

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1241 Subdivided Lands  
**SPONSOR(S):** Eagle  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	12 Y, 0 N	Thompson	Smith
2) Appropriations Committee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Antiquated subdivisions are subdivisions that were platted prior to the development of current state and local comprehensive plans and land development regulations, and thus, are not suitable for development under modern planning techniques. Currently, Florida does not provide a statutory mechanism to address the state's 2.1 million vacant lots due to antiquated subdivisions.

The bill establishes a prioritized funding mechanism to provide assistance to local governments and other stakeholders to mitigate the effects of antiquated subdivisions. Specifically, the bill provides that a "legacy community" means lands under a recorded plat which were registered as subdivided lands on or before July 1, 1985 under former chapter 498, F.S., or former chapter 478, F.S. The bill requires each state agency and each public or private entity or corporation that administers a dedicated grant program or trust fund and receives legislative appropriations to fund grants or to provide financial assistance for community development or redevelopment, environmental protection or preservation, local improvements, concurrency, or management and development of real property in this state, to award a portion of those grants or trust funds on a prioritized basis as follows:

- **First Priority:** Incorporated municipalities in which any portion of their land consists of a legacy community;
- **Second Priority:** Special districts, municipal services taxing units, and municipal services benefit units, any portion of which is comprised of a legacy community; and
- **Third Priority:** Applicants for projects other than the projects identified in the above two tiers (see projects list below) only if funds remain after the entities in the first two tiers have been funded.

The entities in the first two tiers are to use the assistance as follows:

- To fund electrical, natural gas, water, or wastewater utility service infrastructure projects;
- To fund transportation infrastructure projects;
- To construct public schools, libraries, public safety facilities, or governmental facilities;
- To vacate or replat a previously recorded plat, or take land management actions to concentrate or aggregate lot owners in the areas of the legacy community that need updated or more efficient municipal services; and
- To acquire, dedicate, or set aside portions of the legacy community to protect potable water supplies or water resources, or to create conservation easements, parks, or recreational areas in the legacy community.

The fiscal impact of the bill on the state, local governments and the private sector is indeterminate. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for discussion.

The effective date of the bill is July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### ***Antiquated Subdivisions***

Current law defines a “Plat or replat” as a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirements of part I of chapter 177, F.S., relating to the platting of land boundaries, and of any local ordinances.<sup>1</sup> A “Subdivision” means the division of land into three or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land, and includes the establishment of new streets and alleys, additions, and resubdivisions, and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.<sup>2</sup>

Generally, antiquated subdivisions (also known as pre-platted subdivisions, obsolete subdivisions, or platted lands) are those subdivisions of land that were recorded or otherwise approved prior to the enactment of land development regulations and Florida’s Growth Management Act,<sup>3</sup> and that are not suitable for development as originally platted. The sale of such properties proliferated in the 1950s due to land speculators mass-marketing small parcels within large tracts of land sight-unseen to buyers nationwide as vacation and retirement home sites.<sup>4</sup> It has been estimated that, historically, 2.1 million vacant lots were sold in approximately 2,600 antiquated subdivisions in Florida.<sup>5</sup>

In 2003, the Florida Legislative Committee on Intergovernmental Relations (LCIR) issued a report entitled “Platted Lands.” According to the report, Florida’s population growth has resulted in an increased need for land development and often antiquated subdivisions are unsuitable for such development. The report describes platted lands as usually exhibiting one or more of the following: “fiscally unsound, or lack of, service delivery; housing developments with no lands set aside for parks, schools, or commercial sites; lack of cohesive character in an area with no ability to ensure sound planning; lack of environmental sensitivity; inadequate planning for emergency management and evacuation, and; serious infrastructure deficits, such as water and wastewater systems.”

##### ***Growth Management***

Prior to the 1970s, growth planning and land development were not addressed at the state or local level in a comprehensive manner in Florida. In 1972, the Legislature passed the Environmental Land and Water Management Act,<sup>6</sup> which created a program to designate areas of critical ecological concern, and a program to provide increased regulation and regional and state oversight for a “development of regional impact” (DRI).<sup>7</sup> However, due to a low number of submittals under the DRI system, and a vesting<sup>8</sup> procedure that protected existing subdivisions, local comprehensive plans were adopted, but often went unenforced.<sup>9</sup>

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<sup>1</sup> s. 177.031(14), F.S.

<sup>2</sup> s. 177.031(18), F.S.

<sup>3</sup> ch. 85-55, Laws of Fla.; codified in ch. 163, pt. II, F.S.

