

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.)

Prepared By: Community Affairs Committee

BILL: SB 2614

SPONSOR: Senator Constantine

SUBJECT: University Campus Planning

DATE: March 30, 2005

REVISED: 04/13/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	Fav/3 amendments
3.	<u></u>	<u></u>	<u>JU</u>	<u></u>
4.	<u></u>	<u></u>	<u>EA</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

The bill revises requirements for a campus master plan so that only the general location of structures must be identified. It allows draft master plans to be submitted electronically to local governments and state agencies for review. This bill revises timing requirements for the two required public hearings for a local government that is adopting a campus master plan.

Under this bill, a petition for the review of a campus master plan is limited to the issues relating to public facilities and services that have a direct and material impact on the petitioner. It allows the university to execute a campus development agreement while the plan amendment is pending as the result of a challenge. The bill changes the informal hearing required under s.

1013.30(8)(b), F.S., to an evidentiary hearing. The Administration Commission's review is limited to the record developed before or during the evidentiary hearing. In its report to the Administration Commission, the Department of Community Affairs (DCA) must address the petitioner's compliance with section 1013.30, F.S.

The bill specifies that the signature of an attorney or a party represents that the person does not believe the pleading serves an improper purpose. The Administration Commission is authorized to impose sanctions on the person signing the pleading and the represented party if the pleading violates this provision.

This bill substantially amends section 1013.30 of the Florida Statutes.

II. Present Situation:

University Campus Master Plans

Section 1013.30, F.S., governs campus planning and concurrency. Each university board of trustees is required to adopt a campus master plan (master plan) that identifies general land uses and addresses the need for public services and facilities for a 10- to 20-year period. A master plan must contain the following elements: future land use, intergovernmental coordination, capital improvements, recreation and open space, general infrastructure, housing, and conservation. Data to support these elements must include:

- The characteristics of vacant lands;
- Projected impacts of development on onsite and offsite infrastructure, public services and natural resources;
- Student enrollment projections;
- Student housing needs; and
- The need for academic and support facilities.

The State Board of Education may require additional elements that are not subject to review under s. 1013.30, F.S. A master plan must be consistent with the comprehensive plan of the host local government and any affected local government, and the state comprehensive plan.¹ The university must update its master plan every 5 years.

Prior to the adoption of a master plan, the master plan is sent to specified local governments and state agencies for review. The state agencies have 90 days after receipt of the draft plan to provide comments to the university board of trustees. Following receipt of all the comments and at least two public hearings within the host local government's jurisdiction, the board shall adopt the master plan. A master plan developed under s. 1013.30, F.S., is not subject to ch. 120, F.S.

The university is required to send notice within 45 days of the master plan's adoption to any affected person that submitted comments on the draft plan.² Within 30 days of receipt of the notice or 30 days after the adopted master plan is available, an affected person may petition the university board of trustees challenging the compliance of the plan with s. 1013.30, F.S. The parties have 60 days to mediate the issues in dispute. If the parties do not reach a resolution, DCA has 60 days to hold an informal hearing, if necessary, to identify the issues still in dispute and prepare a report for the Administration Commission (Governor and Cabinet).³ The DCA's report must describe each remaining issue in dispute, identify alternative resolutions, and make

¹ Section 1013.30(2)(c), F.S., defines "host local government" as a local government having jurisdiction over an area in which all or part of a university is located, but does not include a county if the unincorporated area does not include any part of the institution. Section 1013.30(2)(a), F.S., defines "affected local government" as a unit of local government providing public services or responsible for maintaining facilities within a campus or that is directly affected by development proposed for a campus.

² Section 1013.30(2)(b), F.S., defines "affected person" as a host local government; an affected local government; any state, regional, or federal agency; or a person who resides, owns property, or owns or operates a business within the jurisdiction of the host local government or an affected local government.

³ The DCA reports that an informal hearing has been used 3 times to date for the resolution of a dispute involving a campus master plan under s. 1013.30, F.S.

recommendations. The Administration Commission must take action to resolve the issues in dispute and the final order of the commission is subject to judicial review under s. 120.68, F.S.

An amendment to a campus master plan must be reviewed and adopted under the same process that is applicable to the adoption of the plan itself if the amendment, alone or in conjunction with other amendments, would: increase the density or intensity of the land use by more than 10 percent; decrease the amount of natural areas, open space, or buffers by more than 10 percent; or rearrange land uses in a manner that increases the impact of proposed campus development on public facilities and services by more than 10 percent.

Campus Development Agreements

Within 270 days after the adoption of the campus master plan, the university board of trustees is required to draft a proposed campus development agreement and send it to each local government. A campus development agreement must do the following:

- Identify the geographic area of the campus and local government covered by the agreement;
- Establish the duration of the agreement between 5 and 10 years;
- Address public facilities and services, including roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and public transportation;
- Identify the level-of-service standard established by the local government for each facility and service that will be provided to the campus, specify the service provider, and describe any financial arrangement between the State Board of Education and other entities relating to facilities and services; and
- Determine the impact of existing and proposed campus development on facilities and services for the term of the agreement and identify any deficiencies.

