

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Military Installations
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Mawn	Jones
2) Local Administration & Veterans Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The state, a county, or a municipality may take private property for a public purpose under its eminent domain powers but must fairly compensate the owner for such taking. Administrative agencies, including school boards, railroads, utility companies, and certain districts and authorities also have eminent domain powers. Before bringing an eminent domain proceeding, the condemning authority must attempt to negotiate in good faith with the parcel's owner, provide the owner with a written offer, and attempt to reach an agreement on the compensation amount to be paid for the parcel. If negotiations fail, the condemning authority may file a condemnation petition in the circuit court of the county wherein the property lies. If the condemning authority files such a petition, ownership or control of property acquired thereunder generally may not be conveyed to a natural person or private entity, by lease or otherwise, except that ownership or control of property so acquired may be conveyed to a natural person or private entity in specified circumstances.

The Legislature has found that encroachment of military installations is a critical threat to protecting, preserving, and enhancing military installations in the state. In light of this, the Legislature created the Military Base Protection Program ("Program"), with duties including securing non-conservation lands to serve as a buffer to protect military installations against encroachment. Under the Program, the Department of Economic Opportunity ("DEO") must annually request military installations in the state to give DEO a list of base buffering encroachment lands, and DEO must give the list to the Florida Defense Support Task Force ("Task Force"). The Task Force must annually review the list and make acquisition ranking recommendations to DEO. DEO must annually submit the ranked list of base buffering encroachment lands to the Board of Trustees of the Internal Improvements Trust Fund, which may purchase the land if the owner wants to sell and sufficient funds remain in the budget for payment of the requested sale price.

HB 1357 adds to the list of circumstances in which ownership or control of property acquired under a condemnation petition may be conveyed to a natural person or private entity to include use in buffering military installations against encroachment, but only for property identified on the most recent annual list of base buffering encroachment lands. This would allow a military installation adjacent to identified base buffering encroachment land taken through eminent domain to acquire title to the land from the condemning authority for use in installation buffering and provide an alternative method for base buffering encroachment land acquisition.

Under Article X, Section 6 of the Florida Constitution, private property taken by eminent domain may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature. **As such, the bill requires a three-fifths vote for final passage.**

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Eminent Domain

The United States Constitution authorizes the government to take private property for public use so long as it fairly compensates the property owner for the taking.¹ Similarly, the Florida Constitution authorizes the taking of private property for a public purpose² under its eminent domain powers but requires the condemning authority to fairly compensate³ the owner for such taking.⁴ The state, counties, municipalities, administrative agencies, railroads, utility companies, and certain districts and authorities (“condemning authority”) have eminent domain powers.

Before bringing an eminent domain proceeding, the condemning authority must attempt to negotiate in good faith with the property owner, provide the owner with a written compensation offer, and attempt to reach an agreement on the compensation amount to be paid for the taking.⁵ If negotiations fail, the condemning authority may file a condemnation petition in the circuit court of the county wherein the property lies.⁶ If the condemning authority files such a petition, ownership or control of property acquired thereunder generally may not be conveyed to a natural person or private entity, by lease or otherwise, unless it is conveyed to a natural person or private entity:

- For use in providing common carrier services or systems;
- For use as a road or other right-of-way or means that is open to the public for transportation;
- For use in the provision of transportation-related services, business opportunities, and products on a toll road;
- That is a public or private utility for use in providing electricity services or systems; natural or manufactured gas services or systems; water and wastewater services or systems; stormwater or runoff services or systems; pipeline facilities; telephone services or systems; or similar services or systems;
- For use in providing public infrastructure;
- That occupies, under a lease, an incidental part of a public property or a public facility for the purpose of providing goods or services to the public;
- Without restriction, after public notice and competitive bidding unless otherwise provide by general law, if certain conditions are met;
- After public notice and competitive bidding unless otherwise provided by general law, if the property was owned and controlled by the condemning authority or a governmental entity for a specified time period; or
- In accordance with statutory provisions authorizing the property’s transfer, after public notice and competitive bidding, if certain conditions are met.⁷

Military Installation Encroachment

¹ U.S. Const. amend. V. The Fifth Amendment applies to the states through the Fourteenth Amendment.

² For a use to be public, there must be a right on the part of the public, or some portion of it, to use or enjoy it and a duty on the part of the owner to furnish it to the public. Where both private and public benefits result from a taking, the determination of whether the taking was for a public use may turn on whether the public benefits are of a primary or an incidental nature. 21 Fla. Jur. 2d *Eminent Domain* ss. 26-27.

³ Under the Florida Constitution, the property owner has the right to be placed in the same financial position he or she would have been in had there been no taking. Thus, a condemning authority must compensate the property owner for the property’s fair market value and may also be required to compensate the owner for moving costs, severance damages, and attorney fees and costs.

⁴ Art. X, s. 6, Fla. Const.

⁵ S. 73.015(1), F.S.

⁶ S. 73.021, F.S.

⁷ S. 73.013(1) and (2), F.S.

Background

Historically, military installations in Florida were located in remote areas, due largely to land availability security purposes.⁸ Over time, however, military installations drew in people and businesses hoping to take advantage of civilian job opportunities offered on the installations and to provide goods and services necessary for the installation's operation.⁹ Additionally, as the state has grown, development has increased and moved closer to military installations.¹⁰ Increased development, along with an increased number of people and businesses in the vicinity, has led to encroachment¹¹ on military installations that negatively impacts the military's ability to effectively train and accomplish its mission.¹²

Current encroachment threats to Florida's military installations include:

- Sea, air space, and land restrictions;
- Airborne noise, pollution, and urban growth;
- Competition for finite electromagnetic environment spectrum resources, including radio frequencies;
- Threatened and endangered species habitats on or within training areas and ranges;
- Development of onshore and offshore energy sources, including oil and gas, as well as associated pipelines and other infrastructure;
- Infringement on explosive safety arcs and footprints; and
- Physical security.¹³

Encroachment impacts the military's mission by:

- Prohibiting certain operational, training, and testing events;
- Reducing range access and usage days;
- Segmenting training and reducing realism;
- Limiting new technologies;
- Restricting flight altitudes;
- Inhibiting new tactics development;
- Reducing live fire proficiency;
- Complicating night and all-weather trainings and operations; and
- Increasing general costs or risks.¹⁴

Florida's Response

The Florida Legislature has found that encroachment of military installations is a critical threat to protecting, preserving, and enhancing such installations in the state,¹⁵ which stimulate over \$95 billion annually to the Florida economy and provide over 915,000 jobs, making such installations the state's third largest economic engine.¹⁶ To address this threat, the Florida Legislature created the Military Base Protection Program ("Program"), with duties including securing non-conservation lands¹⁷ to serve as a buffer to protect military installations against encroachment.¹⁸ Under the Program, the Department of

⁸ Florida Defense Alliance, *Florida Programs to Mitigate Encroachment to Military Installations* (Aug. 2019), <https://www.enterpriseflorida.com/wp-content/uploads/Florida-Programs-to-Mitigate-Encroachment-to-Military-Installations-FINAL-July-12.pdf> (last visited Mar. 26, 2021).

⁹ *Id.*

¹⁰ *Id.*

¹¹ "Encroachment" means an incompatible use of land, water, air, and other natural resources. *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ There are 15 military installations in the state: Avon Park Air Force Range; Camp Blanding; Eglin Air Force Base and Hurlburt Field; Homestead Air Reserve Base; Jacksonville Training Range Complex; MacDill Air Force Base; Naval Air Station Key West; Naval Support Activity Panama City; Naval Air Station Pensacola; Naval Air Station Whiting Field; Naval Station Mayport; Patrick Air Force Base and Cape Canaveral Air Force Station; and Tyndall Air Force Base. S. 163.3175, F.S.

¹⁶ Enterprise Florida, *Florida Defense Support Task Force Strategic Plan: 2020-2025* (Nov. 1, 2020), <https://www.enterpriseflorida.com/wp-content/uploads/FDSTF-Strategic-Plan-2020-2025.pdf> (last visited Mar. 26, 2021); S. 288.980(1)(c), F.S.

¹⁷ "Non-conservation lands" means land acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation. S. 288.980(2)(c), F.S.

¹⁸ S. 288.980(2)(a), F.S.

Economic Opportunity (“DEO”) must annually request military installations in the state to give DEO a list¹⁹ of base buffering encroachment lands and submit the list to the Florida Defense Support Task Force (“Task Force”).²⁰ The Task Force must annually review the list and make acquisition ranking recommendations to DEO.²¹ DEO must annually submit the ranked list to the Board of Trustees of the Internal Improvements Trust Fund (“the Board”),²² which may purchase the land if the land owner is willing to sell and sufficient funds remain in the budget for payment of the requested sale price.²³

In 2014, the Legislature appropriated nearly \$7.5 million for the Program, through which the Trust Fund acquired property adjacent to Naval Support Activity Panama City and obtained easements restricting the use of certain property adjacent to Naval Station Mayport in Jacksonville, Florida, and MacDill Air Force Base in Tampa, Florida.²⁴ For the 2020 request cycle, military installations in the state identified, and the Task Force ranked, the following base buffering encroachment lands:²⁵

Installations	Property Description
Tier 1: Immediate Encroachment Threat	
Avon Park	Triple Canopy Ranch (345 acres)
Eglin Air Force Base	Valparaiso Lots (6 acres; 18 homes)
Homestead Air Reserve Base	Homestead Park of Commerce and Housing Authority (20.2 acres)
Naval Air Station Key West	Alfred Sears Trust Property (124 acres)
MacDill Air Force Base	Florida Rock Property (14.7 acres)
Naval Air Station Pensacola	Cook Property (37.32 acres)
Naval Air Station Jacksonville	Southbelt Park Ltd. (23 acres)
Tier 2: Moderate Encroachment Threat	
Blount Island	Parcel adjacent to main entry point (4.24 acres)
MacDill Air Force Base	3C Self-Storage and ZONS Property (5.9 acres)
Naval Air Station Key West	Enchanted Island (4 acres)
Tier 3: Low (Long-Term) Encroachment Threat	
Camp Blanding	Chemours properties (6,000+ acres)
Naval Air Station Key West	Gulf Seafood property (8 acres)
MacDill Air Force Base	Caribbean-American Club property and Sally Harris property
Naval Station Mayport	Property adjacent to main gate (1.28 acres)
Tyndall Air Force Base	Longpoint Apartment Complex
Coast Guard Air Station Miami	Parcel between airport and base (1 acre)

¹⁹ The list must include: a legal description of the land and its property identification number; a detailed map of the land; and a management and monitoring agreement to ensure that the land serves a base buffering purpose. S. 288.980(2)(b), F.S.

²⁰ The Task Force’s mission is to make recommendations to preserve and protect military installations to support the state’s position in research and development related to or arising out of military missions and contracting, and to improve the state’s military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state. The Task Force is comprised of the Governor, four governor-appointed members, four members appointed by the President of the Senate, and four members appointed by the Speaker of the House. Ss. 288.980(2)(b) and 288.987(1) and (2), F.S.

²¹ *Id.*

²² The Governor and the Cabinet compose the Board. All funds deposited into the Trust Fund must be used for the acquisition, management, administration, protection, and conservation of state-owned lands. The Board currently holds title to state lands held in trust for the use and benefit of Floridians. Art. X, s. 11, Fla. Const.; S. 253.01, F.S.

²³ Ss. 253.025 and 288.980(2), F.S.

²⁴ DEO, *supra* note 21.

²⁵ *Id.*

Effect of Proposed Changes

HB 1357 adds to the list of circumstances in which ownership or control of property acquired under a condemnation petition may be conveyed to a natural person or private entity to include use in buffering military installations against encroachment, but only for property identified on the most recent annual list of base buffering encroachment lands. This would allow a military installation adjacent to identified base buffering encroachment land taken through eminent domain to acquire title to the land from the condemning authority for use in buffering the installation and provide an alternative method for base buffering land acquisition.

B. SECTION DIRECTORY:

Section 1: Amends s. 73.013, F.S., relating to conveyance of property taken by eminent domain; preservation of government entity communications services eminent domain limitation; exception to restrictions on power of eminent domain.

Section 2: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may incentivize military installations located in Florida to remain in the state as encroachment threats are minimized, thereby preserving jobs and other economic benefits Floridians derive from their presence.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

3. Other:

Under Article X, Section 6 of the Florida Constitution, private property taken by eminent domain under a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature. As such, the bill requires a three-fifths vote for final passage.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES