HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1447 CS Licensing
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

The bill requires the written notice an agency is required to give an applicant when they intend to grant or deny, or has granted or denied, an application for licensure to include the citations to the applicable rule, statute, or both for which issuance or denial is based on.

The bill also requires counties and municipalities to give written notice to an applicant when denying an application for a development permit. This written notice must also state the grounds or basis for the denial, with citation to the applicable ordinance or other legal authority.

This bill may impact the existing caselaw on written findings for certain types of land use decisions.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill would take effect upon becoming law.

There does not appear to be a fiscal impact on state or local government revenues. State agencies, counties, and municipalities may need to update their applicable rules, ordinances, or processes to comply with this bill. The parameters of the required written notice, however, will ultimately determine the level of local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the information provided to applicants when granted or denied a license by the state, counties, and municipalities.

B. EFFECT OF PROPOSED CHANGES:

This bill affects licensing under the Administrative Procedure Act and the denial of development permits by counties and municipalities.

"Licensing" under the Administrative Procedure Act

Chapter 120, Florida Statutes, is the Administrative Procedure Act (APA). The APA applies to "agencies." The term "agencies" includes the Governor,[1] state officers, state departments, departmental units,[2] authorities, regional water supply authorities, boards, commissions,[3] regional planning agencies, educational units, and other specified entities.[4]

The APA defines the term "license" to include: a franchise, permit, certification, registration, charter, or similar form of authorization required by law.[5] This definition, however, excludes any license that is issued primarily for revenue purposes when issuance of the license is merely a ministerial act.[6] The APA has provisions which specifically relate to licensing and place certain requirements on agencies:

- Examine any application for a license upon receipt, notify the applicant of any apparent errors or omissions within 30 days, and request any additional information the agency required by law;[7]
- Consider an application complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired;[8]
- Approve or deny every application for a license within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law;[9]

[1] Fla. Stat. § 120.52(1)(a) (2005) (while the Governor is exercising all executive powers other than those derived from the Florida Constitution).
[2] Fla. Stat. § 120.52(1)(b)1. (2005) (as described in section 20.04, Florida Statutes).
[3] Fla. Stat. § 120.52(1)(b)4. (2005) (including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature).
[4] Fla. Stat. § 120.52(1)(b)8. (2005) (This includes entities described in chapters 163 [Intergovernmental Programs], 373 [Water Resources], 380 [Land and Water Management], and 582 [Soil and Water Conservation Districts], Florida Statutes, and section 186.504 [Regional Planning Councils], Florida Statutes. Agency does not include legal entities created pursuant to part II of chapter 361 [Joint Electric Power Supply Projects], Florida Statutes, metropolitan planning organizations, separate legal or administrative entities which include metropolitan planning organizations, expressway authorities, legal or administrative entities created pursuant to an interlocal agreement unless a party is otherwise subject to the APA.).
[5] Fla. Stat. § 120.52(9) (2005).
[6] Fla. Stat. § 120.52(9) (2005).
[7] Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information).
[8] Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information).
[9] Fla. Stat. § 120.60(1) (2005) (Any application for a license that is not approved or denied within the 90-day or other shorter time period required by law, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.).

- Notify any applicant seeking a license for an activity that is exempt from licensure and return any application fee within 30 days after receipt of the original application; and[10]

- Provide written notice, either personally or by mail, that the agency intends to grant or deny an application for license and state with particularity the grounds or basis for the issuance or denial of the license.[11]

The licensing provisions of the APA also apply to licenses which do not automatically expire by statute;[12] the revocation, suspension, annulment, or withdrawal of licenses; and emergency suspensions, restrictions, or limitations of a license.

Changes to Licensing Under the APA

This bill creates a new requirement for the written notice that agencies are required to give applicants when the agency intends to grant or deny, or has granted or denied, an application for licensure. In addition to stating with particularity the grounds or basis for the issuance or denial of a license, the bill requires the written notice to also include a citation to the applicable rule, statute, or both if applicable.

