1983

Session Law 83-301

Florida Senate & House of Representatives

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**NOTES**

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MUNICIPALITIES

AMENDMENT OF GENERAL TEXT OF ZONING CODE—APPLICABILITY OF SPECIAL NOTICE REQUIREMENTS

To: Seymour H. Rowland, Jr., City Attorney, Ocala
Prepared by Craig Wills, Assistant Attorney General

QUESTION:

Do the special notice requirements of s. 166.041(3)(c), F. S., apply when the governing body amends the general text of a municipal zoning code but does not rezone a specific tract of land?

SUMMARY:

The special notice requirements contained in s. 166.041(3)(c), F. S., apply to or govern any amendment to a municipal zoning code or ordinance which has the effect of changing or altering the existing uses, restrictions, or regulation of land or permissible activities on or uses thereof within designated zones or districts, conversely, an amendatory ordinance not having such effect would not have to comply with the special notice provisions of s. 166.041(3)(c).

Section 166.011, F. S., establishes a uniform procedure for the adoption of municipal ordinances and resolutions. These procedures are applicable generally to all municipalities throughout the state, and the requirements set forth therein cannot be lessened or reduced by any municipality. See ACO 074.371. Generally, except for ordinances which rezone private real property, an ordinance must be read by title, or in full, on at least 2 separate days and noticed once in a newspaper of general circulation in the municipality at least 7 days prior to such ordinance's adoption. Compare City of St. Petersburg v. Austin, 355 So. 2d 486 (2 D.C.A. Fla., 1978). As set forth in the statute, "[t]he notice of proposed enactment shall state the date, time, and place of the meeting, the title or titles of proposed ordinances, and the place or places within the municipality where such proposed ordinances may be inspected by the public." Section 166.041(3)(a).

The notice must also advise interested parties of their right to appear at a public meeting and be heard in respect to the proposed ordinance. However, for ordinances which rezone private real property, special, more stringent noticing procedures must be followed by the governing body of the municipality. See s. 166.041(3)(c). For ordinances in which the proposed rezoning involves less than 5 percent of the total land area of the municipality, notice by mail to each of the real property owners whose land the municipality will rezone by the enactment is required at least 30 days prior to a public hearing on the proposed ordinance. For proposed ordinances rezoning more than 5 percent of the total land area of the municipality, the statute sets out specific requirements for advertised notice. Section 166.041(3)(c) is not in terms limited to the rezoning of a single or specific parcel of land or the single ownership of a particular parcel of land, rather, it speaks in terms of "land area" and "area covered" by a proposed rezoning ordinance, as opposed to specific parcels or ownership of land.

You question which noticing requirements and procedures of the statute must be followed by a municipality that proposes to amend "the general text of the zoning code" rather than rezoning a specific parcel of real property. In a request for clarification of the term "amendment to general text of the zoning code," you stated that it meant "a change in either the procedural or substantive provisions of the code that might affect all future petitions to rezone private property but having no immediate effect on any pending proceeding to zone or rezone private property." (Emphasis supplied.) Since it is still not completely clear what types of amendments this term encompasses, this office may respond to your inquiry only in a general way.

Section 166.041(3)(c), F. S., in pertinent part, states that "[e]nactment of ordinances initiated by the governing body or its designee which rezone private real property shall be enacted pursuant to the following procedure . . . ." (Emphasis supplied.) The statute
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Section 166.041, F. S., establishes a uniform procedure for the adoption of municipal ordinances and resolutions. These procedures are applicable generally to all municipalities throughout the state, and the requirements set forth therein cannot be lessened or reduced by any municipality. See AGO 074-371. Generally, except for ordinances which rezone private real property, an ordinance must be read by title, or in full, on at least 2 separate days and noticed once in a newspaper of general circulation in the municipality at least 7 days prior to such ordinance’s adoption. Compare City of St. Petersburg v Austin, 355 So. 2d 486 (2 DCA Fla., 1978). As set forth in the statute, “[t]he notice of proposed enactment shall state the date, time, and place of the meeting, the title or titles of proposed ordinance, and the place or places within the municipality where such proposed ordinances may be inspected by the public.” Section 166.041(3)(a)

