The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, March 28, 2011
TIME: 1:00 —3:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 2042** Budget Subcommittee on Finance and Tax	Administration of Property Tax; Repeals provisions relating to the Property Tax Administration Task Force. Revises provisions requiring that certain information be included on the real property assessment roll following a transfer of ownership. Revises provisions requiring that a property appraiser file an appeal of a decision by the value adjustment board within a specified period. Clarifies provisions allowing a taxpayer to file an application for homestead assessment in the year following eligibility, etc. CA 03/28/2011 BC	
2	**SB 2044** Budget Subcommittee on Finance and Tax (Compare CS/H 907, CS/CS/H 7005, CS/CS/S 728, S 1384)	Tax Administration; Repeals provisions relating to liability for taxes following the sale of a business. Clarifies provisions imposing certain penalties for noncompliance with requirements for reporting taxes. Authorizes the Department of Revenue to require that sellers of alcoholic beverages or tobacco products file information reports of sales of those products to retailers in the state. Authorizes the department to release unemployment tax rate information to certain additional agents providing payroll services for employers, etc. CA 03/28/2011 BC	
3	**SB 890** Dean (Identical H 783)	Public Safety Telecommunicators; Exempts sworn state-certified law enforcement officers from certification requirements for public safety telecommunicators. CA 03/07/2011 Temporarily Postponed CA 03/28/2011 CJ BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SJR 1954** Garcia (Identical HJR 1321)	Home Rule Charter of Miami-Dade County; Proposes an amendment to the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by special law approved by a vote of the electors. Provides requirements for a bill proposing such a special law. CA 03/28/2011 JU RC	
5	**CS/SB 426** Judiciary / Latvala (Compare H 291)	Service of Process; Authorizes certified process servers to serve writs of possession in actions for possession of residential property. Authorizes a landlord to select a certified process server to serve a writ of possession. Requires a certified process server to provide notice of the posting of the writ to the sheriff. JU 02/08/2011 Fav/CS CA 03/21/2011 Not Considered CA 03/28/2011 RC	
6	**SB 884** Latvala (Identical H 817)	Taxi Operators; Authorizes governmental units that regulate the operation of taxis to create a private property right in the license to operate a taxi. Provides for the transfer of such property right. Provides definitions. CA 03/28/2011 JU GO	
7	**SB 1792** Diaz de la Portilla (Identical H 4001)	Growth Policy; Repeals provisions relating to the Urban Infill and Redevelopment Assistance Grant Program, to terminate the program. Conforms cross-references to changes made by the act. CA 03/28/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1722** Fasano (Identical H 1163, Compare CS/HJR 381, H 1053, Link CS/SJR 658, S 1564)	Ad Valorem Taxation; Reduces the amount that any change in the value of nonhomestead residential property resulting from an annual reassessment may exceed the assessed value of the property for the prior year. Reduces the amount that any change in the value of certain residential and nonresidential real property resulting from an annual reassessment may exceed the assessed value of the property for the prior year. Provides a first-time Florida homesteader with an additional homestead exemption, etc. CA 03/28/2011 JU BC RC	
9	**CS/SB 530** Regulated Industries / Fasano (Compare H 1035, H 1195, S 1516)	Condominium/Cooperative/Homeowners' Associations; Revises provisions relating to the official records of condominium associations. Revises provisions relating to bylaws. Requires the vote or written consent of a majority of the voting interests before a condominium association may enter into certain agreements to acquire leaseholds, memberships, or other possessory or use interests. Provides procedures and requirements for partial termination of a condominium property. Authorizes an association to charge for collection services for delinquent accounts, etc. RI 03/16/2011 Fav/CS CA 03/28/2011 JU BC	
10	**SB 1904** Altman (Identical H 987, Compare H 7129)	Optional Sector Plans; Increases the minimum size of geographic areas that qualify for the use of optional sector plans. Revises terminology relating to such plans. Requires that public notice be given for scoping meetings between the state land planning agency and the local government. Revises the content required to be included in conceptual long-term overlay plans and detailed specific area plans. Requires identification of water development projects and transportation facilities to serve future development needs, etc. CA 03/28/2011 EP TR BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 1248** Norman (Identical H 1173)	Enforcement of County & Municipal Codes/Ordinances; Authorizes notices relating to a code violation to be sent by certified mail to the property owner at an address provided to the local government for the purposes of receiving notices or to the registered agent of a corporation for property owned by a corporation. Deletes a requirement for such notices to be sent by first-class mail. Authorizes a code enforcement officer to immediately issue a citation for a code violation if the violator is engaged in violations of an itinerant or transient nature, etc. CA 03/28/2011 JU BC	
12	**SJR 592** Bennett (Identical HJR 439)	Veteran's Property Tax Discount; Proposes an amendment to the State Constitution to expand the availability of the property tax discount on the homesteads of veterans who became disabled as the result of a combat injury to veterans who were not Florida residents when they entered the military. MS 03/17/2011 Favorable CA 03/28/2011 BC RC	
13	**SB 1122** Bennett (Compare H 7021)	Growth Management; Extends the deadline for a local government to comply with the financial feasibility requirement for the capital improvements element of its comprehensive plan. Expands future land use categories to require the consideration of compatibility with adjacent lands, the preservation of recreational and commercial working waterfronts, public schools, and future municipal incorporation. Deletes consideration of future planned industrial use, based on certain criteria. Eliminates certain criteria specific to coastal counties, etc. CA 03/28/2011 EP BC	

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 Community Affairs Committee

BILL:	SB 2042
INTRODUCER:	Budget Subcommittee on Finance and Tax
SUBJECT:	Administration of Property Tax
DATE:	March 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill clarifies ambiguous language and corrects drafting errors in the property tax statutes. It also standardizes statutory requirements for applying for tax deferral and appealing VAB decisions, reduces the Department of Revenue's role in approving tax refunds, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 192.001, 192.117, 193.114, 193.122, 193.155, 193.1554, 193.1555, 193.501, 193.503, 193.505, 194.011, 194.032, 194.034, 194.035, 194.037, 194.171, 195.096, 195.0985, 195.099, 196.031, 196.081, 196.082, 196.091, 196.101, 296.121, 196.202, 196.24, 197.122, 197.182, 197.2301, 197.253, 197.3041, 197.3073, 197.323, 200.065, 218.12, and 218.125.

II. Present Situation:

Section 195.002, F.S., provides that the Department of Revenue (department) shall have general supervision of the assessment and valuation of property, and over tax collection and all other aspects of the administration of such taxes. In its supervisory roll, the department from time to time identifies provisions of Florida Statutes that appear to contain drafting errors, are inconsistent with other statutory provisions, or are not consistent with efficient tax administration. This bill contains recommendations, suggested by the department and approved by the Governor and Cabinet, to address some of these issues.

In 2008 Florida voters approved Amendment 1 to the State Constitution, which increased the homestead exemption, provided portability of the Save Our Home tax limitation, and limited assessment increases for non-homestead property. The Legislature has also made significant changes to property tax statutes in recent years—imposing limitations on local millage rates, changing the value adjustment board (VAB) process, and changing the burden of proof in assessment challenges. Since these changes have been in effect, it has become apparent that some of the language implementing them contained drafting errors, left certain questions unanswered, or created administrative difficulties. Inconsistencies with other statutory provisions have also been uncovered, creating further challenges in implementing the constitutional and statutory changes.

III. Effect of Proposed Changes:

This bill clarifies ambiguous language and corrects drafting errors that have become apparent since these property tax law changes were implemented. It also standardizes statutory requirements for applying for tax deferral and appealing VAB decisions, reduces the department's role in approving tax refunds, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

(See section by section analysis below.)

Section 1
Present situation: Section 192.001, F.S., provides definitions of terms used in the statutes governing the imposition of ad valorem taxes. Some of these definitions have not been amended to conform to changes that have been enacted in other ad valorem statutes.

Proposed change: This bill amends the definitions of "assessed value of property" to make it consistent with Art VII of the Florida Constitution, as amended in 2008. It amends "complete submission of the rolls" to conform to s. 193.114, F.S., as amended in 2008.

Section 2 repeals s. 192.117, F.S., which created the Property Tax Administration Task Force. This task force was dissolved in 2004.

Section 3
Present situation: Subsection (2) of s. 193.114, F.S., lists items that must be included on the real property assessment roll. When this section was amended in 2008, some of the changes made at that time used terms that are inconsistent with established practice and terminology, and this has led to confusion for the property appraisers.

Proposed change: Paragraph (n) of this subsection is amended to change the recorded selling price requirement from the two most recently recorded selling prices to the recorded selling prices required by s. 193.114, F.S., and to replace the term "sale price" with "recorded selling price" to clarify that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. The term "sale" is replaced with "transfer" to clarify that all real property transfers recorded or otherwise discovered during the period beginning 1

year before the assessment date, and up to the date the roll is submitted to the department, must be included on the assessment roll. "Transfer date" is defined as the date on which the transfer document was signed and notarized, and sale qualification decisions must be recorded on the assessment roll within 3 months after the deed or other transfer instrument is recorded or otherwise discovered.

Paragraph (p) is amended to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Section 4
Present situation: Subsection (4) of s. 193.122, F.S., provides that the property appraiser must appeal a value adjustment board decision within 30 days of recertification under subsection (4) of that section.

Proposed change: Effective July 1, 2011 and applying to assessments beginning with the 2011 tax year, this subsection is amended to clarify that the appeal must be made within 30 days after the date the decision is rendered. This conforms to other changes made in the bill to clarify the timeline for appealing VAB decisions.

Section 5
Present situation: Subsection (8) of s. 193.155, F.S., allows a taxpayer to transfer certain amounts of his or her Save Our Home assessment limitation to a newly-acquired homestead, but the transfer must be applied for by a certain date in order to get the full benefit of the transfer. Because of a drafting error, the statute refers to an application for "homestead" instead an application for "assessment" under this subsection.

Proposed change: Effective July 1, 2011, the bill amends the language to clarify that the required application is for "assessment" instead of "homestead" and that the assessment reduction is calculated as if the application had been timely filed.

Sections 6 and 7
Present situation: Amendment 1, approved by the voters in 2008, provided that the assessed value of certain property cannot increase by more than 10 percent over the prior year. Sections 193.1554 and 193.1555, F.S., which implement this provision, require that property be assessed at just (full) value the first year the property is "placed on the tax roll." It is not clear from the statutory language that "placed on the tax roll" is meant to include property that was already on the roll in a different classification, although the fiscal impact estimates provided at the time were based on that assumption.[1] These sections also provide for assessment of combined or divided parcels, but do not specify how to assess parcels that are combined or divided after the assessment date but before the tax bills are sent.

Proposed change: These sections are amended to clarify that property must be assessed at full value when it is subject to a new limitation, and that parcels combined or divided after January 1

[1] In *Sommers v. Orange County Property Appraiser, et.al.*, a recent summary judgment issued by the Ninth Judicial Circuit Court, it was ruled that the Sommers were entitled to the 10 % assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in section 193,1554(3), F.S.

are not considered combined or divided for purposes of assessment until the January 1 that the parcels are first assessed as combined or divided, even though they are combined or divided for purposes of the tax notice.

Sections 8, 9 and 10
Present situation: Sections 193.501, 193.503, 193.505., F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively. The statutes require repayment of the reduced tax liabilities if the use is not maintained for the required period, and local tax collectors are required to report this repayment information to the department. These repayments are rare and this information is not needed by the department.

Proposed change: These sections are amended to delete the reporting requirement.

Section 11 and Sections 31- 33
Present situation: Sections 194.011(3)(d), 197.253(2)(b), 197.3041(2)(b), and 197.3073(2)(b), F.S., provide conflicting requirements regarding the time allowed to file a petition for homestead tax deferral. Section 194.011, F.S., provides 30 days following the mailing of the notice by the property appraiser, but the sections in ch. 197 provide 20 days.

Proposed change: These provisions are amended to provide the 30-day window of opportunity, and s. 194.011, F.S., is amended to include cross-references to all homestead tax deferral provisions.

Section 12
Present situation: An obsolete provision in s. 194.032(2), F.S., requires a petitioner to wait at least 4 hours for his or her VAB hearing before being able to file in circuit court, even though a petitioner is no longer required to exhaust all administrative remedies (i.e., the VAB) before filing a circuit court petition.

Proposed change: This section repeals the obsolete statutory language providing the 4 hour waiting requirement.

This section also creates a new subsection that prescribes how the VAB must handle a complaint that a special magistrate did not follow the requirements of state law. It provides that a special magistrate is subject to removal from serving in that capacity upon being found to have failed to follow the requirements of state law.

Section 13
Present situation: Section 194.034(2), F.S., requires the VAB clerk to provide notice to taxpayer petitioners, property appraisers, and the department of board decisions.

Proposed changes: This subsection is amended to delete the requirement that the department be notified of every VAB decision. It allows the department to request notification or relevant statistics.

Section 14
Present situation: Section 194.035(1), F.S., provides that, subject to an appropriation, the department will reimburse certain counties for their special magistrate expenses, and the department will establish a reasonable range for special magistrate payments. No appropriations have been provided for these payments.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, these provisions are deleted from the statute.

Section 15
Present situation: Section 194.037(1), F.S., requires the clerk of each VAB to provide a public notice of the findings and results of VAB actions, and prescribes the format of this notice. One of the required elements of the notice is the net change in taxable value as a result of VAB actions. It does not specify which taxable value—county, school board, or special district—is to be reported.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, this subsection is amended to specify that the change in county taxable value is to be reported by the clerk.

Section 16
Present situation: When a VAB petitioner receives a decision from the board, the petitioner has 60 days in which to contest the decision in circuit court. There is confusion on when the 60 days begins—some courts have based the time frame on the date the VAB decision is mailed, but others have used the date the property appraiser first certifies the assessment roll prior to mailing the decision. Taxpayers that appeal to the circuit court without using the VAB process have 60 days from the date the roll is certified to initiate the appeal. It is sometimes difficult to determine this date.

Proposed change: Effective July 1 and applying to assessments beginning with the 2011 tax year, s. 194.171(2), F.S., is amended to begin the 60 day window of opportunity to appeal to the circuit court on the date the VAB decision is mailed or otherwise transmitted to the petitioner, or on the tax notice postmark date if a VAB appeal is not made.

Sections 17 and 18
Present situation: Sections 195.096 and 195.0985, F.S., require the department to report the results of its in-depth review of the assessment rolls of each county. The findings must be published and copies must be forwarded to legislative staff and county officials. The statutory reporting requirements contain different reporting dates and redundant requirements.

Proposed change: The bill amends subsections (2) and (3) of s. 195.096 to standardize reporting requirements for the in-depth assessment roll review, and repeals s. 195.0985, F.S., which contains a redundant requirement.

Section 19
Present Situation: Section 195.099, F.S., requires the department to review the assessment of new, rebuilt, or expanded businesses in designated enterprise zones or "brownfield" areas.

Proposed change: This section is amended to allow the department to review these assessments as the need arises for such review.

Section 20
Present Situation: Section 196.031, F.S., specifies the order in which various exemptions are applied to homestead property. Under present law, the order of exemptions has the result that some properties where only a portion of the property is homesteaded are not able to take full advantage of all the exemptions.

Proposed change: This section is amended to require that exemptions applicable to only homestead property be taken before exemptions that apply to both homestead and non-homestead property, in order to maximize the value of the exemptions.

Sections 21-24 and 26-27
Present situation: Sections 196.081, 196.082. 196.091, and196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions. In order to qualify, a taxpayer must obtain a disability letter from the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration, and the person may not receive a discount or exemption until the letter is obtained.

Proposed change: The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Section 25
Present situation: Section 196.121, F.S., requires the department to furnish printed homestead exemption forms to the property appraisers. This requirement is obsolete since the forms are provided electronically and funding for printed forms has been eliminated.

Proposed change: The bill amends this section to delete the requirement for printed forms and clarify that the department will provide electronic funds.

Sections 28-30 and Section 34
Present situation: Sections 197.122 and 197.182, F.S., require the department to review most property tax refunds and ss. 197.2301 and 197.323, F.S., provide that department approval is not required for refunds of certain tax overpayments.

Proposed change: Sections 197.122 and 197.182, F.S., are amended to require the department to periodically review tax refund procedures instead of reviewing and approving individual tax refunds. The sections are amended to provide additional guidance to the tax collector in making

refunds, and require the tax collector and property appraiser to cooperate in the conduct of the department's procedural reviews. Sections 197.2301 and 197.323, F.S., are amended to conform to changes in the refund approval process.

Section 35
Present situation: The statutory language used to limit local governments' millage rates contains a reference to the prior year's rate. In an apparent drafting error, the phrase "is adopted" was used instead of "was adopted" in referring to that rate, causing uncertainty in the phrase's meaning.

Proposed change: Section 200.065(5)(a), F.S., is amended in the bill to change the phrase from "is adopted" to "was adopted".

Sections 36 and 37
Present situation: Section 218.12 and 218.125, F.S., provide for distributions to fiscally constrained counties for tax losses due to constitutional changes approved by the voters in 2008. There is no provision in the statute for addressing what happens if a county fails to apply for the distribution. The statute requires counties to report their maximum millage under ch. 200, F.S., but the citation to that chapter is not correct. Finally, distributions under both sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than the current year's rate.

Proposed change: The bill amends these sections to specify that if a county fails to apply for distribution under these sections its share reverts to the fund from which the appropriation is made. The maximum millage calculation references are corrected, and the calculation of the distribution is based on the current year millage.

Section 38 provides that, except as otherwise provided, this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, provides that "except upon a approval by two-thirds of members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February1, 1989".[2] Since this bill would reduce a county or municipality's authority to raise revenue in the aggregate, it may require a two-thirds vote of the membership of each house of the Legislature for passage if the magnitude of that reduction is found to be significant for the purposes of this provision.

[2] FLA. CONST. art. VII, s. 18(b).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Proposed changes to ss. 196.081, 196.082. 196.091, and196.101, 196.202, and 196.24, F.S., which provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions, have the potential to reduce local governments' property tax revenue. The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Proposed changes to ss. 193.1554 and 193.1555, F.S., which clarify that property must be assessed at full value when it is subject to a new limitation under these provisions, have the potential to increase local governments' property tax revenue.

The Revenue Estimating Conference has not evaluated the impact of this bill.

B. Private Sector Impact:

This bill has several provisions that clarify the process by which taxpayers apply for various property tax exemptions and other tax preferences.

C. Government Sector Impact:

This bill reduces the role of the Department of Revenue in receiving various reports and approving property tax refunds, and is expected to provide greater efficiency in its oversight of property tax administration. Other statutory corrections and clarifications should also reduce the department's workload with respect to property tax oversight.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Community Affairs Committee

BILL:	SB 2044
INTRODUCER:	Budget Subcommittee on Finance and Tax
SUBJECT:	Tax Administration
DATE:	March 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill clarifies the tax treatment of tax liabilities when a business or its inventory are sold and repeals obsolete sections relating to the sale of a business. It clearly establishes the department's authority to require security for certain individuals seeking to register new businesses, imposes a reporting requirement on wholesalers and distributors of alcoholic beverages and tobacco products, allows department staff to verify the identity of business owners by using driver's license photos, provides an incentive for businesses to comply with requests for records for audit purposes, and authorizes payroll service providers to file a memorandum of understanding with the department if they provide service for at least 100 employees, instead of 500, as required under current law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 202.31, 212.10, 212.12, 212.131, 212.14, 213.053, 213.758, 322.142, and 443.131.

II. Present Situation:

The Department of Revenue (department) is charged with ensuring that the taxes it administers are carried out in a fair and equitable manner. Each year the Executive Director seeks approval of proposed legislative concepts by the Governor and Cabinet, in their role as the head of the department. The department's tax administration concepts are proposed to reduce the burden on taxpayers and to ensure that Florida's tax laws are applied in a consistent, cost-effective, and equitable manner.

(See section-by-section analysis below.)

III. Effect of Proposed Changes:

Section 1 repeals ss. 202.31 and 212.10, F.S., relating to liability for taxes following the sale of a business. These sections are no longer needed since s. 213.758, F.S., was created in ch. 2010-166, Laws of Florida.

Section 2
Present situation: Section 212.12(2)(d)1, F.S., contains redundant and potentially confusing language concerning the criminal penalty for failing to collect sales and use tax.

Proposed change: This bill deletes the redundant and confusing language and clarifies that a person who willfully fails to register after receiving notice commits a felony in the third degree. No new penalties are created in the bill. This section takes effect upon the act becoming a law.

Section 3
Present situation: The Department of Revenue has recognized that there are recurring tax law compliance problems in retail businesses with substantial alcohol and tobacco sales. The department periodically requests third-party information from wholesalers that sell these products to retail businesses in an effort to improve compliance, and some wholesalers and distributors provide the information voluntarily. Others, however, require the department to resort to expensive and cumbersome legal processes to obtain the information.

Proposed change: The bill creates s. 212.131, F.S., which requires alcohol and tobacco wholesalers to provide annual sales information to the department upon request. The report is due each July 1 for the preceding July 1 through June 30 period and is delinquent if not received by the department by September 30. The information report must be filed electronically through the department's specified data file format to ensure that the information is kept confidential. The electronic filing requirement may be waived if the seller demonstrates it causes problems for the seller, and any seller who fails to provide the information report timely is subject to a penalty of $1,000 for every month the report is not provided, up to a maximum amount of $10,000.

Section 4
Present situation: Section 212.14(4), F.S., authorizes the Department of Revenue to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a sales tax dealer's registration. Despite this requirement delinquent sales tax dealers are able to close down their business with tax liabilities, and to reopen under a new name, because the current provision does not clearly apply to all of the individuals who were responsible for prior delinquent tax accounts when they seek to register new businesses.

Proposed change: The bill revises s. 212.14(4) to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses.

Section 5 authorizes the department to adopt emergency rules to administer the provisions of sections 3 and 4 of this act.

Section 6
Present situation: Payroll service providers (agents) that represent clients on unemployment tax natters before the department must file a power of attorney for each of their clients. If the provider represents at least 500 clients, s. 213.053(4), F.S., permits the provider to file a single memorandum of understanding with the department in lieu of the 500 individual powers of attorney.

Proposed change: The bill amends s. 213.053(4), F.S., to allow payroll service providers to file a memorandum of understanding with the department if they represent at least 100 clients. This reduces the administrative burden on the service provider and the department, and matches a similar provision in s. 442.163, F.S., which requires a person who prepared and filed employment reports for 100 or more employers in any quarter during the previous year to file by approved electronic means.

Section 7
Present situation: Section 213.758, F.S., which clarifies the transfer of tax liabilities when a business or its inventory is sold, was created last year. Since it was enacted, the business community has identified issues with this section that require additional clarification.

Proposed change: Section 213.758, F.S., is amended by the addition of definitions for "business," "financial institution," insider," "stock of goods," and "tax." The existing definition of "transfer" is expanded. The description of a taxpayer's liability for taxes if he or she quits a business without transferring the business or its assets is also expanded. A transferee's responsibilities for unpaid taxes of a transferor are explicitly identified.

Section 8
Present situation: The Department of Revenue staff does not have a way to verify the identity of business owners prior to visiting businesses during audits and cannot be sure that the person with whom they are working during field visits is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles maintains a file of the digital image and signatures of drivers' license holders. These records may be shared with the Department of Revenue for child support enforcement purposes but not for other purposes.

Proposed change: The bill amends s. 322.142, F.S., to allow the Department of Revenue to use drivers' license images to establish positive identification for tax administration proposes.

Section 9
Present situation: Florida law provides a standard unemployment tax rate, and allows many businesses to receive a lower rate if they meet certain criteria, including being in compliance with the law. Section 443.131, F.S., lists the criteria necessary for a business to be in compliance, but it does not explicitly state that a taxpayer must comply with records requests during audits to qualify for the reduced tax rate.

Proposed change: Section 443.131, F.S., is amended to create an additional condition for receiving a lower-than-standard unemployment tax rate. The condition is that the employer has produced records requested by AWI or the department for audit purposes. This section takes effect upon the bill becoming a law.

Section 10 provides that except as otherwise expressly provided in this act (see sections 2 and 9), and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2011.

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:

The department anticipates that some provisions of this bill will improve enforcement and collection of state tax laws:

- Information provided by tobacco products and alcoholic beverage wholesalers is expected to improve sales tax compliance among retailers.
- Improved compliance with unemployment tax reporting is expected to improve the department's audit capability

The Revenue Estimating Conference has not completed a fiscal impact analysis of these provisions.

The Revenue Estimating Conference has determined the impact of changes in the statute governing transfer of tax liabilities to be negative but indeterminate.

B. Private Sector Impact:

This bill has the following effects on the private sector:

- It requires alcoholic beverage and tobacco products manufacturers and wholesalers to file annual reports with the department of sales of these products to any retailer in the state.
- It authorizes the department to require additional persons to provide a cash deposit, bond, or other security as a condition of obtaining or retaining a sales and use tax dealer's certificate of registration.
- It allows a payroll service provider that provides services for more than 100 employers to enter into a memorandum of understanding with the department, reducing administrative costs for the service provider.

- It clarifies the conditions under which a transferee may be liable for unpaid tax of a transferor.
- It provides that an employer may not qualify for a reduced unemployment tax rate unless the employer has produced all records that were requested by the department or the Agency for Workforce Innovation.

C. Government Sector Impact:

The bill is expected to improve tax administration by providing additional information about sales of alcoholic beverages and tobacco products, improving compliance with requests for information from employers for unemployment tax purposes, and reducing administrative costs for payroll service provider accounts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) is added to section 401.465, Florida Statutes, to read:

401.465 911 public safety telecommunicator certification.—

(5) TEMPORARY 911 PUBLIC SAFETY COMMUNICATORS; EXCEPTION.—Notwithstanding any provision of law to the contrary, a public safety agency may use sworn law enforcement officers as temporary 911 public safety telecommunicators. Any officer who works as a temporary 911 public safety telecommunicator must,

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within 12 months after first serving as such, successfully complete a supplementary training program for temporary 911 public safety telecommunicators which provides a maximum of 40 hours training and is distributed by the Criminal Justice Standards and Training Commission.

Section 2. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public safety telecommunicators; amending s. 401.465, F.S.; providing for sworn state-certified law enforcement officers to serve as temporary 911 public safety telecommunicators; providing training requirements; providing an effective date.

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 Community Affairs Committee

BILL:	SB 890
INTRODUCER:	Senator Dean
SUBJECT:	Public Safety Telecommunicators
DATE:	February 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	**Pre-meeting**
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill exempts sworn state-certified law enforcement officers from current certification requirements for public safety telecommunicators.

This bill substantially amends section 401.465, Florida Statutes.

II. Present Situation:

Public safety telecommunicators, also known as 911 operators or emergency dispatchers, are often the initial point of contact for the public when emergency assistance is required. Emergency dispatchers receive emergency calls from the public requesting police, fire, medical or other emergency services. These personnel then determine the nature, location, and priority of the emergency, and communicate this information to police, fire, ambulance, or other emergency units as necessary and in accordance with established procedures. Emergency dispatchers receive and process 911 emergency calls, maintain contact with all units on assignment, and maintain status and location of police, fire, and other emergency units, as necessary. Emergency dispatchers may be trained to enter, update, and retrieve information from a variety of computer systems to assist callers. If equipped, they may also use Emergency Medical Dispatch (EMD), a program that tells them how to help people treat themselves over the phone, while sending the appropriate EMS or fire units to the scene.

Section 365.171, F.S., governs Florida's public policy on the emergency telephone number "911." This statute specifies that it is the intent of the Legislature to "establish and implement a cohesive statewide emergency telephone number '911' plan which will provide citizens with rapid direct access to public safety agencies by dialing the telephone number '911' with the

objective of reducing response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services."

All 67 Florida counties have enhanced 911 (E911) equipment, which allows an emergency dispatch center's computers to automatically provide the caller's name, address and mapped location. The map also identifies the closest police, fire, and emergency medical services (EMS) agencies. The state E911 board is working to move towards Next Generation 911 (NG911) equipment which includes video and data transmission capability.[1]

There are 258 Public Safety Answering Points (PSAPs) statewide, with each county having between one and forty of these. There is no standard procedure defining which local agency operates these call centers, but many are operated by Sheriff's Offices, Police Departments, Fire Rescue, or a variety of local administrative agencies.[2]

Department of Education Curriculum Framework and Standards

The Division of Workforce Education at the Department of Education publishes curriculum frameworks and standards for both Public Safety Telecommunication and Law Enforcement.

The Public Safety Telecommunication framework is designed to prepare students for employment as police, fire, and ambulance dispatchers. The intended outcomes for the Public Safety Telecommunication course include the ability of the dispatcher to:

- Describe and demonstrate professional ethics and the role of telecommunicator;
- Describe Guidelines and Operational Standards of call classification and prioritization;
- Identify and explain communication equipment and resources;
- Demonstrate communication and interpersonal skills;
- Perform operational skills;
- Demonstrate understanding of fire department role and responses as well as hazardous materials awareness;
- Demonstrate understanding of emergency medical services role and responses;
- Demonstrate understanding of law enforcement role and responses;
- Understand the duties of a public safety telecommunicator;
- Comprehend stress management techniques;
- Demonstrate an understanding of Emergency Management practices; and
- Demonstrate CPR proficiency.[3]

The Public Safety Telecommunication program curriculum is currently taught at various community colleges and vocational/technical centers across the state. Thirty public safety

[1] State of Florida E911 Board 2010 Annual Report, *available at* http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board (last visited Mar. 03, 2011).
[2] David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice, http://www.al911.org/sites/default/files/Florida-911-Report.pdf (last visited Feb. 23, 2011).
[3] *See* Florida Department of Education, "Curriculum Framework, Public Safety Telecommunication," July 2010, http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp (last visited Feb. 22, 2011).

agencies have been certified to teach the curriculum since 2008, including twenty-two local law enforcement agencies.[4]

The Florida DOE curriculum framework for Law Enforcement Officers includes its own set of intended outcomes, overlapping with seven of the twelve Public Safety Telecommunication outcomes. The five Public Safety Telecommunication outcomes which are not covered by the Law Enforcement Officer curriculum are the first three, relating to the role of telecommunicator, call classification and prioritization, and E911 equipment; the fifth, relating to operational skills; and the tenth, relating to understanding the duties of a public safety telecommunicator. No specific, formal public safety telecommunication training is presently known to be provided to law enforcement officers.[5]

Although the total number of 911 call center staff statewide cannot be identified, it was estimated in 2010 that the state's 235 call centers employ 6,000 staff. [6] The Gulf Coast Community Foundation of Venice had previously commissioned an independent consultant in 2009 to analyze Florida's 911 system, and found 5,498 staff in 258 public safety answering points. That report cited Liberty County as an example of a need for more staff in public safety answering points; only one call-taker is available to take calls at any time of day, with the responsibility of answering four lines. They also found a difficulty statewide in maintaining personnel long-term because of the stress and low pay associated with the work, leading to high turnover and a lack of experienced personnel.[7]

Section 401.465, F.S.

The Florida Legislature made several changes to this section in 2010, including introducing the term "public safety telecommunicator" to replace "911 emergency dispatcher" throughout Florida law and introducing a definition for "public safety telecommunication training program" which includes any program certified by the Department of Health to meet the curriculum framework established by the Department of Education, which must be a minimum of 232 hours of training.

The most significant change to this section in 2010 was the transition of certification from a voluntary to a mandatory procedure. Effective October 1, 2012, all public safety telecommunicators must be certified by the DOH if they are employed at an "answering point," defined as a "public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls"[8] unless they are enrolled in a training program and have been employed less than 12 months.

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[4] Florida Department of Health "911 Public Safety Telecommunicator Program: Overview", *available at* http://www.doh.state.fl.us/DEMO/EMS/dispatchers.html (last visited Feb. 22, 2011).
[5] *See* Florida Department of Education, "Curriculum Framework, Law Enforcement Officer," July 2010, http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp (last visited Feb. 23, 2011).
[6] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, Report No. 10-12, (Jan. 2010) http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-12 (last visited Feb. 22, 2011).
[7] David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice, http://www.al911.org/sites/default/files/Florida-911-Report.pdf (last visited Feb. 23, 2011).
[8] Section 365.172(3)(a), F.S.

Also effective October 1, 2012, all public safety telecommunicators will be required to pass an exam administered by the DOH in order to receive certification; an alternative process for initial certification of public safety telecommunicators already employed as such for 3 years since January 1, 2002, will expire on the same date.

The requirements for the mandatory certification of 911 public safety telecommunicators may be temporarily waived by the DOH in a geographic area of Florida where a state of emergency has been declared by the Governor.

Section 401.465(2)(j), F.S., includes a requirement that persons "employed as a 911 public safety telecommunicator, a sworn state-certified law enforcement officer, or a state-certified firefighter before April 1, 2012," pass the examination, at which point completion of the training program would be waived and they would be certified.

In a 2010 Advisory Legal Opinion, Florida Attorney General Bill McCollum addressed a question posed by Springfield, FL, Chief of Police as to whether the law now required "all law enforcement officers who are likely to work in the city's dispatch center and serve as a call-taker and dispatcher of 911 calls to be trained and certified?" The Attorney General clarified that certification is the only requirement. Currently law enforcement officers employed prior to April 1, 2012, are only required to pass the exam in order to be certified. McCollum stated, "it is my opinion that pursuant to section 401.465(2)(a), Florida Statutes, any public agency employee whose duties and responsibilities include answering, receiving, transferring, and dispatching functions related to 911 calls or supervising or serving as the command officer to a person or persons having these duties and responsibilities at a public safety answering point is required to be certified by the Department of Health by October 1, 2012."[9]

Newly employed sworn state-certified law enforcement officers beginning who begin their employment on or after April 1, 2012 will be required to be certified by both taking a training course and passing the exam.

III. Effect of Proposed Changes:

Section 1 creates an exemption for sworn state-certified law enforcement officers who serve as 911 public safety telecommunicators from the certification requirements of section 401.465, F.S.

