

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 2956

SPONSOR: Comprehensive Planning and Senator Bennett

SUBJECT: Comprehensive Planning

DATE: March 29, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) allows a municipality located within a certain charter county, that has a population of greater than 1.5 million people and has less than 10 percent of the countywide population within the unincorporated area, to exercise exclusive planning authority within its jurisdiction.

This CS substantially amends sections 163.3171 and 163.3174 of the Florida Statutes.

II. Present Situation:

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (AAct@, ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the Department of Community Affairs was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Local Planning Agencies

Section 163.3174, F.S., authorizes each local government, individually or in combination with other local governments, to establish a local planning agency. This local planning agency reviews rezonings and comprehensive plan amendments. These agencies shall include a representative of the district school board as a nonvoting member to attend meetings, at which, proposed rezonings and plan amendments that would increase residential density will be considered. The local planning agency is required to prepare the comprehensive plan or plan amendments after notice and public hearings, and the agency makes recommendations to the governing body of the local government regarding the adoption or amendment of the plan. The local planning agency may be a local planning commission, the planning department of the local government, a countywide planning entity established by special act, or a council of local government officials. Section 163.3174(1)(a), F.S., provides that in the case of chartered counties, the planning responsibility between the county and municipalities within the county shall be as stipulated in the charter.

County and Municipal Governments

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.² Section 125.01, F.S., enumerates the powers and duties of county government, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.³

Sections 125.60-125.64, F.S., provides procedures for the adoption of a county charter. These provisions allow for a charter commission to conduct a comprehensive study of the operation of county government and of the ways it could be improved or reorganized. Following the commission's submission of a charter to the board of county commissioners, the board shall call a special election within a specified time frame to determine whether the proposed charter is adopted. Alternatively, the board of county commissioners may propose by ordinance a charter that is consistent with Part IV of ch. 125, F.S., the "Optional Charter County Law." Under this law, s. 125.86, F.S., specifies the powers and duties of the charter county, which include all powers of local self-government "not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the charter."

III. Effect of Proposed Changes:

Section 1 amends s. 3174(1)(b), F.S., to conform a cross-reference.

Section 2 amends s. 163.3171(2), F.S., to allow a municipality located within a charter county, that has a population greater than 1.5 million people and has less than 10 percent of the

¹ Art. VIII, § 1(f), Fla. Const.

² Art. VIII, § 1(g), Fla. Const.

³ Art. VIII, § 2(b), Fla. Const.

countywide population within the unincorporated area of the county, to exercise exclusive planning authority within its jurisdiction. It provides exceptions for charter counties that operate under a home rule charter that is preserved by s. 6(e), Art. VIII of the Constitution of 1968. This planning authority includes, but is not limited to, platting, zoning, comprehensive planning, and the issuance of development orders.

Under this CS, a municipality that is subject to its provisions may, by resolution of its governing board, delegate planning authority for the area under its municipal jurisdiction to the county. In addition, a charter county may, upon the request of the municipality, provide written comments on a proposed land use or planning assistance. Municipalities that obtain exclusive planning authority under the provisions of this CS may amend their comprehensive plans one additional time in 2004 or 2005 without regard to the twice-a-year limitation on plan amendments.

In addition, it provides that development orders issued before July 1, 2004, shall remain valid for the effective period of the order unless an amendment to the order is approved by a municipality that has exclusive planning authority under the provisions of the CS. It clarifies that a county's authority to adopt and enforce countywide impact fees is not affected by the CS. Also, the level of service applied by a charter county on April 1, 2004, for county facilities located within a municipality that has exclusive planning authority remains in effect until both the affected county and municipality adopt the amended level of service into their respective comprehensive plans. For counties subject to the provisions of this CS that have adopted a level of service for county roadways, the county may, after receipt of a written application and a reasonable fee, review and advise the municipalities on whether the proposed mitigation of traffic impacts through improvements to county roadways meets the county's permit criteria for such improvements. This section does not affect the county's permit authority with respect to county roadways. In the case of other charter counties, the planning responsibility between the county and municipality shall be as stipulated in the charter.

Section 3 provides that the CS shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In *City of Miami v. McGrath*⁴, the Florida Supreme Court invalidated a provision of law that authorized certain municipalities to impose a parking tax. The provision of law at issue, s. 218.503(5), F.S., that was enacted in 1999, allowed a municipality with a resident population of 300,000 or more by April 1, 1999, that had been declared in a state of financial emergency within the previous two fiscal years to impose a discretionary per vehicle surcharge on the sale, rental, or lease of space at a parking facility. The court affirmed the invalidation of the statute at issue, in part, because it did not apply uniformly to all municipalities that have a population of 300,000.⁵ Instead, the statute applied to only those municipalities with a population of 300,000 as of April 1, 1999, and, therefore, forever excluded other municipalities from becoming eligible.⁶

VIII. Amendments:

None.

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

⁴ 824 So. 2d 143 (Fla. 2002).

⁵ *See id.* at 150-51.

⁶ *See id.*