

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2223  
By: Van de Putte  
Veteran Affairs & Military Installations  
4/24/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Uncurtailed development is impinging upon the critical mission capability of several military installations in the state of Texas. It is imperative in order to sustain Texas' military installations that decision makers find a way to reconcile a city's growth with the maintenance of the installation's mission. Military installations provide an invaluable contribution to a community's diversity and economic stability. Ensuring their continued operation is critical to a community's well-being, and it also ensures that Texas continues to enjoy a productive, mutually-beneficial relationship with the Department of Defense and its military installations. It is an appropriate role for a defense base regulatory authority to regulate economic activity around an active defense base in or near a municipality.

C.S.S.B. 2223 amends current law relating to authorizing the creation of regional military sustainability commissions around military installations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle C, Title 12, Local Government Code, by adding Chapter 397A, as follows:

#### **CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS RELATING TO MILITARY INSTALLATIONS**

Sec. 397A.001. **LEGISLATIVE FINDINGS; PURPOSE.** (a) Sets forth the findings of the legislature.

(b) Provides that the regulatory powers granted by this chapter are for the purpose of promoting the public health, safety, and general welfare; protecting and preserving places and areas of military and national security importance and significance; protecting critical military missions and operations related to those missions; and ensuring state and national security.

Sec. 397A.002. **APPLICABILITY.** (a) Provides that a regulation adopted under this chapter does not apply to a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision; a tract of land in agricultural use; or an activity or a structure or appurtenance on a tract of land in agricultural use.

(b) Defines "agricultural use" and "agriculture."

Sec. 397A.003. **CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION.** (a) Authorizes a municipality with a population of 1.1 million or more and each county that, with respect to the same active military installation, constitute a defense community, as defined by Section 397.001 (Definitions), to agree by order, ordinance, or other means to establish and fund a regional military sustainability commission (commission) under this chapter in an area that is in the same county as the active military installation and in the municipality's extraterritorial jurisdiction.

(b) Prohibits defense communities from establishing more than one commission in a county.

(c) Provides that 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) Provides that a commission is a political subdivision of the state and is entitled to immunity as described by Chapter 101 (Tort Claims), Civil Practice and Remedies Code.

(e) Requires that this chapter be liberally construed in conformity with the findings and purposes under Section 397A.001.

Sec. 397A.004. HEARING ON CREATION OF COMMISSION. (a) Requires the governing body, 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 commission, to hold two public hearings to consider the creation of the proposed commission. Requires each governing body, at least seven days before each public hearing, to 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 in the proposed territory, if any.

(b) Requires that the notice required by Subsection (a) state the date, time, and place for the public hearing; identify the boundaries of the proposed territory, including a map of the proposed territory; and provide a description of the proposed commission's authority.

Sec. 397A.005. GOVERNING BODY OF THE REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) Provides that the governing body of the commission is composed of not more than nine members.

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

(c) Prohibits a member of a governing body of a commission from being an elected official of a participating county or municipality.

Sec. 397A.006. REGULATORY AUTHORITY. (a) Provides that a commission has the authority granted to a municipal zoning commission and a board of adjustment under Chapter 211 (Municipal Zoning Authority) in the commission's territory, including the area that is within the boundaries of a municipality's extraterritorial jurisdiction. Provides that on annexation of an area of the commission's territory for full or limited purposes by the municipality, the commission's authority to regulate the area under Chapter 211 expires. Provides that the commission regains the authority in an area if the municipality disannexes the area.

(b) Requires a commission to establish an advisory committee (committee) and appoint not more than five members to the committee. Requires three of the members appointed to the committee to represent the military installation for which the commission is established. Requires the committee to advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) Requires the participating governmental entities to determine the procedures under Chapter 211 that apply to the review and approval of a zoning regulation under this chapter. Provides that the governmental entity with jurisdiction in the area to which a proposed zoning regulation applies makes the final decision under this chapter regarding a proposed zoning regulation.

Sec. 397A.007. REGIONAL PLAN. (a) Requires a commission to recommend and adopt a plan for the territory. Requires the commission to consider and authorizes it to adopt as part of the regional plan the Federal Aviation Administration regulations regarding height restrictions, standards, and density limitations surrounding a military installation that services aircraft and helicopters. Requires the commission, after adoption, to submit the plan to the participating governmental entities for approval.

(b) Requires the participating governmental entities, before taking action to approve or reject the plan, to provide notice of the commission's proposed plan to property owners in the commission's territory, as determined by the most recent county tax roll and publish notice of the commission's proposed plan in a newspaper of general circulation in the commission's territory, if any.

(c) Provides that the failure of notice to reach each property owner under Subsection (b) does not invalidate a plan adopted under this section.

(d) Provides that the plan is final after approval by a majority of the participating governmental entities. Requires that notice of the final plan be provided to all appropriate taxing entities for filing in the real property records of the county.

(e) Authorizes the plan to include a recommendation to a participating governmental entity to purchase property in the commission's territory as practical to protect a critical military mission.

(f) Authorizes the commission to amend an approved plan after providing notice of the amended plan and holding hearings in the same manner as provided by the procedures described by Section 397A.006(c). Authorizes the participating governmental entities to approve the commission's amended plan under the procedures adopted by Section 397A.006(c) for the approval of zoning regulations.

Sec. 397.008. COORDINATION WITH OTHER PLANS AND STUDIES. Requires that the plan and regulations adopted under this chapter be coordinated with the county plan for growth and development of a participating county or a county located in the commission's territory; the comprehensive plan of a participating municipality; and 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. DORMANT PROJECTS. (a) Requires that, notwithstanding Section 245.005(b) (relating to a regulatory agency enacting an ordinance, rule, or regulation that places an expiration date of not less than two years on an individual permit if no progress has been made towards completion of the project), a project, as defined by Section 245.001 (Definitions), in the commission's territory have not more than four years to show progress towards completion, as determined under Section 245.005(c) (relating to required components of progress towards completion of the project).

(b) Provides that this subsection does not prohibit a project developer from applying to the commission for a new permit or other form of authorization required to complete the project.

Sec. 397A.010. CONFLICT WITH OTHER LAWS. Provides that 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.011. FUNDS. (a) Provides that a commission does not have power to tax.

(b) Authorizes a participating governmental entity to appropriate funds to the commission for the costs and expenses required in the performance of its purposes.

(c) Authorizes a commission to 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 other source.

Sec. 397A.012. RESTRICTIONS. (a) Requires a commission to comply with laws applicable to participating governmental entities relating to reimbursement for travel expenses; nepotism; conflicts of interest; and registration of lobbyists.

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

Sec. 397A.013. WITHDRAWAL FROM COMMISSION. Authorizes a participating governmental entity to withdraw from a commission by a two-thirds vote of its governing body and after providing notice to the relevant military installation commander not later than the 45th day before the date of the vote under Subdivision (1) (relating to a two-thirds vote by the governing body).

Sec. 397.014. EXPIRATION AFTER MILITARY INSTALLATION CLOSURE. Authorizes a commission that regulates territory around a military installation that is closed by the federal government and the regional plan and zoning regulations adopted by the commission to continue in effect until the fourth anniversary of the date the military installation is closed.

Sec. 397A.015. EXEMPTION FROM OTHER LAW. Provides that Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, does not apply to an action by a commission or a participating governmental entity under this chapter.

SECTION 2. Effective date: upon passage or September 1, 2009.