

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/ SB 2548

SPONSOR: Comprehensive Planning Committee and Senator Bennett

SUBJECT: Consolidation and Recordation of Lands

DATE: April 17, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute (CS) authorizes local governments to reassemble antiquated subdivisions for the purpose of encouraging appropriate planning and more efficient development patterns. The CS limits certain legal actions for a period of years following the issuance of a tax deed. It includes the regulation of platted lands development among the powers of county government. Also, it authorizes county and municipal governments to exercise eminent domain for the purpose of consolidating platted or subdivided lots. It provides a definition for “land assembly or adjustment” and “antiquated subdivisions.”

In addition, the CS requires a local government’s future land use plan to include provisions that address antiquated subdivisions, including the identification of any area where the local government seeks to consolidate platted or subdivided lots. It requires local land development regulations to address the assembly, reassembly, or adjustment of land. The CS amends the definition of “community redevelopment area” to include a pattern of platted or subdivided lots in an area that make it unsuitable for economically viable development or use.

Finally, the CS requires that every approved subdivision plat be recorded in the public records of each county where the property is located. The CS authorizes counties to reassemble or adjust all or part of a subdivision within its jurisdiction to meet the objectives of its revised local comprehensive plan under certain circumstances. However, the county is required to establish provisions for the compensation of any fee simple land owner of platted lands that does not participate in the application to vacate the platting. Also, the CS requires conveyances of real property or an interest therein to be recorded in the public records of a county where the property is located along with a copy of the approved, recorded plat or survey if the plat is unrecorded or the legal description is not attached. It revises recording requirements for all contracts for deed or other instruments for the purchase or sale of real estate. It provides that all contracts or

agreements for deed that convey or sell real or personal property for the purpose of securing the payment of money are deemed and held mortgages and are subject to certain requirements.

This CS substantially amends the following sections of the Florida Statutes: 95.191, 95.192, 125.01, 127.01, 163.3164, 163.3177, 163.3202, 163.340, 163.360, 166.411, 177.011, 177.031, 177.091, 177.101, 177.111, 290.003, 290.0058, 380.031, 695.01, 696.01, and 697.01.

## II. Present Situation:

The Legislative Committee on Intergovernmental Relations (LCIR) issued a report entitled “Platted Lands” in February 2003.<sup>1</sup> According to the report, Florida’s population growth has resulted in an increased need for land development and often platted lands, or antiquated subdivisions are unsuitable for such development. The report describes platted lands as usually exhibiting one or more of the following: “fiscally unsound, or lack of, service delivery; housing developments with no lands set aside for parks, schools, or commercial sites; lack of cohesive character in an area with no ability to ensure sound planning; lack of environmental sensitivity; inadequate planning for emergency management and evacuation, and; serious infrastructure deficits, such as water and wastewater systems.”

The following discussion of techniques available for addressing platted subdivision problems and legislative recommendations are excerpts from the LCIR report:

Several methods are available for use by local governments and other stakeholders to turn platted lands into vibrant communities or conserved land. They all require certain conditions to be present, superior planning, and political resolve.

The problem of platted lands is compounded because in so many instances, the entity wishing to develop or conserve the land cannot locate the lot owner. The ownership status of the millions of lots throughout the state has a significant impact on whether a particular approach can be used to deal with the particular parcel of land.

**Lot merger** Lot merger occurs when the local government’s comprehensive plan requires lots to be combined in order to meet minimum lot size requirements. Problems can arise if the owner of the lot to be built on is surrounded by lots that the owner cannot acquire. In this situation, the local government can allow for a variance, if appropriate.

**Plat vacation** Plat vacation, where the plat lines are removed and redrawn, is most commonly used when one landowner owns or acquires multiple lots. Plat vacation also only resolves the initial piece of the problem – once the plats are vacated, the community still needs an entity with a plan and funding to develop the property. If no development has occurred for a certain amount of time, the

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<sup>1</sup> See Legislative Committee on Intergovernmental Relations, *Platted Lands* (Feb. 2003), <<http://fcn.state.fl.us/lcir/reports/plattedlands03.pdf>>

landowner can request that the antiquated plat be vacated and a new plat is recorded. The government will generally allow such plat vacation provided no injury occurs to any other party who owns land in the subdivision.

Earlier Florida law allowed a local government to initiate plat vacation on its own motion, provided certain conditions were met. These provisions were repealed in 1985. Despite repeal of the state law on plat vacations, local governments are authorized to adopt ordinances through which plat vacation can occur on the local government's initiative....

**Consolidation or readjustment** Land consolidation or readjustment occurs when an area is targeted for reassembly and the majority of owners are persuaded to support the readjustment of the property in a way that will give value to their investment, rather than remove it. The property owners are authorized to create a common enterprise such as a joint venture partnership or a corporation. Local government can also be involved. Dissenting land owners can opt out and be bought out.

Those who pool their lots basically place their ownership in a unified interest, out of which they anticipate receiving a proportional share of the profit. The property is considered as a whole, rather than as a collection of individually owned lots. The whole is then deplatted and replatted into a viable development, with each original owner retaining shares in the development in proportion to their original contribution of land. The replatted land is developed, and the individual owners can either receive a share of the enterprise, or they can sell their share....

**Community redevelopment agencies** The Community Redevelopment Act of 1969 could conceivably be used as a vehicle for development of the antiquated subdivisions. Under Florida law, a city or county can, after making a finding of necessity, create a Community Redevelopment Agency (CRA). The CRA has various enumerated powers with regard to the subject area. The primary purposes of the Act are to rehabilitate, clear and develop slum and blighted areas.

It is unknown whether an antiquated subdivision could fall under the "blight" definition without further amendments to the statute. Advocates for wider application of the statute argue that it is advisable to take a pro-active approach and create a CRA to improve the conditions of an antiquated subdivision before the area deteriorates into blighted or slum conditions. Local governments may be amendable to revisiting the parameters of the statute, provided any new use is narrowly defined to address platted lands....

**Proposals** [T]he state has a role and interest in the state's orderly growth preservation, and can assist local governments in their efforts by modifying existing statutes. As well, the state should continue to explore and consider whether statutory changes would be useful. Accordingly, the following legislative proposals are offered for consideration to provide property owners and local

governments with additional tools to address challenges posed by antiquated subdivisions.

First, local governments already are familiar with the requirements of comprehensive plan amendments. In order to validate any need to deal with an antiquated subdivision within its jurisdiction, through creation of a CRA or the use of any other technique, amend s. 163.3177, F.S., to require local governments to identify in their future land use plans any area where the local government seeks to consolidate undeveloped platted or subdivided lots and the vacation of all or a portion of these lots to allow appropriate development or other use.

Second, amend statutes to clarify that the exercise of eminent domain powers for platted lands development or conservation constitutes a public purpose. Specifically: 1) amend s. 125.01, F.S., to recognize that actions taken by the county government pertinent to antiquated subdivisions constitute a county purpose; and 2) amend s. 166.411, F.S., to enumerate a municipality's authority to exercise its eminent domain powers for certain actions relevant to platted lands.

Third, amend the existing CRA statutes to specify that under certain circumstances, antiquated subdivisions can be considered "blight." The definition of blight under s. 163.340, F.S., can be altered, but narrowly so, to allow CRAs to be established to prevent further decline of an area whose orderly development or economic viability are hampered by platted subdivision issues.

Finally, state policy makers may wish to evaluate whether Florida Statutes should be amended to address recordation and administrative issues relevant to antiquated lands, as well as to reinstate local government's authority to vacate plats on their own motion, previously provided under ch. 177, F.S.

Without action, Florida's land use problems may increase significantly as areas plagued with antiquated subdivisions continue to deteriorate, economically and environmentally.

### **Actions by Former Property Owners When Properties are Acquired by Tax Deed**

A tax deed is defined as a proof of ownership of land given to the purchaser by the government after the land has been taken from another person by the government and sold for failure to pay taxes.<sup>2</sup> Any person, firm, corporation, or county that is the grantee of any tax deed shall be entitled to the immediate possession of the lands described in the deeds.<sup>3</sup> Current law provides that when the holder of a tax deed goes into actual possession of the real property described in the tax deed, no action to recover possession may be maintained by a former owner or other adverse claimant unless the action is begun within 4 years after the holder of the tax deed has gone into actual possession. When the real property is adversely possessed by a person, no action may be brought by the tax deed holder unless the action is begun within 4 years after the

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<sup>2</sup> Black's Law Dictionary, Fifth Edition.

<sup>3</sup> Section 197.562, F.S.

date of the deed.<sup>4</sup> If the tax deed holder is not in possession, no action may be brought by the former owner of the property when a tax deed has been issued for 4 years.<sup>5</sup>

### **Eminent Domain**

Eminent domain is generally defined as the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned on the payment of just compensation.<sup>6</sup> The Legislature has granted the county authority to exercise the right and power of eminent domain; that is the right to appropriate property, except state or federal, for any county purpose.<sup>7</sup> The board of county commissioners may, by resolution, authorize the requirement by eminent domain of property real or personal, for any county use or purpose designated in such resolution.<sup>8</sup>

### **Community Redevelopment Agencies**

Part III of chapter 163, Florida Statutes, addresses community redevelopment areas, which are defined as:

a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or modest income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combinations thereof which the governing body designates as appropriate for community redevelopment.<sup>9</sup>

Upon a finding of necessity by the county or municipality, and upon a further finding that there is a need for a community redevelopment agency to function in the county to carry out the purposes of the law, any county or municipality may create a public body corporate and politic to be known as a 'community redevelopment agency.'<sup>10</sup> The governing body may also declare itself to be an agency.<sup>11</sup> The purpose of the agency is chiefly to carry out the provisions of the community redevelopment plan, including the right to acquire by condemnation any interest in real property which it deems necessary for, or in connection with, community redevelopment.<sup>12</sup>

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

**Section 1** amends s. 95.191, F.S., to prohibit an action by the former owner of a property or any claimant under the former owner after a tax deed has been issued to the county for property that

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<sup>4</sup> Section 95.191, F.S.

<sup>5</sup> Section 95.192(1), F.S. If the tax deed has been issued to property in the actual possession of the legal owner and the legal owner continues in actual possession 1 year after the tax deed and before an action to eject him or her is begun, subsection (1) does not apply, pursuant to s. 95.192(3), F.S.

<sup>6</sup> See 21 Fla. Jur. 2d, Eminent Domain s.1.

<sup>7</sup> Section 127.01, F.S.

<sup>8</sup> Section 127.02, F.S.

<sup>9</sup> Section 163.340(10), F.S.

<sup>10</sup> Section 163.356, F.S.

<sup>11</sup> Section 163.357, F.S.

<sup>12</sup> Sections 163.370 and 163.375, F.S.

escheats to the county after it was offered for public sale or a tax deed has been issued pursuant to s. 197.552, F.S., for one year or more.

**Section 2** amends s. 95.192, F.S., to include provisions identical to those in section 1 of the CS.

**Section 3** amends s. 125.01, F.S., to include the regulation of platted lands development, including platting, deplatting, and reassembly in those powers granted to county governments to the extent not inconsistent with general or special law. It specifies that county governments may establish and administer programs for platted lands assembly or adjustment.

**Section 4** creates s. 127.01(3), F.S., to provide that consolidation of platted or subdivided lots to allow replatting for more appropriate development or use shall be considered a county purpose and the county is authorized to exercise eminent domain for this purpose and appropriate property.

**Section 5** amends s. 163.3164(23), F.S., to include ordinances enacted by local governments to regulate land assembly or adjustment of platted or subdivided lands in the definition of “land development regulations.” It defines “land assembly or adjustment” as the consolidation of contiguous and noncontiguous platted or subdivided lots or the vacation or deplatting of such lots to allow replatting and reassembly for more appropriate development.

**Section 6** amends s. 163.3177(6)(a), F.S., to require a local government’s future land use plan to contain provisions that address antiquated subdivisions to minimize the effects of single land use buildout, lack of public services, and the environmental and water quality impacts of this type of development. Also, the future land use plan element must identify any area where the local government seeks to consolidate platted or subdivided lots.

**Section 7** amends s. 163.3202, F.S., to require that a local government’s land development regulations include ordinances that regulate the assembly, reassembly, or adjustment of land as defined in ss. 163.3164(32) and 177.101, F.S. It also encourages the use of innovative land development regulations for land assembly, reassembly, or adjustment as described in ch. 177, F.S.

**Section 8** amends s. 163.340, F.S., to include the reassembly, platting, or replatting of lands in the definition of “community redevelopment” or “redevelopment” as used in part III of ch. 163, F.S., the Community Redevelopment Act of 1969. It also amends the definition of “community redevelopment area” to include an antiquated subdivision that is deteriorating and economically distressed due to a pattern of platted or subdivided lots that make an area unsuitable for economically viable development or use.

**Section 9** amends s. 163.360(8)(b), F.S., to provide that a county or municipality may acquire an area of land to be developed in whole or in part for nonresidential uses if the acquisition requires governmental action because of improper or antiquated subdivisions.

**Section 10** creates s. 166.411(12), F.S., to authorize municipalities to exercise the power of eminent domain for the purpose of consolidation of platted or subdivided lots to allow replatting and reassembly for more appropriate development or use.

**Section 11** amends s. 177.011, F.S., to authorize local governing bodies to regulate and control the platting, replatting, and reassembly of lands. It specifies that the regulation of platting and land assembly or adjustment is intended to :

- Aid in the coordination of land development in orderly physical patterns;
- Discourage haphazard, premature, uneconomic, or scattered land development;
- Encourage the development of economically stable and healthful communities;
- Ensure adequate utilities provision to lands being developed; and
- Function as an instrument of the local government's comprehensive plan.

**Section 12** amends s. 177.031, F.S., to define the term "land assembly or adjustment", as used in part I of ch. 177, F.S., relating to platting, as the consolidation of contiguous and noncontiguous platted or subdivided lots or the vacation or deplatting of such lots to allow replatting and reassembly for more appropriate development.

**Section 13** amends s. 177.091, F.S., to require that every approved plat of a subdivision shall be recorded in the public records of each county in which the property is situated.

**Section 14** amends s. 177.101, F.S., to provide that a county may assemble or adjust all or part of a subdivision within in its jurisdiction to the provisions and objectives in its comprehensive plan. The county may order the assembly, replatting, or vacation of the acreage of an existing plat on any portion of the subdivision, including the vacation of streets, except any roads on the State Highway System, or other parcels of land dedicated for public purposes if:

- The plat of the subdivision was recorded, or approved pursuant to law but not recorded, more than 25 years before the county orders assembly, replatting, or vacation of the acreage.
- Less than 20 percent of the total subdivision area has been built into the uses of the subdivision's zoned or land use purposes.

If a party, other than the county, attempts to reassemble a parcel under s. 177.101, F.S., the party making application for the vacation must own fee simple title to at least 60 percent of the subdivision or portion of the tract covered by the plat sought to be vacated. Further, the applicant must demonstrate the vacation will not affect the ownership or right of convenient access for property owners in other parts of the subdivision.

Such action shall be based on a finding by the county that the proposed assembly or adjustment, or vacation and reversion to acreage of subdivided land conforms to the adopted comprehensive plan and promotes public health and safety. Also, the county is required by the CS to establish provisions for the fair and just compensation of any fee simple owner of platted lands within the tract by application for vacation and reversion to acreage who refuses to participate in the application.

**Section 15** makes technical changes to s. 177.111, F.S.

**Section 16** amends s. 290.003, F.S., to provide that the revitalization of antiquated subdivisions through the combined efforts of government and the private sector is a public purpose. Sections 290.001-290.016, F.S., comprise the Florida Enterprise Zone Act of 1994.

**Section 17** amends s. 290.0058(4), F.S., to provide that when determining whether an area suffers from pervasive poverty, unemployment, and general distress, such distress shall be evidenced by describing adverse conditions within the area, including antiquated subdivisions. In addition, a substantial population change, a high percentage of tax delinquent parcels, or inappropriate lot sizes are examples of appropriate indicators of general distress.

**Section 18** amends s. 380.031, F.S., to include assembly, reassembly, or adjustment of platted or subdivided lands in the definition of “land development regulations” for purposes of the Florida Land and Water Management Act of 1972. It also provides definitions for “land assembly or adjustment” and “antiquated subdivisions” under the act.

**Section 19** amends s. 695.01(1), F.S., to require every conveyance, transfer, agreement, or contract for deed, and transfers of, or mortgage of, real property, or any interest therein, be recorded in the public records of the county where the real property is situated. If the plat is unrecorded or the legal description is not attached, then a copy of the approved, recorded plat or survey shall be attached to each instrument and submitted to the clerk of the circuit court for recording.

**Section 20** amends s. 696.01, F.S., to require all contracts for deed or other instruments for the purchase or sale of real estate, along with a copy of the approved, recorded plat or survey attached, be recorded in the public records of the county where the property is located.

**Section 21** amends s. 697.01, F.S., to provide that any contracts or agreements for deeds that convey or sell property for the purpose or with the intention of securing the payment of money are deemed and held mortgages. It subjects mortgages to recordation requirements, in addition to the same rules of foreclosure, regulations, restraints, and forms as are prescribed in relation to mortgages.

**Section 22** provides the act shall take effect upon becoming a law.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.



**D. Other Constitutional Issues:**

**Access to Courts** – Article I, section 21 of the Florida Constitution provides that “the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” Where citizens have enjoyed a historical right of access, the Legislature can only eliminate a judicial remedy under two circumstances: a valid public purpose coupled with a reasonable alternative,<sup>13</sup> or an overriding public necessity.<sup>14</sup> To the extent that this CS shortens the statute of limitations for actions brought by a former owner of property after a tax deed has been issued to a county from 4 years to 1 year, it may curtail citizens’ historical right of access to the courts. It is unknown whether the courts will find that the ‘whereas’ clauses provide a sufficient public purpose.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The property values in antiquated subdivisions may be affected by this CS.

**C. Government Sector Impact:**

This CS requires local governments to amend their comprehensive plans to address antiquated subdivisions. The DCA will incur costs as a result of the additional staff time and expenses associated with the review and approval of those plan amendments any litigation related to the same. The department reports the extra workload could be absorbed by existing staff.

The CS may have positive fiscal impact on local governments because of its potential for additional ad valorem revenues resulting from the reassembly of certain lands and the eventual productive use of those lands. Local governments would also potentially avoid excessive costs of public facilities and services that would be needed to serve development in antiquated subdivisions.

County clerks may be required by this CS to process additional paperwork related to the recording of instruments related to real property, and the abandonment of plats.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

<sup>13</sup> See Kluger v. White, 281 So.2d 1 (Fla. 1973).

<sup>14</sup> See Rotwein v. Gersten, 36 So. 2d 419 (Fla. 1948).

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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