ECONOMIC DEVELOPMENT & TOURISM SUBCOMMITTEE

MEETING PACKET

Monday, January 25, 2016
2:30 PM – 3:30 PM
12 HOB

Steve Crisafulli
Speaker

Frank Artiles
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Development & Tourism Subcommittee

Start Date and Time:	Monday, January 25, 2016 02:30 pm
End Date and Time:	Monday, January 25, 2016 03:30 pm
Location:	12 HOB
Duration:	1.00 hrs

Consideration of the following bill(s):

CS/HB 971 Community Development Districts by Local Government Affairs Subcommittee, Sullivan
HB 1169 Emergency Management by Powell
HB 1203 Tourist Development Taxes by Drake
HB 1361 Growth Management by La Rosa

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, January 22, 2016.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 22, 2016

NOTICE FINALIZED on 01/21/2016 3:30PM by Lawhon.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 971 Community Development Districts
SPONSOR(S): Local Government Affairs Subcommittee; Sullivan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Darden	Miller
2) Economic Development & Tourism Subcommittee		Lukis	Duncan
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Community development districts (CDD) are a type of special-purpose local government intended to provide basic urban community services in a cost-effective manner. The operation of CDDs is governed by Chapter 190, F.S., the "Uniform Community Development District Act of 1980." Depending on their size, CDDs are created by a county or municipal ordinance or the adoption of a rule by the Florida Land and Water Adjudicatory Commission (FLWAC). There are currently 605 active CDDs in Florida.

The bill would increase the size of CDDs that may be created by a county or municipal ordinance from 1,000 acres or less to 2,500 acres or less. The bill makes corresponding changes to the threshold for creating a CDD by FLWAC rule and the process for determining district expansion. The bill clarifies CDDs may contract with towing operators to provide services to facilities and property owned by the district. The bill also creates a merger procedure for multiple districts created by ordinances of the same county or municipality.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 190, F.S., the "Uniform Community Development District Act of 1980,"[1] sets forth the exclusive and uniform procedures for establishing and operating a community development district (CDD).[2] This type of independent special district[3] is an alternative method to manage and finance basic services for community development.[4] There are currently 605 active CDDs in Florida.[5]

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general purpose government.[6] CDDs have certain general powers, including the authority to assess and impose ad valorem taxes upon lands in the CDD, sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders pursuant to the APA, maintain an office, lease, issue bonds, raise money by user charges or fees, and levy and enforce special assessments.[7]

The statute also authorizes additional special powers pertaining to public improvements and facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.[8] With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for improvements such as parks and recreational areas, fire prevention and control, school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; waste collection and disposal.[9]

Establishing a CDD

Petition for Rulemaking by the Florida Land and Water Adjudicatory Commission

The method for establishing a CDD depends upon its size. CDDs of 1,000 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)[10] to adopt an

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[1] Section 190.001, F.S.

[2] Sections 190.004 & 190.005, F.S.

[3] A "special district" is "a unit of local government created for a special purpose… within a limited geographic boundary … created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Section 189.012(6), F.S. An "independent special district" is characterized by having a governing body the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality. Section 189.012(3), F.S. Any special district including more than one county is an independent special district, unless the district lies wholly within a single municipality. Section 189.012(3), F.S.

[4] Section 190.003(6), F.S.

[5] Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, available at https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/ (last visited Jan. 13, 2016).

[6] Section 190.004(3), F.S.

[7] Section 190.011, F.S.

[8] Section 190.012(1), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection. Section 190.005(1)(f), (2)(d), F.S.

[9] Section 190.012(2), F.S.

[10] Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet. This distinction affects the requirements for an affirmative vote by the FLWAC. Unless

administrative rule creating the district.[11] The statute requires each petition to contain specific information, including the written consent to establishing the CDD by all landowners[12] of real property to be included in the district.[13] Prior to filing, the petitioner must submit copies of the petition and pay separate filing fees of $15,000 each to the county or municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district.[14] The counties and municipalities required to receive copies of the petition may conduct public hearings and express support or objection to the proposed district by resolution and by stating their position before the FLWAC.[15] Additionally, a public hearing on the petition must be held in the county where the CDD will be located; these hearings are conducted under the requirements of the Administrative Procedure Act[16] before an administrative law judge.[17] Once the hearing process is complete, the entire record is submitted to the FLWAC, reviewed by staff, and placed on the FLWAC meeting agenda for final consideration with the petition.[18] If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

APA Rulemaking Requirements

A rule creating a CDD may not expand, modify, or delete any of the statutory requirements for a CDD charter, except for inclusion or exclusion of special powers as provided in s. 190.012, F.S.[19] Rulemaking begins with publication of a notice of rule development.[20] Once the final form of the rule is developed, the agency must publish a notice of the proposed rule before it may be adopted.[21] The publication of this notice triggers certain deadlines for the rulemaking process.[22] The notice must include the full text of the proposed rule, other additional information, and the procedure to request a hearing on the proposed rule.[23] Once the statutory rulemaking requirements are met, the FLWAC may file the rule with the Department of State for final adoption and the rule typically goes into effect 20 days from this filing unless the notice of proposed rule provides a later date.[24]

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otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least 2 Cabinet members.

[11] Section 190.005(1), F.S.

[12] "Landowner" means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years." Section 190.003(14), F.S.

[13] Section 190.005(1)(a), F.S.

[14] Section 190.005(1)(b), F.S.

[15] Section 190.005(1)(c), F.S.

[16] Ch. 120, F.S. The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.

[17] Section 190.005(1)(d), F.S.; Rules 42-1.009 & 42-1.012, F.A.C. Chapter 42-1, F.A.C., the procedural rules of the FLWAC, remains substantially unchanged since its adoption in 1982.

[18] Section 190.005(1)(e), F.S. A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. *See* FLWAC Agenda Item 1 and attachments (Aug. 8, 2011), at http://www.myflorida.com/myflorida/cabinet/agenda11/0816/index.html (last visited Jan. 13, 2016).

[19] Section 190.005(1)(f), F.S. The statute permits the rule to contain only the metes and bounds description of the real property included in the CDD, the names of the 5 members of the initial board of supervisors for the CDD, and the name of the CDD.

[20] Section 120.54(2), F.S.

[21] Section 120.54(3)(a)1., F.S.

[22] Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.541(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

[23] Section 120.54(3)(a)1., F.S.

[24] Section 120.54(3)(e)6., F.S. If the rule itself increases regulatory costs in excess of $1 million over the first 5 years from implementation the rule cannot go into effect until ratified by the Legislature. Section 120.541(3), F.S.

Petition for Ordinance Creating a CDD

CDDs of less than 1,000 acres are established by ordinance of the county having jurisdiction over the majority of land in the area in which the CDD is to be located, with certain exceptions.[25] A petition to establish a CDD is filed with the county commission.[26] After conducting a local public hearing before an administrative law judge,[27] the commission may adopt an ordinance creating the CDD.[28] If any of the land proposed for inclusion in the CDD lies within the area of a municipality the county cannot create the district without approval of the affected municipality.[29]

If all the land proposed for inclusion in the CDD lies within the territorial jurisdiction of a municipality, the petition is filed with that municipality which then exercises the duties otherwise performed by the county commission.[30] In this case, the CDD would be created by municipal ordinance. Within 90 days of receiving the petition, the county commission (or municipality, as applicable) may transfer the petition to the FLWAC.[31] Finally, if all the land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities, the petition must be filed with the FLWAC even if the total area is less than 1,000 acres.[32]

Requirements for Notice, Meeting, and Vote of Landowners in a CDD

The powers of a CDD are exercised by the board of supervisors elected by the landowners of the district.[33] The board must have five members serving two or four year terms.[34] The initial members of the board are designated in the original petition to create the CDD and serve until new members are elected after the district is established.[35] A meeting of landowners for the purpose of electing the board must be held within 90 days of the effective date of the rule or ordinance creating the district.[36] Each landowner is entitled to one vote for each acre he or she owns.[37] The top two candidates are elected to four year terms, while the next three candidates are elected to two year terms.[38] A new board election, held among the qualified electors of the district, occurs when either the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (ten years for districts exceeding 5,000 acres).[39] Once the statutory requirements are met for election of one or more board member by all qualified electors in the district, such elections are non-partisan general elections conducted by the supervisor of elections.[40]

Special Powers of a CDD

In addition to the general powers granted to a CDD in s. 190.011, F.S., a CDD may exercise additional powers subject to the consent of other regulatory and permitting bodies encompassing the territory of

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[25] Section 190.005(2), F.S.
[26] Section 190.005(2)(a), F.S. The petition must contain the same information as required for submission to the FLWAC.
[27] Section 190.005(2)(b), F.S. The hearing must follow the same notice and procedural requirements as the local hearing for petitions before the FLWAC.
[28] *See* s. 190.005(2)(d), F.S.
[29] Section 190.005(2)(e), F.S.
[30] Section 190.005(2)(e), F.S.
[31] Section 190.005(2)(f), F.S.
[32] Section 190.005(2)(e), F.S.
[33] Section 190.006(1), F.S.
[34] *Id.*
[35] Sections 190.005(1)(a)3., 190.005(2)(a), F.S.
[36] Section 190.006(2)(a), F.S.
[37] Section 190.006(2)(b), F.S.
[38] *Id.*
[39] Sections 190.006(3)(a)1.-2., F.S. .). For CDDs with less than certain minimum numbers of qualified electors after 6 or 10 years, as applicable, the district landowners shall continue to elect the board members (s. 190.006(3)(a)2.a., F.S.) until the number of qualified electors in the district exceeds the statutory minimum (s. 190.006(3)(a)2.b., F.S.).
[40] Section 190.006(3)(b), F.S. The statute does not specify which supervisor of elections conducts the board election if the district encompasses property in more than one county.

the district.[41] With the consent of the local general-purpose government, a CDD may operate and maintain facilities for:

- Indoor and outdoor recreational, cultural, and educational uses;[42]
- Fire prevention and control;[43]
- School buildings and related structures;[44]
- Security systems, except that the district may not exercise any police power.[45]

Financial Reporting by a CDD

CDDs are subject to the financial reporting requirements of Chapters, 189, 190, and 218, F.S.[46] The district manager is responsible for drafting a proposed budget on or before June 15 of each year.[47] The board of the CDD considers the proposed budget, makes amendments (as necessary), and adopts the budget by resolution.[48] After the board adopts the budget, a public hearing on the budget is held and the board may make further changes as it deems necessary.[49] At least sixty days prior to adoption, district is required to submit its budget to the local government entities having jurisdiction over the area.[50] This submission is for the purposes of disclosure and information only, but the local government entities may submit written comments to the CDD board.[51] CDDs are also required to take affirmative steps to provide full disclosure of information related to public financing and maintenance of improvements constructed by the district.[52] The district must furnish any developer of residential property in the district with sufficient copies of this information to be able to provide a copy to each prospective initial purchaser of property.[53] Districts must file disclosures of this information in the property records of each county in which the district is located.[54] DEO is required to keep a current list of districts and their disclosures of public financing.[55]

CDDs, like other special districts, also must comply with the annual financial reporting and financial audit reporting requirements of Chapter 218, F.S.[56] A CDD with revenues or total expenditures or expenses in excess of $100,000 is required to have an annual audit conducted by an independent certified public accountant.[57] The auditor shall review the financial accounts and records of the district, reports on compliance and internal control, management letters, and financial statements, as required by rules adopted by the Auditor General.[58] The auditor must present these findings to the chair of the district's governing board and submit a copy of the report to the Auditor General.[59] The audit report is a

[41] Section 190.012, F.S.
[42] Section 190.012(2)(a), F.S.
[43] Section 190.012(2)(b), F.S.
[44] Section 190.012(2)(c), F.S.
[45] Section 190.012(2)(d), F.S.
[46] Sections 189.013, 190.008(1), F.S.
[47] Section 190.008(2)(a), F.S.
[48] *Id.*
[49] *Id.*
[50] Section 190.008(2)(b), F.S.
[51] Section 190.008(2)(b)-(c), F.S.
[52] Section 190.009(1), F.S.
[53] *Id.*
[54] Section 190.009(1), F.S.
[55] Section 190.009(2), F.S.
[56] Section 189.016(9), F.S., s. 190.008(1), F.S.
[57] Section 218.39(1), F.S. An entity is exempt from this requirement if it is informed by the first day of the fiscal year that the Auditor General will be conducting an audit of the entity for that fiscal year.
[58] Section 218.39(2), F.S. The rules of the Auditor General are Rules 10.550, 10.650, 10.700, 10.800, and 10.850, F.A.C. *See* Rule 61H1-20.0093, F.A.C.
[59] Sections 218.39(5), (7), F.S.

public record once the report is submitted by the auditor to the district.[60] All CDDs are required to file an annual financial report with the Department of Financial Services.[61]

Expansion or Contraction of a CDD

A landowner or the board of a CDD may petition for the boundaries of the district to be expanded or contracted.[62] This petition must contain the same information as is required to form a district and follows the same hearing process.[63] For districts established by FLWAC rule, the petitioner must pay a $1,500 filing fee to each county or municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district, and the required public meeting is conducted by the board of the CDD instead of a hearing officer.[64]

The amount of land that can be added to a CDD is restricted. If a district was initially established by FLWAC rule, the cumulative additions to the district may not be greater than the lesser of ten percent of the land area of the district or 250 acres.[65] If a district was initially established by county or municipal ordinance, the cumulative additions to the district may not be greater than the lesser of fifty percent of the land area of the district or 500 acres.[66]

Dissolution of a CDD

A CDD remains in existence unless the district is merged with another district, all community development services associated with the district have been transferred to a county or municipal government, or the district is dissolved as provided in statute.[67] Ch. 190 provides three ways a district may be dissolved:

- Automatic dissolution: If a landowner does not receive a development permit for some part of the area covered by the CDD within five years of the effective date of the rule or ordinance establishing the district, the CDD is automatically dissolved.[68]

- Action by local government: If a CDD is declared inactive by DEO pursuant to s. 189.062, F.S., the county or municipal government that created the district must be informed and is required to take "appropriate action."[69]

- Petition for dissolution: A district with no outstanding financial obligations and no operating or maintenance responsibilities may petition the authority that created the district to dissolve the district by appropriate action.[70] If the district was created by a county or municipal government, the CDD may be dissolved by a non-emergency ordinance.[71] If the district was created by FLWAC rule, the CDD may petition the commission to repeal the rule.

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[60] *See* s. 119.0713(3), F.S.
[61] Section 218.32(1)(a), F.S.
[62] Section 190.046(1), F.S.
[63] Sections 190.046(1)(a)-(d), F.S.
[64] Section 190.046(1)(d)1.-4., F.S.
[65] Section 190.046(1)(e)1., F.S.
[66] Section 190.046(1)(e)1., F.S.
[67] Section 190.046(2), F.S.
[68] Section 190.046(7), F.S. This subsection also requires a "judge of the circuit shall cause a statement (of dissolution) to be filed in the public records." No guidance is provided as to whether a party must ask the court for the statement, who is authorized to ask, or the procedure to bring the matter before the court.
[69] Section 190.046(8), F.S.
[70] Section 190.046(9), F.S.
[71] *Id.*

A CDD may merge with another CDD upon filing a petition for merger.[72] The petition must meet the requirements and will be evaluated by the criteria for establishing a new district.[73] The district created as a result of the merger may be a new district, or one of the districts may be the noted as the surviving district.[74] The newly merged district assumes all assets and liabilities of the previous districts.[75] Before filing the petition, the merging districts must enter into a merger agreement to properly allocate indebtedness.[76] The approval of the merger agreement and the petition by the boards of each district is considered to constitute consent of the landowners of the district.[77]

Effect of Proposed Changes

The bill modifies the establishment of CDDs in several ways. First, the bill increases the size of CDDs that can be created by county or municipal ordinance from less than 1,000 acres to less than 2,500 acres. The bill makes the corresponding changes to the threshold required for needing FLWAC approval for creation of a CDD.

The bill requires any CDD in the territorial jurisdiction of two or more counties to be established by FLWAC rule, mirroring the requirement for FLWAC approval of any CDD in two or more municipalities in current law.

The bill clarifies that the prohibition on a CDD exercising police power does not prevent a district from contracting with a towing operator to remove a vehicle or vessel from facilities or property owned by the district. The district may only exercise its power to tow if the district follows the statutory authorization, notice, and procedural requirements[78] for an owner or lessee of private property. The district is not required to solicit bids when selecting a towing operator if the operator is included in an approved list of operators maintained by the local government that has jurisdiction over the district's facilities or property.

The bill raises the maximum threshold by which a district can expand. If a district was established initially by FLWAC rule, the cumulative additions to the district may not be greater than the lesser of fifty percent of the land area of the district or 1,000 acres. If a district was established initially by county or municipal ordinance, the cumulative additions to the district may not be greater than the lesser of fifty percent of the land area of the district or 1,000 acres.

The bill also contains a streamlined merger procedure for CDDs created by the same county or municipality. Up to five districts, created by the same local general-purpose government and whose boards are composed entirely of qualified electors, may merge into one district by adoption of an ordinance by the local general-purpose government that created them. CDDs would be able to utilize this provision even if the merged district would have been required to have been created by the FLWAC if it were a new district. The filing of a petition approved by the board of each CDD applying constitutes consent of the landowners within each district.

The CDDs planning to merge must meet the requirements of s. 190.046(3), F.S. and must enter into a merger agreement specifying that:

- The merged district's board will consist of five members,
- Each at-large member of the merged district's board represents the entire district,
- Each former district is entitled to elect at least one board member from its former boundary,

[72] Section 190.046(3), F.S.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] Section 715.07, F.S.

- The member of the merger district's interim board will consist of:
  - If two CDDs merge, two members from each district and one at-large member
  - If three CDDs merge, one member from each district and two at-large members
  - If four CDDs merge, one member from each district and one at-large member
  - If five CDDs merge, one member from each district
- All pre-existing board members terms will end at the next general election and a new board representing the entire district will be elected

Before filing the merger petition, each district must hold a public hearing to take comment on the proposed merger, the merger agreement, and the assignment of board seats. The hearing must be noticed at least 14 days beforehand. If any district withdraws after the public hearing, the remaining districts considering merger must hold a public hearing on a revised merger agreement between the remaining parties. The petition may not be filed for at least 30 days after the last public hearing.

B. SECTION DIRECTORY:

Section 1: Amends s. 190.005, F.S., increasing the maximum acreage for community development districts established by an ordinance of the county commission having jurisdiction.

Section 2: Amends s. 190.012, F.S., to authorize community development districts to contract with a towing operator to remove a vehicle or vessel from district property.

Section 3: Amends s. 190.046, F.S., increasing the permissible expansion of districts by petition and enabling districts created by county or municipal ordinance to merge, subject to certain conditions.

Section 4: Providing an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have an indeterminate positive impact on local government revenues to the extent the bill makes CDDs easier to create.

2. Expenditures:

   The bill may have an indeterminate positive impact on CDD expenditures to the extent CDDs created by local ordinance may merge more readily and reduce administrative and reporting costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes a provision which would have reduced the notice period of the public hearing conducted by a hearing officer on the petition to the FLWAC from four weeks immediately prior to the hearing to two weeks.

This analysis is drawn to the bill as amended.

A bill to be entitled

An act relating to community development districts; amending s. 190.005, F.S.; amending the acreage threshold for the establishment, by rule or ordinance, of a community development district; revising criteria for requiring a petition for a proposed district to be filed with the Florida Land and Water Adjudicatory Commission; amending s. 190.012, F.S.; authorizing a district to contract with a towing operator to remove vehicles or vessels from specified facilities or properties, subject to certain requirements; amending s. 190.046, F.S.; revising the criteria necessary for amending the boundaries of a district; authorizing up to a certain number of districts to merge into one surviving district, subject to certain requirements; providing for membership of the surviving merged district board; providing requirements of the merger agreement; providing for public hearings subject to certain requirements; prohibiting a petition to merge from being filed within a specified timeframe; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 190.005,

Florida Statutes, are amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 2,500 ~~1,000~~ acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(a) A petition for the establishment of a community development district shall be filed by the petitioner with the Florida Land and Water Adjudicatory Commission. The petition shall contain:

1. A metes and bounds description of the external boundaries of the district. Any real property within the external boundaries of the district which is to be excluded from the district shall be specifically described, and the last known address of all owners of such real property shall be listed. The petition shall also address the impact of the proposed district on any real property within the external boundaries of the district which is to be excluded from the district.

2. The written consent to the establishment of the district by all landowners whose real property is to be included in the district or documentation demonstrating that the petitioner has control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the district, and when real property to be included in the district

is owned by a governmental entity and subject to a ground lease as described in s. 190.003(14), the written consent by such governmental entity.

3. A designation of five persons to be the initial members of the board of supervisors, who shall serve in that office until replaced by elected members as provided in s. 190.006.

4. The proposed name of the district.

5. A map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence.

6. Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services. These estimates shall be submitted in good faith but are not binding and may be subject to change.

7. A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan of which all mandatory elements have been adopted by the applicable general-purpose local government in compliance with the Community Planning Act.

8. A statement of estimated regulatory costs in accordance with the requirements of s. 120.541.

(b) Prior to filing the petition, the petitioner shall:

1. Pay a filing fee of $15,000 to the county, if located

within an unincorporated area, or to the municipality, if located within an incorporated area, and to each municipality the boundaries of which are contiguous with, or contain all or a portion of the land within, the external boundaries of the district.

2. Submit a copy of the petition to the county, if located within an unincorporated area, or to the municipality, if located within an incorporated area, and to each municipality the boundaries of which are contiguous with, or contain all or a portion of, the land within the external boundaries of the district.

3. If land to be included within a district is located partially within the unincorporated area of one or more counties and partially within a municipality or within two or more municipalities, pay a $15,000 filing fee to each entity. Districts established across county boundaries shall be required to maintain records, hold meetings and hearings, and publish notices only in the county where the majority of the acreage within the district lies.

(c) Such county and each such municipality required by law to receive a petition may conduct a public hearing to consider the relationship of the petition to the factors specified in paragraph (e). The public hearing shall be concluded within 45 days after the date the petition is filed unless an extension of time is requested by the petitioner and granted by the county or municipality. The county or municipality holding such public

hearing may by resolution express its support of, or objection to the granting of, the petition by the Florida Land and Water Adjudicatory Commission. A resolution must base any objection to the granting of the petition upon the factors specified in paragraph (e). Such county or municipality may present its resolution of support or objection at the Florida Land and Water Adjudicatory Commission hearing and shall be afforded an opportunity to present relevant information in support of its resolution.

(d) A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e). The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements

appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published fewer than 5 days a week. In addition to being published in the newspaper, the map referenced above must be part of the online advertisement required pursuant to s. 50.0211. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

(e) The Florida Land and Water Adjudicatory Commission shall consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments as provided in paragraph (c), and the following factors and make a determination to grant or deny a petition for the establishment of a community development district:

1. Whether all statements contained within the petition have been found to be true and correct.

2. Whether the establishment of the district is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.

3. Whether the area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.

4. Whether the district is the best alternative available for delivering community development services and facilities to the area that will be served by the district.

5. Whether the community development services and facilities of the district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.

6. Whether the area that will be served by the district is amenable to separate special-district government.

(f) The Florida Land and Water Adjudicatory Commission shall not adopt any rule which would expand, modify, or delete any provision of the uniform community development district charter as set forth in ss. 190.006-190.041, except as provided in s. 190.012. A rule establishing a community development district shall only contain the following:

1. A metes and bounds description of the external boundaries of the district and any real property within the external boundaries of the district which is to be excluded.

2. The names of five persons designated to be the initial members of the board of supervisors.

3. The name of the district.

(g) The Florida Land and Water Adjudicatory Commission may

adopt rules setting forth its procedures for considering petitions to establish, expand, modify, or delete uniform community development districts or portions thereof consistent with the provisions of this section.

(2) The exclusive and uniform method for the establishment of a community development district of less than 2,500 ~~1,000~~ acres in size or a community development district of up to 7,000 acres in size located within a connected-city corridor established pursuant to s. 163.3246(14) shall be pursuant to an ordinance adopted by the county commission of the county having jurisdiction over the majority of land in the area in which the district is to be located granting a petition for the establishment of a community development district as follows:

(a) A petition for the establishment of a community development district shall be filed by the petitioner with the county commission. The petition shall contain the same information as required in paragraph (1)(a).

(b) A public hearing on the petition shall be conducted by the county commission in accordance with the requirements and procedures of paragraph (1)(d).

(c) The county commission shall consider the record of the public hearing and the factors set forth in paragraph (1)(e) in making its determination to grant or deny a petition for the establishment of a community development district.

(d) The county commission shall not adopt any ordinance which would expand, modify, or delete any provision of the

uniform community development district charter as set forth in ss. 190.006-190.041. An ordinance establishing a community development district shall only include the matters provided for in paragraph (1)(f) unless the commission consents to any of the optional powers under s. 190.012(2) at the request of the petitioner.

(e) If all of the land in the area for the proposed district is within the territorial jurisdiction of a municipal corporation, then the petition requesting establishment of a community development district under this act shall be filed by the petitioner with that particular municipal corporation. In such event, the duties of the county, hereinabove described, in action upon the petition shall be the duties of the municipal corporation. If any of the land area of a proposed district is within the land area of a municipality, the county commission may not create the district without municipal approval. If all of the land in the area for the proposed district, even if less than 2,500 ~~1,000~~ acres, is within the territorial jurisdiction of two or more municipalities or two or more counties, except for proposed districts within a connected-city corridor established pursuant to s. 163.3246(14), the petition shall be filed with the Florida Land and Water Adjudicatory Commission and proceed in accordance with subsection (1).

(f) Notwithstanding any other provision of this subsection, within 90 days after a petition for the establishment of a community development district has been filed

pursuant to this subsection, the governing body of the county or municipal corporation may transfer the petition to the Florida Land and Water Adjudicatory Commission, which shall make the determination to grant or deny the petition as provided in subsection (1). A county or municipal corporation shall have no right or power to grant or deny a petition that has been transferred to the Florida Land and Water Adjudicatory Commission.

Section 2. Paragraph (d) of subsection (2) of section 190.012, Florida Statutes, is amended to read:

190.012 Special powers; public improvements and community facilities.—The district shall have, and the board may exercise, subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies, and special districts having authority with respect to any area included therein, any or all of the following special powers relating to public improvements and community facilities authorized by this act:

(2) After the local general-purpose government within the jurisdiction of which a power specified in this subsection is to be exercised consents to the exercise of such power by the district, the district shall have the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for:

(d) Security, including, but not limited to, guardhouses, fences and gates, electronic intrusion-detection systems, and

patrol cars, when authorized by proper governmental agencies; except that the district may not exercise any police power, but may contract with the appropriate local general-purpose government agencies for an increased level of such services within the district boundaries. However, this paragraph does not prohibit a district from contracting with a towing operator to remove a vehicle or vessel from a district-owned facility or property if the district follows the authorization and notice and procedural requirements in s. 715.07 for an owner or lessee of private property. The district's selection of a towing operator is not subject to public bidding if the towing operator is included in an approved list of towing operators maintained by the local government that has jurisdiction over the district's facility or property.

Section 3. Paragraph (e) of subsection (1) and subsection (2) of section 190.046, Florida Statutes, are amended, subsections (4) through (9) are renumbered as subsections (5) through (10), respectively, and a new subsection (4) is added to that section, to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

(e)1. During the existence of a district initially established by administrative rule, the process to amend the

boundaries of the district pursuant to paragraphs (a)-(d) shall not permit a cumulative net total greater than 50 ~~10~~ percent of the land in the initial district, and in no event greater than 1,000 ~~250~~ acres on a cumulative net basis.

2. During the existence of a district initially established by county or municipal ordinance, the process to amend the boundaries of the district pursuant to paragraphs (a)-(d) shall not permit a cumulative net total greater than 50 percent of the land in the initial district, and in no event greater than 1,000 ~~500~~ acres on a cumulative net basis.

(2) The district shall remain in existence unless:

(a) The district is merged with another district as provided in subsection (3) or subsection (4);

(b) All of the specific community development systems, facilities, and services that it is authorized to perform have been transferred to a general-purpose unit of local government in the manner provided in subsections ~~(4),~~ (5), (6), and (7) ~~(6)~~; or

(c) The district is dissolved as provided in ~~subsection (7),~~ subsection (8), ~~or~~ subsection (9), or subsection (10).

(4)(a) To achieve economies of scale, reduce costs to affected district residents and businesses in areas with multiple existing districts, and encourage the merger of multiple districts, up to five districts that were established by the same local general-purpose government and whose board memberships are composed entirely of qualified electors may

merge into one surviving district through adoption of an ordinance by the local general purpose government, notwithstanding the acreage limitations otherwise set forth for the establishment of a district in this chapter. The filing of a petition by the majority of the members of each of the district board of supervisors seeking to merge constitutes consent of the landowners within each applicable district.

(b) In addition to meeting the requirements of subsection (3), a merger agreement entered into between the district boards subject to this subsection must also:

1. Require the surviving merged district board to consist of five elected board members.

2. Require each at-large board seat to represent the entire geographic area of the surviving merged district.

3. Ensure that each district to be merged is entitled to elect at least one board member from its former boundary.

4. Ensure a fair allocation of board membership to represent the districts being merged. To that end:

a. If two districts merge, two board members shall be elected from each of the districts and one member shall be elected at-large.

b. If three districts merge, one board member shall be elected from each of the three districts and two board members shall be elected at-large.

c. If four districts merge, one board member shall be elected from each of the four districts and one board member

shall be elected at-large.

d. If five districts merge, one board member shall be elected from each of the five districts.

5. Require the election of board members for the surviving merged district to be held at the next general election following the merger, at which time all terms of preexisting board members shall end and the merger shall be legally in effect.

(c) Before filing the merger petition with the local general-purpose government under this subsection, each district proposing to merge must hold a public hearing within its district to provide information about and take public comment on the proposed merger, merger agreement, and assignment of board seats. Notice of the hearing shall be published at least 14 days before the hearing. If, after the public hearing, a district board decides that it no longer wants to merge and cancels the proposed merger agreement, the remaining districts must each hold another public hearing on the revised merger agreement. A petition to merge may not be filed for at least 30 days after the last public hearing held by the districts proposing to merge.

Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1169 Emergency Management
SPONSOR(S): Powell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Hancock EBH	Duncan
2) Appropriations Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Division of Emergency Management (DEM), located within the Executive of the Governor, is responsible for administering programs to rapidly apply all available aid to communities stricken by an emergency and preparing a state comprehensive emergency management plan (CEMP). The CEMP is integrated into and coordinated with the federal government's emergency management plans. Both the state and federal government have established processes to prepare for, respond to, recover from, and mitigate natural, technological, or manmade disasters.

Although Florida's CEMP establishes three levels of activation for the SERT to effectively monitor and respond to threats or emergency situations, the term "activate" is not defined in statute. The bill clarifies the process utilized by DEM's State Emergency Response Team (SERT) to effectively mobilize resources and conduct activities to guide and support local emergency management efforts.

The bill defines the term "activate" as "the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation."

The bill does not appear to have a fiscal impact on state or local government revenues.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

State Emergency Management Act

The State Emergency Management Act[1] created the Florida Division of Emergency Management (DEM), conferred emergency powers upon the Governor, and provided for the rendering of mutual aid among political subdivisions of the state, other states, and with the Federal Government.[2] It was enacted with a declaration of state policy "that all emergency management functions of the state be coordinated to the maximum extent with comparable functions of the Federal Government... to the end that the most effective preparation and use may be made of the workforce, resources, and facilities of the nation for dealing with any emergency that may occur."[3]

Florida Division of Emergency Management's Comprehensive Emergency Management Plan

DEM is tasked with administering programs to rapidly apply all available aid to communities stricken by an emergency.[4] In order to do so, DEM is responsible for preparing a state comprehensive emergency management plan (CEMP), "which shall be integrated into and coordinated with the emergency management plans and programs of the Federal Government."[5] The CEMP serves as the framework for disaster and emergency preparedness, response, recovery and mitigation activities.[6]

Florida Emergency Process

When an imminent or actual event threatens the state, the Director of DEM activates the State Emergency Response Team (SERT) and recommends that the Governor declare a state of emergency.[7] The SERT provides management of response and recovery activities from the State Emergency Operations Center (SEOC), a permanent facility located in Tallahassee.[8] The SEOC operates 24 hours a day, 7 days a week, but the level of staffing varies with the activation level.

The CEMP establishes three levels of activation as follows:

- Level 3 – Monitoring Activation
  This level is a "monitoring" phase. Notification is made to those state agencies and Emergency Support Functions (ESFs) needed to take action as part of everyday responsibilities. The State Emergency Operation Center is staffed with State Warning Point Communicators and DEM staff.
- Level 2 – Partial Activation of SERT
  This level is limited activation with all primary or lead ESFs notified. The State Emergency Operations Center will be staffed by DEM personnel and necessary ESFs.
- Level 1 – Full Activation

[1] Sections 252.31-60, F.S.
[2] Section 252.32(1), F.S.
[3] Section 252.32(2), F.S.
[4] Section 14.2016, F.S.
[5] Section 252.35(2)(a), F.S.
[6] *See* Florida Division of Emergency Management (DEM), *State of Florida 2014 Comprehensive Emergency Management Plan (2014 CEMP), available at*: http://floridadisaster.org/cemp.htm (last visited January, 11, 2016).
[7] *Id.* at 18. Alternatively, the SERT can be activated by the Governor, or the SERT Chief. *See* 2014 CEMP, Section IV H, Activation of Emergency Facilities.
[8] *Id.* at 12-17.

This level is full scale activation and all primary and support agencies under the state plan are notified. The State Emergency Operations Center is staffed by DEM personnel and all ESFs. [9]

In order to receive federal assistance, the Governor of the state requesting funding must demonstrate direct execution of the State's emergency plan.[10] The Federal Coordinating Officer (FCO) works in unison with the State Coordinating Officer (SCO) to coordinate the federal response to a state affected by a disaster or emergency.[11]

Federal Emergency Declaration Process

When state and local resources are inadequate to effectively respond to a disaster or emergency, a state governor may request federal assistance.[12] The Governor's written request for federal assistance is made through the regional Federal Emergency Management Agency (FEMA) office after a preliminary damage assessment (PDA) has been completed.[13] The PDA assesses the costs associated with emergency protective measures, debris removal, and damage to infrastructure.[14] . In the case of an emergency, Florida sends its PDA to Region IV, located in Atlanta, Georgia.[15] However, if a severe or catastrophic event occurs, the Governor's request may be submitted prior to the PDA.

The Governor's request for federal assistance must demonstrate that appropriate action has occurred under state law and that the state's emergency plan has been initiated, among other things. After completion of the Governor's request, the President may activate federal programs to assist in the response and recovery effort. Not all federal programs are activated for every disaster.

These federal programs providing assistance are organized within the Emergency Support Functions (ESF) framework. The ESF provides the structure and coordination of federal interagency support in the event of an incident.[16] The ESF is structured upon fifteen annexes. Within each annex, federal agencies that engage in work within that functional area are labeled as primary or support agencies. Primary agencies have significant roles, resources, or capabilities necessary for emergency support within the ESF annex. Support agencies assist primary agencies in responding to an incident or providing necessary resources.[17]

The needs of the state requesting assistance determine which federal programs are activated within the ESF framework.[18] There are three activation levels and a "watch steady state" recognized by FEMA for the National Response Coordination Center. The federal levels of activation are described as follows:

- Watch Steady State
  - No event or incident anticipated.
- Level III
  - Requires moderate direct federal assistance.
  - Typically a recovery effort with minimal response requirements.

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[9] DEM, *State Emergency Operations Center Activation Levels, available at*: http://www.floridadisaster.org/eoc/eoclevel.htm (last visited Dec. 1, 2015).
[10] FEMA, *The Declaration Process, available at:* https://www.fema.gov/declaration-process (last visited Dec. 3, 2015).
[11] *Supra*, note 10 at 21-22.
[12] Public Law No: 100-707.
[13] *Supra*, note 14.
[14] DEM, *Public Assistance Program, available at*: http://www.floridadisaster.org/Recovery/PublicAssistance/Index.htm (last visited Dec. 3, 2015).
[15] DEM, *Declaration Process – Request for Presidential Disaster Declaration, available at*: http://www.floridadisaster.org/Recovery/IndividualAssistance/DeclarationProcess/Index.htm (last visited Dec. 3, 2015).
[16] FEMA, *EMERGENCY SUPPORT FUNCTION ANNEXES: INTRODUCTION, available at*: www.fema.gov/pdf/emergency/nrf/nrf-esf-intro.pdf
[17] FEMA, *Primary and Support Agencies, available at*: https://emilms.fema.gov/IS293/MAO0103070text.htm
[18] *Supra*, note 14.

- Federal assistance may be limited to activation of only one or two ESF primary agencies.