The notice must also advise interested parties of their right to appear at a public meeting and be heard in respect to the proposed ordinance. However, for ordinances which rezone private real property, special, more stringent noticing procedures must be followed by the governing body of the municipality. See s. 166.041(3)(c). For ordinances in which the proposed rezoning involves less than 5 percent of the total land area of the municipality, notice by mail to each of the real property owners whose land the municipality will rezone by the enactment is required at least 30 days prior to a public hearing on the proposed ordinance. For proposed ordinances rezoning more than 5 percent of the total land area of the municipality, the statute sets out specific requirements for advertised notice. Section 166.041(3)(c) is not in terms limited to the rezoning of a single or specific parcel of land or the single ownership of a particular parcel of land, rather, it speaks in terms of “land area” and “area covered” by a proposed rezoning ordinance, as opposed to specific parcels or ownership of land.

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Section 166.041(3)(c), F. S., in pertinent part, states that “[c]ntiuctment of ordinances enacted by the governing body or its designee which rezone private real property shall be enacted pursuant to the following procedure” (Emphasis supplied.) The statute
requires notice be given to each property owner whose land the municipality proposes to rezone stating the substance of the proposed ordinance as it affects that property owner or, in cases involving more than 5 percent of the land area of the municipality, clearly explaining the proposed ordinance and, if by advertisement, containing a geographic location map of the area covered by the proposed ordinance.

"Zoning" is defined at 82 Am. Jur 2d Zoning and Planning s 2 (1976), as the "division of a municipality or other local community into districts, and the regulation of buildings and structures (in such districts) according to their construction and the nature and extent of their use, or the regulation of land according to its nature and use." See also 101A CJS Zoning & Land Planning s 2 (1979), and Black's Law Dictionary (4th Rev ed 1968) at 1793. Thus, the typical zoning ordinance divides the community into several or a number of districts, specifying or restricting the use to which the land in each district or zone may be put.

A rezoning ordinance is a legislative act which is, in effect, an amendment to the original ordinance. See 82 Am. Jur 2d Zoning & Planning s 18 (1976). The prefix "re" is defined by Webster's New Collegiate Dictionary (1977), p 960, as meaning "again" or "anew." In Troup v Bird, 53 So 2d 717 (Fla 1951), the Florida Supreme Court stated that "rezoning ordinarily contemplates a change in existing zoning rules and regulations within a district, subdivision or other comparatively large area in a given governmental unit ... ." It is stated at 8 McQuillan Zoning s 25 93 (1976), that "rezoning to a different classification may be accomplished as effectively by changing the content of the classification as by shifting the classification category in which the particular property is placed." In Sarasota County v Walker, 144 So 2d 345 (2 DCA Fla, 1962), the court used the term "rezoning" in upholding a resolution of the board of county commissioners for Sarasota County which reclassified certain property from multiple dwelling to commercial use. In McGee v City of Coup, 168 So 2d 766 (2 DCA Fla, 1964), the Second District Court of Appeal stated that an amendatory zoning ordinance which changed the permitted use from multiple family to commercial within a district was a type of rezoning. See also Metropolitan Dade County v McGee, 291 So 2d 28 (3 DCA Fla, 1974). Thus, any amendment to the "substantive provisions" or "general text" of a zoning ordinance which has the effect of changing or altering existing uses or restrictions or existing regulation of land or permissible activities therein within designated zones or districts is a type of rezoning. Also included in this definition would be the redrawing of district boundary lines. See 101A CJS Zoning & Land Planning s 41 (1979). See also Troup v Bird, supra, for a discussion of the distinction between rezoning and the granting of a variance from, or an exception to, zoning regulations.
A bill to be entitled
An act relating to municipalities; amending s.
166.041(3)(c), Florida Statutes, providing for
the applicability of procedures for the
enactment of municipal rezoning ordinances;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section
166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and
resolutions.--

(3) (c) Enactment of ordinances initiated by the governing
body or its designee which rezone specific parcels of private
real property shall be enacted pursuant to the following
procedure:

1. In cases in which the proposed rezoning involves
less than 5 percent of the total land area of the
municipality, the governing body shall direct the clerk of the
governing body to notify by mail each real property owner
whose land the municipality will rezone by enactment of the
ordinance and whose address is known by reference to the
latest ad valorem tax records. The notice shall state the
substance of the proposed ordinance as it affects that
property owner and shall set a time and place for one or more
public hearings on such ordinance. Such notice shall be given
at least 30 days prior to the date set for the public hearing,
and a copy of such notice shall be kept available for public
inspection during the regular business hours of the office of

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
the clerk of the governing body. The governing body shall
hold a public hearing on the proposed ordinance and may, upon
the conclusion of the hearing, immediately adopt the
ordinance.

2. In cases in which the proposed ordinance deals with
more than 5 percent of the total land area of the
municipality, the governing body shall provide for public
notice and hearings as follows:

   a. The local governing body shall hold two advertised
public hearings on the proposed ordinance. Both hearings
shall be held after 5 p.m. on a weekday, and the first shall
be held approximately 7 days after the day that the first
advertisement is published. The second hearing shall be held
approximately 2 weeks after the first hearing and shall be
advertised approximately 5 days prior to the public hearing.
The day, time, and place at which the second public hearing
will be held shall be announced at the first public hearing.

   b. The required advertisements shall be no less than
one-quarter page in a standard size or a tabloid size
newspaper, and the headline in the advertisement shall be in a
type no smaller than 18 point. The advertisement shall not be
placed in that portion of the newspaper where legal notices
and classified advertisements appear. The advertisement shall
be published in a newspaper of general paid circulation in the
municipality and of general interest and readership in the
community, not one of limited subject matter, pursuant to
chapter 50. It is the legislative intent that, whenever
possible, the advertisement shall appear in a newspaper that
is published at least 5 days a week unless the only newspaper
in the community is published less than 5 days a week. The
advertisement shall be in the following form:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
NOTICE OF ZONING CHANGE

The ...(name of local governmental unit)... proposes to rezone the land within the area shown in the map in this advertisement.

A public hearing on the rezoning will be held on ...(date and time)... at ...(meeting place)....

The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the area.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance.

Section 2. This act shall take effect October 1, 1983.
I. SUMMARY:
A. Present Situation:

Notice and public hearing requirements for the adoption of municipal ordinances are established in s. 166.041, F.S. In regard to a proposed ordinance not related to rezoning, the municipality must publish in a local newspaper of general circulation the title of the proposed ordinance and the time and location of the meeting at which the proposed ordinance will be considered (s. 166.041(3)(a), F.S.). Notice for a proposed ordinance initiated by the municipality to rezone private real property, however, must meet more extensive publication requirements (s. 166.041(3)(c), F.S.). If the proposed rezoning involves less than 5 percent of the total land area of the municipality, notice must be mailed to each owner of property to be rezoned. If the proposed ordinance deals with more than 5 percent of the total land area of the municipality, notice must be published in a local newspaper of general circulation in accordance with specific standards which include the size of the type, location of the advertisement in the newspaper, size of the advertisement (not less than 1/4-page), number of days per week it must appear, wording of the notice, and inclusion of a location map. In addition, two advertised public hearings must be held on such proposed rezoning ordinances. In lieu of the advertisement, the municipality may mail notice to each person owning real property within the area covered by the rezoning ordinance.

The Attorney General has stated that the more extensive publication and public hearing requirements apply to any amendment to the substantive provisions or general text of a zoning ordinance if the effect of the amendment would be to alter existing uses of land or permissible activities upon land constituting more than 5 percent of the total land area of the municipality (AGO 80-104).

B. Effect of Proposed Changes:

This bill would restrict the more extensive notice and public hearing requirements of s. 166.041(3)(a) and (c), F.S., to those proposed rezoning ordinances which rezone specific parcels of private real property or which substantially change permitted use categories in zoning districts. Notice of a proposed rezoning ordinance which would neither rezone specific parcels of private real property nor make a substantial change in a permitted use category would have to meet the same requirements as proposed ordinances that are not related to rezoning, which are that the proposed ordinance be published in a local newspaper of general circulation noting the title of the ordinance and the time and location of the meeting at which the proposed ordinance will be considered. Such a proposed
rezoning ordinance also would not have to be heard at two advertised public hearings.)

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Any savings realized by municipalities are presumed to be passed on ultimately to their taxpayers or service users.

B. Government:

Municipalities would save the cost of the 1/4-page advertisement and a second advertised public hearing on those rezonings that are initiated by the municipality and affect over 5 percent of the land area of the municipality, but neither rezone specific parcels of private real property nor substantially change permitted use categories in zoning districts. Municipalities would also save the cost of mailing notices to each owner of property to be rezoned on those rezonings that are initiated by the municipality and affect less than 5 percent of the land area of the municipality, but neither rezone specific parcels of private real property nor substantially change permitted use categories in zoning districts. The weekday cost of a 1/4-page advertisement in some of the state's larger newspapers can vary between $375 and $700.

III. COMMENTS:

The determination of what types of changes in permitted use categories are substantial will probably be open to judicial interpretation based on the facts of the situation.

An identical bill, HB 609, has been introduced in the House this year.

IV. AMENDMENTS:

None.
I. SUMMARY:

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Notice and public hearing requirements for the adoption of municipal ordinances are established in s. 166.041, F.S. In regard to a proposed ordinance not related to rezoning, the municipality must publish in a local newspaper of general circulation the title of the proposed ordinance and the time and location of the meeting at which the proposed ordinance will be considered (s. 166.041(3)(a), F.S.). Notice for a proposed ordinance initiated by the municipality to rezone private real property, however, must meet more extensive publication requirements (s. 166.041(3)(c), F.S.). If the proposed rezoning involves less than 5 percent of the total land area of the municipality, notice must be mailed to each owner of property to be rezoned. If the proposed ordinance deals with more than 5 percent of the total land area of the municipality, notice must be published in a local newspaper of general circulation in accordance with specific standards which include the size of the type, location of the advertisement in the newspaper, size of the advertisement (not less than 1/4-page), number of days per week it must appear, wording of the notice, and inclusion of a location map. In addition, two advertised public hearings must be held on such proposed rezoning ordinances. In lieu of the advertisement, the municipality may mail notice to each person owning real property within the area covered by the rezoning ordinance.

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This bill would restrict the more extensive notice and public hearing requirements of s. 166.041(3)(a) and (c), F.S., to those proposed rezoning ordinances which rezone specific parcels of private real property. (Notice of a proposed rezoning ordinance which would not rezone specific parcels of private real property (e.g., a proposed rezoning ordinance which makes a change in a permitted use category throughout a zoning district) would only have to meet the less extensive requirements currently applied to proposed ordinances that are not related to rezoning, which are that the proposed ordinance be published in a local newspaper of general circulation noting the title of the ordinance and the time and location of the meeting at which the proposed ordinance will be considered.
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III. COMMENTS:

A similar bill, HB 609, was ordered enrolled on June 3, 1983.

IV. AMENDMENTS:

None.
February 4, 1983

Representative Jack Tobin
6191 W. Atlantic Blvd.
Suite #1
Margate, Fl. 33063

Dear Jack:

As a follow up to our conversation in Tallahassee earlier in the week, I'm asking that you introduce a bill that will substantially reduce the cost of rezoning procedures now required of local government.

F.S. 166.041(3)(c) outlines two advertising procedures for city ordinances which rezone private real property, one for changes which affect less than 5% of the city's land area and one for changes which affect more than 5% of the city's land area. The latter requires the placement of a 1/4 page advertisement in a general paid circulation newspaper and costs in Broward anywhere between $600-$750.

AGO 80-104, (attached), has in effect said that general text amendments to our zoning ordinances potentially effect more than 5% of the land area and therefore require the more costly procedure. We do not believe the law was designed to place this burden on local government, particularly when many text changes are minor or merely technical in effect. If we assume that each of the state's 393 cities makes only one text change a year at an average 1/4 page ad cost of $500, it's costing a minimum of $196,500.

