

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1513 w/CS Regulating the Consolidation and Recordation of Lands
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>10 Y, 0 N</u>	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>19 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Cutchins</u>
3) <u>Judiciary</u>	<u>17 Y, 0 N w/CS</u>	<u>Birtman</u>	<u>Havlicak</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Antiquated subdivisions (also known as pre-platted subdivisions, obsolete subdivisions, or platted lands) are subdivisions platted prior to the development of local comprehensive plans and land development regulations. Currently, throughout some areas of Florida, antiquated subdivisions and platted lands fail to meet the original purposes of the subdivision or platting. These antiquated subdivisions and platted lands provide numerous problems for local governments and property owners alike.

This bill would encourage local governments to vacate or reconfigure antiquated subdivisions through a broad range of statutory revisions, as follows:

- Requiring local governments to specifically address the remediation of antiquated subdivisions in their comprehensive plans and land development regulations.
- Including the vacation or reconfiguration of antiquated subdivisions in the powers that are specifically enumerated for local governments;
- Allowing counties to use eminent domain to consolidate platted lands and replat subdivisions;
- Allowing the remediation of antiquated subdivisions as a purpose for community redevelopment areas and Enterprise Zones;
- Revising the general statute regarding subdivision/platting to specifically include the vacation or reconfiguration of plats; and
- Revising the general statute regarding subdivision/platting to include a specific process for county commissions to order the vacation or reconfiguration of plats, and to allow property owners to apply for same.

The bill does not appear to impact the state budget.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1513d.ju.doc
DATE: April 13, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

To the extent that local governments will need to amend their comprehensive plans and land development regulations, it appears that the size of government is not reduced.

B. EFFECT OF PROPOSED CHANGES:

Currently, throughout some areas of Florida, antiquated subdivisions and platted lands remain that fail to meet the original purposes of the subdivision or platting. These antiquated subdivisions and platted lands provide numerous problems for local governments and property owners alike.

BACKGROUND - THE PLATTED LANDS PROBLEM¹

Florida’s ever increasing population places constant demands on the state’s limited land areas to accommodate such growth. For a variety of reasons, certain tracts of land known as platted lands, cannot be developed or put to other uses. Platted lands (also referred to as antiquated subdivisions) refer to those areas which, although platted, recorded and sold, are not suitable for development or other appropriate use due to non-compliance with applicable land use regulations or other factors such as environmental issues. Many of the subdivisions are removed from the pool of land available for development or other appropriate use. The majority of the areas affected by platted lands sites are located in the southwest quadrant of the state, However, other parts of the state are experiencing platted lands problems in varying degrees.

Starting in the 1920’s, and carrying through the 1970’s, enterprising business people sold land in Florida to people around the globe. While many sales were legitimate, some sales strategies called for twenty-three lots to an acre or sold land described as “waterfront” that was miles and miles away from any coast. In other areas, only paper plats were sold, and were never recorded and never experienced any development. Large-scale marketing land sale ventures were conducted by companies that owned enormous tracts. Governmental regulation of land sales, poor planning by some land sale companies and lack of research by prospective buyers contributed to the creation of millions of acres that now stagnate as undevelopable or useable. It is estimated that Florida has more than 2,600 antiquated subdivisions, covering over 2.1 million lots. In the 1980s, as the state and local governments became more involved in land use regulations, the problems caused by antiquated subdivisions became more apparent. Developers, private lot owners, and service providers also became aware of the obstacles caused by antiquated subdivisions as their own plans were stymied.

Although what constitutes optimal neighborhood design is constantly being reevaluated by planners, architects and residents, there appears to be consensus that antiquated subdivisions do not carry traits that are conducive to providing a high quality of life.

¹ See generally, “Platted Lands”, Florida Legislative Committee on Intergovernmental Relations; February, 2003.

Platted lands are often characterized by one or more of the following traits: 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.