The first clause of the exemption, "[n]otwithstanding any provision of law to the contrary," removes any question of whether current sworn state-certified law enforcement officers would be expected to pass the public safety telecommunication examination specified by s. 401.465 (2)(j), F.S., which directs anyone employed as such prior to April 1, 2012, to pass the examination in order to be exempted from completion of the training course. Under this new exemption, sworn state-certified law enforcement officers would be required to complete neither the course nor the examination. The amount of state-certified law enforcement officers presently engaging in public safety telecommunication is unknown and, because of the non-uniform nature of E911 equipment and protocol across the state, the effect of officers serving without becoming certified is indeterminate.

[9] Op. Atty Gen. Fla. 10-27 (2010).

Section 2 provides an effective date of July 1, 2011.

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:

None.

C. Government Sector Impact:

This bill may reduce the cost for local governments who use sworn state-certified law enforcement officers in their answering points. The number of the estimated 6,000 call-takers and dispatchers currently employed statewide who would qualify is unknown.[10] The Department of Highway Safety and Motor Vehicles states, "This bill will have a positive future fiscal impact for state and local governments by eliminating the costs of certification for sworn state-certified law enforcement officers that would have been required beginning October 1, 2012."[11] There are 50,936 sworn state-certified law enforcement officers in Florida; the Florida Department of Law Enforcement employs 418 of these, and eight of those are employed as public safety telecommunicators.[12]

VI. Technical Deficiencies:

None.

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[10] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, Report No. 10-12, (Jan. 2010) http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-12 (last visited Feb. 22, 2011).

[11] Department of Highway Safety and Motor Vehicles, *Senate Bill 890 Agency Bill Analysis* (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).

[12] E-mail from Rachel Truxell, Government Analyst II, Florida Department of Law Enforcement, to Galen Wood, Intern, Florida Senate (Mar. 3, 2011) (on file with the Senate Committee on Community Affairs).

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause and insert:

That the following amendment to Section 6 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 6. Schedule to Article VIII.—

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) COUNTIES; COUNTY SEATS; MUNICIPALITIES; DISTRICTS. The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of intoxicating liquors, wines and beers; the method of selection of county officers; the performance of municipal functions by county officers; the county seats; and the municipalities and special districts of the state, their powers, jurisdiction and government.

(c) OFFICERS TO CONTINUE IN OFFICE. Every person holding office when this article becomes effective shall continue in office for the remainder of the term if that office is not abolished. If the office is abolished the incumbent shall be paid adequate compensation, to be fixed by law, for the loss of emoluments for the remainder of the term.

(d) ORDINANCES. Local laws relating only to unincorporated areas of a county on the effective date of this article may be amended or repealed by county ordinance.

(e) CONSOLIDATION AND HOME RULE. Article VIII, Sections 9, 10, 11 and 24, of the Constitution of 1885, as amended, shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions of the Miami-Dade ~~Metropolitan Dade~~

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County Home Rule Charter, heretofore or hereafter adopted by the electors of Miami-Dade ~~Dade~~ County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended. However, notwithstanding any provision of Article VIII, Section 11, of the Constitution of 1885, as amended, or any limitations under this subsection, the Miami-Dade County Home Rule Charter may be amended or revised by special law approved by the electors of Miami-Dade County and, if approved, shall be deemed an amendment or revision of the charter by the electors of Miami-Dade County. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation.

(f) DADE COUNTY; POWERS CONFERRED UPON MUNICIPALITIES. To the extent not inconsistent with the powers of existing municipalities or general law, the Metropolitan Government of Miami-Dade ~~Dade~~ County may exercise all the powers conferred now or hereafter by general law upon municipalities.

(g) DELETION OF OBSOLETE SCHEDULE ITEMS. The legislature shall have power, by joint resolution, to delete from this article any subsection of this Section 6, including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

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BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

AUTHORIZING AMENDMENTS TO MIAMI-DADE COUNTY HOME RULE CHARTER BY SPECIAL LAW APPROVED BY REFERENDUM.—Authorizes amendments or revisions to the Miami-Dade County Home Rule Charter by a special law when the law is approved by a vote of the electors of Miami-Dade County. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation. It also conforms references in the State Constitution to reflect the county's current name.

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

And the title is amended as follows:

Delete everything before the resolving clause and insert:

A bill to be entitled

A joint resolution proposing an amendment to Section 6 of Article VIII of the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by special law approved by a vote of the electors; providing requirements for a bill proposing such a special law.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Dockery) recommended the following:

Senate Amendment to Amendment (598528)

Delete line 58
and insert:
(f) MIAMI-DADE ~~DADE~~ COUNTY; POWERS CONFERRED UPON MUNICIPALITIES. To

Delete line 74
and insert:
ARTICLE VIII, SECTION 6

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 Community Affairs Committee

BILL:	SJR 1954
INTRODUCER:	Senator Garcia
SUBJECT:	Home Rule Charter of Miami-Dade County
DATE:	March 23, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Joint Resolution (SJR) 1954 proposes an amendment to Article III, section 6, of the Florida Constitution, to authorize amendments or revisions to the home rule charter of Miami-Dade County by a special law approved by a vote of the electors, and provides requirements for a bill proposing such a special law.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Counties

Article VII, section 1 of the Florida Constitution requires the state to be divided into political subdivisions known as counties which shall provide state services at the local level. There are two types of counties that are recognized under the Florida Constitution: 1) counties that are not operating under a county charter, and 2) counties that are operating under a county charter.[1]

A.) Non-Charter Counties

Non-charter county governments only have such powers of self-government as is provided by general or special law.[2] In addition, non-charter counties may enact ordinances not inconsistent

[1] *See* FLA. CONST. art. VII, s. 1(f)-(g).
[2] FLA. CONST. art. VII, s. 1(f).

with general or special law. A county ordinance in a non-charter county that is in conflict with a municipal ordinance is not effective within the municipality to the extent of such conflict.

B.) Charter Counties

Charter counties have greater powers of self-government than non-charter counties. Counties operating under a charter have all powers of self-government not inconsistent with general law or with special law approved by the vote of the electorate.[3] Although a non-charter county can be established through general law, a charter county can only be adopted, amended or related through a special election by the vote of the electors in that county. In a charter county, the charter shall provide which shall prevail in the event of a conflict between county and municipal ordinance. Special acts that do not require referendum approval do not apply to charter counties.

Miami-Dade Home Rule Charter[4]

In 1955, the voters of Dade County were authorized by the Legislature under an amendment to Article VII, section 11, of the 1885 Florida Constitution to enact the first home rule charter in Florida.[5]

Article VIII, section 6(e), of the Florida Constitution, states that the provisions of the Metropolitan Dade (or Miami-Dade) County Home Rule Charter adopted by the electors of Miami-Dade County pursuant to Article VIII, section 11 of the Constitution of 1885 are valid and any subsequent amendments to the charter, authorized by Article VIII, section 11 of the Constitution of 1885 are authorized.[6]

A.) Unique Powers

Article VIII, section 11 of the Constitution of 1885 granted the electors of Miami-Dade County the authority to adopt a home rule charter government in Miami-Dade County of which the Board of County Commissioners of Miami-Dade County is the governing body. In contrast to charter governments created pursuant to Article VIII, section 6(g) of the State Constitution, Miami-Dade County is granted unique powers that include:

- Merging, consolidating abolishing and changing the boundaries of municipal, county or district governments whose jurisdictions lie wholly within Miami-Dade County;
- Providing a method for establishing new municipal corporations, special taxing units and other governmental units in Miami-Dade County;

[3] FLA. CONST. art. VII, s. 1(g).

[4] Section 125.011(1), F.S., defines the term "county" to mean:

> any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

The constitutional sections that are contained in s. 125.011(1), F.S., refer to Key West/Monroe County, Miami-Dade County and Hillsborough County, respectively.

[5] Memorandum to Rip Colvin, Legislative Committee on Intergovernmental Relations (LCIR) from Carolyn Horwich, Staff Attorney (April 20, 2006).

[6] FLA. CONST. art. VII, s. 6(e).

- Providing an exclusive method for municipal corporations to make, amend or repeal its own charter, which, once adopted, cannot be changed or repealed by the Legislature;
- Abolishing the offices of sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court and provide for the consolidation and transfer of their functions; and
- Changing the name of Miami-Dade County.

In addition, even though Article VIII, section 11(5), of the Florida Constitution of 1885 does not limit or restrict the power of the Legislature to enact general laws that apply to Miami-Dade County and any one or more counties in Florida or to any municipality in Miami-Dade County and one or more municipalities in Florida, Miami-Dade County ordinances control in the event of conflict with special or general law only applicable to Miami-Dade County. Hence, the Legislature is prohibited by Article VIII, section 11(5), of the Florida Constitution of 1885, as amended, from enacting special laws that apply only to Miami-Dade County, even if such a special act were approved by referendum.

B.) Special Provisions

Miami-Dade County Home Rule Charter ("Charter") was officially adopted on May 21, 1957. The Charter authorizes the Board of County Commission to create new municipalities; change municipal boundaries; and to establish, merge and abolish special purpose districts. The Charter also abolishes the constitutional office of the Sheriff and authorizes the Board of County Commission to "exercise all powers and privileges granted to municipalities, counties and county officers by the Constitution and laws of the state."[7]

C.) Court Interpretations

Florida courts have consistently invalidated the applicability of special acts passed by the Legislature that attempt to supersede the home rule powers of Miami-Dade County. The Florida Supreme Court has held that the constitutional provisions granting home rule authority to Miami-Dade County transferred to the county "the powers formerly vested in the State Legislature with respect to the affairs, property and government of Dade County and all the municipalities within its territorial limits." *See State v. Dade Count.* [8]

In the case of *Chase v. Cowart*,[9] the Florida Supreme Court was asked to determine whether the Miami-Dade County Budget Commission had been abolished by the electors of Miami-Dade County through the enactment of its home rule charter. The Commission was originally established by the Florida Legislature with authority over the fiscal affairs of county boards and county officers of Miami-Dade County and whose jurisdiction fell entirely within Miami-Dade County.

In deciding the issue, the Court weighed the meaning of subsections (5), (6), (7), and (9), s. 11, Art. VIII, of the Florida Constitution of 1885, as amended, which preserve to the Legislature the authority to enact general laws that apply to Miami-Dade County and any one or more counties. The Court also analyzed subsection (1)(c), s. 11, Art. VIII, of the Florida Constitution of 1885,

[7] Section 1.01(21), *Miami-Dade County Home Rule Charter.*
[8] 142 So. 2d 79, 85 (Fla. 1961).
[9] 102 So. 2d 147 (Fla. 1958).

which provides an express grant of power authorizing the voters of Miami-Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly within Miami-Dade County, whether created by the Constitution, the Legislature or otherwise.

After conducting its analysis, the Court held that the electors of Miami-Dade County, through the enactment of its home rule charter, abolished the budget commission. The court reasoned that the limitations of subsections (5) and (9) do not prohibit the abolishment of the Budget Board because the charter provision allowing abolishment of the board comes within the exception to the limitations of subsections (5) and (9) that states "except as expressly authorized herein." Specifically stating that section 11(1)(c) is:

> clearly an express grant of power which authorizes the voters of Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly in Miami-Dade County, whether created by the Constitution or by the Legislature or otherwise. We think it crystal clear that the words 'except as expressly authorized or provided' as found in subsections (5) and (9) relates directly to the specific grants of power contained in the various sub-subsections of subsection (1).[10]

The Court further stated that its reasoning did not weigh on the analysis of whether the law creating the Budget Board was a general law, general law of local application, or a special act.

In *City of Sweetwater v. Dade County*,[11] the Third District Court of Appeal held that general law provisions governing the annexation of land into municipalities did not apply within Miami-Dade County since municipal boundary changes is "one of the areas of autonomy conferred on Dade County" by its Home Rule Charter.[12] In reaching this holding the Third District Court of Appeal upheld the trial court's judgment ruling which relied on the autonomy granted to Miami-Dade County under Article VII, section 11(1), of the Florida Constitution of 1885, as amended:

> Subsections 1(a) through (i) of the Home Rule Charter Amendment constitute those organic areas of autonomy and authority in local affairs conferred upon Dade County by the Florida Constitution and may not be diminished and curtailed by general laws of the State enacted after 1956. [13]

Based on this information the Third District Court of Appeal determined "that the method provided by the Home Rule Charter . . . is effective and exclusive, notwithstanding the existence from time to time of a general state law which makes provision for some other method."[14]

[10] *Id.* at152-53.
[11] 343 So. 2d 953 (3rd DCA 1977).
[12] *Id.* at 954.
[13] *Id.* (citations omitted).
[14] *Id*.

III. Effect of Proposed Changes:

This joint resolution would allow the Miami-Dade Home Rule Charter to be amended or revised by special law approved by the electors of Miami-Dade County, notwithstanding any provision of Article VII, section 11, of the Florida Constitution.[15]

If such amendments or revisions are approved by the electors of Miami-Dade County, they shall be deemed an amendment or revision of the charter by the electors of Miami-Dade County.

A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation.

This joint resolution also conforms references in the State Constitution to reflect the county's current name which is Miami-Dade County, and not Dade County.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments
Section 1, Art. XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(d), Art. XI, of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

[15] If approved by the voters, this amendment would in effect eliminate the unique constitutional home rule powers that are currently afforded to Miami-Dade County by the Florida Constitution so that the powers of Miami-Dade County would be no greater than that of a charter county government established under Article VIII, section 1(g), of the Florida Constitution.

Section 5(e), Art. XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Upon voter approval, this joint resolution would allow Miami-Dade County Home Rule Charter amendments or revisions to be made by special law approved by a vote of the electors. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation.

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[16] Costs for advertising vary depending upon the length of the amendment. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[16] FLA. CONST. art. XI, s. 5(d).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Community Affairs Committee

BILL:	CS/SB 426
INTRODUCER:	Judiary Committee and Senator Latvalla
SUBJECT:	Service of Process
DATE:	March 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill authorizes certified process servers to serve writs of possession in actions for possession of residential property. More specifically, upon the entry of a judgment in favor of a landlord in a possession action and issuance of the writ by the clerk of court, the landlord may elect to use a certified process server to serve the writ rather than the sheriff.

After the posting of a writ by the certified process server, he or she must, within 12 hours, provide written notice to the sheriff including the date and time the writ was posted on the premises.

This bill substantially amends the following sections of the Florida Statutes: 48.021, 48.27, and 83.62.

II. Present Situation:

Florida Residential Landlord and Tenant Act

Part II of chapter 83, F.S., titled the "Florida Residential Landlord and Tenant Act" (act), governs the relationship between landlords and tenants under a residential lease agreement.[1] A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.[2] The provisions of this act specifically address the payment of rent,[3] duration of leases,[4] security deposits,[5] landlord maintenance obligations,[6] termination of rental agreements,[7] and landlord remedies.[8]

Landlord Remedies for Breach of Lease

Current law provides the landlord with choices of remedies for breaches of the rental agreement by the tenant.[9] The remedies provided in statute apply to the following situations:

- The tenant has breached the lease for the dwelling unit and the landlord has obtained a writ of possession;
- The tenant has surrendered possession of the dwelling unit to the landlord; or
- The tenant has abandoned the dwelling unit.

The statute permits the landlord to:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rent stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a reletting; or
- Stand by and do nothing, holding the lessee liable for the rent as it comes due.[10]

Right of Action for Possession

A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated.[11] However, under current law, a landlord is not authorized to recover possession except under the following circumstances:

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[1] Part II of ch. 83, F.S.
[2] Section 83.43(7), F.S. (A rental agreement "means any written agreement, … or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")
[3] Section 83.46, F.S.
[4] *Id.*
[5] Section 83.49, F.S.
[6] Section 83.51, F.S.
[7] *See* ss. 83.56 and 83.575, F.S.
[8] *See* ss. 83.58 and 83.595, F.S.
[9] Section 83.595, F.S.
[10] *Id.*
[11] Section 83.59(1), F. S.

- In an action for possession, in which the landlord, the landlord's attorney, or agent files a specified complaint alleging certain facts authorizing recovery in the proper county court where the dwelling unit is located;[12]
- In other civil actions in which right of possession is to be determined;
- Possession of the dwelling unit has been surrendered by the tenant to the landlord;
- The dwelling unit has been abandoned by the tenant; or
- The only remaining tenant in the dwelling unit has been deceased for at least 60 days with his or her personal property still remaining on the premises and rent remains unpaid, and the landlord has not received notice of a probate estate or personal representative thereof.[13]

Writs of Possession

After judgment is awarded in favor of the landlord in an action for possession of the property, the clerk must issue a writ of possession to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.[14] After the 24-hour period elapses from the posting of the writ, the landlord or the landlord's agent may remove any personal property found on the premises.[15] The landlord may request that the sheriff stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises.[16] Neither the sheriff nor the landlord is liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.[17]

Overview of Service of Process

Service of process is the formal delivery of a writ, summons, or other legal process or notice.[18] As a general rule, "statutes governing service of process are to be strictly construed to insure that a defendant receives notice of the proceedings."[19] Currently, under Florida law process may be served by a sheriff, a person appointed by the sheriff in the sheriff's county ("special process server"), or a certified process server appointed by the chief judge of the circuit court.[20] All process must be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses, which may be served by a special or certified process server.[21] Any person

[12] Section 83.59(2), F.S.
[13] Section 83.59(3), F.S.
[14] Section 83.62(1), F.S.
[15] Section 83.62(2), F.S.
[16] *Id*.
[17] *Id*.
[18] "The term 'process' is not limited to 'summons.' In its broadest sense [,] it is equivalent to, or synonymous with, 'procedure,' or 'proceeding.'" BLACK'S LAW DICTIONARY (9th ed. 2009). Thus, service of process may trigger the constitutional issue of procedural due process, which requires notice and the opportunity to be heard. *See, e.g., Minda v. Ponce*, 918 So. 2d 417, 422 (Fla. 2d DCA 2006) (citing *Schnicke v. Schnicke*, 533 So. 2d 337, 337-38 (Fla. 5th DCA 1988)).
[19] *Abbate v. Provident Nat'l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994) (citing *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. 5th DCA 1992)).
[20] *Id*.
[21] Section 48.021(1), F.S. Service of process may be categorized as enforceable or nonenforceable. *See* Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, at 1 (Aug. 2005).

authorized by the Florida Rules of Procedure may also serve civil witness subpoenas.[22] However, at present, there is no statutory authority or rule of procedure that allows anyone other than a sheriff or a sheriff's deputy to serve writs of possession in actions for possession of real property.

Certified Process Servers

A certified process server must be appointed by the chief judge of the judicial circuit in which he or she shall be allowed to serve process.[23] The chief judge of each circuit has discretion as to whether or not to appoint certified process servers. According to s. 48.29(3), F.S., a person applying with the chief judge to become a certified process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process;
- Execute a bond in the amount of $5,000, which shall be renewable annually, for the benefit of any person injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server; and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.[24]

Once the process server is certified, he or she may serve nonenforceable civil process, as well as criminal witness subpoenas and criminal summonses, on a person found within the circuit where the server is certified.[25] Florida law does not provide a fee schedule establishing the fees allowed to be charged by certified process servers. Rather, current law generally provides that a "certified process server may charge a fee for his or her services."[26]

Fees and Costs Associated with Writs of Possession

Under Florida law, county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.[27] All fees collected under the statutory provisions for sheriffs' fees for service of process are to be paid monthly into

"Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property)." *Id*. On the other hand, "[n]onenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena)." *Id*.

[22] Section 48.021(1), F.S. Rule 1.070, Florida Rules of Civil Procedure, provides that service of process may be made by a person appointed by court order, known as an elisor.

[23] Section 48.27, F.S.

[24] Section 48.29(3), F.S.

[25] Section 48.27(2), F.S.

[26] Section 48.29(8), F.S.

[27] Section 30.231(1), F.S.

the county's fine and forfeiture fund.[28] Current law provides that the sheriff's office may charge $40 for docketing and indexing each writ of execution, regardless of the number of persons involved, and $50 for each levy.[29] In addition to these fees, the sheriff is authorized to charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace in an action for possession of property is responsible for paying the hourly rate.[30]

III. Effect of Proposed Changes:

The bill authorizes certified process servers to serve writs of possession in actions for possession of real property. Currently, there is no statute or rule that allows anyone other than a sheriff or deputy to serve writs of possession in possession actions. The bill specifies that, upon the entry of a judgment in favor of a landlord in an eviction action and issuance of the writ by the clerk of court, the landlord may elect to use a certified process server to serve the writ.

The bill also makes conforming changes in the Florida Residential Landlord and Tenant Act (specifically s. 83.62, F.S.) and the general service of process statute (s. 48.021, F.S.) to authorize service of the writ of possession by a certified process server. The bill retains a sheriff's authority to serve a writ of possession in an eviction action.

Under current statute and practice, the clerk issues the writ of possession to the sheriff, and the sheriff serves the writ by conspicuously posting the writ on the premises. After 24 hours have passed from the posting of the writ, the landlord may take possession of the property with the sheriff standing by to keep the peace.[31] Under the bill, if the landlord elects to use a certified process server to serve the writ, the sheriff will remain under the obligation to stand by to keep the peace after the 24-hour period has passed. To aid in this process, the bill provides that upon the posting of the writ by the certified process server, he or she, within 12 hours, must provide written notice to the sheriff including the date and time the writ was posted on the premises.

Other Potential Implications:

It is the long-standing practice of Florida that enforceable civil process is served by the sheriff. Allowing a certified process server to serve the writ of possession is a significant departure from this practice.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists

[28] Section 30.231(5), F.S.
[29] Section 30.231(1)(d), F.S. A levy is considered made when any property or any portion of the property listed or unlisted in the instructions for levy is seized, or upon demand of the sheriff the writ is satisfied by the defendant in lieu of seizure.
[30] Section 83.62(2), F.S.
[31] Section 83.62, F.S.

on February 1, 1989. Because sheriffs retain the authority to serve writs of possession under the bill, it does not appear that the authority of the local government to raise revenues has been affected by the provisions of the bill.

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:

In counties experiencing high volumes of cases involving possession of real property, landlords who elect to use a certified process server to deliver the writ of possession may experience a reduction in the amount of time that elapses between court approval of the writ and the actual service of the writ. Dependent upon the actual fee charged by certified process servers for serving the writ of possession, landlords could experience higher costs associated with the execution of the writ if they elect to use a certified process server.

C. Government Sector Impact:

The bill will allow landlords in successful eviction actions to elect to use certified process servers rather than the sheriff's office to serve writs of possession. All fees collected under the statutory provisions for sheriffs' fees for service of process are paid monthly into the county's fine and forfeiture fund. County revenues could be decreased contingent upon the number of landlords who elect to use certified process servers rather than the sheriff to serve the writs. However, sheriffs will continue to receive fees for assisting with repossession of the property 24 hours after the posting of the writ.

Clerks of court may experience some expense associated with revisions to the writ of possession form if changes are necessary as a result of allowing certified process servers to serve the writ.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on February 8, 2011:
The committee substitute:

- Specifies that a writ of possession may be served by a certified process server in s. 48.021, F.S. (the general service of process statute), for consistency with the bill's grant of authority to certified process servers in s. 48.27, F.S.;
- Substitutes the term "landlord" for the term "person" to make clear that the landlord selects the certified process server; and
- Requires a certified process server, within 12 hours of the posting of the writ, to provide written notice to the sheriff including the date and time the writ was posted on the premises.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Community Affairs Committee

BILL:	SB 884
INTRODUCER:	Senator Latvala
SUBJECT:	Taxi Operators
DATE:	March 22, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			GO	
4.				
5.				
6.				

I. Summary:

The bill allows governmental units authorized to regulate the operation of taxis to create a property right or interest in a license.

This bill creates an undesignated section of law.

II. Present Situation:

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[4] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger,

[1] FLA. CONST. art VIII, s. 1(f).
[2] FLA. CONST. art VIII, s. 1(g).
[3] FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] Section 125.01, F.S.

exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitutions or law.[5]

Under s. 125.01(1)(n), F.S., a county commission has the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that Miami-Dade was authorized to issue a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, are issued by lottery among individuals with such experience as a taxi driver as the county may determine. According to a November 2010 study, there is approximately 1 cab for every 1,200 people in the county. Because of the scarcity of medallions most drivers lease their medallions for as much as $350 a week.[6] In New York, where medallions are also limited, licenses sell for hundreds of thousands of dollars.

Cities can regulate taxis within their jurisdiction.[7] "The right to use the streets and highways of a municipality for the conduct of a strictly private business is not inherent; it can be acquired by permission or license from the city, whose power to withhold or grant it in the manner and to the extent it may see fit is an essential prerogative of municipal government."[8]

The Hillsborough County Public Transportation Commission, created by special act of the Florida Legislature, regulates the operation of certain "for-hire" vehicles in Hillsborough County and its municipalities. Vehicles regulated are taxicabs, limousines, vans, handicabs, basic life support ambulances, and wreckers used for government purposes.[9] In 1994, the Department of Community Affairs designated the commission as an independent special district. "[T]he commission may determine whether the operation of a certain public vehicle serves a public convenience or necessity when a permit is being granted and may, by rule, establish a cap on the number of taxicab permits that may be issued."[10]

III. Effect of Proposed Changes:

The bill allows any governmental unit authorized to regulate the operation of taxis to create a property right or interest in a license to operate a taxi within the geographic boundaries of the governmental unit.

Upon the creation of such private property right, the owner of a taxi operation may pledge, sell, assign, sublease, or otherwise transfer the license to another person. However, the owner must apply to the governmental unit before making such transfer and obtain its approval for the proposed action, except that a license may be transferred by operation of intestate succession or devise.

[5] Section 166.021, F.S.
[6] Paul Sherman, *Miami's Vice: Overregulating Entrepreneurs*, Institute for Justice (Nov. 2010).
[7] *Pratt v. City of Hollywood*, 78 So. 2d 697 (Fla. 1955) *but see Duck Tours Seafari, Inc. v. City of Key West*, 875 So. 2d 650, 655+ (Fla. 3d DCA 2004).
[8] *Jarrell v. Orlando Transit Co*., 167 So. 664 (1936).
[9] *See* sh. 47-24921, L.O.F., as modified by ch. 83-423, L.O.F.
[10] Op. Att'y Gen. Fla. 2007-01 (2007).

As used in this section, the term:

- "License" includes any certificate, permit, medallion, or other evidence that authorizes a person to operate a taxi within the geographic boundaries of a governmental unit.
- "Governmental unit" includes a county, municipality, special district, commission, or other unit of state or local government.

The bill provides an effective date of July 1, 2011.

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:

Limiting the number of taxi licenses within a given jurisdiction decreases competition because there can only be a limited amount of taxis in the market. Decreased competition drives up the cost of taxi fare. A new market for taxi licenses will be created, which, depending on the number of licenses issued, could have significant value.

C. Government Sector Impact:

The bill does not specify whether government entities are authorized to sell these licenses originally or charge for transfer of the license. To the extent that the government entity can sell the license or charge for transfer of the license, the government entity could generate revenue by creating a property right in a license.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Community Affairs Committee

BILL:	SB 1792
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Growth Policy
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill eliminates the Urban Infill and Redevelopment Assistance Grant Program. This program was created by the Legislature in 1999 and has not been funded since fiscal year 2000-2001.

This bill repeals section 163.2523 of the Florida Statutes.

II. Present Situation:

The Legislature passed the "Growth Policy Act" [1] in 1999, establishing a definition for urban infill and redevelopment areas (UIRAs), authorizing local governments to designate UIRAs and provide economic incentives for them, and setting standards for local governments to follow in designating them. The Act, currently found in ss. 163.2511-163.2523, F.S., has the goal of promoting and sustaining urban cores.[2]

Section 163.2523, F.S., establishes a grant program to be administered by the Division of Housing and Community Development of the Department of Community Affairs. This program includes three types of grants. The largest percentage, sixty percent, is allocated towards fifty-fifty matching grants for implanting urban infill and redevelopment projects. Thirty percent is allocated for planning grants to be used in the development of an urban infill and redevelopment plan. The remaining ten percent is to be used for grants to implement projects which require an

[1] Chapter 1999-378, s. 1, Laws of Fla.
[2] Section 163.2511, F.S.

expenditure of under $50,000. The local government which receives the grants is specifically allowed to allocate them to special districts and nonprofits.

The program has not been funded since fiscal year 2000-2001 when it was appropriated $2.5 million which the Department of Community Affairs then awarded to 22 local governments.[3]

III. Effect of Proposed Changes:

Section 1 repeals s. 163.2523, F.S. This terminates the Urban Infill and Redevelopment Assistance Grant Program. The repeal of s. 163.2523, F.S., will not affect either the authority of local governments to designate UIRAs or use the economic incentives, such as revenue bonds and tax increment financing, currently available for local governments to use in implementing UIRA plans and projects.[4]

Section 2 amends s. 163.065, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 3 amends s. 163.2511, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 4 amends s. 163.2514, F.S., to reflect the repeal of s. 163.2523, F.S., by removing a reference to that statute.

Section 5 sets an effective date of July 1, 2011.

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.

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[3] Office of Program Policy Analysis and Government Accountability, Florida Legislature, *Status Report: Urban Infill and Redevelopment Areas Have Uncertain Impact But Perceived as Useful*, Report No. 04-14, 1 (Feb. 2004), http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0414rpt.pdf (last visited Mar. 22, 2011).

[4] Section 163.2520, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Community Affairs Committee

BILL:	SB 1722
INTRODUCER:	Senator Fasano
SUBJECT:	Ad Valorem Taxation
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			BC	
4.			RC	
5.				
6.				

I. Summary:

This bill provides statutory implementation of SJR 658 or HJR 381, should either joint resolution be approved by the voters. The bill reduces the limitation on annual assessment increases applicable to non-homestead property and residential and nonresidential property from 10 percent to 3 percent. The bill also provides an additional homestead exemption for specified "first-time Florida homesteaders," as defined herein.

Upon voter approval of HJR 381 or SJR 658, this bill substantially amends sections 193.1554 and 193.1555 of the Florida Statutes.

Upon voter approval of HJR 381 or SJR 658, this bill creates section 196.078 of the Florida Statutes, and creates an undesignated section of law to provide emergency rulemaking authority to the Department of Revenue.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair

market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

B.) Assessed Value

The Florida Constitution authorizes certain exceptions to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[4] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[5] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[6] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[7] Certain working waterfront property is assessed based upon the property's current use.[8]

C.) Additional Assessment Limitations

Sections 4(g) and (h), Article VII, of the Florida Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control.[9]

Article XII, section 27 of the Florida Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

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[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

[2] The constitutional provisions in article VII, section 4 of the Florida Constitution, were implemented in Part II of ch. 193, F.S.

[3] FLA. CONST. art. VII, s. 4(a).

[4] FLA. CONST. art. VII, s. 4(c).

[5] FLA. CONST. art. VII, s. 4(e).

[6] FLA. CONST. art. VII, s. 4(f).

[7] FLA. CONST. art. VII, s. 4(i).

[8] FLA. CONST. art. VII, s. 4(j).

[9] FLA. CONST. art. VII, s. 4(g) and (h).

D.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[10]

Homestead Exemption

Article VII, section 6 of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

Additional Homestead Exemption, Amendment 3 Proposed for 2010 Ballot *(2009 SJR 532)*

In 2009, the Legislature passed SJR 532 which was scheduled to go before the voters as Amendment 3 on the November 2010 ballot. The proposed amendment 3 sought to reduce the annual assessment limitation from 10 to 5 percent annually and to provide an additional homestead exemption for "a person or persons" who have not owned a principal residence in the previous *eight* years that is equal to *25 percent* of the just value of the homestead in the first year for all levies, up to *$100,000*. The amount of the additional homestead exemption decreases by 20 percent of the initial exemption each succeeding five years until it is no longer available in the sixth and subsequent years.[11]

However, in August 2010, the Florida Supreme Court removed Amendment 3 from the 2010 Ballot, on the grounds that the ballot title and summary were misleading and failed to comply with the constitutional accuracy requirement implicitly provided in Art. XI, section 5(a) of the Florida Constitution.[12] The Court stated that the accuracy requirement is implicitly indicated in section 5(a) through the statement that the proposed amendment "shall be submitted to the electors at the next general election." Specifically, the Court stated that:

> Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity.[13]

The Court further stated that the accuracy requirement is codified in Florida Statutes in s. 106.161(1), F.S., which in part provides that:

[10] FLA. CONST. art. VII, ss. 3 and 6.
[11] Fla. CS for SJR 532, 1st Eng. (2009) (Senator Lynn and others).
[12] *Roberts v. Doyle*, 43 So. 3d 654 (Fla. 2010).
[13] *Id.* at 657, citing *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (further reiterating that the accuracy requirement is codified in s. 106.161(1), F.S. (2009)).

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . .

In determining whether a ballot title and summary are in compliance with the accuracy requirement, courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public'."[14]

Based on this test, the Florida Supreme Court determined that the ballot title and summary for Amendment 3 were "neither accurate nor informative" and "are confusing to the average voter."[15] The Court supported its holding based on the following:

- Neither the title nor the summary provided notice that the additional exemption is only available for properties purchased on or after January 1, 2010. Stating that the "lack of an effective date renders it impossible for a voter to know which homeowners would qualify for the exemption."[16]
- The term "new homestead owners" in the title coupled with "first-time homestead" in the summary is ambiguous as it conveys the message that to be eligible for the additional exemption, the property owner must have both not owned a principal residence during the preceding eight years *and* have never previously declared the property homestead.[17]
- The use of both the terms "principal residence" and "first-time homestead" in the ballot title and summary is misleading.[18]
- There is a material omission in the ballot title and summary, as they fail to "note that the additional exemption is not available to a person whose spouse has owned a principal residence in the preceding eight years."[19]

2011 Regular Session: Senate Joint Resolution 658 and House Joint Resolution 381

A.) Senate Joint Resolution 658

Senate Joint Resolution (SJR) 658 proposes an amendment to Article VII, section 4 of the Florida Constitution, to prohibit increases in the assessed value of homestead property if the just value of the property decreases, and reduces the limitation on annual assessment increases applicable to non-homestead property from 10 percent to 3 percent.[20]

SJR 658 also proposes an amendment to Article VII, section 6 of the Florida Constitution, to create an additional homestead exemption for specified homestead owners. This amendment allows individuals that are entitled to a homestead exemption under s. 6(a), Art. VII of the Florida Constitution, that have not previously received a homestead exemption in the past three years[21] to receive an additional homestead exemption equal to 50 percent of the just value of the

[14] *Id.* at 659, citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).
[15] *Id.* at 657 and 660.
[16] *Id.*
[17] *Id.*
[18] *Roberts,* at 657 and 660.
[19] *Id.* at 657 and 661.
[20] *See* CS/SJR 658 (2011 Regular Session).
[21] SJR 658 specifies "three calendar years," HJR 381 just states "three years."

homestead property up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies.[22]

B.) House Joint Resolution 381

HJR 381 makes similar amendments to sections 4 and 6 of Article VII of the Florida Constitution. However, HJR 381 does not amend Article VII, section 4 of the Florida Constitution to prohibit increases in the assessed value of the homestead property if the just value of the property decreases.[23]

SJR 658 and HJR 381 also provide different effective dates:

- The reduction in non-homestead property annual assessment increases from 10 to 3 percent takes effect January 1, 2013, in SJR 658, whereas it takes effect January 1, 2012, in HJR 381.
- The additional homestead exemption applies to properties purchased on or after January 1, 2012, and takes effect January 1, 2013, in SJR 658, whereas it applies to properties purchased on or after January 1, 2011, and takes effect January 1, 2012, in HJR 381.