A campus development agreement that has been agreed to by the university board of trustees and the host local government must be executed according to the provisions of s. 163.3225, F.S., and a copy transmitted to DCA within 14 days of its execution. Section 1013.30(16), F.S., provides procedures for resolving issues in dispute if the host local government and the university board of trustees cannot agree on the provisions of the campus development agreement within 180 days. Section 1013.30(22), F.S., requires the State Board of Education to adopt rules governing the development and adoption of campus master plans.

Informal Hearings under Section 120.57, F.S.

Section 120.57, F.S., provides procedures for administrative hearings involving disputed issues of material fact. All parties have an opportunity under this section to respond, present evidence, conduct cross-examination and submit rebuttal evidence. Also, the parties may submit proposed findings of fact and orders and file exceptions to the administrative law judge's recommended order. The standard of review is preponderance of the evidence. Proceedings under this section are de novo.

III. Effect of Proposed Changes:

Section 1 amends s. 1013.30, F.S., to require a university board of trustees to maintain a copy of the campus master plan on the university's website. Subsection (3) is also amended to eliminate

the requirement that a campus master plan identify the location of structures and, instead, requires the plan to identify the general location.

Subsection (6) is amended to allow a university to transmit its draft master plan electronically to affected local governments and state agencies for review. It requires a university to hold an informal public information session before the first of the two mandatory public hearings within the host local government's jurisdiction. It also specifies that the first required public hearing must be held before the draft master plan is sent to the state agencies for review. The second required public hearing must be held in conjunction with the adoption of the draft master plan by the university board of trustees.

Subsection (7) is amended to limit a petition by an individual to the university board of trustees challenging a campus master plan to those issues pertaining to public facilities or services that have a direct and material effect on the individual. During the pendency of such a challenge, the university is authorized to negotiate and execute a campus development agreement as provided for in s. 1013.30(11), F.S.

Subsection (8) is amended to require DCA to hold an evidentiary hearing if the issues raised in the petition have not been resolved in 60 days. This hearing, if necessary, is for the purposes of identifying any issues remaining in dispute, preparing a record of the proceedings, and submitting the matter to the Administration Commission. The hearing shall be conducted using the procedures in s. 120.57(1), F.S. The review by the Administration Commission is limited to the record developed before and during the evidentiary hearing. The DCA's report to the Administration Commission must address whether the petitioner has met the requirements of s. 1013.30, F.S.

Paragraph (d) is added to subsection (8) to provide that the signature of an attorney or a party that represents the person has read the pleading and does not believe that it serves an improper purpose. It authorizes the Administration Commission to impose sanctions on the person signing the pleading and the represented party if the pleading is found to have been filed for an improper purpose, including attorney's fees and costs.

Subsection (22) is amended to authorize a university board of trustees, rather than the State Board of Education, to adopt rules in consultation with DCA that govern the development and adoption of campus master plans.

Section 2 provides the act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Board of Governors; Art. IX, Section 7 of the State Constitution

Article IX, Section 7 of the State Constitution provides that the Board of Governors shall operate, regulate, control, and be fully responsible for the management of the whole university system. The courts have not interpreted this provision with respect to the extent of the powers and duties of the Board of Governors. A lawsuit was filed on December 21, 2004, against the Board of Governors and the State Board of Education seeking a declaratory action, among other things, regarding the Board of Governor's powers and duties with respect to the state university system. The results of this lawsuit may have an impact on the constitutionality of the bill.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Petitioners may experience higher costs as the result of participating in a formal evidentiary hearing rather than the informal hearing that is in current law.

C. Government Sector Impact:

There may be some additional costs for DCA resulting from the provision that requires a formal, as opposed to an informal, hearing.

VI. Technical Deficiencies:

The term "individual" is used on page 6, line 3, and is not defined in s. 1013.30, F.S. Section 1013.30(2)(b), F.S., defines the term "affected local government." This creates a bifurcated process for challenging a campus master plan.

Also, on page 6, line 5, the bill narrows standing for a petitioner to only those issues that have a "direct and material effect on the individual", but does not provide a definition for this phrase.

The bill amends s. 1013.30(8), F.S., to require DCA to hold a formal hearing under s. 120.57(1), F.S., to resolve issues in a petition that remain in dispute after a 60-day mediation period. Section 120.57(1), F.S., requires the administrative law judge holding a formal hearing to issue a

recommended order. This bill does not specify what DCA should do with the recommended order or if it should be submitted directly to the Administration Commission.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 192870 by Education Committee:

This amendment revises the definition of an affected person to require that the person must have also submitted comments, recommendations, or objections to the local government during the period of time beginning with the transmittal of the proposed amendment to the host government until the adoption of the plan or plan amendment. Adjoining local governments are exempt from this requirement.

Barcode 102166 by Education Committee:

This amendment specifies that the contents of a petition filed by an individual affected by the campus master plan must include those items required by the uniform rules adopted under s. 120.54(5), F.S.

Barcode 384070 by Education Committee:

This amendment requires the Division of Administrative Hearings to assign an administrative law judge to hold hearings and resolve disputes concerning the campus master plan if the disputes are not resolved within 60 days.

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