

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CMAS 11-04 Growth Management  
**SPONSOR(S):** Community & Military Affairs Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee		Gibson	Hoagland

### SUMMARY ANALYSIS

This bill, designated as “The Community Planning Act”, substantially amends part II of chapter 163, F.S., to reflect the experience of local government planning efforts, to streamline processes and to remove unworkable provisions in the planning process that delay economic development and result in outcomes that hinder urban development and flexible planning solutions. This bill focuses the state oversight role in growth management on protecting important state resources and facilities.

This bill amends the necessary components for various required elements within a comprehensive plan. Within the Future Land Use Element, this bill modifies and incorporates provisions relating to “urban sprawl” and modifies the need requirement to be based upon a minimum population. Within the Capital Improvements Element, this bill removes the financial feasibility requirement and requires local governments to list their funded and unfunded capital improvements. This bill also removes specific provisions for optional elements within a local government’s comprehensive plan. This bill repeals rule 9J-5 of the Florida Administrative Code and incorporates important and relevant definitions and provisions of the rule within part II of chapter 163.

This bill changes the requirements associated with the large-scale planning tools of sector plans and rural land stewardship areas.

The comprehensive plan amendment process is streamlined while maintaining public participation in the local government planning process. State review and challenges are focused on protecting important state resources and facilities. This bill removes the twice a year limitation on local government adoption of plan amendments.

This bill removes state mandated concurrency for transportation, parks and recreation, and schools. Local governments may maintain their current use of these tools without taking any action.

This bill continues to require local governments to evaluate their comprehensive plans once every seven years and to adopt update amendments as necessary, but this bill removes the state requirement for local governments to adopt an evaluation and appraisal report every seven years.

This bill does not require any updates to a local government’s comprehensive plan prior to the regular adoption of update amendments following the required seven year local evaluation of the plan. Chapter 163, part II, as amended by this bill, continues to provide the minimum standards for Florida’s comprehensive growth management system. This bill is not intended to reduce the home rule authority of any local government.

The bill repeals several provisions in law including section 163.3189, F.S., relating to the process for amendment of an adopted plan, section 163.3246, F.S., relating to the Local Government Comprehensive Planning Certification Program, section 163.32465, F.S., relating to the alternative state review pilot program, section 163.3247, F.S., relating to the Century Commission for a Sustainable Florida, and rules 9J-5 and 9J-11.023, FAC.

This bill takes effect upon becoming a law.

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

STORAGE NAME: pcb04.CMAS

DATE: 3/16/2011

**FULL ANALYSIS**  
**I. SUBSTANTIVE ANALYSIS**

A. EFFECT OF PROPOSED CHANGES:

**GROWTH MANAGEMENT IN FLORIDA**

Current Situation

In 1972, Florida took its first step towards an intergovernmental system of planning by adopting the Environmental Land and Water Management Act that created a program to designate areas of critical state concern<sup>1</sup> and a program to provide increased regulation and regional and state oversight for developments of regional impact<sup>2</sup> affecting multiple jurisdictions. In 1975, the Legislature passed the Local Government Comprehensive Planning Act that required local governments to adopt comprehensive plans by July 1, 1979, and to manage development according to the adopted plans.

In response to continued rapid growth and the challenges of state and local governments to adequately address development impacts, the Legislature adopted Florida's Growth Management Act in 1985, known officially as "The Local Government Comprehensive Planning and Land Development Regulation Act" (the Act).<sup>3</sup> This Act was designed to remedy deficiencies in the 1975 Act by giving more state oversight and control of the planning process to the Department of Community Affairs (DCA), the state's land planning agency. As directed by law, DCA adopted minimum standards that all local plans were required to comply with.<sup>4</sup> The 1985 Act created the intergovernmental system of planning we know today. Today, every county and municipality is required to adopt a local government comprehensive plan in order to guide future growth and development, and the Act authorizes DCA to review comprehensive plans and plan amendments for compliance with the Act. Other state and regional entities also review local government plans and amendments and provide comments to DCA. With state, regional, and local government oversight, Florida has one of the most comprehensive, regulatory, growth management systems in the country.

Since it was adopted, the Act has been amended in some way almost every year, most notably in 1995, 2005, and 2009. Since 1985, the Act has been amended to address a series of unintended consequences and provide numerous specific options to meet the needs of a few local governments. In some cases the changes provided more flexibility, less state oversight and more creative planning tools for local governments, but in other cases, the amendments created inflexible solutions that became unworkable for all but a few local governments. Florida's growth management system today is much different than it was in 1985. Today, every local government has a comprehensive plan in place containing required elements along with adopted local land use regulations to implement the plan. Local governments that were inexperienced and unsophisticated in 1985 are now more sophisticated and many have employed creative planning techniques to guide the future growth of their communities. Though the specific criteria and guidelines put into law in 1985 were designed to help local governments manage their growth, some requirements have hindered the ability of local governments to effectively manage growth and promote economic development within their communities.

Effect of the Bill

This bill substantially amends part II of chapter 163, F.S., in order to modernize Florida's growth management laws. In addition, this bill recognizes the progress that local governments have made since the 1985 Growth Management Act was first adopted by providing local governments with greater local control over planning decisions that affect the growth of their communities. This bill preserves part II of chapter 163 as the minimum standards for Florida's comprehensive growth management system. This bill also preserves the opportunities in current law for public participation in the local planning process and maintains the broad standing for affected persons to challenge the local government's adoption of plans and plan amendments. In addition, this bill focuses the state's role in the growth management process to one of protecting important state resources and facilities.

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<sup>1</sup> See s. 380.05, F.S.

<sup>2</sup> See s. 380.06, F.S.

<sup>3</sup> See ch. 163, pt. II, F.S.

<sup>4</sup> Rule 9J-5, F.A.C. (Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance).

## **CONTENTS OF A COMPREHENSIVE PLAN**

### Current Situation

The Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes), requires all local governments to adopt comprehensive land use plans and implement those plans through land development regulations and development orders.

Each comprehensive plan contains chapters or “elements” that address future land use (and future land use map), housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements (and a 5-year capital improvement schedule) and public school facilities. Section 163.3177, F.S., and rule 9J-5, Florida Administrative Code (FAC), provide the requirements for elements of local comprehensive plans. The statute also provides for scheduled updates to various elements and imposes penalties for failure to adopt or update elements.

### Effect of the Bill

This bill maintains the required comprehensive plan elements in current law but no longer mandates a public school facilities element. Provisions relating to public school facilities are only required if a local government chooses to maintain school concurrency at the local level. This bill removes many of the state specifications and requirements for optional elements in the comprehensive plan, but specifically states that a local government’s comprehensive plan may continue to include optional elements. All mandatory and optional elements of a comprehensive plan and plan amendments are required to be based upon professionally accepted data. Local governments are not required, but may choose to use original data as long as their methodologies are professionally accepted. This bill maintains that a major objective of the planning process is for elements to be coordinated with one another and requires elements within a plan to be consistent with one another. Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan’s adoption and one covering at least a 10-year period. However, additional planning periods for specific components, elements, land use amendments or projects are permissible.

### **Rule 9J-5**

#### Current Situation

Rule 9J-5 of the Florida Administrative Code (FAC) establishes the minimum criteria for the preparation, review, and determination of compliance of comprehensive plans and plan amendments pursuant to chapter 163, part II, of the Florida Statutes. DCA adopted rule 9J-5, FAC, at the direction of the Legislature in the 1985 Growth Management Act. This rule was important at the time of adoption because it provided the necessary detail and specificity that local governments needed to create their local comprehensive plans. All plans and plan amendments must meet the technical guidelines of rule 9J-5, FAC, in order to be “in compliance” under part II of chapter 163, F.S. Initially, rule 9J-5, FAC, required ratification by the Legislature to become effective. Since that time, DCA has amended the rule several times pursuant to the requirements of chapter 120, F.S.

#### Effect of the Bill

This bill repeals rule 9J-5, FAC, and incorporates into the law important and relevant definitions and provisions of the rule relating to the contents of and requirements for elements within a comprehensive plan.

### **Capital Improvements Element (CIE)**

#### Current Situation

In order to maintain a financially feasible 5-year schedule of capital improvements, the Legislature in 2005 required local governments to adopt an annual capital improvements schedule (CIE) as an annual amendment to the comprehensive plan. Each local government is required to submit an annual update of its capital improvements element to demonstrate it is maintaining a financially feasible 5-year schedule of capital improvements.<sup>5</sup> The 5-year schedule of capital improvements must include specific capital projects necessary to achieve and maintain level-of-service standards identified in other areas of

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<sup>5</sup> S. 163.3177(3)(b)1, F.S.

the comprehensive plan, reduce existing deficiencies, provide for necessary replacements, and meet future demand during the time period covered by the schedule. Failure to update can result in penalties such as ineligibility for certain grant programs, or ineligibility for revenue-sharing funds. In order to be financially feasible, the CIE must identify sufficient revenues to fund the 5-year schedule of capital improvements. Local governments have had difficulty meeting this requirement.

When the financial feasibility and update requirements were strengthened, the local governments had until December 1, 2007, to meet the requirements. The Legislature later extended that date to December 1, 2008. In early 2009, a majority of local governments had failed to submit their financial feasibility reports by the December 1, 2008 deadline. In 2009, the deadline for local governments to comply with the financial feasibility requirement was extended again from December 1, 2008, to December 1, 2011.

#### Effect of the Bill

This bill requires the capital improvements element to be reviewed by the local government on an annual basis. Modifications may be accomplished by ordinance and are not deemed to be amendments to the local comprehensive plan. This is a return to the pre-2005 standard. This bill removes the requirement that the capital improvements element be financially feasible. However, it provides that projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be listed and identified as either funded or unfunded and given a level of priority for funding.

#### ***Future Land Use Plan Element***

##### Current Situation

The future land use element includes a future land use map or map series. The law has numerous requirements relating to the designation of existing and future land uses. Several provisions are specifically mentioned including compatibility of land uses with military bases and airports, siting of schools, and future municipal incorporation.

#### Effect of the Bill

This bill changes the format of the future land use element provisions to increase readability. Specific requirements from rule 9J-5, FAC, have been added, including provisions relating to urban sprawl. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements and each such map must be included in the comprehensive plan. This bill requires the future land use element to clearly identify the land use categories in which public schools are an allowable use, but removes outdated language relating to compliance. This bill also removes requirements relating to energy efficiency and green house gas reductions. Further, the bill addresses population projections, the issue of identified need for future development and highlights the need to address outdated land uses, such as antiquated subdivisions. The issues of need, urban sprawl, and antiquated subdivisions are addressed below.

- ***Need***

##### Effect of the Bill

This bill requires the comprehensive plan to be based upon resident and seasonal population estimates and projections, which must either be those provided by the University of Florida, Bureau of Economic and Business Research, or generated by the local government based upon a professionally acceptable methodology.<sup>6</sup> This bill requires the future land use plan and plan amendments to be based in part upon the amount of land designated for future planned uses to provide a balance of uses that foster vibrant, viable communities, provide economic development strategies, and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and may not be limited solely by the projected population. This bill requires, as a minimum standard, that the element must accommodate at least the minimum amount of land required to accommodate the medium projections of the Bureau of Business and Economic Research.

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<sup>6</sup> Rule 9J-5, F.A.C.

- **Urban Sprawl**

Current Situation

One of the key components of rule 9J-5, FAC, and of growth management law in Florida is the discouragement of urban sprawl. Land use planning is designed to avoid urban sprawl, which forces limited resources to be allocated to the creation of new infrastructure rather than to maintaining existing infrastructure, thereby creating burdens on local governments, disrupting agricultural land uses, and creating scattered automobile-dependent communities.

Effect of the Bill

This bill incorporates, from rule 9J-5, FAC, the thirteen primary indicators that a plan or plan amendment does not discourage urban sprawl. In addition, this bill adds eight indicators that a plan or plan amendment achieves the discouragement of urban sprawl. If the future land use element or a plan amendment achieves four of these eight indicators within its development pattern or urban form it will automatically be determined to discourage the proliferation of urban sprawl.

- **Antiquated Subdivisions**

Current Situation

Because they were created prior to the enactment of land development regulations, areas known as “antiquated subdivisions” share characteristics that hinder their vitality in today’s market, and result in detrimental effects on the local economies and environment. Largely platted throughout the 1950’s and 1960’s, antiquated subdivisions are often predominantly residential land with insufficient space reserved for industrial or commercial enterprises necessary for sustaining the community. Many such subdivisions lack adequate infrastructure including sewer systems and higher capacity arterial roads, and local law enforcement, fire, and emergency services struggle to reach these remote developed parcels.

Effect of the Bill

This bill requires the future land use plan and plan amendments to be based upon surveys, studies, and data regarding the area, as applicable, including the need to modify land uses and development patterns within antiquated subdivisions. This bill requires the future land use plan and plan amendments to be based in part upon the amount of land designated for future planned uses to provide a balance of uses that foster vibrant, viable communities, provide economic development strategies, and address outdated development patterns, *such as antiquated subdivisions*. This bill does not require any action by a local government in regards to outdated subdivisions such as antiquated subdivisions, it simply requires the local government’s future land use plan and plan amendments to consider them.

**Other Comprehensive Elements**

Current Situation

Comprehensive plans also must include an element for sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge, as well as elements for transportation, conservation, recreation and open space, housing, and intergovernmental coordination. Coastal counties and municipalities must also adopt a coastal element. The coastal element includes a provision that encourages local governments to adopt recreational surface water use policies. The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) completed a review of the recreational surface water use policies<sup>7</sup> and noted that most local governments were unaware of the 2006 statutory provision and have addressed this issue through other mechanisms. Currently, the transportation requirements for elements is located in various subsections<sup>8</sup> of the law, which apply to local governments with differing characteristics, such as size and whether they are members in a metropolitan planning organization.

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<sup>7</sup> “Few Local Governments Have Adopted Optional Recreational Surface Water Use Policies,” Report No. 10-58, Office of Program Policy Analysis & Government Accountability, November 2010.

<sup>8</sup> Ss. 163.3177(6)(b), 163.3177(6)(i) – (k) and 163.3177(7)(a) – (d), F.S.

## Effect of the Bill

Provisions of rule 9J-5, FAC, are included in this bill to provide the necessary direction and guidance for the contents of a comprehensive plan. In the housing element, the provision requiring the element to include principles, guidelines, standards and strategies for energy efficiency and renewable energy resources in the design and construction of new housing is removed. Further, the provision requiring counties meeting certain requirements to adopt a plan for workforce housing has been removed, as well as the limitation on receipt of affordable housing funds if the county fails to adopt such a plan. The provisions relating to assistance in data collection are also removed. In the coastal management element, the optional provisions relating to recreational surface water use policies are removed. In the interlocal agreement element, several redundant provisions, and outdated provisions are removed. This bill combines the multiple subsections of the transportation element into one subsection of law.

## **PROCESS**

### Current Situation

The Department of Community Affairs (DCA) is designated as the lead oversight agency, responsible for reviewing comprehensive plans and amendments to determine consistency with state law. Amendments to comprehensive plans generally may be adopted not more than two times during any calendar year; however, over time a number of statutory exceptions have been created for situations where the twice a year limit was unworkable.

### ***Traditional State Review Process (s. 163.3184, F.S.)***

Section 163.3184, F.S., sets forth the criteria for the adoption of comprehensive plans and amendments to those plans. A local government may amend its comprehensive plan provided certain conditions are met including two advertised public hearings on a proposed amendment before its adoption and review by the state land planning agency. State, regional, and local governmental agencies submit comments on the plan or plan amendment to the state land planning agency, which has the option to review the amendment, unless required to review upon a request from the regional planning council, an affected person, or the local government transmitting the amendment. If DCA elects to review or is required to review it must issue the local government an objections, recommendations, and comments report (ORC report) regarding whether the plan or plan amendment is “in compliance.”<sup>9</sup> After receiving the report, the local government has 60 days to adopt the amendment, adopt the amendment with changes, or not adopt the amendment.<sup>10</sup> Currently, the statutorily prescribed processing timeline for a comprehensive plan amendment requires at a minimum 136 days.<sup>11</sup>

After adoption, within 10 days, the local government must transmit the adopted plan amendment to DCA which has between 20 and 45 days to issue a notice of intent (NOI) to find the amendment either “in compliance” or “not in compliance.”<sup>12</sup> If DCA issues a NOI to find in compliance, within 21 days any “affected person”<sup>13</sup> may challenge the plan or plan amendment by filing a petition with the Division of Administrative Hearings (DOAH), and DCA may intervene in the proceeding. If DCA issues a NOI to find not in compliance the NOI is forwarded to DOAH for a hearing and any affected person may intervene in the proceeding. Depending on the entity initiating the challenge and the administrative law

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<sup>9</sup> S. 163.3184(1)(b), F.S. defines “in compliance” as “consistent with the requirements of ss. [163.3177](#), [163.3178](#), [163.3180](#), [163.3191](#), and [163.3245](#), with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.”

