

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7075 (SB 2076)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Community & Military Affairs Subcommittee; Workman (Military Affairs, Space, and Domestic Security)	116 Y's	0 N's
COMPANION BILLS:	SB 2076	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

House Bill 7075 passed the House on February 23, 2012, was amended by the Senate on March 6, 2012, and subsequently passed the House on March 6, 2012. In addition, the bill was included in CS/CS/SB 922. HB 7075 addresses military installation support as follows:

Encroachment: Current law contains a number of provisions relating to coordination between local governments and the military regarding land use decisions. The bill clarifies provisions relating to commanders' advisory comments on land use changes; however, despite these changes, the original intent and meaning of the statutes remains unchanged. In addition, the bill requires advisory comments be supported and accompanied by appropriate data and analyses.

Defense Grants: Current law provides for seven grant programs designed to aid in the transition from a defense economy to a nondefense economy and to aid in the retention of military bases. The bill streamlines these provisions into the Military Base Protection Program, the Florida Defense Reinvestment Grant Program, and the Florida Defense Infrastructure Grant Program. It also revises legislative intent for the programs to include the Legislature's interest in supporting and sustaining military installations throughout the state.

Military Support Organizations: Florida currently has two statutorily created organizations designed to support the military, the Florida Council on Military Base and Mission Support (Council) and the Florida Defense Support Task Force (Task Force). The bill repeals provisions relating to the Council and transfers the powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of the Council to the Task Force. The bill also amends provisions related to the Task Force to remove language relating to federal base realignment and closure action and remove obsolete provisions relating to the reporting requirements.

Public Records and Public Meetings Exemptions: The bill transfers existing exemptions of the Council to the Task Force for records and discussions of the strengths and weaknesses of the state's military bases and strategies that are formulated to protect those bases during a base realignment and closure process. The sunset date for the exemption remains October 2, 2014.

Other Changes: The bill amends additional sections of statute to make conforming changes.

While the bill does not have an impact on state revenues or expenditures, it may have a positive impact on the state and local economy if it is successful in keeping the state's current military base infrastructure intact while promoting the transfer of additional military assets to the state.

The bill was approved by the Governor on April 6, 2012, ch. 2012-98, Laws of Florida. Sections 4-8 of the bill are effective upon becoming law. Sections 1-3 of the bill are effective July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Military Presence in Florida

Present Situation

Florida is home to 20 major military installations and three unified combatant commands. In 2008, defense related spending was estimated to be responsible for nearly \$60 billion of the state's gross domestic product.¹ The state is also home to many of the nation's leading defense companies and a large pool of highly skilled workers and veterans. Florida's top ten contractors alone employ more than 28,000 Floridians. In 2010, Florida companies generated \$12.8 billion in Department of Defense Contract awards, ranking the state fourth in the nation.² Only tourism and agriculture contribute more to Florida's economy.

The Department of Defense (DoD) recently completed implementing the 2005 round of base realignments and closures, commonly referred to as "BRAC."³ 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.⁴

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.

Growth Management - Military Base Commander Comments

Present Situation

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.⁵ Such development can also

¹ Enterprise Florida, Inc. Florida Industry Clusters: Homeland Security/Defense.

http://www.eflorida.com/Homeland_Security_Defense.aspx?id=324 (last visited on January 21, 2011).

² *Id.*

³ 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.

⁴ 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.

⁵Section 163.3175, F.S.

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.⁶ Based on these findings, the Legislature established s. 163.3175, F.S., to encourage compatible land use between local governments and military installations, help prevent incompatible encroachment, and facilitate the continued presence of military installations in this state. Further, the Legislature in 2011 passed the Community Planning Act,⁷ which recognized the military as an important part of the traditional economic base of Florida.⁸