Licensing by Counties and Municipalities

The APA applies to certain local government entities such as multicounty special districts with a majority of its governing board comprised of nonelected persons.[13] The APA also applies to counties and municipalities to the extent they are *expressly* made subject to the APA by general or special law or existing judicial decisions.[14] Most licensing decisions of counties and municipalities have not, however, been made subject to the APA. As such, most licensing by counties and municipalities, including development permits, is controlled by ordinances, judicial decisions, and other applicable statutes.[15]

Development Permits by Counties and Municipalities

In general, a development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[16] The authority to issue development permits is part of the "home rule" power of charter counties[17] and municipalities.[18] It is also, for non-charter counties in particular, an essential component of the authority to prepare, implement, and enforce comprehensive plans as well as the authority to establish, coordinate, implement, and enforce zoning ordinances.[19]

There is, however, an important judicial distinction between establishing a comprehensive plan or zoning ordinance, and its implementation through the development permit process. Establishing a comprehensive plan or zoning ordinance is the formulation of a general rule of policy and is a legislative action.[20] The decision to grant or deny development permits in implementing the

[10] Fla. Stat. § 120.60(2) (2005).
[11] Fla. Stat. § 120.60(2) (2005) (This notice must further inform the applicant of the basis for the agency decision, of any administrative hearing or judicial review which may be available, of the procedure which must be followed, and of any applicable time limits.).
[12] Fla. Stat. § 120.60(3) (2005).
[13] Fla. Stat. § 120.52(1) (2005).
[14] Fla. Stat. § 120.52(1)(c) (2005).
[15] *See, e.g.,* Fla. Stat. § 553.792 (2005) (providing response timeframes for local governments for certain building permit applications).
[16] *See, e.g.,* Fla. Stat. §§ 163.3164(8) and 163.3221(5) (2005).
[17] Fla. Const. art VIII, § 1(g) (Counties operating under charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.).
[18] Fla. Const. art. VIII, § 2(b) (Muncipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as provided by law.).
[19] *See, e.g.,* Fla. Stat. § 125.01(g) and (h) (2005).
[20] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).

comprehensive plan or zoning ordinance generally is the application of a general rule of policy and is a "judicial" or quasi-judicial action.[21]

The distinction between legislative and quasi-judicial action determines the type of review or deference that courts will give the action. Legislative actions, for example, will be sustained as long as they are fairly debatable.[22] Quasi-judicial actions, by contrast, are subject to review as to whether there was strict compliance with the comprehensive plan or zoning ordinance.[23]

Quasi-judicial Actions

Quasi-judicial action on most development permits is unique in that it is one of three types of actions that qualify for an extraordinary review by a court known as the common law writ of certiorari.[24] In the first tier of certiorari review, the circuit court reviews *the record* to determine whether the decision was supported by competent and substantial evidence.[25] The Florida Supreme Court has declined to require *findings of fact* by local governments as part of this quasi-judicial record.[26] Yet, the Florida Supreme Court noted that this decision has been called into question and directed the Rules of Judicial Administration Committee of the Florida Bar to study whether to require written final decisions with detailed findings of fact in local land use actions that are subject to review in the courts.[27] The Rules of Judicial Administration Committee ultimately recommended that the Florida Supreme Court not adopt such a rule because it violates the separation of powers between the judicial and executive branches.[28]

Findings of Fact Arguments

To assist the Rules of Judicial Administration Committee in its deliberations, an ad hoc committee of the Environmental and Land Use Law Section of the Florida Bar provided a memorandum which recommended against the adoption of such a rule because it would encroach upon the authority of the legislative branch; that is, the Florida Constitution grants authority over local governments to the legislative branch and local governments are not "courts" for purposes of adopting rules for procedure and practice as required by article V, section 2(a) of the Florida Constitution.[29] The ad hoc committee was divided as to whether the court should require written final decisions with detailed findings of fact as a matter of constitutional due process of law.[30] The ad hoc committee presented both of these perspectives.

Among the arguments presented in support of due process requiring written findings in quasi-judicial decisions: enables the proper certiorari review and ensures rationality; serves as both the starting point and guideposts for the circuit court's review; exposes "decisional referents;" reverses the radical

