HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 517 CS University Campus Master Plans and Campus Development Agreements
SPONSOR(S): Cannon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee	9 Y, 0 N, w/CS	Porter	Grayson
2) Colleges & Universities Committee			
3) Education Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 517/CS clarifies procedures for adoption of university campus master plans and procedures for challenges to the plans.

The bill allows for university campus master plans to be made available electronically.

The bill limits the standing of persons that may challenge the adoption of university campus master plans and the subject matter they may challenge.

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

The bill provides for an effective date of July 1, 2005.

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:

HB 517 changes the process surrounding the development and adoption of university campus master plans. Specifically, the bill amends ss. 1013(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 pre plan adoption public hearings;
- 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(2), F.S. to modify the location of buildings requirement of a university campus master plan to be 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 satisfied relevant concerns.

Electronic format. The bill amends s. 1013(6), F.S. to allow a university to provide a copy of the draft master plan to the reviewing agencies electronically in addition to sending printed copies to the host or affected local government. 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 college will have to make the electronic copy available to the effected local governments prior to the first public hearing. 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. This process should make it easier for the colleges to include concerns voiced in the first public hearing into the formally submitted draft master plan.

Timing of public hearings. The bill amends s. 1013(6), F.S. to provide for the first public hearing to be held by the university prior to sending the physical copy of the draft master plan to identified agencies but after the draft plan is made available electronically. This provision means that effected local governments will have received an electronic copy of the proposed plan prior to the first hearing and 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 feed back to the university board of trustees prior to the formal submission of the draft plan to local governments for the 90 day review. The bill provides for the second public hearing to be held by the university at least 14 days prior to the adoption of the draft master plan. 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 can not occur until after the two required public hearings are complete. This should allow the board of trustees to adopt relevant changes addressed in the public hearings into the plan prior to adoption.

Challenges to the master plan. The bill amends s. 1013(7), F.S. to limit 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(8), F.S. to replace the Department of Community Affairs (DCA) informal hearing with an evidentiary hearing, when necessary, during the dispute resolution process. The bill requires the hearing report to the Administration Commission to be based on evidence on the record prior to or during the evidentiary hearing and to determine the petitioner's compliance with this section of statute. This provision states the hearing will be conducted in accordance with s. 120.57(1), F.S. but it is not clear how this will be accomplished. There is already an established evidentiary hearing process provided for in ss. 120.569 and 120.57(1), F.S. that may need to be followed for this provision.

Improper purpose for challenge. The bill creates s. 1013(8)(d), F.S. to equate the signature of the person challenging the campus master plan or their attorney to certification that 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(22), F.S. to provide rule making authority to the individual university boards of trustees instead of the State Board of Education for subsections (3)-(6) of the amended statute. This provision will basically allow each university to adopt rules relating to its own adoption of a master plan and could lead to an un-uniform set of rules for the adoption of master plans in the state.

Background

The statutes currently require 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 to the host and any affected local governments, the 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, the statute is not clear about when the hearings must be held or how long after they are held the plan may be adopted.

Standing

The statutes do not currently limit the standing on who may file a challenge to a university campus master plan. A representative of University of Central Florida[1] 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. Since the statute is silent on this issue anyone is allowed to challenge a university campus master plan for any reason.

Hearing

The DCA currently will conduct 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 relating to the master plan 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 shall 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.

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 expenditure.

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. However, the bill could place a burden on local governments if the university chooses not to provide them with a printed copy of the master plan and they are forced to print one from the electronically available copy authorized by the bill.

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct impact on the private sector. However, the bill does change who would have standing to challenge a university master plan and how the challenge would be handled that could have some effect on the private sector. However, these 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 sued, then perhaps the hearing should be conducted pursuant to the applicable provisions of ss. 120.569, 120.57(1) and (2), F.S.

Rulemaking. Line 163. Transferring rulemaking authority from the State Board of Education to "each university board of trustees" will basically allow each university to adopt unique rules relating to its own adoption of a master plan and could lead to an un-uniform set of rules for the adoption of campus master plans throughout the state.

Other Comments

The following comments, separated by subject matter, are summarized from those provided by an Opponent[2] and a Proponent[3] to the bill for the disputed subject matter not amended in the bill.

[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.

Standing.

Opponent: The limits on petitions suggested by the changes to s. 1013(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, 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 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.

Adoption 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.

a. I would note that in the case I am currently litigating, the University secured what we considered a completely inadequate Final Order through inadequate procedures, and is now implementing the Final Plan during the pendency of the appeal. That implementation includes destroying unique and valuable coastal scrub habitats that we argue should be protected from development by the statute and rules.

b. Moreover, during the past week a number of facts have come to my attention that leads me to believe that USF is violating the Final Order and its Plan. The statute provides us with NO means to enforce the Final Order directly against USF or require its compliance with the adopted and amended Plan – it can do anything it wants with impunity."

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(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(8)(d), F.S., without a complementary provision that holds the University to a similar measure of responsibility for its actions. USF completely failed to meet any of the procedural deadlines provided by the statute and generally conducted itself badly. 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(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