In an effort to encourage cooperation between local governments and the military and facilitate the exchange of information, the local government is required to include a representative of the military installation as an *ex officio*, nonvoting member of the affected local government's land planning or zoning board.⁹ Section 163.3175, F.S., also requires local governments to provide information to the commanding officer of an affected military installation relating to any proposed changes to the local comprehensive plan or proposed changes to the local land development regulations, which if approved, would affect the intensity, density, or use of land adjacent to or in close proximity to the military installation. If the commanding officer requests, the local government must also transmit copies of applications the local government receives for development orders requesting a variance or waiver from height or lighting restrictions or noise attenuation reduction requirements within the military zone of influence defined in the local comprehensive plan.¹⁰ Once these proposed changes are transmitted to the military installation, the local government must provide an opportunity for the commanding officer or his or her designee to review and comment on the proposed changes.¹¹

The comments on the proposed changes may include factors identified in s. 163.3175(5), F.S., including whether the proposed changes will be incompatible with certain safety and noise standards,¹² whether the changes are incompatible with the findings of a Joint Land Use Study (JLUS) for the area, and whether the military installation's mission will be adversely affected by the proposed changes being made by the local government. The commanding officer's comments, the underlying studies, and reports are not intended to be binding on the local government¹³ but instead advisory, for the local government to take into consideration when evaluating proposed changes.¹⁴ Section 163.3175(6), F.S., was amended in 2011 to emphasize the importance of private property rights and to clarify that the local government when considering comments from a military installation must be sensitive to private property rights and not be unduly restrictive on those rights.

A local government's future land use plan and plan amendments are required to be based upon surveys, studies, and data regarding the area. Among other factors, the future land use plan is to include information relating to the compatibility of uses on lands adjacent to or closely proximate to military installations, if applicable.¹⁵ The future land use plan element must also include criteria to be used to achieve the compatibility of lands adjacent or closely proximate to military installations.¹⁶ The

⁶ *Id.*

⁷ Chapter 2011-139, L.O.F.

⁸ *See* s. 163.3161, F.S.

⁹ Section 163.3175(8), F.S.

¹⁰ Section 163.3175(4), F.S.

¹¹ *Id.*

¹² Comments provided may include whether the proposed changes are compatible with the Air Installation Compatible Use Zone (AICUZ) adopted by the military installation that has an airfield and whether the proposed changes are compatible with the Installation Environmental Noise Management Program (IENMP) of the U.S. Army.

¹³ *See* s. 163.3175(5), F.S.

¹⁴ *See* s. 163.3175(6), F.S.

¹⁵ Section 163.3177(6)(a)2.f., F.S.

¹⁶ Section 163.3175(9), F.S., provides that if the local government does not adopt criteria and address compatibility of lands adjacent to or closely proximate to existing military installations in its future land use plan element by June 30, 2012, the local government, military installation, state land planning agency, and other parties identified by the regional planning Council, including but not limited to private landowner representatives must enter into mediation. If by December 31, 2013, the local government comprehensive plan does not contain criteria, the state land planning agency may notify the Administration Commission, which may impose sanctions on the local government. Local governments that adopted criteria in 2004 found to be in compliance to address

local government in establishing the criteria within the future land use plan element must consider the factors identified in s. 163.3175(5), F.S., described above.

When a proposed comprehensive plan or plan amendment affects a major military installation in Florida,¹⁷ s. 163.3184(1)(c), F.S., defines the commanding officer of an affected military installation as a reviewing agency.¹⁸ This allows the commanding officer of the military installation to submit comments on the proposed plan or plan amendment to the local government at the same time as other reviewing agencies. Comments from the military installation on a proposed comprehensive plan or comprehensive plan amendment are to be provided in accordance with the guidelines set in s. 163.3175, F.S.,¹⁹ as described above. Since the commanding officer of an affected military installation is defined as one of the “reviewing agencies”, the comments submitted by the military installation regarding proposed comprehensive plan amendments are to be considered and weighed by the local government similar to comments from other reviewing agencies representing interests that may be affected by proposed changes such as the environment, public schools, or transportation. Along with reviewing agency comments, the local government also takes into consideration public testimony and other information and data at its disposal.