[21] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[22] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[23] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[24] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 842 ("The common law writ of certiorari is a special mechanism whereby an upper court can direct a lower tribunal to send up the record of a pending case so that the upper court can 'be informed of' events below and evaluate the proceedings for regularity. The writ functions as a safety net and gives the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists. The writ is discretionary and was intended to fill the interstices between direct appeal and the other prerogative writs. The writ never was intended to redress mere legal error, for common law certiorari--above all--is an extraordinary remedy, not a second appeal." The court further noted this type of action is not subject to review under the APA and that legislative actions are not reviewable via certiorari).
[25] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, at 845 (Fla. 2001); *see also id.* at 843 (If further certiorari review is granted, the district court of appeal reviews the circuit court's judgment to determine whether the circuit court afforded procedural due process and applied the correct law).
[26] *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 476 (Fla. 1993).
[27] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 846 (Fla. 2001).
[28] Letter from the Chair, Rules of Judicial Admin. Committee, Fla. Bar, to the Clerk of Court, Fla. Supreme Court (Jan. 18, 2002).
[29] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).
[30] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).

alteration in the review of quasi-judicial decisions; returns a fundamental aspect of judicial review which no data suggest was an undue burden to communities; and benefits identifiably affected parties.[31]

Among the arguments presented against due process requiring written findings in quasi-judicial decisions: limits local discretion to choose from a range of legally permissible options; interferes with the ability of local officials to represent their constituents; does not necessarily improve the quality of decision-making; unnecessarily complicates circuit court review; and increases the likelihood of violating separation of powers.[32]

These arguments serve as background for requiring written findings and have implications for any other type of written notice.

Written Notice of Denial

This bill does not require written findings, but does require written notice stating the grounds or basis for the denial of the permit, with citation to the applicable ordinance or other legal authority to the applicant when a county or municipality denies an application for a development permit.

C. SECTION DIRECTORY:

Section 1: Amends subsection (3) of section 120.60, Florida Statutes, to require a citation to the applicable rule when giving notice of its decision to deny or issue a license.

Section 2: Creating section 125.022, Florida Statutes, to require a county to give written notice when it denies an application for a development permit and to set forth requirements for the written notice.

Section 3: Creating section 166.033, Florida Statutes, to require a municipality to require a county to give written notice when it denies an application for a development permit and to set forth requirements for the written notice.

Section 4: Providing for the bill to take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   State agencies may need to update their rules and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[31] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001) (citing Thomas G. Pelham, *Rezonings: A Commentary on the Snyder Decision and the Consistency Requirement*, 9 J. Land Use & Envtl. L. 243 and T.R. Hainline & Steven Diebenow, *Synder House Rules? The New Deference in the Review of Quasi-Judicial Decisions*, 74 Fla. B. J. 53 (Nov. 2000)).
[32] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Counties and municipalities may need to update their ordinances and processes to comply with this bill. The parameters of the required written notice, however, will ultimately determine the level of local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, these expenditures do not appear to be significant enough to trigger the constitutional provisions related to the mandated expenditure of funds.[33]

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority. Yet, the bill will likely require agencies to revise their current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Definition of Development Permit

"Development permit" does not appear to be defined in chapters 125 or 166, Florida Statutes. The sponsor may wish to add an amendment to provide a definition or reference a definition elsewhere in the statutes.[34]

Written Notice versus Written Findings

[33] Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

[34] *See, e.g.,* Fla. Stat. §§ 70.51(2)(b), 163.3164(8), 163.3221(5), 288.109(3), and 380.031(4) (2005).

The bill requires and sets forth requirements for the written notice. It is not clear, however, how this written notice comports with the current caselaw on written findings. The Senate version of the bill currently contains a provision which sets forth the requirements of the written notice when the denial is the result of a quasi-judicial proceeding, specifying the notice is not required to contain findings of fact or conclusions of law. The sponsor may wish to consider a similar provision or otherwise clarify the relationship between written notices and written findings.

Timing of Written Notice

The bill does not currently specify *when* the written notice must be given to the applicant. It also is not clear what effect, if any, this written notice has on the timing of any applicable appellate rights. The sponsor may wish to further address these issues.

Results of Noncompliance by Local Governments

The bill does not currently provide any penalty for non-compliance. As such, it is unknown whether the remedy for failure by a county or municipality to provide the required notice results in approval or only serves to stay the denial until the requirements are met. The sponsor may wish to add procedures similar to those in section 120.60, Florida Statutes, which provide additional detail related to non-compliance for certain requirements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted a substitute amendment that revised the definition of "license," further detailed the requirements of the written notice for state "agencies," and limited the scope and applicability of the required written notice for counties and municipalities to denial of an application for a development permit.

The Council on Local Government adopted one amendment on April 19, 2006. The amendment removes the change made to the definition of license under the Administrative Procedure Act.