

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB VMAS 13-02 Inhibiting Encroachment of Military Installations

SPONSOR(S): Veteran & Military Affairs Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Veteran & Military Affairs Subcommittee		Thompson	De La Paz

SUMMARY ANALYSIS

Florida is home to 20 major military installations and three unified combatant commands. Encroachment is a term used by the Department of Defense (DoD) to refer to incompatible uses of land, air, water, and other resources in close proximity to a military installation. The Legislature has found that incompatible development of land close to military installations can adversely affect the installation, threaten public safety, and may also affect the economic vitality of the respective local communities.

At least 20 states, including Florida, in recent years have enacted land use-related laws to address encroachment concerns that include land conservation. However, lands bordering a military installation may or may not have conservation value. The lands that do have conservation value are eligible to be acquired using the state lands funding mechanism known as the Florida Forever program (Florida Forever). Those that do not have conservation value (non-conservation lands) are not eligible for Florida Forever. In addition, a program or source of funding does not exist at the state level to provide funding for non-conservation lands which are desired to buffer a military base.

Section 288.980, F.S., creates the Military Base Protection Program (MBPP), within the Department of Economic Opportunity (DEO). The MBPP is authorized to address emergent needs relating to mission sustainment and base retention. However, the problem of encroachment is not specifically mentioned.

The PCB amends s. 288.980, F.S., to provide Legislative findings related to encroachment of military installations, specify functions of the MBPP, and provide funding authority for the Board of Trustees of the Internal Improvement Trust Fund (Board) to acquire non-conservation lands to buffer a military base against encroachment.

The PCB specifies functions of the MBPP to include:

- Securing non-conservation lands to serve as a buffer to protect military installations against encroachment; and
- Supporting local community efforts to engage in service partnerships with military installations.

The PCB revises the current funding appropriation purposes of the MBPP to include encroachment reduction or prevention. The PCB authorizes DEO to submit a list annually to the Board to acquire non-conservation lands, and directs the Board to consider the recommendations of the Florida Defense Support Task Force in making determinations to acquire non-conservation lands. The PCB amends s. 253.025, F.S., to authorize the Board to acquire non-conservation lands from the list submitted by DEO for the purpose of buffering a military base against encroachment subject to a specific appropriation.

The PCB does not preclude the acquisition of such lands by local governments.

According to DEP, the PCB will have an insignificant fiscal impact.

The PCB provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Military Presence in Florida

Florida is home to 20 major military installations and three unified combatant commands. Defense related spending is estimated to be responsible for nearly \$73.4 billion of the state's gross domestic product and over 758,000 jobs around the state. The average earnings per military job in Florida is just over \$77,241, which is well above the state average earnings-per-worker level.¹ Only tourism and agriculture contribute more to Florida's economy.

The Department of Defense (DoD) has completed implementation of the 2005 round of base realignments and closures, commonly referred to as "BRAC."² The BRAC process reflects a desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training. There have been five BRAC rounds between 1988 and 2005. During the 1993 round, four Florida bases were closed.³

As a result of the 2005 BRAC round, a U.S. Army Special Forces Group of approximately 3,000 soldiers was moved from Ft. Bragg, North Carolina to Eglin Air Force Base in Northwest Florida. Also, Eglin was selected to establish multi-service/multi-nation training facilities for the F-35 Joint Strike Fighter aircraft. In addition, the 2005 BRAC round brought the new Navy P-8 aircraft mission to Naval Air Station Jacksonville.

In 2008 the U.S. Navy, in a decision unrelated to the BRAC process, announced its intention to homeport one of its nuclear powered aircraft carriers to Naval Station Mayport in Jacksonville. This basing decision will have significant positive economic impact on the Jacksonville area, however, as all nuclear powered aircraft carriers are currently homeported in Norfolk, Virginia, the Virginia Congressional delegation is actively trying to prevent this move.

