

# Military Installations and Civilian Encroachment

This Act declares areas of the state wholly or partially within a 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, constitute a state area of interest vital to national security and the economic well being of the state. The bill requires military installations notify and coordinate with municipalities about any development, project, or operational change that alters or amends a JLUS area, ACUB, AICUZ, or ENMP.

The Act requires representatives from military installations and municipal officials to meet at least annually to determine critical areas within areas of vital interest. It defines “critical areas” as areas “where future use of such area is set through a coordinated effort between the municipality and military installation to avoid conflict with any military operation or the economic well being of the municipality.”

The bill requires military and municipal officials notify each other about proposed changes and developments within critical areas and it requires municipalities consider a number of factors that might impact a military installation before permitting development within critical areas.

Interested readers should know that some concerns were raised by SSL Committee members that a state cannot legally mandate participation and compliance by military officials. However, because the bill lacks any enforcement provisions and because the goals of the bill can only be achieved when both municipal and military officials willingly participate in the program, the Department of Defense representatives involved in the legislative process supported the final bill language of HB 2445.

Submitted as:

Kansas

[HB 2445 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Land Use  
2 Relating to Military Installations and Adjacent Areas.”

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4           Section 2. [*Legislative Findings.*] Areas of this state that are wholly or in part within  
5 jointly developed community — military Air Installation Compatible Use Zone (AICUZ) study  
6 area, Joint Land Use Study (JLUS) area, Army Compatible Use Buffer (ACUB), or an  
7 Environmental Noise Management Plan (ENMP) of an active duty, National Guard or reserve  
8 military installation shall constitute a state area of interest vital to national security and the  
9 economic well being of the state.

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11           Section 3. [*Promoting Communication, Cooperation, and Collaboration between*  
12 *Military Installations in the State and Municipalities in the State.*]

13 (a) It is the desire of this state to promote communication, cooperation, and collaboration  
14 between any military installation and any municipality adjacent to or surrounding the military  
15 installation.

16 (b) To further communication, cooperation, and collaboration:

17 (1) Each military installation shall:

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

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

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

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

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

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

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

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

57 (E) Consider the impact of each of the following factors, based upon  
58 information provided by the installation, before making a decision regarding a development  
59 proposal located within an agreed upon critical area:

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

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

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

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

71 (V) Whether or not structures are proposed within 10 feet of any  
72 defined aircraft approach, departure, or transitional surface; or within 100 feet beneath any low-  
73 level military aircraft training route as provided by the Federal Aviation Administration.

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

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

78 (VIII) Whether or not there will be a violation of any Federal  
79 Aviation Administration height restriction in Title 14 of the Code of Federal Regulations (14  
80 CFR) part 77 entitled “Objects Affecting Navigable Airspace” or Department of Defense  
81 Instruction (DoDI) Number 4165.57 entitled “Air Installations Compatible Use Zones.”

82 (F) Review and coordinate all comprehensive plans or zoning ordinances  
83 or regulations affecting any mutually agreed upon critical area of a state area of interest and  
84 consider the most current jointly developed community—military JLUS or AICUZ, or both,  
85 recommendations from the following [insert applicable military installations in the state]. All  
86 such comprehensive plans or zoning ordinances or regulations shall also consider the presence of  
87 any ACUB and the findings of any AICUZ or ENMP.

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

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

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

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

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

Section 4. [*Definitions.*] As used in sections 1 through 4, and amendments thereto of this Act:

(1) “AICUZ” means a jointly developed community - Military Air Installation Compatible Use Zone as defined in Department of Defense Instruction 4165.57.

(2) “ACUB” means an Army Compatible Use Buffer as authorized in 10 U.S.C.A. § 2684a.

(3) “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.

(4) “DNL” means the Day-Night Noise Level as defined in Army Regulation AR 200-1, Cpt. 7 (1997) and Cpt. 14 (2007).

(5) “ENMP” means an Environmental Noise Management Plan of an active duty, National Guard or reserve military installation as required by Army Regulation AR 200-1, Cpt. 7 (1997) and Cpt. 14 (2007).

(6) “JLUS” means a Joint Land Use Study as authorized in 10 U.S.C. § 2391.

(7) “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.

(8) “Municipality” shall mean a city or county as defined in [insert citation].

(9) “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 as defined in as defined in the Joint Air Force, Navy, Army, and FAA Criteria Handbook - FM 55-9.

Section 5. [*Authority to Make Final Decisions About Planning and Zoning Issues for Land Surrounding Military Installations.*] 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.

Section 6. [*Severability.*] [Insert severability clause.]

Section 7. [*Repealer.*] [Insert repealer clause.]

Section 8. [*Effective Date.*] [Insert effective date.]