

CHAPTER 21
HOUSE BILL No. 2445°

AN ACT concerning land use; relating to military installations and adjacent areas.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Areas of this state that are wholly or in part within jointly developed community — military air installation compatible use zone (AICUZ) study area, joint land use study (JLUS) area, army compatible use buffer (ACUB), or an environmental noise management plan (ENMP) of an active duty, national guard or reserve military installation shall constitute a state area of interest vital to national security and the economic well being of the state.

Sec. 2. (a) It is the desire of the state of Kansas to promote communication, cooperation and collaboration between any military installation and any municipality adjacent to or surrounding the military installation.

(b) To further communication, cooperation and collaboration:

(1) Each military installation shall:

(A) Notify and coordinate with each municipality adjacent to or surrounding the military installation regarding any development, project or operational change on the military installation which will alter or amend a JLUS, ACUB, AICUZ or ENMP or any element therein.

(B) Notify each municipality adjacent to or surrounding the military installation of any change in the name of any contact person, and any related information thereto, who is used for the purpose of communication between the military installation and the municipality.

(C) Meet and coordinate at least annually with representatives of each municipality adjacent to or surrounding military installations for the purpose of determining any critical area within the state area of interest. A critical area of interest is any portion of the state area of interest where future use of such area is determined in a coordinated manner between the military installation and the municipality and should be monitored or managed to reduce any potential conflict with any military operation and the economic well being of the municipality.

(2) Each municipality adjacent to or surrounding a military installation shall:

(A) Meet and coordinate at least annually with the commander of the active duty, national guard or reserve military installation associated with the state area of interest in which the municipality is located to jointly determine what portion, if any, of that state area of interest is a critical area.

(B) Notify the commander of each military installation located adjacent to or surrounded by a municipality of any change in the name of any contact person, and any related information thereto, who is used for the purpose of communication between the military installation and the municipality.

(C) Provide notice to the commander of each military installation located adjacent to or surrounded by a municipality of the adoption of any regulation, including any amendment thereof, or any amendment to any comprehensive planning document which affects any mutually agreed upon critical area. Such notice shall be provided at least 30 days prior to the adoption of any such regulation, or amendment thereof, or any such amendment to a comprehensive planning document. Failure of an installation commander to respond after receiving notification under this subparagraph shall be deemed to indicate such commander's approval of the regulation, or amendment thereof, or amendment to the comprehensive planning document.

(D) Provide written notice to the commander of each military installation located adjacent to or surrounded by a municipality of each development proposal which affect any agreed upon critical area to provide the commander of any military installation affected an opportunity to assess any impact and coordinate issues with planning staff. Such an assessment shall not be unreasonably withheld, but shall be offered within the statutorily required notice for public hearing. Such notice shall be provided concurrently with any statutorily required notice for public hearing.

(E) Consider the impact of each of the following factors, based upon

information provided by the installation, before making a decision regarding a development proposal located within an agreed upon critical area:

(i) The potential for release into the air of any substance such as steam, dust or smoke unless such substance is generated by agricultural use, that would impair visibility or otherwise interfere with military operations, including ground operations.

(ii) The potential for production of any light emission, either directly, or indirectly or by reflective light, that would interfere with pilot vision, and aerial or ground based night vision training.

(iii) The potential for the production of electrical emissions that would interfere with military ground and aircraft communications and navigation equipment.

(iv) The potential to attract birds or waterfowl including, but not limited to, operation of any sanitary landfill and the maintenance of any large scale feeding station.

(v) Whether or not structures are proposed within 10 feet of any defined aircraft approach, departure, or transitional surface; or within 100 feet beneath any low-level military aircraft training route as provided by the federal aviation administration.

(vi) The potential to expose persons to noise greater than 65 DNL.

(vii) The potential for obstructed visibility or surveillance, or both, of direct fire weaponry platforms into permanently populated or operational areas of military installations.

(viii) Whether or not there will be a violation of any federal aviation administration height restriction in title 14 of the code of federal regulations (14 CFR) part 77 entitled "Objects Affecting Navigable Airspace" or Department of Defense Instruction (DoDI) Number 4165.57 entitled "Air Installations Compatible Use Zones."

(F) Review and coordinate all comprehensive plans or zoning ordinances or regulations affecting any mutually agreed upon critical area of a state area of interest and consider the most current jointly developed community — military JLUS or AICUZ, or both, recommendations sponsored by the United States air force installation located at McConnell air force base located in Sedgwick county, Kansas, sponsored by the United States department of the army installations located at Fort Riley in or adjacent to Clay, Geary and Riley counties, Kansas, and Fort Leavenworth in Leavenworth county, Kansas, or sponsored by the Kansas adjutant general for Forbes Field in Shawnee county, Kansas, or the Smoky Hill facility located in Saline county, Kansas. All such comprehensive plans or zoning ordinances or regulations shall also consider the presence of any ACUB and the findings of any AICUZ or ENMP.

(G) For such plans, ordinances or regulations, consider the recommendation or study provided by the military with a view to protection of public health, safety and welfare and maintenance of safe military and aircraft operations, and the sustainability of installation missions.

(H) Consider the adoption of a mandatory disclosure requirement for any property within any agreed upon critical area of a state area of interest, which would inform a buyer of the potential for impact from noise, smoke, dust, light, electromagnetic interference and aircraft safety zones on the landowner produced by normal military operations.

(I) Provide the following written notice to individuals receiving a construction permit for improvements within the agreed upon critical area:

"The property for which this permit is issued is situated in an area that may be subjected to conditions resulting from military training at a nearby military installation. Such conditions may include the firing of small and large caliber weapons, the over flight of both fixed-wing and rotary-wing aircraft, the movement of vehicles, the use of generators and other accepted and customary military training activities. These activities ordinarily and necessarily produce noise, dust, smoke and other conditions that may not be compatible with the permitted improvement according to established federal guidelines, state guidelines or both."

(c) Nothing herein shall prevent municipalities adjacent to or surrounding military installations from entering into interlocal agreements with such military installations, in order to accomplish the objectives expressed herein.

Sec. 3. As used in sections 1 through 4, and amendments thereto:

(a) "AICUZ" means a jointly developed community — military air installation compatible use zone.

(b) “ACUB” means an army compatible use buffer.

(c) “Development proposal” means any development requiring a review process prior to approval including, but not limited to, platting, rezoning, conditional use, special use, variance or any other similar action.

(d) “DNL” means a day — night noise level.

(e) “ENMP” means an environmental noise management plan of an active duty, national guard or reserve military installation.

(f) “JLUS” means a joint land use study.

(g) “Military training buffer contract” means land in which the private owner voluntarily provides, sells or leases the development rights for the land or provides, sells or leases the right of the military to reject proposed development that will be incompatible with the training mission and operations of a federal or state military facility of more than 100 acres. Nothing in the state area of interest, military training buffer area or military training buffer area contract shall provide authority for the use of eminent domain.

(h) “Municipality” shall mean a city or county.

(i) “State area of interest military training buffer area” means land that is contiguous to a federal or state military facility of more than 100 acres as specified in the applicable AICUZ, JLUS, ACUB, or ENMP or is located adjacent to lands already in the program or is under a military flight path.

Sec. 4. Notwithstanding any other provision of this act, the final decision on all planning, development, zoning and land use issues shall be made by each municipality adjacent to or surrounding a military installation.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 24, 2010.
