

# Working with State Legislatures: A Guide for Military Installations and State Legislatures



**NCSL** National Conference of State Legislatures

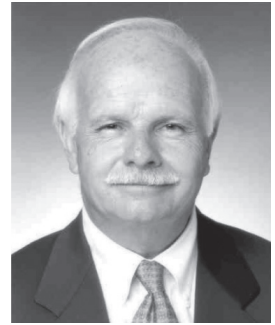




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Dear Reader:

State and local governments, along with the military, share responsibility to ensure the health and safety of residents living near military installations without compromising training needs that are critical to protect our nation's security at home and abroad. Managing growth near military bases is one way to accomplish these objectives, and that authority is vested in state and local governments. Collaboration between the two is essential if effective land use laws are to pass and be implemented where communities come face to face with installation fence lines. The participation of military commanders in the planning process is also vital. Without their input, states, cities and counties may not have sufficient information about the effects of their decisions to strike the appropriate balance between development, conservation and military operations.



The National Conference of State Legislatures (NCSL) is pleased to partner with the Department of Defense to help educate all stakeholders about the types of options available to achieve mutual objectives. NCSL is the bipartisan organization that serves the legislators and staff of the states, commonwealths and territories. We provide research, technical assistance and opportunities for policy makers to exchange ideas on the most pressing state concerns. Our objectives are to improve the quality and effectiveness of state legislatures, promote policy innovation and communication among our constituents, and ensure state legislatures a strong, cohesive voice in the federal system.

These guides are designed to encourage a greater understanding of the roles that state legislators, local government officials, land conservation organizations and the military play in managing development near military bases and protecting natural resources and the health and safety of our citizens. NCSL's contribution begins with a discussion of how state legislatures operate in the policy making process. It proceeds to describe the relationship of state and local governments in land use planning. A detailed presentation of state legislative options follows, with brief case studies of successful state policies. Finally, it presents statutory language that legislators may want to consider as they work with their counterparts in city and county government, public interest groups and the military in crafting practical solutions.

These guides are the first step in a broader communication strategy. NCSL is pleased to be part of it and hopes you will consider the ideas presented.

A handwritten signature in black ink that reads "William Pound". The signature is written in a cursive, flowing style.

William T. Pound  
Executive Director  
National Conference of State Legislatures



## TABLE OF CONTENTS

### Working with State Legislatures: A Guide for Military Installations and State Legislatures

<b>FRAMING THE ISSUE</b> .....	<b>1</b>
<i>The Need for Communication</i> .....	<i>1</i>
<i>The Issue</i> .....	<i>3</i>
<i>The Implications</i> .....	<i>4</i>
<b>THE ROLE OF THE STATE LEGISLATURE</b> .....	<b>5</b>
<i>Legislative Structure</i> .....	<i>5</i>
<i>Legislative Process</i> .....	<i>6</i>
<i>Case Study: Florida</i> .....	<i>8</i>
<b>STATE LEGISLATURES AND LOCAL GOVERNMENT RELATIONSHIPS IN MANAGING ENCROACHMENT</b> .....	<b>9</b>
<i>Home Rule</i> .....	<i>10</i>
<i>Case Study: Washington</i> .....	<i>11</i>
<i>New Focus in State Planning Laws</i> .....	<i>12</i>
<i>Case Studies: State Smart Growth Legislation</i> .....	<i>12</i>
<b>STATE/MILITARY ENCROACHMENT LEGISLATION— POLICY OPTIONS</b> .....	<b>14</b>
<i>State Encroachment Legislation Categories</i> .....	<i>14</i>
<b>STATUTORY LANGUAGE—SOME ALTERNATIVES</b> .....	<b>15</b>
<i>Category 1: Enhanced Planning and Zoning Restrictions</i> .....	<i>16</i>
<i>Category 2: Enhanced Planning Communication and Notification</i> .....	<i>17</i>
<i>Category 3: Open Space/Conservation</i> .....	<i>19</i>
<i>Category 4: Allocation of Resources</i> .....	<i>20</i>
<b>CONCLUSION</b> .....	<b>21</b>



## FRAMING THE ISSUE

### *The Need for Communication*

Two-way communication between the military and outside stakeholders is crucial to successful compatible land use planning. State legislatures can contain incompatible development; the military can provide a variety of resources to achieve mutually beneficial solutions to encroachment issues. Working together, these groups can make land use decisions that benefit all parties.

This guide is designed to:

- Help Department of Defense (DoD) officials and military base commanders gain a better understanding of state government land use decision-making that may affect military operations
- Facilitate communication and potential collaboration among stakeholders on encroachment issues

Appendix A provides a checklist of questions to consider when working with state legislators.

The chart on the following page provides a summary and clarification of common misperceptions about what installation personnel can do to engage state and local governments in dialogue on issues.

