted under this subsection before making a final determination relating to the proposed ordinance, rule, or plan or proposed enforcement of the ordinance, rule, or plan. The defense community may enforce the ordinance, rule, or plan only if any comments and analysis received from defense base authorities support the enforcement of the ordinance, rule, or plan in the corporate boundaries or applicable extraterritorial jurisdiction.

(e) Notwithstanding any other law, an ordinance, rule, or plan regulating the planting, clearing, or harvesting of trees or vegetation or other uses of trees or vegetation on a particular tract of land may not be enforced in any portion of the extraterritorial jurisdiction of a municipality that is not located within three miles of the boundary line of a defense base.

[FA1(1),(2)]

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

Sec. 397.006. CONSULTATION WITH OR NOTIFICATION TO DEFENSE BASE AUTHORITIES: PROPOSED STRUCTURE.

SECTION 3. Same as House version.

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

(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 notify [~~seek comments and analysis from~~] the defense base authorities concerning the compatibility of the proposed

SECTION 4. Same as House version.

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structure with base operations.

No equivalent provision.

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

CHAPTER 44. CERTAIN WIND-POWERED ELECTRIC GENERATION FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

[Sections 44.002-44.050 reserved for expansion]

SUBCHAPTER B. REQUEST FOR NOTIFICATION

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

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

(b) The commission shall publish the notification list required by this section on its Internet website and provide a copy of

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the list to each person who requests a copy.

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

[Sections 44.054-44.100 reserved for expansion]

SUBCHAPTER C. NOTIFICATION OF CONSTRUCTION OR EXPANSION

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

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

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

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

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

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

(c) The commission may charge a fee in an amount provided by commission rule to a person who provides written notice of a construction or expansion project to the commission under

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this section. The amount of the fee may not exceed an amount reasonably necessary to recover the cost of administering this chapter.

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

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

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

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

(3) the office of the governor;

(4) the Texas Military Preparedness Commission;

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

(6) the State Energy Conservation Office;

(7) the General Land Office; and

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

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

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

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

[Sections 44.104-44.150 reserved for expansion]

SUBCHAPTER D. FEDERAL AVIATION ADMINISTRATION DETERMINATION

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

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

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

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

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

[Sections 44.155-44.200 reserved for expansion]

SUBCHAPTER E. PROCEDURES AND DELEGATION

Sec. 44.201. CONSULTATION CONCERNING PROCEDURES. The commission shall 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 to implement and administer this chapter.

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

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

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

(c) This section applies only to construction or expansion of a wind-powered electric generation facility that begins on or after the effective date of this Act. Construction or expansion of a wind-powered electric generation facility that began

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before the effective date of this Act is governed by the law in effect on the date the construction or expansion began, and that law is continued in effect for that purpose. [FA2,3rd]

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

SECTION 5. Same as House version.

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

SECTION 6. Same as House version.

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

SECTION 7. 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, 2011.

SECTION 7. Same as House version.