Effect of Changes

The bill clarifies that commanding officer comments on proposed changes that may have an impact on the mission of the military installation are advisory to the local government, and provides that the advisory comments must be based on appropriate data and analyses provided with the comments. Further, the local government must consider the comments, underlying studies, and reports in the same manner as comments received by other reviewing agencies pursuant to s. 163.3184, F.S.²⁰

The bill also specifies that the local government must take into consideration any comments and accompanying data and analyses provided by the commanding officer or his or her designee as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base’s operations,²¹ while also respecting private property rights and not being unduly restrictive on those rights. Although the bill makes changes to the language in s. 163.3175(5) and (6), F.S., in an attempt to clarify, the original intent and meaning remains unchanged.

This section of the bill is effective July 1, 2012.

military installation compatibility requirements are exempt until required to update the comprehensive plan during the evaluation and appraisal review pursuant to s. 163.3191, F.S.

¹⁷ Major military installations that due to their mission and activities have a greater potential for experiencing compatibility and coordination issues than others are specifically listed in s. 163.3175(2), F.S.

¹⁸ (c) “Reviewing agencies” means:

1. The state land planning agency;
2. The appropriate regional planning Council;
3. The appropriate water management district;
4. The Department of Environmental Protection;
5. The Department of State;
6. The Department of Transportation;
7. In the case of plan amendments relating to public schools, the Department of Education;
8. In the case of plans or plan amendments that affect a military installation listed in s. [163.3175](#), the commanding officer of the affected military installation;
9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and
10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

¹⁹ See s. 163.3184(3)(b)3.d., F.S.

²⁰ Section 163.3184(1)(c), defines “reviewing agencies”, which includes in the case of plans or plan amendments that affect a military installation, the commanding officer of the affected military installation. S. 163.3184(3)(b)2., F.S., provides in part that comments from reviewing agencies, if not resolved, may result in a challenge by the state land planning agency to the plan amendment.

²¹ These issues are consistent with the legislative findings in s. 163.3175(1), F.S.

Grants for Military Base Retention

Present Situation

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state. The legislative intent of this section, created in 1994 after the series of base closures from the 1993 BRAC round, focuses on aiding these communities transition from a defense economy to a nondefense economy in light of the federal BRAC process.

It contains provisions for the Florida Economic Reinvestment Initiative, which is comprised of two distinct grant programs, the Florida Defense Planning Grant Program and the Florida Defense Implementation Grant Program. The other grant programs provided in statutes are: the Florida Military Installation Reuse Planning and Marketing Grant Program, the Defense Infrastructure Grant Program, the Defense Related Business Adjustment Program, and the Retention of Military Installations Program.

In addition, it authorizes the Department of Economic Opportunity (DEO) to award nonfederal matching funds specifically for the construction, maintenance, and analysis of a Florida defense workforce database. This database is to be a registry of worker skills that can be used to match the worker needs of companies that are relocating to Florida or to assist workers in relocating to other areas within Florida where similar or related employment is available. This database has not been created.

The Florida Defense Alliance serves as the overall advisory body for defense-related activity for Enterprise Florida, Inc. In addition, the Florida Defense Alliance may receive funding from appropriations made for that purpose to DEO.

Many of the grant programs have not been funded. Recent grants have focused on military base retention, which is inconsistent with the statute's emphasis on response to base closure.

Effect of Changes

The bill revises the legislative intent found in s. 288.980, F.S. While it retains the intent to encourage 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, it also recognizes the need for communities to develop and implement strategies to preserve and protect military installations. It further recognizes that the state needs to coordinate all efforts that can support military installations through the state.

Many of the changes in this section are to update the statutes to reflect how the grants have been funded and utilized.

The bill statutorily creates the Military Base Protection Program, and authorizes that funds appropriated to the program may be used to address emergent needs relating to mission sustainment and base retention. In addition, these funds may be used to match federal funds. DEO is directed to coordinate and implement this program.

The bill authorizes DEO to award grants on a competitive basis to support activities related to the Florida Defense Reinvestment Grant Program (DRG) and the Florida Defense Infrastructure Grant Program (DIG).

The DRG program is established with two purposes: to work with defense-dependent communities to develop and implement strategies to help the communities support the missions of military installations and to help communities transition from a defense economy to a nondefense economy. Eligible applicants include defense-dependent counties and cities, and local economic development councils

located within such communities. DEO is directed to administer the program. Grant awards under the DRG program may be provided to support community-based activities that: protect existing military installations; diversify the economy of a defense-dependent community; or develop plans for the reuse of closed or realigned military installations, including any plans necessary for infrastructure improvements needed to facilitate reuse and related marketing activities.

The bill clarifies that grants under the DIG program are prohibited from being used to fund on-base military construction projects.

The bill repeals the Florida Economic Reinvestment Initiative, which consisted of the Florida Defense Planning Grant Program and the Florida Defense Implementation Grant Program. It repeals the Florida Military Installation Reuse Planning and Marketing Grant Program; however, the DRG program incorporates much of this program. In addition, it repeals the Defense Related Business Adjustment Program. Finally, it repeals the Retention of Military Installations Program.

The bill maintains the authorization for DEO to award funds for a Florida defense workforce database. It also retains limitations that payment for administrative expenses are limited to no more than ten percent of any grants issued. DEO is directed to establish guidelines to implement and carry out the purpose and intent of the programs.

This section of the bill is effective July 1, 2012.

Florida's Military Support Organizations

Present Situation

Florida Council on Military Base and Mission Support

In 2009, the Legislature established the Florida Council on Military Base and Mission Support (Council).²² The mission of the Council is to support and strengthen all DoD missions and bases located in Florida; know the capabilities of Florida's military installations in order to support future military growth opportunities; and support local community efforts relating to mission support of a military base by acting as a liaison between the local communities and the Legislature.

The Council is composed of nine members. The President of the Senate and the Speaker of the House each appoint three members: a member of their respective Legislative body, a representative from a community-based defense support organization, and a retired military general or flag rank officer or an executive officer of a defense contracting firm doing significant business in Florida. The Governor appoints the three remaining Council members: the director or designee of DEO, a board member of Enterprise Florida, Inc., and one at-large member. Legislative members of the Council serve a term of two-years commencing on July 1 of each odd year. The remaining members are appointed to four-year terms with vacancies filled for any unexpired portion in the same manner as the initial appointment. Members of the Council elect a chair and vice-chair. The chair and vice-chair serve terms of two years and are eligible to succeed themselves.

The Secretary of Environmental Protection, the Secretary of Transportation, the Adjutant General of Florida, and the Executive Director of Veterans' Affairs are required to attend all Council meetings and provide assistance, information, and support upon request. Each of the officials is permitted to send a designee in his or her stead.

The Council is directed to establish four workgroups: the Intrastate Activities Workgroup, Federal Activities Workgroup, Competitive Advantages Workgroup, and the Public Communications Workgroup. Each of these workgroups is tasked with duties defined in s. 288.984(3), F.S. These duties include

²² Section 289.984, F.S.

collecting information and conducting analyses, developing ongoing dialogue with DoD officials, working to leverage Florida's competitive advantage with respect to BRAC activities, and increasing public awareness of BRAC activities and public investment in preserving the state's military bases.

The Council is required to provide an annual report to the Legislature and the Governor, summarizing the current status of the state's military bases, the Council's activities, and any recommendations for legislative or executive action, by January 1 each year.

DEO is directed to provide administrative support to the Council. The Legislature has not appropriated funds for use by the Council.

Florida Defense Support Task Force

In 2011, the Legislature established the Florida Defense Support Task Force (Task Force).²³ The mission of the Task Force is to make recommendations to prepare the state to effectively compete in any federal base realignment and closure action; support the state's position in research and development related to or arising out of military missions and contracting; and 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 or his or her designee and twelve members comprised of four members appointed by the Governor, President of the Senate, and Speaker of the House, respectively. Task Force members represent defense-related industries or communities that host military bases and installations. With the exception of Legislative members, Task Force members serve for a term of four years, with the first term ending July 1, 2015. Vacancies are to be filled for the remainder of the unexpired term in the same manner as the initial appointment. Legislative members of the Task Force serve until the expiration of their Legislative term. When the Governor participates in Task Force activities, he or she serves as the chair; however, the Governor's designee does not serve as the chair in his or her absence. The President of the Senate and the Speaker of the House each designates one of their appointees to serve as chair, with the President of the Senate's appointee serving as the initial chair. The chair shall rotate between the President of the Senate's appointee and the Speaker of the House's appointee each July 1.

The director of the Office of Tourism, Trade and Economic Development (OTTED),²⁴ or his or her designee, serves as the ex officio, nonvoting executive director of the Task Force.

The Task Force is required to submit a progress report and work plan for the remainder of the Fiscal Year 2011 – 2012 to the Governor, President of the Senate, and Speaker of the House by February 1, 2012. After that, the Task Force is required to submit an annual report every February 1.

OTTED is to contract with the Task Force for the expenditure of appropriated funds which can be used for economic and product research and development, joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The Task Force is authorized to spend up to \$200,000 of funds appropriated for staffing and administrative expenses, including travel and per diem costs incurred by Task Force members who are not otherwise eligible for state reimbursement. OTTED was appropriated \$5 million in nonrecurring General Revenue for the Task Force in Fiscal Year 2011 – 2012.

²³ Section 288.987, F.S.

²⁴ Section 4, ch. 2011-142, L.O.F., transferred all of the powers, duties, and functions of OTTED to DEO.

Effect of Changes

The bill repeals s. 288.984, F.S., relating to the Council. It transfers the powers, duties, functions, records, personnel, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds of the Council to the Task Force.

The bill amends s. 288.987, F.S., to amend language relating to BRAC and remove obsolete provisions relating to the reporting requirements.

It also amends ss. 163.3175 and 288.987, F.S., to make conforming changes.

These sections of the bill are effective upon becoming law.

Public Records and Meetings Exemption

Present Situation

General Policies

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.²⁵

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act²⁶ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Exemption for the Florida Council on Military Base and Mission Support

In 2009, the Legislature created a public records and meetings exemption for certain activities of the Council.²⁷ Council records and discussions of the strengths and weaknesses of the state's military bases and strategies that are formulated to protect those bases during a base realignment and closure process are covered under the exemption.

General law provides a public disclosure exemption for the following records held by the Council including that portion of a record relating to:

²⁵ Article I, s. 24(c) of the Florida Constitution.

²⁶ Section 119.15, F.S.

²⁷ Section 288.985, F.S.

- Strengths and weaknesses of military installations or missions in this state relative to BRAC realignment and closure selection criteria.
- Strengths and weaknesses of military installations or missions in other states or territories relative to BRAC realignment and closure selection criteria.
- The state's strategies to retain, relocate, or realign its military bases during any BRAC realignment or closure process.

Council meetings or portions thereof where exempt records are presented or discussed are exempt from public disclosure. Any records generated during such meetings, including but not limited to minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes, are exempted.

Any person who willfully and knowingly violates the exemption commits a misdemeanor of the first degree punishable as provided in ss. 775.082 or 775.083, F.S.

The section of statute relating to the public records and meetings exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S. The section shall stand repealed on October 2, 2014, unless reviewed and reenacted by the Legislature.

When it created the exemption for the Council, the Legislature provided a finding of public necessity for the meetings and records disclosure exemption. This finding stated that military bases enhance the national defense and the state's economic development, and given the economic contribution of military installations and defense-related industry, the state has a substantial financial interest in retaining its military bases. Consequently, protecting critical information such as strengths, weaknesses, or strategies relating to locating or retaining military bases is important if Florida is to effectively compete against other states and territories whose records are not open to the public. The state's ability to protect military bases and missions from realignment or closure or to attract new bases will be impaired if Council meetings, portions of thereof, and related records are not exempted.

Effect of Changes

The bill transfers the exemption from public records and public meetings requirements found in s. 288.985, F.S., from the Council to the Task Force. The sunset date for the exemption remains October 2, 2014.

This section of the bill is effective upon becoming law.

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 have a positive impact on the state and local economy if it is successful in keeping the state's current military base infrastructure intact while promoting the transfer of additional military assets to the state.

D. FISCAL COMMENTS:

None.