<sup>10</sup> The local government has 120 days to hold the second hearing regarding adoption if adopting a new plan or an amendment pursuant to the Evaluation and Appraisal Report.

<sup>11</sup> OPPAGA Report No. 08-62.

<sup>12</sup> On February 16, 2011, DCA provided written responses to questions raised at the February 9, 2011 meeting of the Community & Military Affairs Subcommittee. DCA stated that “the vast majority of plan amendments [are] announced through a notice of intent published in a local newspaper publication. During FY 2010-2011, about \$390,000 was budgeted for the newspaper publication.”

<sup>13</sup> Section 163.3184(1)(a), F.S., defines “affected person” as “the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction.”

judge's finding, the administrative law judge's recommended order is submitted to either DCA or the Administration Commission for final agency action.

The burden of proof regarding plans and plan amendments adopted pursuant to s. 163.3184, F.S., is provided in statute based on DCA's notice of intent determination. If the adopted plan or plan amendment is challenged and the state land planning agency issued a notice of intent to find in compliance, the plan or plan amendment will be determined to be in compliance if the local government's determination of compliance is "fairly debatable."<sup>14</sup> If the adopted plan or plan amendment is challenged and the state land planning agency issued a notice of intent to find not in compliance, the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct and the local government's determination will be sustained unless it is shown by a preponderance of the evidence<sup>15</sup> that the comprehensive plan or plan amendment is not in compliance.

***Alternative State Review Process Pilot Program (s. 163.32465, F.S.)***

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments based on streamlined state agency review. Under the pilot process, selected communities<sup>16</sup> transmit proposed plan amendments directly to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Most plan amendments proposed in the pilot program jurisdictions are required to follow the alternative review process.<sup>17</sup> In 2009, the Legislature authorized any local government to use the alternative state review process to designate an urban service area in its comprehensive plan. State agencies commenting on a plan amendment under the alternative review process may include technical guidance on issues of agency jurisdiction as it relates to chapter 163, part II, F.S. Such comments must clearly identify issues that, if not resolved, may result in an agency challenge to the plan amendment. Comments are sent to the local government proposing the plan amendment within 30 days after the commenting agency receives the amendment.

Following a second public hearing for the purpose of adopting the plan amendment, the local government must transmit the adopted amendment to the state land planning agency and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., or the state land planning agency may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. A challenge by the state land planning agency is limited to those issues raised in the comments by the reviewing agencies, however the state land planning agency is encouraged to focus its challenges on issues of regional or statewide importance. The state land planning agency does not issue a report detailing its objections, recommendations, and comments (ORC report) on the proposed amendment or a notice of intent (NOI) on the adopted amendment. In a challenge initiated by the state land planning agency or an affected person, the local government's determination that the amendment is in compliance is presumed to be correct and is sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance. The alternative state review process shortens statutorily prescribed timeline for

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<sup>14</sup> "The fairly debatable standard of review is a highly deferential standard [for the local government] requiring approval of a planning action if reasonable persons could differ as to its propriety." *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997).

<sup>15</sup> "Preponderance of the evidence" is the burden of proof in most civil trials and is also known as the "greater weight of the evidence" defined in the Florida Standard Jury Instructions as "the more persuasive and convincing force and effect of the entire evidence in the case." *In re Standard Jury Instructions In Civil Cases*- Report No. 09-01 (Reorganization of the Civil Jury Instructions), 35 So. 3d 666 (Fla. 2010).

<sup>16</sup> Local governments subject to the pilot program include: Pinellas and Broward Counties, and the municipalities within these counties, and Jacksonville, Miami, Tampa and Hialeah.

<sup>17</sup> Plan amendments not eligible for the alternative review process that must undergo the traditional state review process are those that propose a rural land stewardship area pursuant to section 163.3177(11)(d), F.S.; propose an optional sector plan; update a comprehensive plan based on an evaluation and appraisal report; implement new statutory requirements; or new plans for newly incorporated municipalities. Small-scale amendments may still be adopted in the pilot program jurisdictions according to section 163.3187(1)(c) and (3).

comprehensive plan amendments process from 136 days to 65 days.<sup>18</sup> DCA has stated that expanded use of the Alternative State Review Pilot Program would result in cost savings for expenses and staff resources.

### ***Small- Scale Amendment Process***

Small-scale comprehensive plan amendment adoption is treated differently than other amendments. Amendments must meet several criteria to be eligible as a “small-scale amendment.” Small-scale amendments are limited to properties that are 10 acres or fewer, cannot be located in an area of critical state concern with exceptions, and must meet certain density criteria if it involves residential land use, among other requirements. Small-scale amendments may not change goals, policies, or objectives of the local government’s comprehensive plan. Instead, these amendments propose changes to the future land use map for site-specific small scale development activity. Unlike other comprehensive plan amendments, small-scale amendments require only one public hearing and are not subject to the twice a year limitation on plan amendments. The state land planning agency does not review or issue a notice of intent stating whether a small scale development amendment is in compliance with the comprehensive plan. Any affected person may challenge the amendment’s compliance in an administrative hearing, and the state land planning agency may intervene.

### ***Local Government Comprehensive Planning Certification Program***

In 2002, the Legislature created the Local Government Comprehensive Planning Certification Program. Since that time, only five local governments have chosen to apply for certification. Three local governments were certified by DCA (cities of Lakeland, Miramar, and Orlando) while two withdrew their applications (cities of Naples and Sarasota). The City of Freeport was certified as a result of a law passed during the 2005 legislative session. The four certified cities have been subject to less state and regional oversight of their comprehensive plan amendments allowing them to expedite the amendments’ approval. Counties, regional planning councils, and the DCA generally report they have not experienced problems as a result of the cities participating in the program.<sup>19</sup>

### **Effect of the Bill**

- Removes the twice a year limit for the adoption of any plan amendments. Local governments may determine if and when their plans should be amended.
- Streamlines the review of plans and plan amendments into one of three processes.
  - The expedited state review process is designed for most plan amendments and is similar to the alternative state review pilot program process.
  - The state coordinated review process is designed for new comprehensive plans and plan amendments that require a more comprehensive review. This process is identical to the expedited state review process, except that the state land planning agency performs a more comprehensive review and is subject to different challenge requirements.
  - Maintains and streamlines the small-scale amendment review process.
  - Repeals the Local Government Comprehensive Planning Certification Program. Cities that were certified under the program will use the same processes for adopting plan amendments as other local governments.
- Focuses state agency comments on important state resources and facilities within their jurisdiction that will be adversely impacted by the proposed plan or plan amendment.
- Requires commanding officers of military installations that will be affected by a proposed plan or plan amendment to submit comments according to section 163.3175, F.S., along with other reviewing agencies under the expedited and state coordinated review processes.
- Limits DCA’s objections, recommendations, and comments (ORC) report to the state coordinated review process for new plans and certain amendments that require a more comprehensive review.
- Removes the costly and time consuming extra procedural step that requires DCA to issue a notice of intent after review of a comprehensive plan or plan amendment.

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<sup>18</sup> OPPAGA Report No. 08-62

<sup>19</sup> OPPAGA Report No. 07-47.

- Modifies the standard of review for challenges and removes the state land planning agency's ability to intervene in a challenge initiated by an affected person.
  - In all challenges, when a determination of compliance is made, consideration must be given to the plan amendment as a whole and whether the plan amendment furthers the intent of part II of chapter 163.
- Maintains the ability of parties to a challenge to enter into compliance agreements. This bill contains new procedures for compliance agreements.
- Maintains the ability of an affected person or the state land planning agency, after filing a petition challenging a plan or plan amendment, to demand mediation or expeditious resolution of its case.
- Modifies the Administration Commission's authority to impose sanctions. Sanctions may be imposed on a local government if the local government elects to make an amendment effective notwithstanding a determination of noncompliance or if a local government adopts a plan amendment that amends a plan that has not been finally determined to be in compliance.

### ***Expedited State Review Process***

This bill renames the alternative state review pilot program process the "expedited state review process" and expands it to statewide application. This process may be used for all plan amendments except those that are specifically required to undergo the state coordinated review process. The expedited process requires two public hearings and plan amendments are transmitted to reviewing agencies including the state land planning agency which may provide comments on the proposed plan amendment. The reviewing agencies<sup>20</sup> are kept the same as under current law, except that if a plan amendment affects a military installation, the commanding officer of the military installation is now subject to the same timing requirements for comments as other reviewing agencies.

This bill limits the scope of state agency comments on a proposed plan amendment. State agencies may only comment on specified subjects within their jurisdiction as they relate to important state resources and facilities that will be adversely impacted by the adopted amendment. The state land planning agency must limit its comments to important state resources and facilities outside the jurisdiction of other commenting state agencies and may include comments on countervailing planning policies and objectives served by the plan amendment that should be balanced against potential adverse impacts to important state resources and facilities. Comments provided by state agencies must state with specificity how the plan amendment will adversely impact an important state resource or facility and must list measures the local government may take to eliminate, reduce, or mitigate the adverse impacts. Comments regarding state resources and facilities that will be adversely impacted may result in a challenge.

After receiving reviewing agency comments, the local government is required to hold a second public hearing on whether to adopt the amendment. The second public hearing must be conducted within 180 days after the agency comments are received. If a local government fails to adopt the plan amendment within 180 days, the plan amendment is deemed withdrawn. After adopting an amendment, the local government must transmit the plan amendment to the state land planning agency within 10 days of the second public hearing, and the state land planning agency must notify the local government of any deficiencies with the plan amendment within 5 working days. Unless timely challenged, an amendment adopted under the expedited review process does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete.

Within 30 days after the local government adopts the amendment, any affected person may file a challenge with the Division of Administrative Hearings (DOAH). This bill keeps the same broad

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<sup>20</sup> "Reviewing agencies" means: state land planning agency; appropriate regional planning council; appropriate water management district; Department of Environmental Protection; Department of State; Department of Transportation; in the case of plan amendments relating to public schools, the Department of Education; in the case of plans or plan amendments that affect a military installation listed in section 163.3175, the commanding officer of the affected military installation; in the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and in the case of municipal plans and plan amendments, the county in which the municipality is located.

definition of an “affected person” as under current law. The state land planning agency may also challenge an adopted amendment by filing a challenge with DOAH within 30 days after the state land planning agency notifies the local government that the plan amendment is complete.

The state land planning agency’s challenge is limited to the comments provided by the reviewing agencies, but only if the state land planning agency makes its own determination that an important state resource or facility will be adversely impacted by the adopted plan amendment. The state land planning agency must only make this determination if the amendment’s adverse impacts to the important state resource or facility outweigh the amendment’s benefits to the affected local community or the amendment’s furtherance of the intent of part II of chapter 163. This requirement allows DCA to balance comments provided by multiple state agencies regarding important state resources and facilities within their jurisdiction that will be adversely impacted, and the balancing requirement prevents challenges from being brought by the state land planning agency when the benefits to the local community or the amendment’s furtherance of the intent of chapter 163, part II outweigh any adverse impact to the important state resource or facility.

In a challenge brought by the state land planning agency, a local government may contest the agency’s determination of an important state resource or facility, and if contested, the state land planning agency must prove its determination of an important state resource or facility by clear and convincing evidence.

This bill maintains the challenge process in current law involving the administrative law judge, the state land planning agency, and the Administration Commission. For challenges initiated by an “affected person”, the plan amendment is determined to be in compliance if the local government’s determination of compliance is fairly debatable. In challenges initiated by the state land planning agency, the local government’s determination that the amendment is in compliance is presumed to be correct and will be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance.

### ***State Coordinated Review Process***

This bill amends section 163.3184, F.S., to create the state coordinated review process for new comprehensive plans and for amendments that require a more comprehensive review. Amendments that are in an area of critical state concern designated pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S.,<sup>21</sup> propose a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191, F.S., and new plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S., are required to follow the state coordinated review process. The state coordinated review process requires two public hearings and a proposed plan or plan amendment is transmitted to the reviewing agencies after the initial hearing. This bill limits the subjects on which reviewing agencies are permitted to comment under in the same way reviewing agency comments are limited under the state expedited review process. Under the state coordinated review process, reviewing agency comments are sent to the state land planning agency that may elect to issue an ORC report to the local government within 60 days after receiving the proposed plan or plan amendment. The state land planning agency’s ORC report details whether the proposed plan or plan amendment is in compliance and whether the proposed plan or plan amendment will adversely impact important state resources and facilities.

When making objections in the ORC report as to whether a proposed plan or plan amendment is in compliance, the state land planning agency must consider the proposed plan or plan amendment as a whole and whether the intent of part II of chapter 163 is furthered. When making objections in the ORC report regarding an important state resource or facility that will be adversely impacted by the plan or plan amendment, if adopted, the state land planning agency must only make an objection if on the whole the plan or plan amendment’s adverse impacts to the important state resource or facility outweigh the plan or plan amendment’s benefits to the affected local community or the amendment’s furtherance of the intent of part II of chapter 163. When the state land planning agency makes an objection regarding an important state resource or facility that will be adversely impacted, it is required to state with specificity how the important state resource or facility will be adversely impacted and list

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<sup>21</sup> S. 163.3177(11)(d), F.S., (2010).

measures that the local government may take to eliminate, reduce, or mitigate the adverse impacts. This bill requires the state land planning agency to balance certain factors when making objections in the ORC. Challenges brought by the state land planning agency, to a plan or plan amendment adopted under the state coordinated review process, are limited to objections made in the ORC.

Once a local government receives the ORC, it has 180 days to hold the second public hearing on whether to adopt the plan or plan amendment. If not held within 180 days, the plan or plan amendment will be deemed withdrawn. This bill removes DCA's issuance of a notice of intent (NOI) and maintains the same timeframes and requirements for affected person challenges and challenges initiated by the state land planning agency as under the state expedited review process. However, under the state coordinated review process, challenges by the state land planning agency are limited to objections raised in the ORC regarding compliance or an objection regarding an adverse impact to an important state resource or facility. Challenges filed by the state land planning agency to a plan amendment that updates a comprehensive plan based on an EAR are limited to objections raised in the ORC regarding the plan or plan amendment's adverse impact to an important state resource or facility.

The burdens of proof and process for challenges brought against a plan or plan amendment adopted under the state coordinated review process are the same as under the expedited review process.

### ***Small-Scale Amendment Review Process***

This bill removes the density restriction on small-scale plan amendments, but maintains the current 10 acre limit and 120 acre per year limits. It also maintains the requirement that a small-scale amendment must only undergo one public hearing. This bill changes the standard of review for challenges brought by an affected person. It provides that the plan amendment will be determined to be in compliance if the local government's determination that the small scale development amendment is in compliance is fairly debatable. This bill also removes the state land planning agency's ability to intervene in challenges filed by an affected person.

## **CONCURRENCY**

### Current Situation

Concurrency requires public facilities and services to be available concurrent with the impacts of development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation. Concurrency is tied to provisions requiring local governments to adopt level of service standards, address existing service deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan. Rule 9J-5.0055(3), FAC, establishes the minimum requirements for satisfying concurrency. Local governments are charged with setting levels-of-service standards within their jurisdiction, and if levels-of-service standards are not met, development permits may not be issued without an applicable exception. For example, a new development leading to traffic that exceeds the level-of-service for a roadway may be prohibited from moving forward unless improvements are scheduled within three years of the development's commencement, or the development is located in a transportation concurrency exception area (TCEA), or it meets other criteria or exceptions provided by law and the comprehensive plan.

### Effect of this Bill

This bill maintains the state mandated concurrency requirements for sanitary sewer, solid waste, drainage, and potable water. This bill removes the state mandated concurrency requirements for parks and recreation, schools, and transportation facilities. If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application.

This bill specifies that in order for a local government to remove any optional concurrency provisions, a comprehensive plan amendment is required. An amendment removing any optional concurrency is not subject to state review. Further, the local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can be reasonably met. Infrastructure needed to ensure that adopted level-of-service standards are achieved and

maintained for the 5-year period of the capital improvement schedule must be identified as either funded or unfunded.

## ***Transportation Concurrency***

### Current Situation

The statute requires local governments to employ a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. To implement concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period.

The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregional significant transportation facilities and services and plays a critical role in moving people and goods between major economic regions in Florida, to and from other states, as well as to shipment centers for global distribution.

Strict application of concurrency has resulted in developers seeking capacity in undeveloped areas. Consequently, methods to allow for greater flexibility to meet public policy objectives were adopted. In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, which allowed an area-wide LOS standard, rather than facility-specific designations, to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems.

Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to “reduce the adverse impact transportation concurrency may have on urban infill and redevelopment” by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

Broward County uses an alternative approach to concurrency called transit-oriented concurrency. The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) administers an expedited permitting process for “those types of economic development projects which offer job creation and high wages, strengthen and diversify the state’s economy, and have been thoughtfully planned to take into consideration the protection of the state’s environment.” These projects may also have transportation concurrency waived under certain circumstances.

Often, transportation concurrency requirements create unintended consequences. For example, transportation concurrency in urban areas is often times more costly and functionally difficult than in non-urban areas. As a result, transportation concurrency incentivizes urban sprawl and discourages development in urban areas. This conflicts with the goals and policies Chapter 163, part II. Further, there are many viable alternative forms of transportation that can be employed in urban areas that are more efficient than widening roads.

### Effect of this bill

This bill removes the state mandated requirement for transportation concurrency, but allows local governments the option of continuing to apply transportation concurrency locally without having to take further action. Local governments that have created transportation concurrency exception areas may continue to utilize the areas as an exception to locally mandated transportation concurrency. If a local government wishes to remove transportation concurrency, it must adopt a comprehensive plan amendment.

For local governments that choose to continue to apply transportation concurrency, this bill provides the minimum requirements and guidelines for doing so.

## ***Proportionate Fair-Share Mitigation and Proportionate Share Mitigation***

### **Current Situation**

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or the Florida Department of Transportation. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of chapter 163, F.S., and:

- the proposed improvement satisfies a significant benefit test; or
- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Statute provides the formula used for proportionate share mitigation for DRI and non-DRI developments.

### **Effect of the Bill**

This bill modifies proportionate share to clarify that when an applicant for a development permit contributes or constructs its proportionate share mitigation of impacts, a local government cannot require payment or construction of transportation facilities whose costs are greater than the development's proportionate share necessary to mitigate its transportation impacts. This bill provides a specific formula for calculating proportionate share contribution and specifies that when a development's proportionate share has been satisfied for a particular stage or phase of development, all of the transportation impacts from that stage or phase will be deemed fully mitigated in any cumulative transportation analysis for a subsequent stage or phase of development. This bill also provides that applicants are not responsible for funding "transportation backlog" or the cost of reducing or eliminating transportation deficits that existed prior to the filing of an application. Further, if an applicant is required to pay transportation impact fees in the future on the development, the local government is required to provide the applicant with a dollar-for-dollar credit on the transportation impact fees for the proportionate share already paid.

## ***School Concurrency***

### **Current Situation**

School concurrency allows for coordinated planning between school boards and local governments in planning and permitting developments that will impact school capacity and utilization rates. In 2005, the Legislature required local governments and school boards to adopt a school concurrency system in order to implement a comprehensive focus on school planning.<sup>22</sup> Prior to this, school concurrency was optional. Mitigation options for developers to address school concurrency requirements include the contribution of land; the construction, expansion, or payment for land acquisition; or construction of a public school facility.

As part of implementing school concurrency, local governments were required by December 1, 2008, to adopt a Public Schools Facilities Element in their comprehensive plan and update their existing public school interlocal agreements. Most counties and municipalities met this deadline. Failure to comply could subject non-compliant local governments and school boards to financial sanctions imposed by the Administration Commission.

Certain smaller counties are allowed a waiver from the school concurrency requirement. DCA may allow for a projected 5-year capital outlay student growth rate to exceed 10 percent when the projected 10-year capital outlay student enrollment is less than 2,000 students and the capacity rate for all schools within the district will not exceed 100 percent in the tenth year.

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<sup>22</sup> Ch. 2005-290, L.O.F.

### Effect of the Bill

This bill removes the state mandated requirement for school concurrency, but allows local governments the option of continuing to apply school concurrency locally without having to take further action. If a local government wishes to remove school concurrency, it must adopt a comprehensive plan amendment doing so. For local governments that choose to continue to apply school concurrency, this bill provides the minimum requirements and guidelines for doing so.

For local governments that choose to apply school concurrency, this bill encourages local governments to apply school concurrency to development on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide. However, if a local government elects to apply school concurrency on a less than districtwide basis, then certain requirements must be met. Where school capacity is available on a districtwide basis but school concurrency is applied on a less than districtwide basis, the bill maintains current law that if the adopted level-of-service standard cannot be met in a particular service area to meet the needs of a proposed development, and if there is school capacity in one or more contiguous service areas that would meet the needs of the proposed development, then the local government may not deny an application for the development based on school concurrency. However, this bill adds that students from a development may not be required to go to an adjacent service area unless the school board rezones the area in which the development occurs.

For local governments that maintain school concurrency, this bill provides that a local government still may allow a landowner to move forward with developing a specific parcel of land without satisfying school concurrency, if certain requirements are met.

### ***Interlocal Agreement***

#### Current Situation

In 2000, almost 40 percent of Florida's public schools were at 90 percent or greater capacity. The Legislature enacted Senate Bill 1906 in 2002 that focused on school planning through coordination of information between local governments and school boards. This is accomplished by a required interlocal agreement that addresses school siting, enrollment forecasting, school capacity, infrastructure, collocation and joint use of civic and school facilities, and sharing of development and school construction information. These interlocal agreements are reviewed and approved by DCA with the assistance of the Department of Education. A local government or school board that does not enter into an interlocal agreement is subject to financial sanctions. There are exemptions from the statutory requirements for those local governments that do not require increased capacity because they are not experiencing growth in school age populations. Those exemptions are available if certain conditions are met, such as when no schools are found within the jurisdiction's boundaries and when the school board verifies in writing that no schools are needed in the five and 10-year planning period.

### Effect of this Bill

Interlocal agreements between a county, the municipalities within, and a school board are maintained in this bill in order to coordinate plans and processes of the local governments and school boards. However, this bill removes state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. If a local government chooses to maintain optional school concurrency within its jurisdiction, this bill specifies that the interlocal agreement must also meet further requirements.

### **EVALUATION AND APPRAISAL REPORT (EAR)**

#### Current Situation

Because planning is a continuous and ongoing process, section 163.3191, F.S., requires each local government to adopt an evaluation and appraisal report once every seven years in order to assess the progress in implementing the comprehensive plan. The EAR is the principle process for updating local comprehensive plans to address changes in the local community and changes in state law relating to growth management. The report evaluates the success of the community in addressing land use planning issues through implementation of its comprehensive plan. Based on this evaluation, the report suggests how the plan should be revised to better address community objectives, changing conditions and trends affecting the local community, and changes in state requirements. The local government is

required to submit its report to DCA, who conducts a sufficiency review to ensure the report fulfills the requirements of section 163.3191, F.S. The local government is also required to adopt amendments to its plan based on the recommendations in the report, within 18 months after DCA determines the report to be sufficient. The Administration Commission is authorized to impose sanctions if the local government fails to adopt and submit its report or fails to implement its report through timely amendments to its comprehensive plan. Although the report can serve an important purpose in requiring local governments to keep their comprehensive plans updated and current, the process of preparing an evaluation and appraisal report is both time consuming and costly, especially for smaller local governments who often are required to hire outside consultants to assist in the preparation of the report.

#### Effect of the Bill

This bill continues to direct the local governments to evaluate its comprehensive plan once every seven years to determine if plan amendments are needed to reflect changes in state requirements; however this bill removes the specific requirements regarding the preparation, adoption, submittal, and review of the evaluation and appraisal report. If changes are necessary, a local government must amend the plan and transmit the amendments updating the plan to the reviewing agencies. Local governments are encouraged to update their plans more comprehensively to reflect changes in local conditions. If the local government fails to submit a letter to the state land planning agency regarding its need to amend its plan or update the plan as needed, no amendments are permitted until such time as the local government adopts the necessary amendments to update its plan.

### **SECTOR PLANS**

#### Current Situation

The optional sector planning process is designed to promote large scale planning of areas that include at least 5,000 acres and to avoid the duplicative data and analysis that would otherwise be necessary if projects were planned as developments of regional impact. The sector plan process is designed to minimize repetitive permitting while ensuring adequate mitigation of a development's impacts. DCA enters into agreements to authorize the preparation of an optional sector plan. The process involves the development of a long-term, build-out overlay and detailed specific area plans. Currently, the optional sector plan is a pilot program and is limited to five local governments, or combinations of local governments.

#### Effect of the Bill

The bill amends s. 163.3245, F.S., removes the pilot status of the optional sector plan program, and increases the minimum acreage for a sector plan to 15,000 acres, which includes all existing approved sector plans. Sector plans continue to be prohibited in designated areas of critical state concern.

This bill allows the local government, prior to preparing a sector plan, to request a scoping meeting. The scoping meeting must be noticed and open to the public and is conducted by the applicable regional planning council with affected local governments and certain state agencies. If a scoping meeting is conducted, on certain planning issues associated with the sector plan, the local government may request the regional planning council to make written recommendations to the state land planning agency and affected local governments.

This bill specifies that the sector planning process encompass two levels:

- 1) 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 section 163.3184(4), F.S., and
- 2) adoption by a local development order of two or more detailed specific area plans that implement the long-term master plan and within which development of regional impact (DRI) requirements are waived.

This bill specifies that the long-term master plan must include maps, illustrations, and text supported by data and analysis to address specific issues related to land uses, water supply and conservation measures, transportation facilities and other state or regionally significant public facilities, identification

of state or regionally significant natural resources and policies setting forth the procedures for protection or conservation, procedures and policies to facilitate intergovernmental coordination, and other general principles and guidelines. This bill also provides that the detailed specific area plans must be consistent with and implement the long-term master plan and must meet certain specific requirements similar to the long-term master plan.

The two level planning process in this bill provides that a long-term master plan must be based upon a planning period longer than the planning period of the local comprehensive plan, while allowing a detailed specific area plan the flexibility to be based on a planning period longer than the planning period of the local comprehensive plan. Both the long-term master plan and the detailed specific area plan must specify the projected population within the 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. Both the long-term master plan and a detailed specific area plan are not required to demonstrate need based upon projected population growth or on any other basis.

This bill specifies that notwithstanding the limitations on comments of agencies under the state coordinated review process in section 163.3184(4), F.S., when the state land planning agency is reviewing a long-term master plan it must consult with certain state and governmental agencies.

After adopting a detailed specific area plan by development order, the local government must send the order to the state land planning agency who may initiate a civil action pursuant to section 163.3215, F.S. to challenge a detailed specific area plan that is not consistent with a long-term master plan. Any other aggrieved or adversely affected party is also subject to section 163.3215, F.S., when initiating a consistency challenge to a detailed specific area plan.

Once a long-term master plan becomes legally effective, this bill requires the plan to be connected to any long-range transportation plan developed by a metropolitan planning organization and the regional water supply plan. A water management district also may issue consumptive use permits for durations commensurate with the long-term master plan and the permitting criteria must be based upon the projected population, the approved densities and intensities of use and their distribution in the long-term master plan.

This bill allows property owners within the planning area of a proposed long-term master plan to withdraw their consent to the master plan prior to adoption by the local government, and the parcels withdrawn will not be subject to the long-term master plan, any detailed specific area plan, and the exemption from DRI review. 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. This bill protects existing agricultural, silvicultural, and other natural resource activities within a long-term master plan or a detailed specific area plan. This bill also protects properties against downzoning, unit density reduction, or intensity reduction in the detailed specific area for the duration of the buildout date.

This bill provides that a landowner or developer who has received approval of a master DRI order may apply to implement the order by filing one or more applications to approve a detailed specific area plan.

This bill provides that any detailed specific area plan to implement a conceptual long-term buildout overlay, adopted by a local government and found in compliance before July 1, 2011, will be governed by the section 163.3245, F.S. as amended by this act.

## **RURAL LAND STEWARDSHIP AREA**

### **Current Situation**

The Legislature originally enacted the Rural Land Stewardship Area (RLSA) Program as a pilot program in 2001.<sup>23</sup> The stated intent of the RLSA program has been the "restoration and maintenance of the economic value of rural land; control of urban sprawl; identification and protection of ecosystems,

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<sup>23</sup> Ch. 2001-279, L.O.F., codified as s. 163.3177(11)(d), F.S.

habitats, and natural resources; promotion of rural economic activity; maintenance of the viability of Florida's agriculture economy; and protection of the character of the rural areas of Florida.<sup>24</sup> The program uses a "transfer of development rights" process by which owners of land in designated conservation areas may trade their rights from the conserved areas for the right to use land in designated development areas. In 2004, the Legislature removed the pilot status from the program and substantially amended the statute.<sup>25</sup> The statute was again amended in 2005<sup>26</sup> and 2006.<sup>27</sup> Florida currently has two rural land stewardship areas: one consisting of approximately 200,000 acres in Collier County and another of approximately 15,000 acres in St. Lucie County. In 2009, DCA adopted two rules governing rural land stewardship areas which were objected to and cited by critics as overly restrictive and unnecessary.

#### Effect of the Bill

This bill creates section 163.3248, F.S. for provisions of law relating to RLSAs and attempts to make the RLSA process more workable with less state oversight. This bill states that "rural land stewardship areas are designed to establish a long-term incentive based strategy to balance and guide the allocation of land so as to accommodate future land uses in a manner that protects the natural environment, stimulate economic growth and diversification, and encourage the retention of land for agriculture and other traditional rural land uses."

This bill repeals rules 9J-5.026 and 9J-11.023, FAC, that govern the rural land stewardship area process, and specifies that rulemaking is not authorized and the provisions of this section are to be implemented pursuant to law. Plan amendments proposing a RLSA are subject to the state coordinated review process in s. 163.3184(4), F.S., of this bill, and each local government with jurisdiction over a RLSA must designate the area through a plan amendment. This bill renames "transferable rural land use credits" as "stewardship credits" and creates an improved process for determining the amount of transferrable stewardship credits that may be assigned within a RLSA through the establishment of a rural land stewardship overlay zoning district. This bill also specifies specific land management activities of public benefit that may act as an incentive for which owners of land within a RLSA may choose to engage in for compensation.

### **OTHER ISSUES ADDRESSED**

#### ***Planning Innovations and Technical Assistance***

##### Effect of the Bill

This bill creates section 163.3168, F.S., which encourages local governments to apply innovative planning tools to address future new development areas, urban service area designations, urban growth boundaries, and mixed-use, high-density development in urban areas. The majority of provisions in this newly created section were transplanted from more detailed provisions in the law or rule 9J-5, FAC, which this bill removed. Section 163.3168, F.S., requires the state land planning agency to provide direct and indirect technical assistance to help local governments find creative solutions to foster vibrant, healthy communities, while protecting the functions of important state resources and facilities. If a plan amendment may adversely impact an important state resource or facility, upon request by the local government, the state land planning agency must coordinate multi-agency assistance, if needed, to develop an amendment to minimize any adverse impacts.

#### ***Development Agreements***

##### Effect of the Bill

This bill specifies that a development agreement may not exceed twenty years unless the local government and the developer agree to an extension and a public hearing is held. This bill removes the requirement to send a copy of a recorded development agreement between a local government and a developer to the state land planning agency. This bill maintains the requirement for the local government to review land subject to a development agreement once every year, but the requirement

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<sup>24</sup> S. 163.3177(11)(d)2., F.S.

<sup>25</sup> Ch. 2004-372, L.O.F.

<sup>26</sup> Ch. 2005-290, L.O.F.

<sup>27</sup> Ch. 2006-220, L.O.F.

to send a written report to the state land planning agency and all parties to the agreement for years 6-10 of a development agreement is removed. This bill also removes the state land planning agency's ability to file an action in circuit court to enforce the terms of a development agreement or to challenge compliance of the agreement with the provisions of ss. 163.3220-163.3243, F.S.

### ***Century Commission for a Sustainable Florida***

#### **Current Situation**

The Century Commission was created in 2005 as a standing body charged with helping the state envision and plan for the future using a 25-year and a 50-year planning horizon.<sup>28</sup> The Century Commission must submit an annual report containing specific recommendations for addressing growth management in the state. The report, which must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, must also contain discussions regarding the need for intergovernmental cooperation and the balancing of environmental protection with future development, as well as recommendations regarding dedicated funding sources for sewer facilities, water supply and quality, transportation facilities, and educational infrastructure.

The Century Commission consists of 15 members representing local governments, school boards, developers, homebuilders, the business, agriculture, environmental communities and other appropriate stakeholders. The membership is appointed as follows: 5 by the Governor, 5 by the President of the Senate, and 5 by the Speaker of the House of Representatives.

The commissioners serve without compensation, but, with the exception of FY 2010-11,<sup>29</sup> may receive reimbursement for per diem and travel expenses while in performance of their duties. Meetings of the commission are held at least three times a year in different regions of the state to collect public input and the Department of Community Affairs provides staff and other resources necessary for the Century Commission to accomplish its goals. The Century Commission was not funded for FY 2010-11. In recent years, the commission has operated primarily on private funding.

#### **Effect of the Bill**

This bill repeals section 163.3247, F.S., authorizing the Century Commission.

### ***Comprehensive Plan Referenda***<sup>30</sup>

#### **Current Situation**

Section 163.3167(12), F.S., prohibits a local government from adopting "an initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment that affects five or fewer parcels of land." Under state law, local governments are not prohibited from adopting an initiative or referendum process for approval of development orders or comprehensive plan amendments or future land use map amendments that affect more than five parcels of land.

The city of St. Pete Beach has received the most attention for its use of the referendum process. In 2006, voters amended the city's charter to require voter referendums on all future changes to the comprehensive land use plan, community redevelopment plans, and any regulation increasing allowable building height. These actions resulted in stalled local development. Voters in St. Pete Beach

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<sup>28</sup> Section 163.3247, F.S.

<sup>29</sup> Ch. 2010-153, L.O.F.

<sup>30</sup> A local referendum or initiative process for approving comprehensive plan amendments has become known as "mini-hometown democracy." Amendment 4, which appeared on the 2010 ballot, proposed an amendment to the Florida Constitution stating that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or amendment must be subject to vote of the electors of the local government by referendum. This amendment became known as "Hometown Democracy" in reference to "Florida Hometown Democracy" the group that succeeded in getting the amendment on the ballot. Amendment 4 was defeated overwhelmingly 67% to 33%.

on March 8, 2011, approved three charter amendments that removed the referendum requirements imposed in 2006.<sup>31</sup>

#### Effect of this Bill

This bill prohibits a local government from adopting any initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment.

#### ***Transportation Backlog***

##### Effect of this Bill

This bill renames a number of items within s. 163.3182 including renaming “transportation concurrency backlog area” as “transportation deficiency area”, “transportation concurrency backlog authority” as “transportation facility authority”, and “transportation concurrency backlog plans” as “transportation sufficiency plans.” The bill makes conforming changes to this section as well.

#### ***Transition Language and Preservation of Rights***

##### Effect of this Bill

This bill requires the state land planning agency, within 60 days of the effective date of this bill, to review administrative and judicial proceedings filed by it to determine if the issues raised are consistent with the revised provisions of chapter 163, part II. If no issues raised are consistent with the revised provisions, the state land planning agency must dismiss the proceeding. If one or more issues raised are consistent with the revised provisions, the agency must amend its petition to specifically state how the plan or plan amendment fails to meet the revised provisions. In all challenges filed by the state land planning agency prior to the effective date of this bill that continue after the effective date the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct, and the local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance.

#### ***Amendments to Implement New Statutory Requirements***

##### Effect of this Bill

This bill clarifies current law that local governments are not required to adopt amendments to their comprehensive plan in order to implement new statutory requirements until the required by the evaluation and appraisal report process in section 163.3191, F.S. However, any new comprehensive plan amendments adopted must comply with the current statutory requirements.

#### ***Definition of “In Compliance”***

##### Effect of this Bill

This bill adds section 163.3248, F.S., the newly created section dealing with rural land stewardship areas, to the definition of “in compliance.” This bill no longer requires a plan or plan amendment to be consistent with the requirements of the state comprehensive plan and rule 9J-5, FAC, in order to be “in compliance.”

#### B. SECTION DIRECTORY:

**Section 1:** amends subsection (26) of s. 70.51, F.S., to remove an exception to twice a year limit on adoption of plan amendments.

**Section 2:** redesignates paragraphs (h) through (l) of subsection (3) of s. 163.06, F.S., as paragraphs (g) through (k), respectively, and amends the present paragraph (g) of that subsection to remove the requirement for the Miami River Commission to coordinate a joint planning area agreement between the Department of Community Affairs, the city, and the county.

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<sup>31</sup> See Sheila Mullane Estrada, *St. Pete Beach Voters Give Development Decisions back to City Commission*, ST. PETERSBURG TIMES, Mar. 9, 2011, available at: <http://www.tampabay.com/news/politics/elections/st-pete-beach-voters-give-development-decisions-back-to-city-commission/1156081> (last visited Mar. 14, 2011).

**Section 3:** amends subsection (4) of s. 163.2517, F.S., to remove an exception to the twice a year limit on adoption of plan amendments.

**Section 4:** amends s. 163.3161, F.S.; redesignating the "Local Government Comprehensive Planning and Land Development Regulation Act" as the "Community Planning Act"; revising and providing intent and purpose of act.

**Section 5:** subsections (2) through (5) of s. 163.3162, F.S., are renumbered as subsections (1) through (4), respectively, and present subsections (1) and (5) of that section are amended to remove references to rule 9J-5.006(5), FAC, and to specify plan amendments presumed not to be urban sprawl as defined in s. 163.3164, F.S.

**Section 6:** amends s. 163.3164, F.S.; revising multiple definitions.

**Section 7:** amends s. 163.3167, F.S.; to revise scope of the act; revises and provides duties of local governments and municipalities relating to comprehensive plans; deletes retroactive effect.

**Section 8:** creates s. 163.3168, F.S., entitled "planning innovations and technical assistance" to encourage local governments to apply for certain innovative planning tools; authorizes the state land planning agency and other appropriate state and regional agencies to use direct and indirect technical assistance.

**Section 9:** amends subsection (4) of s. 163.3171, F.S.; provides legislative intent.

**Section 10:** amends subsection (1) of section 163.3174, F.S.; deletes certain notice requirements relating to the establishment of local planning agencies by a governing body.

**Section 11:** amends s. 163.3177, F.S.; revises and provides duties of local governments; revises and provides required and optional elements of comprehensive plans; revises requirements of schedules of capital improvements; revises and provides provisions relating to capital improvements elements; revises major objectives of, and procedures relating to, the local comprehensive planning process; revises and provides required and optional elements of future land use plans; provides required transportation elements; revises and provides required conservation elements; revises and provides required housing elements; revises and provides required coastal management elements; revises and provides required intergovernmental coordination elements.

**Section 12:** amends s. 163.31777, F.S.; revises requirements relating to public schools' interlocal agreements; deletes duties of the Office of Educational Facilities, the state land planning agency, and local governments relating to such agreements; deletes an exemption.

**Section 13:** amends subsection (9) of s. 163.3178, F.S.; deletes a deadline for local governments to amend coastal management elements and future land use maps.

**Section 14:** amends s. 163.3180, F.S.; revises and provides provisions relating to concurrency; revises concurrency requirements; revises application and findings; revises local government requirements; revises and provides requirements relating to transportation concurrency, transportation concurrency exception areas, urban infill, urban redevelopment, urban service, downtown revitalization areas, transportation concurrency management areas, long-term transportation and school concurrency management systems, development of regional impact, school concurrency, service areas, financial feasibility, interlocal agreements, and multimodal transportation districts; revises duties of OPPAGA and the state land planning agency; provides requirements for local plans; provides for the limiting the liability of local governments under certain conditions.

**Section 15:** amends s. 163.3182, F.S.; revises definitions; revises provisions relating to transportation deficiency plans and projects.

**Section 16:** amends s. 163.3184, F.S.; provides a definition; provides requirements for comprehensive plans and plan amendments; creates the expedited state review process for adoption of comprehensive plan amendments; provides requirements for the adoption of comprehensive plan amendments; creates the state coordinated review process; provides and revises provisions relating to the review process; revises requirements relating to local government transmittal of proposed plan or amendments; provides for comment by reviewing agencies; deletes provisions relating to regional, county, and municipal review; revises provisions relating to state land planning agency review; revises provisions relating to local government review of comments; deletes provisions relating to notice of intent and processes for compliance and noncompliance; provides procedures for administrative challenges to plans and plan amendments; provides for compliance agreements; provides for mediation and expeditious resolution; revises powers and duties of the administration commission; revises provisions relating to areas of critical state concern; provides for concurrent zoning.

**Section 17:** amends s. 163.3187, F.S.; deletes provisions relating to the amendment of adopted comprehensive plan and provides the process for adoption of small-scale comprehensive plan amendments.