<sup>4</sup> The Florida Legislative Committee on Intergovernmental Relations, *Platted Lands* (Feb. 2003), p. i, available at: <http://www.spikowski.com/documents-LehighAcres/LCIR-PlattedLands-February2003.pdf> (last visited Mar. 23, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> ss. 380.012-380.10 (Supp. 1973).

<sup>7</sup> s. 380.06, F.S., defines the term “development of regional impact,” as any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

<sup>8</sup> s. 380.06(20), F.S., provides for vesting of developments that received certain approvals prior to 1973 and developers that agree to convey property to the local government or the state as a prerequisite for a zoning change approval.

Consequently, the Legislature in 1985 passed the Growth Management Act, known officially as “The Local Government Comprehensive Planning and Land Development Regulation Act” (the Act).<sup>10</sup> The Act required every city and county to create and implement a comprehensive plan to guide future development.<sup>11</sup> This led to the planning techniques and requirements used in the state today. A local government’s comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A development that does not conform to the comprehensive plan may not be approved by a local government unless the local government first amends its comprehensive plan.<sup>12</sup>

### ***Land Sales Practices***

Prior to Florida’s comprehensive land development regulations and the Growth Management Act, the Uniform Land Sales Practices Law, previously called the Florida Installment Land Sales Law<sup>13</sup> addressed the offer and disposition of subdivided lands to the public.<sup>14</sup> The law provided a registration program to protect consumers from fraud and abuse in the sale or lease of vacant subdivided lands.<sup>15</sup>

Originally administered by the Florida Land Sales Board<sup>16</sup> and later by the Division of Florida Land Sales, Condominiums, and Mobile Homes within the Department of Business Regulation,<sup>17</sup> the law included the authority to issue cease and desist orders,<sup>18</sup> civil remedies,<sup>19</sup> and penalties for fraudulent practices regarding land sales.<sup>20</sup> However, the law was more permissive and did not actually require an action to be brought in order to enforce violations.<sup>21</sup> The law also exempted sales of fewer than 50 separate lots, parcels, units or interests in subdivided lands that were made during the course of a year.<sup>22</sup> In addition, subdivisions containing 100 or less properties were exempted in certain circumstances if they were marketed and sold to persons in the local community.<sup>23</sup>

In 2008, the sale of subdivided lands under the Uniform Land Sales Practices Law was deregulated.<sup>24</sup> The deregulation was due in part to the increased regulation of new developments by local government and the federal regulation of interstate land sales.<sup>25</sup> At the time of the deregulation, most sellers were either exempt or under the jurisdiction of the federal Interstate Land Sales Full Disclosure Act<sup>26</sup> regulated by the United States Department of Housing and Urban Development (HUD).<sup>27</sup>

Although Florida has enacted comprehensive legislation for the improved management of land development and rapid population growth, current law does not provide a mechanism to address the state’s 2.1 million vacant lots due to antiquated subdivisions.

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<sup>9</sup> Hubert B. Stroud & William M. Spikowski, *Planning in the Wake of Florida Land Scams*, Association of Collegiate Schools of Planning Journal of Planning Education and Research (1998), at p. 9.

<sup>10</sup> ch. 85-55, Laws of Fla.; codified in ch. 163, pt. II, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *See* s. 163.3163, F.S.

<sup>13</sup> ch. 478, F.S. (1963).

<sup>14</sup> ss. 498.001-498.063, F.S. (2007).

<sup>15</sup> ch. 478, F.S. (1967).

<sup>16</sup> s. 478.031, F.S. (1963).

<sup>17</sup> s. 498.005(6), F.S. (1983).

<sup>18</sup> s. 478.171, F.S. (1967).

<sup>19</sup> s. 478.191, F.S. (1967).

<sup>20</sup> s. 478.211, F.S. (1967).

<sup>21</sup> s. 498.007, F.S. (1983).

<sup>22</sup> s. 478.221(1), F.S. (1967).

<sup>23</sup> s. 478.041(7), F.S. (1967).

<sup>24</sup> ch. 2008-240, Laws of Fla.

<sup>25</sup> Florida House of Representatives Bill Analysis 2008 CS/CS/HB 601, p. 3 (Apr. 15, 2008).

<sup>26</sup> 15 U.S.C. §1701.

<sup>27</sup> *Id.*

## Effect of Proposed Changes

The bill creates s. 163.10, F.S., to establish a prioritized funding mechanism to provide assistance to local governments and other stakeholders to mitigate the effects of antiquated subdivisions.

