

- SUBJECT:** Permitting commissioners courts to regulate lighting near military bases
- COMMITTEE:** Defense Affairs and State-Federal Relations — committee substitute recommended
- VOTE:** 9 ayes — Corte, Escobar, Garcia, Herrero, Hodge, Merritt, Moreno, Noriega, Raymond
0 nays
- WITNESSES:** For — (*Registered, but did not testify*: Leilah Powell, Bexar County Commissioners Court)
Against — None
On — Regan Beck, Texas Farm Bureau
- BACKGROUND:** Local Government Code, sec. 240.032 permits a county commissioners court to regulate lighting in the area surrounding an astronomical observatory upon the request of the observatory. Such regulations must be designed to protect against the use of outdoor lighting in a way that interferes with astronomical research. Any county whose boundaries fall within 57 miles of the McDonald Observatory near Fort Davis and five miles of the Stephen F. Austin State University Observatory near Nacogdoches or the George Observatory in Fort Bend County may:
- require that a county permit be obtained before the installation and use of certain types of outdoor lighting in a regulated area;
 - establish a fee for the issuance of the permit;
 - prohibit the use of a type of outdoor lighting that interferes with the effective use of the observatory;
 - establish requirements for the shielding of outdoor lighting; and
 - regulate the times during which certain types of outdoor lighting may be used.

The commissioners court may apply more stringent standards for areas in which the use of outdoor lighting has a greater impact on observatory activities. Any regulations adopted by the commissioners court under

these provisions must go through a public hearing process held with two weeks notice.

DIGEST:

CSHB 1852 would allow county commissioners courts to regulate lighting around military installations in addition to astronomical observatories. At the request of the commanding officer, the bill would permit any county immediately adjacent to a U.S. military installation, base, or camp to regulate the use of outdoor lighting within five miles of the site. The county could establish a fee sufficient to cover the costs of administering the issuance of any necessary permits.

The bill would prohibit commissioners courts from regulating outdoor lighting uses that:

- had been installed or used before the effective date of the county's regulations and were necessary for the operations of electric utilities, gas utilities, surface coal mining and reclamation operations, or telecommunications providers;
- were located on a tract of land maintained as a single-family residence and located outside the boundaries of a platted subdivision;
- were located on a tract of land maintained for agricultural use or associated with agricultural activities and structures; or
- were used as part of a correctional facility operated or contracted by the Texas Department of Criminal Justice.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

CSHB 1852 would strike a good balance between protecting the ability of the U.S. military to conduct vital operations and allowing development in the vicinity of military bases.

Conducting nighttime exercises is critical to the ongoing viability of many military installations in Texas. Lighting associated with encroaching development has interfered with the ability of some bases to effectively conduct military exercises at night. Camp Bullis, which covers approximately 28,000 acres 17 miles northwest of San Antonio in Bexar County, is a good example of an installation threatened by encroaching development. Camp Bullis was established in 1917 in a then-remote area

that has experienced considerable development in recent decades. Current development and lighting patterns threaten to compromise the base's ability to hold effective nighttime exercises.

Protecting the long-term viability of military bases in Texas is especially critical in the context of base closures around the state and country. A base's ability to hold combat operations factors heavily in the federal government's decision to reinvest in the base and extend its operation. Protecting and preserving federal investments in Texas bases should be a top priority for elected state officials. CSHB 1852 would provide an important tool for surrounding counties to use in ensuring the continued operability of Texas military bases.

CSHB 1852 would be permissive in allowing commissioners courts to take action at the request of a U.S. military installation. The bill would not require regulations in the absence of problems, and the regulatory powers given to counties would be well-defined and limited in scope. Regulations would have to be carefully tailored to lighting that threatened base operations, and only the five-mile area surrounding military bases potentially would be subject to regulation.

Any regulations could be adopted through a public process that took into account the needs of nearby residents and developers. In addition, the use of modern lighting technology in most cases would resolve the concerns of all parties. For example, counties could require new developments to install shielded outdoor lighting that aims the light downward, where it effectively illuminates public and private spaces. Modern lighting technologies contain reflectors in the shielding that amplify the downward light and allow the use of lower-wattage bulbs, which also provide significant savings in energy costs. Devices providing greater energy efficiency and minimizing incidental light also would make it possible to comply with county regulations without sacrificing the safety and security that lights provide.

**OPPONENTS
SAY:**

CSHB 1852 would allow counties to impose burdensome lighting regulations in large areas around military installations. Businesses and developers might have to pay to install more expensive lighting, and counties could create more cumbersome permitting processes that might increase development costs. CSHB 1852 would add incrementally to the ever-increasing authority of counties across the state.

The bill could hamper development around military bases. Counties are not accustomed to designing and implementing regulatory measures. The lighting regulations imposed by Fort Bend County, for example, have created controversy. This ordinance has proved onerous for property owners and developers and problematic for the nearby Long Point Landfill. The language in CSHB 1852 is not sufficiently specific to protect against the adoption of lighting ordinances that could place undue burdens on developers and businesses.

OTHER
OPPONENTS
SAY:

The proposed exemptions for single-family residences and agricultural uses excessively would limit the ability of counties to impose lighting regulations near both observatories and military installations. For example, the bill would conflict with lighting regulations in Fort Bend County, which has the state's most extensive county lighting ordinance.

Fort Bend County passed an outdoor lighting ordinance in March 2004, under the auspices of powers granted for the protection of George Observatory. The Fort Bend ordinance designates three light regulation zones of increasing intensity and provides that area lighting must be properly focused such that no part of the beam width radiates directly into the open sky above the horizontal plane. The ordinance provides exemptions for temporary light uses, but applies to permanent agricultural and single-family light uses. CSHB 1852 would prevent counties from regulating these uses.

NOTES:

The committee substitute would exclude from regulation existing lighting used by electric and gas utilities, surface coal mining and reclamation operations, or telecommunications providers. CSHB 1852 also would exempt lighting used for illuminating single-family residences and agricultural structures and activities. The committee substitute also would define "agricultural use" according to the definition found in Tax Code, sec. 23.51.

A related bill, CSHB 2648 by Rose, which would expand counties' ability to regulate outdoor lighting in subdivisions and other unincorporated areas, has been referred to the County Affairs Committee.