SOLUTIONS PROPOSED BY THE BILL

Including the vacation or reconfiguration of antiquated subdivisions in the powers that are specifically enumerated for local governments – Section 125.01, Florida Statutes, sets forth the powers and duties of the legislative and governing body of a county in order to carry on county government, to the extent not inconsistent with general or special law. This bill amends three subsections of s. 125.01, authorizing county governments to:

- Prepare and enforce comprehensive plans for the development of the county and the regulation of platted lands development, including platting, deplatting, and reassembly;
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the community and environmental welfare; and
- Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, platted lands assembly or adjustment, and navigation and drainage and cooperated with governmental agencies and private enterprises in the development and operation of such programs.

Allowing counties to use eminent domain to consolidate platted lands and replat subdivisions - Eminent domain is generally defined as the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned on the payment of just compensation.² The Legislature has granted the county authority to exercise the right and power of eminent domain; that is the right to appropriate property, except state or federal, for any county purpose.³ The board of county commissioners may, by resolution, authorize the requirement by eminent domain of property real or personal, for any county use or purpose designated in such resolution.⁴

This bill provides that pursuant to the authority of counties or municipalities to exercise the right and power of eminent domain, the consolidation of platted or subdivided lots to allow replatting for more appropriate development consistent with the public policies of the jurisdiction or for public use shall be considered a public purpose.

Requiring comprehensive plans to identify antiquated subdivisions, and to include provisions for remedying antiquated subdivisions - Section 163.3177, Florida Statutes, sets forth the requirements for comprehensive plans. This bill requires such comprehensive plan to include a future land use plan element, which includes (among numerous other things) an analysis of antiquated subdivisions, and the need for redevelopment and land reassembly. The bill requires the future land use plan to contain provisions to address antiquated subdivisions that are underused to minimize the imbalance of single land use buildout, lack of public services, and environmental and water quality impacts; and to identify any area where the local government seeks to consolidate platted or subdivided lots and the vacation of all or a portion of such lots to allow appropriate development, redevelopment, reassembly, or any other use.

Current law also requires each county to adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan within 1 year after submission of its revised comprehensive plan.⁵ This bill requires local governments to address

² See 21 Fla. Jur. 2d, Eminent Domain s.1.

³ See s. 127.01, F.S.

⁴ See s. 127.02, F.S.

⁵ See s. 163.3202, F.S.

antiquated subdivisions in the land development regulations that such local governments are required to adopt.

Allowing the remediation of antiquated subdivisions as a purpose for community redevelopment areas and enterprise zones – Part III of chapter 163, Florida Statutes, addresses community redevelopment areas, which are defined as:

a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or modest income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combinations thereof which the governing body designates as appropriate for community redevelopment.⁶

Upon a finding of necessity by the county or municipality, and upon a further finding that there is a need for a community redevelopment agency to function in the county to carry out the purposes of the law, any county or municipality may create a public body corporate and politic to be known as a 'community redevelopment agency.'⁷ The governing body may also declare itself to be an agency.⁸ The purpose of the agency is chiefly to carry out the provisions of the community redevelopment plan, including the right to acquire by condemnation any interest in real property which it deems necessary for, or in connection with, community redevelopment.⁹

Similarly, an Enterprise Zone is an area designated by the state which has been nominated by a county or municipality by adopting a resolution finding that an area exists within the county or municipality which chronically exhibits extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment; rehabilitation, conservation, or redevelopment is necessary in the interest of the public health, safety, and welfare of the residents of such county or municipality; and revitalization can occur only if the private sector can be induced to invest its own resources in productive enterprises that build or rebuild the economic viability of the area.¹⁰ The government entity can create a public body corporate and politic to be known as an enterprise zone development agency.¹¹ The agency is generally empowered to implement the enterprise zone development plan.

This bill includes antiquated subdivisions, or a pattern of platted or subdivided lots in an area that makes the area unsuitable for economically viable development or use in the definition of 'community redevelopment area', and includes the reassembly, platting, or replatting of lands in the definition of 'community redevelopment.' The bill allows the acquisition of antiquated subdivisions as part of the community redevelopment plan.

