SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SBs 1906 and 550

SPONSOR: Comprehensive Planning, Local & Military Affairs Committee, Senators Peaden and Constantine

SUBJECT: Growth Management

DATE: March 5, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.			JU	
3.			AGG	
4.			AP	
5.			RC	
6.				

I. Summary:

This bill makes available to owners, developers, and applicants the same methods available to third parties to appeal and challenge the consistency of a development order with a local comprehensive plan. The bill allows local governments to establish a special master process to address quasi-judicial proceedings associated with development order challenges. If a local government establishes such a process, the bill provides that the sole method by which an aggrieved and adversely affected party may challenge any decision of a local government granting or denying an application for a development order, which materially alters the use or density or intensity of use on a particular piece of property, on the basis that it is not consistent with the comprehensive plan is by a petition for certiorari filed in circuit court no later than 30 days following rendition of a development order or other written decision of the local government, or when all local administrative appeals are exhausted, whichever occurs later.

If a local government enacts a special master process, third parties would lose their right to a "trial de novo." Instead, third parties, as well as owners, developers, and development order applicants' right to appeal would be by certiorari review. If a local government does not establish a special master process consistent with the requirements of the bill, then all aggrieved or adversely affected parties, including third parties and owners, developers, and applicants for development orders, would have the same right to maintain an action for declaratory, injunctive or other relief against any local government to challenge any decision of local government granting or denying an application for, or to prevent such local government from taking any action on, a development order which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan.

This bill substantially amends section 163.3215 of the Florida Statutes.

II. Present Situation:

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, DCA was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by DCA on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.).

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Land Development Regulations

Section 163.3202, F.S., requires each county and each municipality to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan. Such regulations must contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and must at a minimum:

- Regulate the subdivision of land;
- Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space;
- Provide for protection of potable water wellfields;
- Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;

- Ensure the protection of environmentally sensitive lands designated in the comprehensive plan;

- Regulate signage;

- Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177, F.S., and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. Not later than 1 year after its due date established by the state land planning agency's rule for submission of local comprehensive plans pursuant to s. 163.3167(2), F.S., a local government shall not issue a development order or permit which results in a reduction in the level of services for the affected public facilities below the level of services provided in the comprehensive plan of the local government.

- Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.

Local governments, in adopting land development regulations to implement their comprehensive plans, are required to include specific and detailed provisions necessary or desirable to implement the plan which must, at a minimum, ensure the compatibility of adjacent uses.

Review of Development Regulations

Section 163.3213, F.S., defines "land development regulation" to mean:

an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553, F.S.

The section authorizes a substantially affected person within 12 months after final adoption of a land development regulation to challenge the regulation on the basis that it is inconsistent with the local comprehensive plan. Prior to instituting such a challenge, a substantially affected person must file a petition with the local government outlining the facts on which the petition is based and the reasons that the substantially affected person considers the land development regulation to be inconsistent with the local comprehensive plan. The local government has 30 days after the receipt of the petition to respond. Thereafter, the substantially affected person may petition DCA no later than 30 days after the local government has responded or at the expiration of the 30-day period which the local government has to respond. The local government and the petitioning, substantially affected person may by agreement extend the 30-day time period within which the local government has to respond. The petition to DCA must contain the facts and reasons outlined in the prior petition to the local government.

DCA is required to notify the local government of its receipt of a petition and must give the local government and the substantially affected person an opportunity to present written or oral

testimony on the issue and must conduct any investigations of the matter that it deems necessary. These proceedings are informal. No later than 60 days after receiving the petition, DCA must issue its written decision on the issue of whether the land development regulation is consistent with the local comprehensive plan, giving the grounds for its decision.

If DCA determines that the regulation is consistent with the local comprehensive plan, the substantially affected person may, within 21 days, request a hearing from the Division of Administrative Hearings, and an administrative law judge must hold a hearing in the affected jurisdiction no earlier than 30 days after DCA renders its decision. The section provides that the adoption of a land development regulation by a local government is legislative in nature and may not be found to be inconsistent with the local plan if it is fairly debatable that it is consistent with the plan.

If DCA determines that the regulation is inconsistent with the local comprehensive plan, it must, within 21 days, request a hearing from the Division of Administrative Hearings, and an administrative law judge must hold a hearing in the affected jurisdiction no earlier than 30 days after DCA renders its decision.

If the administrative law judge finds the land development regulation to be inconsistent with the local comprehensive plan, the order must be submitted to the Administration Commission for imposition of sanctions. An administrative proceeding under this section is the sole proceeding available to challenge the consistency of a land development regulation with a comprehensive plan adopted under this part.

Judicial Review of Development Orders based on Consistency

A. Description of Current Process and Problems.

Section 163.3215, F.S., creates a civil court action for an aggrieved or adversely affected party to maintain an action for injunctive relief against a local government to prevent the local government from taking any action on a development order which: "materially alters the use or density or intensity of use on a particular piece of property that is not consistent with the comprehensive plan..." The definition of "an aggrieved or adversely affected party" who may maintain an action under this section differs from the definition of affected person under s. 163.3184(1), F.S. "Aggrieved or affected party" is defined as:

> any person or local government which will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection services, or environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.

Courts have construed this definition as providing standing for property owners adjacent to a proposed development but excluding groups of citizens with a general interest in a proposed development order. *Southwest Ranches Homeowner's Association v. Broward County*, 502 So.2d 931 (Fla. 4th DCA), rev. denied, 511 So.2d 99 (Fla. 1987). In addition, merely owning land or a

business in the jurisdiction rendering the decision at issue or having an interest in how the decision might affect one's quality of life is insufficient to afford standing. *Florida Rock Properties v. Keyser*, 709 So. 2d 177 (Fla. 5th DCA 1998).

In order to maintain the action, the complaining party must first file a verified complaint with the local government whose actions are complained of describing the complaint and relief sought which must be filed no later than 30 days after the local government action has been taken. The local government must respond within 30 days after receiving the complaint and the lawsuit must be filed no later than 30 days after the expiration of the 30-day period in which the local government has to act.

1. *Certiorari vs. De Novo Review--Poulos v. Martin County*

Case law construing s. 163.3215, F.S., has limited the availability of the cause of action only to third party intervenors to the exclusion of landowners or developers who were the subject of the development order at issue. The Florida Supreme Court, in *Parker v. Leon County*, 627 So.2d 476 (Fla. 1993), held that a landowner denied approval of preliminary subdivision plats based on inconsistency with the local government comprehensive plan did not have a cause of action under the section. Instead, the landowners would have to exercise their common law right to petition for certiorari review in circuit court. *Id* at. p. 479.

However, the standard of review of actions brought under s. 163.3215, F.S., by third-party intervenors has been determined by the courts to be an original de novo review. In *Poulos v. Martin County*, 700 So.2d 163 (Fla. 4th DCA 1997), the court reasoned that a reading of section 163.3215, F.S., to:

> authorize the invocation of the circuit court's certiorari jurisdiction more than 30 days after the agency action being challenged would make the section unconstitutional.. . . . Accordingly, we hold that section 163.3215 does not provide for appellate review by the circuit court, but rather provides for an original de novo action. *Id* at p. 165-6

At the same time, a third-party may raise issues other than the consistency of a development order with the comprehensive plan through common law certiorari review. See *Education Development Center, Inc. v. Palm Beach County*, 721 So. 2d 1240, (Fla. 4th DCA 1998). Hence, a situation has been created by these cases where a third-party intervenor challenging a development order decision, has different remedies for different aspects of a particular local government decision.

2. *Relationship between review standard and Quasi-Judicial requirement for non-legislative land development decisions.*

In *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993), the Supreme Court opined that rezoning actions that have a limited impact on the public and can be characterized as policy applications rather than policy setting, are quasi-judicial decisions. As quasi-judicial decisions, review of the local government's action is reviewable by petition for certiorari and subject to the strict scrutiny of review. In a quasi-judicial rezoning proceeding, the landowner

has the burden of proving that the rezoning is consistent with the comprehensive plan and complies with the procedural requirements of the zoning order before the burden shifts to the local government to prove that maintaining the existing zoning accomplishes a legitimate public purpose. Id. at 476.

As a consequence of the *Snyder* decision, many local governments have changed the way they conduct zoning hearings so that a factual record of their decision-making is created. Meetings of the local governing body where quasi-judicial proceedings have come to resemble court proceedings where witnesses are sworn and expert testimony is elicited. This type of proceeding is not very user friendly for individuals who wish to express their opinion in a particular rezoning or development order matter. In addition, because s. 163.3215, F.S., has been interpreted as requiring a de novo rather than certiorari review, an applicant for a development order and third-party challengers face the prospect of having to develop a factual record twice, once before the local government and a second time before the circuit judge conducting the de novo proceeding.

In the recent case of *Broward County v. G.B.V. International, Ltd.*, 2001 WL 617823 (Fla. 2001), the Florida Supreme Court, in reviewing a plat approval decision made by the Broward County Commission, criticized the commission for failing to make findings, stating a formal reason for its decision, and issuing a written order, formally asked the Rules of Judicial Administration Committee of the Florida Bar to study the following question: "Whether the Court should implement a rule requiring written final decisions with detailed findings of fact in local land use actions that are subject to review in the courts." Should the courts require written decisions with written findings of fact in quasi-judicial proceedings, local governments are more likely to adopt a special master procedure for conducting such proceedings.

Growth Management Study Commissions

In July 2000, Governor Bush issued Executive Order 2000-196 appointing a twenty-three member Growth Management Study Commission to review Florida's growth management system in order to "assure that the system meets the needs of a diverse and growing State and to make adjustments as necessary based on the experience of implementing the current system." The 23-member study commission included representatives of local government, the development community, agriculture, and the environmental community. The commission conducted 12 meetings throughout the state to hear citizen comment, expert opinion, and deliberate on the question of how to adjust Florida's system of growth management. There was general consensus among members of the commission, as well as members of the public, that the current system of local comprehensive planning in Florida has fallen short of addressing problems associated with growth, including: traffic congestion, school overcrowding, loss of natural resources, decline of urban areas and conversion of agricultural lands.

In its final report entitled "A Livable Florida for Today and Tomorrow," the Growth Management Study Commission set forth 89 recommendations for reforming Florida's growth management system. Some of these recommendations are addressed by this bill.

Recommendation 29: There should be a uniform proceeding to address challenges to a development order's consistency with the comprehensive plan and challenges to a development order's consistency with the land development regulations.

Recommendation 30: Combining plan and regulation consistency challenges for development orders into the one new action is not intended to abolish the right to seek other declaratory relief, including declarations of unconstitutionality, in independent and separate actions as allowed by current law.

Recommendation 31: Local governments should be encouraged to establish a special master process to address quasi-judicial proceedings associated with development order challenges.

Recommendation 32: Local governments would establish the special master process by adoption of a local ordinance, which would include the following minimum provisions:

- notice by publication and by mailed notice to other property owners as required by law simultaneous with the filing of application for development permit, as defined by s. 163.3164, F.S. The notice must delineate that aggrieved or adversely affected persons have the right to request a quasi-judicial hearing and include a provision as to how to initiate the quasi-judicial process and the time frames for doing so. Once a local official (i.e., planning director) has recommended approval, approval with conditions, or denial and the report is issued, any aggrieved or adversely affected party would have a specified number of days to request a special master. The request for a special master need not be a full-blown petition or complaint. The local government shall include an opportunity for an alternative dispute resolution process and may include a stay of the formal hearing for this purpose;

- an opportunity to participate in the process for an aggrieved or adversely affected party which provides a reasonable time to prepare and present a case;

- an opportunity for reasonable discovery prior to a quasi-judicial hearing;

- a hearing before an independent special master who shall be an attorney with at least five years experience and who shall, at conclusion of the hearing, recommend written findings of fact and conclusions of law;

- at the hearing all parties shall have the opportunity to respond, present evidence and argument on all issues involved that are directly related to the development order and to conduct cross-examination and submit rebuttal evidence;

- the standard of review applied by the special master shall be in accordance with Florida law; and

- a hearing before the local government which shall be bound by the special master's findings of fact unless the findings of fact were not based on competent substantial evidence. The governing body may modify conclusions of law. Provided, however, that the governing body shall be authorized to correct a misinterpretation of the local government's comprehensive plan or land development regulations without regard to whether the misinterpretation is labeled as a finding of fact or a conclusion of law.

- no ex parte communication relating to the merits of the matter under review shall be made to the special master. No ex parte communication relating the merits of the matter under review shall be made to the governing body after a time to be established by the local ordinance, but no later than receipt of the recommended order by the governing body.

Recommendation 33: Upon adoption of the ordinance with the minimum provisions for a special master process, there would be a review at the Circuit Court level of final action of any development order.

Recommendation 34: The special master process would be paid for through a reasonable surcharge on all development permits or in another manner determined by a local government.

Recommendation 35: The standard of review and burden of proof will be in accordance with Florida law.

Recommendation 36: A local government may elect to not use the special master process. However, a new statutory cause of action would be made available (i.e., petitioner would choose either de novo or cert review). In the event there is more than one petition, the Court shall be encouraged to consolidate the cases. Additionally, if there is more than one petition and one of the petitioners elects de novo review, all petitions will be subject to de novo review. A petitioner will have 30 days from the rendition of the development order to file for either de novo or certiorari review. The burden of proof would be in accordance with Florida law, and discovery would be handled using the Florida Rules of Civil Procedure. Persons would be allowed to seek chapter 86, F.S., relief to the extent currently available.

Recommendation 37: Any petitioner that elects de novo review would waive all objections to the adequacy of the hearing before the local government.

Recommendation 38: Regardless of whether a local government used the special master process, the verified complaint provisions of s.163.3215, F.S., would be deleted and the time schedule in s.163.3215(4), F.S., would be revised to make clear that a challenger has a certain amount of time from the date of the rendition of the local decision, in accordance with the Florida rules of court to file an action in circuit court for the appropriate review, as provided by statute.

Recommendation 39: Regardless of whether a local government used the special master process, a petitioner may join as part of the same action a claim or complaint for injunctive relief which the circuit court may hear and grant as part of its certiorari review.

Recommendation 40: The provisions of section 163.3215(1), F.S., should be amended as follows: Any aggrieved or adversely affected party may maintain an action for declaratory and injunctive or other relief against any local government to reverse any decision of local government regarding an application for or to prevent such local government from taking any action on a development order, as defined in s. 163.3164, F.S., which materially alters the use or density or intensity of use on a particular piece of property that is not consistent with the comprehensive plan or land development regulation adopted under this part.

Recommendation 41: A developer/applicant shall have the same remedies available to challenge the consistency of a development order with the comprehensive plan as a third party and shall be a party to any action filed by a third party against a development order.

While the Commission recommended a uniform procedure for challenging the consistency of development orders with local government comprehensive plans, and stated what the minimum requirements of a special master process should include, the Commission did not take a position on whether certiorari or de novo review should be the method of judicial review of the local government action:

> The Commission received compelling testimony on two distinct types of review regarding citizen appeal challenges to development orders and plan amendment approvals. It heard the advantages and disadvantages of de novo (gives citizens the right to raise new issues not considered during testimony before elected officials) and certiorari (appeals would only be heard on the record created before elected officials - no additional information could be considered) reviews. The Legislature should consider these differences and make its determination concerning the appropriate type of review.

Pinecrest Lakes, Inc. v. Schidel

In the case of *Pinecrest Lakes, Inc. v. Schidel*, 795 So.2d 191 (Fla. 4th DCA 2001), rehearing denied, 802 So.2d 486, the Fourth District Court of Appeal upheld a circuit court ruling ordering the demolition and removal of several multi-story buildings because the buildings are inconsistent with Martin County's comprehensive land use plan. The case was initiated by a complaint brought under section 163.3215, F.S., by an adjacent property owner who alleged that the development order authorizing Pinecrest Lakes to build a number of multi-family apartments next to a residential subdivision conflicted with a policy of the Martin County comprehensive plan requiring that: "…new development of undeveloped abutting lands shall be required to include compatible structure types of land immediately adjacent to existing single family development." The trial court found the development order inconsistent with the Martin County comprehensive plan and imposed the remedy of ordering the demolition of the apartments, based on a finding of bad faith that the developer continued construction during the pendency of the appeal of the case and continued to build and lease during the trial, even after losing on the issue of consistency with the Martin County comprehensive plan.

III. Effect of Proposed Changes:

Section 1 of the bill substantially revises current methods for challenging the consistency of a local-government development order with a local-government comprehensive plan. The bill adds the owner, developer, or applicant for a development order to the definition of an "aggrieved or adversely affected party" to make available to such parties the same methods as are available to third parties to appeal and challenge the consistency of a development order with a local comprehensive plan. The local government that issues the development order must be named as a respondent to the proceeding.

The bill deletes the current requirement of s. 163.3215(4), F.S., that requires the complaining person seeking relief under the statute to file a verified complaint with the local government, and wait for 30 days for a response, prior to being to entitled to file an action under the statute.

The bill sets up two alternative methods in which an aggrieved or adversely affected person proceeds that is based on whether or not the local government elects to adopt a special master process. Subsection (3) provides that if a local government does not establish a special master process consistent with the requirements of the bill, then all aggrieved or adversely affected parties, including third parties and owners, developers, and applicants for development orders, would have the same right to maintain a de novo action for declaratory, injunctive or other relief against any local government to challenge any decision of local government granting or denying an application for, or to prevent such local government from taking any action on, a development order which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan. This de novo action must be filed no later than 30 days following rendition of a development order or other written decision, or when all local administrative appeals are exhausted, whichever occurs later.

Subsection (4) provides for aggrieved or affected parties to challenge a decision of a local government granting or denying a development order by writ of certiorari if the local government whose decision is at issue, has adopted a special master process meeting the requirements of the bill. The bill allows local governments to establish a special master process to address quasi-judicial proceedings associated with development order challenges, by adoption of a local ordinance. If a local government enacts the special master process, third parties would lose their right to a "trial de novo," in which the circuit court conducts a completely new trial with all new evidence and potentially new issues raised. Instead, third parties as well as owners, developers, and development order applicants' appeal rights would be by certiorari review in circuit court where the court relies solely on the record as it was established at the local quasi-judicial hearing.

A local government ordinance establishing a special master process must include the following minimum provisions which are set forth in s. 163.3215(4) (a)-(j), F.S.:

- Notice by publication or by mailed notice to other property owners as required by law simultaneous with the filing of an application for development review, excluding building permits. The notice must be given within 10 days after the filing of an application for a development order. The notice must tell people how to initiate the quasi-judicial process and the timeframes for doing so. The request for a special master need not be a full-blown petition or complaint. The local government may include an opportunity for an alternative dispute resolution process and may include a stay of the formal hearing for this purpose;

- A point of entry consisting of a written preliminary decision, at a time and in a manner to be established in the local ordinance, with the time to request a quasi-judicial hearing running from the issuance of the written preliminary decision; the local government, however, is not bound by the preliminary decision. A party may request a hearing to challenge or support a preliminary decision;

- An opportunity to participate in the process for an aggrieved or adversely affected party which provides a reasonable time to prepare and present a case;

- An opportunity for the disclosure of witnesses and exhibits prior to a hearing, and an opportunity for the depositions of witnesses to be taken;

- The local process may not require that a party be represented by an attorney in order to participate in the hearing;

- A hearing before an independent special master who shall be an attorney with at least five years experience and who shall, at the conclusion of the hearing, recommend written findings of fact and conclusions of law;

- The special master shall have the power to swear witnesses, issue subpoenas and compel entry upon the land;

- At the hearing, all parties have the opportunity to respond, present evidence and argument on all issues involved and to conduct cross-examination and submit rebuttal evidence and public testimony must be allowed;

- The standard of review applied by the special master in determining whether a proposed development order is consistent with the comprehensive plan is the strict scrutiny standard;

- The local government process must provide for a noticed public hearing before the local government at which public testimony is allowed;

- A hearing before the local government that shall be bound by the special master's findings of fact unless the findings of fact were not based on competent substantial evidence. The governing body may modify conclusions of law if it finds that the special master’s application or interpretation of law is erroneous. Provided, however, that the governing body shall be authorized to correct a misinterpretation of the local government's comprehensive plan or land development regulations without regard to whether the misinterpretation is labeled as a finding of fact or a conclusion of law. The local government’s final decision must be reduced to writing, and include findings of fact and conclusions of law, and is not final until date-stamped by the clerk of the local government.

- No ex parte communication relating to the merits of the matter under review shall be made to the special master. No ex parte communication relating to the merits of the matter under review shall be made to the governing body after a time to be established by local ordinance, but no later than receipt of the recommended order by the governing body.

- At the option of the local government the process may require actions to challenge the consistency of a development order with land development regulations to be brought in the same proceeding.

Upon adoption of the ordinance with the minimum provisions for a special master process, there is certiorari review at the Circuit Court level of final action of any development order. If a local government chooses not to adopt a special master process, there is de novo review, for all parties, at the Circuit Court level of final action of any development order.

Subsection (9) of the bill provides that neither subsections (3) relating to de novo proceedings, and subsection (4), relating to the special master process, relieve the local government of its obligations to hold public hearings as required by law.

Section 2 of the bill states that it is the intent of the Legislature that the act shall not affect the outcome of a specific case in litigation, *Pinecrest Lakes, Inc. v. Schidel*, 795 So.2d 191 (Fla. 4th DCA 2001), rehearing denied, 802 So.2d 486.

Section 3 of the bill provides an effective date of June 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, if a local government establishes a special master process to address quasi-judicial proceedings associated with development order challenges, property owner and developer interests could be positively impacted by the revisions to the judicial review of challenged development orders as the review would be a certiorari rather than a de novo review. Conversely, if a local government does not establish such a process, the bill grants the same opportunity (de novo review) to all parties involved.

Under the bill's provisions, if a local government establishes a special master process to address quasi-judicial proceedings associated with development order challenges, third parties would loose their right to a "trial de novo," in which the circuit court conducts a completely new trial with all new evidence and potentially new issues raised. Instead, third parties as well as owners, developers, and development order applicants' right to appeal would be by certiorari review in circuit court where the court relies solely on the record as it was established at the local quasi-judicial hearing.

Citizens are positively impacted by this bill as it allows for earlier citizen involvement in the process. Local governments are required to include in their citizen participation procedures several requirements that improve the current citizen participation requirements.

C. Government Sector Impact:

If a local government chooses to adopt a special master process, it will incur costs in the employment of special masters that meet the qualification criteria of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.