Specifically, the bill provides that for purposes of this law, the term "legacy community" means lands under a recorded plat which were registered as subdivided lands on or before July 1, 1985 under former chapter 498, F.S., or former chapter 478, F.S.

The bill provides the following Legislative findings:

- a) Since the early days of the twentieth century, developers have subdivided large tracts of undeveloped and unincorporated land in the state with the vision of marketing and selling those subdivisions for small home or commercial sites.
- b) The recorded plats of these subdivisions created vested rights in the purchasers before the creation and implementation of current subdivision, environmental, development, and comprehensive planning standards.
- c) Legacy communities (as defined) have antiquated development patterns that can create significant conflicts with current planning, infrastructure development and financing, and environmental protection laws.
- d) Without assistance to mitigate the effects of these antiquated development patterns, legacy communities will remain at a financial disadvantage relative to other communities in the state, with a disproportionate burden being placed on residential ad valorem tax revenues to provide necessary services in the community.

The bill requires each state agency and each public or private entity or corporation that administers a dedicated grant program or trust fund and receives legislative appropriations to fund grants or to provide financial assistance for community development or redevelopment, environmental protection or preservation, local improvements, concurrency, or management and development of real property in this state, to award a portion of those grants or trust funds to entities that have filed an application, on a prioritized basis as follows:

- **First priority:** Any incorporated municipality in which any portion of its land consists of a legacy community, only for assistance with the following:
  - To fund electrical, natural gas, water, or wastewater utility service infrastructure projects.
  - To fund transportation infrastructure projects.
  - To construct public schools, libraries, public safety facilities, or governmental facilities.
  - To vacate or replat a previously recorded plat, or take land management actions to concentrate or aggregate lot owners in the areas of the legacy community that need updated or more efficient municipal services.
  - To acquire, dedicate, or set aside portions of the legacy community to protect potable water supplies or water resources, or to create conservation easements, parks, or recreational areas in the legacy community.
- **Second priority:** Any special district, municipal services taxing units (MSTUs),<sup>28</sup> and municipal services benefit units (MSBUs),<sup>29</sup> any portion of which is comprised of a legacy community, only for assistance with the following:
  - To fund electrical, natural gas, water, or wastewater utility service infrastructure projects.
  - To fund transportation infrastructure projects.
  - To construct public schools, libraries, public safety facilities, or governmental facilities.
  - To vacate or replat a previously recorded plat, or take land management actions to concentrate or aggregate lot owners in the areas of the legacy community that need updated or more efficient municipal services.

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<sup>28</sup> s. 125.01(1)(q), F.S.

<sup>29</sup> *Id.*

- To acquire, dedicate, or set aside portions of the legacy community to protect potable water supplies or water resources, or to create conservation easements, parks, or recreational areas in the legacy community.
- **Third priority:** Applicants for projects other than those identified in the first and second priority groups but only if funds remain after the priorities in the first and second priority groups have been funded.

To become eligible for the funding, the bill requires an entity to apply to the appropriate state agency or public or private entity or corporation annually for funding for the following state fiscal year, identifying with particularity the amount of funding requested and the project or program to be funded.

The bill provides that the requirements of these funding priorities do not apply to state agencies that administer the Stan Mayfield Working Waterfronts program under s. 380.5105, F.S.<sup>30</sup>

**B. SECTION DIRECTORY:**

**Section 1** creates s. 163.10, F.S., Legacy Communities; related to subdivided lands.

**Section 2** provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

See Fiscal Comments.

**D. FISCAL COMMENTS:**

The fiscal impact on the state, local governments and the private sector is indeterminate. The bill establishes funding priorities for state agencies, and public or private entities or corporations that administer a dedicated grant program or trust fund and receive legislative appropriations to fund grants or to provide financial assistance for community development or redevelopment, environmental

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<sup>30</sup> In 2008, the Legislature created the Stan Mayfield Working Waterfronts Program (SMWWP) to provide money to local governments or designated groups to buy waterfront property to provide access in perpetuity for commercial fishing, aquaculture, and ancillary businesses. The program is funded through the Florida Forever land acquisition program and administered by the Department of Environmental Protection, Office of Operations, Land and Recreation Grants Program, Florida Communities Trust (FCT).

protection or preservation, local improvements, concurrency, or management and development of real property in this state.

The bill does not appropriate additional funds to these entities or require these entities to award additional funds.

The bill does not specify a limitation on the amount of funds that may be applied for or awarded.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**