**Section 18:** repeals s. 163.3189, F.S., relating to process for amendment of adopted comprehensive plan.

**Section 19:** amends s. 163.3191, F.S., relating to the evaluation and appraisal of comprehensive plans; provides and revises local government requirements including notice, amendments, compliance, mediation, reports, and scoping meetings.

**Section 20:** amends paragraph (b) of subsection (2) of s. 163.3217, F.S., to remove an exception to twice a year limit on adoption of plan amendments.

**Section 21:** amends subsection (3) of s. 163.3220, F.S., to reflect redesignation of "Local Government Comprehensive Planning and Land Development Regulation Act" as "Community Planning Act."

**Section 22:** amends subsections (2) and (11) of s. 163.3221, F.S., to reflect redesignation of "Local Government Comprehensive Planning and Land Development Regulation Act" as "Community Planning Act."

**Section 23:** amends s. 163.3229, F.S.; revises limitations on duration of development agreements.

**Section 24:** amends s. 163.3239, F.S.; revises recording requirements.

**Section 25:** amends s. 163.3235, F.S.; revises requirements for periodic reviews of a development agreement.

**Section 26:** amends s. 163.3243, F.S.; revises parties who may file an action for injunctive relief.

**Section 27:** amends s. 163.3245, F.S.; revises provisions relating to optional sector plans; authorizes the adoption of sector plans under certain circumstances.

**Section 28:** repeals s. 163.3246, F.S., relating to the local government comprehensive planning certification program, 163.32465, F.S., relating to state review of local comprehensive plans in urban areas, and 163.3247, F.S., relating to the Century Commission for a Sustainable Florida.

**Section 29:** creates s. 163.3248, F.S.; provides for the designation of rural land stewardship areas; provides purposes and requirements for the establishment of such areas; provides for the creation of rural land stewardship overlay zoning district and transferable rural land use credits; provides certain limitation relating to such credits; provides for incentives; provides legislative intent.

**Section 30:** amends paragraph (a) of subsection (2) of s. 163.360, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 31:** amends paragraph (a) of subsection (3) and subsection (8) of section 163.516, F.S., to change reference of “Local Government Comprehensive Planning and Land Development Regulation Act” to “Community Planning Act” and to delete cross references.

**Section 32:** amends paragraph (f) of subsection (6), subsection (9), and paragraph (c) of subsection (11) of s. 171.203, F.S., to remove exceptions to twice a year limit on adoption of plan amendments.

**Section 33:** amends section 186.513, F.S., to conform to changes made in this act.

**Section 34:** amends s. 186.515, F.S., to conform to changes made in this act.

**Section 35:** amends subsection (1) of s. 189.415, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 36:** amends subsection (3) of s. 190.004, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 37:** amends paragraph (a) of subsection (1) of s. 190.005, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 38:** amends paragraph (i) of subsection (6) of s. 193.501, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 39:** amends subsection (15) of s. 287.042, F.S., to conform to changes made in this act.

**Section 40:** amends subsection (4) of s. 288.063, F.S., to conform to changes made in this act.

**Section 41:** amends paragraph (a) of subsection (2), subsection (10), and paragraph (d) of subsection (12) of s. 288.975, F.S., to conform to changes made in this act and to remove an exception to twice a year limit on adoption of plan amendments.

**Section 42:** amends subsection (4) of s. 290.0475, F.S., to conform to changes made in this act.

**Section 43:** amends paragraph (c) of subsection (3) of s. 311.07, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 44:** amends subsection (1) of s. 331.319, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 45:** amends paragraph (e) of subsection (5) of s. 339.155, F.S., to conform to changes made in this act.

**Section 46:** amends paragraph (a) of subsection (4) of s. 339.2819, F.S., to conform to changes made in this act.

**Section 47:** amends subsection (5) of s. 369.303, F.S., to conform to changes made in this act.

**Section 48:** amends subsections (5) and (7) of s. 369.321, F.S., to conform to changes made in this act and to remove a reference to rule 9J-5, FAC.

**Section 49:** amends subsection (1) of s. 378.021, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 50:** amends subsection (10) of s. 380.031, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 51:** amends s. 380.06, F.S.; revising exemptions; revising provisions to conform to changes made by this act.

**Section 52:** amends paragraph (a) of subsection (8) of s. 380.061, F.S.; revising provisions to conform to changes made by this act.

**Section 53:** amends paragraph (a) of subsection (2) of s. 380.065, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 54:** amends subsection (3) of s. 380.115, F.S., to conform to changes made in this act.

**Section 55:** amends subsection (1) of s. 403.50665, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 56:** amends subsection (13) and paragraph (a) of subsection (14) of s. 403.973, F.S.; removes an exception to twice a year limit on adoption of plan amendments; revises provisions to conform to changes made in this act.

**Section 57:** amends subsections (9) and (10) of s. 420.5095, F.S.; revises provisions to conform to changes made in this act.

**Section 58:** amends subsection (5) of s. 420.615, F.S.; removes an exception to twice a year limit on adoption of plan amendments.

**Section 59:** amends subsection (16) of section 420.9071, F.S., to conform to changes made in this act.

**Section 60:** amends paragraph (a) of subsection (4) of s. 420.9076, F.S., to conform to changes made in this act.

**Section 61:** amends subsection (1) of s. 720.403, F.S., to reflect redesignation of “Local Government Comprehensive Planning and Land Development Regulation Act” as “Community Planning Act.”

**Section 62:** amends subsection (6) of s. 1013.30, F.S., to conform to changes made in this act.

**Section 63:** amends subsections (3), (7), and (8) of s. 1013.33, F.S., to conform to changes made in this act.

**Section 64:** repeals rules 9J-5 and 9J-11.023, FAC, relating to minimum criteria for review of local government comprehensive plans and plan amendments, evaluation and appraisal reports, land development regulations and determinations of compliance; directs the Department of State to remove rules from the FAC.

**Section 65:** requires the state land planning agency to review certain administrative and judicial proceedings within 60 days of effective date of this act; provides procedures for such review.

**Section 66:** affirms statutory construction with respect to other legislation passed at the same session.

**Section 67:** directs the Division of Statutory Revision to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

**Section 68:** provides that this act shall take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Community Affairs would likely see significant cost savings because of the reduction in state oversight and review that the agency currently handles.

On February 16, 2011, DCA provided written comments to questions that were posed at the February 9, 2011 meeting of the Community & Military Affairs Subcommittee. Specifically, in regards to the amendment adoption process, DCA stated that expanding the alternative review process pilot program statewide would result in cost savings for expenses and staff resources.

Under the expedited state review process and the state coordinated review process in this bill, DCA is not required to issue or publish a notice of intent for plan amendments in a local newspaper. During FY 2010-2011, DCA budgeted \$390,000 for newspaper publications.

The agency would see a reduction in their need for staff resources because of the reduced need for review planners. This is due to the fact that under the expedited state review process and the state coordinated review process, DCA's ability to comment and challenge is narrowed and focused, and therefore DCA may screen most proposed and adopted amendments specifically for adverse impacts to important state resources and facilities. DCA would be able to dedicate staff resources only to those amendments that will create an adverse impact on important state resources and facilities, and DCA would only have to conduct a comprehensive review on certain plan amendments and new plans as opposed to a detailed review of each and every single amendment. These savings, however, may be offset to some degree given the rapid pace of the expedited review process.

Additionally, since DCA is not required to publish a notice of intent, an affected party initiating a challenge would be challenging a local government action and not DCA's compliance determination. Consequently, DCA would not have to participate in each and every administrative proceeding.

There also would likely be a minor reduction in the staff resources necessary for plan processing and publication.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not restrict the ability of local governments to raise revenues through their home rule powers. This bill eliminates unnecessary and redundant state oversight and gives local governments the ability to promote increased economic development within their jurisdictions.

2. Expenditures:

This bill potentially requires some local governments to expend funds, and at the same time provides cost savings for some local governments that are likely to offset any required expenditure of funds. This bill:

- Removes the state mandated transportation and school concurrency, allowing local governments the flexibility to employ less costly methods of managing transportation and school impacts. However, the local governments' authority to continue applying concurrency is retained.
- Removes the requirement for local governments to submit a financially feasible capital improvements element, and the requirement for local governments to annually amend their comprehensive plans to update the element and to submit the update for state review.
- Provides greater deference to local government decisions, therefore potentially reducing the likelihood of lengthy and drawn-out challenge proceedings.
- Removes the requirement for local governments to submit the costly evaluation and appraisal report every seven years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By streamlining the plan amendment process, the private sector will likely see cost savings as a result of the expedited process.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES