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## SENATE BILL NO. 565

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on March 2, 2006)

(Patron Prior to Substitute—Senator Stolle)

A BILL to establish certain land use requirements and eminent domain authority in localities containing certain jet bases and to amend the Code of Virginia by adding in Article 23.1 of Chapter 26 of Title 2.2 a section numbered 2.2-2666.3, relating to Oceana/Fentress Military Advisory Council.

**Be it enacted by the General Assembly of Virginia:**

1. § 1. Land use adjacent to certain jet bases for the purpose of preventing further encroachment.

A. The governing body of any locality in which a United States Navy Master Jet Base, or an auxiliary landing field used in connection with flight operations arising from such Master Jet Base, is located shall:

1. Adopt zoning ordinances that require the governing body to follow Navy Air Installation Compatible Use Zone (AICUZ) guidelines in deciding discretionary applications for property in noise levels 70 dB DNL or greater;

2. Undertake an evaluation of undeveloped properties located in noise zones 70 dB DNL or greater to determine the suitability of such properties for rezoning classifications that would prohibit uses incompatible under AICUZ guidelines;

3. Adopt such ordinances or take such other actions as may be recommended in any Joint Land Use Study that has been officially approved by the Navy and the governing body of the locality; and

4. Assemble available funding from federal, state, and local sources to purchase land or development rights from willing sellers in the corridor of land underneath the flight path between the Master Jet Base and the auxiliary landing field known as an interfacility traffic area.

B. For the purpose of preventing further encroachment, the governing body of any locality in which a United States Navy Master Jet Base is located shall adopt ordinances to establish a program to purchase incompatible use property and prohibit development deemed incompatible with air operations in the Accident Potential Zone 1 and Clear Zone areas, as depicted in the Navy's 1999 AICUZ Pamphlet, and fund and expend no less than \$15 million annually in furtherance of the program, to the extent that properties or development rights are reasonably available for acquisition. Such funding and expenditures shall be subject to annual appropriations from the state and locality, and shall continue until such time as all reasonably available properties or development rights have been acquired in the designated areas. Such program shall include the restriction of by-right development of property within Accident Potential Zone 1 areas.

§ 2. Acquisition of property to prevent further encroachment in Accident Potential Zone 1 and Clear Zone areas of United States Master Jet Bases; limited power to exercise right of eminent domain.

A. For the purpose of preventing further encroachment, all localities in which a United States Navy Master Jet Base is located are hereby granted the power to exercise the limited right of eminent domain in acquisition of any lands, easements, and privileges for the purpose of protecting public safety by providing unobstructed airspace for the landing and takeoff of aircraft utilizing such Master Jet Base and preventing incompatible development within Accidental Potential Zone 1 and Clear Zone areas surrounding such Master Jet Base. The power to exercise the limited right of eminent domain may only be exercised where:

1. The property is located wholly or partially within an Accident Potential Zone 1 (APZ-1) or Clear Zone area as described in the United States Navy's 1999 Air Installation Compatible Use Zone (AICUZ) Pamphlet;

2. The property is zoned for residential use, but is undeveloped, and use restrictions imposed by the locality to protect the APZ-1 or Clear Zone areas have left the property without a reasonable use;

3. The locality has made a bona fide offer to purchase the property from the owner and the owner and the locality have not been able to agree on the terms thereof; and

4. The owner of the property has made a written request to the locality that the property be acquired by the locality by eminent domain.

B. Condemnation proceedings authorized by subsection A shall be conducted under the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 of the Code of Virginia, mutatis mutandis.

C. Any property acquired by any locality pursuant to this section shall be valued as if any use restriction enacted by such locality prohibiting incompatible development in APZ-1 or Clear Zone areas surrounding the United States Master Jet Base does not apply.

D. With respect to any property acquired pursuant to this section, the locality (i) may use, lease, dispose, or convey the property to adjoining land owners where such disposition does not result in any

60 *increased density or intensity of use within the Accident Potential Zone 1 or Clear Zone areas; or (ii)*  
61 *may convert the use of any property to a compatible use as under the United States Navy's OPNAV*  
62 *Instruction 11010.36B (or any superseding Navy AICUZ program regulation) and use, lease, dispose, or*  
63 *convey the property for a use consistent with the AICUZ Pamphlet.*

64 **2. That the Code of Virginia is amended by adding in Article 23.1 of Chapter 26 of Title 2.2 a**  
65 **section numbered 2.2-2666.3 as follows:**

66 *§ 2.2-2666.3. Oceana/Fentress Military Advisory Council created; composition; duties; staff support.*

67 *A. The Oceana/Fentress Military Advisory Council (the Oceana/Fentress Council) is hereby created*  
68 *as a subunit of the Virginia Military Advisory Council. The Oceana/Fentress Council shall be composed*  
69 *of two members of the Chesapeake City Council, two members of the Virginia Beach City Council, those*  
70 *members of the Virginia General Assembly whose districts encompass Naval Air Station Oceana and*  
71 *Naval Auxiliary Landing Field Fentress, the Commander, Navy Mid-Atlantic Region or his*  
72 *representative, and the Commanding Officer of Naval Air Station Oceana or his representative.*

73 *B. The Oceana/Fentress Council shall identify and study and provide advice and comments to the*  
74 *Virginia Military Advisory Council on issues of mutual concern to the Commonwealth and the Navy*  
75 *concerning Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress and perform such*  
76 *other issues as the Governor or the Virginia Military Advisory Council may determine to be appropriate*  
77 *subjects of consideration.*

78 *C. Such staff support as is necessary for the conduct of the Oceana/Fentress Council's business shall*  
79 *be furnished by the Office of Commonwealth Preparedness.*

80 **3. That the provisions of this act and all authority contained herein shall terminate in the event**  
81 **that the aircraft and activities necessary to support the operations of a Master Jet Base are**  
82 **designated for realignment outside of the locality.**