The bill further declares the revitalization of antiquated subdivisions as an explicit public purpose relating to enterprise zones; and includes antiquated subdivisions and tax delinquent parcels or a high percentage of inappropriate lot sizes to ensure a balance of land uses in the types of areas that qualify as enterprise zones.

The bill also includes definitions of 'land assembly or adjustment' and 'antiquated subdivisions' in chapter 380, Florida Statutes, relating to Land and Water Management. Nothing in chapter 380

⁶ See s. 163.340(10), F.S.

⁷ See s. 163.356, F.S.

⁸ See s. 163.357, F.S.

⁹ See ss. 163.370 and 163.375, F.S.

¹⁰ See ss. 290.0055 and 290.0065, F.S. Note that these provisions are repealed effective December 31, 2005, by s. 37, ch. 94-136, LOF.

¹¹ See s. 290.0056, F.S. Note that this provision is repealed effective December 31, 2005, pursuant to s. 37, Ch. 94-136, LOF.

authorizes any governmental agency to adopt a rule or regulation that constitutes a taking of property without the payment of full compensation, or in violation of the state or federal constitution.¹²

Revising the general statute regarding subdivision/platting to specifically include the vacation or reconfiguration of plats - A “plat or replat” means 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 requirement of all applicable sections of the law and of any local ordinances.¹³ The stated purpose of the platting provisions found in Part I of chapter 177, Florida Statutes, is to establish consistent minimum requirements, and to create such additional powers in local governing bodies, to regulate and control the platting of lands.¹⁴ Plat vacation is a technique most commonly used when one landowner owns or acquires multiple lots. If no development has occurred for a certain period of time, the landowner can request that the antiquated plat be vacated and a new plat is recorded.¹⁵ Plat vacation is generally allowed provided that the vacation will not affect the ownership or right of convenient access of persons owning other parts of the subdivision.¹⁶

This bill makes the following changes to the platting requirements, and platting vacation, in chapter 177, Florida Statutes:

- Includes the replatting and reassembly of lands in the purpose of the platting provisions.
- Provides that the general welfare of the public requires the harmonious, orderly, and progressive development of land.
- Authorizes local governments to adopt, amend, or revise and enforce measures relating to platting and land assembly or adjustment.
- Provides legislative intent regarding the regulation of platting and land assembly or readjustment.
- Includes a definition of “land assembly or adjustment”; and reduces the definition of “subdivision” from three or more divisions of land, to two.
- Requires subdivision plats to be recorded in the public records of each county in which the property is situated.
- Includes assembly or replatting of subdivisions in the law governing vacation and annulment of subdivision plats.
- Allows the governing body of a county to order the assembly or adjustment of all or part of a subdivision within its jurisdiction to the provisions and objectives of the revised local comprehensive plan, if the following conditions are met:
 - The plat was approved or recorded at least 25 years prior to the county commission’s actions; and
 - Not more than 20% of the subdivision has been developed for its currently allowable uses.
- Allows a private owner of at least 60% of a subdivision to apply to the county commission to pursue reassembly or a parcel, if the person demonstrates that such action would not affect the ownership or convenient access of other persons who own land in the subdivision, based upon a finding by the governing body that the proposed assembly or adjustment conforms to the comprehensive plan and that the public health, safety, economy, comfort, order, convenience, and welfare will be promoted.

C. SECTION DIRECTORY:

Section 1. Amends ss. 125.01(1)(g), (h) and (j), F.S., relating to county governing board powers and duties.

¹² See s. 380.08, F.S.

¹³ See s. 177.031(14), F.S.

¹⁴ See s. 177.011, F.S.

¹⁵ See s. 177.101, F.S.

¹⁶ Id.

Section 2. Amends s. 127.01(3), F.S., relating to counties delegated power of eminent domain.

Section 3. Amends ss. 163.3164(23) and (32), F.S., relating to definitions in the Local Government Comprehensive Planning and Land Development Regulation Act.

Section 4. Amends s. 163.3177(6)(a), F.S., relating to required and optional comprehensive plan elements.

Section 5. Amends ss. 163.3202(2)(a) and (3), F.S., relating to land development regulations.

Section 6. Amends ss. 163.340(9) and (10), F.S., relating to definitions of "community redevelopment," "redevelopment," and "community redevelopment area."

Section 7. Amends s. 163.360(8)(b), F.S., relating to community redevelopment plans.

Section 8. Amends 166.411(12), F.S., relating to eminent domain.

Section 9. Amends s. 177.011, F.S., relating to local government regulation of platting, replatting and reassembly.

Section 10. Amends s. 177.031(18), F.S., relating to definitions of "subdivision" and "land assembly or adjustment."

Section 11. Amends s. 177.091, F.S., relating to plats made for recording.

Section 12. Amends s. 177.101, F.S., relating to assembly, replat, vacation and annulment of plats subdividing land.

Section 13. Amends s. 177.111, F.S., relating to instructions for filing plats.

Section 14. Amends s. 290.003, F.S., relating to the policy and purpose for the Florida Enterprise Zone Act of 1994.

Section 15. Amends s. 290.0058(4), F.S., relating to the determination of pervasive poverty, unemployment and general distress.

Section 16. Amends ss. 380.031(8), (21), and (22), F.S., relating to definitions respectively of "land development regulations," "land assembly or adjustment," and "antiquated subdivisions."

Section 17. Provides for an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Community Affairs reports that it could incur additional costs as a result of staff time and expenses needed to process plan amendments related to antiquated subdivisions, any litigation related to same, and development order or land development regulation challenges that

are related to antiquated subdivisions. The department notes that it presumes that the extra workload could be absorbed by existing staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Provides a potential for additional ad valorem revenues resulting from the reassembly of certain lands and the eventual productive economic or environmental use of those lands.

2. Expenditures:

The Department of Community Affairs reports that local governments could be required to submit and adopt comprehensive plan amendments and land development regulations that address antiquated subdivisions, which would involve costs related to the preparation and process of these amendments; local governments may incur additional costs due to staff time and litigation that will potentially occur as a result of actually vacating or reconfiguring antiquated subdivisions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The rights of property owners in antiquated subdivisions could be affected, which could in turn affect their property value.

D. FISCAL COMMENTS:

The Department of Community Affairs reports that local governments would potentially avoid excessive costs of public facilities and services that would be needed to serve development in antiquated subdivisions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Subcommittee on Local Affairs favorably recommended two amendments. Amendment 1 changes the language of line 129 to provide that replatting is considered a public

purpose. Amendment 2 excludes state highway system roads from the vacation of streets provision in line 676.

On April 1, 2004, the Committee on Local Government & Veterans' Affairs adopted the two amendments referenced above.

On April 13, 2004, the Judiciary Committee adopted 5 amendments as follows:

1. Amends lines 134 and 328 - 329 to read, "(3) The consolidation of platted or subdivided lots to allow replatting for more appropriate development consistent with the public policies of the jurisdiction, or for public use shall be considered a public purpose" in order to mitigate any perceived constitutional infirmity regarding the takings clause.
2. Deletes lines 708-712, which require county governing authorities to provide full and just compensation to specified property owners who do not want to participate in the application of reassembly of their property, as the language appears to violate the constitutional separation of powers doctrine, to include an inherent conflict of interest, and to be unnecessary as fee simple owners have an independent constitutional and statutory remedy.
3. Amendment 3 was amended to provide a due date for specified plan amendments.
4. Deletes lines 780-831 to remove language requiring recordation of specified documents.
5. Deletes lines 79-109 to remove language regarding limitation of actions by former property owners when properties are acquired by tax deed.

This analysis is to the bill as amended.