Due to constraints with the federal budget and the drawdown of troops overseas, the federal government is focusing on redefining the scope and structure of the U.S. military. While there has not yet been an official call for another BRAC round, federal budget cuts and restructuring have led to changes in the missions at military installations throughout the nation, including calls to reorganize the Air Armament Center at Eglin Air Force Base due to a larger Air Force-wide effort.

Encroachment

Encroachment is a term used by DoD to refer to incompatible uses of land, air, water, and other resources in close proximity to a military installation. The Legislature has found that incompatible development of land close to military installations can adversely affect the ability of the installation to carry out its mission, threaten public safety if accidents are to occur near the military installation, and may also affect the economic vitality of a community when military operations or missions must be relocated because of urban encroachment.⁴ Also, from an environmental perspective, the loss of natural habitats through development on areas adjacent to military installations can negatively impact the biodiversity on military lands.⁵

¹ Enterprise Florida, Inc., Florida Defense Factbook 2013.

² See the Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510, as amended through the National Defense Authorization Act of Fiscal Year 2003.

³ During the 1993 BRAC round, Florida lost the Naval Aviation Depot Pensacola, the Naval Aviation Station Cecil Field Jacksonville, the Naval Training Center Orlando, and Homestead Air Force Base. Florida did not have any major DoD closures or realignments during the 1998, 1991, and 1995 BRAC rounds.

⁴ Section 163.3175, F.S.

⁵ J. Douglas Ripley, Legal and Policy Background, United States Department of Defense, *Conserving Biodiversity on Military Lands, A Guide for Natural Resources Managers*, available at <http://www.dodbiodiversity.org/ch3/index.html> (last visited February 27, 2013).

At least 20 states, including Florida, in recent years have enacted land use-related laws to address encroachment concerns. The types of land use laws fall into three categories.

- Land Use Planning – requires local governments to include in their comprehensive plans criteria to be considered to ensure that land use adjacent to a military base is compatible with the military mission.
- Notification of Military – creates or expands procedural requirements to provide planning and zoning information to the military and creates a specific mechanism for the military to comment on how the proposed development or planning change affects the military mission.
- Land Conservation – allocates state resources for open space protection such as acquisition of title or development rights to land, or conservation easements or transfer of development rights to restore and preserve open space and farmland or protect land from incompatible development.⁶

Lands bordering a military installation may or may not possess conservation value. The lands that have conservation value are eligible to be acquired using the state lands funding mechanism known as the Florida Forever program (Florida Forever).⁷ Those that do not have conservation value (non-conservation lands) are not eligible for Florida Forever.

The Florida Defense Support Task Force (Task Force)⁸ has expressed a need to develop and support a state non-conservation encroachment prevention plan. The Task Force has initially identified five military installations that have incompatible land use issues that would benefit from such a plan. However, a program or source of funding does not exist at the state level to provide funding for non-conservation lands which are desired to buffer a military base.

Land Conservation

Florida Forever

The State of Florida has a history of land acquisition programs, each with differing goals, objectives and funding. Since 1963 there has been a series of land acquisition programs, including Outdoor Recreation and Conservation (1963), Environmentally Endangered Lands (EEL, 1972), Conservation and Recreation Lands (CARL, 1979), Save Our Rivers (SOR, 1981), Save Our Coast (SOC, 1981), Florida Communities Trust (FCT, 1989), Preservation 2000 (P2000, 1990),⁹ and Florida Forever.¹⁰

Florida Forever is Florida's premier conservation and recreation lands acquisition program. The "Florida Forever Act" was created by the Legislature in 1999¹¹ and authorized the issuance of not more than \$3 billion in bonds for land acquisition, water resource development projects, preservation and restoration of open space and greenways, and outdoor recreation purposes. Florida Forever acquisitions may be carried out through fee simple (absolute ownership), less-than-fee interest (ownership of development rights or conservation easements), or other techniques, and must be scientifically based on Florida's natural resources.

The Board of Trustees of the Internal Improvement Trust Fund

⁶ The National Conference of State Legislatures, *Military Installations Sustainability (Updated June 18, 2010)*, provides the following states have enacted land-use related laws to address encroachment concerns: Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Virginia, Washington, and Wisconsin, available at <http://www.ncsl.org/issues-research/env-res/military-installation-sustainability.aspx> (last visited March 5, 2013).

⁷ Section 259.105, F.S.

⁸ Section 288.987, F.S.

⁹ In 1979, the Conservation CARL program was established to preserve Florida's unique natural heritage. In 1990, Florida established the Preservation 2000 (P2000) program in an effort to protect Florida's water resources, wildlife habitat, recreational areas, wetlands, and forests from a rapidly growing population. The Florida Forever program was enacted as a successor program to P2000.

¹⁰ Section 259.105, F.S.

¹¹ Ch. 99-247, Laws of Florida.

The Board of Trustees of the Internal Improvement Trust Fund (Board) is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may inure to the state or any of its agencies, departments, boards, or commissions, with certain exceptions.¹² The Board is comprised of four trustees: the Governor; the Attorney General; the Chief Financial Officer; and, the Commissioner of Agriculture.¹³

The procedures for state land acquisitions, titles to which will vest in the Board, are provided in chapters 253 and 259, F.S., and rule 18-24, F.A.C. The Department of Environmental Protection (DEP), Division of State Lands performs staff duties and functions related to the acquisition, administration, and disposition of state lands, where title will be vested in the Board.

The lands that are owned by the Board include conservation lands (about 3.1 million acres) and non-conservation lands (about 200,000 acres) such as state hospitals, prisons, state and community colleges, office buildings, etc. The Board also owns land that is not for conservation purposes that is leased out for cattle grazing or other agricultural purposes.¹⁴

Land Acquisition Process

Selection

Under Florida Forever, the Acquisition and Restoration Council (ARC) is responsible for evaluating, selecting and ranking state land acquisition projects for submission to the Board for approval. ARC is composed of ten voting members, four of whom are appointed by the Governor. The remaining members are the Secretary of DEP, director of the Division of Forestry of the Department of Agriculture and Consumer Services, executive director of the Florida Wildlife Conservation Commission (FWCC), director of the Division of Historical Resources of the Department of State,¹⁵ an appointment by the Commissioner of Agriculture; and an appointment by the FWCC.¹⁶

A list of proposed acquisitions is developed by ARC on an annual basis. The list includes acquisition applications that meet a combination of conservation goals. Applications are accepted from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals.¹⁷ Priority is given to projects that were placed on previous land acquisition lists or for which matching funds are available. ARC is also directed to give increased priority to projects where the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.¹⁸

After the initial review, a project can only move forward with the approval of at least five ARC members. A Project Evaluation Report is prepared by the staff for ARC approval after a project is approved for full review. In preparing the Project Evaluation Report, DEP staff confirms or revises the information contained in the initial project application, provides a review of the natural resource and other application components to determine the number of Florida Forever criteria, goals and measures being met, confirms the project boundary as contained in the application, and includes a recommended manager for the project along with a management policy statement and a management prospectus.¹⁹

¹² Section 253.03, F.S.

¹³ Section 259.03(2), F.S.

¹⁴ Email received March 4, 2013, from Susan Grandin, Director, Division of State Lands, Department of Environmental Protection (on file with the Veteran & Military Affairs Subcommittee).

¹⁵ Section 259.035(1)(b), F.S., authorizes the Secretary of Environmental Protection, the director of the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State to appoint a designee in their place.

¹⁶ Section 259.035, F.S.

¹⁷ Section 259.105(7)(a), F.S.

¹⁸ Section 259.105(10), F.S.

¹⁹ James A. Farr, Ph.D., O. Greg Brock, Ph.D. Florida Department of Environmental Protection, *Florida's Landmark Programs for Conservation and Recreation Land Acquisition*, available at <http://www.dep.state.fl.us/lands/AcqHistory.htm> (last visited March 4, 2013).

After a full review has been completed, the ARC develops a list of projects for consideration by the Board. At least five members of the ARC must vote to place a project on the Board's list. Projects of highest priority are on the "A" acquisition list. Projects that are not of the highest priority are ranked on the "B" acquisition list. Three sub-groups of projects are contained in both the "A" and "B" lists:

- Fee simple or large holdings;
- Multi-parcel or small holdings; and
- Less-than-fee acquisitions.

Prior to approval of the list by the board, ARC must submit a report with the list of proposed projects which outlines the following:

- The stated purpose of each included project;
- Costs to achieve the acquisition goals;
- An interim management budget;
- Specific performance measures;
- Plans for public access;
- Identification of the essential parcels within the project boundary;
- Identification of parcels, within each project boundary, which should be acquired by fee simple or less-than-fee simple methods;
- Identification of lands being acquired for conservation purposes;
- A management policy statement and a management prospectus;
- An estimate of land value;
- A map delineating the project boundaries;
- An assessment of the project's ecological, recreational, forest, and wildlife value as well as ownership patterns, utilization and location;
- Identification of alternative uses for the property and what those uses are; and
- A designation of the management agency or agencies.²⁰

Upon receipt, the Board of Trustees must provide final approval of the Florida Forever acquisition list each year.²¹ The Board may remove projects but may not add projects to the list or rearrange project rankings.

Acquisition

Once projects are approved for placement on the acquisition list by the Board, negotiations may begin with the individual property owners. Agents of the Negotiation Section within the Bureau of Land Acquisition negotiate full fee acquisitions, conservation easements and other less-than-fee transactions. The active process begins with an appraisal of value for the listed parcel and ends with an approximate six-week process wherein the acquisition is presented to the Board for approval.

Agents from the Closing Section within the Bureau of Land Acquisition prepare the transaction for conveyance to state ownership.²²

The title to lands acquired under Florida Forever is vested in the Board, except that title to lands acquired by water management districts are vested in the name of that district and lands acquired by local governments are vested in the name of that local government.²³

Readiness and Environmental Protection Initiative

The DoD Readiness and Environmental Protection Initiative (REPI)²⁴ provides the opportunity for cost-sharing partnerships between the military, private conservation groups, and state and local governments to protect military testing and training capabilities and conserve land. These partnerships acquire easements or other interests in land to limit incompatible development, and protect valuable

²⁰ Section 259.105(15), F.S.

²¹ Section 259.105(16), F.S.

²² Section 259.041, F.S.

²³ Section 259.105(7)(c), F.S.

²⁴ 10 USC § 2684(A) (2003).

open space and habitat around key test and training areas to support military readiness. As such, REPI funds may be used to acquire either conservation or non-conservation lands.

The State of Florida has had a successful partnership with DoD for over ten years to acquire conservation lands around military bases that also serve as encroachment buffers. This has been made possible by matching Florida Forever with REPI funds. As of June 2012, using this method, DEP has acquired almost 37,000 acres that conserve natural resources and help protect the mission of the adjacent military base.²⁵

Military Base Protection

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state. The legislative intent of this section encourages communities to initiate a coordinated program of response and plan of action in advance of future actions of the federal government relating to realignments and closures, recognizes the need for communities to develop and implement strategies to preserve and protect military installations, and recognizes that the state needs to coordinate all efforts that can support military installations through the state.²⁶

This section also provides for the Military Base Protection Program (MBPP). The MBPP is authorized to use its funds to address emergent needs relating to mission sustainment and base retention. In addition, these funds may be used to match federal funds. The Department of Economic Opportunity (DEO) is directed to coordinate and implement this program.²⁷ However, funds appropriated under the MBPP are not specifically authorized to be used to combat encroachment. Furthermore, specific functions of the MBPP are not provided.

Defense grant programs are administered by the Florida Defense Alliance, an organization within Enterprise Florida, Inc.,²⁸ and funded by the state's legislature to assist Florida's communities hosting defense industries, bases, and installations. DEO is authorized to award grants on a competitive basis through the Florida Defense Reinvestment Grant Program (DRG)²⁹ and the Florida Defense Infrastructure Grant Program (DIG).³⁰

The DRG program provides communities hosting military installations with resources to support advocacy and military community relations. DRGs must be part of a plan to support the needs of an installation, or work in conjunction with defense-dependent communities in developing strategies that will help communities expand its non-defense economy, as appropriate. Activities may include studies, presentations, analyses, plans, marketing, modeling, and reasonable travel costs.³¹ As such, DRG grants likely are not used for land acquisitions.

The DIG program provides support for local infrastructure projects including those associated with encroachment, transportation and access, utilities, communications, housing, environment, and security that have a positive impact on an installation's military value. Infrastructure grants may also be used to conduct studies, develop presentations, analyses, plans, and modeling in direct support of infrastructure projects.³² Since DIG provides support for several types of projects in addition to encroachment, funding may not be sufficient to meet the needs of Florida's encroachment concerns as a whole.

Proposed Changes

²⁵ Minutes from the Florida Defense Support Task Force Meeting, 27 June 2012. On file with the Veteran & Military Affairs Subcommittee.

²⁶ Section 288.980(1)(a), F.S.

²⁷ Section 288.980(2), F.S.

²⁸ Section 288.980(1)(b), F.S., provides that the Florida Defense Alliance... shall serve as an overall advisory body for defense-related activity of Enterprise Florida, Inc., and may receive funding for that purpose from DEO.

²⁹ Section 288.980(4), F.S.

³⁰ Section 288.980(5), F.S.

³¹ The Florida Defense Alliance, *Grant Information*, available at <http://www.floridadefense.org/grants.asp> (last visited March 8, 2013).

³² *Id.*

The PCB amends s. 288.980, F.S., to provide Legislative findings related to encroachment of military installations, specify functions of the MBPP, and provide funding authority for the Board of Trustees of the Internal Improvement Trust Fund (Board) to acquire, subject to a specific appropriation, non-conservation lands to buffer a military base against encroachment.

The PCB specifies functions of the MBPP to include, but not be limited to:

- Securing non-conservation lands to serve as a buffer to protect military installations against encroachment; and
- Supporting local community efforts to engage in service partnerships with military installations.

The PCB revises the current funding appropriation purposes of the MBPP that funds be used to address emergent needs related to mission sustainment and base retention to include encroachment reduction or prevention.

The PCB authorizes DEO to submit a list annually to the Board, to acquire non-conservation lands through fee simple purchase or through perpetual, less-than-fee interest in such lands, for the purpose of buffering a military base against encroachment.

In making determinations for the purchase of non-conservation lands to secure and protect a military installation against encroachment, the PCB directs the Board to consider the recommendations of the Florida Defense Support Task Force.

The PCB amends s. 253.025, F.S., the section of law that authorizes the acquisition of state lands for purposes other than preservation, conservation, and recreation, to authorize the Board to acquire non-conservation lands from the list of non-conservation lands submitted to it from DEO, subject to a specific appropriation, for the purpose of buffering a military base against encroachment.

The PCB does not preclude the acquisition of such lands by local governments through fee simple purchase or through perpetual, less-than-fee interest, for the purpose of buffering a military base against encroachment.

B. SECTION DIRECTORY:

- Section 1. Amends s. 288.980, F.S., relating to military base retention; legislative intent; grants program.
- Section 2. Amends s. 253.025, F.S., relating to the acquisition of state lands for purposes other than preservation, conservation, and recreation.
- Section 3. Providing an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DEP, the PCB will have an insignificant fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES