HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1447 CS Licensing
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/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	9 Y, 0 N, w/CS	Mitchell	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill requires counties and municipalities to give written notice to an applicant when denying an application for a development permit. This written notice must 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.

There does not appear to be a fiscal impact on state or local government revenues. 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 denied a development permit by a county or municipality.

B. EFFECT OF PROPOSED CHANGES:

Development Permits by Counties and Municipalities

A development permit, as defined in section 163.3164(8), Florida Statutes, 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.[1] The authority to issue development permits is part of the "home rule" power of charter counties[2] and municipalities.[3] 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.[4]

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.[5] The decision to grant or deny development permits in implementing the comprehensive plan or zoning ordinance generally is the application of a general rule of policy and is a "judicial" or quasi-judicial action.[6]

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.[7] Quasi-judicial actions, by contrast, are subject to review as to whether there was strict compliance with the comprehensive plan or zoning ordinance.[8]

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.[9] In the first tier of certiorari review, the circuit court reviews *the record* to determine whether the decision was

[1] *See also, e.g.,* Fla. Stat. § 163.3221(5) (2005).
[2] 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.).
[3] 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.).
[4] *See, e.g.,* Fla. Stat. § 125.01(g) and (h) (2005).
[5] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[6] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[7] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[8] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[9] *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).

supported by competent and substantial evidence.[10] The Florida Supreme Court has declined to require *findings of fact* by local governments as part of this quasi-judicial record.[11] 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.[12] 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.[13]

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.[14] 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.[15] 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 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.[16]

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.[17]

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

Written Notice of Denial for Development Permit Denial

The bill defines development permit by cross reference to section 163.3164, Florida Statutes.[18] The bill

[10] *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).
[11] *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 476 (Fla. 1993).
[12] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 846 (Fla. 2001).
[13] Letter from the Chair, Rules of Judicial Admin. Committee, Fla. Bar, to the Clerk of Court, Fla. Supreme Court (Jan. 18, 2002).
[14] 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).
[15] 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).
[16] 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)).
[17] 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).
[18] *Supra,* "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."

requires written *notice*, but not written findings, that cites 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: Creates section 125.022, Florida Statutes, to require a county to give written notice when it denies an application for a development permit, to set forth requirements for the written notice, and to define development permit by cross-reference.

Section 2: Creates section 166.033, Florida Statutes, to require a municipality to give written notice when it denies an application for a development permit, to set forth requirements for the written notice, and to define development permit by cross-reference.

Section 3: Providing for the bill to take effect October 1, 2006.

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:

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.[19]

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:

Written Notice versus Written Findings

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.

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.

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.

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 bill was reported favorably with committee substitute.

The Council on Local Government adopted one amendment on April 19, 2006. The amendment removed the change made to the definition of license under the Administrative Procedure Act. The bill was reported favorably with committee substitute.

On April 21, 2006, the State Administration Council adopted a "strike-all" amendment that removed the additional licensing in the Administrative Procedure Act and provided a definition of development permit. The bill was reported favorably with committee substitute.

[19] 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.