- Level II
  - Requires a high amount of federal assistance.
  - Significant involvement of FEMA, and other federal agencies.
  - Possible deployment of initial response resources are required to support the needs of the affected state.
- Level II
  - An incident of such magnitude that has caused the response at the local, regional, or national-level to be completely overwhelmed or broken.
  - Requires an extreme amount of direct federal assistance for response and recovery efforts.
  - Major involvement of FEMA, other Federal agencies, and all primary ESF agencies are activated.[19]

Effect of Proposed Changes

This bill defines the term "activate" as it relates to the activation of the SERT within the SEOC or at an alternate facility pursuant to the State Emergency Management Act. "Activate" is defined as "the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation."

B. SECTION DIRECTORY:

Section 1: Amends s. 252.34, F.S., relating to definition under the State Emergency Management Act, defining the term "activate."

Section 2: Amends s. 163.360(10), F.S., relating to community redevelopment plans, conforming a statutory cross-reference.

Section 3: Amends s. 474.2125(1), F.S., relating to the issuance of a temporary license to a licensed veterinarian, conforming a statutory cross-reference.

Section 4: Amends s. 627.659(4), F.S., relating to blanket health insurance, conforming a statutory cross-reference.

Section 5: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[19] FEMA, *National Incident Support Manual, available at:* https://www.fema.gov/media-library/assets/documents/24921 (last visited Dec. 9, 2015).

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to emergency management; amending s. 252.34, F.S.; defining the term "activate" for purposes of part I of ch. 252, F.S.; amending ss. 163.360, 474.2125, and 627.659, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (1) through (9) of section 252.34, Florida Statutes, are renumbered as subsections (2) through (10), respectively, and a new subsection (1) is added to that section, to read:

252.34 Definitions.—As used in this part, the term:

(1) "Activate" means the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation.

Section 2. Subsection (10) of section 163.360, Florida Statutes, is amended to read:

163.360 Community redevelopment plans.—

(10) Notwithstanding any other provisions of this part, when the governing body certifies that an area is in need of redevelopment or rehabilitation as a result of an emergency

under s. 252.34(4) ~~s. 252.34(3)~~, with respect to which the Governor has certified the need for emergency assistance under federal law, that area may be certified as a "blighted area," and the governing body may approve a community redevelopment plan and community redevelopment with respect to such area without regard to the provisions of this section requiring a general plan for the county or municipality and a public hearing on the community redevelopment.

Section 3. Subsection (1) of section 474.2125, Florida Statutes, is amended to read:

474.2125 Temporary license.—

(1) The board shall adopt rules providing for the issuance of a temporary license to a licensed veterinarian of another state for the purpose of enabling her or him to provide veterinary medical services in this state for the animals of a specific owner or, as may be needed in an emergency as defined in s. 252.34(4) ~~s. 252.34(3)~~, for the animals of multiple owners, provided the applicant would qualify for licensure by endorsement under s. 474.217. No temporary license shall be valid for more than 30 days after its issuance, and no license shall cover more than the treatment of the animals of one owner except in an emergency as defined in s. 252.34(4) ~~s. 252.34(3)~~. After the expiration of 30 days, a new license is required.

Section 4. Subsection (4) of section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket

health insurance is that form of health insurance which covers special groups of individuals as enumerated in one of the following subsections:

(4) Under a policy or contract issued in the name of a volunteer fire department, first aid group, local emergency management agency as defined in s. 252.34(6) ~~s. 252.34(5)~~, or other group of first responders as defined in s. 112.1815, which is deemed the policyholder, covering all or any grouping of the members or employees of the policyholder or covering all or any participants in an activity or operation sponsored or supervised by the policyholder.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1203 Tourist Development Taxes
SPONSOR(S): Drake
TIED BILLS: **IDEN./SIM. BILLS:** SB 1520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		White	Duncan
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Local Option Tourist Development Act authorizes counties to levy tourist development taxes on transient rentals of living quarters or accommodations, such as hotel stays. The bill authorizes coastal counties with populations less than 225,000 and at least nine municipalities to use revenues from the existing tourist development tax to fund beach safety personnel and lifeguard operational activities in areas with public access.

The bill has no fiscal impact on state or local government revenues.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Local Option Tourist Development Act[1] authorizes counties to levy five separate tourist development taxes on transient rental transactions. Depending on a county's eligibility to levy, the tax rate varies from a minimum of three percent to a maximum of six percent. The levies may be authorized by vote of the county's governing authority or referendum approval. The revenues generated by the tax may be used in various ways to promote tourism, including capital construction of tourism-related facilities. The authorized uses of each local option tax vary according to the particular levy. These taxes are:

- The tourist development tax may be levied at the rate of 1 or 2 percent.[2]
- An additional tourist development tax of 1 percent may be levied by counties who have previously levied a tourist development tax at the 1 or 2 percent rate for at least three years.[3]
- A professional sports franchise facility tax may be levied up to an additional 1 percent.[4]
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[5]
- A high tourism impact tax may be levied at an additional 1 percent.[6]

Revenues received by a county from a tax levied under s. 125.0104(3)(c) and (d), F.S., must be used for purposes listed in s. 125.0104(5), F.S. These purposes are:

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.
- In counties with populations less than 750,000, tourist development tax revenue may be used for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly

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[1] Section 125.0104, F.S.

[2] Section 125.0104(3)(c), F.S. Sixty-two counties levy this tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, *available at* http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Jan. 16, 2016).

[3] Section 125.0104(3)(d), F.S. Forty-eight of the 59 eligible counties levy this tax. Florida Revenue Estimating Conference, 2016 Florida Tax Handbook, p. 268.

[4] Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism. Thirty-nine of the 67 eligible counties levy this additional tax. *Id.*

[5] Section 125.0104(3)(n) F.S. Twenty-four of the 65 eligible counties levy the additional professional sports franchise facility tax. *Id.*

[6] Section 125.0104(3)(m), F.S. Of the seven counties eligible to levy this tax, only Monroe, Orange, Osceola, and Palm Beach levy it. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.

owned and operated or owned and operated by a not-for-profit organization and open to the public.

- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

The use of tourist development tax revenue for any purpose not expressly authorized in statute is prohibited.[7]

Section 125.0104(10), F.S., authorizes a county levying taxes on transient rentals to self-administer the tax, if the county adopts an ordinance providing for the local collection and administration of the tax. A county that chooses to self-administer the tax must choose whether to assume all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate this authority to the Department of Revenue.

Local option tourist taxes are significant revenue sources to Florida's county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion.[8]

Proposed Changes

The bill creates s. 125.0104(5)(c), F.S., authorizing a coastal county with population less than 225,000 and at least nine municipalities to use its tourist development tax revenue to fund beach safety personnel and lifeguard operational activities in areas with public access.

Currently, two coastal counties, Bay and Okaloosa, meet the requirements of the bill by having populations less than 225,000,[9] and nine or more municipalities.[10] Both of these counties levy the original and additional tourist development taxes,[11] and have chosen local administration of the tourist development tax.[12]

For Fiscal Year 2015-2016,[13] the Florida Office of Economic & Demographic Research (EDR) estimates the total taxable sales reported by transient rental facilities to be $369.7 million for Bay County, and $315.8 million for Okaloosa County.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., to allow certain coastal counties to use tourist development tax revenue to fund beach safety personnel and lifeguard operational activities in areas with public access.

Section 2: Provides an effective date of July 1, 2016.

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[7] Section 125.0104(5)(d), F.S.

[8] Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf (last visited Jan. 16, 2016).

[9] EDR, Florida Population by County, *available at* http://edr.state.fl.us/Content/population-demographics/data/ (last visited Jan. 16, 2016).

[10] Florida Association of Counties, Florida Cities by County, *available at* http://www.fl-counties.com/about-floridas-counties/florida-cities-by-county (last visited Jan 16, 2016).

[11] This represents a 3% tax rate on sales reported by transient rental facilities that could be used for tourist development.

[12] EDR, 2015 Local Government Financial Information Handbook, at 242, available at http://edr.state.fl.us/Content/local-government/reports/lgfih15.pdf (last visited Jan. 19, 2016).

[13] The State fiscal year ends June 30. *Id.* at 244.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill authorizes affected counties to use an existing source of revenue to fund expenditures for beach patrols and lifeguard services. In the alternative, these services likely would continue to be funded by county general revenue funds.[14]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[14] Ad valorem property taxes are a significant source for a county's general revenue fund.

A bill to be entitled

An act relating to tourist development taxes; amending s. 125.0104, F.S.; specifying additional uses for revenues received from tourist development taxes for certain coastal counties; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) of section 125.0104, Florida Statutes, is redesignated as paragraph (d), present paragraph (d) is amended, and a new paragraph (c) is added to that subsection, to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(c) A coastal county with at least nine municipalities and an estimated population of less than 225,000 according to the most recent population estimate prepared pursuant to s. 186.901, excluding the inmate population, may also use tax revenues received pursuant to this section to fund beach safety personnel and lifeguard operational activities in areas with public access.

(e) ~~(d)~~ Any use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l) or paragraph (3)(n) or

paragraph (a), paragraph (b), or paragraph (d) ~~(c)~~ of this subsection is expressly prohibited.

Section 2. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1203 (2016)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Development & Tourism Subcommittee

Representative Drake offered the following:

Amendment

Remove line 17 and insert:

(c) A coastal county with at least three municipalities and

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1361 Growth Management
SPONSOR(S): La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Lukis AL	Duncan pkd
2) Local Government Affairs Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill seeks to alter various provisions within four areas of the state's growth management laws: administrative challenges to comprehensive plan amendments; Developments of Regional Impact (DRIs); sector plans; and annexation of enclaves.

Administrative Challenges to Comprehensive Plan Amendments

- The bill provides that a recommended order submitted to the Department of Economic Opportunity (DEO) by an administrative law judge regarding a challenged comprehensive plan amendment becomes final within 90 days without agency action.
- The bill specifies a 45 day time limit for certain expedited administrative proceedings.

Developments of Regional Impact

- The bill authorizes reductions in height, density, or intensity in DRIs without losing vested rights.
- The bill specifies that a proposed development or changes thereto that would otherwise require DRI review must follow the state coordinated review process, but only if the development or changes require an amendment to the comprehensive plan.
- The bill allows a developer, DEO, and local government, to amend their agreement that a development is essentially built-out without a notification of proposed change necessary for a substantial deviation.
- The bill provides that certain unbuilt land uses specified in an agreement establishing that a development is essentially built out, may be substituted for another land use.
- The bill creates a rebuttable presumption that certain changes to a DRI development order are substantial deviations requiring additional state and regional review.
- The bill adds phase extensions to the list of DRI changes that are not substantial deviations under certain circumstances.
- The bill provides that previously developed lands acquired for development as part of an existing DRI are not subject to aggregation under certain circumstances.
- The bill authorizes DRIs to rescind their DRI development order.

Sector Plans

- The bill increases the minimum required acreage of sector plans from 15,000 acres to 5,000 acres.

Annexation of Enclaves

- The bill authorizes enclaves that are 110 acres in size to be annexed on an expedited basis.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Administrative Challenges to Comprehensive Plan Amendments

Comprehensive Plan Background and the Comprehensive Plan Amendment Process

In 1985, the Florida Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.[1] A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first.[2]

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[3] The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies,[4] including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate.

Upon receipt of the proposed plan amendment, state agencies review the proposed amendment for impacts related to their statutory purview.[5] The RPC reviews the amendment specifically for "extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region" as well as adverse effects on regional resources or facilities. The affected state agencies and the RPC then issue a report of their review to the local government, which then holds a second public hearing at which the governing body votes to approve the amendment or not.[6] If the amendment receives a favorable vote it is transmitted to DEO for final review.[7] The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.[8]

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[9] Most plan amendments were placed into the Expedited State Review Process, while plan amendments relating to large-scale developments were placed into the State Coordinated Review Process.[10] The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.[11]

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[1] Chapter 85-55, L.O.F.
[2] *See* s. 163.3163, F.S.
[3] Sections 163.3184 and 163. 3181, F.S.
[4] Section 163.3184, F.S.
[5] Section 163.3184(3), (4), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Section 17, Ch. 2011-139, L.O.F.
[10] *Id.*
[11] Section 163.3184(3), (4), F.S.

Administrative Challenges to Plan Amendments

Any "affected person" as defined in s. 163.3184(1)(a), F.S., may file a petition with the Division of Administrative Hearings (Division), to request a formal hearing to challenge whether a plan amendment is "in compliance" with law.[12] The petition must be filed with the Division within 30 days after the local government adopts the amendment.[13]

The state land planning agency (DEO) may also file a petition with the Division to request a formal hearing to challenge whether the plan amendment is in compliance.[14] Under the expedited state review process, this petition must be filed with the Division within 30 days after the DEO notifies the local government that the plan amendment package is complete. Under the state coordinated review process, this petition must be filed with the division within 45 days after DEO notifies the local government that the plan amendment package is complete.[15]

Once filed, an administrative law judge (ALJ) must hold a hearing on the petition in the affected local jurisdiction to determine whether to make a recommendation that the challenged plan amendment is in compliance or not in compliance.[16] In challenges filed by an affected person, the ALJ must determine a plan amendment to be in compliance if the local government's determination of compliance is "fairly debatable."[17] Conversely, in challenges filed by DEO, a plan amendment is presumed to be in compliance and will only be found not in compliance by a preponderance of the evidence.[18] Absent a showing of extraordinary circumstances, the ALJ must issue the recommended order, within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.[19]

If the ALJ recommends that the amendment be found *not* in compliance, the ALJ must submit the recommended order to the Administration Commission for final agency action.[20] Upon submittal of the recommended order, the Administration Commission must enter a final order within 90 days.[21] Conversely, if the ALJ recommends that the amendment be found *in* compliance, the ALJ must submit its recommended order to DEO.[22]

If DEO determines that the plan amendment should be found in compliance, it must enter its final order within 90 days.[23] If DEO determines that the plan amendment should be found not in compliance, it must submit its recommended order to the Administration Commission for final action within 90 days.[24]

If the Administration Commission finds that the plan amendment is not in compliance with law, the Commission must specify remedial actions that would bring the plan amendment into compliance.[25] The Commission may also specify certain sanctions to which the local government will be subject if it elects to make the amendment effective notwithstanding the Commission's determination of noncompliance.[26]

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[12] Section 163.3184(5)(a), F.S. See definition of "in compliance" in s. 163.3184(1)(b), F.S.
[13] Section 163.3184(5)(a), F.S. At any time after the filing of a challenge, the state land planning agency and the local government may voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the proceedings. Section 163.3184(6), F.S.
[14] Section 163.3184(5)(b), F.S.
[15] *Id.*
[16] Section 163.3184(5)(c), F.S.
[17] *Id.*
[18] *Id.*
[19] Section 163.3184(7)(c), F.S.
[20] Section 163.3184(5)(d), F.S.
[21] *Id.;* s. 120.569(2)(l), F.S.
[22] Section 163.3184(5)(e), F.S.
[23] *Id.*
[24] *Id.*
[25] Section 163.3184(8)(a), F.S.
[26] Section 163.3184(8)(b), F.S.

Mediation and Expedited Challenges

Challenges to comprehensive plans may also go through mediation or an expedited process.[27] At any time after the matter has been forwarded to the Division, the local government proposing the amendment may demand formal mediation.[28] Additionally, any time after the matter has been forwarded to the Division, the local government proposing the amendment or an affected person who is a party to the proceeding may demand informal mediation or expeditious resolution of the proceedings.[29] In either case, the party demanding mediation or expedited review must serve written notice on all other parties to the proceeding and the ALJ.

Upon receipt of the notice, the ALJ must set the matter for final hearing within 30 days.[30] Once a final hearing has been set, no continuance in the hearing, and no additional time for post-hearing submittals, may be granted without the written agreement of the parties absent a finding by the administrative law judge of extraordinary circumstances.[31]

Absent a showing of extraordinary circumstances, the ALJ must issue a recommended order within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.[32] Absent a showing of extraordinary circumstances, the Administration Commission, upon receiving a recommended order of not in compliance (from the ALJ or DEO), must issue a final order within 45 days unless the parties agree in writing to a longer time.[33]

Developments of Regional Impact

Developments of Regional Impact Background

Section 380.06, F.S., defines a Development of Regional Impact (DRI) as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Given their size, DRIs are subject to a special review process and often require an amendment to a comprehensive plan.

The Legislature initially created the DRI program in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.[34] However, the DRI program remained until 2015. In 2015,[35] the Legislature determined that *new* developments that would otherwise require DRI review must adhere to the state coordinated review process.[36] Accordingly, although there would be no additional DRIs, existing DRIs would remain intact and must adhere to existing DRI laws and review requirements.

DRI Review

Florida law requires all developments that meet the DRI thresholds and standards provided by statute and rules adopted by the Administration Commission to undergo DRI review, unless an exemption applies.[37] The developments that are exempt from DRI review include the following:

- particular types of developments for which the Legislature has provided an exemption (e.g., hospitals are exempt from DRI review);

[27] Section 163.3184(7)(a), F.S.
[28] *Id.*
[29] *Id.*
[30] Section 163.3184(7)(b), F.S.
[31] *Id.*
[32] Section 163.3184(7)(c), F.S.
[33] Section 163.3184(7)(d), F.S.
[34] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in Growth Management in Florida: Planning for Paradise, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T.Higgins eds. 2005).
[35] Chapter 2015-30, L.O.F.
[36] Section 380.06(30), F.S.
[37] Section 380.06(24),(28), (29), F.S.

- developments that are located within a "dense urban land area" (DULA)[38]; and
- developments that are located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area.[39]

The types of developments required to undergo DRI review may include attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, or recreational vehicle developments. Over the years, the Legislature has enacted new exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.[40]

The review process is a joint effort between Florida's 11 Regional Planning Councils (RPCs), the Department of Economic Opportunity (DEO or department), other state agencies, and local governments.[41]

A DRI review begins by a developer contacting the appropriate RPC to arrange a pre-application conference.[42] The developer or the RPC may request that other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that the agency will require in the application to assess those issues.[43] At the pre-application conference, the RPC provides the developer with information about the DRI process and uses the pre-application conference to identify issues and to coordinate the appropriate state and local agency requirements.[44]

The RPC and developer may reach an agreement regarding assumptions and methodology to be used in the application for development approval.[45] If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant.[46]

Upon completion of the pre-application conference with all parties, the developer files an application for development approval with the local government, the RPC, and the state land planning agency.[47] The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[48]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days.[49] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[50] The RPC is required to identify regional issues specifically examining the following:

- whether the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;

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[38] Dense urban land areas are characterized by certain population densities. Section 380.06(29), F.S.
[39] *Id.*
[40] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, at 2. September 2011.
[41] *See* s. 380.06, F.S.
[42] Section 380.06(6)-(9), F.S.
[43] Section 380.06(7)-(8), F.S.
[44] Section 380.06(7), F.S.
[45] Section 380.06(8), F.S.
[46] *Id.*
[47] Section 380.06(7)-(10), F.S.
[48] Section 380.06(10), F.S.
[49] Section 380.06(11), F.S.
[50] Section 380.06(12), F.S.

- whether the development will significantly impact adjacent jurisdictions; and
- in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[51]

If the proposed project will have impacts within the purview of other state agencies, those agencies will also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdiction.[52] These reports become part of the RPC's report, but the RPC may attach dissenting views.[53] When water management district and Department of Environmental Protection permits have been issued pursuant to Ch. 373, F.S., or Ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[54] Finally, the state land planning agency (DEO) also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[55]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well.[56] When considering whether the development is approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the following:

- whether the development is consistent with its comprehensive plan and land development regulations;
- whether the development is consistent with the report and recommendations of the RPC; and
- whether the development is consistent with the state comprehensive plan.[57]

Within 30 days of the public hearing on the application for development approval, the local government must decide whether to issue a development order or not.[58] Within 45 days after a development order is or is not rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission. An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[59]

DRI review requires significant time and expense. Moreover, because DRIs (like all developments) must maintain consistency with the local government's comprehensive plan, changes to the DRI development order may meet further delay and expense if a change to the DRI triggers the need for a plan amendment.[60]

Local Government Development Order: Buildout Date and "Essentially Built Out"

Local government development orders, at a minimum, must include the following:

- the monitoring procedures and the local official responsible for assuring compliance with the development order;

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[51] *Id.*
[52] Section 380.06(9),(12), F.S.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] Section 380.06(10)-(11), F.S.
[57] *Id.*
[58] Section 380.06(15), F.S.
[59] *Id.*
[60] *Bay Point Club, Inc. v. Bay County*, 820 So. 2d 256 (Fla. 1st DCA 2004).

- compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and a buildout date that reasonably reflects the time anticipated to complete the development;
- a date until which the local government agrees that the approved DRI is not subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare; and
- a legal description of the property.[61]

A local government may only issue permits for development subsequent to the buildout date under certain circumstances.[62] One of those circumstances includes when a project has been determined to be an "essentially built out" DRI through an agreement executed by the developer, DEO, and the local government.[63] An "essentially built-out" development of regional impact means the developers are in compliance with all applicable terms and conditions of the development order except the buildout date and either:

- the amount of development that remains to be built is less than the substantial deviation threshold for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or
- DEO and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.[64]

If the project is determined to be essentially built out, development may proceed after the termination or expiration date contained in the development order without further DRI review subject to the local government comprehensive plan and land development regulations or subject to a modified development-of-regional-impact analysis.[65]

Substantial Deviation

Any proposed change to a previously approved DRI development order that creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, constitutes a "substantial deviation" and requires such proposed change to be subject to further DRI review.[66] To determine whether a proposed change requires further DRI review, Florida law establishes the following:

- certain threshold criteria beyond which a change constitutes a substantial deviation;[67]
- certain changes in development that do not amount to a substantial deviation;[68]
- scenarios in which a substantial deviation is presumed;[69] and
- scenarios in which a change is presumed not to create a substantial deviation.[70]

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[61] Section 380.06(15)(c), F.S.
[62] Section 380.06(15)(g), F.S.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Section 380.06(19)(a), F.S.
[67] Section 380.06(19)(b), F.S.
[68] Section 380.06(19)(e), F.S.
[69] Section 380.06(19)(c), F.S.
[70] Section 380.06(19)(d), F.S.

In addition, Florida law directs DEO to establish by rule standard forms for submittal of proposed changes to a previously approved DRI development order.[71] At a minimum, the form must require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.[72] The developer must submit the form to the local government, the regional planning agency, and DEO.[73]

After the developer submits the form, the appropriate regional planning agency or DEO must review the proposed change and, no later than 45 days after submittal of the proposed change, must advise the local government in writing whether it objects to the proposed change, specifying the reasons for its objection, and must provide a copy to the developer.[74]

In addition, the local government must give 15 days' notice and schedule a public hearing to consider the change.[75] This public hearing must be held within 60 days after submittal of the proposed changes, unless the developer wishes to extend the time.[76]

At the public hearing, the local government must determine whether the proposed change requires further DRI review based on the thresholds and standards set out in law.[77] The local government may also deny the proposed change based on matters relating to local issues, such as if the land on which the change is sought is plat restricted in a way that would be incompatible with the proposed change, and the local government does not wish to change the plat restriction as part of the proposed change.[78]

If the local government determines that the proposed change does not require further DRI review and is otherwise approved, the local government must issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change.[79] If, however, the local government determines that proposed change does require further DRI review, the local government must determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development.[80]

Aggregation of Developments

Section 380.0651, F.S., directs the Administration Commission to adopt statewide guidelines and standards for developments to undergo DRI review. As part of such guidelines and standards, the law provides for when two or more developments must be "aggregated" and treated as a single development.[81]

Specifically, two or more developments must be aggregated when they are determined to be part of a unified plan of development and are physically proximate to one other.[82] Three of the following four criteria must be met to determine that a "unified plan of development" exists:

- the same person has retained or shared control of the developments, the same person has ownership or a significant legal interest in the developments, or the developments share common management controlling the form of physical development or disposition of parcels of the development;

[71] Section 380.06(19)(f), F.S.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] Section 380.06(19)(g), F.S.
[81] Section 380.0651(4), F.S.
[82] *Id.*

- there is a reasonable proximity in time between the completion of 80 percent or less of one development and the submission to a governmental agency of plans or drawings for the other development which is indicative of a common development effort;
- plans or drawings exist covering the developments sought to be aggregated which have been submitted to certain government bodies; and
- there is a common advertising scheme or promotional plan in effect for the developments.[83]

However, despite the finding of physical proximity and the existence of a unified plan, Florida law provides for the following circumstances in which aggregation is not applicable:

- developments which are otherwise subject to aggregation with a DRI, which has received approval through the issuance of a final development order may not be aggregated with the approved DRI;
- two or more developments, each of which is independently a DRI that has or will obtain a development order;
- completion of any development that has been vested;
- the developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date; and
- any development that qualifies for an exemption as a DULA.[84]

Rescission

Certain developments or portions of developments that have received a DRI development order may subsequently not be required to undergo DRI-impact review. This may occur on account of a change in statutory guidelines and standards, because the DRI has reduced its size below certain legal thresholds, or because a development becomes exempt from DRI review, for example in the case of a DULA.[85]

If one of these scenarios ensues, the development must continue to be governed by the DRI development order and may be completed pursuant to the development order unless the developer or landowner has followed the procedures for rescission.[86] Upon request by the developer or landowner, the DRI development order must be rescinded by the local government having jurisdiction "upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed" under an existing permit or some other equivalent authorization.[87]

Sector Plans

Background and History

Sector planning is a tool for large-area planning through which one or more local governments engage in long-term planning for areas of at least 15,000 acres.[88] Sector plans are intended to promote and encourage long-term planning for conservation, development, and agriculture on a landscape scale, to further support innovative and flexible planning and development strategies, to facilitate and emphasize protection of regionally significant resources, and to avoid duplication of effort in terms of the level of data and analysis required for a DRI.[89]

[83] Section 380.0615(4)(a), F.S.
[84] Section 380.0615(4)(c), F.S.
[85] Section 380.115(1), F.S.
[86] Section 380.115(1)(a), F.S.
[87] Section 380.115(1)(b), F.S.
[88] Section 163.3245(1), F.S.
[89] *Id.*

Prior to the creation of sector planning, such large scale plans were primarily left to DRIs and traditional comprehensive plans.[90] However, once Florida's population, and thus development began to dramatically increase in the 1990s, planners and lawmakers sought new approaches for a more long term and flexible approach to planning that maintained a principled focus on conservation.[91] This brought about the advent of sector plans in 1998.[92]

Sector Plan Process

The sector planning process encompasses two levels: adoption in the local government's comprehensive plan of a long-term master plan and subsequent adoption by local development order of two or more detailed specific area plans (DSAP) that implement the master plan.[93] Both levels require review and approval by affected local governments, and appropriate regional and state authorities.[94]

In addition to other requirements, a long-term master plan must include maps, illustrations, data, and analysis to address the following:

- a framework map that, at a minimum, generally depicts conservation land use, identifies allowed uses in the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern;
- a general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures needed to meet the projected demand of the future land uses in the long-term master plan;
- a general identification of the transportation facilities to serve the future land uses in the long-term master plan;
- a general identification of other regionally significant public facilities necessary to support the future land uses;
- a general identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area;
- general principles and guidelines addressing, among other things, future land uses, the use of lands identified for permanent preservation through recordation of conservation easements, achieving a healthy environment, limiting urban sprawl, enhancing the prospects for the creation of jobs, and providing housing types; and
- identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from the future land uses.[95]

Additionally, a long-term master plan may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan, and 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.[96] A long-term master plan must specify the projected population within the planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.[97]

[90] David L. Powell, Gary K. Hunter, Jr., & Robert M. Rhodes, *Sector Plans*, Florida Environmental and Land Use Law, The Florida Bar, June 2014. Page 33.1-1 to 33.1-2. Article on file with House Economic Development & Tourism Subcommittee staff.
[91] *Id.*
[92] Section 163.3245, F.S.
[93] Section 163.3245(3), F.S.
[94] Section 163.3245, F.S.
[95] Section 163.3245(3)(a), F.S.
[96] *Id.*
[97] *Id.*

The DSAPs must be consistent with the long-term master plan and generally must include conditions and commitments that provide for the following:

- development or conservation of an area of at least 1,000 acres;
- detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses;
- detailed identification of plans to address water needs of development in the DSAP;
- detailed identification of the transportation facilities to serve the future land uses in the DSAP;
- detailed identification of other regionally significant public facilities;
- detailed identification of public facilities necessary to serve development in the DSAP;
- detailed analysis and identification of specific measures to ensure the protection, restoration and management of lands within the boundary of the DSAP identified for permanent preservation through recordation of conservation easements;
- detailed principles and guidelines addressing, among other things, the future land uses, achieving a healthy environment, limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, and advancing the efficient use of resources; and
- identification of specific procedures to facilitate intergovernmental coordination to address extrajurisdictional impacts from the DSAP.[98]

A landowner, developer, or the state land planning agency may appeal a local government development order implementing a DSAP to the Florida Land and Water Adjudicatory Commission.[99] In addition, any owner of property within the planning area of a proposed long-term master plan may withdraw his or her consent to the master plan at any time prior to local government adoption, and the local government must exclude such parcels from the adopted master plan.[100] Thereafter, the long-term master plan and any DSAP do not apply to the subject parcels. After adoption of a long-term master plan, an owner may withdraw his or her property from the master plan only with the approval of the local government by plan amendment.[101]

As of July 1, 2014 there are seven approved sector plans in Florida:

- the Bay County (West Bay Area Vision) Sector Plan;
- the Orange County (Horizon West) Sector Plan;
- the City of Bartow (Clear Springs) Sector Plan;
- the Escambia County Sector Plan;
- the Nassau County (East Nassau County) Sector Plan;
- the Hendry County (Rodina) Sector Plan; and
- the Osceola County (Northeast District) Sector Plan.[102]

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[98] Section 163.3245(3)(b), F.S. Like a long-term mast plan, a DSAP may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan. Again, like a long term master plan, a DSAP must specify the projected population within the specific planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.

[99] Section 163.3245(3)(e), F.S.

[100] Section 163.3245(8), F.S.

[101] *Id.*

[102] Department of Economic Opportunity website, available at: http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/sector-planning-program. Last visited January 21, 2016.

Annexation of Enclaves

Annexation Background

Florida law defines annexation as the adding of real property to the boundaries of an incorporated municipality.[103] The purpose of annexation varies. Historically, annexation was typically used to provide rural communities with access to municipal services—a proposition grounded in the notion that only cities could effectively deliver essential services such as police, fire, and water and sewer.[104] Presently, in addition to seeking out appropriate levels of service, annexation is often used either by developers to find the most favorable laws and regulations for a development, or by a municipality to increase its tax base.[105]

There are three threshold requirements to annex land: the annexed land must be unincorporated, "contiguous", and "compact."[106] Under Florida law, "contiguous" means that "a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality."[107] "Compactness" means "concentration of a piece of property in a single area and precludes any action which would create enclaves (discussed below), pockets, or finger areas in serpentine patterns."[108]

Assuming the land to be annexed is contiguous and compact, there are two primary methods of annexation procedures—involuntary and voluntary—and one exceptional method—expedited annexation of certain enclaves.[109] All three methods are discussed below; however, it is important to note that Florida law may allow certain special acts to supersede general laws related to annexation, and charter counties may have special annexation procedures.[110]

Involuntary Annexation

Involuntary annexation originates from a municipality wishing to annex unincorporated territory. The process begins with the municipality adopting an ordinance proposing to annex an area of contiguous, compact, and unincorporated territory.[111] Once the governing body of the municipality adopts the ordinance, a majority of the electors in the area to be annexed must vote in favor of the annexation in a referendum.[112]

The referendum must be conducted and paid for by the municipality seeking annexation and may not take place sooner than 30 days following the final adoption of the annexation ordinance.[113] Further, the governing body of the annexing municipality must publish notice of the referendum at least once each week for two consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held.[114] The notice must contain several details including the ordinance number, the time and places for the referendum, and a general description of the area proposed to be annexed with an illustrating map.[115]

If more than 70 percent of the land to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, such area shall not be annexed unless the owners of

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[103] Section 171.031(1), F.S.
[104] Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 Stetson L. Rev. 669 (1996).
[105] *Id.*
[106] Section 171.043, F.S. Florida law also lays out many "prerequisites to annexation" in s. 171.042, F.S.
[107] Section 171.031(11), F.S.
[108] Section 171.031(12), F.S.
[109] Section 171.046, F.S.
[110] Sections 171.0413(4) and s. 171.044(4), F.S.
[111] Section 171.0413(1), F.S.
[112] Section 171.0413(2), F.S. If there are no electors in the area, there is no need for a referendum, but owners of more than 50 percent of the parcels of land in the area proposed to be annexed must consent to annexation. Section 171.0413(6), F.S.
[113] Section 171.0413(2), F.S.
[114] *Id.*
[115] *Id.*

more than 50 percent of the land consent to the annexation.[116] Otherwise, the annexation will become effective upon a simple majority vote in the referendum.

Voluntary Annexation

Voluntary annexation, in contrast to involuntary annexation, is born out of petition by the owner or owners of real property.[117] That is, the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.[118]

Typically, upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property.[119]

However, the process for voluntary annexation may differ as the laws relating to voluntary annexation in the Florida statutes are supplemental to any other procedure provided in general or special law.[120] Moreover, charter counties may provide (in their charter) for an exclusive method of municipal annexation.[121]

Annexation of Enclaves

The other method of annexation provided for in the Florida statutes deals with the annexation of "enclaves."[122] Florida law defines "enclave" as follows:

- any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.[123]

The Legislature expressly recognizes in s. 171.046, F.S., that, "enclaves can create significant problems in planning, growth management, and service delivery, and therefore declare that it is the policy of the state to eliminate enclaves."[124] Accordingly, the Legislature authorizes two expedited methods of annexing enclaves of less than 10 acres into the municipality in which they exist:

- a municipality may annex such an enclave by interlocal agreement with the county having jurisdiction over the enclave; or
- a municipality may annex such an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.[125]

[116] Section 171.0413(5), F.S.
[117] Section 171.044(1), F.S.
[118] *Id.*
[119] Section 171.044(2), F.S.
[120] Section 171.044(4), F.S.
[121] *Id.*
[122] Section 171.046, F.S.
[123] Section 171.031(13), F.S.
[124] Section 171.046(1), F.S.
[125] *See id.*

Effect of Proposed Changes

The bill seeks to alter various provisions within four areas of the State's growth management laws: administrative challenges to comprehensive plan amendments; Developments of Regional Impact (DRIs); sector plans; and annexation of enclaves.

Administrative Challenges to Comprehensive Plan Amendments

- The bill provides that a recommended order to DEO by an administrative law judge that a challenged comprehensive plan amendment be found in compliance with law becomes a final order within 90 days after issuance unless:
  - DEO finds the plan amendment to be in compliance and issues its final order;
  - DEO finds the plan amendment not in compliance and it refers the recommended order to the Administration Commission for final action; or
  - all parties consent in writing to an extension of the 90 day period.
- The bill also specifies that a recommended order issued under expedited proceedings that recommends a plan amendment to be in compliance, becomes a final order 45 days after issuance unless all parties agree in writing to extend the 45 day period.

Developments of Regional Impact

- The bill specifies that a person does not lose his or her right to proceed with a development authorized as a DRI if a change is made to the development that has the effect only of reducing the height, density, or intensity of the originally approved development.
- The bill specifies that a proposed development or amendments thereto that would otherwise require DRI review must follow the state coordinated review process if the development or amendment to the development requires an amendment to the comprehensive plan.
- The bill allows a developer, DEO, and local government, to amend their agreement that a development is essentially built-out without the submission, review, or approval of a notification of proposed change necessary for a substantial deviation.
- The bill provides that unbuilt land uses specified in an agreement establishing that a development is essentially built out, may be developed in a manner by which one approved land use is substituted for another approved land use at a ratio that ensures there will be no increase in net external transportation impacts. Further, at the time of building permit issuance, the developer must demonstrate to the local government that the exchange ratio will not result in an increase in net external transportation impacts.
- The bill creates a presumption that certain changes to a DRI development order are substantial deviations to the DRI agreement or development order, which presumption may be rebutted with clear and convincing evidence. If not rebutted, the development is subject to further DRI review through the notification of proposed change process. The presumption is created for changes that under current law are deemed substantial deviations.
- The bill provides that the following is not a substantial deviation: a phase date extension, if DEO, in consultation with the appropriate regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.
- The bill provides that previously developed lands acquired for development as part of an existing DRI are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to the existing DRI development order.

- The bill authorizes DRIs to rescind their DRI development order. Such rescission would be subject to local government oversight as to what form of substituted entitlement replaces the DRI development order.

Sector Plans

- The bill decreases the minimum required acreage of sector plans from 15,000 acres to 5,000 acres.

Annexation of Enclaves

- The bill increases the size of enclaves which can be annexed on an expedited basis from 10 acres to 110 acres.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3167, F.S., allowing for the right to proceed with a DRI after changing the height, density, or intensity of the originally approved development.

Section 2: Amends s. 163.3184, F.S., clarifying when certain developments are subject to the state coordinated review process; and establishing time limits related to challenges to proposed plan amendments.

Section 3: Amends s. 163.3245, F.S., increasing the minimum required acreage for creating sector plans.

Section 4: Amends s. 171.046, F.S., increasing the maximum size of enclaves eligible for expedited annexation.

Section 5: Amends s. 380.06, F.S., providing for the ability to avoid the notice of proposed change requirements necessary for a substantial deviation when amending an agreement that a development is essentially built-out; allowing for the substitution of an approved land use for another in a development that is essentially built out in certain circumstances; allowing for the rebuttal of a presumption of a substantial deviation to a DRI agreement or development order in certain circumstances; providing that a phase date extension is not a substantial deviation in certain circumstances; and clarifying when certain developments are subject to the state coordinated review process.

Section 6: Amends s. 380.0651, F.S., providing that previously developed land acquired for development as a part of an existing DRI is not subject to aggregation in certain circumstances.

Section 7: Amends s. 380.115, F.S., expanding the projects subject to certain statutory vested rights protections and development order rescission procedures, to include developments that elect to rescind the development order.

Section 8: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its analysis of the bill, DEO stated that "[t]he bill should have a minimal impact to expenditures due to reduction in the number and types of situations that result in DRI amendments or extensive review of amendments."[126]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[126] Department of Economic Opportunity, 2016 Agency Legislative Bill Analysis, page 7. January 14, 2016. Analysis on file with House Economic Development & Tourism Subcommittee staff.

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; authorizing certain changes to approved developments of regional impact; amending s. 163.3184, F.S.; specifying that certain developments must follow the state coordinated review process; providing timeframes within which the Division of Administrative Hearings must transmit certain recommended orders to the Administration Commission; providing that certain recommended orders become final orders; providing that certain recommended orders become final within a specified period after issuance unless the state land planning agency acts, or the parties agree, to extend the period; amending s. 163.3245, F.S.; revising the acreage thresholds for sector plans; amending s. 171.046, F.S.; revising the size of an enclave that a municipality may annex under certain circumstances; amending s. 380.06, F.S.; authorizing parties to amend certain development agreements without submittal, review, or approval of a notification of proposed change; providing criteria under which one approved land use may be substituted for another approved land use in certain land development agreements under certain circumstances; providing a rebuttable presumption that certain proposed changes to certain developments are a

substantial deviation; specifying that if the presumption is not rebutted, the development must undergo further development-of-regional-impact review; providing that certain phase date extensions to amend a development order are not substantial deviations under certain circumstances; specifying conditions under which certain proposed developments are not required to undergo the state coordinated review process; amending s. 380.0651, F.S.; providing that lands acquired for development are not subject to aggregation under certain circumstances; amending s. 380.115, F.S.; providing the procedures to be used by a development that elects to rescind a development order; providing an effective date.

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

Section 1. Subsection (5) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(5) ~~Nothing in~~ This act does not ~~shall~~ limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith. A person does not lose his or her right to proceed with a

development authorized as a development of regional impact if a change is made to the development that has the effect only of reducing the height, density, or intensity of the originally approved development.

Section 2. Paragraph (c) of subsection (2), paragraph (e) of subsection (5), and paragraph (d) of subsection (7) of section 163.3184, Florida Statutes, are amended, and paragraph (d) is added to subsection (2) of that section, to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

(c) Plan amendments that are in an area of critical state concern designated pursuant to s. 380.05; propose a rural land stewardship area pursuant to s. 163.3248; propose a sector plan pursuant to s. 163.3245 or an amendment to an adopted sector plan; update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191; ~~propose a development that qualifies as a development of regional impact pursuant to s. 380.06;~~ or are new plans for newly incorporated municipalities adopted pursuant to s. 163.3167 shall follow the state coordinated review process in subsection (4).

(d) Proposed developments as set forth in s. 380.06(30), or plan amendments thereto, shall follow the state coordinated review process in subsection (4).

(5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN AMENDMENTS.—

(e) If the administrative law judge recommends that the amendment be found in compliance, the judge shall submit the recommended order to the state land planning agency.

1. If the state land planning agency determines that the plan amendment should be found not in compliance, the agency shall make every effort to refer the recommended order and its determination expeditiously to the Administration Commission for final agency action, but at a minimum within the time period provided by s. 120.569.

2. If the state land planning agency determines that the plan amendment should be found in compliance, the agency shall make every effort to enter its final order expeditiously, but at a minimum within the time period provided by s. 120.569.

3. The recommended order submitted under this paragraph becomes a final order within 90 days after issuance unless the state land planning agency acts as provided in subparagraph 1. or subparagraph 2. or all parties consent in writing to an extension of the 90-day period.

(7) MEDIATION AND EXPEDITIOUS RESOLUTION.—

(d) Absent a showing of extraordinary circumstances, the Administration Commission shall issue a final order, in a case proceeding under subsection (5), within 45 days after ~~the~~ issuance of the recommended order, unless the parties agree in writing to extend the 45-day period ~~a longer time~~. If the recommended order recommends a finding of in compliance, the recommended order becomes final 45 days after issuance unless

the state land planning agency acts, or the parties agree in writing, to extend the 45-day period.

Section 3. Subsection (1) of section 163.3245, Florida Statutes, is amended to read:

163.3245 Sector plans.—

(1) In recognition of the benefits of long-range planning for specific areas, local governments or combinations of local governments may adopt into their comprehensive plans a sector plan in accordance with this section. This section is intended to promote and encourage long-term planning for conservation, development, and agriculture on a landscape scale; to further support innovative and flexible planning and development strategies, and the purposes of this part and part I of chapter 380; to facilitate protection of regionally significant resources, including, but not limited to, regionally significant water courses and wildlife corridors; and to avoid duplication of effort in terms of the level of data and analysis required for a development of regional impact, while ensuring the adequate mitigation of impacts to applicable regional resources and facilities, including those within the jurisdiction of other local governments, as would otherwise be provided. Sector plans are intended for substantial geographic areas that include at least 5,000 ~~15,000~~ acres of one or more local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and public facilities. A sector plan may not be adopted in an area of critical state concern.

Section 4. Subsection (2) of section 171.046, Florida Statutes, is amended to read:

171.046 Annexation of enclaves.—

(2) In order to expedite the annexation of enclaves of 110 ~~10~~ acres or less into the most appropriate incorporated jurisdiction, based upon existing or proposed service provision arrangements, a municipality may:

(a) Annex an enclave by interlocal agreement with the county having jurisdiction of the enclave; or

(b) Annex an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.

Section 5. Paragraph (g) of subsection (15), paragraphs (b) and (e) of subsection (19), and subsection (30) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(15) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(g) A local government shall not issue a permit ~~permits~~ for a development subsequent to the buildout date contained in the development order unless:

1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) after ~~subsequent to~~ the termination or expiration date;

2. The proposed development is consistent with an

abandonment of development order that has been issued in accordance with ~~the provisions of~~ subsection (26);

3. The development of regional impact is essentially built out, in that all the mitigation requirements in the development order have been satisfied, all developers are in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remains to be built is less than 40 percent of any applicable development-of-regional-impact threshold; or

4. The project has been determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially built out, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations ~~or subject to a modified development-of-regional-impact analysis~~. The parties may amend the agreement without the submission, review, or approval of a notification of proposed change pursuant to subsection (19). For purposes of ~~As used in~~ this paragraph, a ~~an "essentially built-out"~~ development of regional impact is considered essentially built out, if ~~means~~:

a. The developers are in compliance with all applicable terms and conditions of the development order except the buildout date; and

b.(I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or

(II) The state land planning agency and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.

The single-family residential portions of a development may be considered "essentially built out" if all of the workforce housing obligations and all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination. The mobile home park portions of a development may be considered "essentially built out" if all the infrastructure and horizontal development has been completed, and at least 50 percent of the lots are leased to individual mobile home owners. In order to accommodate changing market

demands and achieve maximum land use efficiency in an essentially built-out project, the unbuilt land uses specified in the agreement may be developed in a manner by which one approved land use is substituted for another approved land use at a ratio that ensures there will be no increase in net external transportation impacts. At the time of building permit issuance, the developer must demonstrate to the local government that the exchange ratio will not result in an increase in net external transportation impacts.

(19) SUBSTANTIAL DEVIATIONS.—

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall be presumed to create ~~constitute~~ a substantial deviation, and the presumption may be rebutted by clear and convincing evidence. If not rebutted, the development is subject to further development-of-regional-impact review through the notification of proposed change process ~~and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government~~:

1. An increase in the number of parking spaces at an attraction or recreational facility by 15 percent or 500 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 15 percent or 1,500 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25 percent lengthening of an existing runway, or a 25 percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

3. An increase in land area for office development by 15 percent or an increase of gross floor area of office development by 15 percent or 100,000 gross square feet, whichever is greater.

4. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.

5. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced before ~~prior to~~ the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of

this subparagraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for customers for 425 cars or a 10 percent increase, whichever is greater.

7. An increase in a recreational vehicle park area by 10 percent or 110 vehicle spaces, whichever is less.

8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

9. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.

10. A 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

11. Any change that would result in development of any

area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.

The substantial deviation numerical standards in subparagraphs 3., 6., and 9., excluding residential uses, and in subparagraph 10., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Department of Economic Opportunity as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 4., 5., 6., 9., and 10. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which individually or cumulatively with any

previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback which do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads which do not affect external access points.

e. Changes to the building design or orientation which stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of

Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, if no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, if there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, if these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.

l. A phase date extension, if the state land planning

agency, in consultation with the regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.

m.~~l.~~ Any other change that the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-l. ~~a.-k.~~ and that does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but requires an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., sub-subparagraph k., or sub-subparagraph

m.~~1.~~ and if the agency believes that the change creates a reasonable likelihood of new or additional regional impacts.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development must include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence:~~.~~

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized

multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c) and (d) and residential use.

6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may not be considered an additional regional transportation impact.

(30) ~~NEW~~ PROPOSED DEVELOPMENTS.—A ~~new~~ proposed development otherwise subject to the review requirements of this section shall be approved by a local government pursuant to s. 163.3184(4) in lieu of proceeding in accordance with this section. However, if the proposed development is consistent with the comprehensive plan as provided in s. 163.3194(3)(b), the development is not required to undergo review pursuant to s. 163.3184(4) or this section. This subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 6. Paragraph (c) of subsection (4) of section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines and standards.—

(4) Two or more developments, represented by their owners

or developers to be separate developments, shall be aggregated and treated as a single development under this chapter when they are determined to be part of a unified plan of development and are physically proximate to one other.

(c) Aggregation is not applicable when the following circumstances and provisions of this chapter are applicable:

1. Developments which are otherwise subject to aggregation with a development of regional impact which has received approval through the issuance of a final development order shall not be aggregated with the approved development of regional impact. However, nothing contained in this subparagraph shall preclude the state land planning agency from evaluating an allegedly separate development as a substantial deviation pursuant to s. 380.06(19) or as an independent development of regional impact.

2. Two or more developments, each of which is independently a development of regional impact that has or will obtain a development order pursuant to s. 380.06.

3. Completion of any development that has been vested pursuant to s. 380.05 or s. 380.06, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. Development-of-regional-impact review of additions to vested developments of regional impact shall not include review of the impacts resulting from the vested portions of the development.

4. The developments sought to be aggregated were

authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date.

5. Any development that qualifies for an exemption under s. 380.06(29).

6. Lands acquired for development as a part of an existing development of regional impact that has been developed are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to the existing development-of-regional-impact development order.

Section 7. Subsection (1) of section 380.115, Florida Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction, changes in guidelines and standards.—

(1) A change in a development-of-regional-impact guideline and standard does not abridge or modify any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact. A development that has received a development-of-regional-impact development order pursuant to s. 380.06~~,~~ but is no longer required to undergo development-of-regional-impact review by operation of a change in the guidelines and standards, a development that ~~or~~ has reduced its size below the thresholds in s. 380.0651, ~~or~~ a development that is exempt pursuant to s. 380.06(24) or (29), or a development that elects to rescind the

development order shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed before a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies.

Section 8. This act shall take effect July 1, 2016.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Development & Tourism Subcommittee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2), paragraph (e) of subsection (5), and paragraph (d) of subsection (7) of section 163.3184, Florida Statutes, are amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

(a) Plan amendments adopted by local governments shall follow the expedited state review process in subsection (3), except as set forth in paragraphs (b) and (c).

(b) Plan amendments that qualify as small-scale development amendments may follow the small-scale review process in s. 163.3187.

(c) Plan amendments that are in an area of critical state concern designated pursuant to s. 380.05; propose a rural land stewardship area pursuant to s. 163.3248; propose a sector plan pursuant to s. 163.3245 or an amendment to an adopted sector plan; update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191; propose a development that is subject to the state coordinated review process ~~qualifies as a development of regional impact~~ pursuant to s. 380.06; or are new plans for newly incorporated municipalities adopted pursuant to s. 163.3167 shall follow the state coordinated review process in subsection (4).

(5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN AMENDMENTS.—

(e) If the administrative law judge recommends that the amendment be found in compliance, the judge shall submit the recommended order to the state land planning agency.

1. If the state land planning agency determines that the plan amendment should be found not in compliance, the agency shall make every effort to refer the recommended order and its determination expeditiously to the Administration Commission for final agency action, but at a minimum within the time period provided by s. 120.569.

2. If the state land planning agency determines that the plan amendment should be found in compliance, the agency shall make every effort to enter its final order expeditiously, but at a minimum within the time period provided by s. 120.569.

3. The recommended order submitted under this paragraph becomes a final order within 90 days after issuance unless the state land planning agency acts as provided in subparagraph 1. or subparagraph 2. or all parties consent in writing to an extension of the 90-day period.

(7) MEDIATION AND EXPEDITIOUS RESOLUTION.—

(d) For cases proceeding under this subsection, absent ~~Absent~~ a showing of extraordinary circumstances or written consent of the parties, if the administrative law judge recommends that the amendment be found not in compliance, the Administration Commission shall issue a final order~~, in a case proceeding under subsection (5),~~ within 45 days after ~~the~~ issuance of the recommended order~~, unless the parties agree in writing to a longer time~~. If the administrative law judge recommends that the amendment be found in compliance, the state land planning agency shall issue a final order within 45 days after the issuance of the recommended order, or the recommended order of in compliance shall become final 46 days after issuance.

Section 2. Subsection (1) of section 163.3245, Florida Statutes, is amended to read:

163.3245 Sector plans.—

(1) In recognition of the benefits of long-range planning for specific areas, local governments or combinations of local governments may adopt into their comprehensive plans a sector plan in accordance with this section. This section is intended to promote and encourage long-term planning for conservation, development, and agriculture on a landscape scale; to further support innovative and flexible planning and development strategies, and the purposes of this part and part I of chapter 380; to facilitate protection of regionally significant resources, including, but not limited to, regionally significant water courses and wildlife corridors; and to avoid duplication of effort in terms of the level of data and analysis required for a development of regional impact, while ensuring the adequate mitigation of impacts to applicable regional resources and facilities, including those within the jurisdiction of other local governments, as would otherwise be provided. Sector plans are intended for substantial geographic areas that include at least 5,000 ~~15,000~~ acres of one or more local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and public facilities. A sector plan may not be adopted in an area of critical state concern.

Section 3. Subsection (2) of section 171.046, Florida Statutes, is amended to read:

171.046 Annexation of enclaves.—

(2) In order to expedite the annexation of enclaves of 150 ~~10~~ acres or less into the most appropriate incorporated

jurisdiction, based upon existing or proposed service provision arrangements, a municipality may:

(a) Annex an enclave by interlocal agreement with the county having jurisdiction of the enclave; or

(b) Annex an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.

Section 4. Subsection (14), paragraph (g) of subsection (15), paragraphs (b) and (e) of subsection (19), and subsection (30) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(14) CRITERIA OUTSIDE AREAS OF CRITICAL STATE CONCERN.—If the development is not located in an area of critical state concern, in considering whether the development shall be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:

(a) The development is consistent with the local comprehensive plan and local land development regulations~~;~~. However, a local government may approve a change to a development authorized as a development of regional impact that has the effect of reducing the height, density or intensity of the development from that originally approved if the proposed reduced development would have been consistent with the comprehensive plan in effect when the development was originally

approved. If approved and in accordance with s. 163.3167(5), the developer does not lose the right to proceed;

(b) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (12); and

(c) The development is consistent with the State Comprehensive Plan. In consistency determinations the plan shall be construed and applied in accordance with s. 187.101(3).

(15) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(g) A local government shall not issue a permit ~~permits~~ for a development subsequent to the buildout date contained in the development order unless:

1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) after ~~subsequent to~~ the termination or expiration date;

2. The proposed development is consistent with an abandonment of development order that has been issued in accordance with ~~the provisions of~~ subsection (26);

3. The development of regional impact is essentially built out, in that all the mitigation requirements in the development order have been satisfied, all developers are in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remains to be built is less than 40 percent of any applicable development-of-regional-impact threshold; or

4. The project has been determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially built out, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations ~~or subject to a modified development-of-regional-impact analysis~~. The parties may amend the agreement without submission, review, or approval of a notification of proposed change pursuant to subsection (19). For purposes of ~~As used in~~ this paragraph, a ~~an "essentially built-out"~~ development of regional impact is considered essentially built out, if ~~means~~:

a. The developers are in compliance with all applicable terms and conditions of the development order except the buildout date; and

b.(I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or

(II) The state land planning agency and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.

The single-family residential portions of a development may be considered "essentially built out" if all of the workforce housing obligations and all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination. The mobile home park portions of a development may be considered "essentially built out" if all the infrastructure and horizontal development has been completed, and at least 50 percent of the lots are leased to individual mobile home owners. In order to accommodate changing market demands and achieve maximum land use efficiency in an essentially built out project, a local government by resolution, and without the concurrence of the state land planning agency, may authorize the developer to exchange one approved land use for another approved land use specified in the agreement when building out the project. Before issuance of a building permit pursuant to an exchange, the developer must demonstrate to the local government that the exchange ratio will not result in a net increase in impacts to public facilities and will meet all

applicable requirements of the comprehensive plan and land development code.

(19) SUBSTANTIAL DEVIATIONS.—

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the ~~following~~ criteria in the following sub-paragraphs, creates ~~shall constitute~~ a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review through the notice of proposed change process under this subsection. ~~without the necessity for a finding of same by the local government:~~

1. An increase in the number of parking spaces at an attraction or recreational facility by 15 percent or 500 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 15 percent or 1,500 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25 percent lengthening of an existing runway, or a 25 percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

3. An increase in land area for office development by 15 percent or an increase of gross floor area of office development by 15 percent or 100,000 gross square feet, whichever is greater.

4. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.

5. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced before ~~prior to~~ the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this subparagraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for

customers for 425 cars or a 10 percent increase, whichever is greater.

7. An increase in a recreational vehicle park area by 10 percent or 110 vehicle spaces, whichever is less.

8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

9. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.

10. A 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

11. Any change that would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State.

The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.

The substantial deviation numerical standards in subparagraphs 3., 6., and 9., excluding residential uses, and in subparagraph 10., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Department of Economic Opportunity as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 4., 5., 6., 9., and 10. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning

agency. Such notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback which do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads which do not affect external access points.

e. Changes to the building design or orientation which stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, if no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, if there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, if these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.

l. A phase date extension, if the state land planning agency, in consultation with the regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.

m.~~l.~~ Any other change that the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-l. ~~a.-k.~~ and that

does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but requires an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., sub-subparagraph k., or sub-subparagraph m.~~1.~~ and if the agency believes that the change creates a reasonable likelihood of new or additional regional impacts.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development must include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence:~~.~~

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c) and (d) and residential use.

6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting

the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may not be considered an additional regional transportation impact.

(30) ~~NEW~~ PROPOSED DEVELOPMENTS.—A ~~new~~ proposed development otherwise subject to the review requirements of this section shall be approved by a local government pursuant to s. 163.3184(4) in lieu of proceeding in accordance with this section. However, if the proposed development is consistent with the comprehensive plan as provided in s. 163.3194(3)(b), the development is not required to undergo review pursuant to s. 163.3184(4) or this section. This subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 5. Paragraph (c) of subsection (4) of section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines and standards.—

(4) Two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development under this chapter when they are determined to be part of a unified plan of development and are physically proximate to one other.

(c) Aggregation is not applicable when the following circumstances and provisions of this chapter are applicable:

1. Developments which are otherwise subject to aggregation with a development of regional impact which has received approval through the issuance of a final development order shall not be aggregated with the approved development of regional impact. However, nothing contained in this subparagraph shall preclude the state land planning agency from evaluating an allegedly separate development as a substantial deviation pursuant to s. 380.06(19) or as an independent development of regional impact.

2. Two or more developments, each of which is independently a development of regional impact that has or will obtain a development order pursuant to s. 380.06.

3. Completion of any development that has been vested pursuant to s. 380.05 or s. 380.06, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. Development-of-regional-impact review of additions to vested developments of regional impact shall not include review of the impacts resulting from the vested portions of the development.

4. The developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date.

5. Any development that qualifies for an exemption under s. 380.06(29).

6. Lands acquired for development as a part of an existing development of regional impact that has been developed are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to the existing development-of-regional-impact development order.

Section 6. Subsection (1) of section 380.115, Florida Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction, changes in guidelines and standards.—

(1) A change in a development-of-regional-impact guideline and standard does not abridge or modify any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact. A development that has received a development-of-regional-impact development order pursuant to s. 380.06~~,~~ but is no longer required to undergo development-of-regional-impact review by operation of a change in the guidelines and standards, a development that ~~or~~ has reduced its size below the thresholds in s. 380.0651, ~~or~~ a development that is exempt pursuant to s. 380.06(24) or (29), or a development that elects to rescind the development order shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures

for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed before a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies.

Section 7. This act shall take effect July 1, 2016.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert: An act relating to growth management; amending s. 163.3184, F.S.; specifying that certain developments must follow the state

coordinated review process; providing timeframes within which the Division of Administrative Hearings must transmit certain recommended orders to the Administration Commission; providing that certain recommended orders become final within a specified period after issuance; amending s. 163.3245, F.S.; revising the acreage thresholds for sector plans; amending s. 171.046, F.S.; revising the size of an enclave that a municipality may annex on an expedited basis; amending s. 380.06, F.S.; authorizing certain changes to approved developments of regional impact; authorizing parties to amend certain development agreements without submittal, review, or approval of a notification of proposed change; providing criteria under which one approved land use may be submitted for another approved land use in certain land development agreements under certain circumstances; providing a rebuttable presumption that certain proposed changes to certain developments are a substantial deviation; specifying that if the presumption is not rebutted, the development must undergo further development-of-regional-impact review; providing that certain phase date extensions to amend a development order are not substantial deviations under certain circumstances; specifying conditions under which certain proposed developments are not required to undergo the state coordinated review process; amending s. 380.0651, F.S.; providing that lands acquired for development are not subject to aggregation under certain circumstances; amending s. 380.115, F.S.; providing the

procedures to be used by a development that elects to rescind a development order; providing an effective date.

Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Development & Tourism Subcommittee

Representative La Rosa offered the following:

Amendment to Amendment (223301) by Representative La Rosa (with title amendment)

Between lines 6 and 7 of the amendment, insert:

Section 1. Subsection (6) is added to section 125.045, Florida Statutes, to read:

125.045 County economic development powers.—

(6) The governing body of a county may employ tax increment financing for the purposes of this section. For any tax increment area created pursuant to this section, the governing body of a county shall administer a separate reserve account in which the tax increment revenues will be deposited. Tax increment revenues, including the proceeds of any revenue bonds secured by, and repaid with, such tax increment revenues,

shall be used to fund economic development activities, and projects which directly benefit the tax increment area. The tax increment authorized under this section shall be determined annually and shall be the amount equal to a maximum of 95 percent of the difference between:

1. The amount of ad valorem taxes levied each year by the county, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of the tax increment area; and

2. The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for the county, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the tax increment area as shown upon the most recent assessment roll used in connection with the taxation of such property by the county prior to the establishment of the tax increment area.

T I T L E A M E N D M E N T

Remove line 503 of the amendment and insert:

An act relating to growth management; amending s. 125.045, F.S.; authorizing counties to use tax increment financing for certain economic development activities; providing conditions; amending s. 163.3184,