The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL:	SB 562
INTRODUCER:	Senator Simpson
SUBJECT:	Growth Management
DATE:	March 16, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Price	Eichin	TR	**Pre-meeting**
3.			RC	

I. Summary:

SB 562 removes the state mandate that new developments surpassing certain thresholds and standards be subjected to the development of regional impact review process. The bill shifts comprehensive plan amendments related to such developments from the Expedited State Review Process to the State Coordinated Review Process.

II. Present Situation:

Development of Regional Impact Background

A development of regional impact (DRI) is defined in s. 380.06, F.S., 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." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[1] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed moment that brought truly modern planning requirements into force. In recognition of this fact,

[1] Section 380.07(2), F.S.

the Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) in their local plans.[2] After much controversy, this recommendation never fully came to fruition and the DRI program continued in its previous form. The Legislature has enacted a number of exemptions to the DRI program since that time, but never fully removed it as originally intended.

DRI Review

All developments that meet the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] are required to undergo DRI review, unless the Legislature has provided an exemption for that particular type of project, the development is located within a "dense urban land area,"[5] or the development is located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area. The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, and recreational vehicle developments.[6] Over the years, the Legislature has enacted new exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. A DRI review is begun by a developer contacting the RPC with jurisdiction over a proposed development to arrange a pre-application conference.[7] The developer or the RPC may request 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. 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.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval. 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.

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. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[8]

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[2] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[3] Section 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] The criteria for qualification as a dense urban land area are contained in s. 380.06(29), F.S. Currently, eight counties and 243 cities qualify as dense urban land areas that are exempt from the DRI program.
[6] Section 380.0651, F.S.
[7] Section 380.06(7), F.S.
[8] Section 380.06(10), F.S.

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.[9] 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.[10] The RPC is required to identify regional issues specifically examining the extent to which:

- 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;
- 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.[11]

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. These reports become part of the RPC's report, but the RPC may attach dissenting views.[12] 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.[13] Finally, the state land planning agency 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.[14]

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

- The development is consistent with its comprehensive plan and land development regulations;
- The development is consistent with the report and recommendations of the RPC; and
- The development is consistent with the state comprehensive plan.[15]

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. 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

[9] Section 380.06(11), F.S.
[10] Section 380.06(12), F.S.
[11] Section 380.06(12)(a), F.S.
[12] Section 380.06(12)(b), F.S.
[13] *Id*.
[14] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.
[15] Section 380.06(13), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.

and Water Adjudicatory Commission.[16] An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[17]

Completion of this entire process can take one to two years and require the expenditure of significant resources, both on the part of private developers and state agencies, resulting in costs totaling in the millions of dollars.

Comprehensive Plans and the Comprehensive Plan Amendment Process

Completion of the DRI process does not give a developer final authority to build. Rather, the permitting local government almost always must also approve an amendment to its local comprehensive plan prior to construction, and the developer must still obtain all requisite permits.

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. 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. 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.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[18] 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.[19] These are the same agencies that are required to review proposed DRIs, including the DEO, the relevant RPC, and adjacent local governments that request to participate.[20]

Similar to the DRI process, the state agencies review the proposed amendment for impacts related to their statutory purview. 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.[21] Upon receipt of the reports from the various agencies the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.[22] 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.[23]

[16] Section 380.07(2), F.S.
[17] Section 163.3215, F.S.
[18] Section 163.3174(4)(a), F.S.
[19] Section 163.3184, F.S.
[20] *Id.*
[21] Section 163.3184(3)(b)3.a., F.S.
[22] Section 163.3184, F.S.
[23] *Id.*

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

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments. Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. 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 the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency

The Intergovernmental Coordination Element of a Comprehensive Plan.

Every local government is required to have adopted an Intergovernmental Coordination Element (ICE) into its comprehensive plan.[24] This element is required to demonstrate consideration of the effects of the local plan upon the development of adjacent jurisdictions.[25] It must describe joint processes for collaborative planning and decision-making with regard to the location and extension of public facilities subject to concurrency and the siting of facilities with countywide significance, among other things.[26]

The statutory ICE provisions contain another requirement that is key to effective implementation of interlocal coordination in comprehensive planning and growth management; i.e., that all local governments establish interlocal agreements covering certain topics.[27] The interlocal agreement must:[28]

- Establish joint processes to facilitate coordination;
- Ensure that the local government addresses through coordination mechanisms the impacts of development proposed in the comprehensive plan upon development in adjacent jurisdictions; and
- Ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3184, F.S., to require a comprehensive plan amendment related to a development that qualifies as development of regional impact pursuant to s. 380.06, F.S., to be reviewed under the State Coordinated Review Process.

Section 2 amends s. 380.06, F.S., to provide that new developments will not be subject to the DRI review requirements provided by s. 380.06, F.S. However, already existing developments of regional impact will continue to be governed by s. 380.06, F.S.

[24] Section 163.3177(6), F.S.
[25] Section 163.3177(6)(h)1., F.S.
[26] Section 163.3177(6)(h)2., F.S.
[27] Section 163.3177(6)(h)3., F.S.
[28] *Id.*

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will prevent future developments from being required by state law to undergo the DRI review process, which could reduce costs for those types of developments that would otherwise have qualified as a DRI.

C. Government Sector Impact:

This bill will reduce the number of duplicative reviews that state agencies must perform with relation to the same developments. This could result in cost savings for those state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184 and 380.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.