

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 1440
 INTRODUCER: Senator Hays
 SUBJECT: Rural Land Development
 DATE: March 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes multiple substantive changes to the implementation of the Rural Land Stewardship Area (RLSA) Program. Generally, the bill attempts to streamline the RLSA designation process by giving local governments more control and removing much of the Department of Community Affairs' (DCA) existing oversight and coordination functions. These functions are transferred to the Department of Agriculture and Consumer Affairs (DACCS), which becomes the lead coordinating agency. The bill requires local governments who designate RLSAs to establish a rural land stewardship overlay zoning district to better determine the amount of stewardship credits that may be transferred. Finally, the bill specifies that landowners may be compensated for conducting certain activities on their properties when those activities benefit the public.

This bill substantially amends s. 163.3177, Florida Statutes, and repeals Rules 9J-5.026 and 9J-11.023, Florida Administrative Code.

II. Present Situation:

Growth Management

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),¹ also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to

¹ See Chapter 163, Part II, F.S.

adopt local government comprehensive plans that guide future growth and development. “Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan’s adoption and one covering at least a 10-year period.”² Comprehensive plans contain chapters or “elements” that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. The RLSA program is part of the comprehensive planning process.

Rural Land Stewardship Area Program

The Legislature originally enacted the RLSA Program as a pilot program in 2001.³ The RLSA program provides incentives for conserving agriculture and environmentally sensitive lands.⁴ The primary goals of the program have been the “restoration and maintenance of the economic value of rural land; control of urban sprawl; identification and protection of ecosystems, habitats and natural resources; promotion of rural economic activity; maintenance of the viability of Florida’s agriculture economy; and protection of the character of the rural areas of Florida.”⁵ The program allows land owners to transfer stewardship credits from sending areas to receiving areas. Sending areas have high resource values in their existing states, while receiving areas are deemed more suitable for development. Sending areas are protected from future development through the use of stewardship easements that run with the land in perpetuity.⁶ The statute was amended in 2002, 2004, 2005 and 2006.⁷ It is no longer considered a pilot program and several local governments have explored using RLSAs to augment their comprehensive plans. Collier, Highlands, Osceola and St. Lucie Counties have all expressed interest in developing RLSAs. As of today, only Collier and St. Lucie have RLSA programs. Since Collier’s program predates the creation of the RLSA program, only St. Lucie’s RLSA is statutorily approved.⁸

The DCA administers the program for the state. Due to several statutory changes, including the RLSA program shedding its “pilot” status, the DCA initiated rule making in June 2007. The rules, RLSA Rule 9J-5.026 and 9J-11.023, were challenged twice. Despite the first challenge being dismissed in an administrative law hearing, the DCA revised the rules to address some of the petitioners’ concerns. The petitioners filed a second challenge, which was also denied,⁹ after discussions with the DCA regarding additional rule modifications ceased. The rule became effective on October 18, 2009.¹⁰

² Section 163.3177(5), F.S.

³ Section 163.3177(11)(d), F.S. See also Chapter 2001-279, Laws of Fla.

⁴ Florida Dep’t of Community Affairs, *Rural Land Stewardship Program 2007 Annual Report* (Dec. 2007), available at <http://www.dca.state.fl.us/fdcp/dcp/RuralLandStewardship/Files/RLSA2007ReportLegislature.pdf> (last visited 03/21/2011).

⁵ Section 163.3177(11)(d)2, F.S.

⁶ See *supra* note 4, at 1-2.

⁷ See *supra* note 4, at 3.

⁸ Florida Dep’t of Community Affairs, *Rural Land Stewardship Area Program 2009 Annual Report* (Dec. 2009), available at <http://www.dca.state.fl.us/fdcp/dcp/RuralLandStewardship/Files/RLSA2009AnnualReport.pdf> (last visited 03/21/2011).

⁹ *Florida Chamber of Commerce v. Department of Community Affairs*, Case No. 09-3488RP (Fla. DOAH 2009).

¹⁰ See *supra* note 9, at 3

Population Projections – Needs Assessment

The needs assessment is a part of the land use planning process that provides a mechanism for local governments to determine the appropriate supply of land uses necessary to accommodate anticipated demand. The "need" issue is one of the factors to be considered in any urban sprawl analysis.¹¹ To determine need, the reviewer analyzes: the categories of land use and their densities or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.¹² This methodology is then submitted to the DCA for review with the proposed comprehensive plan amendment. When reviewing this methodology, the DCA reviews both the numerical population and policy factors. Currently, a local government may use several different projections, including one that it creates.¹³

III. Effect of Proposed Changes:

The bill makes multiple substantive changes to the implementation of the Rural Land Stewardship Area (RLSA) Program. Generally, the bill attempts to streamline the RLSA designation process by giving local governments more control and removing much of the DCA's existing oversight functions and potentially eliminates the needs assessment requirement. While oversight and coordination functions are transferred to the DACS, comprehensive plan amendments designating RLSAs must still go through the DCA's normal s. 163.3184, F.S., process. The bill repeals Rules 9J-5.026 and 9J-11.023, F.A.C., which the DCA uses to regulate the RLSA program. It specifies that the provisions of the bill shall be implemented pursuant to law and rule making is not authorized. The bill requires local governments who designate RLSAs to establish a rural land stewardship overlay zoning district to better determine the amount of stewardship credits that may be transferred. It strikes "transferable rural land use credits" in favor of "stewardship credits." Finally, the bill specifies that landowners may be compensated for conducting certain activities on their properties when those activities benefit the public.

