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: CS/SB 1904

INTRODUCER: Community Affairs Committee and Senator Altman

SUBJECT: Growth Management

DATE: April 4, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.	Uchino	Yeatman	EP	**Pre-meeting**
3.			TR	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes

B. AMENDMENTS........................ [ ] Technical amendments were recommended

[ ] Amendments were recommended

[ ] Significant amendments were recommended

I. Summary:

This Committee Substitute (CS) modifies the optional sector planning process to:

- make the program permanent by removing its status as a pilot program;
- rename optional sector plans as "sector plans";
- substantially remove the role of the Department of Community Affairs;
- revise the role that population projections ("needs assessment") plays in the sector planning process;
- provide additional guidelines for implementation of the process;
- require the metropolitan planning organizations (MPO) and water management districts (WMDs) to substantially include provisions in the long term master plan in the MPO and long range water supply plans;
- allow developments of regional impact (DRIs) to operate under either the sector planning process or the DRI process; and
- prevent the downzoning of sector planning areas until the date set by the detailed specific area.

This CS substantially amends section 163.3245 of the Florida Statutes. Conforming amendments are made to ss. 163.3164, 163.3177, 163.3180, 380.06(24), and 380.115(3) 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 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

---

[1] *See* Chapter 163, Part II, F.S.
[2] Section 163.3177(5), F.S.
[3] Dep't of Community Affairs, Division of Community Planning, *Optional Sector Plans*, http://www.dca.state.fl.us/fdcp/DCP/optionalsectorplans/index.cfm (last visited Apr. 4, 2011).
[4] Section 380.06(1), F.S.

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 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.

Metropolitan Planning Organizations

Metropolitan Planning Organizations[7] 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.

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.[8] Metropolitan Planning Organizations

---

[5] Rule 9J-5.006(5)(g)1, F.A.C.
[6] Rule 9J-5.006(2)(c), F.A.C. For an example of how the methodolgy is analyzed, see page 5.
[7] For more information, see the Florida Metropolitan Planning Organization Advisory Council website available at http://www.mpoac.org/index.shtml (last visited Apr. 4, 2011).
[8] Dep't of Community Affairs, Division of Community Planning, *Transportation Planning*, http://www.dca.state.fl.us/fdcp/dcp/transportation/OtherAgencies.cfm#MTPO (last visited Apr. 4, 2011).

also adopt long-range transportation plans that identify both funded and unfunded projects for as much as 20 years.[9]

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.[10]

Water Supply Planning

The Legislature has established a process for water supply planning through Florida's Growth Management Act[11] and the Water Protection and Sustainability Program.[12] 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 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

[9] Section 339.175(7), F.S.
[10] *Id.*
[11] Chapter 163, Part II, F.S.
[12] Chapter 373, F.S.

- regardless of whether they are in one of these planning areas - must address water supply in their concurrency management programs.[13]

Permitting of Consumptive Uses of Water

The WMDs administer the consumptive use permit (CUP) program pursuant to Part II, ch. 373, F.S. The program includes permitting, compliance and enforcement. Any entity or person who wants to use water for certain types of activities, except those exempted by statute or rule, is required to obtain a CUP. These permits are issued for finite durations and, upon expiration, must be renewed. No entity or type of use is given priority over another. However, when two or more applications are pending for a quantity of water that is not available to satisfy both permits, the DEP or governing board grants the permit to the applicant whose activities best serve the public interest. In this instance, preference is also given to applications for renewal over initial applications.[14]

Currently, the DEP and the WMDs may issue a CUP for a period of 20 years if requested, provided there is sufficient data that provides reasonable assurance that the conditions of the permit will be met during the duration of the permit. A CUP may be issued for period of up to 50 years if the related construction bonds for waterworks and waste disposal facilities require a longer period. In addition, the DEP and a WMD may require compliance reporting every 10 years as a condition of the permit.[15] CUPs for the development of alternative water supplies must be granted for periods of at least 20 years and require compliance reporting.

Section 373.219, F.S., gives the WMDs the authority to define the requirements for issuance of these permits. Such requirements, however, must follow a set of conditions enumerated in s. 373.223(1), F.S. These conditions provide a three-prong test applicants must meet for the water use to be accepted:

- Is the use a reasonable-beneficial use as defined in statute;
- Will the use interfere with any presently existing legal use of water; and
- Is the use consistent with the public interest?

Pursuant to their rulemaking authority, each WMD has adopted rules that detail when and what type of permit, individual or general, an applicant may need.[16]

III. Effect of Proposed Changes:

The Committee Substitute (CS) amends s. 163.3245, F.S., to make substantial changes to the optional sector plan process. The primary thrust of the CS is to develop a two-part planning process for large-scale, long-term planning. It consists of a long-term master plan adopted as part of the comprehensive plan and two or more detailed specific area plans adopted by development order. Other sections of law are amended to make conforming changes.

---

[13] Dep't of Community Affairs, Division of Community Planning, *Water Supply Planning*, http://www.dca.state.fl.us/fdcp/DCP/WaterSupplyPlanning/index.cfm (last visited Apr. 4, 2011).
[14] *See* s. 373.223, F.S.
[15] Chapter 2010-205, s. 55, Laws of Fla.
[16] See the following Florida Administrative Code rules for each district's criteria: 40A-2 (Northwest Florida); 40B-2 (Suwannee River); 40C-2 (St. Johns River); 40D-2 (Southwest Florida); and 40E-2 (South Florida).

The CS:

- Renames optional sector plans as "sector plans."
- Makes the sector plan program permanent by removing its pilot status.
- Removes the limitation on the number of sector plans that can be in existence.
- Increases the acreage required to have a sector plan from 5,000 to 15,000 acres.
- Removes the requirement that DCA review and approve 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 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 sector planning process.

The CS contains language of legislative intent that the new sector planning process is designed to promote and encourage long-term planning for conservation, development and agriculture on a landscape scale as well as facilitate protection of regionally significant resources, including but not limited to regionally significant water courses and wildlife corridors. If a scoping meeting is conducted it will be noticed and open to the public. If multiple local governments will be included in the sector plan, the CS gives them the option of entering into a joint planning agreement but it does not need to include the more prescriptive requirements in existing law for an agreement between the DCA and the local government(s).

The CS 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:

- The allowed uses in various parts of the planning area and the maximum and minimum densities and intensities of use and provides the framework for the development pattern.
- 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 master plan.
- Policies setting forth the procedures to be used to mitigate impacts on other regionally significant public facilities including utilities.
- 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 CS 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 future land uses.

The long-term conceptual overlay plan shall 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.

In its review of a long-term master plan, the state land planning agency shall consult with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, and the applicable water management district regarding the design of areas for protection and conservation of regionally significant natural resources and for the protection and, as appropriate, restoration and management of lands identified for permanent preservation.

The state land planning agency shall also consult with the Department of Transportation, the applicable metropolitan planning organization, and any urban transit agency regarding the location, capacity, design, and phasing or staging of major transportation facilities in the planning area.

The state land planning agency may initiate a civil action pursuant to s. 163.3215, F.S., with respect to a detailed specific area plan which is not consistent with a long-term master plan adopted pursuant to this section. Judicial review of a detailed specific area plan initiated by the state land planning agency shall be de novo and not by petition for writ of certiorari. Any other aggrieved or adversely affected party shall be subject to s. 163.3215, F.S., (relating to enforcement of local comprehensive plans through development orders) when initiating a consistency challenge to a detailed specific area plan.

Once the overlay plan becomes effective, the metropolitan planning organization must be consistent to the maximum extent feasible with the long-term master plan. The water management district must include the water resource development planned in the long-term master plan in the water management water supply plan. An applicant under a 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. The permitting criteria shall be applied based upon the projected population, the approved densities and intensities of use and their distribution in the long-term master plan.

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:

- implementation of the plan is not continuing in good faith,
- 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.

Although originally the sector planning process was a substitute for the DRI process, the CS would allow DRIs to develop concurrent with or subsequent to adoption of a long-term master plan to establish a buildout date. However, an increment of development in an approved master development plan shall be approved as a detailed specific area plan and is exempt from DRI review. Approved DRIs may function under the detailed specific area plan instead of s. 380.06, F.S.

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 master 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 DRI 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 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.

The CS 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 CS may make the sector planning process more amenable to large-scale land owners by giving them multiple avenues to pursue long-range development. Conversely, small-scale land owners may be disadvantaged by not having their parcels included in long-range planning activities of MPOs and WMDs.

C. Government Sector Impact:

The land planning agency should have reduced oversight and review expenses for sector planning activities. However, the costs savings are indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The water needs, sources and various development projects identified in adopted sector plans must be incorporated into the applicable WMD and regional water supply plans. This requirement may cause conflicts within the regional water supply plan if different sector plans identify the same water source and that water source is not sufficient to satisfy the needs of both sector plans.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 28, 2011:
Changes terminology, revises language allowing certain DRIs to operate under a detailed specific area plan rather than s. 380.06, F.S., and allows the DOT to comment..

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.