

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 Community Affairs Committee

BILL: SB 1904

INTRODUCER: Senator Altman

SUBJECT: Optional Sector Plans

DATE: March 21, 2011 REVISED: _____

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

I. Summary:

This bill modifies the optional sector planning process to:

- substantially remove the role of the Department of Community Affairs;
- revise the role that population projections (“needs assessment”) plays in the optional sector planning process;
- provide additional guidelines for implementation of the process;
- require the metropolitan planning organizations and water management districts to conform their planning to the optional sector plan;
- allow developments of regional impact (DRIs) to operate under either the optional sector planning process or the DRI process; and
- prevent the downzoning of optional sector planning areas until the appropriate overlay or detailed specific area plan comes into effect.

This bill substantially amends section 163.3245 of the Florida Statutes.

II. Present Situation:

Growth Management

The 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. A key component of the Act is its “concurrency” provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

Optional Sector Planning

The optional sector plan process was established as an alternative to the development of regional impact process (see below). Optional sector plans may be initiated by the local government upon written agreement with the DCA. An optional sector plan includes two levels of planning: a conceptual, long-term build-out overlay; and one or more detailed specific area plans. An annual monitoring report will be submitted to the DCA and the affected regional planning council. Additionally, optional sector plans combine the purposes of chapters 380 and 163, Florida Statutes; require public participation throughout the process; emphasize urban form and the protection of regional resources and facilities; and apply to areas greater than 5,000 acres. There are currently four optional sector plans in effect. They are located in Bay County, Orange County, the City of Bartow, and Escambia County.³

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.⁴ Regional planning councils assist the developer by coordinating multi-agency DRI review. The council’s job is to assess the DRI project, incorporate input from various agencies, gather additional information, and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.

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.⁵ To determine need, the reviewer analyzes: the categories of land use and their densities

² Section 163.3177(5), F.S.

³ Dept. of Community Affairs, Optional Sector Plans, <http://www.dca.state.fl.us/fdcp/DCP/optionalsectorplans/index.cfm>.

⁴ Section 380.06(1), F.S.

⁵ Rule 9J-5.006(5)(g)1, F.A.C.

or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.⁶ This methodology is then submitted to DCA for review with the proposed comprehensive plan amendment. When reviewing this methodology, DCA reviews both the numerical population and policy factors.

Market Factor

Residential: A market factor (also known as an allocation number or multiplier) is a numerical tool used by professional planners to determine the amount of land use supply needed to accommodate anticipated growth.⁷ For residential land, a market factor is calculated by dividing the amount of dwelling unit capacity by the amount of dwelling unit demand.⁸ In the past, DCA has recommended a market factor of 1.25 which means a plan allows for land uses to support 125% of the projected population.⁹ The additional 25% is designed to allow for market flexibility. If the market factor goes above 1.25 it may cause the plan amendment to be subject to a heightened review to see if it meets the indicators of urban sprawl.¹⁰

Commercial/Industrial: Similar to residential, examining the market factor for commercial and industrial lands is a significant factor in determining need. However, case law has indicated that the need for additional commercial or industrial land may also be demonstrated by other factors such as the suitability of the property for change, locational criteria, and community desires.¹¹ For industrial land use changes, rural communities are also provided a special exception. Section 163.3177(6)(a) F.S., states that “the amount of land designated for future planned industrial use should be based on surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies and should not be limited solely by the projected population of the rural community.”

Planning Time Horizon

The Florida Growth Management Act of 1985 requires each local government comprehensive plan to 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.¹² In planning for the amount of land needed for a particular land use, the local government must analyze it within the adopted planning time horizon applicable to that portion of the comprehensive plan. Other local governments have also adopted a third planning time horizon for longer range planning. These longer range planning time horizons have been extended out as far as 40 years, and DCA has approved comprehensive plan amendments that have incorporated these longer term planning time horizons.¹³

⁶ Rule 9J-5.006(2)(c), F.A.C. For an example of how the methodology is analyzed, see page 5.

⁷ *The Role of Need in Comprehensive Planning*, Department of Community Affairs Presentation, June 26, 2009.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Sierra Club v. St. Johns County & DCA*, DOAH 01-1851GM (May 20, 2002).

¹¹ *O'Connell v. Martin County*, DOAH 01-4826GM (Oct. 16, 2002).

¹² Section 163.3177(5)(a), F.S.

¹³ “There is not a prohibition against analyzing more time frames than just one planning horizon.” *Sierra Club & Panhandle Citizens v. DCA and Franklin County*, DOAH 05-2731GM (June 12, 2006).

Population Projections

A key component of the needs issue is the population projection. In 1986, rulemaking required comprehensive plans to be based on resident and seasonal population estimates provided by the University of Florida Bureau of Economic and Business Research, the Executive Office of the Governor, or generated by the local government.¹⁴ If the local government chooses to base its plan on the figures provided by the University of Florida or the Executive Office of the Governor, medium range projections should be utilized.¹⁵ If the local government chooses to base its plan on either low or high range projections provided by the University of Florida or the Executive Office of the Governor, a detailed description of the rationale for such a choice shall be included with such projections.¹⁶

Alternative Methodologies (for Population Projections)

If a local government chooses to prepare its own estimates and projections, it is required to submit estimates and projections and a description of the methodologies utilized to generate the projections and estimates to the DCA with its plan amendments for compliance review, unless it has submitted them for advance review. DCA will evaluate the alternative methodology to determine whether the methodology is professionally accepted. In addition, DCA is required to make available examples of methodologies for resident and seasonal population estimates and projections that it deems to be professionally acceptable. Finally, in its review of any population estimates, projections, or methodologies proposed by local governments, DCA must be guided by the Executive Office of the Governor, in particular the State Data Center.¹⁷

Metropolitan Planning Organizations

Metropolitan Planning Organizations¹⁸ provide a forum for elected officials of various local governments within an urban area to meet on a regular basis, in order to work toward a coordinated and comprehensive transportation planning process. This process is critical to providing a safe, effective, and cost-efficient transportation system. Under federal and state laws, urban areas with at least 50,000 residents must form Metropolitan Planning Organizations to be eligible for federal Highway Trust Fund dollars for surface transportation projects. Florida has 26 Metropolitan Planning Organizations (sometimes called Transportation Planning Organizations).

As part of their mission to conduct cooperative and comprehensive transportation planning, the Metropolitan Planning Organizations study ways to move both people and goods by various modes of travel, including highways, public transportation, bicycles, and foot. They also plan for the connections that link these modes together, such as airports, seaports, or bus, railroad, and pipeline terminals. To assist with the many complex issues before it, each Metropolitan Planning Organization typically has a Technical Advisory Committee, a Citizens Advisory Committee, and a Bicycle/Pedestrian/Greenways Advisory Committee.

¹⁴ Rule 9J-5.005(2)(e), F.A.C.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Rule 9J-5.005(2)(e), F.A.C.

¹⁸ For more information see Florida Metropolitan Planning Organization Advisory Council website available at <http://www.mpoac.org/index.shtml>.

Each Metropolitan Planning Organization sets priorities for the use of state or federal funding for surface transportation improvement projects within its area. To qualify for federal funds, the Metropolitan Planning Organization must endorse a Transportation Improvement Program identifying projects to be done in the next several years.¹⁹ Metropolitan Planning Organizations also adopt long-range transportation plans that identify both funded and unfunded projects for as much as 20 years.²⁰

The plan includes both long-range and short-range strategies and must comply with all other state and federal requirements. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the MPO. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

- Identify transportation facilities that will function as an integrated metropolitan transportation system.
- Include a financial plan and cooperatively develop estimates of funds that will be available to support implementation of the long-range transportation plan.
- Assess capital investment and other measures.
- Indicate, as appropriate, proposed transportation enhancement activities, including, but not limited to, pedestrian and bicycle facilities, scenic easements, landscaping, historic preservation, mitigation of water pollution due to highway runoff, and control of outdoor advertising.
- In metropolitan areas that are classified as nonattainment areas for ozone or carbon monoxide, the MPO must coordinate the development of the long-range transportation plan with the State Implementation Plan developed pursuant to the requirements of the federal Clean Air Act.

In the development of its long-range transportation plan, each MPO must provide the public, affected public agencies, and transportation entities with a reasonable opportunity to comment on the long-range transportation plan.²¹

Water Supply Planning

The Legislature has established a process for water supply planning through Florida's Growth Management Act²² and the Water Protection and Sustainability Program.²³ Under this system, the state's five water management districts must periodically evaluate whether adequate water supplies exist to meet the needs of their areas. If a district finds that the water supply will not be adequate, it must prepare regional water supply plans for those areas, identifying how water supply needs can be met for the next 20 years. Local governments that fall within the area of a

¹⁹ Dept. of Community Affairs, Transportation Planning, <http://www.dca.state.fl.us/fdcp/dcp/transportation/OtherAgencies.cfm#MTPO>.

²⁰ Section 339.175(7), F.S.

²¹ *Id.*

²² Chapter 163, Part II, F.S.

²³ Chapter 373, F.S.

regional water supply plan are required to ensure that adequate water supplies will be available to meet future demand, by developing 10-year water supply facilities work plans. These work plans include alternative water supplies, water reuse and conservation programs, and they are incorporated into the local governments' comprehensive plans. In addition, all local governments - regardless of whether they are in one of these planning areas - must address water supply in their concurrency management programs.²⁴

Consumptive Use Permits

A consumptive use permit (CUP) allows water to be withdrawn from surface and groundwater supplies for reasonable and beneficial uses such as public supply (drinking water), agricultural and landscape irrigation, and industry and power generation. Permits may be granted for a period of 20 years, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided.²⁵

The CUP program benefits all people by requiring water conservation to prevent wasteful uses, requiring reuse of reclaimed water (treated wastewater and storm water) instead of higher quality groundwater, and setting limits on how much water can be withdrawn at each location in the aquifer. These limits protect existing residents' water supplies and protect aquifers, lakes and rivers from harm.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 163.3245, F.S., to make substantial changes to the optional sector plan process. The bill:

- Removes the limitation on the number of optional sector plans that can be in existence.
- Increases the acreage required to have an optional sector plan from 5,000 to 15,000 acres.
- Removes the requirement that DCA review and approve optional sector plans, including the requirement that the DCA enter into agreements based on the specific criteria of the local government.
- Removes the requirement that the local government hold a public workshop to review and explain to the public the optional sector planning process.
- Removes the requirement that the host local government(s) submit a monitoring report to DCA.
- Removes the requirement that DCA report to the Legislature annually on the optional sector planning process.

