

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Freedom – The bill places a limit on the standing of persons that can challenge the adoption of university campus master plans and the subject matter they may challenge.

Promote Personal Responsibility - The bill equates the signature of the person challenging the campus master plan or their attorney to a certification that the challenge was not for improper purposes.

B. EFFECT OF PROPOSED CHANGES:

GENERAL BACKGROUND

Currently, s.1013.30, F.S., requires each university board of trustees to prepare and adopt a campus master plan for the university. The master plan identifies general land uses and addresses the need for, and plans for, the provision of roads, parking, public transportation, solid waste, drainage, sewer, potable water, and recreational and open space for the university for the coming 10 to 20 years. The plans are required to contain future land use, intergovernmental coordination, capital improvements, recreation and open space, general infrastructure, housing, and conservation elements and must address compatibility with the surrounding community. The master plan must also identify land uses, location of structures, densities and intensities of use, and contain standards for onsite development, site design, environmental management, and the preservation of historic and archaeological resources.

Adoption

The campus master plans must be provided to the host and any affected local governments, the Department of Community Affairs (DCA), the Department of Environmental Protection, the Department of Transportation, the Department of State, the Fish and Wildlife Conservation Commission, and the applicable water management district and regional planning council for review and comment. These agencies must be given 90 days after receipt of the campus master plans in which to conduct their review and provide comments to the university board of trustees. The commencement of this review period must be advertised in newspapers of general circulation within the host local government and any affected local government to allow for public comment. Following receipt and consideration of all comments and the holding of at least two public hearings within the host jurisdiction, the university board of trustees shall adopt the campus master plan. However, s. 1013.30, F.S. does not specify when the hearings must be held or how long after they are held the plan may be adopted.

Standing

Currently, under s. 1013.30, F.S., the only limitation on who may file a challenge to a university campus master plan is that a challenge may only be made by an affected person who submitted comments on the plan. An affected person is defined to include a host or affected local government; any state, regional, or federal agency; or a person who resides, owns property, or owns or operates a business within the boundaries of a host or affected local government. A representative of University of Central Florida¹ has indicated that this presents an obstacle to the adoption of master plans because of the numerous delays encountered by challenges from citizens claiming standing to challenge the plans. An affected person is allowed to challenge a university campus master plan for any reason.

Hearings

¹ W. Scott Cole, General Counsel, University of Central Florida.

The DCA currently conducts an informal hearing to identify issues remaining in dispute during the mediation of master plan differences when the parties have not been able to resolve their differences within 60 days. The DCA is provided 60 days to conduct the hearing and must prepare a record of proceedings and submit a report to the Administration Commission. The report to the Administration Commission must list each issue in dispute, describe the nature and basis for each dispute, identify alternative resolutions of the dispute, and make recommendations. After receiving the report from DCA, the Administration Commission must take action to resolve the issues in dispute. In deciding upon a proper resolution, the Administration Commission considers the nature of the issues in dispute, the compliance of the parties with the statutes, the extent of the conflict between the parties, the comparative hardships, and the public interest involved.

EFFECT OF PROPOSED CHANGES

HB 517 CS changes the process surrounding the development and adoption of university campus master plans. Specifically, the bill amends ss. 1013.30(3), (6), (7), (8), and (22), F.S., to:

- Require the draft master plan to identify the “tentative” location of structures in the master plan;
- Make the master plan available in electronic format in addition to a physical copy;
- Direct the specific timing of the two public hearings prior to plan adoption;
- Limit master plan challenges by limiting individual standing and the scope of such challenges;
- Change the type of hearing to be conducted in response to a challenge;
- Provide for a certification and sanctions for improper actions in a challenge; and
- Change the entity authorized to conduct rulemaking.

Location of structures. The bill amends s. 1013.30(3), F.S., modifying the location of buildings by requiring a university campus master plan to identify the “tentative” location. This provision would still allow concerned parties to see building locations on a map and comment on where buildings will be “tentatively” located without the college being locked into the exact location where buildings will be in the master plan. This should provide increased flexibility to the university to alter the location of structures to satisfy relevant concerns.

Deliver of draft plan and timing of public hearings. The bill amends s. 1013.30(6), F.S., requiring a university to physically provide a copy of the draft master plan to the host, any affected local government, reviewing agencies, and the applicable water management district and regional planning council. In addition, the draft master plan must be made available electronically. The bill clarifies that the method of transmittal for formal submission and start of the 90 day review will be the physical submission of a printed copy of the draft master plan. However, the university will have to make the electronic copy available to the affected local governments prior to the first public hearing, but before the physical copy is sent to the review agencies. This provision makes access to a copy of the proposed master plan less difficult for the concerned parties prior to the first public hearing without interrupting the 90 day review cycle for the draft master plan with local governments. In addition, by providing affected local governments with an electronic copy of the proposed plan prior to the first hearing, they will be able to make comments on the draft during the meeting. As a result, these local governments and concerned citizens will be able to provide feedback to the university board of trustees prior to the formal submission of the draft plan to local governments for the 90 day review. This process should make it easier for the universities to include concerns voiced in the first public hearing into the formally submitted draft master plan. The bill also requires that a second hearing be held by the university at least 14 days prior to the adoption of the draft master plan by the university board of trustees. This provision provides a date certain of when the adoption vote for the plan will be held and stipulates that the vote on the plan cannot occur until after the two required public hearings are complete. This should allow the board of trustees to adopt relevant changes to the plan addressed in the public hearings prior to adoption of the plan.

Challenges to the master plan. The bill amends s. 1013.30(7), F.S., limiting an individual’s petition challenging the campus master plan to issues pertaining to the public facilities or services that have a “direct and material impact” on the individual and to issues that were raised during that person’s

presentation to the university board of trustees prior to or during the adoption hearing. This provision limits a person's standing to challenge the proposed master plan and is not very specific on who will have standing. It is difficult to determine what would constitute a "direct and material impact" under the provisions of the bill. This provision would also prevent a challenge based on an issue that did not become evident until after the scheduled hearings on the proposed plan. The bill permits the university to negotiate and execute a campus development agreement during the time frame permitted for a challenge to the campus master plan.

Petition hearings. The bill amends s. 1013.30(8), F.S., replacing the DCA's informal hearing with an evidentiary hearing, to be held if necessary during the dispute resolution process. The bill requires the hearing report that is submitted to the Administration Commission to be based on evidence adduced on the record prior to and during the evidentiary hearing. The report must also determine the petitioner's compliance with this section of law. The evidentiary hearing will be conducted using the evidentiary procedures set forth in s. 120.57(1), F.S., of the Administrative Procedure's Act, but it is not clear how this will be accomplished. There appears to be an established evidentiary hearing process provided for in ss. 120.569 and 120.57(1)-(2), F.S.; however, instead of going through the Department of Administration's (DOA) evidentiary hearing process, the bill provides for an evidentiary hearing that is separate from DOA hearings.

Improper purpose for challenge. The bill creates s. 1013.30(8)(d), F.S., to equate the signature of the person challenging the campus master plan or their attorney to certification that the challenge was not for improper purposes. The Administration Commission may impose an appropriate sanction if the document was signed in violation of this requirement.

Rulemaking. The bill amends s. 1013.30(22), F.S., to provide rulemaking authority to the individual university boards of trustees instead of the State Board of Education (SBE) for subsections (3)-(6) of the amended statute.

C. SECTION DIRECTORY:

Section 1. Amends s. 1013.30, F.S., relating to university campus master plans.

Section 2 Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an effect on state revenues.

2. Expenditures:

The bill does not appear to have an effect on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an effect on local government revenue.

2. Expenditures:

The bill does not appear to have an effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill limits who would have standing to challenge a university master plan and how the challenge would be handled; however, the direct effects could not be estimated at the time of analysis.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill transfers rule-making authority for the development of university master plans from the State Board of Education to the board of trustees of each university.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Challenges to the master plan. Lines 95-105. Limiting the standing of an individual to challenge a proposed campus master plan to “those issues pertaining to the public facilities or services that have a *direct and material impact* on the individual,” appears to establish a undefined standing provision. The phrase “direct and material impact” is thus left to judicial rather than legislative interpretation.

Petition hearings. Lines 116-123. Replacing the informal hearing conducted by the DCA with a hearing “using the evidentiary procedures set forth in s. 120.57(1)” leaves unclear the nature and process to be applied to the hearing. If those evidentiary procedures are to be used, then perhaps the hearing should be conducted pursuant to the applicable provisions of ss. 120.569 and 120.57(1) and (2), F.S.

Other Comments

The following comments, separated by subject matter, are summarized from those provided by an opponent² and a proponent³ to the bill.

Standing.

Opponent: The limits on petitions suggested by the changes to s. 1013.30(7), F.S., will render the land use, environmental, academic and other facets of the campus master plan essentially unreviewable and will gut the purpose of the statute. The existing limitation on host governments already prevents them from protecting their public’s interest in non-infrastructure aspects of the plan; the proposed amendments effectively gut the campus master planning process as a land use planning tool.

The language of the bill should be amended to provide that any aggrieved or affected person as defined in section 163.3215, F.S., or any host or affected government, who provided objections or comments regarding the campus master plan, in writing or in person, may initiate a challenge to the

² Robert Lincoln, Esquire, Icard, Merrill, Cullis, Timm, Furen & Ginsburg, representing homeowners in Couma, et al. v. University of South Florida, 1DO-04-1615 (Fla. 1st DCA).

³ W. Scott Cole, General Counsel, University of Central Florida.

adoption of the campus master plan on the basis that it does not comply with the statute or implementing rules.

Proponent: The first provision, requiring a direct and material impact of a plan on the person challenging the plan, is similar to, but in some ways less restrictive than, the standing provision contained in s. 163.3184, F.S., which defines “affected persons” for purposes of standing as: “...persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map...”

The purpose of the standing provision in the bill is to strike a balance between the right of those actually impacted by proposed campus development to have an opportunity to challenge the plan and the right of the university (and ultimately the taxpayers) to avoid incurring unnecessary costs in responding to challenges by individuals who are not impacted by the master plan. The goal of the new language requiring a challenger to have submitted oral or written comments on the master plan prior to or during the adoption hearing is to reduce unnecessary costs to the public. The universities should have the opportunity to revise the plan to address public concerns before adoption rather than incur the delay and cost of a challenge on those issues. This provision is very similar to a requirement for standing in s.163.3184, F.S.

Negotiation and execution of development agreement.

Opponent: “Authorizing a University to proceed with the adoption of its development agreement during the pendency of a challenge completely guts the process. Given the absence of any other enforcement mechanism, the only reason that a University has to comply with the statute is that it limits its ability to proceed with development until the development agreement is in place and the development agreement is predicated on the validity of the plan.”

Proponent: “This provision is designed to protect the host local government and university from incurring unnecessary delays, and the costs associated with those delays, in addressing the impact that proposed campus development will have on a host local government through a campus development agreement. It typically takes over six months for the university and host local government to negotiate an acceptable campus development agreement. This provision will allow the university and host local government to begin that process upon adoption of the campus master plan.”

“In addition, allowing the university to proceed with negotiating a campus development agreement with the host local government does not gut the process. It takes a significant amount of time for the local government to calculate the cost to the host local government of the proposed growth of the university, which must be determined prior to executing a campus development agreement. To prohibit the host local government and university from even beginning this process until all challenges are resolved causes an unreasonable delay in the county being able to address the anticipated impact on its local facilities. Under the current process, it can take over two years from the resolution of a master plan challenge for a host local government to obtain funding from the Concurrency Trust Fund due to the inability to negotiate and execute a campus development agreement upon adoption of the plan.”

Evidentiary Hearing.

Opponent: “While the changes to s. 1013.30(8)(b), F.S, requiring an evidentiary hearing are appropriate and necessary (except that they need to explicitly require DCA to compile a transcript of the proceedings along with its compilation of the record), the DCA should not issue a report, but a proposed recommended order, to which the parties may file exceptions. The problem between this subsection and subsection (c) is that it is insufficient to provide due process – essentially the DCA holds a hearing, but the Administration Commission reviews a record and recommendation and – without having the opportunity to conduct the hearing, etc., makes a quasi-judicial determination of the matter. This does not comport with a number of decisions that hold that a tribunal can’t make a final factual determination unless it has conducted the hearing. There is an exception for “special master” type proceeding that we see in 120 today – a tribunal can accept a recommended order and uphold it,

change its legal conclusions, or only after a complete review of the record, change factual findings, only if it finds that they are not supported by competent substantial evidence. There is no precedent for a procedure under which a tribunal delegates the holding of a hearing to a 3d party and then makes its own findings of fact and conclusions of law based just on a “recommendation” and the record. (actually the US Supreme Court just found – and struck – a procedure where the Tax Court held hearings before a special magistrate judge and then had a full judge issue the opinion after “collaboration” on the opinion in Ballard v. Commissioner).”

Proponent: “The purpose of this amendment is to establish a fair and consistent process for the “informal hearing” currently required by the statute. While this hearing is not a Chapter 120 hearing, it will follow the same established evidentiary rules used in those hearings so that the parties are given a full and fair opportunity to present their evidence to the Department of Community Affairs.”

“It is not clear whether a challenger to a campus master plan has a liberty or property interest that is impacted which would create a right to due process in challenging the plan. However, the amendments to this section would create a hearing that would satisfy any minimal due process requirements (notice and a hearing) of a petitioner without creating a full judicial hearing. It is not necessary for the Administration Commission to conduct the hearing any more than a state agency is required to conduct a chapter 120 hearing. The agency can rely upon a recommendation and report (which I believe is the equivalent of a recommended order) of a fact finder as the basis for issuance of its final order.”

Improper Purpose.

Opponent: “I also strongly object to the inclusion of s. 1013.30(8)(d), F.S., without a complementary provision that holds the University to a similar measure of responsibility for its actions.”

“The provision as drafted, in combination with the very vague standard (“direct and material impact”) and limited basis of review provided earlier, is nothing less than a bald-faced effort to scare off neighbors and environmental groups from making good-faith challenges to the campus master plan. In particular, it will frighten neighbors from representing themselves to bring challenges, whether well founded or not. The way that this provision is constructed – that DCA is not making the determination early and giving folks a chance to remove themselves, and the Admin Commission is required to levy attorneys fees at a point after the (expensive) hearing has been conducted – is such an obvious attempt to penalize that its simply disgusting. If this kind of thing is going to stay in at all, the statute should provide that prior to conducting the evidentiary hearing, DCA shall rule on the sufficiency of the petitions, and shall dismiss any that don’t establish a good faith basis for proceeding.”

Proponent: This amendment, which is identical to Section 163.3184(12), F.S., is designed to discourage unethical actions by any party or their attorney during the course of a master plan challenge. This provision is applicable to all parties, including the university, and requires all parties to act ethically during a challenge. The law would not prevent a party from requesting a determination on this issue by the Department of Community Affairs at the commencement of the hearing process so that unnecessary fees are not incurred by the other party.

Rule Making Authority

Opponent: “The proposed amendment to s. 1013.30(22), F.S., is unconstitutional – only the Board of Governors has the authority to adopt such rules for Universities and to determine the scope of authority of Boards of Trustees. In fact, it has done so in adopting by resolution the prior rules of the Board of Education governing campus master plan (Rule 6C-21, F.A.C.). The provision as adopted is simply asking for an ugly sidebar constitutional challenge to any efforts to implement amendments.”

Proponent: “Prior to their dissolution by the Legislature, the Board of Regents was responsible for overseeing the master plan process. In furtherance of that function, they promulgated rules implementing the master plan statute. When the Board of Regents was dissolved, the Legislature amended the master plan statute to direct the Boards of Trustees to perform the master planning functions previously performed by the Board of Regents, with the exception of rulemaking, which was

granted to the State Board of Education. However, since by statute the State Board of Education is not involved in the master planning process, it does not make sense for them to promulgate rules in this area. Rather the Board of Trustees should have rulemaking authority to be consistent with the current statutory scheme.”

“Transferring rule-making authority to the Board of Trustees would not be unconstitutional. The Board of Governors has chosen not to be involved in the master planning process, but rather has allowed the universities to follow the current statutory scheme. To the extent that allowing the universities to adopt rules is inconsistent with prior Board of Governors resolution, new resolutions can be adopted to correct those inconsistencies.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2005, the Growth Management Committee adopted 5 amendments as detailed below:

- Amendment 1 – This amendment removes lines 31-32 and inserts language to restore the inclusion of buildings in the master plan but makes their locations tentative. Adopted
- Amendment 2 – This amendment removes line 45 and inserts language to clarify that a physical copy of the draft master plan must be sent to local governments as well as made available electronically. Adopted
- Amendment 3 – This amendment removes lines 60-61 and inserts language to require that the universities provide the electronic copy of the draft master plan to local governments prior to the first public meeting to discuss the draft master plan. It also clarifies that the first hearing shall be conducted prior to the formal submission of the physical copy of the draft master plan to the local governments. Adopted
- Amendment 6 - This amendment removes line 51 and inserts language to clarify that the 90 day review period that local governments have to review the draft master plan shall begin after the physical copy of the draft is submitted. Adopted
- Amendment 7 – This amendment added that the second public hearing must be held at least 14 days prior to the adoption of the draft master plan by the board of trustees. Adopted