Section 1 amends s. 163.3177, F.S. Specifically, this section:

- Specifies that the DCA and water management districts (WMDs) may no longer provide assistance to land owners and local governments in implementation of land use planning and development; however, it adds the Florida Fish and Wildlife Conservation Commission (FWC) to the list of agencies that are required to give such assistance;
- Transfers coordinating and oversight functions to the DACS;
- Exempts landowners and local governments from having to demonstrate need;
- Authorizes the landowner to petition the local government to designate future land use categories and removes the DCA from this process;
- Adds economic development as a planning goal of the RLSA program;
- Removes the Department of Environmental Protection (DEP) and the WMDs as governmental entities that assist in mapping environmental areas worthy of protection;¹⁴
- Requires listed agencies to provide "technical" assistance to local governments, as needed;

¹¹ Rule 9J-5.006(5)(g)1, F.A.C.

¹² Rule 9J-5.006(2)(c), F.A.C.

¹³ *Id.*

¹⁴ See the "Technical Deficiencies" section of the bill analysis.

- Removes the DCA from provisions that expand its role as a resource agency for smaller rural governments that do not have the staff or resources to create a RLSA;
- Removes the requirement that the DCA encourage local government participation in development of RLSAs;
- Expands legislative intent to promote economic activity in rural areas. Existing language promotes *rural economic* activity (emphasis added);
- Expands legislative intent to protect private property rights in rural areas;
- Removes the requirement that local governments notify the DCA of their intent to designate RLSAs;
- Changes “urban growth boundaries” to “urban service boundaries” to make it consistent with the definition provided in s. 163.3164(29), F.S.;
- Allows for more than one comprehensive plan amendment if the RLSA is in more than one jurisdiction;
- Removes the requirement that receiving areas are connected to the rest of the RLSA through rural design and rural road corridors;
- Removes the requirement to develop adequate workforce housing, including low, very low and moderate income housing, within the receiving area;
- Removes the “control of sprawl” as a bright-line goal for RLSAs, though control of sprawl is cross-referenced in Rule 9J-5.006(5)(l) in this sub-paragraph;
- Provides that only local governments may designate receiving areas, and the DCA has no authority to review the designation;
- Strikes “developer” and adds “applicant” as the party who is responsible to coordinate with state agencies if listed species occur in the receiving area;
- Specifies that potential impacts and protective measures of the receiving area must be evaluated together with the substantial benefits and protective measures taken from outside the receiving area;
- Requires local governments that adopt RLSAs to establish an overlay zoning district for the area;
- Removes consideration of the “25-year or greater projected population” when transferring stewardship credits in favor of using projections based on available data. When taken together with the needs assessment language on lines 74-76, it may eliminate the requirement for local governments to justify the buildup of receiving areas within RLSAs.
- Clarifies that stewardship credits may only be credited from sending areas and only be used in receiving areas;
- Clarifies that permitted uses and intensity are part of the underlying character of land within an RLSA;
- Allows permitted uses and intensity to continue exist on a sending area after transfer of density to a receiving area. Density assigned to the sending area ceases to exist once it has been transferred to the receiving area;
- Provides for an increase in density or intensity of the receiving area without a comprehensive plan amendment;
- Specifies that a change in either density or intensity must be accomplished by a development order;
- Adds the FWC to the list of governmental entities that sending area landowners should enter into agreements with to achieve conservation objectives;

- Provides compensation for landowners who provide public benefits by effective land management;
- Removes the requirement that the DCA provide annual reports to the Legislature on implementation of RLSAs;
- Provides additional legislative intent; and
- Directs that the provisions be implemented pursuant to law and prohibits rule making.

Section 2 repeals Rules 9J-5.026 and 9J-11.023, F.A.C. The DCA adopted these rules in October 2009. They regulate RLSAs and the designation procedures.

Section 3 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides landowners additional flexibility to explore options with the RLSA program. Implementation of the program has not yielded the results that had been anticipated by the private sector. If the changes provide adequate incentives and program clarifications, significant economic activity may occur with development of RLSAs as the economy picks up.

C. Government Sector Impact:

The DCA's oversight responsibility is eliminated from many of the areas over which it currently has authority. The fiscal impact of its reduced responsibility cannot be determined. The WMDs and, potentially, the DEP have reduced assistance requirements and should also see reduced costs, which cannot be determined. The FWC is added to the list of state agencies that will be impacted by this bill. Its responsibilities will likely be met with existing staff and resources. Finally, local governments will have to take on

additional oversight capacity that may be offset by streamlining the RLSA designation process. They will have more authority and control at the local level. Local governments may also see long-term benefits in increasing tax revenues in receiving areas. The combined effect to local governments is unknown.

VI. Technical Deficiencies:

On lines 69-71, the DEP is required to assist landowners and local governments, but the WMDs are stricken from the process. On lines 90-91, both the DEP and WMDs are stricken from rendering mapping assistance. It appears that this is an inconsistency with the earlier requirement for the DEP to render assistance. However, the later DEP reference may have been deleted because it is redundant. Clarification may be needed at a later committee stop.

On line 212, the word “amount” is used in reference to a receiving area. The intent is probably to refer to the size or acreage of the receiving area and not the generic term “amount.”

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.