Attached for your consideration is some proposed language that we believe will clarify what the legislature intended. The potential savings to local government is tremendous and it in no way prejudices public notice/hearing requirements currently required by law.
MUNICIPALITIES

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To Seymour H. Rowland, Jr., City Attorney, Orlando
Prepared by Craig Willis, Assistant Attorney General

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The notice must also advise interested parties of their right to appear at a public meeting and be heard in respect to the proposed ordinance. However, for ordinances which rezone private real property, special, more stringent notice procedures must be followed by the governing body of the municipality. See 166.041(3)(c). For ordinances in which the proposed rezoning involves less than 5 percent of the total land area of the municipality, notice by mail to each of the real property owners whose land will be rezone by the enactment is required at least 30 days prior to a public hearing on the proposed ordinance. For proposed ordinances rezone more than 5 percent of the total land area of the municipality, the statute sets out specific notice provisions. A proposed rezoning ordinance which has the effect of changing or altering existing uses or restrictions or existing regulation of land or permissible activities must be advertised in a newspaper of general circulation in the municipality at least 7 days prior to any public hearing. Ordinances which rezone private real property are subject to the same notice requirements as other ordinances.

You question which notice provisions and procedures of the statute must be followed by a municipality that proposes to amend the “general text of the zoning code,” rather than rezoning a specific parcel of real property. In a request for clarification of the term “amendment to general text of the zoning code,” you stated that it meant “a change in either the procedural or substantive provisions of the code that might affect all future petitions to rezone private property but having no immediate effect on any pending rezoning petition.” (Emphasis supplied) Since it is still not completely clear what types of amendments the term encompasses, this office may respond to your inquiry only in a general way.

Section 166.041(3)(c), F.S., in pertinent part, states that “[e]nactment of ordinances initiated by the governing body or its designee which rezone private real property shall be enacted pursuant to the following procedure.” (Emphasis supplied) The statute requires that notice be given to each property owner whose land the municipality proposes to rezone stating the substance of the proposed ordinance and that the property owner or, in cases involving more than 5 percent of the land area of the municipality, clearly explaining the proposed ordinance and, if by advertisement, containing a geographic location map of the area covered by the proposed ordinance. “Zoning” is defined at 2 A.M. Jur. 2d Zoning and Planning § 2 (1976), as the “division of a municipality or other local community into districts, and the regulation of buildings and structures within such districts according to their construction and the nature and extent of their use, or the regulation of land according to its nature and use.” See also 10A C.J. S. Zoning & Land Planning § 2 (1979), and Black’s Law Dictionary (4th Rev. 1968) at 1793. Thus, the typical zoning ordinance divides the community into several or a number of districts, specifying or restricting the use to which the land in each district or zone may be put.

A rezoning ordinance is a legislative act which is, in effect, an amendment to the original ordinance. See 2 A.M. Jur. 2d Zoning & Planning § 8 (1976). The phrase “amendment” is defined by Webster’s New Collegiate Dictionary (1977), p. 960, as meaning “again” or “again.” It is stated at 8 Quimblin Zoning § 2593 (1976), that “re zoning” to a different classification may be accomplished as effectively by changing the content of the classification as by shifting the classification category in which the particular property is placed. In Sarasota County v. Walker, 114 So.2d 348 (2 D.C.A. Fla., 1962), the court used the term “re zoning” in upholding a resolution of the board of county commissioners for Sarasota County which reclassified certain property from multiple dwelling to commercial use. In McGee v. City of Cocoa, 168 So.2d 766 (2 D.C.A. Fla., 1964), the Second District Court of Appeal stated that an amendatory zoning ordinance which changed the permitted use from multiple family to commercial within a district was a type of re zoning. See also Metropolitan Dade County v. McGearry, 291 So.2d 28 (3 D.C.A. Fla., 1974). Thus, any amendment to the “substantive provisions” or “general text” of a zoning ordinance which has the effect of changing or altering existing uses or restrictions or existing regulation of land or permissible activities thereon designated zones or districts is a type of re zoning. Also included in this definition would be the redrawing of district boundaries. See 10A C.J. S. Zoning & Land Planning § 4 (1979). See also Troup v. Bird, supra, for a discussion of the distinction between rezoning and the granting of a variance from, or an exception to, zoning regulations.
A bill to be entitled
An act relating to procedures for adoption
of ordinances and resolutions; amending s.
166.041(3)(c), Florida Statutes, providing
that rezoning of specific parcels of private
real property and substantial changes to
zoning use categories be subject to certain
procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3)(c) of section 166.041, Florida
Statutes, is amended to read:

166.041 Procedures for adoption of ordinances
and resolutions --

(3)(c) Enactment of ordinances initiated by the
governing body or its designee which rezone specific
parcels of private real property or which substantially
change permitted use categories in zoning districts
shall be enacted pursuant to the following procedure:

Section 2. This act shall take effect upon becoming a
law.
I. SUMMARY:

A. Present Situation:

Notice and public hearing requirements for the adoption of municipal ordinances are established in s. 166.041, F.S. In regard to a proposed ordinance not related to rezoning, the municipality must publish in a local newspaper of general circulation the title of the proposed ordinance and the time and location of the meeting at which the proposed ordinance will be considered (s. 166.041(3)(a), F.S.). Notice for a proposed ordinance initiated by the municipality to rezone private real property, however, must meet more extensive publication requirements (s. 166.041(3)(c), F.S.). If the proposed rezoning involves less than 5 percent of the total land area of the municipality, notice must be mailed to each owner of property to be rezoned. If the proposed ordinance deals with more than 5 percent of the total land area of the municipality, notice must be published in a local newspaper of general circulation in accordance with specific standards which include the size of the type, location of the advertisement in the newspaper, size of the advertisement (not less than 1/4-page), number of days per week it must appear, wording of the notice, and inclusion of a location map. In addition, two advertised public hearings must be held on such proposed rezoning ordinances. In lieu of the advertisement, the municipality may mail notice to each person owning real property within the area covered by the rezoning ordinance.

The Attorney General has stated that the more extensive publication and public hearing requirements apply to any amendment to the substantive provisions or general text of a zoning ordinance if the effect of the amendment would be to alter existing uses of land or permissible activities upon land constituting more than 5 percent of the total land area of the municipality (AGO 80-104).

B. Effect of Proposed Changes:

This bill would restrict the more extensive notice and public hearing requirements of s. 166.041(3)(a) and (c), F.S., to those proposed rezoning ordinances which rezone specific parcels of private real property or which substantially change permitted use categories in zoning districts. (Notice of a proposed rezoning ordinance which would neither rezone specific parcels of private real property nor make a substantial change in a permitted use category would have to meet the same requirements as proposed ordinances that are not related to rezoning, which are that the proposed ordinance be published in a local newspaper of general circulation noting the title of the ordinance and the time and location of the meeting at which the proposed ordinance will be considered. Such a proposed
rezoning ordinance also would not have to be heard at two advertised public hearings.)

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Any savings realized by municipalities are presumed to be passed on ultimately to their taxpayers or service users.

B. Government:

Municipalities would save the cost of the 1/4-page advertisement and a second advertised public hearing on those rezonings that are initiated by the municipality and affect over 5 percent of the land area of the municipality, but neither rezone specific parcels of private real property nor substantially change permitted use categories in zoning districts. Municipalities would also save the cost of mailing notices to each owner of property to be rezoned on those rezonings that are initiated by the municipality and affect less than 5 percent of the land area of the municipality, but neither rezone specific parcels of private real property nor substantially change permitted use categories in zoning districts. The weekday cost of a 1/4-page advertisement in some of the state's larger newspapers can vary between $375 and $700.

III. COMMENTS:

The determination of what types of changes in permitted use categories are substantial will probably be open to judicial interpretation based on the facts of the situation.

An identical bill, HB 609, has been introduced in the House this year.

IV. AMENDMENTS:

None.
one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

In cases in which the proposed ordinance deals with more than 5 percent of the total land area of the municipality, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. Both hearings shall be held after 5 p.m. on a weekday, and the first shall be held approximately 7 days after the day that the first advertisement is published. The second hearing shall be held approximately 2 weeks after the first hearing and shall be advertised approximately 5 days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

b. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the municipality and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever...
A bill to be entitled
An act relating to municipalities, amending s. 166.041(3)(c), Florida Statutes, providing for the applicability of procedures for the enactment of municipal rezoning ordinances to ordinances substantially changing permitted use categories in zoning districts, providing an effective date

Be It Enacted by the Legislature of the State of Florida

Section 1 Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read

166.041 Procedures for adoption of ordinances and resolutions --

(c) Enactment of ordinances initiated by the governing body or its designee which rezone specific parcels of private real property or which substantially change permitted use categories in zoning districts shall be enacted pursuant to the following procedure.

1 In cases in which the proposed rezoning or permitted use change involves less than 5 percent of the total land area of the municipality, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will rezone or whose land will be affected by the permitted use change by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for
possible, the advertisement shall appear in a newspaper that
is published at least 5 days a week unless the only newspaper
in the community is published less than 5 days a week. The
advertisement shall be in the following form:

NOTICE OF ZONING (PERMITTED USE) CHANGE

The [name of local governmental unit] proposes to
rezone [change the permitted use of] the land within the area
shown in the map in this advertisement.

A public hearing on the rezoning will be held on
[date and time] at [meeting place].

The advertisement shall also contain a geographic location map
which clearly indicates the area covered by the proposed
ordinance. The map shall include major street names as a
means of identification of the area.

In lieu of publishing the advertisement set out in
this paragraph, the municipality may mail a notice to each
person owning real property within the area covered by the
ordinance. Such notice shall clearly explain the proposed
ordinance and shall notify the person of the time, place, and
location of both public hearings on the proposed ordinance.

Section 2 This act shall take effect October 1, 1983

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HOUSE SUMMARY

Provides that the procedures for the adoption of
municipal rezoning ordinances shall apply to the adoption
of municipal ordinances which substantially change
permitted use categories in zoning districts.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance deals with more than 5 percent of the total land area of the municipality, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. Both hearings shall be held after 5 p.m. on a weekday, and the first shall be held approximately 7 days after the day that the first advertisement is published. The second hearing shall be held approximately 2 weeks after the first hearing and shall be advertised approximately 5 days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

b. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the municipality and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever
A bill to be entitled
An act relating to municipalities; amending s. 166.041(3)(c), Florida Statutes, providing for the applicability of procedures for the enactment of municipal rezoning ordinances to ordinances substantially changing permitted use categories in zoning districts; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and resolutions.--

(3) Enactment of ordinances initiated by the governing body or its designee which rezone specific parcels of private real property or which substantially change permitted use categories in zoning districts shall be enacted pursuant to the following procedure:

1. In cases in which the proposed rezoning or permitted use change involves less than 5 percent of the total land area of the municipality, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will rezone or whose land will be affected by the permitted use change by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for
possible, the advertisement shall appear in a newspaper that
is published at least 5 days a week unless the only newspaper
in the community is published less than 5 days a week. The
advertisement shall be in the following form:

NOTICE OF ZONING (PERMITTED USE) CHANGE

The ...(name of local governmental unit) ...proposes to
rezone (change the permitted use of) the land within the area
shown in the map in this advertisement.

A public hearing on the rezoning will be held on
...(date and time) ...at ...(meeting place)....

The advertisement shall also contain a geographic location map
which clearly indicates the area covered by the proposed
ordinance. The map shall include major street names as a
means of identification of the area.

c. In lieu of publishing the advertisement set out in
this paragraph, the municipality may mail a notice to each
person owning real property within the area covered by the
ordinance. Such notice shall clearly explain the proposed
ordinance and shall notify the person of the time, place, and
location of both public hearings on the proposed ordinance.

Section 2. This act shall take effect October 1, 1983.

