

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2152

SPONSOR: Comprehensive Planning Committee, Military and Veterans' Affairs, Base Protection, and Spaceports Committee, Senator Clary and others

SUBJECT: Military Readiness

DATE: April 7, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Krasovsky</u>	<u>Krasovsky</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute provides two methods to address the problem of incompatible urban encroachment diminishing the military value of a military installation. First, the committee substitute establishes a process by which bases and local governments can exchange information and comments on proposed land use changes and rezoning that would impact the installation. The second method is to require a military readiness element in a local government's comprehensive plan if that local government has a military installation within or adjacent to its boundaries.

In addition, the committee substitute provides that if a local government grants a quasi-judicial development order under its adopted land development regulations and the order is not the subject of a pending appeal, the order may not be abrogated by a subsequent determination that the land development regulations are invalid. This provision takes effect upon becoming law and is retroactive to January 1, 2002.

This committee substitute creates section 163.3175 of the Florida Statutes, and substantially amends sections 163.3177 and 163.3187 of the Florida Statutes.

II. Present Situation:

The extent to which urban encroachment has an impact on the operational activity of a military installation is a major consideration in determining an installation's future viability. Mission constraints caused by urban encroachment that effect the military value of an installation can jeopardize the entire base.

The federal government is embarking on another base realignment and closure process, commonly referred to as "BRAC", during which military installations across all services will be reviewed to determine whether functions and bases can be consolidated or closed. Although the final decisions on realignments and closures will not come until late 2005, the process is starting this year with the selection of proposed criteria. It is already known that the military value of a base will be a heavily weighted element of that criteria.

The BRAC process reflects a desire to eliminate excess physical capacity created as a result of reduced troop size, which has been cut by 40% since 1990, and the need to fund higher priority weapons and troop training. There have been four BRAC rounds between 1988 and 1995. The Department of Defense has indicated that approximately 25% of the military bases will be closed or realigned during this round. The 22 bases and three joint commands situated in Florida will, like all other bases across all the military branches, be subjected to the BRAC review process.

The Department of Defense has established programs in response to existing and potential threats of incompatible land development compromising the missions of military installations. The programs, the Navy and Air Force's Air Installation Compatible Use Zone (AICUZ) program and the Army's Installation Environmental Noise Management Program (IENMP) are designed to promote compatible development on and off bases. These programs provide information to local governments about noise and accident potential generated by base operations and encourage communities to adopt land use controls that ensure compatible development in areas adversely affected by military installations. The Department of Defense's Joint Land Use Study Program is a cooperative effort between local governments and military installations to develop compatible measures designed to prevent urban encroachment. The Office of Economic Adjustment offers technical and financial assistance in the form of community assistance grants as an incentive to participate in that joint planning process which promotes the incorporation of AICUZ/ IENMP data into local plans and zoning codes.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. Optional elements are also identified. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making.

Under the Act, the Department of Community Affairs was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the Department of Community Affairs on March 6, 1986 as Rule 9J-5, Fla. Admin. Code. After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plan.

Development Orders and Land Development Regulations

Section 163.3164(23), F.S., defines the term “land development regulations” as ordinances enacted by local governments relating to any aspect of development, including zoning, rezoning, subdivision, building construction, sign regulations, or any other regulations controlling land development. All zoning and development permitting must be consistent with the local government’s comprehensive plan. However, the Local Government Comprehensive Planning and Land Development Regulation Act does not limit the broad statutory and constitutional powers of a local government to plan for and regulate land use.¹ In a recent decision, *Miami – Dade County v. Omnipoint Holdings, Inc.*, 811 So. 2d 767 (Fla. 3d DCA 2002), the Third District Court of Appeal invalidated certain sections of the Miami-Dade County Code, relating to the approval of special exceptions, unusual and new uses, as unconstitutional because the provisions lacked objective standards.² The court stated that sufficient guidelines were required to ensure that: “persons are able to determine their rights and duties; the decisions recognizing such rights will not be left to arbitrary administrative determination; all applicants will be treated equally; and meaningful judicial review is available”.³

Miami-Dade County sought a writ of certiorari quashing the lower court’s order directing the county zoning board to grant an application from Omnipoint to erect a 148-foot telecommunications monopole, an unusual use under Miami-Dade’s land development regulations. The Third District Court of Appeal did not disturb the lower court’s remand to the zoning board, concluding the county’s “unconstitutional hearing criteria” had the effect of prohibiting the provision of personal wireless services in violation of the Federal Telecommunications Act. This decision is currently on appeal.⁴

III. Effect of Proposed Changes:

Section 1 provides legislative findings related to land uses surrounding military installations. The committee substitute requires each local government in any county, including the county government, that has a military installation within or adjacent its boundaries to transmit to the commanding officer of that installation information regarding proposed changes in land use or proposed rezoning that would, if approved, affect the intensity, density, or use of the property that is the subject of the application and is within the area of interest as identified by the base commander. The commanding officer or his or her designee may submit written comments regarding adverse effects on the installation, operating areas or ranges, including, but not limited to, whether the proposed changes will violate safety and noise standards in AICUZ/ IENMP. The commanding officer or designee is encouraged to provide information about any community planning assistance grants that might be available through the federal Office of Economic Adjustment as an incentive for communities to participate in a joint planning process that would facilitate the compatibility of community planning and activities vital to the national defense. The local government shall take the comments of the commanding officer into consideration

¹ S. 163.3161(8), F.S.

² The Court noted this constitutional issue may not have been preserved. See *Miami-Dade County*, 811 So. 2d at 769.

³ See *Miami-Dade County*, 811 So. 2d at 769, citing *North Bay Village b. Blackwell*, 88 So. 2d 524 (Fla. 1956); *Drexel c. City of Miami Beach* 64 So. 2d 317 (Fla. 1953).

⁴ See *Miami-Dade County*, 835 So. 2d 268 (2002).

when rezoning or making changes in land use. A definition of “military installation” is also included in the committee substitute.

Section 2 amends s. 163.3177, F.S., to require the comprehensive plan of units of local government, that have a military installation within its boundaries, to contain a military readiness element. In preparing to adopt this element, the local government must seek advice from residents of the county and others who are likely to be affected by the provisions.

The military readiness element must take into consideration:

- How the public, health, safety and welfare is likely to be affected by the proximity of residential areas to military bases and operating areas, and must make reasonable provisions for preserving open space and compatible land uses near a military base;
- The findings of the Department of Defense Joint Land Use Study Program which promotes incorporating the findings of the AICUZ / IENMP, and
- The extent to which the use of land surrounding an airfield is consistent with the safety and noise standards contained in the AICUZ prepared for that military airfield.

Also, the committee substitute requires each local government that must update or amend its comprehensive plan to submit this information to the department by June 30, 2004.

Section 3 allows a comprehensive plan amendment relating to military readiness to be made at any time without counting towards the limitation on the frequency of plan amendments.

Section 4 amends s. 163.3167, F.S., to provide that if a local government grants a quasi-judicial development order under its adopted land development regulations and the order is not the subject of a pending appeal, the order may not be abrogated by a subsequent determination that the land development regulations are invalid due to a deficiency in approval standards. This provision takes effect upon becoming law and is retroactive to January 1, 2002.

Section 5 provides the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Property owners in the immediate vicinity of military bases and installations may experience some restriction on the use of the property; and businesses, located near military bases and installations, may benefit from the continued operations of the base or installation.

The prohibition on abrogating a quasi-judicial development order, that was approved under applicable standards and is not the subject of a pending appeal, because of a subsequent invalidation of the approval standards under which the order was issued may have a positive impact on the private sector.

C. Government Sector Impact:

This committee substitute will have a nominal fiscal impact on both the military base and local government that would be required to exchange information and provide comments pursuant to this legislation. For those local governmental units that would be required to update or amend their comprehensive plan to include a military readiness element, the fiscal impact would be greater. There are 22 military bases and three joint commands situated in 13 Florida counties. The total cost of adopting the necessary number of military readiness elements cannot be determined at this time.

The Department of Community Affairs staff will review and approve comprehensive plan updates and amendments to include the military readiness element. Local governments required under this bill to submit a plan update or amendment must transmit that information to the department by June 30, 2004.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.