

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1407 Marine Encroachment on Military Operations

SPONSOR(S): Altman

TIED BILLS: IDEN./SIM. BILLS: SB 1720

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------------------------------------------|-----------|-------------|---------------------------------------|
| 1) Local Administration, Federal Affairs & Special Districts Subcommittee | 16 Y, 0 N | Mwakyanjala | Darden |
| 2) Infrastructure Strategies Committee | | Mamontoff | Harrington |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans. Each county and municipality must maintain a comprehensive plan to guide future development. Comprehensive plan amendments must be reviewed either through the Expedited State Review Process or the State Coordinated Review Process. During the review process, the plan amendments are sent to a number of reviewing agencies, including the commanding officer of an affected military installation.

Current law provides for findings relating to land use around military installations and provides that it is desirable for local governments to cooperate with military installations when developing land use concepts. Sixteen major military installations are identified, due to their mission and activities, as having a greater potential for experiencing compatibility and coordination issues than others. Local governments are required to transmit proposed comprehensive plan amendments, proposed land development regulations, and applications for development orders to the commanding officer of the relevant associated installation.

The bill adds various annexes and a range to the list of major military installations that have a greater potential for experiencing compatibility and coordination issues with local government planning than others. These include the annexes across Boca Chica Key and Key West as well as the Fleming Bay/Patton Water Drop Zone training range used by the Army Special Forces Underwater Operations School that are a part of Naval Air Station Key West.

The bill is not expected to have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Comprehensive Plans

The Community Planning Act¹ provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.² Each county and municipality must maintain a comprehensive plan to guide future development.³

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.⁴ A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

Among the many components of a comprehensive plan is a land use element designating proposed future general distribution, location, and extent of the uses of land.⁵ Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities. The future land use plan and plan amendments must be based upon surveys, studies, and data regarding the area, as applicable, including the compatibility of uses on lands adjacent to or in close proximity to military installations.⁶

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.⁷ Plan amendments are now placed into either the "Expedited State Review Process" or the "State Coordinated Review Process."⁸ The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the Department of Commerce (Commerce), rather than communicated directly to the permitting local government by each individual reviewing agency.

Under both processes, a proposed comprehensive plan or plan amendment must receive a public hearing by the local governing body before it may be transmitted to the state for review. First, the local planning board must hold a public hearing at which it makes a recommendation to the local governing body on adoption of the plan or plan amendment.⁹ Then, the local governing body must hold a public hearing to consider transmittal of the proposed plan or plan amendment.¹⁰

If a majority of the local governing body members present at the hearing approve such transmittal, the plan or amendment must be transmitted within 10 working days to the following state and local governmental entities, known as "reviewing agencies":

- Commerce, designated as the "state land planning agency";¹¹
- The appropriate regional planning council;
- The appropriate water management district;
- The Department of Environmental Protection;
- The Department of State;

¹ Part II, ch. 163, F.S.

² S. 163.3167(1), F.S.

³ S. 163.3167(2), F.S.

⁴ S. 163.3194(3), F.S.

⁵ S. 163.3177(6)(a), F.S.

⁶ S. 163.3177(6)(a)2.f., F.S.

⁷ Ch. 2011-139, s. 17, Laws of Fla.

⁸ S. 163.3184(3) and (4), F.S.

⁹ S. 163.3184(11), F.S.

¹⁰ S. 163.3184(3)-(4), F.S.

¹¹ S. 163.3164(44), F.S.

- The Department of Transportation;
- The Department of Education, if plan amendments relate to public schools;
- The commanding officer of an affected military installation, if the plan amendment affects a military installation listed in s. 163.3175, F.S.;
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, in the case of county plans and plan amendments; and
- The county in which the municipality is located, in the case of municipal plans and plan amendments.¹²

The reviewing agencies and certain other government entities may provide comments to the local government regarding a plan or plan amendment.¹³ State agencies may only comment on important state resources and facilities that will be adversely impacted by a plan amendment if it is adopted. Comments provided by state agencies must state with specificity how a plan amendment will adversely impact an important state resource or facility and must identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts.¹⁴

Under the expedited process, these comments must be provided directly to the local government no later than 30 days after receipt of the plan amendment.¹⁵ Alternatively, the state coordinated review requires agencies to provide comments to Commerce.¹⁶ Commerce then has a total of 60 days from receipt to provide the local government with a report containing the state's objections, recommendations, and comments.¹⁷

After the local government receives the comments made by the reviewing agencies, whether directly from the agencies or through the report issued by Commerce, the local governing body must hold a second public hearing to approve or deny the plan or plan amendment.¹⁸ The second public hearing must be conducted within 180 days after the agency comments are received. Generally, if a local government fails to hold the second public hearing within 180 days after receipt of agency comments, the plan amendment is deemed withdrawn.¹⁹

Exchange of Information between Local Governments and Military Installations

Current law identifies the major military installations that, due to their mission and activities, have a greater potential for experiencing compatibility and coordination issues than others, and identifies the local governments proximate to these installations that are required to address compatibility of land development with military installations in their comprehensive plans.²⁰ There are 16 military installations that cooperate with local governments to encourage compatible land use, help prevent incompatible encroachment, and facilitate the continued presence of major military installations in Florida.²¹

Each affected local government must transmit the following proposed comprehensive plan amendments, proposed land development regulations, and applications for development orders to the commanding officer of the relevant associated installation or installations:

- Information relating to proposed changes to the local government's comprehensive plan which, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military installation;

¹² S. 163.3184(1)(c) and (3)(b)1., F.S.

¹³ S. 163.3184(3)(b)2. and (4)(c), F.S. Commerce has special requirements for providing comments on plans or plan amendments following the state coordinated review process.

¹⁴ *Id.*

¹⁵ S. 163.3184(3)(b)2., F.S.

¹⁶ S. 163.3184(4)(c)-(d), F.S.

¹⁷ S. 163.3184(4)(d), F.S.; See Dept. of Commerce, *State Coordinated Review Amendment Process*, http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/comp-plan/statecoordinatedreviewprocessflowchart.pdf?sfvrsn=d6a766b0_2 (last visited Jan. 21, 2024).

¹⁸ S. 163.3184(11), F.S.

¹⁹ S. 163.3184(3)(c)1. and (4)(e)1., F.S. This 180-day timeframe maybe extended by agreement as long as notice is provided to Commerce and any affected person that provided comments on the plan amendment. Also, an exception exists for developments of regional impact.

²⁰ S. 163.3175(2). F.S.

²¹ See s. 163.3175(2)(a)-(p), F.S., (listing affected military installations and their related communities).

- Information relating to proposed changes to land development regulations which, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military installation; and
- At the request of the commanding officer, copies of applications for development orders requesting a variance or waiver from height or lighting restrictions or noise attenuation reduction requirements within areas defined in the local government's comprehensive plan as being in a zone of influence of the military installation.²²

The commanding officer or his or her designee may provide advisory comments to the affected local government on the impact the proposed changes may have on the mission of the military installation.²³ The affected local government must take into consideration any comments and accompanying data and analyses provided by the commanding officer as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base's operations, while also respecting private property rights and not being unduly restrictive on those rights.²⁴ Additionally, any comments regarding comprehensive plan amendments must be forwarded to the state land planning agency.²⁵ To facilitate the exchange of information, a representative of a military installation acting on behalf of all military installations within that jurisdiction serves as a nonvoting member of the county's or affected local government's land planning or zoning board.

Effect of Proposed Changes

The bill adds various annexes and a range to the list of major military installations that, due to their mission and activities, have a greater potential for experiencing compatibility and coordination issues with local government planning than others. Specifically, the bill adds the various annexes across Boca Chica Key and Key West as well as the Fleming Bay/Patton Water Drop Zone training range used by the Army Special Forces Underwater Operations School associated with Naval Air Station Key West, which is currently on the list.

The bill also makes conforming changes to reflect the addition of a range to the list of compatibility and coordination issues with local government planning.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3175, F.S., relating to legislative findings on compatibility of development with military installations.

Section 2: Provides an effective date of July 1, 2024.

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.

²² S. 163.3175(4), F.S.

²³ S. 163.3175(5), F.S.

²⁴ S. 163.3175(6), F.S.

²⁵ *Id.*

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 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.