

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 Committee on Environmental Preservation and Conservation

BILL: CS/SB 832

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Sector Plans

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 832 primarily clarifies the sector plan law. It states that the planning standards of the sector planning statute supersede generally applicable planning standards elsewhere in ch. 163, F.S. The bill provides more flexibility in the designation of conservation easements related to sector plans but still requires they be designated prior to the beginning of construction. The bill requires a local government to send an application for development of a detailed specific area plan to the Department of Economic Opportunity (DEO) and certain state agencies for review as to whether the development would be consistent with the comprehensive plan and the long-term master plan. It provides that a water management district (WMD) may issue a consumptive use permit (CUP) for the same time period as a master development of regional impact development order if the project meets certain requirements. The bill provides that a WMD may phase in the water allocation over the duration of the permit to correspond to actual needs.

II. Present Situation:

Sector Plans

Originally authorized as a pilot program in 1998, the Legislature enacted s. 163.3245, F.S., in 2011 to permit all local governments to adopt a sector plan into their comprehensive plans. The Legislature stated that the 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.”¹

Sector plans must be a minimum of 15,000 acres and may not be created within an area of critical state concern.² The sector planning process requires two levels of planning:

- Adoption of a long-term master plan (formerly a “conceptual long-term buildout overlay”) for the entire planning area as an amendment to the local comprehensive plan adopted pursuant to the state coordinated review process in s. 163.3184(4), F.S.; and
- Adoption by a local development order of two or more detailed specific area plans (DSAP) that implement the long-term master plan and within which development of regional impact (DRI) requirements are waived.³

The law allows a local government, prior to preparing a sector plan, to request a scoping meeting with a developer proposing a sector plan. The scoping meeting must be noticed, open to the public, and conducted by the applicable regional planning council (RPC) with affected local governments and certain state agencies. If a scoping meeting is conducted, the RPC must make written recommendations to the DEO and affected local governments on the issues requested by the local government.⁴

Section 163.3245, F.S., specifies that the long-term master plan must include maps, illustrations, and text supported by data and analysis to address and identify:

- A framework map that, at a minimum, generally depicts conservation land use, identifies allowed uses in the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern;
- A general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures needed to meet the projected demand of the future land uses in the long-term master plan;
- A general identification of the transportation facilities to serve the future land uses in the long-term master plan;
- A general identification of other regionally significant public facilities necessary to support the future land uses;
- A general identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area;
- General principles and guidelines addressing, among other things, future land uses, the use of lands identified for permanent preservation through recordation of conservation easements, achieving a healthy environment, limiting urban sprawl, and providing housing types; and
- Identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from the future land uses.

¹ Section 163.3245(1), F.S.

² *Id.*

³ Section 163.3245(3), F.S.

⁴ Section 163.3245(2), F.S.

The two-level planning process provides that a long-term master plan and a DSAP may be based upon a planning period longer than the planning period of the local comprehensive plan. Both the long-term master plan and the DSAP must specify the projected population within the planning area during the chosen planning period. Concurrent with or subsequent to review and adoption of a long-term master plan, an applicant may apply for approval of a master development order for the entire planning area in order to establish the buildout date for the sector plan.⁵

A long-term master plan may include a phasing or staging schedule that allocates a portion of the local government's future growth to the planning area through the planning period. Neither the long-term master plan nor a DSAP are required to demonstrate need based upon projected population growth or on any other basis.⁶ The state land planning agency must consult with certain state and governmental agencies when it is reviewing a long-term master plan.⁷

When a local government issues a development order approving a DSAP, it must provide copies of the order to the state land planning agency and the owner or developer of the property affected by the order according to the rules established for DRI development orders.⁸ This order may be appealed by the owner, developer, or state land planning agency to the Florida Land and Water Adjudicatory Commission (commission), made up of the Governor and Cabinet, by filing a petition alleging that the DSAP is not consistent with the long-term master plan or the local government's comprehensive plan. The administrative proceeding for review of a DSAP is conducted according to s. 380.07(6), F.S., and the commission must grant or deny permission to develop according to the long-term master plan and may attach conditions or restrictions to its decision.⁹

If a development order is challenged by an aggrieved and adversely affected party in a judicial proceeding pursuant to s. 163.3215, F.S., the state land planning agency, if it has received notice, must dismiss its appeal to the commission and may intervene in the pending judicial proceeding.¹⁰

Once a long-term master plan becomes legally effective, s. 163.3245, F.S., requires the plan to be connected to any long-range transportation plan developed by a metropolitan planning organization and the regional water supply plan. A WMD also may issue CUPs for the duration of the long-term master plan or DSAP, considering the ability of the master plan area to contribute to regional water supply availability and the need to maximize reasonable-beneficial use of the water resource. The consumptive use permitting criteria must be applied based upon the projected population, the approved densities and intensities of use and their distribution in the long-term master plan, but the allocation of the water may be phased over the duration of the permit to reflect actual projected needs.¹¹

⁵ Section 163.3245(6), F.S.

⁶ Section 163.3245(3)(a) and (b), F.S.

⁷ Section 163.3245(3)(c), F.S.

⁸ Section 163.3245(3)(e), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 163.3245(4), F.S.

When a DSAP becomes effective for a portion of the planning area governed by a long-term master plan, developments within the DSAP are not subject to DRI review.¹² A developer may enter into a development agreement with the local government.¹³ The duration of the agreement may be through the planning period of the long-term master plan or the DSAP.¹⁴

Property owners within the planning area of a proposed long-term master plan may withdraw their consent to the master plan prior to adoption by the local government, and the parcels withdrawn will not be subject to the long-term master plan, any DSAP, or the exemption from DRI review.¹⁵ After the local government adopts the long-term master plan, a property owner may withdraw from the master plan only if the local government approves by adopting a plan amendment.¹⁶

Existing agricultural, silvicultural, and other natural resource activities are protected by s. 163.3245, F.S., within a long-term master plan or a DSAP.¹⁷ The law also protects properties against downzoning, unit density reduction, or intensity reduction in the DSAP until the buildout date.¹⁸

Rural Areas of Opportunity

Rural Areas of Opportunity (RAOs) are rural communities, or regions composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor, by executive order, may designate up to three RAOs, which establishes each region as a priority assignment for the Rural Economic Development Initiative agencies and allows the Governor to waive criteria of any economic development incentive including, but not limited to:

- The Qualified Target Industry Tax Refund Program under s. 288.106, F.S.;
- The Quick Response Training Program and the Quick Response Training Program for participants in the welfare transition program under s. 288.047, F.S.;
- Transportation projects under s. 288.063, F.S.;
- The brownfield redevelopment bonus refund under s. 288.107, F.S.; and
- The rural job tax credit program under ss. 212.098 and 220.1895, F.S.¹⁹

Regional Water Supply Plans

Section 373.709, F.S., requires each WMD to conduct water supply planning for a water supply planning region where it determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and

¹² Section 163.3245(5), F.S.

¹³ Section 163.3245(7), F.S.

¹⁴ *Id.*

¹⁵ Section 163.3245(8), F.S.

¹⁶ *Id.*

¹⁷ Section 163.3245(9), F.S.

¹⁸ Section 163.3245(5)(d), F.S.

¹⁹ DEO, *Rural Areas of Opportunity*, <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Apr. 5, 2015).

related natural systems for the planning period. Each regional water supply plan must be based on at least a 20-year planning period and must include, at a minimum:

- A water supply development component for each water supply planning region identified by the WMD;
- A water resource development component;
- A recovery or prevention strategy;
- A funding strategy;
- Consideration of how the project options in the plan serve the public interest or save costs;
- The technical data and information applicable to each planning region;
- The minimum flows and levels established for water resources;
- Reservations of water adopted by rule;
- Identification of surface waters or aquifers for which minimum flows and levels are scheduled to be adopted; and
- An analysis of areas or instances in which variances may be used to create water supply or water resource development projects.²⁰

Basin Management Action Plans

Basin Management Action Plans (BMAPs) address pollutant loading in impaired waterbodies so they meet their total maximum daily loads. A total maximum daily load is the amount of a pollutant a waterbody may assimilate and still meet water quality standards. The plans equitably allocate pollutant reductions to individual basins, as a whole to all basins, or to each identified source of pollution. BMAPs then establish schedules for implementing projects and activities to meet pollution reduction allocations.²¹

Consumptive Use Permits

A CUP establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily by a permittee. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Under s. 373.223, F.S., the proposed water use must:

- Be a “reasonable-beneficial use” as defined in s. 373.019(16), F.S.;
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3245, F.S., to update the sector plan law. The bill clarifies that the planning standards of s. 163.3245(3)(a), F.S., concerning long-term master plans, supersede generally applicable planning standards elsewhere in ch. 163, F.S.

