

**SUBJECT:** Authorizing land use regulation around air force bases in certain counties

**COMMITTEE:** Defense and Veterans' Affairs — committee substitute recommended

**VOTE:** 8 ayes — Corte, Vaught, Chavez, Edwards, Farias, Ortiz, Pickett, C. Turner

0 nays

1 absent — Maldonado

**WITNESSES:** For — Irma Balderas, Sandra Fuentes, Maria Luz Liserio, Silvia Rocha, Ofelia Rodriguez, The Border Organization; Denise Bowers, interpreter for The Border Organization; Twana Billeaudeau, Del Rio Chamber of Commerce, Military Affairs Association; Michael Blackburn, Department of Defense; Andrew Cernicky, 47th Flying Training Wing, Laughlin Air Force Base; Pat Cole, Del Rio City Council; Clay Ellis, Del Rio Board of Realtors; Pat Ellis; Gary Glick, Thompson Properties; Beau Nettleton, Val Verde County; Janice Pokrant, City of Del Rio; Jerry Simpton, Laughlin Air Force Base; Efrain Valdez, City of Del Rio; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Justin Burk; Katie Gonzalez; Jennifer Harris, Laughlin Air Force Base; Tony Hernandez, Amistad Bank; Shanna Igo, Texas Municipal League; Kurt Lemp, Del Rio Chamber of Commerce)

Against — Kristin Belt, Landowners in MIA; Clay Dissler; David Earl, SE Ranch Holdings, Val Verde Development Company; Jimmy Gaines, Texas Landowners Council; Darrell Hargrove, South West Livestock; Michael D. Moore, Greater San Antonio Builders Association

**BACKGROUND:** Local Government Code Title 7, subchapter C authorizes the regulation of issues that involve more than one type of local government, such as municipal and county zoning authority around airports.

**DIGEST:** CSHB 2056 would allow the governing bodies of a municipality and a county that had an air force facility located within it, a population between 5,000 and 60,000, and that was not located on an international border to appoint a joint airport zoning board to regulate land use around the facility. The area that could be regulated could not extend more than five

nautical miles from a line extending through the midpoint of each end of a runway or more than five nautical miles from each end of the paved surface of the air force facility's landing strip.

The zoning board would be able to regulate:

- the height, number of stories, and size of buildings and other structures in the area around the air force facility;
- the location and use of land and buildings and other structures for business, industrial, residential, or other purposes;
- the percentage of a lot that could be occupied;
- the size of yards, courts, and other open spaces;
- population density, and;
- the placement of water and sewage facilities, landfills, parks, and other required public facilities.

The joint zoning board would be comprised of:

- two members appointed by the county judge;
- two members appointed by the presiding officer of the municipality's governing body;
- two landowner members, one who owns less than 500 acres of land in the regulated area and one who owns more than 500 acres, each to be appointed jointly by the county judge and presiding officer of the municipality, and;
- one member to serve as presiding officer, appointed jointly by the zoning board's other four members.

The zoning board would adopt a resolution issuing recommendations for prohibiting or restricting development in the regulated area. The recommendations would have to be based on the most recent Air Installation Compatible Use Zone (AICUZ) Study and the most recent Joint Land Use Study. The governing bodies of a municipality and the county in the regulated area then would be required to hold a joint public hearing on the proposed regulations and to publish notice of the hearing in both English and Spanish in a newspaper of general circulation in the county at least 15 days before the hearing.

Development regulations would not be effective until adopted by the governing bodies of a municipality and the county in the regulated area. Regulations would have to be adopted in accordance with the most recent

AICUZ study and the most recent Joint Land Use study and the county growth and development plan, and would have to be coordinated with the municipality's comprehensive plan.

The governing bodies of a municipality and the county could amend the adopted regulations based on recommendations from the joint zoning board based on updated AICUZ and Joint Land Use studies, or if each governing body found that the conclusions of the studies accurately reflected development circumstances. A majority vote of the full membership of each governing body would be required to amend a land use development recommendation.

The zoning board could not regulate land used for agricultural purposes, and the governing bodies of a municipality and a county in the regulated area would be required to prepare a written takings impact assessment of any proposed regulation. The joint airport zoning board would be allowed to divide the regulated area into districts of a number, size, and shape determined by the board, and development regulations could vary from district to district.

The governing bodies of a municipality and the county in the regulated area would be able to adopt ordinances, orders, or regulations to enforce the development regulations adopted under the bill. Any person who violated the bill's provisions or ordinances adopted by the governing bodies could be charged in district court with a misdemeanor punishable by a \$500-\$1,000 fine. Each day that the violation occurred would be considered a separate offense.

Persons who felt aggrieved by development regulations adopted under this bill would be able to petition the governing bodies of a municipality and the county in the regulated area for a special exception to the regulation. A special exception could only be granted with a majority vote of the full membership of each governing body. Any procedures governing applications, notice, hearings, or other matters related to the granting of a special exception would be determined by the governing bodies.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 2056 would allow cities such as Del Rio to preserve the economic benefits they receive from a nearby air force facility and protect the facility's mission and training operations. The increased development seen

in some areas of Texas can encroach on military installations and threaten the base's use by the military, which could lead to a base closure. Only a limited number of counties would be able to enact development regulations under the bill, and allowing cities and counties to enact compatible land use regulations around air force bases would ensure that those facilities continued to benefit surrounding economies in the future.

**OPPONENTS  
SAY:**

While it is important to protect military bases, CSHB 2056 could lead to the infringement of landowners' property rights. The bill would be overly broad in authorizing the regulation of population density and the placement of water and sewage facilities and could lead to development regulation in an area larger than necessary. The bill also would provide no forum to appeal a regulation other than with the entities that enacted the regulation.

**NOTES:**

The substitute differs from the bill as filed by exempting counties located on an international border with populations below 5,000, by defining the types of agricultural land use exempt from regulation and removing language allowing land used for agriculture to be regulated if the joint zoning board found that the agricultural interfered with an air force facility's activities, by requiring the governing bodies of a municipality and the county in a regulated area to prepare a written takings impact assessment of a proposed regulation, and by requiring notice of a public hearing on a proposed regulation to be published in English and Spanish.

The companion bill, SB 2439 by Uresti, passed the Senate by 21-8 (Eltife, Fraser, Harris, Hegar, Huffman, Nichols, Patrick, Seliger) on May 8, and has been referred to the House Defense and Veterans' Affairs Committee.