The bill elaborates on the requirements that must be addressed in the long-term overlay plan. Each long-term overlay plan must include maps and text and be supported by data and analyses that address:

²⁴ Dept of Community Affairs, Water Supply Planning, <http://www.dca.state.fl.us/fdcp/DCP/WaterSupplyPlanning/index.cfm>.

²⁵ Section 337.236, F.S.

²⁶ St. John's River Water Management District, Permitting, <http://www.sjrwmd.com/permitting/index.html>.

- The allowed uses in various parts of the planning area and the maximum and minimum densities and intensities of use that generally depict anticipated areas of urban, agricultural, rural, and conservation land use.
- Identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, which are needed to meet the projected demand of the future land uses in the long-term conceptual overlay plan.
- Identification of the transportation facilities to serve the future land uses in the long-term conceptual overlay plan.
- Policies setting forth the procedures to be used to mitigate impacts on other regionally significant public facilities as part of the adoption of detailed specific area plans.
- Identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection and conservation of significant natural resources within the planning area.
- The protection and, as appropriate, restoration and management of lands identified for permanent preservation (however the bill deletes language suggesting that the plan address restoring key ecosystems) achieving a more clean, healthy environment, discouraging the proliferation of limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, advancing the efficient use of land and other resources, and creating quality communities with a design to promote travel by multiple transportation modes, and enhancing the creation of jobs.
- Identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from the long-range conceptual overlay plan framework map.

The long-term conceptual overlay plan may be based on a planning period longer than the generally applicable planning period of the local comprehensive plan and does not have to demonstrate need based on population growth or any other basis.

The detailed specific area plan must contain similar criteria but with more detail. Although it may be based upon a planning period longer than the comprehensive plan, it is required to demonstrate need for the detailed specific area plan by reference to:

- projected population growth,
- creation of workplaces for job creation and new employment,
- remediation of preexisting development patterns in the vicinity which exhibit the characteristics of urban sprawl, or
- any other professionally acceptable methodology.

Once the overlay plan becomes effective, the metropolitan planning organization and the water management district must adapt their planning to fit with the long-term conceptual overlay plan. Specifically, any long-range transportation plan developed by a metropolitan planning organization must be consistent, to the maximum extent feasible, with the long-term conceptual overlay plan, including, but not limited to, the projected population, the approved uses and densities and intensities of use and their distribution within the planning area, and the transportation facilities identified in adopted optional sector plans.

The water needs, sources, and water resource development and water supply development projects identified in adopted optional sector plans must be incorporated into the applicable district and regional water supply plans adopted. Notwithstanding the permit durations stated in s. 373.236, F.S., an applicant under an optional sector plan may receive CUPs for greater than 20 years. The permitting criteria will be applied based on the projected population and the approved densities and intensities of use and their distribution in the long-term conceptual overlay plan.

DRIs need not comply with the requirement of creating a detailed specific area plan and may operate under s. 380.06, F.S., (the DRI process) instead.

Under current law, the detailed specific area plan controls DRIs that are not yet vested (not s. 380.06, F.S.). The long-term overlay may (if the underlying land use requires consistency) and the detailed specific area plan shall establish a buildout date until which the approved development is not subject to downzoning, unit density reduction, or intensity reduction. The local government may downzone if the local government can demonstrate that:

- substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred,
- the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or
- the change is clearly established to be essential to the public health, safety, or welfare.

The long-term overlay plan may also include a phasing or staging schedule that allocates a portion of the county's future growth to the planning area through the buildout date in order to provide for orderly physical development that discourages the proliferation of urban sprawl.

Development agreements between the developer and the local government may exceed the 20-year limitation specified in s. 163.3229, F.S.

Any owner of property within the defined planning area may withdraw his consent to the long-term conceptual overlay plan at any time before the local government adoption, and the local government shall exclude such parcel from the adopted overlay plan. Thereafter, the overlay plan, any detailed specific area plan, and the exemption from development-of-regional-impact review under this section do not apply to the subject parcel. After adoption of the overlay plan, a landowner may withdraw his property from the overlay plan only with the approval of the local government by plan amendment.

The adoption of a long-term conceptual overlay plan or a detailed specific area plan pursuant to this section does not limit the right to continue existing agricultural or silvicultural uses or other natural resource-based operations or to establish similar new uses that are consistent with the optional sector plan.

A detailed specific area plan to implement a conceptual long-term buildout overlay of less than 15,000 acres, adopted by a local government and found in compliance before the effective date of the act will be governed by this act.

Section 2 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.