*The Army, Navy, Air Force, and Marine Corps manage nearly 30 million acres of land on more than 425 major military installations*



## *Engaging State and Local Governments: The Facts*

Common Concerns	True/False	What the Law Says	What This Means
“DoD personnel cannot provide information to state and local governments about legislation that would protect our military bases and ranges.”	FALSE	<ul style="list-style-type: none"> <li>• “No part of the money appropriation...shall be used directly or indirectly to... influence...a Member of Congress, a jurisdiction, or official of any government, to favor ...or oppose any law, policy or appropriation.” [18 U.S.C. 1913]</li> </ul>	<p>IT IS OK TO:</p> <ul style="list-style-type: none"> <li>• Share information about Administration positions</li> <li>• Share information necessary to the administration of laws for which a government agency is responsible</li> <li>• Provide pre-existing materials</li> <li>• Give speeches on Administration positions (as long as not exhorting the public to contact government officials in support of position)</li> </ul>
“Providing information on the impacts from local development action near our installation is considered lobbying.”	FALSE	<ul style="list-style-type: none"> <li>• Applicable to lobbying at the state and local level AND with regard to regulations and policy, not just legislation and appropriations</li> </ul>	<ul style="list-style-type: none"> <li>• Send letters from an agency to members of Congress</li> <li>• Make statements to the news media on Administration positions</li> </ul>
“Giving speeches on legislation is considered lobbying.”	DEPENDS	<ul style="list-style-type: none"> <li>• “No part of any appropriations contained in this Act shall be used for publicity or propaganda purposes...” [DoD FY05 Appropriations Act]</li> </ul>	<p>IT IS NOT OK TO:</p> <ul style="list-style-type: none"> <li>• Use appropriated funds to generate grassroots support, i.e., attempt to mobilize citizens or networks to call, write, email, or otherwise contact lawmakers in support of DoD initiatives</li> </ul>
“If state and local governments take the military’s advice, the military may become liable for takings.”	FALSE	<ul style="list-style-type: none"> <li>• “Nor shall private property be taken for public use, without just compensation.” [U.S. Constitution, Amendment 5]</li> </ul>	<p>IT IS OK TO:</p> <ul style="list-style-type: none"> <li>• Testify or provide information to government agencies about impacts of actions on military operations</li> <li>• Make recommendations or otherwise be persuasive about actions</li> </ul>
“Testifying to a local land use planning authority makes the government liable for takings.”	FALSE	<ul style="list-style-type: none"> <li>• “The United States may use its position as a landowner to influence local zoning authorities without incurring liability for a taking.” [Persyn v. United States, 32 Fed. Cl. 579, 585 (1995)]</li> </ul>	<p>IT IS NOT OK TO:</p> <ul style="list-style-type: none"> <li>• Prepare draft ordinance/legislation</li> <li>• Be part of a panel that <i>votes</i> on land use matters</li> <li>• Threaten, deceive or recommend others do what DoD cannot do</li> </ul>
“Working with state and local governments to combat encroachment is DoD policy.”	TRUE	<p>“I recommend you direct more active involvement at the installation and Regional Environmental Coordinator level in all aspects of state and local planning that could impact readiness.”<sup>1</sup></p>	<p>IT IS OK TO:</p> <ul style="list-style-type: none"> <li>• Participate, communicate, build relationships, and share information</li> </ul> <p>IT IS NOT OK TO:</p> <ul style="list-style-type: none"> <li>• Avoid all interactions with local planners and organizations about land use issues</li> </ul>

2 <sup>1</sup> Reference Memo from Deputy Under Secretary of Defense (Installations & Environment) dated August 23, 2004, Subject: Working with State and Local Governments to Combat Encroachment



## *The Issue*

Encroachment on U.S. military installations and training and testing ranges is a serious and growing problem for DoD. Encroachment – a term used by DoD to refer to incompatible uses of land, air, water, and other resources – is the cumulative impact of uncontrolled urban development that hampers the military’s ability to carry out its testing and training missions.

The rapid pace of urban growth into rural areas around military installations and ranges presents two sets of encroachment problems. As residential and commercial development increases in areas near military bases, residents may be exposed to aircraft over-flights, dust, and noise from military activities. Important military training exercises may be compromised due to incompatible land use adjacent to or near installations and ranges. For example:

- Night training can be compromised when light from nearby shopping centers interferes with a trainee’s night vision
- Parachute training can be halted when housing developments are built near drop zones
- Usable testing and training areas can be segmented and diminished if development forces endangered species to migrate inside the military installation fence lines

Other issues that can lead to degradation of testing or training capabilities include:

- Competition for frequency spectrum
- Cell phone towers or wind energy towers in military use airspace
- New highways near or through training areas

*In 2002, the General Accountability Office reported that nearly 80 percent of the nation’s military bases were witnessing growth around their fence lines at a rate higher than the national average.*

## *The Implications*

The U.S. military is responsible for protecting the American people and U.S. interests around the world. To maintain the country's premier military edge, troops must have the best and most realistic training and preparation for the challenges of combat before they go to war. Restrictions caused by increased growth and development can have a detrimental impact on the military's ability to "train as we fight." If trainees receive restricted or inadequate training, they are more likely to misunderstand combat strategies and tactics, leading to poor skills and unsafe practices on the battlefield.

State and local governments have responsibility for managing urban growth and development through their land use management authorities. Land trusts, the agriculture community, and conservation organizations can leverage their respective interests in open space conservation areas and work cooperatively with the military to establish compatible land use buffer areas around DoD lands. Working collaboratively, the military, state and local governments, and other stakeholder groups can protect military training capabilities while conserving important natural resources, and maintaining community well-being.

To date, various groups have taken action in response to the growing issue of encroachment:

- States have passed legislation to minimize incompatible development and promote compatible resource use around military installations
- State and local governments have formed military advisory boards to facilitate discussion and develop compatible land use policy for areas around military installations
- Specific installations have engaged with conservation-oriented non-governmental organizations (NGOs) such as land trusts, as well as state and local governments, to establish conservation areas surrounding military lands

## THE ROLE OF THE STATE LEGISLATURE

State legislatures have the constitutional authority to pass laws and play a major role in adopting or enabling land use policies that local governments carry out. They may require local governments to adopt comprehensive plans containing land use elements that protect their citizens from activities at nearby military installations, and ensure that the military can continue to conduct important testing activities and training exercises. Local governments may need enabling authority from the state to adopt land use planning and zoning ordinances independent of state mandates to control development adjacent to military bases. Understanding how the legislature operates—and its relationship to local governments exercising planning and zoning authority—is essential to developing successful state-military collaboration to prevent and control encroachment.

### *Legislative Structure*

In every state except Nebraska, the legislative branch is composed of a senate and a house of representatives, or a comparably named body (e.g., house of delegates or assembly). Nebraska has a single chamber, or unicameral legislature, whose members are called senators. The size of each chamber varies from state to state. Alaska has the fewest number of senators (20), and Minnesota has the highest number (60). The average is 39. Alaska has the fewest number of representatives (40), and New Hampshire tops the list with 400. The average is 110.

After November elections, the members of each house convene before the legislative session begins (normally in January for all but a handful of states) to elect the legislative leadership—Senate president, Senate majority leader, Senate minority leader, House speaker, House majority leader and House minority leader. The leadership typically:

- Selects the chairs and membership of each of the standing committees responsible for hearing and determining the initial fate of proposed bills
- Assigns bills to committees
- Schedules floor debate for bills that make it out of committee

Knowing a legislature's session schedule is important because the window of opportunity to affect the content and fate of a bill is limited. Unlike the U.S. Congress, few state legislatures are full-time bodies. Only eight meet throughout the year—Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and Wisconsin. Twelve states adjourn after roughly two months in

*Tanks and artillery need firing corridors, but they are increasingly encroached upon by civilian developments outside the installation.*

*Successful state legislation can take more than one session to pass, and interim committee studies can play a key role.*

*Always know your committees of jurisdiction for issues important to your installation and have an ongoing relationship with those legislators — even if they are not in your district.*

*Most of the substantive work on a bill, including amendments, occurs in a committee.*

session, while the majority finish the year after three to six months in session. Six state legislatures—Arkansas, Montana, Nevada, North Dakota, Oregon, and Texas—meet only every other year. Because state legislatures spend the majority of their time out of session, the period between sessions is crucial to the policy making process. Most state legislatures establish interim committees that can study issues in more depth away from the stress of daily session schedules. These committees may draft and recommend bills to the full legislature when it reconvenes. The support gained for bills submitted by interim committees can be crucial to success during the session.

## ***Legislative Process***

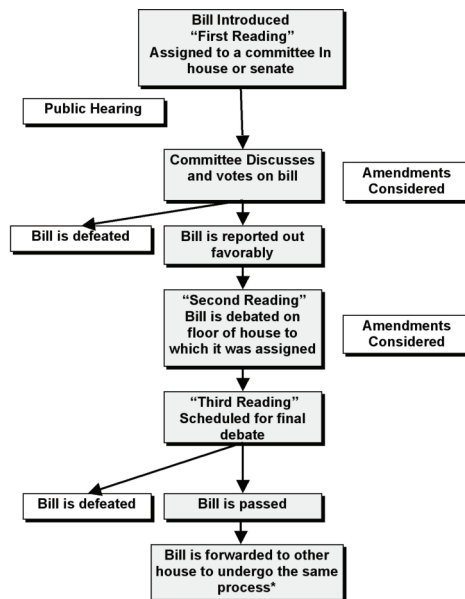
Understanding the legislative process is essential to understanding the access points to influence legislation. Ideas for bills come from several different sources:

- A legislator may develop an idea on his or her own
- Constituents, including military installations within the district, may request a legislator to introduce a bill
- The governor or state executive agency may suggest proposed legislation and seek a legislative sponsor
- Lobbyists representing private and public sector interests look for legislative sponsors who share their positions
- Interim committees may recommend legislation that already has a built-in level of support

Once a bill is introduced, it is read the first time (“first reading”) and assigned to a committee in either the house or senate. It is in committee that most amendments are considered. The committee may hold a public hearing on the bill (which offers an opportunity to present testimony in support or opposition) and then take action to report the bill out favorably or defeat it. If passed by the committee, the bill is read a second time (“second reading”) and debated on the floor of the house in which it is assigned. Additional amendments may be considered on second reading in most state legislatures. If reported favorably, the bill is read a third time (“third reading”) and scheduled for final debate. Third reading is typically when a bill is voted up or down, without additional amendments. If passed, the bill is forwarded to the second house for consideration, where it undergoes the same process.

If a bill passes the second house in a different form, the bill returns to the first house—its house of origin. The first house typically has three options: 1) accept the changes made by the second house (concur with the amendments); 2) reject the changes and let the bill die; or 3) request a conference committee. A conference committee is made up of a small group of legislators from each house who are appointed by the leadership of their respective bodies. The conference committee is responsible for preparing a version of the bill that is acceptable to both chambers. A conference committee’s report returns to each house for final acceptance without change. If a bill is accepted by both chambers, it is transmitted to the governor (See Figure 1).

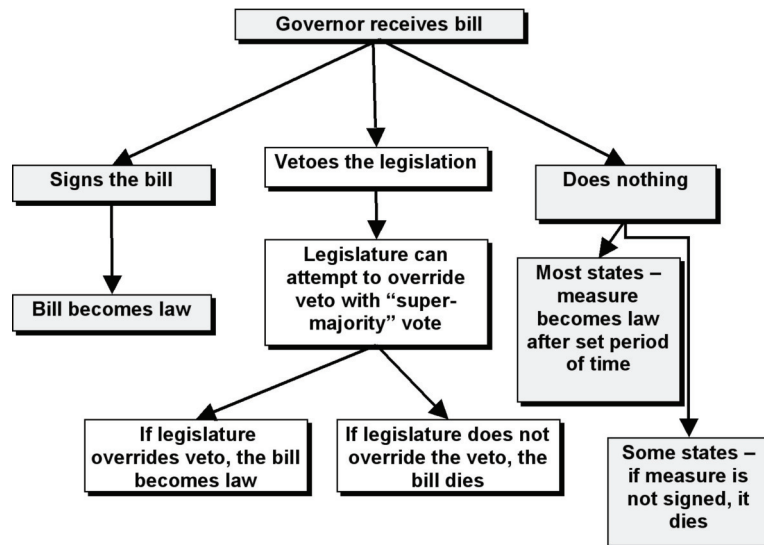
*Figure 1. The Lifecycle of a Bill - The Legislature*



\* If the bill passes the second house in a different form, the bill returns to the first house— its house of origin – for review.

The governor generally has three options when he or she receives a bill: 1) sign the bill; 2) veto the legislation; or 3) do nothing. If the governor signs a bill, it becomes law. If the governor vetoes a bill, the legislature must decide whether to override the veto (which usually requires a super-majority vote, such as two-thirds) or let the measure die. The outcome is not quite as clear if the governor takes the third option. In most states, a measure becomes law if the governor does not sign it within a set period of time. A few states, however, give the governor “pocket veto” power, whereby a measure that is not signed dies (See Figure 2).

*Figure 2. The Lifecycle of a Bill - The Governor*



### *Case Study: Florida*

The passage of Florida Senate Bill 1604 during the 2004 session of the State legislature illustrates the voyage a bill can take before it becomes law. Senate Bill 1604 contains provisions designed to address encroachment issues:

- Zoning restrictions
- Enhanced planning communication and notification
- Allocation of resources

The bill originated from unsuccessful legislation that was considered, but not enacted the previous year. The bill was generated internally by legislators who recognized the importance of the military to the State's economy and wanted to ensure incompatible land use did not contribute to potential military base closures. At the end of the 2003 session, legislative leaders formed an interim study committee to develop consensus on an approach that could pass during the 2004 session.

Senate Bill 1604 addressed several topics, so it was assigned to three substantive policy committees and one fiscal committee:

- Military and Veterans Affairs Base Protection and Spaceports
- Commerce, Economic Opportunities and Consumer Services
- Governmental Oversight and Productivity
- Appropriations

Pre-filed on January 22, 2004, the bill made it unanimously through each of the four committee votes and on April 27, 2004, passed the Senate 39-0 on third reading, three days before the end of the session. A companion measure containing similar provisions—House Bill 705—went through a comparable committee process in the House of Representatives. To expedite the bill’s consideration, the House leadership substituted Senate Bill 1604 for House Bill 705 and sent it directly to the House floor on April 28, 2004. The bill passed second reading on a voice vote and was approved by a vote of 110-0 on April 30, 2004, the final day of the session. The governor signed the bill on May 25, 2004, as Chapter No. 2004-230.

Coming out of an interim committee study, legislators were committed to the bill from the outset of the 2004 session. As a result, the military did not need to provide highly visible input during public hearings. Rather than creating a new program, the Legislature recognized that it already had a local land use planning process that stakeholder groups felt comfortable with and chose to integrate military installations into that process. As the legislation came to a vote, leadership in both chambers made sure they had the necessary vehicles—bills that had undergone committee scrutiny in each house—to comply with session deadlines and successfully passed legislation that everyone supported.

## **STATE LEGISLATURES AND LOCAL GOVERNMENT RELATIONSHIPS IN MANAGING ENCROACHMENT**

Although the state legislature has a prominent role in devising land use policies through legislation, local governments have primary responsibility for implementing the strategies contained in the laws. Local governments are given land use planning authorities, such as zoning; they are closest to constituents who are being regulated. State legislation may enable local governments to act or they may require that certain criteria be part of local comprehensive plans. Local governments are usually the entities that ultimately make development siting decisions that may affect operations at a military installations.

The authority of the state to regulate land use comes from its “police power,” which is designed to protect public health, safety, and welfare. States have this authority through two sources:

- “Common law,” which is based on precedent established by court cases that grant the state power to regulate private activities to protect public health, safety, and welfare

*Comprehensive Plan—Policy document adopted by a county commission or city council that sets goals and specific strategies to guide development within the jurisdiction.*



*Zoning—Government action that places land into specific districts and regulates permissible land uses within each district.*

- The U.S. Constitution, which reserves to the states powers not expressly granted the federal government. Planning and zoning are not mentioned in the Constitution.

Most states have delegated planning and zoning authority to local governments. In some states, local governments cannot exercise land use controls without express authority from the state

### ***Types of State-Delegated Authority***

The American Planning Association has identified four types of state-delegated land use planning and management authority:<sup>1</sup>

- Advisory—Legislatures authorize local governments to exercise land use planning as a desirable function to protect public health, safety, and welfare, and to promote orderly growth.
- Incentives—Legislatures encourage local governments to exercise land use planning authority by:
  - Offering incentives such as zoning and subdivision controls
  - Providing ability to assess effect of development fees to support infrastructure necessary to service growth
- Mandatory—Legislatures:
  - Require local governments to adopt a comprehensive plan that conforms to criteria contained in state law as a condition for exercising regulatory authority
  - Require regulations to be consistent with the objectives contained in the plan
- Regional Coordination—Legislatures:
  - Require local governments to adopt a comprehensive plan that does not conflict with other local plans in the region, or with the state plan
  - May offer incentives to coordinate regional planning, such as transfer of development rights and revenue sharing

*“Home rule” authority gives local governments greater latitude in land use decisions.*

### ***Home Rule***

Home rule counties or municipalities have broad authority to regulate matters of purely local interest without interference from the state. Local matters subject to home rule jurisdiction typically include land use planning and zoning. **The state legislature can, however, pass laws that affect home rule authority where the issue involves a matter of general state interest.**

*1. Stewart Meck, ed., Growing Smart Legislative Guidebook (Chicago: American Planning Association, 2002), 2-7.*

For example, the state may exercise state authority to regulate growth or require local governments to amend comprehensive plans to do so if growth in an area adjacent to a military installation may:

- Affect the installation’s ability to continue operating, thereby risking closure and subsequent impact on the region’s economy as a whole
- Place new residents under flight paths or close to firing ranges, thus impacting health and safety

### ***Case Study: Washington***

The Washington Growth Management Act provides an example of how state legislation can enable or require local governments to adopt comprehensive plans that contain specific land use planning components. The Act requires counties with a population of 50,000 or more, and whose population has increased by at least 10 percent in the previous 10 years, to prepare comprehensive plans. The Legislature set 13 goals to guide local planning, including encouraging development in urban areas with adequate infrastructure, reducing sprawl into rural areas, and retaining open space. Each local comprehensive plan must contain eight mandatory elements that address land use, housing, capital facilities, utilities, rural areas, transportation, economic development, and parks and recreation. In addition, counties must designate urban growth areas “ ... within which urban growth shall be encouraged and outside of which can occur only if it is not urban in nature.”

#### ***Office of Economic Adjustment (OEA) Guidebook***

Encroachment from incompatible civilian development is a problem that can affect the operation and mission of military installations across the nation. In an effort to encourage compatible civilian development near military installations, the Office of Economic Adjustment has released a Practical Guide describing the roles of local, State and Federal governments in conducting collaborative local land use planning and the various tools and methods of implementation that can be utilized by state and local governments to prevent encroachment. Working together, military installations and local decision making bodies can enact policies and guidance that are beneficial to both parties.

To view the guidebook, visit: [http://www.oea.gov/index.php/resource-library/resource-library/doc\\_details/553-the-practical-guide-to-compatible-civilian-development-near-military-installations](http://www.oea.gov/index.php/resource-library/resource-library/doc_details/553-the-practical-guide-to-compatible-civilian-development-near-military-installations)

*OEA is DoD’s primary source for assisting communities adversely impacted by Defense program changes, including base closures or realignments, base expansions, and contract or program cancellations. OEA offers technical and financial assistance to adversely impacted communities, and coordinates involvement of other federal agencies through the Defense Economic Adjustment Program and the President’s Economic Adjustment Committee.*

## *New Focus in State Planning Laws*

State legislatures have expanded the scope of local planning legislation in recent years as part of the “smart growth” movement that began in the mid- to late-1990s. This new type of legislation does not attempt to curtail growth, but channels it into areas that have the necessary infrastructure in place to sustain it. By offering incentives to concentrate growth where transit, sewers, and schools already exist or are located in close proximity to new development, state legislatures hope to spur urban revitalization and appropriate economic development, reduce local government service costs, and preserve open space. **These laws can serve as the basis for preventing or mitigating the effects of encroachment near military installations by providing buffers around bases that protect farm and forest land, wildlife habitat, and recreational opportunities for nearby residents.**

*“Smart growth” legislation provides state incentives for local governments to site development in areas that can sustain it in a cost-effective manner.*

### *Case Studies: State Smart Growth Legislation*

Recently enacted laws in Arizona, Florida, Maine, Maryland, and Pennsylvania illustrate some of the trends in changing relationships between state and local governments as they attempt to more effectively manage growth through incentive-based approaches.

#### *Arizona*

Municipal and county general plans must include, among other components:

- A land use element to promote infill and identify locations where development should be encouraged
- A growth area element to identify areas suitable for planned multimodal transportation, encourage mixed use development, conserve significant natural resources, and promote financially sound infrastructure expansion
- A cost of development element to require developers to pay their fair share of the costs of providing necessary infrastructure

Arizona municipalities and counties may establish infrastructure service area boundaries beyond which publicly financed water, sewer, and street improvements necessary to service new development are limited. Municipalities may designate infill incentive districts to encourage redevelopment through expedited zoning procedures, expedited processing of plans and proposals, waivers of municipal fees, and relief from development standards. Counties may designate rural planning areas and help landowners develop plans that emphasize voluntary, non-regulatory incentives to encourage continuing traditional rural and agricultural activities. In addition, counties are authorized to assess impact

development fees to offset the capital costs of public infrastructure provided to the development.

### ***Florida***

Counties and municipalities may designate urban infill and redevelopment areas to encourage development in built-up, but run-down parts of the community. Local government incentives for development within an urban infill and redevelopment area include:

- Waiver of license and permit fees
- Waiver of local option state taxes
- Expedited permitting
- Lower transportation impact fees for development that encourages public transit
- Prioritized infrastructure financing
- Absorption of developer's costs to fund necessary infrastructure concurrent with the pace of development

### ***Maine***

State growth-related capital investments for municipalities are limited to designated growth areas contained in a local government's comprehensive plan. When awarding grants or financial assistance for capital investments, state agencies must give preference to municipalities that have adopted comprehensive plans consistent with state smart growth objectives. A Municipal Investment Trust Fund provides loans to municipalities that undertake comprehensive downtown revitalization efforts.

### ***Maryland***

The Priority Funding Areas Program designates the types of existing areas—primarily urban centers and areas proposed for revitalization—that are eligible for state economic development funds. The Program authorizes counties to designate priority funding areas that meet local guidelines for intended use and have sufficient infrastructure in place to make development viable. No state funding of growth-related projects can occur unless the projects are located in a priority funding area.

### ***Pennsylvania***

Municipalities may enter into intergovernmental cooperative agreements to develop and implement a regional comprehensive plan. The comprehensive plan may designate growth areas, potential future growth areas, and rural resource

areas. State agencies may give priority to applicants for financial assistance for projects that are consistent with the comprehensive plans. Municipalities that have entered into cooperative implementation agreements can share tax revenue and impact fees with other municipalities within the region, and can adopt transfer of development rights (TDR) programs to enable the transfer of development rights from rural resource areas to designated growth areas.

## **STATE/MILITARY ENCROACHMENT LEGISLATION— POLICY OPTIONS**

*Legislation may require local governments to include land use criteria in comprehensive plans to protect military bases from incompatible development.*

State legislatures have used existing local comprehensive planning statutes authorizing or requiring counties and municipalities to adopt land use plans and regulations as the basis for new laws that address encroachment concerns. Encroachment policy options build upon these existing laws by:

- Requiring local governments to identify lands adjacent to military installations and adopt strategies to ensure that incompatible development does not occur
- Expanding upon existing requirements that the military installation commander be notified and offered an opportunity to submit comments on the proposed change prior to a public hearing or planning/zoning change

In addition, state legislatures have set up special revolving loan and grant funds, appropriated general fund revenue, and authorized the use of bond proceeds dedicated to open space preservation to purchase title or development rights to lands to serve as buffers between military bases and expanding urban growth. Other land conservation tools that build upon existing statutory strategies may be used to offer incentives to local governments and landowners to preserve open space and farmland near military installations. These tools include:

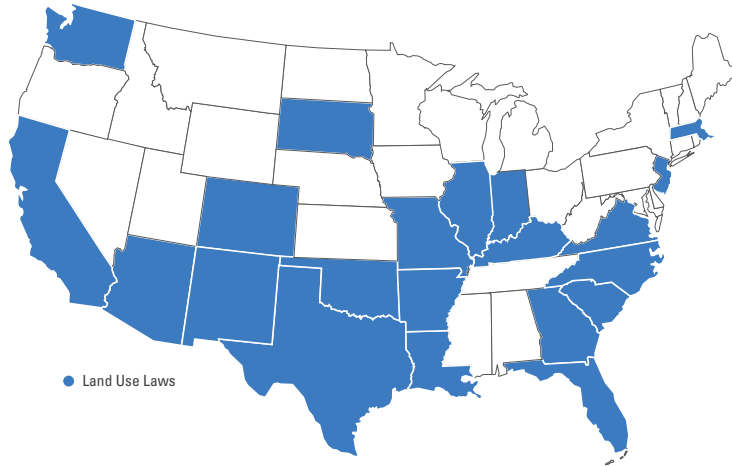
- Expansion of local government authority to purchase land for the continued operation of a military facility in addition to land conservation purposes
- Transfer of development rights from rural lands adjacent to military bases to urban areas that can accommodate increased density
- Tax credits for the donation of conservation easements on lands with open space or agricultural values

*As of 2006, 20 states have passed land use laws to address encroachment concerns.*

### ***State Encroachment Legislation Categories***

State legislatures in recent years have been active in passing laws designed to prevent encroachment. At least 20 states have enacted land use related laws to address encroachment concerns (See Figure 3).

*Figure 3. State Encroachment Legislation*



Source: National Conference of State Legislatures, 2006.

Land use laws fall into four categories:

- **Enhanced Planning and Zoning Restrictions.** Creates requirements for local government to include in comprehensive plans criteria to be considered to ensure that land use adjacent to a military base is “compatible” with the military mission
- **Enhanced Planning Communication and Notification.** Creates or expands procedural requirements to provide planning and zoning information to the military, and creates a specific mechanism for the military to make comments on how the proposed development or planning change affects the military mission
- **Open Space/Conservation.** Allocates state resources for open space protection, such as acquisition of title or development rights to land or conservation easements for restoration and preservation of open space and farmland
- **Allocation of Resources.** Provides funding to support military sustainability, including general fund appropriations, grants and funds to acquire easements, land exchanges, or bonding authority for infrastructure projects done at the state level that benefit the military

## STATUTORY LANGUAGE—SOME ALTERNATIVES

This section contains alternative statutory language to implement the legislative policy options described in the previous section. The statutory language is not intended to be model legislation—it represents a series of different approaches that legislatures may want to consider as they address encroachment concerns. Statutory language is presented for each of the four categories:

*For an interactive map with detailed descriptions of these and other state strategies to control encroachment, visit the U.S. Department of Defense’s “State Initiatives Supporting Military Range Sustainability” Web site at <http://www.denix.osd.mil/SustainableRanges>*

- Enhanced Planning and Zoning Restrictions
- Enhanced Planning Communication and Notification
- Open Space/Conservation
- Allocation of Resources

Alternative statutory language is found in the bulleted text below; each bullet can be a stand-alone approach or can be linked with other options to craft a more comprehensive approach. The language has been modified to present a general approach that can be more easily adapted to an individual state's legal frame-work.

### ***Category 1: Enhanced Planning and Zoning Restrictions***

- **Provides criteria to be considered in local comprehensive plans and zoning ordinances**
  - Any comprehensive plan shall include a future land use plan element that contains criteria to be used to achieve the compatibility of adjacent lands or lands in close proximity to military facilities, where applicable.
  - Zoning ordinances shall be developed with the purpose of promoting the health, safety or general welfare of the public. To these ends, such ordinances shall be designed to provide for reasonable consideration of the protection of military bases against encroachment where lands are adjacent or in close proximity to a military base.
- **Requires local government to plan compatible land uses in the vicinity of military facilities**
  - A comprehensive plan, an amendment to a plan, a development regulation or an amendment to a development regulation shall not allow development in the vicinity of a military facility that is incompatible with the facility's mission or operations.
  - Any county or city that has a military facility within or adjacent to its border shall adopt strategies in its comprehensive plan to identify lands adjacent to military facilities and adopt policies to ensure that those lands are protected from encroachment of incompatible uses. This process may include a Joint Land Use Study (JLUS) conducted by the city or county in cooperation with the relevant military facility, where applicable, to examine issues of encroachment and compatible land use for the lands adjacent to the facility. The city or county shall incorporate the joint recommendations of that study into its plans to protect military installations from encroachment.

*A Joint Land Use Study (JLUS) is a study performed through a partnership between a military installation and the surrounding community to encourage cooperative land use planning. The Office of Economic Adjustment (OEA) offers matching grants for a JLUS. Please visit [www.oea.gov](http://www.oea.gov).*



- **Elevates the status of land in the vicinity of any military installation as land of special concern, creating additional procedural requirements for the development or use of such land**
  - The local planning commission shall prepare a comprehensive plan for development of territory within its jurisdiction, and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction. The plan shall show the locality's long-range recommendations for the development of territory covered by the plan, including, but not limited to: a) the designation of areas for various types of public and private development; b) the location of military bases, military installations and military airports and their adjacent safety areas; and c) the designation of military installations as areas of critical state concern.
  - The local planning commission may designate areas and activities of state concern, including areas around key facilities, in which development may have a material effect upon the key facility or surrounding community. Areas around key facilities shall be developed in a manner that will discourage traffic, congestion and incompatible uses.

## ***Category 2: Enhanced Planning Communication and Notification***

- **Creates or expands procedural requirements to provide planning and zoning information to the military**
  - The local government of any county in which a military facility is located must provide the commanding officer of that facility with information relating to proposed changes to comprehensive plans, amendments, and proposed changes to land development regulations that, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military facility. Each affected local government shall provide the military installation with an opportunity to review and comment on the proposed changes. The affected local government shall take into consideration any comments provided by the commanding officer or his or her agent when making such decisions regarding comprehensive planning or development regulations.
  - The local government shall provide written notice to the commander of a military facility at least [x] days before a public hearing and advise the commander of the opportunity to submit comments or recommendations to any proposed comprehensive plan or amendment thereto, proposed change

*It is important for the military to take advantage of comment periods provided in legislation to ensure cooperation and compatibility of development.*

in zoning map classification, or an application for special exception for a change in use involving any parcel of land located within [y] feet/miles of the boundary of a military facility.

- **Creates a specific mechanism for the military to make comments on how the proposed development or planning change affects the military mission**
  - Any county or city that has a military installation or facility within or adjacent to its border shall notify the commander of the military facility of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to the military facility to ensure that the facility is protected from incompatible development. Such notice shall request that the commander of the military facility provide a written recommendation and supporting facts relating to the use of land being considered in the adoption of the comprehensive plan or an amendment to the plan. The notice shall provide [x] days for a response from the commander. If the commander does not submit a response to such request within that time period, the local government may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the installation.
  - Prior to adopting or amending any ordinance that would result in changes to the zoning map or would change or affect the permitted uses of land located [x] feet/miles or less from the border of a military facility, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the affected military facility not less than [y] days nor more than [z] days prior to the date of a public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment, the board of commissioners shall take such comments and analysis into consideration before making a final determination.
  - The planning department of any local government charged with reviewing zoning proposals shall, with respect to each proposed zoning decision involving land that is adjacent to or within [x] feet of any military facility, request from the commander of such military facility a written recommendation and supporting facts related to the use of the land being considered in the proposed zoning decision at least [y] days prior to a public hearing. If the base commander does not submit a response to such request by the date of the public hearing, it shall be presumed that the proposed zoning decision will not have any adverse effect on the military facility.

- **Includes a non-voting military representative on local planning or zoning boards**
  - To facilitate the exchange of information related to the development of lands adjacent to or in close proximity of a military facility, a representative of a military facility, acting on behalf of all military facilities within that jurisdiction, may be included as an ex-officio, nonvoting member of the county's or affected local government's planning or zoning board.

### *Category 3: Open Space/Conservation*

- • **Includes land conservation tools so that more intense land uses can be located further away from a military facility**
  - The local planning commission shall prepare a comprehensive plan that includes a list of existing open-space land areas, an analysis of a military facility's forecasted needs for open-space areas to conduct its military testing or training activities, and suggested strategies under which land with limited development can make a transition to an open-space area, if needed.
  - In addition to authority granted pursuant to other laws, a municipality or county may acquire by purchase, lease, exchange, donation, devise or condemnation land or interests in land adjacent to a military facility to provide a buffer for the continued operation of the military facility.
  - A municipality or county may establish procedures and standards for the transfer of development rights to land located within its jurisdiction in order to conserve land, including land that possesses conservation values that may serve as a buffer between developed land and a military facility, and to promote the public health, safety, and general welfare of the citizens within its jurisdiction. Any proposed transfer of development rights shall be subject to the approval and consent of the property owners of both the sending and receiving property. Prior to any transfer of development rights, a municipality or county shall adopt an ordinance providing for 1) the issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix the development rights to the receiving property; 2) the preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner; and 3) a system for monitoring the severance, ownership, assignment and transfer of the development rights.

*Open space acquisition and transfer of development rights programs are important land conservation tools for local governments.*

- **Provides financial incentives for a property owner to conserve land possessing conservation values that may serve as a buffer between developed land and a military facility**

- A taxpayer who makes a qualified donation of an interest in real property located in the state during the taxable year that is useful for land conservation purposes, as determined by the Department of Natural Resources, including lands that possess conservation values that may serve as a buffer between developed land and a military facility, is allowed a credit against the state income tax equal to [x] percent of the fair market value of the donated property interest. To be eligible for the credit, the interest in real property must be donated in perpetuity to and accepted by the state, a local government, or a body that is qualified to receive charitable contributions and manage lands for conservation purposes. The credit allowed may not exceed [y] dollars, and may not exceed the amount of the tax imposed. Any unused portion of the tax credit may be carried forward and applied against the income tax due in the succeeding [z] years.

#### ***Category 4: Allocation of Resources***

- **Establishes a special fund to award grants and low-interest loans for projects designed to preserve the continued operation of a military installation threatened by encroaching development**

- The military installation fund is established in the Department of [x]. Revenue in the fund shall be appropriated by the legislature. The fund shall provide grants and low-interest loans to state agencies, municipalities, counties or qualified nonprofit organizations that undertake military installation preservation and enhancement projects. Eligible uses of fund revenue include 1) acquisition of private real property for the purpose of preserving a military installation; 2) acquisition of interests in private real property to prevent or mitigate the effects of development on land adjacent to a military installation; and 3) acquisition of infrastructure on land adjacent to a military installation that is vital to the preservation or enhancement of a military installation. Infrastructure projects to be funded under this section include those related to encroachment, transportation and access, utilities, communications, environmental protection, sustainable land uses and security.

*State funds that provide grants and low-interest loans can help finance projects to prevent or mitigate encroachment.*

## CONCLUSION

Both states and the military face significant challenges from urban growth and development. Encroachment impacts the military's ability to conduct realistic training and testing activities. States must continue to protect the health, safety, and welfare of their citizens while balancing protection of natural resources and economic stability. This guide provides information to enhance the military's understanding of state legislatures, and suggests resources and tools for engaging with legislators in compatible land use planning to meet sustainability challenges with mutually beneficial solutions.

This primer is one of a series designed in cooperation with DoD's Sustainable Ranges Initiative. The primer series includes:

- ❖ Collaborative Land Use Planning: A Guide for Military Installations and Local Governments
- ❖ Commander's Guide to Community Involvement
- ❖ Outreach for Mission Sustainability: Working to Balance Military and Civilian Community Needs
- ❖ Partner's Guide to the Department of Defense's Readiness and Environmental Protection Initiative (REPI)
- ❖ Working to Preserve Farm, Forest and Ranch Lands: A Guide for Military Installations
- ❖ Working with Conservation Districts: A Guide for Military Installations
- ❖ Working with Land Trusts: A Guide for Military Installations and Land Trusts
- ❖ Working with Local Governments: A Practical Guide for Installations
- ❖ Working with Regional Councils: A Guide for Installations
- ❖ Working with State Legislators: A Guide for Military Installations and State Legislators

These primers are available online at <http://www.denix.osd.mil/sri/Tools/Primers.cfm>

To obtain hard copies or for more information, contact:

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