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HOUSE SUMMARY

Provides that the procedures for the adoption of
municipal rezoning ordinances shall apply to the adoption
of municipal ordinances which substantially change
permitted use categories in zoning districts.
Summary:
A. Present Situation: Notice requirements for the adoption of municipal ordinances are established in section 166.041, Florida Statutes. In most instances, the municipality must publish the title of the ordinance and the time and location of the meeting. However, notice for a rezoning ordinance which is proposed by the municipality must meet more stringent publication requirements. If the proposed ordinance would rezone less than 5 percent of the total area of the municipality, notice must be mailed to each owner of property to be rezoned. If the ordinance would rezone over 5 percent of the total area of the municipality, notice must be published pursuant to specific standards which include a one quarter page newspaper advertisement.

The Attorney General has recently stated that the more stringent publication requirements apply to amendments to the substantive provisions or general text of a zoning ordinance, if the effect would be to alter existing uses of land or permissible activities upon land. (AGO 080-104)

Therefore, even a minor change would require a quarter page advertisement if it impacts over 5 percent of the area of the municipality.

B. Effect of Proposed Changes: House Bill 609 would limit the more stringent notice requirements of s. 166.041(3)(c) to those rezonings which rezone specific parcels of private real property or substantially change permitted use categories in zoning districts. Rezonings which make insubstantial changes throughout the zoning code or a particular zoning classification would only be required to fulfill the basic notice requirements of s. 164.041.

C. Section by Section Analysis:
Section 1. Amends s. 166.041 to limit certain notice requirements to those rezonings which rezone specific parcels of property or substantially change permitted use categories in zoning districts.
Section 2. This act shall take effect October 1, 1983

Economic Impact:
A. Public: None

B. Government: Municipalities would save the cost of quarter page advertisements on those rezonings which are initiated by the municipality and make insubstantial changes in permitted use categories in zoning districts. The cost of quarter page advertisements in some of the state's larger newspapers can vary between $375 and $700.

Comments:
The determination of what types of changes in permitted use categories are substantial would probably eventually be decided by court decisions.

Amendments:
None

Analysis prepared by: John J. Waltz

Staff Director: Mike Cusick

Copy to Sponsor:
Date: 4-11-93
 Revision: 4-27-93

HOUSE OF REPRESENTATIVES
COMMITTEE ON COUNCIL AND AFFAIRS
END OF SESSION HEARING, CRAFT ANALYSIS AND ECONOMIC IMPACT STUDY

BILL No. 694
SPONSOR REPRESENTATIVE: "none"

RELATING TO: Municipal Zoning
SIMILAR/COMPANION BILLS: 71-90

I. SUMMARY

A. Present Situation:

"Notice" and public hearing requirements for the adoption of municipal ordinances are established in s. 164.041, Florida Statutes. In most instances, the municipality must publish the title of the ordinance and the time and location of the meeting at which it will be considered. However, notice for a rezoning ordinance which is proposed by the municipality must meet more stringent notice and public hearing requirements. If the proposed ordinance would rezone less than five percent of the total area of the municipality, notice must be mailed to each owner of property to be rezoned. If the ordinance would rezone five percent or more of the total area of the municipality, two public hearings must be held and "notice must be published pursuant to specific standards which include a one-quarter page newspaper advertisement.

The Attorney General has recently stated that the more stringent publication and public hearing requirements apply to amendments to the substantive provisions or general text of a zoning ordinance, if the effect would be to alter existing uses of land or permissible activities upon land. (AGO 80-104).

Therefore, even a minor change would require a quarter-page advertisement and two public hearings if it impacts over five percent of the area of the municipality.

B. Effect of Proposed Changes:

House Bill 694 would limit the more stringent notice and public hearing requirements of s. 164.041(3)(c) to those rezonings which rezone specific parcels of private real property or substantially change permitted use categories in zoning districts. Rezonings which make insubstantial changes throughout the zoning code or a particular zoning classification would only be required to fulfill the basic notice requirements of s. 164.041.

C. Section by Section Analysis:

Section 1 -- Amends s. 164.041 to limit certain notice and hearing requirements to those rezonings which rezone specific parcels of property or substantially change permitted use categories in zoning districts.

Section 2 -- This act shall take effect October 1, 1993.

II. ECONOMIC IMPACT

A. Public:

None
The determination of what types of changes in permitted use categories are substantial would probably eventually be decided by court decisions.