

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 Community Affairs

BILL: CS/SB 832

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Sector Plans

DATE: March 31, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Stearns | Yeatman | CA | Fav/CS |
| 2. | | | EP | |
| 3. | | | FP | |

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 and certain state agencies for their 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 may issue a consumptive use permit for the same time period as a master development of regional impact development order, so long as the project meets a number of requirements. The water management district would be allowed to phase in the water allocation over the duration of the permit to correspond to actual needs.

II. Present Situation:

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.”

Sector plans must be a minimum of 15,000 acres and may not be created within a designated area of critical state concern.¹ The sector planning process requires two levels of planning:²

- 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.

The law allows a local government, prior to preparing a sector plan, to request a scoping meeting with a developer proposing a sector plan.³ The scoping meeting must be noticed and open to the public and is conducted by the applicable RPC with affected local governments and certain state agencies. If a scoping meeting is conducted, the RPC must make written recommendations to the state land planning agency (the Department of Economic Opportunity) and affected local governments on the issues requested by the local government.

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.⁴

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.⁵ Both the long-term master plan and the DSAP must specify the projected population within the

¹ Section 163.3245(1), F.S.

² Section 163.3245(3), F.S.

³ Section 163.3245(2), F.S.

⁴ Section 163.3245(3)(a), F.S.

⁵ Section 163.3245(3)(a) and (b), F.S.

planning area during the chosen planning period. 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.

The state land planning agency must consult with certain state and governmental agencies when it is reviewing a long-term master plan.⁶

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.⁷ This order may be appealed by the owner, developer, or state land planning agency to the Florida Land and Water Adjudicatory Commission (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.⁸ The administrative proceeding for review of a DSAP is to be 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.

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.⁹

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.¹⁰ A water management district also may issue consumptive use permits for durations commensurate with the long-term master plan or DSAP in 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 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.

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.¹¹ A developer may enter into a development agreement with the local government.¹² The duration of the agreement may be through the planning period of the long-term master plan or the DSAP.¹³

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

⁶ Section 163.3245(3)(c), F.S.

⁷ Section 163.3245(3)(e), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 163.3245(4), F.S.

¹¹ Section 163.3245(5), F.S.

¹² Section 163.3245(7), F.S.

¹³ *Id.*

withdrawn will not be subject to the long-term master plan, any DSAP, or the exemption from DRI review.¹⁴ 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.¹⁵

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.¹⁶ The law also protects properties against downzoning, unit density reduction, or intensity reduction in the DSAP until the buildout date.¹⁷

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 the sector planning statute 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 to 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, 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 Department of Environmental Protection and the Fish and Wildlife Conservation Commission 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., regardless of the fact that those lands are already encumbered by a 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.

¹⁴ Section 163.3245(8), F.S.

¹⁵ *Id.*

¹⁶ Section 163.3245(9), F.S.

¹⁷ Section 163.3245(5)(d), F.S.

The bill authorizes an applicant with an approved master development order to request that the applicable water management district issue a consumptive use permit 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 water management district to issue a permit to an applicant for the same time period as the applicant's approved master development order if the order was issued subject to the following requirements:

- It was issued by a county which, at the time the order was issued, was designated as a rural area of opportunity 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.

In reviewing the permit application, the water management district 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 district 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:

None.

VI. Technical Deficiencies:

None.

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:

The amended bill primarily clarifies the sector plan law.

- It clarifies the planning standards of the sector planning statute supersede generally applicable planning standards elsewhere in ch. 163, F.S.
- It 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 Department of Economic Opportunity and state agencies so that they may comment on its consistency with the comprehensive plan and long-term master sector plan.
- It authorizes the Department of Environmental Protection 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.