

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

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BILL: SB 1796

INTRODUCER: Senator Wright

SUBJECT: Military Installations

DATE: March 17, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1796 revises eminent domain law by adding an exception to the prohibited list of a conveyance of property to a natural person or private entity. The exception authorizes a conveyance to a natural person or private entity to secure a buffering of a military installation against encroachment. This authority is limited to property identified on the most recent annual list of base buffering encroachment lands.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Military Base Protection Program**

*Statutory Authority*

The 2012 Legislature established the Military Base Protection Program (program).<sup>1</sup> Functions of the program include securing nonconservation lands to serve as a buffer to protect military installations, and supporting community efforts to engage in service partnerships with military installations.<sup>2</sup>

The Department of Economic Opportunity (department) must request that military installations provide the department with a list of base buffering encroachment lands for fee simple or less-

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<sup>1</sup> Chapter 2012-98, Laws of Fla.; s. 288.980(2), F.S. As legislative intent, the Legislature provided that the encroachment of military installations has been identified by local, state, and federal leaders as a critical threat to protecting, preserving, and enhancing military installations. Encroachment can be detrimental to the current and future missions of military installations due to the incompatible use of adjacent land. The Legislature recognizes the unique need to secure lands that do not have conservation value, but may pose an encroachment threat to a military installation. Section 288.980(1)(c), F.S.

<sup>2</sup> Section 288.980(2)(a), F.S.

than-fee-simple acquisitions annually before October 1.<sup>3</sup> The list provided will then be submitted by the department to the Florida Defense Support Task Force, which in turn shall, annually by December 1, review the list and provide a recommended ranking of the lands for acquisition to the department.<sup>4</sup> The department will annually submit the list to the Board of Trustees (board) of the Internal Improvement Trust Fund and the board may acquire the lands.<sup>5</sup>

The annual 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.<sup>6</sup>

A nonconservation land is a land acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation.<sup>7</sup>

Funds appropriated for the program may be used to address emergent needs relating to mission sustainment, encroachment reduction or prevention, or base retention. Also, appropriated funds may be matched with federal funds.<sup>8</sup>

### ***Acquisitions***

In Fiscal Year 2014-2015, \$7,489,975 was appropriated for land acquisition.<sup>9</sup> Lands acquired through the program buffer MacDill Air Force Base, Naval Support Activity Panama City, and Naval Station Mayport.<sup>10</sup> A balance of \$3.7 million remained for acquisition of properties near the three military bases listed as Tier 1 parcels, or those that pose an immediate encroachment threat<sup>11</sup>, of which the balance reverted in FY 2019-2020 after the final recommended parcel did not become available for purchase.<sup>12</sup>

Current properties in the Tier I category as of December 1, 2020 are:

- MacDill Air Force Base - Florida Rock Property (14.7 acres in Accident Potential Zone (APZ) 1)

<sup>3</sup> Section 288.980(2)(b)1., F.S.

<sup>4</sup> Section 288.980(2)(b)2. and 3., F.S.

<sup>5</sup> Section 288.980(2)(b)4., F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 288.980(2)(c), F.S.

<sup>8</sup> Section 288.980(2)(d), F.S.

<sup>9</sup> Enterprise Florida, *Military Base Protection/Non-conservation Land Acquisition Funding* (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

<sup>10</sup> *Id.* The FY 2014-2015 appropriation provided for the acquisition of MacDill Air Force Base (Florida Rock), an easement precluding residential but not commercial development of more than 25.56 acres for \$1,403,923; Naval Support Area Panama City (Barefoot Palms), as a fee simple purchase of 8.4 acres for \$1,716,391; and Naval Station Mayport (JAX Port), as an easement purchase of more than 6 acres for \$659,672.

<sup>11</sup> An immediate encroachment threat, as defined in Florida Defense Support Task Force criteria, constitutes a high likelihood of development incompatible within Clear Zone or Accident Potential Zone 1; approved or proposed development with the potential to impact the overall base mission; and no existing restrictions on development to reduce encroachment and safety risks. Department of Economic Opportunity, *Military Base Protection Program Report* (March 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

<sup>12</sup> Enterprise Florida, *supra* note 9.

- Naval Air Station Pensacola -- Cook Property (37.32 acres in APZ 1)
- Naval Air Station Key West -- Alfred Sears Trust Property (124 acres in APZ 1)
- Homestead Air Reserve Base -- Homestead Park of Commerce, Homestead Housing Authority (20.2 acres in APZ 2)
- Avon Park -- Triple Canopy Ranch (345 acres in MIPA 1)
- Eglin Air Force Base -- Valparaiso Lots in Clear Zone (6 acres/18 homes in Clear Zone)
- Naval Air Station Jacksonville -- Southbelt Park Ltd. (23 acres in APZ1 and APZ2).<sup>13</sup>

## **Eminent Domain**

### ***Constitutional Provisions on Takings***

The Fifth Amendment of the United States Constitution applies to the states through the Fourteenth Amendment and provides, in part: “nor shall private property be taken for public use, without just compensation.”<sup>14</sup>

Similarly, the Florida Constitution provides: “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”<sup>15</sup>

There is no absolute definition of what constitutes a public use. “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.”<sup>16</sup> In situations in which both private and public benefits result from a condemnation, the determination of whether the condemnation was for a public use may turn on whether the public benefits are of a primary or an incidental character.<sup>17</sup> An incidental benefit to a private party does not render a taking invalid as long as the primary benefit is to the public.

### ***Florida Law on Eminent Domain***

Florida affords generous treatment to private property owners, or defendants in eminent domain proceedings. In Florida, the owner is entitled to full and fair compensation.<sup>18</sup> Compensation is generally the payment of the fair market value of the property.<sup>19</sup> Fair market value is considered to be based upon what a willing buyer would pay to a willing seller.<sup>20</sup> Also, the petitioner must always pay attorney’s fees and reasonable costs to the defendant.<sup>21</sup> Reasonable costs include

<sup>13</sup> Enterprise Florida, *supra* note 9.

<sup>14</sup> U.S.C.A. CONST. AMEND V.

<sup>15</sup> FLA. CONST., Article X., s. 6(a).

<sup>16</sup> 21 Fla. Jur. 2d Eminent Domain s. 26, *What constitutes public use for eminent domain purposes; public purpose distinguished* and s. 27, *Service to and use by public for eminent domain purposes* (2021).

<sup>17</sup> 21 Fla. Jur. 2d Eminent Domain s. 28, *Purpose partly public and partly private for eminent domain purposes; incidental private use or benefit* (2021).

<sup>18</sup> Debra Herman and Jorge Martinez-Esteve, *The Admissibility of Dedication Requirements in Condemnation Cases: No Longer the Road Less Traveled*, 85 FLA. B.J. 20, pg. 1 (Nov. 2011).

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> Section 73.091(1), F.S.

appraisal fees and, if business damages are involved, an accountant's fee.<sup>22</sup> Defendants also have the right to a jury trial.<sup>23</sup>

Eminent domain is effected in one of two ways. The first is through the traditional eminent domain process, which involves the filing of a petition for condemnation in circuit court and, if the property owner challenges the action, a jury trial.<sup>24</sup> Alternately, a "quick taking," occurs if the governmental entity files a declaration of taking, which includes a good faith estimate of the value of the property and takes immediate possession before the judicial procedure is completed.<sup>25</sup> "A taking may result from a 'physical invasion' of the property or may follow a 'regulatory imposition.'"<sup>26</sup> Either way, the government asserts its authority to condemn property.<sup>27</sup>

### ***Restrictions on the Conveyance of Condemned Property to Private Parties***

The state may not authorize the taking of private property solely for another private party's private use, even if the state pays full compensation.<sup>28</sup> Neither the state nor a political subdivision may convey a property taken by condemnation to a private entity, unless the conveyance is authorized by law.<sup>29</sup> Examples of exceptions to the prohibition are the conveyance of property to a private party for:

- Use in common carrier services or systems;
- Use as a road or other right-of-way;
- Use in providing utility services or systems; and
- Use in providing public infrastructure.

The subsequent conveyance of a condemned property that has already been conveyed to a private party is restricted. If ownership of a condemned property is conveyed to a private party pursuant to one of the statutory exceptions described above and at least 10 years have elapsed since the condemning authority acquired title to the property, then the property may be transferred again to another private party after public notice and competitive bidding (unless otherwise provided by general law).<sup>30</sup> If fewer than 10 years have elapsed since the condemning authority acquired title to the property, the property may be conveyed a second time if the current titleholder certifies that the property is no longer needed for the use for which the property was originally condemned, and the owner from whom the property was taken by eminent domain is given the opportunity to repurchase the property at the price received from the condemning authority.<sup>31</sup> Two statutory exceptions that substitute the condemning authority for the certifying party or the current titleholder operate similarly.<sup>32</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> Section 73.071(1), F.S.

<sup>24</sup> Sections 73.031(1) and 73.071(1), F.S.

<sup>25</sup> Section 74.031, F.S.

<sup>26</sup> *Alachua Land Investors, LLC v. City of Gainesville*, 107 So.3d 1154, 1158 (Fla. 1st DCA 2013) (internal citations omitted).

<sup>27</sup> 21 FLA. JUR. 2D EMINENT DOMAIN s. 221 *Inverse Condemnation; Generally* (2021).

<sup>28</sup> 21 Fla. Jur. 2d Eminent Domain s. 24, *Eminent domain taking for public use; Taking for private use restricted* (2021).

<sup>29</sup> FLA. CONST., Article X, s. 6(c); s. 73.013(1), F.S.

<sup>30</sup> Section 73.013(2)(a), F.S.

<sup>31</sup> Section 73.013(2)(b), F.S.

<sup>32</sup> Sections 73.013(1)(f) and (g), F.S.

### **Florida Defense Support Task Force**

The Florida Defense Support Task Force (task force), established in s. 288.987, F.S., is housed within the Department of Economic Opportunity (department). The task force recommends strategies to preserve and protect military installations to support the state's related position in research and development,<sup>33</sup> and assists current and former servicemembers and their families.<sup>34</sup> The task force is comprised of the Governor or his or her designee, and for a total of 12 members four members each appointed by the Governor, the President of the Senate, and the Speaker of the House of Representative.<sup>35</sup> The executive director of the department serves as an ex officio, non-voting member.<sup>36</sup> Members generally serve four-year terms and are subject to reappointment.<sup>37</sup>

The task force must submit by February 1 an annual progress report and work plan to the Governor, President of the Senate, and Speaker of the House of Representatives.<sup>38</sup>

### **III. Effect of Proposed Changes:**

SB 1796 revises eminent domain law by adding an exception to the prohibited list of a conveyance of property to a private person or entity. The exception authorizes a conveyance to a private person or entity to secure a buffering of a military installation against encroachment. This authority is limited to property identified on the most recent annual list of base buffering encroachment lands.

The bill takes effect July 1, 2021.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>33</sup> Section 288.987(2), F.S.

<sup>34</sup> Section 288.987(2), F.S.

<sup>35</sup> Section 288.987(3), F.S.

<sup>36</sup> Section 288.987(5), F.S.

<sup>37</sup> Section 288.987(2)(d), F.S.

<sup>38</sup> Section 288.987(6), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As Florida requires full compensation to be paid to the owner whose property is conveyed, a financial impact is likely to be insignificant.

C. Government Sector Impact:

Which entity will fund an eminent domain action and acquisition is unclear. Therefore, fiscal impact is unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 73.013 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.