²⁰ Section 373.709, F.S.

²¹ Section 403.067(7), F.S.

The bill also clarifies that the planning standards of s. 163.3245(3)(b), F.S., concerning detailed specific area plans, supersede generally applicable planning standards elsewhere in ch. 163, F.S.

The bill allows conservation easements associated with a long-term master plan or a DSAP to be based on rectified aerial photographs without the need for a survey and may include a right of adjustment authorizing the developer to modify portions of the area protected by the easement to substitute other lands by recording an amendment to the conservation easement. The bill requires that those substitute lands:

- Contain no less gross acreage than the lands to be removed;
- Have equivalent values in the proportion and quality of wetlands, uplands, and wildlife habitat; and
- Be contiguous to other lands protected by the easement.

The bill requires the applicant for a DSAP to transmit copies of the application to the reviewing agencies specified in s. 163.3184(1)(c), F.S., or their successor agencies,²² for review and comment as to whether the DSAP would be consistent with the comprehensive plan and the long-term master plan. Any comments from those reviewing agencies must be submitted in writing to the host local government within 30 days after the applicant's transmittal of the application.

The bill authorizes the DEP, the Fish and Wildlife Conservation Commission, or the WMD to accept wetland or upland preservation lands previously designated as conservation lands in relation to the development of a sector plan for the purposes of compensatory mitigation related to permitting under chs. 373 or 379, F.S., without considering that those lands are already encumbered by a previously recorded conservation easement.

The bill clarifies that neither a long-term master plan nor a DSAP limits the right to establish new agricultural or silvicultural uses that are consistent with the sector plan.

The bill authorizes an applicant with an approved master development order to request that the applicable WMD issue a CUP for the same period of time as the approved master development order.

The bill states that the more specific provisions of s. 163.3245, F.S., shall supersede the generally applicable provisions of ch. 163, F.S., which would otherwise apply. However, the bill clarifies that the sector plan law does not preclude a local government from requiring data and analysis beyond the minimum criteria it establishes.

Section 2 amends s. 373.236, F.S., to authorize a WMD to issue a permit to an applicant, who is authorized to request a permit under section one of the bill, for the same time period as the applicant's approved master development order if the order was issued subject to the following requirements:

²² Section 163.3184(1)(c), F.S., defines "reviewing agencies" as: the state land planning agency (DEO); the appropriate RPC; the appropriate WMD; the DEP; the Department of State; the Department of Transportation; and, under specific circumstances, the Department of Education; the commanding officer of an affected military installation; the Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, and the county in which the municipality is located.

- It was issued by a county which, at the time the order was issued, was designated as an RAO pursuant to s. 288.0656, F.S.;
- It was not located in an area encompassed by a regional water supply plan as set forth in s. 373.709(1), F.S.; and
- It was not located within the basin area management plan of a first-order magnitude spring.²³

In reviewing the permit application, the WMD must apply the permitting criteria in s. 373.223, F.S., based on the projected population and approved densities and intensities of use and their distribution in the master development order. However, the WMD may phase in the water allocation over the duration of the permit to correspond to actual projected needs. This subsection does not supersede the public interest test established in s. 373.223, F.S.

Section 3 provides an effective date of July 1, 2015.

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:

According to the DEO, there will be some costs associated with the review of and comment on documents submitted concerning the DSAP. The costs are dependent on the number of applications submitted, but will likely be negligible.

²³ First magnitude springs are springs that have a median water discharge greater than or equal to 100 cubic feet per second for the period of record.

VI. Technical Deficiencies:

Lines 296-297 contain the phrase “basin area management plan.” The correct phrase is “basin management action plan.”

Line 297 contains the phrase “first-order magnitude springs.” The correct phrase is “first magnitude springs.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3245 and 373.236.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Community Affairs on March 31, 2015:

- Clarifies the planning standards of the sector planning statute supersede generally applicable planning standards elsewhere in ch. 163, F.S.;
- Provides more flexibility in the designation of a conservation easement associated with a sector plan but still requires they be designated prior to the beginning of construction;
- Requires a local government to send an application for development of a DSAP to the DEO and state agencies so that they may comment on its consistency with the comprehensive plan and long-term master sector plan; and
- Authorizes the DEP and the Fish and Wildlife Conservation Commission to accept as mitigation for purposes of permitting lands that have already been designated as a conservation easement associated with a sector plan.

B. Amendments:

None.