III. Effect of Proposed Changes:

This bill provides statutory implementation of SJR 658 or HJR 381, should either joint resolution be approved by the voters. The bill provides separate amendments to each statute based upon when the joint resolution is approved by the voters, which may be: during a general election held in November 2012 *or* during a special election held concurrent with the presidential preference primary in 2012.

Assessment of Non-Homestead Residential Property

Section 1 Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this section amends s. 193.1554, F.S., to reduce the limitation on annual assessment increases applicable to non-homestead residential property from 10 percent to 3 percent and provides for these provisions to begin in 2013.

Section 2 Upon voter approval of SJR 658 or HJR 381 during *a special election held concurrent with the presidential preference primary in 2012*, this section amends s. 193.1554, F.S., to reduce the limitation on annual assessment increases applicable to non-homestead residential property from 10 percent to 3 percent and provides for these provisions to begin in 2012.

Assessment of Certain Residential and Non-Residential Real Property

Section 3 Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this section amends s. 193.1555, F.S., to reduce the limitation on annual assessment increases applicable to certain residential and nonresidential property from 10 percent to 3 percent and provides for these provisions to begin in 2013.

[22] *Id.*
[23] *See* CS/HJR 381 (2011 Regular Session).

Section 4 Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this section amends s. 193.1555, F.S., to reduce the limitation on annual assessment increases applicable to certain residential and nonresidential property from 10 percent to 3 percent and provides for these provisions to begin in 2012.

Additional Homestead Exemption for Specified Homestead Owners

Section 5 Upon voter approval of SJR 658 or HJR 381 during a *general election held in November 2012*, this bill creates s. 196.078, F.S., to provide an additional homestead exemption for specified homestead owners (defined in the bill as "first-time homesteaders").

Specifically this section:

- Definition Defines "first-time Florida homesteader" as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applied.
- Amount of Exemption Provides that every first-time Florida homesteader is entitled to an additional homestead exemption in an amount equal to 50 percent of the just value of the homestead property up to $200,000 for a period of five years or until the property is sold. The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies. Not more than one exemption shall be allowed per homestead property.
- Sworn Statement Directs the property appraiser to require all first-time Florida homesteaders claiming the additional exemption under this section to submit a sworn statement on a form by the Department of Revenue no later than March 1, attesting that the taxpayer and each other person who hold legal/equitable title to the property has not owned property in the prior three years that received the homestead exemption provided in s. 196.031, F.S. In order for the exemption to be retained upon the addition of another person to the title of the property, that person must also submit a sworn statement as prescribed herein.

Sections 196.131 and 196.161, F.S., shall apply to the exemption provided in this section.

Section 6 Upon voter approval of SJR 658 or HJR 381 during a *special election held concurrent with the presidential preference primary in 2012*, this bill creates s. 196.078, F.S., to provide an additional homestead exemption for specified homestead owners (defined in the bill as "first-time homesteaders").

Similar to section 5 of the bill, this section:

- Definition Defines "first-time Florida homesteader" as a person who establishes the right to receive the homestead exemption provided in s. 196.031, F.S., within one year after purchasing the homestead property and who has not owned property in the previous three years to which the homestead exemption provided in s. 196.031(1)(a), F.S., applied.
- Amount of Exemption Provides that every first-time Florida homesteader is entitled to an additional homestead exemption in an amount equal to 50 percent of the just value of the homestead property up to $200,000 for a period of five years or until the property is sold.

The additional exemption is available within one year of purchasing the homestead and would be reduced by 20 percent of the initial exemption on January 1 of each succeeding year, until it is no longer available in the sixth and subsequent years. The exemption does not apply to school levies. Not more than one exemption shall be allowed per homestead property.

- Sworn Statement Directs the property appraiser to require all first-time Florida homesteaders claiming the additional exemption under this section to submit a sworn statement on a form by the Department of Revenue no later than March 1, attesting that the taxpayer and each other person who hold legal/equitable title to the property has not owned property in the prior three years that received the homestead exemption provided in s. 196.031, F.S. In order for the exemption to be retained upon the addition of another person to the title of the property, that person must also submit a sworn statement as prescribed herein.

Sections 196.131 and 196.161, F.S., shall apply to the exemption provided in this section.

Department of Revenue Emergency Rulemaking Authority

Section 7 provides that in anticipation of implementing this act, the executive director of the Department of Revenue (DOR) is authorized to adopt emergency rules under ss. 120.536(1) and 120.54(4), F.S., in order to make the necessary changes and preparations so that forms, methods, and electronic or other data records are ready and in place if the relative provisions of this act become law.

The bill also states that, notwithstanding other provisions of law, such DOR emergency rules shall remain in effect for 18 months after the date of adoption and may be renewed thereafter during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Effective Date

Section 8 provides that this act shall take effect upon becoming law, except that:

- Provisions of this act that take effect upon the approval of HJR 381 or SJR 658 by the electors at a *special election held concurrent with the presidential preference primary in 2012* shall apply retroactively to the 2012 tax roll if the revision of the State Constitution contained in HJR 381 or SJR 658 is approved in such special election.
- Provisions of this act that take effect upon the approval of HJR 381 or SJR 658 by the electors at a *general election held in November 2012* shall apply to the 2013 tax roll if the revision of the State Constitution contained in HJR 381 or SJR 658 is approved in such general election.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill seeks to implement the proposed constitutional amendments to sections 4 and 6 of Article VII, of the Florida Constitution, contained in HJR 381 or SJR 658, 2011 Regular Session, subject to voter approval. For these reasons, the bill does not fall under the mandate provisions in Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If HJR 381 or SJR 658 is approved by the voters, this bill will provide an ad valorem tax relief to specified homestead owners. Owners of specified residential rental and commercial real property will experience further reduction in tax assessments due to the 3 percent assessment limitation. The provisions of this bill, as implemented by either joint resolution, will have an effect on local government revenue.

B. Private Sector Impact:

Assessment Limitation on Non-Homestead Property and Residential & Non-Residential Property
If HJR 381 or SJR 658 is approved by the voters, owners of existing residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will be at a competitive disadvantage compared to older properties with respect to their tax burden.

Additional Homestead Exemption for Specified Homestead Owners
If HJR 381 or SJR 658 is approved by the voters, specified homestead owners will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on the homestead will increase significantly each year. Other property owners in the taxing jurisdiction will pay higher taxes if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

C. Government Sector Impact:

If HJR 381 or SJR 658 is approved by the voters and the provisions of this bill take effect, local governments may experience a reduction in the ad valorem tax base. The revenue estimating conference adopted an indeterminate negative estimate for SJR 658 and HJR 381 since those amendments would require voter approval.

Additional Homestead Exemption for Specified Homestead Owners
Should either joint resolution be approved by the Florida voters, the Revenue Estimating Conference determined that the statewide impact on non-school taxes for the additional homestead exemption for specified homestead owners would be as follows:

For the January 1, 2013, effective date (SJR 658):[24]

FY 2013-14	FY 2014-15	Recurring Impact
-$94.5 million	-$186.5 million	-$344.5 million

For the January 1, 2012, effective date (HJR 381):[25]

FY 2012-13	FY 2013-14	FY 2014-15	Recurring Impact
-$110.0 million	-$165.1 million	-$221.0 million	-$281.0 million

Assessment Limitation on Non-Homestead Property
Should either joint resolution be approved by the Florida voters, the Revenue Estimating Conference has determined that the statewide impact on non-school taxes for reducing the limitation on annual assessment increases for non-homestead property from 10 percent to 3 percent would be as follows:[26]

For the January 1, 2013, effective date (SJR 658):

FY 2013-14	FY 2014-15	FY 2015-16
-$225.0 million	-$526.1 million	-$903.9 million

For the January 1, 2012, effective date (HJR 381):

FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
-$121.6 million	-$326.1 million	-$619.6 million	-$990.9 million

VI. Technical Deficiencies:

The Department of Revenue states that the use of the term "purchasing" may give rise to multiple interpretations of what "purchasing" means which might cause some taxpayers to be excluded from the exemption by such interpretations. For these reasons, the Department recommends deleting the term "purchasing/purchased" and inserting "acquiring/acquired" on the following lines of the bill: line 85, line 103, line 132, line 150.[27]

[24] Revenue Estimating Conference, *First-Time Homesteaders part of SJR 658 & HJR 381* (Feb. 20, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders to account for the definition of first-time homebuyers).
[25] Revenue Estimating Conference, *First-Time Homesteaders part of HJR 381* (March 9, 2011) (assuming that 40 percent of homesteaders will be first-time homesteaders to account for the definition of first-time homebuyers).
[26] Revenue Estimating Conference, *Reduction of annual assessment limitation for non-homestead property from 10% to 3%, HJR 381, SJR 658* (March 14, 2011).
[27] Florida Department of Revenue, *Fiscal Impact of SB 1722*, 6-7 (March 14, 2011) (on file with the Senate Committee on Community Affairs).

For clarification of the amendment discussed above, the Department recommends inserting the following language on lines 87 and 134 of the bill after the period:

- "For purposes of this section, the date on which the deed or other transfer instrument was signed and notarized or otherwise executed shall be considered the date a property was acquired."

The Department has also made the following recommendations:

- On lines 102 and 149, insert the following for consistency with ss. 196.031(1)(a) and 193.155(7), F.S., and because the term "homestead's property just value" is not defined in bill:
  - "Except for owners of an estate held by the entireties or held jointly with the right of survivorship, the amount of the exemption may not exceed the proportionate assessed valuation of all owners who reside on the property."
- In terms of the Department's emergency rulemaking authority, add the terms "amended and repealed" on line 179, so that the Department may "renew, amend, and repeal" any emergency rule.
- Property exemptions are applied to the assessed value of the property, which may include any limitations or exemptions to the property's just value. For these reasons, clarification may be needed on lines 90 and 137 of the bill which states that "the amount [of the additional homestead exemption] shall be equal to 50 percent of the homestead property's just value on January 1 . . . ."

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 94 and 95

insert:

Section 1. Subsection (14) of section 633.0215, Florida Statutes, is amended to read:

633.0215 Florida Fire Prevention Code.—

(14) A condominium, cooperative, or multifamily residential building that is less than four ~~one or two~~ stories in height and has an exterior corridor providing a means of egress is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in

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the Florida Fire Prevention Code. This is intended to clarify existing law.

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

And the title is amended as follows:

Delete line 3

and insert:

homeowners' associations; amending s. 633.0215, F.S.; exempting certain residential buildings from a requirement to install a manual fire alarm system; amending s. 718.111, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 634 and 635
insert:

Section 3. Subsection (5) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters; display of religious decorations.—

(5) Each board of administration shall adopt hurricane shutter specifications for each building within each condominium operated by the association which ~~shall~~ include color, style, and other factors deemed relevant by the board. All

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specifications adopted by the board must ~~shall~~ comply with the applicable building code.

(a) The board may, subject to ~~the provisions of~~ s. 718.3026~~,~~ and the approval of a majority of voting interests of the condominium, install hurricane shutters, impact glass or other code-compliant windows, or hurricane protection that complies with or exceeds the applicable building code. However~~,~~ ~~or both~~, ~~except that~~ a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, or other code-compliant windows ~~or other forms of hurricane protection~~ are the responsibility of the association pursuant to the declaration of condominium. If ~~However, where~~ hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, ~~or other~~ hurricane protection, or impact glass or other code-compliant windows except upon approval by a majority vote of the voting interests.

(b) The association is ~~shall be~~ responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this subsection if such hurricane shutters or other hurricane protection is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters or other hurricane protection is ~~authorized by this subsection are~~ the responsibility of the unit owners pursuant to the declaration of condominium, the responsibility for the maintenance, repair, and replacement of such items is ~~shall be~~ the responsibility of the

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unit owner.

(c) The board may operate shutters installed pursuant to this subsection without permission of the unit owners only if ~~where~~ such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth in this paragraph are ~~herein shall~~ not ~~be deemed~~ a material alteration to the common elements or association property within the meaning of this section.

(d) Notwithstanding any other provision ~~to the contrary~~ in the condominium documents, if approval is required by the documents, a board may ~~shall~~ not refuse to approve the installation or replacement of hurricane shutters by a unit owner conforming to the specifications adopted by the board.

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

And the title is amended as follows:

Delete line 17

and insert:

board director; amending s. 718.113, F.S.; authorizing the board of a condominium association to install impact glass or other code-compliant windows under certain circumstances; amending s. 718.114, F.S.; requiring

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 780 - 784
and insert:
Section 5. Paragraph (c) is added to subsection (2) of section 718.117, Florida Statutes, and subsections (3), (4), and (11), paragraphs (a) and (d) of subsection (12), subsection (14), paragraph (a) of subsection (17), and subsections (18) and (19) of that section are amended, to read:
718.117 Termination of condominium.—
(2) TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.—

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(c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon filing a petition in court seeking equitable relief.

1. Within 10 days after filing the petition, and in lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of termination and mail copies of the plan and the petition to:

a. Each member of the board of directors of the association identified in the most recent annual report filed with the department of state and the registered agent of the association if the association has not been dissolved as a matter of law;

b. The managing entity as defined in s. 721.05;

c. Each unit owner and each timeshare estate owner at the address reflected in the official records of the association, or if the association records cannot be obtained by the petitioner, each unit owner and each timeshare estate owner at the address listed in the office of the tax collector for tax notices; and

d. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address appearing on the recorded mortgage or any recorded assignment thereof.

2. The association as class representative if it has not been dissolved as a matter of law, the managing entity as defined in s. 721.05, any unit owner, timeshare estate owner, or holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The provisions of subsection (9), to the extent inconsistent with

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this paragraph, and subsection (16) are not applicable to a party contesting a plan of termination under this paragraph. If no party intervenes to contest the proposed plan within 45 days after filing the petition, the petitioner may move the court to enter a final judgment authorizing that the plan of termination be implemented. If a party timely intervenes to contest the proposed plan, the plan may not be implemented until a final judgment has been entered by the court finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

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

And the title is amended as follows:

Delete line 30

and insert:

owner; amending s. 718.117, F.S.; providing a procedure for the termination of ownership of a condominium if the units have been totally destroyed or demolished; providing procedures

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 1415 and 1416
insert:

Section 14. Subsection (4) of section 720.301, Florida Statutes, is amended to read:

720.301 Definitions.—As used in this chapter, the term:

(4) "Declaration of covenants," or "declaration," means a recorded written instrument or instruments in the nature of covenants running with the land which subject ~~subjects~~ the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels,

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or their association representatives, must be members.

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

And the title is amended as follows:

Delete line 65

and insert:

noticed board meeting; amending s. 720.301, F.S.; revising the definition of the term "declaration of covenants"; amending s. 720.303, F.S.;

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 1568 and 1569
insert:

Section 16. Subsection (9) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(9) ELECTIONS AND BOARD VACANCIES.—Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association.

(a) All members of the association are eligible to serve on

the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held or, if the election process allows voting by absentee ballot, in advance of the balloting. However:

1. A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association for more than 90 days is not eligible for board membership.

2. A person who has been convicted of any felony in this state or in a United States District or Terrritorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a member of the board is ineligible for board membership due to having been convicted of a felony.

(b) Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division.

(d) Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than

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a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents.

(e) Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled.

(f) Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

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

And the title is amended as follows:

Delete line 74

and insert:

at a noticed board meeting; amending s. 720.306, F.S.; providing limitations on who may serve on the board of directors of a homeowners' association; amending s. 720.3085,

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 Community Affairs Committee

BILL:	CS/SB 530
INTRODUCER:	Regulated Industries Committee and Senator Fasano
SUBJECT:	Condominium, Cooperative, and Homeowners' Associations
DATE:	March 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Gizzi	Yeatman	CA	**Pre-meeting**
3.			JU	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill revises laws related to condominium, homeowner, and cooperative associations (community associations). The bill amends provisions that are applicable to each type of community association.

Regarding all community associations, the bill:

- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation and for failure to comply with the association's governing documents;
- Permits associations to charge for any reasonable expenses for collection services incurred relating to a unit or parcel owner's delinquent account and to secure the expense through a claim of lien;
- Permits the association to demand payment from a unit or parcel owner's tenant for all unpaid monetary obligations of a unit owner owed to the association; and
- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation.

Regarding condominium associations, the bill:

- Includes unit owner facsimile numbers as a record to be maintained by the association;
- Permits condominium unit owners to consent to the disclosure of protected information, e.g., name and telephone numbers for a membership directory;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permits condominium associations to hold closed meetings to discuss personnel matters;
- Provides that the newly elected or appointed board members may, in lieu of the written certification, submit a certificate of having satisfactorily completed an educational curriculum within 1 year before the election;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Provides for the partial termination of a condominium property; and
- Revises provisions related to bulk assignees and bulk buyers.

Regarding homeowners' associations, the bill:

- Permits parcel owners to consent to the disclosure of protected information, e.g., name and telephone numbers for a membership directory;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee; and
- Authorizes and provides procedures for homeowners associations to contract for communications, information, or Internet services on a bulk rate basis.

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.114, 718.116, 718.117, 718.303, 718.703. 718.704, 718.705, 718.706, 718.707, 719.108, 719.303, 720.303, 720.305, 720.3085, and 720.309.

II. Present Situation:

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is like a constitution in that it:

> strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[3]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.[5] Condominiums are administered by a board of directors referred to as a "board of administration."[6]

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) within the Department of Business and Professional Regulation (Department) in accordance with ch. 718, F.S.

The Division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control.[7] It also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the Division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.

As part of the Division's authority to investigate complaints, s. 718.501(1), F.S., provides the Division with the power to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Condominium – Official Records

The official records of the condominium are governed by s. 718.112, F.S. What is constituted as the official records is provided in s. 718.112(12)(a), F.S. The official records of a condominium association must be maintained within the state for at least seven years.[8] The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must also be made available within five working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of the association available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The association must also maintain accounting records including separate accounting records for each condominium that the association operates.[9] Section 718.111(12)(c), F.S., provides that all accounting records must be maintained for a period of not less than seven years. It prohibits any person from knowingly or intentionally defacing or destroying accounting records that are

[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.501(1), F.S.
[8] Section 718.111(12)(b), F.S.
[9] Section 718.111(12)(a)11., F.S.

required to be maintained by ch. 718, F.S. It also prohibits a person from knowingly or intentionally defacing or destroying accounting or official records required to be created or maintained for a required period as provided in ch. 718, F.S., or knowingly or intentionally failing to create or maintain accounting records as required with the intent of causing harm to the association or one or more of its members. Persons who violate this provision are subject to a civil penalty as provided in s. 718.501(1)(d)6., F.S. The prohibition in s. 718.111(12)(c), F.S., is substantially similar to the prohibition in s. 718.111(12)(a)11., F.S.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any person identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Section 718.111(12)(c), F.S., does permit access to the following personal identifying information of a unit: the person's name, lot or unit designation, mailing address, and property address.

Post-Election Certification of Condominium Board Members

Association bylaws requirements are provided in s. 718.112, F.S. Section 718.112(2)(d)3.b., F.S., which provides a post-election certification requirement for newly elected board members. Pursuant to this section, within 90 days of being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a Division-approved condominium education provider.

A board member is automatically suspended from service on the board if he or she fails to timely file the written certification or educational certificate. If this occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the

written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The validity of any appropriate action is not affected by the association's failure to have the certification on file.

Condominium – Assessments and Foreclosures

Current law defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[10]

"Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[11]

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.[12]

If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or 1 percent of the original mortgage debt, whichever is less.[13] However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action. This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.[14] The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.[15]

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.[16] If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney's fees incurred in collection, and then to the delinquent assessment.

Condominiums – Assessment Payments by Tenants

Section 718.116(11), F.S., authorizes the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The

[10] Section 718.103(1), F.S.
[11] Section 718.103(24), F.S.
[12] Section 718.116(1)(a), F.S., The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." Black's Law Dictionary 770 (2d pocket ed. 2001).
[13] Section 718.116(1)(b), F.S.
[14] Section 718.116(1)(e), F.S.
[15] Section 718.116(1)(g), F.S.
[16] Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

association must mail written notice of such action to the unit owner. The tenant is obligated to make such payments. These provisions are comparable to the provisions in ss. 719.108(10) and 720.3085(8), F.S., for tenants in cooperative associations and homeowners' associations, respectively.

The tenant is not required to pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before the receipt of the association's demand for payment, and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments will be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association shall be immune from any claim from the unit owner. It is unclear to what extent "claims" are precluded by the immunity afforded in this provision. For example, if the tenant pays the obligation and subtracts that amount from the rent owed to the unit owner, the unit owner may be precluded from recovering in a "breach of lease" claim.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association is not otherwise considered a landlord under ch. 83, F.S., and does not have the duty to maintain the premises as required by s. 83.56, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

Comparable provisions are provided in s. 719.108(10), F.S., relating to tenants in cooperative associations, and s. 720.3085(8), F.S.

Termination of a Condominium

Section 718.117, F.S., provides for the termination of condominiums when the continued operation of the condominium would constitute economic waste or would be impossible to operate or reconstruct a condominium. To terminate the condominium, the required vote is the lesser of the lowest percentage of voting interests needed to amend the declaration or as otherwise provided in the declaration for termination of the condominium.[17] The criteria for economic waste or impossibility are:

- The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or

[17] Section 718.117(2)(a), F.S.

- It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

If 75 percent or more of the condominium units are timeshare units, the condominium may be terminated by a plan of termination that is approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.[18]

Section 718.117(3), F.S., provides an optional termination procedure with a lower vote threshold. Regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80 percent of the total voting interests of the condominium, provided that not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

Section 718.117(4), F.S., provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Section 718.117(9), F.S., provides that the plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.[19] In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.[20]

Section 718.117(12), F.S, provides for the distribution of the proceeds of sale. Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements, as in current law.

Section 718.117(14), F.S., provides that the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is

[18] Section 718.117(2)(b), F.S.
[19] Section 718.117(11)(a), F.S.
[20] Section 718.117(11)(b), F.S.

recorded on in a later date specified in the plan. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved.

Section 718.117(17), F.S., provides that the condominium property, association property, common surplus, and other assets of the association must be held by the termination trustee. The trustee would hold the property as trustee for the unit owner and lienholders in their order or priority.

Section 718.117(19), provides that the trustee is not barred from filing a declaration of condominium, or an amended and restated declaration of condominium, for any portion or the property.

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines and provides penalties for failure to pay a monetary obligation to the association. It authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be, for a reasonable period of time, for the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. A fine may not exceed $100 per violation, but may be levied on each day of a violation. A fine does not become a lien on the property. A fine against a unit owner may not in the aggregate exceed $1,000. Before a suspension or fine is imposed, notice and an opportunity for a hearing must be provided.

Suspensions may not be imposed by an association unless it first gives at least 14-days notice and an opportunity for a hearing to the unit owner or occupant, if applicable. Associations may provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days. The suspension shall end when the payment due or overdue to the association is paid in full.

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of

some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer's acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Section 718.704, F.S., provides for the assignment and assumption of developer rights. It provides that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under s. 718.203(1) or 718.618, F.S.; however, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee;
- The obligation to provide converter warranties on any portion of the condominium property except as provided in a contract for sale between the assignee and a new purchaser;
- Provide the condominium association with a cumulative audit of the association's finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer's failure to fund previous assessments or resolve budget deficits, but the bulk assignee must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

Section 718.705, F.S., provides for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members. The condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

Section 718.706, F.S., provides for the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than five years, a bulk assignee or a bulk buyer must file the specified documents with the Division and provide the documents to a prospective purchaser or tenant.

Section 718.707, F.S., provides a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer

unless the parcels were acquired prior to July 1, 2012. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Cooperative Associations

Section 719.103(12), F.S., defines a "cooperative" to mean:

> that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[21]

Cooperatives - Sanctioning Unit Owners

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed $100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed $1,000 in the aggregate.

Homeowners' Associations – Background

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.[22]

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[23] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.[24] Homeowners' associations are administered by a board of directors whose members are elected.[25] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted

[21] *See* ss. 719.106(1)(g) and 719.107, F.S.
[22] *See* s. 720.302(1), F.S.
[23] Section 720.301(9), F.S.
[24] Section 720.302(5), F.S.
[25] *See* ss. 720.303 and 720.307, F.S.

amendments to these documents.[26] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[27]

Homeowners' Associations – Inspection and Copying of Records

Section 720.303(5), F.S., provides for the inspection and copying of homeowners' association records. Generally, the official records of the association must be open to the association's membership for inspection and available for photocopying within 10 days of a written request for access. Section 720.303(5)(a), F.S., creates a rebuttable presumption that the association has willfully failed to comply with a member's written request to inspect its records if the association does not provide the member access to the records within 10 days of the request. The member's request must be submitted by certified mail, return receipt requested.

Section 720.303(5)(c), F.S., authorizes the association to charge the member for the actual cost of copying records. The copies may be made by an outside vendor or by the management company if the association does not have a photocopy machine or the copy request exceeds 25 pages in length. In this case the association may charge the actual costs of copying, including any reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover the administrative costs to the association.

Section 720.303(5)(c)1., F.S., lists the official documents of the homeowners' association that are not accessible to members. These include:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, payroll records of the association's employees, but not limited to disciplinary, payroll, health, and insurance records;
- Medical records of parcel owners or community residents;
- Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address;
- Any electronic security measure that is used by the association to safeguard data, including passwords; and
- The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

In pertains to records protected by the attorney-client privilege and prepared exclusively for civil or criminal litigation, s. 720.303(5)(c)1., F.S., provides that the privilege protection shall apply until the conclusion of the litigation or administrative proceedings.

[26] *See* ss. 720.301 and 720.303, F.S.
[27] Section 720.303(1), F.S.

This information is consistent with s. 718.111(12)(c), F.S., which exempts the same information from the open records requirements for condominium associations.

Homeowners' Associations – Sanctioning Parcel Owners

Section 720.305(2), F.S., authorizes homeowners' associations to suspend a unit owner's use rights until the unit owner's monetary obligation to the association is paid if the unit owner is delinquent for more than 90 days. The suspension of the parcel owner's right to use association property does not apply to common areas that provide access or utility services to the parcel. Any fine or suspension must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owner's occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

The association may levy a fine of up to $100 per violation. The fine may be levied for each day of the violation and may not exceed $1,000 in the aggregate. A fine of less than $1,000 may not become a lien against a parcel. If the association imposes a fine or suspension, the association must provide written notice by mail or hand delivery to the parcel owner or, in some instances, any tenant, licensee, or invitee of the parcel owner.

III. Effect of Proposed Changes:

Condominiums – Official Records (Section 1)

The bill amends s. 718.111(12)(a)7., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. The bill clarifies that the email and facsimile addresses of unit owners may not be accessible to unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5. of s. 718.111, F.S. This provision is unclear. The cross reference in s. 718.111(12)(c)5., F.S., does not relate to consent to receive notice via electronic transmission. (see Technical Issues below)

The bill amends s. 718.111(12)(a)11., F.S, to clarify that the prohibited defacement or destruction of records relates to the accounting records that are required to be maintained for 7 years. It deletes redundant language relating to the records that are required to be created or maintained by ch. 718, F.S., during the period such records are required to be maintained.

The bill deletes the prohibition in s. 718.111(12)(c), F.S., relating to the defacement or destruction of accounting or official records, including the provision for a civil penalty as provided in s. 718.501(1)(d)6., F.S. The deleted provision is substantially similar to an existing prohibition in s. 718.111(12)(a)11., F.S., which is not deleted by this bill.

The bill amends s. 718.111(12)(c)1., F.S., which relates to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 718.111(12)(c)3., which relates to personnel records that are not accessible to unit owners, to include records regarding management company employees. It permits unit

owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 718.111(12)(c)5., which relates to information about unit owners that is not accessible to other unit owners, to include facsimile numbers in the list of information that is not accessible to unit owners. It also provides that any address, e-mail address, or facsimile number provided to the association to fulfill its notice requirements is not accessible.

Section 718.111(12)(c)5., F.S., is amended to prohibit access to information about unit owners that is provided to fulfill the association's notice requirements, including any address, e-mail address, or facsimile number.

The bill also amends s. 718.111(12)(c)5., F.S., to permit unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner, and is not requested by the association.

This provision is consistent with the provision in s. 718.111(12)(a)7., F.S., that provides that the association is not liable for the erroneous disclosure of e-mail addresses and facsimile numbers.

Condominiums – Bylaws (Section 2)

The bill creates s. 718.112(2)(c)3.b., F.S., to permit a condominium association to hold closed meetings to discuss personnel matters.

The bill amends s. 718.112(2)(d)2., F.S., to define the term "candidate" as an eligible person who timely submits the written notice, as described in s. 718.112(2)(d)2., F.S., of his or her intent to become a candidate. It also provides an additional exception to the requirement that that the terms of all board members expire at the annual meeting. The terms of members with staggered terms will not expire at the annual meeting. Regarding members whose terms would otherwise expire at the annual meeting, those terms will not expire if there are no candidates.

The bill also amends s. 718.112(2)(d)2., F.S., to:

- Provide that, if the number of board members whose terms have expired exceeds the number of candidates, the candidates become board members upon the adjournment of the annual meeting;
- Provide that, unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director;
- Deletes the current provision that board members whose terms have expired need not stand for reelection and would be eligible for reappointment if the number of board members whose terms have expired exceeds the number of candidates; and
- Requires that candidates comply with the notice of intent to be a candidate requirement in s. 718.112(2)(d)4.a., F.S., and be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run, and continuously thereafter in order to be listed as a proper candidate on the ballot or to serve on the board.

The bill amends s. 718.112(2)(d)4.b., F.S., to revise the post-election certification requirements for newly elected or appointed board members. The bill provides that the newly elected or appointed board member may, in lieu of the written certification, submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved condominium provider within 1 year before the election or 90 days after the election or appointment. It also provides that a certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

In regards to timeshare condominium associations, the bill also amends s. 718.112(2)(d)4.b., F.S., to provide that ch. 718, F.S., does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of the association.

Condominiums – Association Powers (Section 3)

The bill amends s. 718.114, F.S., to require a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities rather than simply allowing the declaration to authorize the approval.

Condominiums – Assessments (Section 4)

The bill amends s. 718.116(3), F.S., to permit condominium associations to charge for reasonable expenses for collection services incurred before filing the claim. The provision applies to the collection services rendered by a community association manager or community association management firm and payable to the community association manager or firm as a liquidated sum. The collection services that are the subject of this provision must be specified in the association's written agreement with the community association manager or firm.

Section 718.116(3), F.S., is also amended to provide that any payment received on a delinquent account must be applied in the following order: first to any interest, then to any administrative late fee, then to any expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

The bill amends s. 718.111.116(5), F.S., to provide that a claim of lien secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 718.116(11), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner that relate to the rent once the association has demanded payment. The bill requires that the tenant's payment be applied to the unit owner's oldest delinquent monetary obligation.

The provisions in s. 718.116(3), F.S., that permit associations to charge for expenses related to collection services are substantially similar to the provisions in the bill for cooperatives in s. 719.108(3), F.S., and for homeowners' associations in s. 720.3085(3), F.S.

Comparable provisions for collecting the unit owner's unpaid monetary obligations from their tenant are provided in the bill for cooperatives in s. 719.108(10), F.S., and for homeowners' associations in s. 720.3085(8), F.S.

Condominium - Termination of Condominium (Section 5)

The bill amends s. 718.117(3), F.S., to provide that a condominium may be terminated for all or a portion of the condominium property. Current law does not reference the termination of a portion of the condominium property.

The bill amends s. 718.117(4), F.S., to provide that a plan for partial termination is not an amendment subject to s. 718.110(4), which requires that all unit owners must approve any amendment that changes the configuration or size of any unit in any material fashion, materially alters or modifies the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses. The bill would permit the partial termination of a condominium with a less than unanimous approval of the owners.

The bill also amends s. 718.117(4), F.S., to provide that a partial termination is permissible if the percentage of ownership share in the common elements remains proportional to the percentage of common element ownership before the partial termination.

The bill amends s. 718.117(11), F.S., to provide that the plan for partial termination must:

- Identify the units that survive the partial termination; and
- Provide that the units that survive the termination remain in the condominium form of ownership.

The bill clarifies that, in a partial termination, title to the surviving units and common elements remain vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill amends s. 718.117(12)(a), F.S., which relates to the allocation of proceeds from the sale of condominium property after a termination, to provide that, in a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined. It also requires that the plan of termination must specify the allocation of the proceeds of sale for the units and common elements.

The bill amends s. 718.117(12)(d), F.S., to provide that liens on terminated units transfer to the sale of the portion being terminated attributable to each unit.

Regarding the association, the bill amends s. 718.117(18), F.S., to provide that the association may continue as the condominium association for the property that remains after the partial termination.

The bill amends s. 718.117(19), F.S., to provide that a partial termination does not bar the termination trustee from filing a declaration of condominium for any portion of the property that it terminated under the plan for partial termination. The termination plan may also provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium for any remaining portion of the condominium property.

Condominiums – Obligations of Owners and Occupants (Section 6)

The bill amends subsection (3) of s. 718.303, F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill adds the deleted provision from subsection (3) of s. 718.303, F.S., to a new subsection (4).

The bill creates s. 718.303(3)(a), F.S., to authorize associations to suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill also amends subsections (3) and (4) of s. 718.303, F.S., to provide that a 14-day notice and a hearing are not required when the association suspends use rights when an owner is more than 90 days delinquent in the payment of any monetary obligation. A hearing is still required before a fine may be imposed and a board meeting is required before suspension of use rights.

The bill amends subsection (5) of s. 718.303, F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the suspension of a member's voting rights may not count for or against a proposed question. It also provides that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.[28]

The bill creates subsection (6) of s. 718.303, F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.
The bill deletes the notice and hearing provisions in the current subsection (4) of s. 718.303, F.S, which relate to fines and suspension of use rights. The deleted provisions are redundant of the notice and hearing provisions in subsections (3), (4), (5), and (6) of s. 718.303, F.S.

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions in the bill for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

[28] Section 718.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

Distressed Condominium Relief Act - Definitions (Section 7)

The bill amends s. 718.703, F.S., to redefine the terms "bulk assignee" and "bulk buyer." The bill further distinguishes the differences between the two classifications.

The bill amends the definition of "bulk assignee" in s. 718.703(1), F.S., to provide that a bulk assignee acquires seven condominium units in a single condominium. Current law does not specify whether the seven condominium units are in a single condominium. It further revises the definition for a bulk buyer to include a final judgment or certificate of title issued at a foreclosure sale within the list of means by which a bulk buyer receives the assignment of any of the developer rights.

The bill also amends s. 718.703, F.S., to clarify the status of a mortgagee or its assignee as a bulk assignee or developer. A mortgagee or its assignee does not become a developer if it acquires condominium units and receives an assignment of some or all of a developer rights. However, the mortgagee or its assignee would be deemed a developer if they exercise any of the developer rights other than those described in subsection (2) of s. 718.703, F.S., bulk buyers.

Distressed Condominium Relief Act – Developer Rights (Section 8)

The bill amends s. 718.704, F.S., to revise the provisions relating to the assignment of developer rights by a "bulk assignee" and "bulk buyer." It provides that the bulk assignee assumes the obligations of a developer when it acquires title to the units. This clarifies that the assumption of developer obligations is prospective.

The bill amends subsections (1) and (2) of s. 718.704(1), F.S., to provide that the bulk assignee is liable for the developer's warrantees expressly provided in the prospectus, offering circular, or contract for purchase and sale.

The bill amends s. 718.704(5), F.S., to provide that the assignment of developer rights may be made by a mortgagee or assignee who has acquired title to the units and received an assignment of rights. It also clarifies that the previous bulk assignee may assign developer rights if the developer rights were held by the predecessor in title to the bulk assignee.

The bill also clarifies that the instrument that assigns the developer the assignment of rights must be recorded in the public records. It further provides that any subsequent purported bulk assignee may still qualify as a bulk buyer.

Distressed Condominium Relief Act – Transfer of Control (Section 9)

The bill amends s. 718.705, F.S., to clarify the provisions relating to turnover of control of the condominium from a "bulk assignee" to the unit owners. It clarifies that a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

The bill also provides that the bulk assignee is not required to deliver items and documents that he or she does not possess if some of the items were or should have been in existence before the bulk assignee acquired the units.

Distressed Condominium Relief Act – Disclosures (Section 10)

The bill amends s. 718.706, F.S., to revise the provisions relating to bulk assignee and bulk buyers offering units for sale or lease. The bill amends ss. 718.706(1) and (2), F.S., to clarify that the documents must be filed, provided or disclosed before offering more than seven units in a single condominium for sale or lease for a term exceeding five years.

The bill also amends s. 718.706(1), F.S., to revise the required disclosure that bulk assignees and bulk buyers must include in purchase contracts. In current law, the disclosure gives notice that the financial information report required under s. 718.111(13), is not available. The bill revises the disclosure to clarify that it relates to all or a portion of the report. It also revises the disclosure to clarify that the financial information report relates to the period before the seller's acquisition of the unit instead of the time period immediately preceding the fiscal year of the association.

The bill provides that the disclosure requirements in s. 718.706(2), F.S., applies to tenants under a lease for a term exceeding 5 years.

The bill amends s. 718.706(5), F.S., to exempt bulk assignees and bulk buyers from the filing and disclosure requirements in subsection (1) and (2) of s. 718.706, F.S., if all of the units they own are offered and conveyed to a single purchaser in a single sale. The bill deletes the current provisions in this subsection that requires the bulk buyer to comply with the requirements in the declaration for the transfer of a unit. It also deletes the provision that the bulk buyer is not entitled to any exemptions afforded a developer or successor developer under ch. 718, F.S., regarding the transfer of a unit.

Distressed Condominium Relief Act – Time Limits for Classification (Section 11)

The bill amends s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. This provision appears to create a two-year window for classification as a bulk assignee or bulk buyer.

Cooperatives – Rents and Assessments (Section 12)

The bill amends s. 719.108(3), F.S., to permit cooperative associations to charge for reasonable expenses for collection services incurred before filing the claim. The provision applies to the collection services rendered by a community association manager or community association management firm and payable to the community association manager or firm as a liquidated sum. The collection services that are the subject of this provision must be specified in the association's written agreement with the community association manager or firm.

Section 719.108(3), F.S., is also amended to provide that any payment received on a delinquent account must be applied in the following order: first to any interest, then to any administrative

late fee, then to any expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

The bill amends s. 719.108(4), F.S., to provide that a cooperative associations' lien against unpaid assessment also secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 719.108(10), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment in order to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner that relate to the rent once the association has demanded payment. The bill requires that the tenant's payment must be applied to the unit owner's oldest delinquent monetary obligation.

The provisions in s. 719.108(3), F.S., that permit cooperatives to charge for expenses related to collection services in s. 719.108(3), F.S., are substantially similar to the lien provisions in the bill for condominiums in s. 718.116(3), F.S., and for homeowners' associations in s. 720.3085(3), F.S.

Comparable provisions for collecting a unit owner' unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for homeowners' association in s. 720.3085(8), F.S.

Cooperatives – Obligations of Owners (Section 13)

The bill amends s. 719.303(3), F.S., which sets forth the provisions for fines by cooperative associations, to delete the exemption for unoccupied units.

The bill creates s. 719.303(3)(a), F.S., to authorize associations to suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill creates s. 719.303(4), F.S., to authorize cooperative associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be until the monetary obligation is paid. The suspension may be directed to the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the

unit, parking spaces, or elevators. For the suspension of use rights, the notice and hearing requirements in s. 719.303(3), F.S., do not apply.[29]

The bill creates s. 719.303(5), F.S., to authorize cooperative associations to suspend the voting rights of members who are delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension would end when all due or unpaid monetary obligations are paid. For the suspension of voting rights, the notice and hearing requirements in s. 719.303(3), F.S., also do not apply.

The bill creates s. 719.303(6), F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 719.303, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for homeowners' associations in s. 720.305, F.S.

Homeowners' Associations - Official Records (Section 14)

The bill revises the provisions related to access to the official records of a homeowners' association. It amends s. 720.303(5)(c)1., F.S., which relate to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 720.303(5)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to permit unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 720.303(5)(c)5., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association.

The bill also amends s. 720.303(5)(c)5., F.S., to permit unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner, and is not requested by the association.

Homeowners' Associations – Obligations of Members (Section 15)

The bill revises the suspension of use and voting rights provisions in s. 720.305, F.S.

[29] Section 719.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill creates s. 720.305(2), F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill moves the deleted provision to s. 718.305(3), F.S. Regarding the suspension of use rights when a member is more than 90 days delinquent in the payment of a monetary obligation, the s. 720.305(3), F.S., provides that the notice and hearing requirements of subsection (2) of s. 720.305, F.S., do not apply.[30]

The bill creates s. 720.305(2)(a), F.S., to authorize the homeowners' association to suspend, for a reasonable period of time, the rights of a member or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.

The bill amends s. 720.305(2)(a), F.S., to move the provision that the suspension of use rights do not apply to the portion of the common areas that must be used to access the parcel or its utility service, to a new subsection (3) of s. 720.305, F.S.

The bill amends s. 718.305(4), F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.

The bill creates s. 718.303(5), F.S., to provide that all suspensions of use rights under subsection (3) and voting rights under subsection (4) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 720.305, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for cooperative associations in s. 719.303, F.S.

Homeowners' Associations – Assessments and Liens (Section 16)

The bill amends s. 720.3085(1)(a), F.S., to provide that a claim of lien secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 720.3085(8), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill deletes the provision that the tenant must have acted in good faith to the association's demand for payment to be immune from any claim by the unit owner, but it maintains the tenant's immunity for claims from the unit owner relate to

[30] Section 719.303(2), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

the rent once the association has demanded payment. The bill requires that the tenant's payment must be applied to the unit owner's oldest delinquent monetary obligation.

The bill amends s. 720.3085(8)(b), F.S., to provide that the liability of the tenant may not exceed the amount due from the tenant's landlord. An identical provision is included under current law in s. 718.116(11)(b), F.S., relating to condominium associations, and in s. 719.108.(10)(b), F.S., relating to cooperative associations.

Comparable provisions for the collecting a homeowner's unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for cooperatives in s. 719.108(10), F.S.

The bill creates s. 720.3085(3)(b), F.S., to permit homeowners associations to charge for reasonable expenses for collection services incurred before filing the claim. The provision applies to the collection services rendered by a community association manager or community association management firm and payable to the community association manager or firm as a liquidated sum. The collection services that are the subject of this provision must be specified in the association's written agreement with the community association manager or firm.

Section 720.3085(3)(c), F.S., is amended to provide that any payment received on a delinquent account must be applied in the following order: first to any interest, then to any administrative late fee, then to any expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

The provisions in s. 720.3085(3), F.S., are substantially similar to the lien provisions in the bill for condominiums in s. 718.116(3), F.S., and for cooperative associations in s. 719.108(3), F.S.

Homeowners' Associations – Bulk Service Contracts (Section 17)

The bill amends s. 720.309, F.S. to authorize homeowners associations to contract for communications services, as defined in s. 202.11, F.S., information services, or Internet services on a bulk rate basis. The association's governing documents must authorize such contracts before the authority can be exercised. However, if the governing documents do not authorize such contract, the board may enter into the contract, and the cost of the service will be an operating expense to be allocated on a per-unit basis rather than a percentage basis. The costs will be assessed on a per-unit basis even if the declaration provides for other than an equal sharing of operating expenses.

The bill also provides that any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all homeowners, may be changed to allocate the cost equally among all parcels. The vote to change the allocation must be by the vote of a majority of the voting interests present at a regular or special meeting of the association.

The bill creates s. 720.309(2)(a), F.S., to permit the homeowners to terminate a bulk rate contract entered into by the board of directors. The vote to terminate the contract must be by the majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. The contract would be deemed ratified if not terminated at that meeting.

The bill creates s. 720.309(2)(b), F.S., to permit the following specified homeowners to elect not to receive bulk services, or be required to pay for the costs allocated to their property:

- A hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person; or
- Any parcel owner receiving Social Security supplemental income.

The expense of the contract must be shared among all the participating parcel owners, and the payment of the expense may be enforced using the provision in s. 720.3085, F.S., which relates to the enforcement of assessment payments.

The cost will be allocated to the homeowner whether or not the homeowner buys the contracted communication service or has contracted with another communication service provider. Payments can be enforced by the association by securing a lien on the property under s. 720.3085, F.S. The homeowner's property may be foreclosed upon by the association for nonpayment of the assessment for the communication service. Communication services under s. 202.11(2), F.S.:

> means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

It does not include, among other items, Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

The bill creates s. 720.309(2)(c), F.S., to provide that any parcel owner or tenant must be afforded access to any available franchised or licensed cable television service paid directly to the service provider by the resident. The resident or the cable or video service provider cannot be required to pay anything of value in order to obtain or provide such service, except those charges normally paid for like services by other residents of single-family homes not located in the community but which are within the same franchised or licensed area, and except for installation charges. Such charges may be agreed to between the resident and the provider.

Effective Date (Section 18)

The bill provides an effective date of July 1, 2011.

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:

Tenants of condominiums, cooperative unit owners and homeowners' association parcel owners may be required to make payments to the association if the owners owe any monetary payments to the association. The tenants would be entitled to deduct the amount of any payments they make to the association from their rent payment.

With certain specified exceptions, homeowners' association parcel owners may be may be required to pay communication service operating expenses if such communications services, as defined within the bill, are contracted for by the homeowners' association.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 718.111(12)(a)7., F.S., to provide that the email and facsimile addresses of unit owners may not be accessible to unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5 of s. 718.111, F.S. This provision is unclear. The cross reference to subparagraph (12)(c)5 of s. 718.111, F.S., does not relate to the consent to receive notice via electronic transmission, rather it relates to the consent to disclose the protected information within that subparagraph.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Regulated Industries on March 16, 2011:
The committee substitute differs from SB 530, in that it:

- Does not amend s. 718.111(12), F.S., to replace the term "electronic mail addresses" with the term "email address;"
- Amends s. 718.111(12)(c)3., F.S., to include records regarding management company employees in the exception;
- Amends s. 718.111(12)(c)5., F.S., to provide that the association is not liable for the disclosure of protected information if it is included in other official records of the association, is voluntarily provided by an owner, and is not requested by the association;
- Amends s. 718.112(2)(d)2., F.S., to define the term "candidate" and to provide additional exceptions to the requirement that the terms of all board members expire at the annual meeting;
- Amends s. 718.112(2)(d)2., F.S., to revise the provisions related to filling vacancies on the board and candidates for election to the board;
- Amends s. 718.112(2)(d)4.b., F.S., to provide for the submission of a certificate that shows the satisfactory completion the educational curriculum within 90 days after the election;
- Amends s. 718.112(2)(d)4.b., F.S., to provide that ch. 718, F.S., does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association;
- Amends s. 718.116(3), F.S., to provide that the collection services are rendered by a community association manager or community association management firm and payable to the community association manager or firm as a liquidated sum;
- Amends s. 718.116(11), F.S., to delete the reference to the tenant having acted in good faith to the association's demand for payment;
- Creates s. 718.303(3)(a), F.S., relating to the suspension of use rights for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association;
- Amends s. 718.303(5), F.S., to provide that the suspension of a member's voting rights may not count for or against a proposed question;
- Amends ss. 719.108(3) and (4), F.S., relating to liens to secure expenses for collection services;
- Amends s. 719.116(10), F.S., to delete the reference to the tenant having acted in good faith to the association's demand for payment;
- Creates s. 719.303(3)(a), F.S., to provide for the suspension of use rights for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association;

- Amends s. 720.3085(3) and (4), F.S., relating to the authority of homeowner's associations to charge for reasonable expenses for collection services incurred before filing a claim of lien;
- Does not amend s. 720.303(5)(c)5., F.S., to replace the term "electronic mail addresses" with the term "email address;"
- Amends s. 720.303(5)(c)5., F.S., to provide for unit owners to consent to the disclosure of protected information;
- Does not amend s. 720.305(2)(a), F.S., to require that the homeowner association's governing documents must provide for the authority to suspend use rights based on failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association;
- Amends s. 720.3085(8), F.S., to delete the reference to the tenant having acted in good faith to the association's demand for payment; and
- Amends s. 720.3085(8)(b), F.S., to provide that the liability of the tenant may not exceed the amount due from the tenant's landlord.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (31) of section 163.3164, Florida Statutes, is amended to read

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.—As used in this act:

(31) "~~Optional~~ Sector plan" means the ~~an optional~~ process authorized by s. 163.3245 in which one or more local governments engage in long-term planning for a large area ~~by agreement with the state land planning agency are allowed to~~ and address

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regional ~~development-of-regional-impact issues within certain designated geographic areas identified in the local comprehensive plan~~ as a means of fostering innovative planning and development strategies in s. 163.3177(11)(a) and (b), furthering the purposes of this part and part I of chapter 380, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts. "Sector plan" includes an optional sector plan that was adopted pursuant to the Optional Sector Plan pilot program.

Section 2. Paragraph (d) of subsection (15) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(15)

(d) This subsection does not apply to a ~~an optional~~ sector plan adopted pursuant to s. 163.3245, a rural land stewardship area designated pursuant to subsection (11), or any comprehensive plan amendment that includes an inland port terminal or affiliated port development.

Section 3. Paragraph (a) of subsection (12) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(12)(a) A development of regional impact may satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06 by payment of a proportionate-share contribution for local and regionally significant traffic impacts, if:

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1. The development of regional impact which, based on its location or mix of land uses, is designed to encourage pedestrian or other nonautomotive modes of transportation;

2. The proportionate-share contribution for local and regionally significant traffic impacts is sufficient to pay for one or more required mobility improvements that will benefit a regionally significant transportation facility;

3. The owner and developer of the development of regional impact pays or assures payment of the proportionate-share contribution; and

4. If the regionally significant transportation facility to be constructed or improved is under the maintenance authority of a governmental entity, as defined by s. 334.03(12), other than the local government with jurisdiction over the development of regional impact, the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity having maintenance authority or to otherwise assure construction or improvement of the facility.

The proportionate-share contribution may be applied to any transportation facility to satisfy the provisions of this subsection and the local comprehensive plan, but, for the purposes of this subsection, the amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed development expected to reach roadways during the peak hour from the complete buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted

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level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. For purposes of this subsection, "construction cost" includes all associated costs of the improvement. Proportionate-share mitigation shall be limited to ensure that a development of regional impact meeting the requirements of this subsection mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs. This subsection also applies to Florida Quality Developments pursuant to s. 380.061 and to detailed specific area plans implementing ~~optional~~ sector plans pursuant to s. 163.3245.

Section 4. Section 163.3245, Florida Statutes, is amended to read:

163.3245 ~~Optional~~ sector plans.—

(1) In recognition of the benefits of ~~conceptual~~ long-range planning for ~~the buildout of an area, and detailed planning for~~ specific areas, ~~as a demonstration project, the requirements of s. 380.06 may be addressed as identified by this section for up to five~~ local governments or combinations of local governments ~~which~~ may adopt into their ~~the~~ comprehensive plans a ~~plan an optional~~ 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 the intent of s. 163.3177(11), which supports 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

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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. ~~Optional~~ Sector plans are intended for substantial geographic areas that include ~~including~~ at least 15,000 ~~5,000~~ acres of one or more local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and public facilities. ~~The state land planning agency may approve optional sector plans of less than 5,000 acres based on local circumstances if it is determined that the plan would further the purposes of this part and part I of chapter 380. Preparation of an optional sector plan is authorized by agreement between the state land planning agency and the applicable local governments under s. 163.3171(4). An optional sector plan may be adopted through one or more comprehensive plan amendments under s. 163.3184. However, an optional~~ A sector plan may not be adopted ~~authorized~~ in an area of critical state concern.

(2) ~~The state land planning agency may enter into an agreement to authorize preparation of an optional sector plan upon the request of one or more local governments based on consideration of problems and opportunities presented by existing development trends; the effectiveness of current comprehensive plan provisions; the potential to further the state comprehensive plan, applicable strategic regional policy plans, this part, and part I of chapter 380; and those factors identified by s. 163.3177(10)(i).~~ Upon the request of a local

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government with jurisdiction, the applicable regional planning council shall conduct a scoping meeting with affected local governments and those agencies identified in s. 163.3184(4) before preparation of the sector plan ~~execution of the agreement authorized by this section~~. The purpose of this meeting is to assist the state land planning agency and the local government in the identification of the relevant planning issues to be addressed and the data and resources available to assist in the preparation of the sector plan. In the event that a scoping meeting is conducted, ~~subsequent plan amendments.~~ the regional planning council shall make written recommendations to the state land planning agency and affected local governments, on the issues requested by the local government. The scoping meeting shall be noticed and open to the public. In the event that the entire planning area proposed for the sector plan is within the jurisdiction of two or more local governments, some or all of them may enter into a joint planning agreement pursuant to s. 163.3171 with respect to ~~including whether a sustainable sector plan would be appropriate. The agreement must define~~ the geographic area to be subject to the sector plan, the planning issues that will be emphasized, procedures ~~requirements~~ for intergovernmental coordination to address extrajurisdictional impacts, supporting application materials including data and analysis, ~~and~~ procedures for public participation, or other issues. ~~An agreement may address previously adopted sector plans that are consistent with the standards in this section. Before executing an agreement under this subsection, the local government shall hold a duly noticed public workshop to review and explain to the public the optional sector planning process~~

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~~and the terms and conditions of the proposed agreement. The local government shall hold a duly noticed public hearing to execute the agreement. All meetings between the department and the local government must be open to the public.~~

(3) ~~Optional~~ Sector planning encompasses two levels: adoption pursuant to ~~under~~ s. 163.3184 of a ~~conceptual~~ long-term master plan for the entire planning area as part of the comprehensive plan; and adoption by local development order of two or more ~~buildout overlay to the comprehensive plan, having no immediate effect on the issuance of development orders or the applicability of s. 380.06, and adoption under s. 163.3184 of~~ detailed specific area plans that implement the ~~conceptual~~ long-term master plan ~~buildout overlay and authorize issuance of development orders,~~ and within which s. 380.06 is waived. ~~Until such time as a detailed specific area plan is adopted, the underlying future land use designations apply.~~

(a) In addition to the other requirements of this chapter, a long-term master plan pursuant to this section ~~conceptual long-term buildout overlay~~ must include maps, illustrations, and text supported by data and analysis to address the following:

1. A ~~long-range conceptual~~ framework map that, at a minimum, generally depicts ~~identifies anticipated~~ areas of urban, agricultural, rural, and conservation land use; identifies allowed uses in various parts of the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern in developed areas with graphic illustrations based on a hierarchy of places and functional place-making components.

2. A general identification of the water supplies needed

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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.

3. A general identification of the transportation facilities to serve the future land uses in the long-term master plan, including guidelines to be used to establish each modal component intended to optimize mobility.

4. A general identification of other regionally significant public facilities ~~consistent with chapter 9J-2, Florida Administrative Code, irrespective of local governmental jurisdiction~~ necessary to support ~~buildout of~~ the ~~anticipated~~ future land uses, which may include central utilities provided on-site within the planning area, and policies setting forth the procedures to be used to mitigate the impacts of future land uses on public facilities.

5. ~~3.~~ A general identification of regionally significant natural resources within the planning area based on the best available data 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 ~~consistent with chapter 9J-2, Florida Administrative Code~~.

6. ~~4.~~General principles and guidelines addressing ~~that address~~ the urban form and the interrelationships of ~~anticipated~~ future land uses; the protection and, as appropriate, restoration and management of lands identified for permanent preservation through recordation of conservation easements consistent with s. 704.06, which shall be phased or staged in

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coordination with detailed specific area plans to reflect phased or staged development within the planning area; ~~and a discussion, at the applicant's option, of the extent, if any, to which the plan will address restoring key ecosystems,~~ achieving a more clean, healthy environment;~~,~~ limiting urban sprawl; providing a range of housing types;~~,~~ protecting wildlife and natural areas;~~,~~ advancing the efficient use of land and other resources;~~, and~~ creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.

7. ~~5.~~ Identification of general procedures and policies to facilitate ~~ensure~~ intergovernmental coordination to address extrajurisdictional impacts from the future land uses ~~long-range conceptual framework map~~.

A long-term master plan adopted pursuant to this section shall be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan, shall specify the projected population within the planning area during the chosen planning period, 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. It shall not be a requirement for a long-term master plan adopted pursuant to this section to demonstrate need based upon projected population growth or on any other basis.

(b) In addition to the other requirements of this chapter, ~~including those in paragraph (a),~~ the detailed specific area plans shall be consistent with the long-term master plan and must include conditions and commitments which provide for:

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1. Development or conservation of an area of ~~adequate size to accommodate a level of development which achieves a functional relationship between a full range of land uses within the area and to encompass~~ at least 1,000 acres consistent with the long-term master plan. The local government ~~state land planning agency~~ may approve detailed specific area plans of less than 1,000 acres based on local circumstances if it is determined that the detailed specific area plan furthers the purposes of this part and part I of chapter 380.

2. Detailed identification and analysis of the maximum and minimum densities and intensities of use, and the distribution, extent, and location of future land uses.

3. Detailed identification of water resource development and water supply development projects and related infrastructure, and water conservation measures to address water needs of development in the detailed specific area plan.

4. Detailed identification of the transportation facilities to serve the future land uses in the detailed specific area plan.

5. Detailed identification of other regionally significant public facilities, including public facilities outside the jurisdiction of the host local government, ~~anticipated~~ impacts of future land uses on those facilities, and required improvements consistent with the long-term master plan ~~chapter 9J-2, Florida Administrative Code~~.

6. ~~4.~~Public facilities necessary to serve development in the detailed specific area plan ~~for the short term~~, including developer contributions in a ~~financially feasible~~ 5-year capital improvement schedule of the affected local government.

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7. ~~5.~~ Detailed analysis and identification of specific measures to assure the protection or conservation of lands identified in the long-term master plan to be permanently preserved within the planning area through recordation of a conservation easement consistent with s. 704.06 and, as appropriate, restored or managed, ~~of regionally significant natural resources~~ and other important resources both within and outside the host jurisdiction~~, including those regionally significant resources identified in chapter 9J-2, Florida Administrative Code~~.

8. ~~6.~~ Detailed principles and guidelines addressing ~~that address~~ the urban form and the interrelationships of ~~anticipated~~ future land uses; ~~and a discussion, at the applicant's option, of the extent, if any, to which the plan will address restoring key ecosystems,~~ achieving a more clean, healthy environment;~~,~~ limiting urban sprawl;~~,~~ providing a range of housing types; protecting wildlife and natural areas;~~,~~ advancing the efficient use of land and other resources;~~, and~~ creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.

9. ~~7.~~ Identification of specific procedures to facilitate ~~ensure~~ intergovernmental coordination to address extrajurisdictional impacts from ~~of~~ the detailed specific area plan.

A detailed specific area plan adopted by local development order pursuant to this section may be based upon a planning period longer than the generally applicable planning period of

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the local comprehensive plan and shall specify the projected population within the specific planning area during the chosen planning period. It shall not be a requirement for a detailed specific area plan adopted pursuant to this section to demonstrate need based upon projected population growth or on any other basis.

(c) In its review of a long-term master plan, the state land planning agency shall consult with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, and the applicable water management district regarding the design of areas for protection and conservation of regionally significant natural resources and for the protection and, as appropriate, restoration and management of lands identified for permanent preservation.

(d) In its review of a long-term master plan, the state land planning agency shall consult with the Department of Transportation, the applicable metropolitan planning organization, and any urban transit agency regarding the location, capacity, design, and phasing or staging of major transportation facilities in the planning area.

(e) The state land planning agency may initiate a civil action pursuant to s. 163.3215 with respect to a detailed specific area plan which is not consistent with a long-term master plan adopted pursuant to this section. For purposes of such a proceeding, the state land planning agency shall be deemed an aggrieved and adversely affected party. Regardless of whether the local government has adopted an ordinance that establishes a local process which meets the requirements of s.

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163.3215(4), judicial review of a detailed specific area plan initiated by the state land planning agency shall be de novo pursuant to s. 163.3215(3) and not by petition for writ of certiorari pursuant to s. 163.3215(4). Any other aggrieved or adversely affected party shall be subject to s. 163.3215 in all respects when initiating a consistency challenge to a detailed specific area plan.

(f) This subsection does ~~may~~ not ~~be construed to~~ prevent preparation and approval of the ~~optional~~ sector plan and detailed specific area plan concurrently or in the same submission.

(4) Upon the long-term master plan becoming legally effective:

(a) Any long-range transportation plan developed by a metropolitan planning organization pursuant to s. 339.175(7) must be consistent, to the maximum extent feasible, with the long-term master plan, including but not limited to the projected population, the approved uses and densities and intensities of use and their distribution within the planning area. The transportation facilities identified in adopted plans pursuant to subparagraphs (3)(a)3. and (3)(b)4. must be developed in coordination with the adopted M.P.O. long-range transportation plan.

(b) The water needs, sources and water resource development and water supply development projects identified in adopted plans pursuant to sub-subparagraphs (3)(a)2. and (3)(b)3. shall be incorporated into the applicable district and regional water supply plans adopted in accordance with ss. 373.036 and 373.709. Accordingly, and notwithstanding the permit durations stated in

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s. 373.236, an applicant may request and the applicable district may issue consumptive use permits for durations commensurate with the long-term master plan. The permitting criteria in s. 373.223 shall be applied based upon the projected population, the approved densities and intensities of use and their distribution in the long-term master plan.

~~The host local government shall submit a monitoring report to the state land planning agency and applicable regional planning council on an annual basis after adoption of a detailed specific area plan. The annual monitoring report must provide summarized information on development orders issued, development that has occurred, public facility improvements made, and public facility improvements anticipated over the upcoming 5 years.~~

(5) When a ~~plan amendment adopting~~ a detailed specific area plan has become effective for a portion of the planning area governed by a long-term master plan adopted pursuant to this section ~~under ss. 163.3184 and 163.3189(2)~~, the provisions of s. 380.06 do not apply to development within the geographic area of the detailed specific area plan. However, any development-of-regional-impact development order that is vested from the detailed specific area plan may be enforced pursuant to ~~under~~ s. 380.11.

(a) The local government adopting the detailed specific area plan is primarily responsible for monitoring and enforcing the detailed specific area plan. Local governments shall not issue any permits or approvals or provide any extensions of services to development that are not consistent with the detailed specific ~~sector~~ area plan.

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(b) If the state land planning agency has reason to believe that a violation of any detailed specific area plan~~, or of any agreement entered into under this section,~~ has occurred or is about to occur, it may institute an administrative or judicial proceeding to prevent, abate, or control the conditions or activity creating the violation, using the procedures in s. 380.11.

(c) In instituting an administrative or judicial proceeding involving an ~~optional~~ sector plan or detailed specific area plan, including a proceeding pursuant to paragraph (b), the complaining party shall comply with the requirements of s. 163.3215(4), (5), (6), and (7), except as provided by paragraph (3)(d).

(d) The detailed specific area plan shall establish a buildout date until which the approved development shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that implementation of the plan is not continuing in good faith based on standards established by plan policy, or that substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred, or that the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or that the change is clearly established to be essential to the public health, safety, or welfare.

(6) Concurrent with or subsequent to review and adoption of a long-term master plan pursuant to subsection (3)(a), an applicant may apply for master development approval pursuant to s. 380.06(21) for the entire planning area in order to establish

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a buildout date until which the approved uses and densities and intensities of use of the master plan shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that implementation of the master plan is not continuing in good faith based on standards established by plan policy, or that substantial changes in the conditions underlying the approval of the master plan have occurred, or that the master plan was based on substantially inaccurate information provided by the applicant, or that change is clearly established to be essential to the public health, safety, or welfare. Review of the application for master development approval shall be at a level of detail appropriate for the long-term and conceptual nature of the long-term master plan and, to the maximum extent possible, shall only consider information provided in the application for a long-term master plan. Notwithstanding any provision of s. 380.06 to the contrary, an increment of development in such an approved master development plan shall be approved by a detailed specific area plan pursuant to subsection (3)(b) and shall be exempt from review pursuant to s 380.06. ~~Beginning December 1, 1999, and each year thereafter, the department shall provide a status report to the Legislative Committee on Intergovernmental Relations regarding each optional sector plan authorized under this section.~~

(7) A developer within an area subject to a long-term master plan which meets the requirements of paragraph (3)(a) and subsection (6) or a detailed specific area plan which meets the requirements of paragraph (3)(b) may enter into a development agreement with a local government pursuant to ss. 163.3220-

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163.3243. The duration of such a development agreement may be through the planning period of the long-term master plan or the detailed specific area plan, as the case may be, notwithstanding the limit on the duration of a development agreement pursuant to s. 163.3229.

(8) Any owner of property within the planning area of a proposed long-term master plan may withdraw his consent to the master plan at any time prior to local government adoption, and the local government shall exclude such parcels from the adopted master plan. Thereafter, the long-term master plan, any detailed specific area plan, and the exemption from development-of-regional-impact review under this section shall 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 adopted and reviewed pursuant to s. 163.3184.

(9) The adoption of a long-term master plan or a detailed specific area plan pursuant to this section shall not limit the right to continue existing agricultural or silvicultural uses or other natural resource-based operations or to establish similar new uses that are consistent with the plans approved pursuant to this section.

(10) Notwithstanding any provision to the contrary of s. 380.06; chapter 163, Part II; or any planning agreement or plan policy, a landowner or developer who has received approval of a master development of regional impact development order pursuant to s. 380.06(21) may apply to implement this order by filing one or more applications to approve detailed specific area plan pursuant to subparagraph (3)(b) of this section.

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(11) Notwithstanding the provisions of this act, a detailed specific area plan to implement a conceptual long-term buildout overlay adopted by a local government and found in compliance prior to July 1, 2011, shall be governed by the provisions of this section.

(12) This section may not be construed to abrogate the rights of any person under this chapter.

Section 5. Paragraph (b) of subsection (9) of section 163.3246, Florida Statutes, is amended to read:

163.3246 Local government comprehensive planning certification program.—

(9)

(b) Plan amendments that change the boundaries of the certification area; propose a rural land stewardship area pursuant to s. 163.3177(11)(d); propose ~~an optional sector~~ plan pursuant to s. 163.3245; propose a school facilities element; update a comprehensive plan based on an evaluation and appraisal report; impact lands outside the certification boundary; implement new statutory requirements that require specific comprehensive plan amendments; or increase hurricane evacuation times or the need for shelter capacity on lands within the coastal high-hazard area shall be reviewed pursuant to ss. 163.3184 and 163.3187.

Section 6. Paragraph (s) of subsection (24) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(s) Any development in a detailed specific area plan which is prepared pursuant to s. 163.3245 ~~and adopted into the~~

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~~comprehensive plan~~ is exempt from this section.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 7. Subsection (3) 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.—

(3) A landowner that has filed an application for a development-of-regional-impact review prior to the adoption of a ~~an optional~~ sector plan pursuant to s. 163.3245 may elect to have the application reviewed pursuant to s. 380.06, comprehensive plan provisions in force prior to adoption of the sector plan, and any requested comprehensive plan amendments that accompany the application.

Section 8. This act shall take effect upon becoming law.

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

And the title is amended as follows:

Delete everything before the enacting clause

729070

and insert:

A bill to be entitled

An act relating to growth management; amending s. 163.3164, F.S.; making conforming amendments; amending s. 163.3177, F.S.; making conforming amendments; amending s. 163.3180, F.S.; making conforming amendments; amending s. 163.3245, F.S.; renaming optional sector plans as sector plans; increasing the minimum size of geographic areas that qualify for the use of sector plans; revising terminology relating to such plans; deleting obsolete provisions; renaming long-term conceptual buildout overlays as long-term master plans; revising the content required to be included in long-term master plans and detailed specified area plans; requiring identification of water development projects and transportation facilities to serve future development needs; exempting certain developments from the requirement to develop a detailed specific area plan; providing that detailed specific area plans shall be adopted by local development orders; requiring that detailed specific area plans include a buildout date and precluding certain changes in the development until after that date; authorizing certain development agreements between the developer and the local government; providing for continuation of certain existing land uses; amending s. 380.06(24), F.S.; amending s. 380.115(3), F.S.; making conforming amendments; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Richter) recommended the following:

Senate Amendment to Amendment (729070)

Delete line 13

and insert:

regional ~~development-of-regional-impact~~ issues ~~within certain~~

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 Community Affairs Committee

BILL:	SB 1904
INTRODUCER:	Senator Altman
SUBJECT:	Optional Sector Plans
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			TR	
4.			BC	
5.				
6.				

I. Summary:

This bill modifies the optional sector planning process to:

- substantially remove the role of the Department of Community Affairs;
- revise the role that population projections ("needs assessment") plays in the optional sector planning process;
- provide additional guidelines for implementation of the process;
- require the metropolitan planning organizations and water management districts to conform their planning to the optional sector plan;
- allow developments of regional impact (DRIs) to operate under either the optional sector planning process or the DRI process; and
- prevent the downzoning of optional sector planning areas until the appropriate overlay or detailed specific area plan comes into effect.

This bill substantially amends section 163.3245 of the Florida Statutes.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[1] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to

[1] *See* Chapter 163, Part II, F.S.

adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[2] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

Optional Sector Planning

The optional sector plan process was established as an alternative to the development of regional impact process (see below). Optional sector plans may be initiated by the local government upon written agreement with the DCA. An optional sector plan includes two levels of planning: a conceptual, long-term build-out overlay; and one or more detailed specific area plans. An annual monitoring report will be submitted to the DCA and the affected regional planning council. Additionally, optional sector plans combine the purposes of chapters 380 and 163, Florida Statutes; require public participation throughout the process; emphasize urban form and the protection of regional resources and facilities; and apply to areas greater than 5,000 acres. There are currently four optional sector plans in effect. They are located in Bay County, Orange County, the City of Bartow, and Escambia County.[3]

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.[4] Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information, and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.

Population Projections – Needs Assessment

The needs assessment is a part of the land use planning process that provides a mechanism for local governments to determine the appropriate supply of land uses necessary to accommodate anticipated demand. The "need" issue is one of the factors to be considered in any urban sprawl analysis.[5] To determine need, the reviewer analyzes: the categories of land use and their densities

[2] Section 163.3177(5), F.S.
[3] Dept. of Community Affairs, Optional Sector Plans, http://www.dca.state.fl.us/fdcp/DCP/optionalsectorplans/index.cfm.
[4] Section 380.06(1), F.S.
[5] Rule 9J-5.006(5)(g)1, F.A.C.

or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.[6] This methodology is then submitted to DCA for review with the proposed comprehensive plan amendment. When reviewing this methodology, DCA reviews both the numerical population and policy factors.

Market Factor

Residential: A market factor (also known as an allocation number or multiplier) is a numerical tool used by professional planners to determine the amount of land use supply needed to accommodate anticipated growth.[7] For residential land, a market factor is calculated by dividing the amount of dwelling unit capacity by the amount of dwelling unit demand.[8] In the past, DCA has recommended a market factor of 1.25 which means a plan allows for land uses to support 125% of the projected population.[9] The additional 25% is designed to allow for market flexibility. If the market factor goes above 1.25 it may cause the plan amendment to be subject to a heightened review to see if it meets the indicators of urban sprawl.[10]

Commercial/Industrial: Similar to residential, examining the market factor for commercial and industrial lands is a significant factor in determining need. However, case law has indicated that the need for additional commercial or industrial land may also be demonstrated by other factors such as the suitability of the property for change, locational criteria, and community desires.[11] For industrial land use changes, rural communities are also provided a special exception. Section 163.3177(6)(a) F.S., states that "the amount of land designated for future planned industrial use should be based on surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies and should not be limited solely by the projected population of the rural community."

Planning Time Horizon

The Florida Growth Management Act of 1985 requires each local government comprehensive plan to include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.[12] In planning for the amount of land needed for a particular land use, the local government must analyze it within the adopted planning time horizon applicable to that portion of the comprehensive plan. Other local governments have also adopted a third planning time horizon for longer range planning. These longer range planning time horizons have been extended out as far as 40 years, and DCA has approved comprehensive plan amendments that have incorporated these longer term planning time horizons.[13]

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[6] Rule 9J-5.006(2)(c), F.A.C. For an example of how the methodolgy is analyzed, see page 5.
[7] *The Role of Need in Comprehensive Planning*, Department of Community Affairs Presentation, June 26, 2009.
[8] *Id.*
[9] *Id.*
[10] *Sierra Club v. St. Johns County & DCA*, DOAH 01-1851GM (May 20, 2002).
[11] *O'Connell v. Martin County*, DOAH 01-4826GM (Oct. 16, 2002).
[12] Section 163.3177(5)(a), F.S.
[13] "There is not a prohibition against analyzing more time frames than just one planning horizon." *Sierra Club & Panhandle Citizens v. DCA and Franklin County*, DOAH 05-2731GM (June 12, 2006).

Population Projections

A key component of the needs issue is the population projection. In 1986, rulemaking required comprehensive plans to be based on resident and seasonal population estimates provided by the University of Florida Bureau of Economic and Business Research, the Executive Office of the Governor, or generated by the local government.[14] If the local government chooses to base its plan on the figures provided by the University of Florida or the Executive Office of the Governor, medium range projections should be utilized.[15] If the local government chooses to base its plan on either low or high range projections provided by the University of Florida or the Executive Office of the Governor, a detailed description of the rationale for such a choice shall be included with such projections.[16]

Alternative Methodologies (for Population Projections)

If a local government chooses to prepare its own estimates and projections, it is required to submit estimates and projections and a description of the methodologies utilized to generate the projections and estimates to the DCA with its plan amendments for compliance review, unless it has submitted them for advance review. DCA will evaluate the alternative methodology to determine whether the methodology is professionally accepted. In addition, DCA is required to make available examples of methodologies for resident and seasonal population estimates and projections that it deems to be professionally acceptable. Finally, in its review of any population estimates, projections, or methodologies proposed by local governments, DCA must be guided by the Executive Office of the Governor, in particular the State Data Center.[17]

Metropolitan Planning Organizations

Metropolitan Planning Organizations[18] provide a forum for elected officials of various local governments within an urban area to meet on a regular basis, in order to work toward a coordinated and comprehensive transportation planning process. This process is critical to providing a safe, effective, and cost-efficient transportation system. Under federal and state laws, urban areas with at least 50,000 residents must form Metropolitan Planning Organizations to be eligible for federal Highway Trust Fund dollars for surface transportation projects. Florida has 26 Metropolitan Planning Organizations (sometimes called Transportation Planning Organizations).

As part of their mission to conduct cooperative and comprehensive transportation planning, the Metropolitan Planning Organizations study ways to move both people and goods by various modes of travel, including highways, public transportation, bicycles, and foot. They also plan for the connections that link these modes together, such as airports, seaports, or bus, railroad, and pipeline terminals. To assist with the many complex issues before it, each Metropolitan Planning Organization typically has a Technical Advisory Committee, a Citizens Advisory Committee, and a Bicycle/Pedestrian/Greenways Advisory Committee.

[14] Rule 9J-5.005(2)(e), F.A.C.
[15] *Id.*
[16] *Id.*
[17] Rule 9J-5.005(2)(e), F.A.C.
[18] For more information see Florida Metropolitan Planning Organization Advisory Council website available at http://www.mpoac.org/index.shtml.

Each Metropolitan Planning Organization sets priorities for the use of state or federal funding for surface transportation improvement projects within its area. To qualify for federal funds, the Metropolitan Planning Organization must endorse a Transportation Improvement Program identifying projects to be done in the next several years.[19] Metropolitan Planning Organizations also adopt long-range transportation plans that identify both funded and unfunded projects for as much as 20 years.[20]

The plan includes both long-range and short-range strategies and must comply with all other state and federal requirements. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the MPO. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

- Identify transportation facilities that will function as an integrated metropolitan transportation system.
- Include a financial plan and cooperatively develop estimates of funds that will be available to support implementation of the long-range transportation plan.
- Assess capital investment and other measures.
- Indicate, as appropriate, proposed transportation enhancement activities, including, but not limited to, pedestrian and bicycle facilities, scenic easements, landscaping, historic preservation, mitigation of water pollution due to highway runoff, and control of outdoor advertising.
- In metropolitan areas that are classified as nonattainment areas for ozone or carbon monoxide, the MPO must coordinate the development of the long-range transportation plan with the State Implementation Plan developed pursuant to the requirements of the federal Clean Air Act.

In the development of its long-range transportation plan, each MPO must provide the public, affected public agencies, and transportation entities with a reasonable opportunity to comment on the long-range transportation plan.[21]

Water Supply Planning

The Legislature has established a process for water supply planning through Florida's Growth Management Act[22] and the Water Protection and Sustainability Program.[23] Under this system, the state's five water management districts must periodically evaluate whether adequate water supplies exist to meet the needs of their areas. If a district finds that the water supply will not be adequate, it must prepare regional water supply plans for those areas, identifying how water supply needs can be met for the next 20 years. Local governments that fall within the area of a

[19] Dept. of Community Affairs, Transportation Planning, http://www.dca.state.fl.us/fdcp/dcp/transportation/OtherAgencies.cfm#MTPO.
[20] Section 339.175(7), F.S.
[21] *Id*.
[22] Chapter 163, Part II, F.S.
[23] Chapter 373, F.S.

regional water supply plan are required to ensure that adequate water supplies will be available to meet future demand, by developing 10-year water supply facilities work plans. These work plans include alternative water supplies, water reuse and conservation programs, and they are incorporated into the local governments' comprehensive plans. In addition, all local governments - regardless of whether they are in one of these planning areas - must address water supply in their concurrency management programs.[24]

Consumptive Use Permits

A consumptive use permit (CUP) allows water to be withdrawn from surface and groundwater supplies for reasonable and beneficial uses such as public supply (drinking water), agricultural and landscape irrigation, and industry and power generation. Permits may be granted for a period of 20 years, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided.[25]

The CUP program benefits all people by requiring water conservation to prevent wasteful uses, requiring reuse of reclaimed water (treated wastewater and storm water) instead of higher quality groundwater, and setting limits on how much water can be withdrawn at each location in the aquifer. These limits protect existing residents' water supplies and protect aquifers, lakes and rivers from harm.[26]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3245, F.S., to make substantial changes to the optional sector plan process. The bill:

- Removes the limitation on the number of optional sector plans that can be in existence.
- Increases the acreage required to have an optional sector plan from 5,000 to 15,000 acres.
- Removes the requirement that DCA review and approve optional sector plans, including the requirement that the DCA enter into agreements based on the specific criteria of the local government.
- Removes the requirement that the local government hold a public workshop to review and explain to the public the optional sector planning process.
- Removes the requirement that the host local government(s) submit a monitoring report to DCA.
- Removes the requirement that DCA report to the Legislature annually on the optional sector planning process.

The bill elaborates on the requirements that must be addressed in the long-term overlay plan. Each long-term overlay plan must include maps and text and be supported by data and analyses that address:

[24] Dept of Community Affairs, Water Supply Planning, http://www.dca.state.fl.us/fdcp/DCP/WaterSupplyPlanning/index.cfm.
[25] Section 337.236, F.S.
[26] St. John's River Water Management District, Permitting, http://www.sjrwmd.com/permitting/index.html.

- The allowed uses in various parts of the planning area and the maximum and minimum densities and intensities of use that generally depict anticipated areas of urban, agricultural, rural, and conservation land use.
- Identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, which are needed to meet the projected demand of the future land uses in the long-term conceptual overlay plan.
- Identification of the transportation facilities to serve the future land uses in the long-term conceptual overlay plan.
- Policies setting forth the procedures to be used to mitigate impacts on other regionally significant public facilities as part of the adoption of detailed specific area plans.
- Identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection and conservation of significant natural resources within the planning area.
- The protection and, as appropriate, restoration and management of lands identified for permanent preservation (however the bill deletes language suggesting that the plan address restoring key ecosystems) achieving a more clean, healthy environment, discouraging the proliferation of limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, advancing the efficient use of land and other resources, and creating quality communities with a design to promote travel by multiple transportation modes, and enhancing the creation of jobs.
- Identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from the long-range conceptual overlay plan framework map.

The long-term conceptual overlay plan may be based on a planning period longer than the generally applicable planning period of the local comprehensive plan and does not have to demonstrate need based on population growth or any other basis.

The detailed specific area plan must contain similar criteria but with more detail. Although it may be based upon a planning period longer than the comprehensive plan, it is required to demonstrate need for the detailed specific area plan by reference to:

- projected population growth,
- creation of workplaces for job creation and new employment,
- remediation of preexisting development patterns in the vicinity which exhibit the characteristics of urban sprawl, or
- any other professionally acceptable methodology.

Once the overlay plan becomes effective, the metropolitan planning organization and the water management district must adapt their planning to fit with the long-term conceptual overlay plan. Specifically, any long-range transportation plan developed by a metropolitan planning organization must be consistent, to the maximum extent feasible, with the long-term conceptual overlay plan, including, but not limited to, the projected population, the approved uses and densities and intensities of use and their distribution within the planning area, and the transportation facilities identified in adopted optional sector plans.

The water needs, sources, and water resource development and water supply development projects identified in adopted optional sector plans must be incorporated into the applicable district and regional water supply plans adopted. Notwithstanding the permit durations stated in s. 373.236, F.S., an applicant under an optional sector plan may receive CUPs for greater than 20 years. The permitting criteria will be applied based on the projected population and the approved densities and intensities of use and their distribution in the long-term conceptual overlay plan.

DRIs need not comply with the requirement of creating a detailed specific area plan and may operate under s. 380.06, F.S., (the DRI process) instead.

Under current law, the detailed specific area plan controls DRIs that are not yet vested (not s. 380.06, F.S.). The long-term overlay may (if the underlying land use requires consistency) and the detailed specific area plan shall establish a buildout date until which the approved development is not subject to downzoning, unit density reduction, or intensity reduction. The local government may downzone if the local government can demonstrate that:

- substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred,
- the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or
- the change is clearly established to be essential to the public health, safety, or welfare.

The long-term overlay plan may also include a phasing or staging schedule that allocates a portion of the county's future growth to the planning area through the buildout date in order to provide for orderly physical development that discourages the proliferation of urban sprawl.

Development agreements between the developer and the local government may exceed the 20-year limitation specified in s. 163.3229, F.S.

Any owner of property within the defined planning area may withdraw his consent to the long-term conceptual overlay plan at any time before the local government adoption, and the local government shall exclude such parcel from the adopted overlay plan. Thereafter, the overlay plan, any detailed specific area plan, and the exemption from development-of-regional-impact review under this section do not apply to the subject parcel. After adoption of the overlay plan, a landowner may withdraw his property from the overlay plan only with the approval of the local government by plan amendment.

The adoption of a long-term conceptual overlay plan or a detailed specific area plan pursuant to this section does not limit the right to continue existing agricultural or silvicultural uses or other natural resource-based operations or to establish similar new uses that are consistent with the optional sector plan.

A detailed specific area plan to implement a conceptual long-term buildout overlay of less than 15,000 acres, adopted by a local government and found in compliance before the effective date of the act will be governed by this act.

Section 2 provides an effective date of July 1, 2011.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

601934

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Norman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 146 - 238.

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

And the title is amended as follows:

Delete lines 14 - 30

and insert:

or transient nature; providing an effective date.

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 Community Affairs Committee

BILL:	SB 1248
INTRODUCER:	Senator Norman
SUBJECT:	Enforcement of County & Municipal Codes/Ordinances
DATE:	March 17, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends the notice requirements relating to a municipal or county code violation and allows a code enforcement officer to immediately issue a citation for a code violation if the violator is engaged in violations of an itinerant or transient nature.

The bill also authorizes a municipality or its assignee to foreclose on an abatement assessment lien against real property after a certain specified period and allows the municipality or its assignee to enforce such abatement assessment lien in circuit court by a bill in chancery.

The bill allows a municipality to assign an abatement assessment lien to a private party for consideration under certain circumstances.

This bill substantially amends the following sections of the Florida Statutes: 162.12, 162.21, 173.01, 173.03, and 173.04.

This bill creates section 173.16 of the Florida Statutes.

II. Present Situation:

County and Municipal Code or Ordinance Enforcement

The Local Government Code Enforcement Boards Act, located in Part I, of ch. 162, F.S., allows each county or municipality to create a local government code enforcement board by ordinance.[1] This Act also allows charter and non-charter counties, and municipalities to adopt an alternate code enforcement system that gives code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of respective codes or ordinances.[2]

Local Government Code Enforcement Boards.—Depending on the size of the county or municipality, the code enforcement board shall consist of five or seven appointed members, with the ability to appoint up to two alternative members.[3] Enforcement board members must be residents of the county or municipality and whenever possible shall include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor. The local governing body attorney must either serve as counsel to the enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but cannot serve in both capacities.

Pursuant to s. 162.08, F.S., local government code enforcement boards shall have the power to:

- Adopt rules for the conduct of its hearings.
- Subpoena alleged violators, witnesses, and evidence to its hearings.
- Take testimony under oath.
- Issue orders that have the force of law to command steps necessary to bring a violation into compliance.[4]

Code Enforcement Process.—The county or municipal code inspector[5] has the authority to initiate code enforcement procedures by notifying the violator and giving him or her reasonable time to correct the violation. If the violation continues to exist after such time period as specified by the code inspector, then the inspector shall notify the code enforcement board and request a hearing. The code enforcement board must provide written notice of the hearing by hand delivery or certified mail to the address listed in the tax collector's office and at any other address provided to the local government by such property owner.[6]

The code inspector does not need to provide the violator reasonable time to remedy the violation if:

- It is a repeat violation;
- The violation presents a serious threat to the public health, safety, and welfare; or

[1] The provisions of this Act are supplemental and do not prohibit a local governing body from enforcing its codes by other means. *See* s. 162.13, F.S.
[2] Section 162.03, F.S.
[3] *See* s.162.05, F.S., (if a population of less than 5,000 persons, may appoint 5-member or 7-member boards; if a population equal to or greater than 5,000 persons, must appoint 7-member boards.)
[4] Section 162.08(1)-(5), F.S.
[5] Section 162.04(2), F.S., defines the term "code inspector" to mean "any authorized agent or employee of the county or municipality whose duty it is to assure code compliance."
[6] Section 162.06(2), F.S.

- The violation is irreparable or irreversible in nature.[7]

Each case heard before a code enforcement board shall be presented either by the local government attorney or a member of the local governing body administrative staff.[8] Testimony shall be taken from both the code inspector and alleged violator, and shall be under oath and recorded.[9] At the conclusion of the enforcement board hearing, the board shall issue findings of fact and provide an order by motion of the board stating the proper relief granted.[10] If the local government prevails it shall be entitled to recover costs associated with prosecuting the case.[11]

If a violator fails to abide by an order of the code enforcement board, the board may order the violator to pay a fine for each day that the repeat violation occurs.[12] The amount of the fine shall not exceed the amount of: $250 per day for the first violation, $500 per day for repeat violations, and $500 per irreparable or irreversible violations.[13] A county or municipality with a population of 5,000 or greater may adopt an order to increase these fines above these limits, however such increased fines shall not exceed: $1,000 per day for the first violation, $5,000 per day for repeat violations, and $15,000 per irreparable or irreversible violations.[14]

If it is found that the violation in non-compliance of the governing board order is one that presents a serious threat to the public health, safety and welfare or is irreparable or irreversible in nature, then the board shall notify the local governing body which shall make reasonable repairs to bring the property in compliance and charge the violator for all associated costs.[15]

A certified copy of the enforcement board order imposing a fine or fine and repair costs may be recorded in public records and constituted as a lien against the property and any other property owned by the violator.[16] Three months after filing the lien, the code enforcement board may authorize the local governing attorney to foreclose on the lien or sue to recover a money judgment on the amount of the lien plus interest.[17] However, the local governing attorney may not foreclose on homestead property or certain real or personal property protected under Article X, section 4, of the Florida Constitution.

All final administrative orders of the code enforcement board may be appealed to the circuit court 30 days after execution of the order. The circuit court reviewing authority shall be limited to the record created before the enforcement board.[18]

[7] Section 162.06(3)-(4), F.S.
[8] Section 162.07(2), F.S.
[9] Section 162.07(3), F.S.
[10] Section 162.07(4), F.S.
[11] Section 162.07(2), F.S.
[12] Section 162.09(1), F.S.
[13] Section 162.09(2)(a), F.S.
[14] Section 162.09(2)(b), F.S.
[15] Section 162.09(1), F.S.
[16] Section 162.09(3), F.S.
[17] *Id.*
[18] Section 162.11, F.S.

***Notice Requirements.*—**Section 162.12, F.S., outlines the notice requirements under the Local Government Code Enforcement Boards Act. Pursuant to this section, an alleged violator must be provided notice by:

- Certified mail, return receipt requested, at the address listed in the tax collector's office *and* at any other address provided to the local government by such owner;
- Hand delivery by the sheriff or other law enforcement officer, code inspector, or person designated by the local governing body;
- Leaving notice at violators usual place of residence with individual over 15 years of age; or
- In the case of commercial premises, leaving the notice with the manager or other person in charge.

The code enforcement board may also provide notice by publication pursuant to the procedures in subsection (2) of s.162.12, F.S.

***Supplemental County or Municipal Code or Ordinance Enforcement Procedures.*—**Part II of ch. 162, F.S., also allows counties and municipalities to designate some of its employees or agents as code enforcement officers that shall be authorized to enforce county or municipal codes or ordinances pursuant to the criteria established in this part. Similar to Part I of ch.162, F.S., Part II allows counties and municipalities to designate enforcement methods and penalties for code violations and outlines notice requirements. Section 162.30, F.S., allows counties and municipalities to enforce code violations by filing a civil action in the county or circuit court.

Foreclosure of Municipal Tax and Special Assessments

Chapter 173, F.S., allows municipalities to foreclose on outstanding taxes, tax certificates, or special assessment liens by a suit in chancery[19] in the county circuit court where the municipality is situated.[20] Section 173.03, F.S., states that such suit may be brought any time after one or more of the following events occur:

- Two years after a tax certificate issued by the city or town has expired;
- Two years after a tax imposed by a city or town has become delinquent; or
- One year after a special assessment or installment thereof becomes due and payable.[21]

The suit may also include all or any part of lands in which outstanding tax certificates, taxes, or special assessments issued by the city or town remain delinquent or in default for the respective periods aforesaid, along with any municipal claims and demands against said lands or parts thereof, which may be due and payable at the time the suit is initiated.[22]

***Notice.*—**The suit must be commenced by bill in chancery in the name of the city or town as the complainant *in rem*[23] against the lands in which any taxes, tax certificates, and special

[19] Also known as a Court of Equity.
[20] The provisions under ch. 173, F.S., are optional procedures which are not mandated upon any municipality of the state. *See* s. 173.13, F.S.
[21] Section 173.03(1)(a)-(c), F.S.
[22] Section 173.03(2), F.S.
[23] The Latin term "*in rem*" means "against a thing," "involving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing."

assessments are delinquent. The bill must describe the levy and nonpayment of taxes and special assessments that are delinquent. Section 173.04, F.S., provides that:

> At least thirty days prior to the filing of any such bill in chancery, written notice of the intention to file the same shall be sent by registered mail to the last known address of the holder of the record title and to the holder of record of each mortgage or other lien, except judgment liens, upon each tract of land to be included in said bill in chancery.

The notice must:

- Describe, in brief, the particular lot or parcel of land,
- State the amount of the tax certificate or special assessment seeking to be enforced,
- Warn the owner or holder of the lien/mortgage that on or after the prescribed date that a bill in chancery will be filed to enforce such taxes or assessments unless they are paid before such time.[24]

Notice shall be publicized once a week for at least two consecutive weeks to obtain jurisdiction of such lands and interested parties. The notice must include a description of the land(s) and the amount sought to be recovered and state that all interested parties must appear for the suit on the date specified in the notice, which shall be no less than four weeks after the date of the first publication.[25] "Any person not appearing and defending within such time shall be deemed to have confessed said bill," unless the court enlarges the time that a party may appear at its discretion and for cause shown.[26]

Affidavits from the tax collector or other officer that show the existence of delinquent taxes, tax certificates and special assessments shall serve as prima facie proof of the facts certified therein.[27]

Judgment for Complainant.—If the judgment is in favor of the complainant, then the amount awarded shall include: the principal and interest of all taxes, tax certificates and special assessments owed; costs resulting from the suit; and attorney's fees.[28] A judgment for the complainant shall direct the special magistrate to sell the parcels of land separately to the highest and best bidder at public sale at the courthouse door of the county where the suit is pending or at a place within the complainant municipality as directed by the court.[29] Prior to the sale of said lands, the special magistrate must advertise the public foreclosure sale and the location thereof. All sales are subject to confirmation by the court, and thereafter shall be delivered to the purchaser.[30]

The proceeds of the foreclosure sale are distributed by the special magistrate according to the provisions of the final decree. The court may direct the payment of all unpaid state, county, and

[24] Section 173.04, F.S.
[25] Section 173.04(3), F.S.
[26] Section 173.05, F.S.
[27] Section 173.06, F.S.
[28] Section 173.08, F.S.
[29] Section 173.09(1), F.S.
[30] Section 173.09(2), F.S.

municipal taxes, and special assessments along with penalties and costs out of the proceeds of such foreclosure sale as part of its judgment or decree. Any surplus proceeds that remain after the payment of the decree, costs, attorney fees and subsequent tax liens are deposited with the clerk of court and disbursed under court order.[31]

Record of Conveyances of Real Estate

Pursuant to s. 695.11, F.S., all instruments that are filed for recording in the Official Records are deemed to be recorded at the time of filing, which shall be indicated by affixing thereon the consecutive official register number. Under Florida law, the sequence of an instrument's official register number also determines the priority of recordation, with the lower number having priority over any instrument with a higher number in the same series. This codifies the common law principal known as "first in time, first in right."[32]

***City of Palm Bay v. Wells Fargo Bank, N.A.*[33]—**In January 2011, the Fifth District Court of Appeal overturned the following ordinance in the City of Palm Bay addressing the priority of its code enforcement liens:

> . . . any liens created by its code enforcement board and recorded in the public record shall remain liens coequal with the liens of all state, county, district and municipal taxes, superior in dignity to all other liens, titles and claims until paid, and . . . may be foreclosed pursuant to the procedure set forth in Florida Statutes, Chapter 173.[34]

The District Court held that the common law principal of "first in time, first in right" shall apply here since the Legislature did not grant code enforcement liens priority over prior recorded mortgages or judgment liens. The court further stated that although municipalities are granted broad home rule powers to enact ordinances under Article VII, section 2(b), of the Florida Constitution, such ordinances may not conflict with state statute.[35] The court held that the enacted Palm Bay ordinance conflicted with s. 695.11, F.S., which codifies the "the common law rule of first in time, first in right."[36]

III. Effect of Proposed Changes:

Section 1 amends s. 162.12, F.S., to amend the notice requirements relating to a municipal or county code violation. Specifically, the bill allows notice to be sent to *either* the address listed in the tax collector's office *or* any other address provided by the property owner in writing to the local government for purposes of receiving notice. Current law requires notice to be sent to both addresses. The bill also states that in instances where said property is owned by a business, notice may be provided by certified mail to the registered agent of the corporation.

[31] Sections 173.10 and 173.11, F.S.
[32] *City of Palm Bay v. Wells Fargo Bank, N.A.,* No. 5D09-1810, 2011 WL 180363 (5th DCA January 2011).
[33] *Id.*
[34] *Id.* at *1 *referencing* Palm Bay enacted ordinance 97-07 (alterations to original) (citations omitted).
[35] *Id*.
[36] *Id.*

If the notice is not signed as being received within 30 days after the date of mailing, the bill states that notice may be provided by posting under the procedures in subparagraphs (2)(b)1. and 2., of s. 162.12, F.S.

Section 2 amends s. 162.21, F.S., to allow a code enforcement officer to immediately issue a citation for a code violation if the violator is engaged in violations of an itinerant or transient nature.

Section 3 amends s. 173.01, F.S., to authorize a municipality or its assignee to foreclose on an abatement assessment lien against real property.

Section 4 amends s. 173.03, F.S., to allow a municipality or its assignee to enforce an abatement assessment lien by filing suit in chancery in circuit court one year from the date the assessment lien is recorded in the public records of the county where the property is located or upon conclusion of any administrative or judicial proceeding challenging the lien, whichever is later.

Section 5 amends s. 173.04, F.S., to authorize a municipality or its assignee to enforce an abatement assessment lien in circuit court by a bill of chancery.

Section 6 creates s. 173.16, F.S., to allow a municipality to assign[37] an abatement assessment lien that it has imposed against real property to a private party for consideration[38] if the lien has been recorded in the official records of the county where the property is located.

The bill describes an abatement assessment lien as a lien for the assessment of costs to abate conditions on property that pose a threat to the public health, safety, and welfare.

Section 7 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[37] The term "assignment" means "the transfer of rights or property," the term "assignment of rights" means "the transfer of rights, esp. contractual rights from one party to another." *See* BLACK'S LAW DICTIONARY 47 (2d ed. 2001).
[38] The term "consideration" means "something of value received by a promisor from a promise." *See* BLACK'S LAW DICTIONARY 131 (2d ed. 2001).

D. Other Constitutional Issues:

This bill authorizes a municipality or its assignee to foreclose on an abatement assessment lien against real property. However, the bill does not provide an exemption from this amendment for homestead property under Article X, section 4, of the Florida Constitution.

Article X, section 4, of the Florida Constitution, addresses homestead exemptions; subsection (a) provides that:

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty . . .

Since this is not a lien for the nonpayment of "taxes or assessments thereon," nor is it an "improvement, repair, or labor on the property" that the homestead owner "contracted" for, the provisions of this bill may violate Article X, Section 4, of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners who are in violation of a municipal or county code will no longer be given reasonable time to remedy prior to issuing a citation of a code violation if the violation is of "an itinerant or transient nature."

Property owners whose property is subject to a municipal abatement assessment lien, as established in this bill, may be subject to foreclosure and suit in the circuit court by a bill in chancery.

Private parties will be authorized to take assignment of the rights to a municipal abatement assessment lien for consideration, so long as the lien has been recorded in the official records in the county where the property is located.

C. Government Sector Impact:

Municipalities or its assignees will be authorized to foreclose on property subject to an abatement assessment lien and will be permitted to enforce such lien in a circuit court by a bill in chancery.

Municipalities will be able to assign the rights of its abatement assessment liens to private parties for consideration if the lien has been recorded in the official records in the county where the property is located.

VI. Technical Deficiencies:

The term "abatement assessment lien" is currently not defined in Florida Statutes and other references to the term "abatement" in Florida Statutes are inconsistent with the intent of this bill. For these reasons, the sponsor may want to consider defining the term "abatement assessment lien" as it is used in this bill.

Assuming that the term "assessment" in "abatement assessment lien" refers to the amount in costs that a municipality incurs in abating the conditions on the real property that pose a threat to the public health, safety, and welfare (as stated on lines 233-238 of the bill), then the sponsor may want to consider revising the use of such term herein to avoid confusion with the general use of the term "assessment" as it is used in Florida Statutes for the tax assessment value of real property.

VII. Related Issues:

Section 173.09, F.S., addresses the sale of real property foreclosed upon for the nonpayment of taxes, tax certificates, and special assessments. This section requires the special magistrate to sell such parcels separately to the highest and best bidder.[39]

The sponsor may want to amend the assignment provisions in section 6 of the bill to require any sales under the assignment to a private party to be granted to the highest and best bidder.

The sponsor may also want to state that any assignment that assigns an interest in the abatement assessment lien to a private party in exchange for labor on the property shall be assigned to the lowest and best bidder.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[39] Section 173.09(1), F.S.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 89 - 97
and insert:

ARTICLE XII
SCHEDULE

SECTION 32. Disabled veterans' property taxes.—The amendment to subsection (e) of Section 6 of Article VII relating to the property tax discount for disabled veterans and this section shall take effect January 1, 2013.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

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CONSTITUTIONAL AMENDMENT
ARTICLE VII, SECTION 6
ARTICLE XII, SECTION 32

DISABLED VETERANS' PROPERTY TAX DISCOUNT.—Proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to expand the availability of the property tax discount on homesteads of veterans who became disabled as the result of a combat injury to include those who were not Florida residents when they entered the military, and to schedule the amendment to take effect January 1, 2013.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 11 - 12

and insert:

That the following amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

of Article VII and the creation of Section 32 of Article XII of the State Constitution to expand the availability of the ad valorem tax discount for disabled veterans to include those who were not Florida residents when they entered military service

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and to provide an effective date.

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 Community Affairs Committee

BILL:	SJR 592
INTRODUCER:	Senators Bennett and Sachs
SUBJECT:	Veteran's Property Tax Discount
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Favorable**
2.	Gizzi	Yeatman	CA	**Pre-meeting**
3.			BC	
4.			RC	
5.				
6.				

I. Summary:

Senate Joint Resolution (SJR) 592 proposes an amendment to Article VII, section 6 of the Florida Constitution, to allow partially or totally disabled veterans who were not Florida residents at the time of entering military service to qualify for the disabled veterans' ad valorem tax discount on homestead property.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Property Valuation

A.) Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

B.) Assessed Value

Section 4 also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational

[1] *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.

The "Save Our Homes" provision in Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of three percent or the Consumer Price Index (CPI).[2] If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law. In 2008, Florida voters approved an additional amendment to article VII, section 4(d), of the Florida Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

C.) Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[3]

Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[4]

A.) Homestead Exemption

Article VII, section 6 of the Florida Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

B.) Additional Tax Exemptions

Article VII, section 3 of the Florida Constitution, provides additional tax exemptions for certain types of property. These exemptions include but are not limited to:

- Exemptions for municipal property that is used for a municipal or public purpose;
- Exemptions for household goods and personal effects up to a certain amount specified by general law not less than one thousand dollars;
- Widows/widowers exemptions up to a certain amount specified in general law not less than $500;

[2] FLA. CONST. art. VII, s. 4(d).
[3] FLA. CONST. art. VII, ss. 3 and 6.
[4] *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). See also, *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978). *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

- Economic development exemptions created by county or municipal ordinance for new businesses and expansions of existing businesses;
- Historic preservation exemptions;
- $25,000 tax exemption for tangible personal property; and
- Exemptions for real property dedicated in perpetuity for conservation purposes.[5]

Property Tax Exemptions for Ex-Service Members

In recognition of their service and sacrifice for our country the State of Florida has granted a number of ad valorem tax exemptions for ex-service members.

A.) Total Ad Valorem Tax Exemption for Ex-Service Members
Section 196.081, F.S., provides that:

> Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt from taxation, . . . [provided] . . . the veteran is a permanent resident of the state on January 1 of the tax year for which exemption is being claimed or on January 1 of the year the veteran died.

Section 196.091, F.S., further provides that:

> Any real estate used and owned as a homestead by an ex-service member who has been honorably discharged with a service-connected total disability and who has a certificate from the United States Government or United States Department of Veterans Affairs or its predecessor, or its successors, certifying that the ex-service member is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheelchair for his or her transportation is exempt from taxation.

B.) $5,000 Ad Valorem Tax Exemption for Ex-Service Members
Section 196.24, F.S., provides a $5,000 property tax exemption to any ex-service member who is a bona fide resident of the state and who has a service-connected disability to a degree of 10% or more. This exemption also applies to the un-remarried surviving spouse of a disabled ex-service member who had been married to such ex-service member for at least 5 years on the date of his/her death.

C.) Combat Related Partial Ad Valorem Tax Exemption (Discount) for Ex-Service Members
Article VII, section 6(e) of the Florida Constitution, grants a discount on ad valorem taxes owed on homestead property for veterans who are 65 years or older and who are partially or totally disabled. In order to qualify for the discount, the veteran must submit proof of the veteran's disability percentage to the county property appraiser and must show that the:

[5] FLA. CONST. art. VII, s. 3(a)-(f).

- Disability was combat related;
- Veteran was a Florida resident at the time he/she entered the US military; and
- Veteran was honorably discharged.[6]

The ad valorem tax discount percentage shall be equal to the veteran's percentage of disability, as determined by the United States Department of Veterans Affairs.

In 2010, 1,206 veterans received the Disabled Veteran's Homestead Discount which amounted to a total discount of $28,749,630. During that time, the average discount paid was $23,839.[7] The U. S. Department of Veterans Affairs (USDVA) indicates that there were 249,565 veterans in Florida receiving compensation for service-related conditions at the end of Fiscal Year 2010.[8]

The following table illustrates the number of veterans by percentage of assessed disability:

Number of Veterans in Florida Receiving Service-Connected Compensation by Percentage of Assessed Disability FY-2010

0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
881	65,812	36,742	29,009	23,662	15,494	18,762	16,986	12,976	6,945	22,296

Source: Florida Department of Veterans' Affairs [9]

III. Effect of Proposed Changes:

SJR 592 proposes an amendment to Article VII, section 6 of the Florida Constitution, to allow totally or partially disabled veterans who were not Florida residents at the time of entering military service to qualify for the disabled veteran's ad valorem tax discount on homestead property.

The joint resolution also deletes an effective date reference in the section that would become outdated upon passage of the amendment.

This joint resolution provides no effective date for the constitutional amendment. In accordance with Article XI, section 5 of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

[6] *See also* s. 196.082, F.S.
[7] Revenue Estimating Conference, *Disabled Veterans' Property Tax Discount SJR 592 & HJR 439* (March 11, 2011).
[8] Conversation with Florida Department of Veterans' Affairs (Response to information request by Senate Military Affairs, Space, and Domestic Security Committee) (Feb. 1, 2011).
[9] *Id.* (**Note:** The number of veterans in this population who were 65 years of age or older by percentage category, the number who were Florida residents at the time of entry into military service, and the number of veterans whose compensation is the result of combat are indeterminate at this time.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments
Section 1, Art. XI of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State, or at a special election held for that purpose.

Section 5(d), Art. XI of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

Section 5(e), Art. XI of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If approved by the voters, this bill will allow partially or totally disabled veterans who were not Florida residents when they entered the military to qualify for the disabled veterans' ad valorem tax discount on homestead property.

B. Private Sector Impact:

If approved by the voters, veterans who were not Florida residents when they entered the military and who became partially or totally disabled as a result of combat injury will qualify for the disabled veterans' ad valorem tax discount on homestead property.

C. Government Sector Impact:

Since this amendment requires voter approval, the Revenue Estimating Conference has adopted an indeterminate negative estimate for SJR 592. Should the electorate approve the proposal, the Revenue Estimating Conference estimates that the expected impact on school taxes would be as follows:[10]

FY 2013-14	FY 2014-15	FY 2015-16
-$1.1 million cash	-$2.3 million cash	-$3.6 million cash
-$3.5 million recurring	-$3.5 million recurring	-$3.6 million recurring

The expected impacts on non-school taxes would be as follows:[11]

FY 2013-14	FY 2014-15	FY 2015-16
-$1.3 million cash	-$2.6 million cash	-$4.0 million cash
-$3.8 million recurring	-$3.9 million recurring	-$4.0 million recurring

The Florida Department of Veterans' Affairs estimates the maximum number of veterans who may qualify for the benefit proposed in this bill to be approximately 74,000.[12]

If approved by the voters, the Florida Department of Revenue states that it would need to amend form DR-501DV to remove the current requirement of providing documentation of evidence of Florida residency at the time of entering military service and that it would need to create a new rule in Ch. 12D-7.[13]

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[14] Costs for advertising vary depending upon the length of the amendment. The Division of Elections within the Department of State estimated that the

[10] Revenue Estimating Conference, *Disabled Veterans' Property Tax Discount SJR 592 & HJR 439* (March 11, 2011).
[11] *Id.*
[12] Conversation with Jim Brodie, Legislative Director of Florida Department of Veterans' Affairs (March 15, 2011) (This estimate includes those veterans with a 10 percent to 90 percent disability rating. This estimate does not include veterans who are 100% disabled as those veterans are exempt from taxation pursuant to s. 196.081, F.S.).
[13] Florida Department of Revenue, *SJR 592 Fiscal Analysis,* 2 (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).
[14] FLA. CONST. art. XI, s. 5(d).

average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 163.3161, Florida Statutes, is amended to read:

163.3161 Short title; intent and purpose.—

(1) This part shall be known and may be cited as the "Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act."

(2) ~~In conformity with, and in furtherance of, the purpose of the Florida Environmental Land and Water Management Act of~~

~~1972, chapter 380,~~ It is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and manage ~~control~~ future development consistent with the proper role of local government.

(3) It is the intent of this act to focus the state role in managing growth under this act to protecting the functions of important state resources and facilities.

(4) It is the intent of this act that the ability of ~~its adoption is necessary so that~~ local governments to ~~can~~ preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; ~~prevent the overcrowding of land and avoid undue concentration of population;~~ facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

(5) ~~(4)~~ It is the intent of this act to encourage and ensure ~~assure~~ cooperation between and among municipalities and counties and to encourage and assure coordination of planning and

development activities of units of local government with the planning activities of regional agencies and state government in accord with applicable provisions of law.

(6) ~~(5)~~ It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

(7) ~~(6)~~ It is the intent of this act that the activities of units of local government in the preparation and adoption of comprehensive plans, or elements or portions therefor, shall be conducted in conformity with the provisions of this act.

(8) ~~(7)~~ The provisions of this act in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state.

(9) ~~(8)~~ It is the intent of the Legislature that the repeal of ss. 163.160 through 163.315 by s. 19 of chapter 85-55, Laws of Florida, and amendments to this part by this chapter law, shall not be interpreted to limit or restrict the powers of municipal or county officials, but shall be interpreted as a recognition of their broad statutory and constitutional powers to plan for and regulate the use of land. It is, further, the intent of the Legislature to reconfirm that ss. 163.3161 through 163.3248 ~~163.3215~~ have provided and do provide the necessary

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statutory direction and basis for municipal and county officials to carry out their comprehensive planning and land development regulation powers, duties, and responsibilities.

(10) ~~(9)~~ It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property. Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must be determined in a judicial action.

(11) It is the intent of this part that the traditional economic base of this state, agriculture, tourism, and military presence, be recognized and protected. Further, it is the intent of this part to encourage economic diversification, workforce development, and community planning.

Section 2. Subsections (2) through (5) of section 163.3162, Florida Statutes, are renumbered as subsections (1) through (4), respectively, and present subsections (1) and (5) of that section are amended to read:

163.3162 Agricultural Lands and Practices ~~Act~~.—

~~(1) SHORT TITLE.—This section may be cited as the "Agricultural Lands and Practices Act."~~

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(4)~~(5)~~ AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.—The owner of a parcel of land defined as an agricultural enclave under s. 163.3164~~(33)~~ may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3184 ~~163.3187~~. Such amendment is presumed not to be urban sprawl as defined in s. 163.3164 if it includes ~~consistent with rule 9J-5.006(5), Florida Administrative Code, and may include~~ land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. This presumption may be rebutted by clear and convincing evidence. Each application for a comprehensive plan amendment under this subsection for a parcel larger than 640 acres must include appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights.

(a) The local government and the owner of a parcel of land that is the subject of an application for an amendment shall have 180 days following the date that the local government receives a complete application to negotiate in good faith to reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Within 30 days after the local government’s receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent

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of the local government and the owner. Compliance with the schedule in the written agreement constitutes good faith negotiations for purposes of paragraph (c).

(b) Upon conclusion of good faith negotiations under paragraph (a), regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review pursuant to s. 163.3184. If the local government fails to transmit the amendment within 180 days after receipt of a complete application, the amendment must be immediately transferred to the state land planning agency for such review ~~at the first available transmittal cycle~~. A plan amendment transmitted to the state land planning agency submitted under this subsection is presumed not to be urban sprawl as defined in s. 163.3164 ~~consistent with rule 9J-5.006(5), Florida Administrative Code~~. This presumption may be rebutted by clear and convincing evidence.

(c) If the owner fails to negotiate in good faith, a plan amendment submitted under this subsection is not entitled to the rebuttable presumption under this subsection in the negotiation and amendment process.

(d) Nothing within this subsection relating to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the following areas:

1. The Wekiva Study Area, as described in s. 369.316; or

2. The Everglades Protection Area, as defined in s.

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373.4592(2).

Section 3. Section 163.3164, Florida Statutes is amended to read:

163.3164 Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act; definitions.—As used in this act, the term:

(1) "Administration Commission" means the Governor and the Cabinet, and for purposes of this chapter the commission shall act on a simple majority vote, except that for purposes of imposing the sanctions provided in s. 163.3184(11), affirmative action shall require the approval of the Governor and at least three other members of the commission.

(2) "Affordable housing" has the same meaning as in s. 420.0004(3).

(4) "Antiquated subdivision" means a subdivision that was recorded or approved more than 20 years ago and that has substantially failed to be built and the continued buildout of the subdivision in accordance with the subdivision's zoning and land use purposes would cause an imbalance of land uses and would be detrimental to the local and regional economies and environment, hinder current planning practices, and lead to inefficient and fiscally irresponsible development patterns as determined by the respective jurisdiction in which the subdivision is located.

(5) ~~(2)~~ "Area" or "area of jurisdiction" means the total area qualifying under the provisions of this act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands within a county, or

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areas comprising combinations of the lands in incorporated municipalities and unincorporated areas of counties.

(6) "Capital improvement" means physical assets constructed or purchased to provide, improve, or replace a public facility and which are typically large scale and high in cost. The cost of a capital improvement is generally nonrecurring and may require multiyear financing. For the purposes of this part, physical assets that have been identified as existing or projected needs in the individual comprehensive plan elements shall be considered capital improvements.

(7) ~~(3)~~ "Coastal area" means the 35 coastal counties and all coastal municipalities within their boundaries ~~designated coastal by the state land planning agency~~.

(8) "Compatibility" means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

(9) ~~(4)~~ "Comprehensive plan" means a plan that meets the requirements of ss. 163.3177 and 163.3178.

(10) "Deepwater ports" means the ports identified in s. 403.021(9).

(11) "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

(12) ~~(5)~~ "Developer" means any person, including a governmental agency, undertaking any development as defined in this act.

(13) ~~(6)~~ "Development" has the same meaning as ~~given it~~ in

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s. 380.04.

(14)~~(7)~~ "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(15)~~(8)~~ "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

(18) "Floodprone areas" means areas inundated during a 100-year flood event or areas identified by the National Flood Insurance Program as an A Zone on flood insurance rate maps or flood hazard boundary maps.

(19) "Goal" means the long-term end toward which programs or activities are ultimately directed.

(20)~~(9)~~ "Governing body" means the board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government, however designated, or the combination of such bodies where joint utilization of the provisions of this act is accomplished as provided herein.

(21)~~(10)~~ "Governmental agency" means:

(a) The United States or any department, commission, agency, or other instrumentality thereof.

(b) This state or any department, commission, agency, or other instrumentality thereof.

(c) Any local government, as defined in this section, or any department, commission, agency, or other instrumentality thereof.

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(d) Any school board or other special district, authority, or governmental entity.

(22) "Intensity" means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

(23) "Internal trip capture" means trips generated by a mixed-use project which travel from one on-site land use to another on-site land use without using the external road network.

(24) ~~(11)~~ "Land" means the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

(27) ~~(12)~~ "Land use" means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or element or portion thereof, land development regulations, or a land development code, as the context may indicate.

(28) "Level of service" means an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility.

(29) ~~(13)~~ "Local government" means any county or municipality.

(30) ~~(14)~~ "Local planning agency" means the agency

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designated to prepare the comprehensive plan or plan amendments required by this act.

(31) "Mobility plan" means an integrated land use and transportation plan that promotes compact, mixed-use, and interconnected development served by a multimodal transportation system that includes roads, bicycle and pedestrian facilities, and, where feasible and appropriate, frequent transit and rail service, to provide individuals with viable transportation options without sole reliance upon a motor vehicle for personal mobility.

(32) ~~(15) A~~ "Newspaper of general circulation" means a newspaper published at least on a weekly basis and printed in the language most commonly spoken in the area within which it circulates, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(33) "New town" means an urban activity center and community designated on the future land use map of sufficient size, population and land use composition to support a variety of economic and social activities consistent with an urban area designation. New towns shall include basic economic activities; all major land use categories, with the possible exception of agricultural and industrial; and a centrally provided full range of public facilities and services that demonstrate internal trip capture. A new town shall be based on a master development plan.

(34) "Objective" means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.

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(35)~~(16)~~ "Parcel of land" means any quantity of land capable of being described with such definiteness that its locations and boundaries may be established, which is designated by its owner or developer as land to be used, or developed as, a unit or which has been used or developed as a unit.

(36)~~(17)~~ "Person" means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(37) "Policy" means the way in which programs and activities are conducted to achieve an identified goal.

(40)~~(18)~~ "Public notice" means notice as required by s. 125.66(2) for a county or by s. 166.041(3)(a) for a municipality. The public notice procedures required in this part are established as minimum public notice procedures.

(41)~~(19)~~ "Regional planning agency" means the council created pursuant to chapter 186 ~~agency designated by the state land planning agency to exercise responsibilities under law in a particular region of the state~~.

(42) "Seasonal population" means part-time inhabitants who use, or may be expected to use, public facilities or services, but are not residents and includes tourists, migrant farmworkers, and other short-term and long-term visitors.

(44)~~(20)~~ "State land planning agency" means the Department of Community Affairs.

(45)~~(21)~~ "Structure" has the same meaning as in ~~given it by~~ s. 380.031(19).

(46) "Suitability" means the degree to which the existing characteristics and limitations of land and water are compatible

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with a proposed use or development.

(47) "Transit-oriented development" means a project or projects, in areas identified in a local government comprehensive plan, which are or will be served by existing or planned transit service. These designated areas shall be compact, moderate to high density developments, of mixed-use character, interconnected with other land uses, bicycle and pedestrian friendly, and designed to support frequent transit service operating through, collectively or separately, rail, fixed guideway, streetcar, or bus systems on dedicated facilities or available roadway connections.

(25) ~~(22)~~ "Land development regulation commission" means a commission designated by a local government to develop and recommend, to the local governing body, land development regulations that ~~which~~ implement the adopted comprehensive plan and to review land development regulations, or amendments thereto, for consistency with the adopted plan and report to the governing body regarding its findings. The responsibilities of the land development regulation commission may be performed by the local planning agency.

(26) ~~(23)~~ "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition shall not apply in s. 163.3213.

(39) ~~(24)~~ "Public facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water,

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educational, parks and recreational, and health systems and facilities, and spoil disposal sites for maintenance dredging located in the intracoastal waterways, except for spoil disposal sites owned or used by ports listed in s. 403.021(9)(b).

(16) ~~(25)~~ "Downtown revitalization" means the physical and economic renewal of a central business district of a community as designated by local government, and includes both downtown development and redevelopment.

(50) ~~(26)~~ "Urban redevelopment" means demolition and reconstruction or substantial renovation of existing buildings or infrastructure within urban infill areas, existing urban service areas, or community redevelopment areas created pursuant to part III.

(49) ~~(27)~~ "Urban infill" means the development of vacant parcels in otherwise built-up areas where public facilities such as sewer systems, roads, schools, and recreation areas are already in place and the average residential density is at least five dwelling units per acre, the average nonresidential intensity is at least a floor area ratio of 1.0 and vacant, developable land does not constitute more than 10 percent of the area.

(38) ~~(28)~~ "Projects that promote public transportation" means projects that directly affect the provisions of public transit, including transit terminals, transit lines and routes, separate lanes for the exclusive use of public transit services, transit stops (shelters and stations), office buildings or projects that include fixed-rail or transit terminals as part of the building, and projects that ~~which~~ are transit oriented and designed to complement reasonably proximate planned or existing

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public facilities.

(51) ~~(29)~~ "Urban service area" means ~~built-up~~ areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are committed in the first 3 years of the capital improvement schedule. Urban service area includes any areas identified in the comprehensive plan as urban service areas, regardless of local government limitation. ~~In addition, for counties that qualify as dense urban land areas under subsection (34), the nonrural area of a county which has adopted into the county charter a rural area designation or areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009, are also urban service areas under this definition.~~

(52) "Urban sprawl" means a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses.

(48) ~~(30)~~ "Transportation corridor management" means the coordination of the planning of designated future transportation corridors with land use planning within and adjacent to the corridor to promote orderly growth, to meet the concurrency requirements of this chapter, and to maintain the integrity of the corridor for transportation purposes.

(43) ~~(31)~~ "~~Optional~~ Sector plan" means the ~~an optional~~ process authorized by s. 163.3245 in which one or more local governments engage in long-term planning for a large area and ~~by~~

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~~agreement with the state land planning agency are allowed to~~ address regional ~~development-of-regional-impact~~ issues through adoption of detailed specific area plans within the planning area ~~within certain designated geographic areas identified in the local comprehensive plan~~ as a means of fostering innovative planning and development strategies ~~in s. 163.3177(11)(a) and (b)~~, furthering the purposes of this part and part I of chapter 380, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts. "Sector plan" includes an optional sector plan that was adopted pursuant to the Optional Sector Plan pilot program.

(17) ~~(32)~~ "Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources of any local government for the first 3 years, or will be available from committed or planned funding sources for years 4 through 10, of a 10-year ~~and 5, of a 5-year~~ capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. A comprehensive plan shall be deemed financially feasible for transportation and school facilities throughout the planning period addressed by the capital improvements schedule if it can be demonstrated that the level-of-service standards will be achieved and maintained by the end of the planning

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period even if in a particular year such improvements are not concurrent as required by s. 163.3180.

(3) ~~(33)~~ "Agricultural enclave" means an unincorporated, undeveloped parcel that:

(a) Is owned by a single person or entity;

(b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years prior to the date of any comprehensive plan amendment application;

(c) Is surrounded on at least 75 percent of its perimeter by:

1. Property that has existing industrial, commercial, or residential development; or

2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure in order to ensure consistency with applicable concurrency provisions of s. 163.3180; and

(e) Does not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000

residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.

~~(34) "Dense urban land area" means:~~

~~(a) A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;~~

~~(b) A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or~~

~~(c) A county, including the municipalities located therein, which has a population of at least 1 million.~~

~~The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and Demographic Research shall submit to the state land planning agency a list of jurisdictions that meet the total population and density criteria necessary for designation as a dense urban land area by July 1, 2009, and every year thereafter. The state land planning agency shall publish the list of jurisdictions on~~

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~~its Internet website within 7 days after the list is received. The designation of jurisdictions that qualify or do not qualify as a dense urban land area is effective upon publication on the state land planning agency's Internet website.~~

Section 4. Section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(1) The several incorporated municipalities and counties shall have power and responsibility:

(a) To plan for their future development and growth.

(b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.

(c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.

(d) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.

The powers and authority set out in this act may be employed by municipalities and counties individually or jointly by mutual agreement in accord with the provisions of this act and in such combinations as their common interests may dictate and require.

(2) Each local government shall maintain ~~prepare~~ a comprehensive plan of the type and in the manner set out in this part or prepare amendments to its existing comprehensive plan to conform it to the requirements of this part and in the manner set out in this part. In accordance with s. 163.3184, each local government shall submit to the state land planning agency its

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complete proposed comprehensive plan or its complete comprehensive plan as proposed to be amended.

~~(3) When a local government has not prepared all of the required elements or has not amended its plan as required by subsection (2), the regional planning agency having responsibility for the area in which the local government lies shall prepare and adopt by rule, pursuant to chapter 120, the missing elements or adopt by rule amendments to the existing plan in accordance with this act by July 1, 1989, or within 1 year after the dates specified or provided in subsection (2) and the state land planning agency review schedule, whichever is later. The regional planning agency shall provide at least 90 days' written notice to any local government whose plan it is required by this subsection to prepare, prior to initiating the planning process. At least 90 days before the adoption by the regional planning agency of a comprehensive plan, or element or portion thereof, pursuant to this subsection, the regional planning agency shall transmit a copy of the proposed comprehensive plan, or element or portion thereof, to the local government and the state land planning agency for written comment. The state land planning agency shall review and comment on such plan, or element or portion thereof, in accordance with s. 163.3184(6). Section 163.3184(6), (7), and (8) shall be applicable to the regional planning agency as if it were a governing body. Existing comprehensive plans shall remain in effect until they are amended pursuant to subsection (2), this subsection, s. 163.3187, or s. 163.3189.~~

(3) ~~(4)~~ A municipality established after the effective date of this act shall, within 1 year after incorporation, establish

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a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan shall be deemed controlling until the municipality adopts a comprehensive plan in accord with the provisions of this act. ~~If, upon the expiration of the 3-year time limit, the municipality has not adopted a comprehensive plan, the regional planning agency shall prepare and adopt a comprehensive plan for such municipality.~~

(4) ~~(5)~~ Any comprehensive plan, or element or portion thereof, adopted pursuant to the provisions of this act, which but for its adoption after the deadlines established pursuant to previous versions of this act would have been valid, shall be valid.

~~(6) When a regional planning agency is required to prepare or amend a comprehensive plan, or element or portion thereof, pursuant to subsections (3) and (4), the regional planning agency and the local government may agree to a method of compensating the regional planning agency for any verifiable, direct costs incurred. If an agreement is not reached within 6 months after the date the regional planning agency assumes planning responsibilities for the local government pursuant to subsections (3) and (4) or by the time the plan or element, or portion thereof, is completed, whichever is earlier, the regional planning agency shall file invoices for verifiable, direct costs involved with the governing body. Upon the failure of the local government to pay such invoices within 90 days, the regional planning agency may, upon filing proper vouchers with the Chief Financial Officer, request payment by the Chief~~

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~~Financial Officer from unencumbered revenue or other tax sharing funds due such local government from the state for work actually performed, and the Chief Financial Officer shall pay such vouchers; however, the amount of such payment shall not exceed 50 percent of such funds due such local government in any one year.~~

~~(7) A local government that is being requested to pay costs may seek an administrative hearing pursuant to ss. 120.569 and 120.57 to challenge the amount of costs and to determine if the statutory prerequisites for payment have been complied with. Final agency action shall be taken by the state land planning agency. Payment shall be withheld as to disputed amounts until proceedings under this subsection have been completed.~~

(5) ~~(8)~~ Nothing in this act 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.

(6) ~~(9)~~ The Reedy Creek Improvement District shall exercise the authority of this part as it applies to municipalities, consistent with the legislative act under which it was established, for the total area under its jurisdiction.

(7) ~~(10)~~ Nothing in this part shall supersede any provision of ss. 341.8201-341.842.

~~(11) Each local government is encouraged to articulate a vision of the future physical appearance and qualities of its community as a component of its local comprehensive plan. The vision should be developed through a collaborative planning~~

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~~process with meaningful public participation and shall be adopted by the governing body of the jurisdiction. Neighboring communities, especially those sharing natural resources or physical or economic infrastructure, are encouraged to create collective visions for greater-than-local areas. Such collective visions shall apply in each city or county only to the extent that each local government chooses to make them applicable. The state land planning agency shall serve as a clearinghouse for creating a community vision of the future and may utilize the Growth Management Trust Fund, created by s. 186.911, to provide grants to help pay the costs of local visioning programs. When a local vision of the future has been created, a local government should review its comprehensive plan, land development regulations, and capital improvement program to ensure that these instruments will help to move the community toward its vision in a manner consistent with this act and with the state comprehensive plan. A local or regional vision must be consistent with the state vision, when adopted, and be internally consistent with the local or regional plan of which it is a component. The state land planning agency shall not adopt minimum criteria for evaluating or judging the form or content of a local or regional vision.~~

(8) ~~(12)~~ An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment ~~that affects five or fewer parcels of land~~ is prohibited.

(9) ~~(13)~~ Each local government shall address in its comprehensive plan, as enumerated in this chapter, the water supply sources necessary to meet and achieve the existing and

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projected water use demand for the established planning period, considering the applicable plan developed pursuant to s. 373.709.

(10) ~~(14)~~ (a) If a local government grants a development order pursuant to its adopted land development regulations and the order is not the subject of a pending appeal and the timeframe for filing an appeal has expired, the development order may not be invalidated by a subsequent judicial determination that such land development regulations, or any portion thereof that is relevant to the development order, are invalid because of a deficiency in the approval standards.

(b) This subsection does not preclude or affect the timely institution of any other remedy available at law or equity, including a common law writ of certiorari proceeding pursuant to Rule 9.190, Florida Rules of Appellate Procedure, or an original proceeding pursuant to s. 163.3215, as applicable.

~~(c) This subsection applies retroactively to any development order granted on or after January 1, 2002.~~

Section 5. Section 163.3168, Florida Statutes, is created to read:

163.3168 Planning innovations and technical assistance.—

(1) The Legislature recognizes the need for innovative planning and development strategies to promote a diverse economy and vibrant rural and urban communities, while protecting environmentally sensitive areas. The Legislature further recognizes the substantial advantages of innovative approaches to development directed to meet the needs of urban, rural, and suburban areas.

(2) Local governments are encouraged to apply innovative

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planning tools, including, but not limited to, visioning, sector planning, and rural land stewardship area designations to address future new development areas, urban service area designations, urban growth boundaries, and mixed-use, high-density development in urban areas.

(3) The state land planning agency shall help communities find creative solutions to fostering vibrant, healthy communities, while protecting the functions of important state resources and facilities. The state land planning agency and all other appropriate state and regional agencies may use various means to provide direct and indirect technical assistance within available resources. If plan amendments may adversely impact important state resources or facilities, upon request by the local government, the state land planning agency shall coordinate multi-agency assistance, if needed, in developing an amendment to minimize impacts on such resources or facilities.

Section 6. Subsection (4) of section 163.3171, Florida Statutes, is amended to read:

163.3171 Areas of authority under this act.—

(4) ~~The state land planning agency and a~~ Local governments may ~~government shall have the power to~~ enter into agreements with each other and ~~to agree together to enter into agreements~~ with a landowner, developer, or governmental agency as may be necessary or desirable to effectuate the provisions and purposes of ss. 163.3177(6)(h), ~~and (11)(a), (b), and (c), and~~ 163.3245, and 163.3248. It is the Legislature's intent that joint agreements entered into under the authority of this section be liberally, broadly, and flexibly construed to facilitate intergovernmental cooperation between cities and counties and to

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encourage planning in advance of jurisdictional changes. Joint agreements, executed before or after the effective date of this act, include, but are not limited to, agreements that contemplate municipal adoption of plans or plan amendments for lands in advance of annexation of such lands into the municipality, and may permit municipalities and counties to exercise nonexclusive extrajurisdictional authority within incorporated and unincorporated areas. The state land planning agency shall not have authority to interpret, invalidate, or declare inoperative such joint agreements, and the validity of joint agreements may not be a basis for finding plans or plan amendments not in compliance pursuant to the provisions of chapter law.

Section 7. Subsection (1) of section 163.3174, Florida Statutes, is amended to read:

163.3174 Local planning agency.—

(1) The governing body of each local government, individually or in combination as provided in s. 163.3171, shall designate and by ordinance establish a "local planning agency," unless the agency is otherwise established by law. Notwithstanding any special act to the contrary, all local planning agencies or equivalent agencies that first review rezoning and comprehensive plan amendments in each municipality and county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. However,

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this subsection does not prevent the governing body of the local government from granting voting status to the school board member. The governing body may designate itself as the local planning agency pursuant to this subsection with the addition of a nonvoting school board representative. ~~The governing body shall notify the state land planning agency of the establishment of its local planning agency.~~ All local planning agencies shall provide opportunities for involvement by applicable community college boards, which may be accomplished by formal representation, membership on technical advisory committees, or other appropriate means. The local planning agency shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. 163.02, provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law.

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities

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therein shall be as stipulated in the charter.

Section 8. Section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall provide the ~~consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of~~ principles, guidelines, ~~and~~ standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the

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content of more detailed land development and use regulations.

(a) The comprehensive plan shall consist of elements as described in this section, and may include optional elements.

(b) A local government may include, as part of its adopted plan, documents adopted by reference but not incorporated verbatim into the plan. The adoption by reference must identify the title and author of the document and indicate clearly what provisions and edition of the document is being adopted.

(c) The format of these principles and guidelines is at the discretion of the local government, but typically is expressed in goals, objectives, policies, and strategies.

(d) Proposed elements shall identify procedures for monitoring, evaluating, and appraising implementation of the plan.

(e) When a federal, state, or regional agency has implemented a regulatory program, a local government is not required to duplicate or exceed that regulatory program in its local comprehensive plan.

(f) All mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon a justification by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment. To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.

1. Surveys, studies, and data utilized in the preparation of the comprehensive plan shall not be deemed a part of the

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comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, data, and supporting documents shall be made available for public inspection, and copies of such plans shall be made available to the public upon payment of reasonable charges for reproduction. Support data or summaries shall not be subject to the compliance review process, but the comprehensive plan must be clearly based on appropriate data. Support data or summaries may be used to aid in the determination of compliance and consistency.

2. Data must be taken from professionally accepted sources. The application of a methodology utilized in data collection or whether a particular methodology is professionally accepted may be evaluated. However, the evaluation shall not include whether one accepted methodology is better than another. Original data collection by local governments is not required. However, local governments may use original data so long as methodologies are professionally accepted.

3. The comprehensive plan shall be based upon resident and seasonal population estimates and projections, which shall either be those provided by the University of Florida's Bureaus of Economic and Business Research or generated by the local government based upon a professionally acceptable methodology. The plan must be based on at least the minimum amount of land required to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research unless otherwise limited under s. 380.05 including related rules of the Administration Commission.

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning

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process. The several elements of the comprehensive plan shall be consistent, and the comprehensive plan shall be financially feasible. Financial feasibility shall be determined using professionally accepted methodologies and applies to the 5-year planning period~~, except in the case of a long-term transportation or school concurrency management system, in which case a 10-year or 15-year period applies.~~ Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new supporting data and analysis. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements and each such map must be contained within the comprehensive plan.

(3)(a) The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities and set forth:

1. A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5-year period.

2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.

3. Standards to ensure the availability of public

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facilities and the adequacy of those facilities including acceptable levels of service.

4. Standards for the management of debt.

5. A schedule of capital improvements which includes any project publicly funded by federal, state, or local government ~~projects~~, and which may include privately funded projects for which the local government has no fiscal responsibility, necessary to ensure that adopted level-of-service standards are achieved and maintained. For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement pursuant to paragraph (10)(h), or other enforceable agreement. These development agreements and interlocal agreements shall be reflected in the schedule of capital improvements if the capital improvement is necessary to serve development within the 5-year schedule. If the local government uses planned revenue sources that require referenda or other actions to secure the revenue source, the plan must, in the event the referenda are not passed or actions do not secure the planned revenue source, identify other existing revenue sources that will be used to fund the capital projects or otherwise amend the plan to ensure financial feasibility.

6. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8) to the extent that such improvements are relied upon to ensure concurrency or implementation of a mobility plan as defined in s. 163.3164(36) and financial feasibility. The schedule must also be coordinated with the applicable

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metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

(b)~~1.~~ The capital improvements element must be reviewed on an annual basis and modified as necessary in accordance with s. 163.3187 ~~or s. 163.3189~~ in order to maintain a financially feasible 5-year schedule of capital improvements. Corrections and modifications concerning costs; revenue sources; or acceptance of facilities pursuant to dedications which are consistent with the plan may be accomplished by ordinance and shall not be deemed to be amendments to the local comprehensive plan. A copy of the ordinance shall be transmitted to the state land planning agency. ~~An amendment to the comprehensive plan is required to update the schedule on an annual basis or to eliminate, defer, or delay the construction for any facility listed in the 5-year schedule.~~ All public facilities must be consistent with the capital improvements element. The ~~annual update to the~~ capital improvements element of the comprehensive plan need not comply with the financial feasibility requirement until December 1, 2013 ~~2011~~. Thereafter, a local government may not amend its future land use map, except for plan amendments to meet new requirements under this part and emergency amendments pursuant to s. 163.3187(1)(a), after December 1, 2013 ~~2011~~, and every year thereafter, unless and until the local government has a financially feasible capital improvements element~~adopted the annual update and it has been transmitted to the state land planning agency~~.

~~2. Capital improvements element amendments adopted after the effective date of this act shall require only a single public hearing before the governing board which shall be an~~

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~~adoption hearing as described in s. 163.3184(7). Such amendments are not subject to the requirements of s. 163.3184(3)-(6).~~

~~(c) If the local government does not adopt the required annual update to the schedule of capital improvements, the state land planning agency must notify the Administration Commission. A local government that has a demonstrated lack of commitment to meeting its obligations identified in the capital improvements element may be subject to sanctions by the Administration Commission pursuant to s. 163.3184(11).~~

~~(d) If a local government adopts a long-term concurrency management system pursuant to s. 163.3180(9), it must also adopt a long-term capital improvements schedule covering up to a 10-year or 15-year period, and must update the long-term schedule annually. The long-term schedule of capital improvements must be financially feasible.~~

~~(e) At the discretion of the local government and notwithstanding the requirements of this subsection, a comprehensive plan, as revised by an amendment to the plan's future land use map, shall be deemed to be financially feasible and to have achieved and maintained level-of-service standards as required by this section with respect to transportation facilities if the amendment to the future land use map is supported by a:~~

~~1. Condition in a development order for a development of regional impact or binding agreement that addresses proportionate-share mitigation consistent with s. 163.3180(12); or~~

~~2. Binding agreement addressing proportionate fair-share mitigation consistent with s. 163.3180(16)(f) and the property~~

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~~subject to the amendment to the future land use map is located within an area designated in a comprehensive plan for urban infill, urban redevelopment, downtown revitalization, urban infill and redevelopment, or an urban service area. The binding agreement must be based on the maximum amount of development identified by the future land use map amendment or as may be otherwise restricted through a special area plan policy or map notation in the comprehensive plan.~~

~~(f) A local government's comprehensive plan and plan amendments for land uses within all transportation concurrency exception areas that are designated and maintained in accordance with s. 163.3180(5) shall be deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.~~

(4)(a) Coordination of the local comprehensive plan with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region; with the appropriate water management district's regional water supply plans approved pursuant to s. 373.709; with adopted rules pertaining to designated areas of critical state concern; and with the state comprehensive plan shall be a major objective of the local comprehensive planning process. To that end, in the preparation of a comprehensive plan or element thereof, and in the comprehensive plan or element as adopted, the governing body shall include a specific policy statement indicating the relationship of the proposed development of the area to the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region and to the state comprehensive plan, as the case may require and as such adopted plans or plans

in preparation may exist.

(b) When all or a portion of the land in a local government jurisdiction is or becomes part of a designated area of critical state concern, the local government shall clearly identify those portions of the local comprehensive plan that shall be applicable to the critical area and shall indicate the relationship of the proposed development of the area to the rules for the area of critical state concern.

(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period. Additional planning periods for specific components, elements, land use amendments, or projects shall be permissible and accepted as part of the planning process.

(b) The comprehensive plan and its elements shall contain guidelines or policies ~~policy recommendations~~ for the implementation of the plan and its elements.

(6) In addition to the requirements of subsections (1)-(5) ~~and (12)~~, the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, ~~public buildings and grounds, other~~ public facilities, and other categories of the public and private uses of land. The approximate acreage and the general range of density or intensity of use shall be provided for the gross land area

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included in each existing land use category. The element shall establish the long-term end toward which land use programs and activities are ultimately directed. ~~Counties are encouraged to designate rural land stewardship areas, pursuant to paragraph (11)(d), as overlays on the future land use map.~~

1. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

2. The future land use plan and plan amendments shall be based upon surveys, studies, and data regarding the area, as applicable, including:

a. The amount of land required to accommodate anticipated growth.~~;~~

b. The projected residential and seasonal population of the area.~~;~~

c. The character of undeveloped land.~~;~~

d. The availability of water supplies, public facilities, and services.~~;~~

e. The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.~~;~~

f. The compatibility of uses on lands adjacent to or closely proximate to military installations.~~;~~

g. The compatibility of uses on lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.~~;~~

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h. The discouragement of urban sprawl.~~; energy-efficient land use patterns accounting for existing and future electric power generation and transmission systems; greenhouse gas reduction strategies; and, in rural communities,~~

i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.

j. The need to modify land uses and development patterns within antiquated subdivisions. ~~The future land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act.~~

3. The future land use plan element shall include criteria to be used to:

a. Achieve the compatibility of lands adjacent or closely proximate to military installations, considering factors identified in s. 163.3175(5).~~, and~~

b. Achieve the compatibility of lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

c. Encourage preservation of recreational and commercial working waterfronts for water dependent uses in coastal communities.

d. Encourage the location of schools proximate to urban residential areas to the extent possible.

e. Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services.

f. Ensure the protection of natural and historic resources.

g. Provide for the compatibility of adjacent land uses.

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h. Provide guidelines for the implementation of mixed use development including the types of uses allowed, the percentage distribution among the mix of uses, or other standards, and the density and intensity of each use.

4. ~~In addition, for rural communities,~~ The amount of land designated for future planned uses ~~industrial use~~ shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and ~~be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and~~ may not be limited solely by the projected population ~~of the rural community~~. The element shall accommodate at least the minimum amount of land required to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research at least a 10-year planning period unless otherwise limited under s. 380.05 including related rules of the Administration Commission.

5. The future land use plan of a county may ~~also~~ designate areas for possible future municipal incorporation.

6. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection. ~~For coastal counties, the future land use element must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial~~

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~~working waterfronts as defined in s. 342.07.~~

7. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use. ~~The failure by a local government to comply with these school siting requirements will result in the prohibition of the local government's ability to amend the local comprehensive plan, except for plan amendments described in s. 163.3187(1)(b), until the school siting requirements are met. Amendments proposed by a local government for purposes of identifying the land use categories in which public schools are an allowable use are exempt from the limitation on the frequency of plan amendments contained in s. 163.3187. The future land use element shall include criteria that encourage the location of schools proximate to urban residential areas to the extent possible and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible and to encourage the use of elementary schools as focal points for neighborhoods. For schools serving predominantly rural counties, defined as a county with a population of 100,000 or fewer, an agricultural~~

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~~land use category is eligible for the location of public school facilities if the local comprehensive plan contains school siting criteria and the location is consistent with such criteria~~.

8. Future land use map amendments shall be based upon the following analyses:

a. An analysis of the availability of facilities and services.

b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site.

c. An analysis of the minimum amount of land needed as determined by the local government.

9. The future land use element and any amendment to the future land use element shall discourage the proliferation of urban sprawl.

a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:

(I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.

(II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped

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lands that are available and suitable for development.

(III) Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.

(IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.

(V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.

(VI) Fails to maximize use of existing public facilities and services.

(VII) Fails to maximize use of future public facilities and services.

(VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.

(IX) Fails to provide a clear separation between rural and urban uses.

(X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.

(XI) Fails to encourage a functional mix of uses.

(XII) Results in poor accessibility among linked or related

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land uses.

(XIII) Results in the loss of significant amounts of functional open space.

b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:

(I) Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.

(II) Promotes the efficient and cost-effective provision or extension of public infrastructure and services.

(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.

(IV) Promotes conservation of water and energy.

(V) Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.

(VI) Preserves open space and natural lands and provides for public open space and recreation needs.

(VII) Creates a balance of land uses based upon demands of residential population for the nonresidential needs of an area.

(VIII) Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or

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if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164.

10. The future land use element shall include a future land use map or map series.

a. The proposed distribution, extent, and location of the following uses shall be shown on the future land use map or map series:

(I) Residential.

(II) Commercial.

(III) Industrial.

(IV) Agricultural.

(V) Recreational.

(VI) Conservation.

(VII) Educational.

(VIII) Public.

b. The following areas shall also be shown on the future land use map or map series, if applicable:

(I) Historic district boundaries and designated historically significant properties.

(II) Transportation concurrency management area boundaries or transportation concurrency exception area boundaries.

(III) Multimodal transportation district boundaries.

(IV) Mixed use categories.

c. The following natural resources or conditions shall be shown on the future land use map or map series, if applicable:

(I) Existing and planned public potable waterwells, cones of influence, and wellhead protection areas.

(II) Beaches and shores, including estuarine systems.

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(III) Rivers, bays, lakes, floodplains, and harbors.

(IV) Wetlands.

(V) Minerals and soils.

(VI) Coastal high hazard areas.

11. Local governments required to update or amend their comprehensive plan to include criteria and address compatibility of lands adjacent or closely proximate to existing military installations, or lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02, in their future land use plan element shall transmit the update or amendment to the state land planning agency by June 30, 2012.

(b)1. A transportation element addressing mobility issues in relationship to the size and character of the local government. The purpose of the transportation element shall be to plan for a multimodal transportation system that places emphasis on public transportation systems, where feasible. The element shall provide for a safe, convenient multimodal transportation system, coordinated with the future land use map or map series and designed to support all elements of the comprehensive plan. A local government that has all or part of its jurisdiction included within the metropolitan planning area of a metropolitan planning organization (M.P.O.) pursuant to s. 339.175 shall prepare and adopt a transportation element consistent with this subsection. Local governments that are not located within the metropolitan planning area of an M.P.O. shall address traffic circulation, mass transit, and ports, and aviation and related facilities consistent with this subsection, except that local governments with a population of 50,000 or less shall only be required to address transportation

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circulation. The element shall be coordinated with the plans and programs of any applicable metropolitan planning organization, transportation authority, Florida Transportation Plan, and Department of Transportation's adopted work program. The transportation element shall address

~~(b) A~~ traffic circulation, including ~~element consisting of~~ the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways. Transportation corridors, as defined in s. 334.03, may be designated in the transportation ~~traffic circulation~~ element pursuant to s. 337.273. If the transportation corridors are designated, the local government may adopt a transportation corridor management ordinance. The element shall reflect the data, analysis, and associated principles and strategies relating to:

a. The existing transportation system levels of service and system needs and the availability of transportation facilities and services.

b. The growth trends and travel patterns and interactions between land use and transportation.

c. Existing and projected intermodal deficiencies and needs.

d. The projected transportation system levels of service and system needs based upon the future land use map and the projected integrated transportation system.

e. How the local government will correct existing facility deficiencies, meet the identified needs of the projected transportation system, and advance the purpose of this paragraph and the other elements of the comprehensive plan.

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2. Local governments within a metropolitan planning area designated as an M.P.O. pursuant to s. 339.175 shall also address:

a. All alternative modes of travel, such as public transportation, pedestrian, and bicycle travel.

b. Aviation, rail, seaport facilities, access to those facilities, and intermodal terminals.

c. The capability to evacuate the coastal population before an impending natural disaster.

d. Airports, projected airport and aviation development, and land use compatibility around airports, which includes areas defined in ss. 333.01 and 333.02.

e. An identification of land use densities, building intensities, and transportation management programs to promote public transportation systems in designated public transportation corridors so as to encourage population densities sufficient to support such systems.

3. Mass-transit provisions showing proposed methods for the moving of people, rights-of-way, terminals, and related facilities shall address:

a. The provision of efficient public transit services based upon existing and proposed major trip generators and attractors, safe and convenient public transit terminals, land uses, and accommodation of the special needs of the transportation disadvantaged.

b. Plans for port, aviation, and related facilities coordinated with the general circulation and transportation element.

c. Plans for the circulation of recreational traffic,

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including bicycle facilities, exercise trails, riding facilities, and such other matters as may be related to the improvement and safety of movement of all types of recreational traffic.

4. An airport master plan, and any subsequent amendments to the airport master plan, prepared by a licensed publicly owned and operated airport under s. 333.06 may be incorporated into the local government comprehensive plan by the local government having jurisdiction under this act for the area in which the airport or projected airport development is located by the adoption of a comprehensive plan amendment. In the amendment to the local comprehensive plan that integrates the airport master plan, the comprehensive plan amendment shall address land use compatibility consistent with chapter 333 regarding airport zoning; the provision of regional transportation facilities for the efficient use and operation of the transportation system and airport; consistency with the local government transportation circulation element and applicable M.P.O. long-range transportation plans; the execution of any necessary interlocal agreements for the purposes of the provision of public facilities and services to maintain the adopted level-of-service standards for facilities subject to concurrency; and may address airport-related or aviation-related development. Development or expansion of an airport consistent with the adopted airport master plan that has been incorporated into the local comprehensive plan in compliance with this part, and airport-related or aviation-related development that has been addressed in the comprehensive plan amendment that incorporates the airport master plan, shall not be a development of regional

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impact. Notwithstanding any other general law, an airport that has received a development-of-regional-impact development order pursuant to s. 380.06, but which is no longer required to undergo development-of-regional-impact review pursuant to this subsection, may rescind its development-of-regional-impact order upon written notification to the applicable local government. Upon receipt by the local government, the development-of-regional-impact development order shall be deemed rescinded.

5. The transportation element shall include a map or map series showing the general location of the existing and proposed transportation system features and shall be coordinated with the future land use map or map series. ~~The traffic circulation element shall incorporate transportation strategies to address reduction in greenhouse gas emissions from the transportation sector.~~

(c) A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. The element may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge.

1. Each local government shall address in the data and analyses required by this section those facilities that provide service within the local government's jurisdiction. Local governments that provide facilities to serve areas within other local government jurisdictions shall also address those facilities in the data and analyses required by this section,

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using data from the comprehensive plan for those areas for the purpose of projecting facility needs as required in this subsection. For shared facilities, each local government shall indicate the proportional capacity of the systems allocated to serve its jurisdiction.

2. The element shall describe the problems and needs and the general facilities that will be required for solution of the problems and needs, including correcting existing facility deficiencies. The element shall address coordinating the extension of, or increase in the capacity of, facilities to meet future needs while maximizing the use of existing facilities and discouraging urban sprawl; conservation of potable water resources; and protecting the functions of natural groundwater recharge areas and natural drainage features. The element shall also include a topographic map depicting any areas adopted by a regional water management district as prime groundwater recharge areas for the Floridan or Biscayne aquifers. These areas shall be given special consideration when the local government is engaged in zoning or considering future land use for said designated areas. ~~For areas served by septic tanks, soil surveys shall be provided which indicate the suitability of soils for septic tanks.~~

3. Within 18 months after the governing board approves an updated regional water supply plan, the element must incorporate the alternative water supply project or projects selected by the local government from those identified in the regional water supply plan pursuant to s. 373.709(2)(a) or proposed by the local government under s. 373.709(8)(b). If a local government is located within two water management districts, the local

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government shall adopt its comprehensive plan amendment within 18 months after the later updated regional water supply plan. The element must identify such alternative water supply projects and traditional water supply projects and conservation and reuse necessary to meet the water needs identified in s. 373.709(2)(a) within the local government's jurisdiction and include a work plan, covering at least a 10-year planning period, for building public, private, and regional water supply facilities, including development of alternative water supplies, which are identified in the element as necessary to serve existing and new development. The work plan shall be updated, at a minimum, every 5 years within 18 months after the governing board of a water management district approves an updated regional water supply plan. ~~Amendments to incorporate the work plan do not count toward the limitation on the frequency of adoption of amendments to the comprehensive plan.~~ Local governments, public and private utilities, regional water supply authorities, special districts, and water management districts are encouraged to cooperatively plan for the development of multijurisdictional water supply facilities that are sufficient to meet projected demands for established planning periods, including the development of alternative water sources to supplement traditional sources of groundwater and surface water supplies.

(d) A conservation element for the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources,

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including factors that affect energy conservation.

1. The following natural resources, where present within the local government's boundaries, shall be identified and analyzed and existing recreational or conservation uses, known pollution problems, including hazardous wastes, and the potential for conservation, recreation, use, or protection shall also be identified:

a. Rivers, bays, lakes, wetlands including estuarine marshes, groundwaters, and springs, including information on quality of the resource available.

b. Floodplains.

c. Known sources of commercially valuable minerals.

d. Areas known to have experienced soil erosion problems.

e. Areas that are the location of recreationally and commercially important fish or shellfish, wildlife, marine habitats, and vegetative communities, including forests, indicating known dominant species present and species listed by federal, state, or local government agencies as endangered, threatened, or species of special concern.

2. The element must contain principles, guidelines, and standards for conservation that provide long-term goals and which:

a. Protects air quality.

b. Conserves, appropriately uses, and protects the quality and quantity of current and projected water sources and waters that flow into estuarine waters or oceanic waters and protect from activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas,

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and surface waters used as a source of public water supply.

c. Provides for the emergency conservation of water sources in accordance with the plans of the regional water management district.

d. Conserves, appropriately uses, and protects minerals, soils, and native vegetative communities, including forests, from destruction by development activities.

e. Conserves, appropriately uses, and protects fisheries, wildlife, wildlife habitat, and marine habitat and restricts activities known to adversely affect the survival of endangered and threatened wildlife.

f. Protects existing natural reservations identified in the recreation and open space element.

g. Maintains cooperation with adjacent local governments to conserve, appropriately use, or protect unique vegetative communities located within more than one local jurisdiction.

h. Designates environmentally sensitive lands for protection based on locally determined criteria which further the goals and objectives of the conservation element.

i. Manages hazardous waste to protect natural resources.

j. Protects and conserves wetlands and the natural functions of wetlands.

k. Directs future land uses that are incompatible with the protection and conservation of wetlands and wetland functions away from wetlands. The type, intensity or density, extent, distribution, and location of allowable land uses and the types, values, functions, sizes, conditions, and locations of wetlands are land use factors that shall be considered when directing incompatible land uses away from wetlands. Land uses shall be

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distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other principles, guidelines, standards, and strategies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

3. ~~Local governments shall assess their~~ Current and~~, as well as~~ projected~~, water~~ needs and sources for at least a 10-year period based on the demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet these demands shall be analyzed. The analysis shall consider the existing levels of water conservation, use, and protection and applicable policies of the regional water management district and further must consider~~, considering~~ the appropriate regional water supply plan approved pursuant to s. 373.709, or, in the absence of an approved regional water supply plan, the district water management plan approved pursuant to s. 373.036(2). This information shall be submitted to the appropriate agencies. ~~The land use map or map series contained in the future land use element shall generally identify and depict the following:~~

~~1. Existing and planned waterwells and cones of influence where applicable.~~

~~2. Beaches and shores, including estuarine systems.~~

~~3. Rivers, bays, lakes, flood plains, and harbors.~~

~~4. Wetlands.~~

~~5. Minerals and soils.~~

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~~6. Energy conservation.~~

~~The land uses identified on such maps shall be consistent with applicable state law and rules.~~

(e) A recreation and open space element indicating a comprehensive system of public and private sites for recreation, including, but not limited to, natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, waterways, and other recreational facilities.

(f)1. A housing element consisting of ~~standards, plans, and~~ principles, guidelines, standards, and strategies to be followed in:

a. The provision of housing for all current and anticipated future residents of the jurisdiction.

b. The elimination of substandard dwelling conditions.

c. The structural and aesthetic improvement of existing housing.

d. The provision of adequate sites for future housing, including affordable workforce housing as defined in s. 380.0651(3)(j), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities.

e. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.

f. The formulation of housing implementation programs.

g. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the

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concentration of affordable housing units only in specific areas of the jurisdiction.

h. Energy efficiency in the design and construction of new housing.

i. Use of renewable energy resources.

j. Each county in which the gap between the buying power of a family of four and the median county home sale price exceeds $170,000, as determined by the Florida Housing Finance Corporation, and which is not designated as an area of critical state concern shall adopt a plan for ensuring affordable workforce housing. At a minimum, the plan shall identify adequate sites for such housing. For purposes of this sub-subparagraph, the term "workforce housing" means housing that is affordable to natural persons or families whose total household income does not exceed 140 percent of the area median income, adjusted for household size.

k. As a precondition to receiving any state affordable housing funding or allocation for any project or program within the jurisdiction of a county that is subject to sub-subparagraph j., a county must, by July 1 of each year, provide certification that the county has complied with the requirements of sub-subparagraph j.

2. The principles, guidelines, standards, and strategies ~~goals, objectives, and policies~~ of the housing element must be based on the data and analysis prepared on housing needs, including an inventory taken from the latest decennial United States Census or more recent estimates, which shall include the number and distribution of dwelling units by type, tenure, age, rent, value, monthly cost of owner-occupied units, and rent or

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cost to income ratio, and shall show the number of dwelling units that are substandard. The inventory shall also include the methodology used to estimate the condition of housing, a projection of the anticipated number of households by size, income range, and age of residents derived from the population projections, and the minimum housing need of the current and anticipated future residents of the jurisdiction ~~the affordable housing needs assessment~~.

3. The housing element must express principles, guidelines, standards, and strategies that reflect, as needed, the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, adequate sites, and distribution of housing for a range of incomes and types, including mobile and manufactured homes. The element must provide for specific programs and actions to partner with private and nonprofit sectors to address housing needs in the jurisdiction, streamline the permitting process, and minimize costs and delays for affordable housing, establish standards to address the quality of housing, stabilization of neighborhoods, and identification and improvement of historically significant housing.

4. State and federal housing plans prepared on behalf of the local government must be consistent with the goals, objectives, and policies of the housing element. Local governments are encouraged to use job training, job creation, and economic solutions to address a portion of their affordable housing concerns.

~~2. To assist local governments in housing data collection and analysis and assure uniform and consistent information~~

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~~regarding the state's housing needs, the state land planning agency shall conduct an affordable housing needs assessment for all local jurisdictions on a schedule that coordinates the implementation of the needs assessment with the evaluation and appraisal reports required by s. 163.3191. Each local government shall utilize the data and analysis from the needs assessment as one basis for the housing element of its local comprehensive plan. The agency shall allow a local government the option to perform its own needs assessment, if it uses the methodology established by the agency by rule.~~

(g)~~1.~~ For those units of local government identified in s. 380.24, a coastal management element, appropriately related to the particular requirements of paragraphs (d) and (e) and meeting the requirements of s. 163.3178(2) and (3). The coastal management element shall set forth the principles, guidelines, standards, and strategies ~~policies~~ that shall guide the local government's decisions and program implementation with respect to the following objectives:

1.~~a.~~ Maintain, restore, and enhance ~~Maintenance, restoration, and enhancement of~~ the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

2.~~b.~~ Preserve the continued existence of viable populations of all species of wildlife and marine life.

3.~~c.~~ Protect the orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

4.~~d.~~ Avoid ~~Avoidance of~~ irreversible and irretrievable loss of coastal zone resources.

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5.~~e.~~ Use ecological planning principles and assumptions ~~to be used~~ in the determination of the suitability ~~and extent~~ of permitted development.

~~f. Proposed management and regulatory techniques.~~

6.~~g.~~ Limit ~~Limitation of~~ public expenditures that subsidize development in ~~high-hazard~~ coastal high-hazard areas.

7.~~h.~~ Protect ~~Protection of~~ human life against the effects of natural disasters.

8.~~i.~~ Direct the orderly development, maintenance, and use of ports identified in s. 403.021(9) to facilitate deepwater commercial navigation and other related activities.

9.~~j.~~ Preserve historic and archaeological resources, which include the ~~Preservation, including~~ sensitive adaptive use of these ~~historic and archaeological~~ resources.

~~2. As part of this element, a local government that has a coastal management element in its comprehensive plan is encouraged to adopt recreational surface water use policies that include applicable criteria for and consider such factors as natural resources, manatee protection needs, protection of working waterfronts and public access to the water, and recreation and economic demands. Criteria for manatee protection in the recreational surface water use policies should reflect applicable guidance outlined in the Boat Facility Siting Guide prepared by the Fish and Wildlife Conservation Commission. If the local government elects to adopt recreational surface water use policies by comprehensive plan amendment, such comprehensive plan amendment is exempt from the provisions of s. 163.3187(1). Local governments that wish to adopt recreational surface water use policies may be eligible for assistance with the development~~

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~~of such policies through the Florida Coastal Management Program. The Office of Program Policy Analysis and Government Accountability shall submit a report on the adoption of recreational surface water use policies under this subparagraph to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives no later than December 1, 2010.~~

(h)1. An intergovernmental coordination element showing relationships and stating principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards, regional water supply authorities, and other units of local government providing services but not having regulatory authority over the use of land, with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, with the state comprehensive plan and with the applicable regional water supply plan approved pursuant to s. 373.709, as the case may require and as such adopted plans or plans in preparation may exist. This element of the local comprehensive plan must demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require.

a. The intergovernmental coordination element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas.

b. ~~The intergovernmental coordination element must provide~~

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~~for recognition of campus master plans prepared pursuant to s. 1013.30 and airport master plans under paragraph (k).~~

~~e.~~ The intergovernmental coordination element shall provide for a dispute resolution process, as established pursuant to s. 186.509, for bringing intergovernmental disputes to closure in a timely manner.

c.~~d.~~ The intergovernmental coordination element shall provide for interlocal agreements as established pursuant to s. 333.03(1)(b).

2. The intergovernmental coordination element shall also state principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element must describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement.

3. Within 1 year after adopting their intergovernmental coordination elements, each county, all the municipalities within that county, the district school board, and any unit of local government service providers in that county shall establish by interlocal or other formal agreement executed by all affected entities, the joint processes described in this subparagraph consistent with their adopted intergovernmental coordination elements. The element must:

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a. Ensure that the local government addresses through coordination mechanisms the impacts of development proposed in the local comprehensive plan upon development in adjacent municipalities, the county, adjacent counties, the region, and the state. The area of concern for municipalities shall include adjacent municipalities, the county, and counties adjacent to the municipality. The area of concern for counties shall include all municipalities within the county, adjacent counties, and adjacent municipalities.

b. 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.

4.~~3.~~ To foster coordination between special districts and local general-purpose governments as local general-purpose governments implement local comprehensive plans, each independent special district must submit a public facilities report to the appropriate local government as required by s. 189.415.

~~4. Local governments shall execute an interlocal agreement with the district school board, the county, and nonexempt municipalities pursuant to s. 163.31777. The local government shall amend the intergovernmental coordination element to ensure that coordination between the local government and school board is pursuant to the agreement and shall state the obligations of the local government under the agreement. Plan amendments that comply with this subparagraph are exempt from the provisions of s. 163.3187(1).~~

~~5. By January 1, 2004, any county having a population~~

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~~greater than 100,000, and the municipalities and special districts within that county, shall submit a report to the Department of Community Affairs which identifies:~~

~~a. All existing or proposed interlocal service delivery agreements relating to education; sanitary sewer; public safety; solid waste; drainage; potable water; parks and recreation; and transportation facilities.~~

~~b. Any deficits or duplication in the provision of services within its jurisdiction, whether capital or operational. Upon request, the Department of Community Affairs shall provide technical assistance to the local governments in identifying deficits or duplication.~~

~~6. Within 6 months after submission of the report, the Department of Community Affairs shall, through the appropriate regional planning council, coordinate a meeting of all local governments within the regional planning area to discuss the reports and potential strategies to remedy any identified deficiencies or duplications.~~

~~7. Each local government shall update its intergovernmental coordination element based upon the findings in the report submitted pursuant to subparagraph 5. The report may be used as supporting data and analysis for the intergovernmental coordination element.~~

~~(i) The optional elements of the comprehensive plan in paragraphs (7)(a) and (b) are required elements for those municipalities having populations greater than 50,000, and those counties having populations greater than 75,000, as determined under s. 186.901.~~

~~(j) For each unit of local government within an urbanized~~

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~~area designated for purposes of s. 339.175, a transportation element, which must be prepared and adopted in lieu of the requirements of paragraph (b) and paragraphs (7)(a), (b), (c), and (d) and which shall address the following issues:~~

~~1. Traffic circulation, including major thoroughfares and other routes, including bicycle and pedestrian ways.~~

~~2. All alternative modes of travel, such as public transportation, pedestrian, and bicycle travel.~~

~~3. Parking facilities.~~

~~4. Aviation, rail, seaport facilities, access to those facilities, and intermodal terminals.~~

~~5. The availability of facilities and services to serve existing land uses and the compatibility between future land use and transportation elements.~~

~~6. The capability to evacuate the coastal population prior to an impending natural disaster.~~

~~7. Airports, projected airport and aviation development, and land use compatibility around airports, which includes areas defined in ss. 333.01 and 333.02.~~

~~8. An identification of land use densities, building intensities, and transportation management programs to promote public transportation systems in designated public transportation corridors so as to encourage population densities sufficient to support such systems.~~

~~9. May include transportation corridors, as defined in s. 334.03, intended for future transportation facilities designated pursuant to s. 337.273. If transportation corridors are designated, the local government may adopt a transportation corridor management ordinance.~~

~~10. The incorporation of transportation strategies to address reduction in greenhouse gas emissions from the transportation sector.~~

~~(k) An airport master plan, and any subsequent amendments to the airport master plan, prepared by a licensed publicly owned and operated airport under s. 333.06 may be incorporated into the local government comprehensive plan by the local government having jurisdiction under this act for the area in which the airport or projected airport development is located by the adoption of a comprehensive plan amendment. In the amendment to the local comprehensive plan that integrates the airport master plan, the comprehensive plan amendment shall address land use compatibility consistent with chapter 333 regarding airport zoning; the provision of regional transportation facilities for the efficient use and operation of the transportation system and airport; consistency with the local government transportation circulation element and applicable metropolitan planning organization long-range transportation plans; and the execution of any necessary interlocal agreements for the purposes of the provision of public facilities and services to maintain the adopted level-of-service standards for facilities subject to concurrency; and may address airport-related or aviation-related development. Development or expansion of an airport consistent with the adopted airport master plan that has been incorporated into the local comprehensive plan in compliance with this part, and airport-related or aviation-related development that has been addressed in the comprehensive plan amendment that incorporates the airport master plan, shall not be a development of regional impact. Notwithstanding any other general law, an~~

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~~airport that has received a development-of-regional-impact development order pursuant to s. 380.06, but which is no longer required to undergo development-of-regional-impact review pursuant to this subsection, may abandon its development-of-regional-impact order upon written notification to the applicable local government. Upon receipt by the local government, the development-of-regional-impact development order is void.~~

~~(7) The comprehensive plan may include the following additional elements, or portions or phases thereof:~~

~~(a) As a part of the circulation element of paragraph (6)(b) or as a separate element, a mass-transit element showing proposed methods for the moving of people, rights-of-way, terminals, related facilities, and fiscal considerations for the accomplishment of the element.~~

~~(b) As a part of the circulation element of paragraph (6)(b) or as a separate element, plans for port, aviation, and related facilities coordinated with the general circulation and transportation element.~~

~~(c) As a part of the circulation element of paragraph (6)(b) and in coordination with paragraph (6)(c), where applicable, a plan element for the circulation of recreational traffic, including bicycle facilities, exercise trails, riding facilities, and such other matters as may be related to the improvement and safety of movement of all types of recreational traffic.~~

~~(d) As a part of the circulation element of paragraph (6)(b) or as a separate element, a plan element for the development of offstreet parking facilities for motor vehicles~~

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~~and the fiscal considerations for the accomplishment of the element.~~

~~(e) A public buildings and related facilities element showing locations and arrangements of civic and community centers, public schools, hospitals, libraries, police and fire stations, and other public buildings. This plan element should show particularly how it is proposed to effect coordination with governmental units, such as school boards or hospital authorities, having public development and service responsibilities, capabilities, and potential but not having land development regulatory authority. This element may include plans for architecture and landscape treatment of their grounds.~~

~~(f) A recommended community design element which may consist of design recommendations for land subdivision, neighborhood development and redevelopment, design of open space locations, and similar matters to the end that such recommendations may be available as aids and guides to developers in the future planning and development of land in the area.~~

~~(g) A general area redevelopment element consisting of plans and programs for the redevelopment of slums and blighted locations in the area and for community redevelopment, including housing sites, business and industrial sites, public buildings sites, recreational facilities, and other purposes authorized by law.~~

~~(h) A safety element for the protection of residents and property of the area from fire, hurricane, or manmade or natural catastrophe, including such necessary features for protection as evacuation routes and their control in an emergency, water~~

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~~supply requirements, minimum road widths, clearances around and elevations of structures, and similar matters.~~

~~(i) An historical and scenic preservation element setting out plans and programs for those structures or lands in the area having historical, archaeological, architectural, scenic, or similar significance.~~

~~(j) An economic element setting forth principles and guidelines for the commercial and industrial development, if any, and the employment and personnel utilization within the area. The element may detail the type of commercial and industrial development sought, correlated to the present and projected employment needs of the area and to other elements of the plans, and may set forth methods by which a balanced and stable economic base will be pursued.~~

~~(k) Such other elements as may be peculiar to, and necessary for, the area concerned and as are added to the comprehensive plan by the governing body upon the recommendation of the local planning agency.~~

~~(l) Local governments that are not required to prepare coastal management elements under s. 163.3178 are encouraged to adopt hazard mitigation/postdisaster redevelopment plans. These plans should, at a minimum, establish long-term policies regarding redevelopment, infrastructure, densities, nonconforming uses, and future land use patterns. Grants to assist local governments in the preparation of these hazard mitigation/postdisaster redevelopment plans shall be available through the Emergency Management Preparedness and Assistance Account in the Grants and Donations Trust Fund administered by the department, if such account is created by law. The plans~~

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~~must be in compliance with the requirements of this act and chapter 252.~~

~~(8) All elements of the comprehensive plan, whether mandatory or optional, shall be based upon data appropriate to the element involved. Surveys and studies utilized in the preparation of the comprehensive plan shall not be deemed a part of the comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, and supporting documents shall be made available to public inspection, and copies of such plans shall be made available to the public upon payment of reasonable charges for reproduction.~~

~~(9) The state land planning agency shall, by February 15, 1986, adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements required by this act. Such rules shall not be subject to rule challenges under s. 120.56(2) or to drawout proceedings under s. 120.54(3)(c)2. Such rules shall become effective only after they have been submitted to the President of the Senate and the Speaker of the House of Representatives for review by the Legislature no later than 30 days prior to the next regular session of the Legislature. In its review the Legislature may reject, modify, or take no action relative to the rules. The agency shall conform the rules to the changes made by the Legislature, or, if no action was taken, the agency rules shall become effective. The rule shall include criteria for determining whether:~~

~~(a) Proposed elements are in compliance with the requirements of part II, as amended by this act.~~

~~(b) Other elements of the comprehensive plan are related to~~

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~~and consistent with each other.~~

~~(c) The local government comprehensive plan elements are consistent with the state comprehensive plan and the appropriate regional policy plan pursuant to s. 186.508.~~

~~(d) Certain bays, estuaries, and harbors that fall under the jurisdiction of more than one local government are managed in a consistent and coordinated manner in the case of local governments required to include a coastal management element in their comprehensive plans pursuant to paragraph (6)(g).~~

~~(e) Proposed elements identify the mechanisms and procedures for monitoring, evaluating, and appraising implementation of the plan. Specific measurable objectives are included to provide a basis for evaluating effectiveness as required by s. 163.3191.~~

~~(f) Proposed elements contain policies to guide future decisions in a consistent manner.~~

~~(g) Proposed elements contain programs and activities to ensure that comprehensive plans are implemented.~~

~~(h) Proposed elements identify the need for and the processes and procedures to ensure coordination of all development activities and services with other units of local government, regional planning agencies, water management districts, and state and federal agencies as appropriate.~~

~~The state land planning agency may adopt procedural rules that are consistent with this section and chapter 120 for the review of local government comprehensive plan elements required under this section. The state land planning agency shall provide model plans and ordinances and, upon request, other assistance to~~

~~local governments in the adoption and implementation of their revised local government comprehensive plans. The review and comment provisions applicable prior to October 1, 1985, shall continue in effect until the criteria for review and determination are adopted pursuant to this subsection and the comprehensive plans required by s. 163.3167(2) are due.~~

~~(10) The Legislature recognizes the importance and significance of chapter 9J-5, Florida Administrative Code, the Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance of the Department of Community Affairs that will be used to determine compliance of local comprehensive plans. The Legislature reserved unto itself the right to review chapter 9J-5, Florida Administrative Code, and to reject, modify, or take no action relative to this rule. Therefore, pursuant to subsection (9), the Legislature hereby has reviewed chapter 9J-5, Florida Administrative Code, and expresses the following legislative intent:~~

~~(a) The Legislature finds that in order for the department to review local comprehensive plans, it is necessary to define the term "consistency." Therefore, for the purpose of determining whether local comprehensive plans are consistent with the state comprehensive plan and the appropriate regional policy plan, a local plan shall be consistent with such plans if the local plan is "compatible with" and "furthers" such plans. The term "compatible with" means that the local plan is not in conflict with the state comprehensive plan or appropriate regional policy plan. The term "furthers" means to take action in the direction of realizing goals or policies of the state or regional plan. For the purposes of determining consistency of~~

~~the local plan with the state comprehensive plan or the appropriate regional policy plan, the state or regional plan shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans.~~

~~(b) Each local government shall review all the state comprehensive plan goals and policies and shall address in its comprehensive plan the goals and policies which are relevant to the circumstances or conditions in its jurisdiction. The decision regarding which particular state comprehensive plan goals and policies will be furthered by the expenditure of a local government's financial resources in any given year is a decision which rests solely within the discretion of the local government. Intergovernmental coordination, as set forth in paragraph (6)(h), shall be utilized to the extent required to carry out the provisions of chapter 9J-5, Florida Administrative Code.~~

~~(c) The Legislature declares that if any portion of chapter 9J-5, Florida Administrative Code, is found to be in conflict with this part, the appropriate statutory provision shall prevail.~~

~~(d) Chapter 9J-5, Florida Administrative Code, does not mandate the creation, limitation, or elimination of regulatory authority, nor does it authorize the adoption or require the repeal of any rules, criteria, or standards of any local, regional, or state agency.~~

~~(e) It is the Legislature's intent that support data or summaries thereof shall not be subject to the compliance review process, but the Legislature intends that goals and policies be~~

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~~clearly based on appropriate data. The department may utilize support data or summaries thereof to aid in its determination of compliance and consistency. The Legislature intends that the department may evaluate the application of a methodology utilized in data collection or whether a particular methodology is professionally accepted. However, the department shall not evaluate whether one accepted methodology is better than another. Chapter 9J-5, Florida Administrative Code, shall not be construed to require original data collection by local governments; however, Local governments are not to be discouraged from utilizing original data so long as methodologies are professionally accepted.~~

~~(f) The Legislature recognizes that under this section, local governments are charged with setting levels of service for public facilities in their comprehensive plans in accordance with which development orders and permits will be issued pursuant to s. 163.3202(2)(g). Nothing herein shall supersede the authority of state, regional, or local agencies as otherwise provided by law.~~

~~(g) Definitions contained in chapter 9J-5, Florida Administrative Code, are not intended to modify or amend the definitions utilized for purposes of other programs or rules or to establish or limit regulatory authority. Local governments may establish alternative definitions in local comprehensive plans, as long as such definitions accomplish the intent of this chapter, and chapter 9J-5, Florida Administrative Code.~~

~~(h) It is the intent of the Legislature that public facilities and services needed to support development shall be available concurrent with the impacts of such development in~~

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~~accordance with s. 163.3180. In meeting this intent, public facility and service availability shall be deemed sufficient if the public facilities and services for a development are phased, or the development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that development are available concurrent with the impacts of the development. The public facilities and services, unless already available, are to be consistent with the capital improvements element of the local comprehensive plan as required by paragraph (3)(a) or guaranteed in an enforceable development agreement. This shall include development agreements pursuant to this chapter or in an agreement or a development order issued pursuant to chapter 380. Nothing herein shall be construed to require a local government to address services in its capital improvements plan or to limit a local government's ability to address any service in its capital improvements plan that it deems necessary.~~

~~(i) The department shall take into account the factors delineated in rule 9J-5.002(2), Florida Administrative Code, as it provides assistance to local governments and applies the rule in specific situations with regard to the detail of the data and analysis required.~~

~~(j) Chapter 9J-5, Florida Administrative Code, has become effective pursuant to subsection (9). The Legislature hereby directs the department to adopt amendments as necessary which conform chapter 9J-5, Florida Administrative Code, with the requirements of this legislative intent by October 1, 1986.~~

~~(k) In order for local governments to prepare and adopt~~

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~~comprehensive plans with knowledge of the rules that are applied to determine consistency of the plans with this part, there should be no doubt as to the legal standing of chapter 9J-5, Florida Administrative Code, at the close of the 1986 legislative session. Therefore, the Legislature declares that changes made to chapter 9J-5 before October 1, 1986, are not subject to rule challenges under s. 120.56(2), or to drawout proceedings under s. 120.54(3)(c)2. The entire chapter 9J-5, Florida Administrative Code, as amended, is subject to rule challenges under s. 120.56(3), as nothing herein indicates approval or disapproval of any portion of chapter 9J-5 not specifically addressed herein. Any amendments to chapter 9J-5, Florida Administrative Code, exclusive of the amendments adopted prior to October 1, 1986, pursuant to this act, shall be subject to the full chapter 120 process. All amendments shall have effective dates as provided in chapter 120 and submission to the President of the Senate and Speaker of the House of Representatives shall not be required.~~

~~(l) The state land planning agency shall consider land use compatibility issues in the vicinity of all airports in coordination with the Department of Transportation and adjacent to or in close proximity to all military installations in coordination with the Department of Defense.~~

~~(11)(a) The Legislature recognizes the need for innovative planning and development strategies which will address the anticipated demands of continued urbanization of Florida's coastal and other environmentally sensitive areas, and which will accommodate the development of less populated regions of the state which seek economic development and which have~~

~~suitable land and water resources to accommodate growth in an environmentally acceptable manner. The Legislature further recognizes the substantial advantages of innovative approaches to development which may better serve to protect environmentally sensitive areas, maintain the economic viability of agricultural and other predominantly rural land uses, and provide for the cost-efficient delivery of public facilities and services.~~

~~(b) It is the intent of the Legislature that the local government comprehensive plans and plan amendments adopted pursuant to the provisions of this part provide for a planning process which allows for land use efficiencies within existing urban areas and which also allows for the conversion of rural lands to other uses, where appropriate and consistent with the other provisions of this part and the affected local comprehensive plans, through the application of innovative and flexible planning and development strategies and creative land use planning techniques, which may include, but not be limited to, urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, mixed-use development, and sector planning.~~

~~(c) It is the further intent of the Legislature that local government comprehensive plans and implementing land development regulations shall provide strategies which maximize the use of existing facilities and services through redevelopment, urban infill development, and other strategies for urban revitalization.~~

~~(d)1. The department, in cooperation with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, water management districts, and~~

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~~regional planning councils, shall provide assistance to local governments in the implementation of this paragraph and rule 9J-5.006(5)(l), Florida Administrative Code. Implementation of those provisions shall include a process by which the department may authorize local governments to designate all or portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area within which planning and economic incentives are applied to encourage the implementation of innovative and flexible planning and development strategies and creative land use planning techniques, including those contained herein and in rule 9J-5.006(5)(l), Florida Administrative Code. Assistance may include, but is not limited to:~~

~~a. Assistance from the Department of Environmental Protection and water management districts in creating the geographic information systems land cover database and aerial photogrammetry needed to prepare for a rural land stewardship area;~~

~~b. Support for local government implementation of rural land stewardship concepts by providing information and assistance to local governments regarding land acquisition programs that may be used by the local government or landowners to leverage the protection of greater acreage and maximize the effectiveness of rural land stewardship areas; and~~

~~c. Expansion of the role of the Department of Community Affairs as a resource agency to facilitate establishment of rural land stewardship areas in smaller rural counties that do not have the staff or planning budgets to create a rural land~~

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~~stewardship area.~~

~~2. The department shall encourage participation by local governments of different sizes and rural characteristics in establishing and implementing rural land stewardship areas. It is the intent of the Legislature that rural land stewardship areas be used to further the following broad principles of rural sustainability: restoration and maintenance of the economic value of rural land; control of urban sprawl; identification and protection of ecosystems, habitats, and natural resources; promotion of rural economic activity; maintenance of the viability of Florida's agricultural economy; and protection of the character of rural areas of Florida. Rural land stewardship areas may be multicounty in order to encourage coordinated regional stewardship planning.~~

~~3. A local government, in conjunction with a regional planning council, a stakeholder organization of private land owners, or another local government, shall notify the department in writing of its intent to designate a rural land stewardship area. The written notification shall describe the basis for the designation, including the extent to which the rural land stewardship area enhances rural land values, controls urban sprawl, provides necessary open space for agriculture and protection of the natural environment, promotes rural economic activity, and maintains rural character and the economic viability of agriculture.~~

~~4. A rural land stewardship area shall be not less than 10,000 acres and shall be located outside of municipalities and established urban growth boundaries, and shall be designated by plan amendment. The plan amendment designating a rural land~~

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~~stewardship area shall be subject to review by the Department of Community Affairs pursuant to s. 163.3184 and shall provide for the following:~~

~~a. Criteria for the designation of receiving areas within rural land stewardship areas in which innovative planning and development strategies may be applied. Criteria shall at a minimum provide for the following: adequacy of suitable land to accommodate development so as to avoid conflict with environmentally sensitive areas, resources, and habitats; compatibility between and transition from higher density uses to lower intensity rural uses; the establishment of receiving area service boundaries which provide for a separation between receiving areas and other land uses within the rural land stewardship area through limitations on the extension of services; and connection of receiving areas with the rest of the rural land stewardship area using rural design and rural road corridors.~~

~~b. Goals, objectives, and policies setting forth the innovative planning and development strategies to be applied within rural land stewardship areas pursuant to the provisions of this section.~~

~~c. A process for the implementation of innovative planning and development strategies within the rural land stewardship area, including those described in this subsection and rule 9J-5.006(5)(l), Florida Administrative Code, which provide for a functional mix of land uses, including adequate available workforce housing, including low, very-low and moderate income housing for the development anticipated in the receiving area and which are applied through the adoption by the local~~

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~~government of zoning and land development regulations applicable to the rural land stewardship area.~~

~~d. A process which encourages visioning pursuant to s. 163.3167(11) to ensure that innovative planning and development strategies comply with the provisions of this section.~~

~~e. The control of sprawl through the use of innovative strategies and creative land use techniques consistent with the provisions of this subsection and rule 9J-5.006(5)(l), Florida Administrative Code.~~

~~5. A receiving area shall be designated by the adoption of a land development regulation. Prior to the designation of a receiving area, the local government shall provide the Department of Community Affairs a period of 30 days in which to review a proposed receiving area for consistency with the rural land stewardship area plan amendment and to provide comments to the local government. At the time of designation of a stewardship receiving area, a listed species survey will be performed. If listed species occur on the receiving area site, the developer shall coordinate with each appropriate local, state, or federal agency to determine if adequate provisions have been made to protect those species in accordance with applicable regulations. In determining the adequacy of provisions for the protection of listed species and their habitats, the rural land stewardship area shall be considered as a whole, and the impacts to areas to be developed as receiving areas shall be considered together with the environmental benefits of areas protected as sending areas in fulfilling this criteria.~~

~~6. Upon the adoption of a plan amendment creating a rural~~

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~~land stewardship area, the local government shall, by ordinance, establish the methodology for the creation, conveyance, and use of transferable rural land use credits, otherwise referred to as stewardship credits, the application of which shall not constitute a right to develop land, nor increase density of land, except as provided by this section. The total amount of transferable rural land use credits within the rural land stewardship area must enable the realization of the long-term vision and goals for the 25-year or greater projected population of the rural land stewardship area, which may take into consideration the anticipated effect of the proposed receiving areas. Transferable rural land use credits are subject to the following limitations:~~

~~a. Transferable rural land use credits may only exist within a rural land stewardship area.~~

~~b. Transferable rural land use credits may only be used on lands designated as receiving areas and then solely for the purpose of implementing innovative planning and development strategies and creative land use planning techniques adopted by the local government pursuant to this section.~~

~~c. Transferable rural land use credits assigned to a parcel of land within a rural land stewardship area shall cease to exist if the parcel of land is removed from the rural land stewardship area by plan amendment.~~

~~d. Neither the creation of the rural land stewardship area by plan amendment nor the assignment of transferable rural land use credits by the local government shall operate to displace the underlying density of land uses assigned to a parcel of land within the rural land stewardship area; however, if transferable~~

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~~rural land use credits are transferred from a parcel for use within a designated receiving area, the underlying density assigned to the parcel of land shall cease to exist.~~

~~e. The underlying density on each parcel of land located within a rural land stewardship area shall not be increased or decreased by the local government, except as a result of the conveyance or use of transferable rural land use credits, as long as the parcel remains within the rural land stewardship area.~~

~~f. Transferable rural land use credits shall cease to exist on a parcel of land where the underlying density assigned to the parcel of land is utilized.~~

~~g. An increase in the density of use on a parcel of land located within a designated receiving area may occur only through the assignment or use of transferable rural land use credits and shall not require a plan amendment.~~

~~h. A change in the density of land use on parcels located within receiving areas shall be specified in a development order which reflects the total number of transferable rural land use credits assigned to the parcel of land and the infrastructure and support services necessary to provide for a functional mix of land uses corresponding to the plan of development.~~

~~i. Land within a rural land stewardship area may be removed from the rural land stewardship area through a plan amendment.~~

~~j. Transferable rural land use credits may be assigned at different ratios of credits per acre according to the natural resource or other beneficial use characteristics of the land and according to the land use remaining following the transfer of credits, with the highest number of credits per acre assigned to~~

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~~the most environmentally valuable land or, in locations where the retention of open space and agricultural land is a priority, to such lands.~~

~~k. The use or conveyance of transferable rural land use credits must be recorded in the public records of the county in which the property is located as a covenant or restrictive easement running with the land in favor of the county and either the Department of Environmental Protection, Department of Agriculture and Consumer Services, a water management district, or a recognized statewide land trust.~~

~~7. Owners of land within rural land stewardship areas should be provided incentives to enter into rural land stewardship agreements, pursuant to existing law and rules adopted thereto, with state agencies, water management districts, and local governments to achieve mutually agreed upon conservation objectives. Such incentives may include, but not be limited to, the following:~~

~~a. Opportunity to accumulate transferable mitigation credits.~~

~~b. Extended permit agreements.~~

~~c. Opportunities for recreational leases and ecotourism.~~

~~d. Payment for specified land management services on publicly owned land, or property under covenant or restricted easement in favor of a public entity.~~

~~e. Option agreements for sale to public entities or private land conservation entities, in either fee or easement, upon achievement of conservation objectives.~~

~~8. The department shall report to the Legislature on an annual basis on the results of implementation of rural land~~

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~~stewardship areas authorized by the department, including successes and failures in achieving the intent of the Legislature as expressed in this paragraph.~~

~~(e) The Legislature finds that mixed-use, high-density development is appropriate for urban infill and redevelopment areas. Mixed-use projects accommodate a variety of uses, including residential and commercial, and usually at higher densities that promote pedestrian-friendly, sustainable communities. The Legislature recognizes that mixed-use, high-density development improves the quality of life for residents and businesses in urban areas. The Legislature finds that mixed-use, high-density redevelopment and infill benefits residents by creating a livable community with alternative modes of transportation. Furthermore, the Legislature finds that local zoning ordinances often discourage mixed-use, high-density development in areas that are appropriate for urban infill and redevelopment. The Legislature intends to discourage single-use zoning in urban areas which often leads to lower-density, land-intensive development outside an urban service area. Therefore, the Department of Community Affairs shall provide technical assistance to local governments in order to encourage mixed-use, high-density urban infill and redevelopment projects.~~

~~(f) The Legislature finds that a program for the transfer of development rights is a useful tool to preserve historic buildings and create public open spaces in urban areas. A program for the transfer of development rights allows the transfer of density credits from historic properties and public open spaces to areas designated for high-density development. The Legislature recognizes that high-density development is~~

~~integral to the success of many urban infill and redevelopment projects. The Legislature intends to encourage high-density urban infill and redevelopment while preserving historic structures and open spaces. Therefore, the Department of Community Affairs shall provide technical assistance to local governments in order to promote the transfer of development rights within urban areas for high-density infill and redevelopment projects.~~

~~(g) The implementation of this subsection shall be subject to the provisions of this chapter, chapters 186 and 187, and applicable agency rules.~~

~~(h) The department may adopt rules necessary to implement the provisions of this subsection.~~

~~(12) A public school facilities element adopted to implement a school concurrency program shall meet the requirements of this subsection. Each county and each municipality within the county, unless exempt or subject to a waiver, must adopt a public school facilities element that is consistent with those adopted by the other local governments within the county and enter the interlocal agreement pursuant to s. 163.31777.~~

~~(a) The state land planning agency may provide a waiver to a county and to the municipalities within the county if the capacity rate for all schools within the school district is no greater than 100 percent and the projected 5-year capital outlay full-time equivalent student growth rate is less than 10 percent. The state land planning agency may allow for a projected 5-year capital outlay full-time equivalent student growth rate to exceed 10 percent when the projected 10-year~~

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~~capital outlay full-time equivalent student enrollment is less than 2,000 students and the capacity rate for all schools within the school district in the tenth year will not exceed the 100-percent limitation. The state land planning agency may allow for a single school to exceed the 100-percent limitation if it can be demonstrated that the capacity rate for that single school is not greater than 105 percent. In making this determination, the state land planning agency shall consider the following criteria:~~

~~1. Whether the exceedance is due to temporary circumstances;~~

~~2. Whether the projected 5-year capital outlay full time equivalent student growth rate for the school district is approaching the 10-percent threshold;~~

~~3. Whether one or more additional schools within the school district are at or approaching the 100-percent threshold; and~~

~~4. The adequacy of the data and analysis submitted to support the waiver request.~~

~~(b) A municipality in a nonexempt county is exempt if the municipality meets all of the following criteria for having no significant impact on school attendance:~~

~~1. The municipality has issued development orders for fewer than 50 residential dwelling units during the preceding 5 years, or the municipality has generated fewer than 25 additional public school students during the preceding 5 years.~~

~~2. The municipality has not annexed new land during the preceding 5 years in land use categories that permit residential uses that will affect school attendance rates.~~

~~3. The municipality has no public schools located within~~

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~~its boundaries.~~

~~(c) A public school facilities element shall be based upon data and analyses that address, among other items, how level-of-service standards will be achieved and maintained. Such data and analyses must include, at a minimum, such items as: the interlocal agreement adopted pursuant to s. 163.31777 and the 5-year school district facilities work program adopted pursuant to s. 1013.35; the educational plant survey prepared pursuant to s. 1013.31 and an existing educational and ancillary plant map or map series; information on existing development and development anticipated for the next 5 years and the long-term planning period; an analysis of problems and opportunities for existing schools and schools anticipated in the future; an analysis of opportunities to collocate future schools with other public facilities such as parks, libraries, and community centers; an analysis of the need for supporting public facilities for existing and future schools; an analysis of opportunities to locate schools to serve as community focal points; projected future population and associated demographics, including development patterns year by year for the upcoming 5-year and long-term planning periods; and anticipated educational and ancillary plants with land area requirements.~~

~~(d) The element shall contain one or more goals which establish the long-term end toward which public school programs and activities are ultimately directed.~~

~~(e) The element shall contain one or more objectives for each goal, setting specific, measurable, intermediate ends that are achievable and mark progress toward the goal.~~

~~(f) The element shall contain one or more policies for each~~

~~objective which establish the way in which programs and activities will be conducted to achieve an identified goal.~~

~~(g) The objectives and policies shall address items such as:~~

~~1. The procedure for an annual update process;~~

~~2. The procedure for school site selection;~~

~~3. The procedure for school permitting;~~

~~4. Provision for infrastructure necessary to support proposed schools, including potable water, wastewater, drainage, solid waste, transportation, and means by which to assure safe access to schools, including sidewalks, bicycle paths, turn lanes, and signalization;~~

~~5. Provision for colocation of other public facilities, such as parks, libraries, and community centers, in proximity to public schools;~~

~~6. Provision for location of schools proximate to residential areas and to complement patterns of development, including the location of future school sites so they serve as community focal points;~~

~~7. Measures to ensure compatibility of school sites and surrounding land uses;~~

~~8. Coordination with adjacent local governments and the school district on emergency preparedness issues, including the use of public schools to serve as emergency shelters; and~~

~~9. Coordination with the future land use element.~~

~~(h) The element shall include one or more future conditions maps which depict the anticipated location of educational and ancillary plants, including the general location of improvements to existing schools or new schools anticipated over the 5-year~~

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~~or long-term planning period. The maps will of necessity be general for the long-term planning period and more specific for the 5-year period. Maps indicating general locations of future schools or school improvements may not prescribe a land use on a particular parcel of land.~~

~~(i) The state land planning agency shall establish a phased schedule for adoption of the public school facilities element and the required updates to the public schools interlocal agreement pursuant to s. 163.31777. The schedule shall provide for each county and local government within the county to adopt the element and update to the agreement no later than December 1, 2008. Plan amendments to adopt a public school facilities element are exempt from the provisions of s. 163.3187(1).~~

~~(j) The state land planning agency may issue a notice to the school board and the local government to show cause why sanctions should not be enforced for failure to enter into an approved interlocal agreement as required by s. 163.31777 or for failure to implement provisions relating to public school concurrency. If the state land planning agency finds that insufficient cause exists for the school board's or local government's failure to enter into an approved interlocal agreement as required by s. 163.31777 or for the school board's or local government's failure to implement the provisions relating to public school concurrency, the state land planning agency shall submit its finding to the Administration Commission which may impose on the local government any of the sanctions set forth in s. 163.3184(11)(a) and (b) and may impose on the district school board any of the sanctions set forth in s. 1008.32(4).~~

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~~(13) Local governments are encouraged to develop a community vision that provides for sustainable growth, recognizes its fiscal constraints, and protects its natural resources. At the request of a local government, the applicable regional planning council shall provide assistance in the development of a community vision.~~

~~(a) As part of the process of developing a community vision under this section, the local government must hold two public meetings with at least one of those meetings before the local planning agency. Before those public meetings, the local government must hold at least one public workshop with stakeholder groups such as neighborhood associations, community organizations, businesses, private property owners, housing and development interests, and environmental organizations.~~

~~(b) The local government must, at a minimum, discuss five of the following topics as part of the workshops and public meetings required under paragraph (a):~~

~~1. Future growth in the area using population forecasts from the Bureau of Economic and Business Research;~~

~~2. Priorities for economic development;~~

~~3. Preservation of open space, environmentally sensitive lands, and agricultural lands;~~

~~4. Appropriate areas and standards for mixed-use development;~~

~~5. Appropriate areas and standards for high-density commercial and residential development;~~

~~6. Appropriate areas and standards for economic development opportunities and employment centers;~~

~~7. Provisions for adequate workforce housing;~~

~~8. An efficient, interconnected multimodal transportation system; and~~

~~9. Opportunities to create land use patterns that accommodate the issues listed in subparagraphs 1.-8.~~

~~(c) As part of the workshops and public meetings, the local government must discuss strategies for addressing the topics discussed under paragraph (b), including:~~

~~1. Strategies to preserve open space and environmentally sensitive lands, and to encourage a healthy agricultural economy, including innovative planning and development strategies, such as the transfer of development rights;~~

~~2. Incentives for mixed-use development, including increased height and intensity standards for buildings that provide residential use in combination with office or commercial space;~~

~~3. Incentives for workforce housing;~~

~~4. Designation of an urban service boundary pursuant to subsection (2); and~~

~~5. Strategies to provide mobility within the community and to protect the Strategic Intermodal System, including the development of a transportation corridor management plan under s. 337.273.~~

~~(d) The community vision must reflect the community's shared concept for growth and development of the community, including visual representations depicting the desired land use patterns and character of the community during a 10-year planning timeframe. The community vision must also take into consideration economic viability of the vision and private property interests.~~

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~~(e) After the workshops and public meetings required under paragraph (a) are held, the local government may amend its comprehensive plan to include the community vision as a component in the plan. This plan amendment must be transmitted and adopted pursuant to the procedures in ss. 163.3184 and 163.3189 at public hearings of the governing body other than those identified in paragraph (a).~~

~~(f) Amendments submitted under this subsection are exempt from the limitation on the frequency of plan amendments in s. 163.3187.~~

~~(g) A local government that has developed a community vision or completed a visioning process after July 1, 2000, and before July 1, 2005, which substantially accomplishes the goals set forth in this subsection and the appropriate goals, policies, or objectives have been adopted as part of the comprehensive plan or reflected in subsequently adopted land development regulations and the plan amendment incorporating the community vision as a component has been found in compliance is eligible for the incentives in s. 163.3184(17).~~

~~(14) Local governments are also encouraged to designate an urban service boundary. This area must be appropriate for compact, contiguous urban development within a 10-year planning timeframe. The urban service area boundary must be identified on the future land use map or map series. The local government shall demonstrate that the land included within the urban service boundary is served or is planned to be served with adequate public facilities and services based on the local government's adopted level-of-service standards by adopting a 10-year facilities plan in the capital improvements element~~

~~which is financially feasible. The local government shall demonstrate that the amount of land within the urban service boundary does not exceed the amount of land needed to accommodate the projected population growth at densities consistent with the adopted comprehensive plan within the 10-year planning timeframe.~~

~~(a) As part of the process of establishing an urban service boundary, the local government must hold two public meetings with at least one of those meetings before the local planning agency. Before those public meetings, the local government must hold at least one public workshop with stakeholder groups such as neighborhood associations, community organizations, businesses, private property owners, housing and development interests, and environmental organizations.~~

~~(b)1. After the workshops and public meetings required under paragraph (a) are held, the local government may amend its comprehensive plan to include the urban service boundary. This plan amendment must be transmitted and adopted pursuant to the procedures in ss. 163.3184 and 163.3189 at meetings of the governing body other than those required under paragraph (a).~~

~~2. This subsection does not prohibit new development outside an urban service boundary. However, a local government that establishes an urban service boundary under this subsection is encouraged to require a full-cost-accounting analysis for any new development outside the boundary and to consider the results of that analysis when adopting a plan amendment for property outside the established urban service boundary.~~

~~(c) Amendments submitted under this subsection are exempt from the limitation on the frequency of plan amendments in s.~~

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~~163.3187.~~

~~(d) A local government that has adopted an urban service boundary before July 1, 2005, which substantially accomplishes the goals set forth in this subsection is not required to comply with paragraph (a) or subparagraph 1. of paragraph (b) in order to be eligible for the incentives under s. 163.3184(17). In order to satisfy the provisions of this paragraph, the local government must secure a determination from the state land planning agency that the urban service boundary adopted before July 1, 2005, substantially complies with the criteria of this subsection, based on data and analysis submitted by the local government to support this determination. The determination by the state land planning agency is not subject to administrative challenge.~~

(7) ~~(15)~~ (a) The Legislature finds that:

1. There are a number of rural agricultural industrial centers in the state that process, produce, or aid in the production or distribution of a variety of agriculturally based products, including, but not limited to, fruits, vegetables, timber, and other crops, and juices, paper, and building materials. Rural agricultural industrial centers have a significant amount of existing associated infrastructure that is used for processing, producing, or distributing agricultural products.

2. Such rural agricultural industrial centers are often located within or near communities in which the economy is largely dependent upon agriculture and agriculturally based products. The centers significantly enhance the economy of such communities. However, these agriculturally based communities are

often socioeconomically challenged and designated as rural areas of critical economic concern. If such rural agricultural industrial centers are lost and not replaced with other job-creating enterprises, the agriculturally based communities will lose a substantial amount of their economies.

3. The state has a compelling interest in preserving the viability of agriculture and protecting rural agricultural communities and the state from the economic upheaval that would result from short-term or long-term adverse changes in the agricultural economy. To protect these communities and promote viable agriculture for the long term, it is essential to encourage and permit diversification of existing rural agricultural industrial centers by providing for jobs that are not solely dependent upon, but are compatible with and complement, existing agricultural industrial operations and to encourage the creation and expansion of industries that use agricultural products in innovative ways. However, the expansion and diversification of these existing centers must be accomplished in a manner that does not promote urban sprawl into surrounding agricultural and rural areas.

(b) As used in this subsection, the term "rural agricultural industrial center" means a developed parcel of land in an unincorporated area on which there exists an operating agricultural industrial facility or facilities that employ at least 200 full-time employees in the aggregate and process and prepare for transport a farm product, as defined in s. 163.3162, or any biomass material that could be used, directly or indirectly, for the production of fuel, renewable energy, bioenergy, or alternative fuel as defined by law. The center may

also include land contiguous to the facility site which is not used for the cultivation of crops, but on which other existing activities essential to the operation of such facility or facilities are located or conducted. The parcel of land must be located within, or within 10 miles of, a rural area of critical economic concern.

(c)1. A landowner whose land is located within a rural agricultural industrial center may apply for an amendment to the local government comprehensive plan for the purpose of designating and expanding the existing agricultural industrial uses of facilities located within the center or expanding the existing center to include industrial uses or facilities that are not dependent upon but are compatible with agriculture and the existing uses and facilities. A local government comprehensive plan amendment under this paragraph must:

a. Not increase the physical area of the existing rural agricultural industrial center by more than 50 percent or 320 acres, whichever is greater.

b. Propose a project that would, upon completion, create at least 50 new full-time jobs.

c. Demonstrate that sufficient infrastructure capacity exists or will be provided to support the expanded center at the level-of-service standards adopted in the local government comprehensive plan.

d. Contain goals, objectives, and policies that will ensure that any adverse environmental impacts of the expanded center will be adequately addressed and mitigation implemented or demonstrate that the local government comprehensive plan contains such provisions.

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2. Within 6 months after receiving an application as provided in this paragraph, the local government shall transmit the application to the state land planning agency for review pursuant to this chapter together with any needed amendments to the applicable sections of its comprehensive plan to include goals, objectives, and policies that provide for the expansion of rural agricultural industrial centers and discourage urban sprawl in the surrounding areas. Such goals, objectives, and policies must promote and be consistent with the findings in this subsection. An amendment that meets the requirements of this subsection is presumed not to be urban sprawl as defined in s. 163.3164 ~~consistent with rule 9J-5.006(5), Florida Administrative Code~~. This presumption may be rebutted by a preponderance of the evidence.

(d) This subsection does not apply to a ~~an optional~~ sector plan adopted pursuant to s. 163.3245, a rural land stewardship area designated pursuant to s. 163.3248 ~~subsection (11)~~, or any comprehensive plan amendment that includes an inland port terminal or affiliated port development.

(e) Nothing in this subsection shall be construed to confer the status of rural area of critical economic concern, or any of the rights or benefits derived from such status, on any land area not otherwise designated as such pursuant to s. 288.0656(7).

Section 9. Section 163.31777, Florida Statutes, is amended to read:

163.31777 Public schools interlocal agreement.—

(1)~~(a)~~ The county and municipalities located within the geographic area of a school district shall enter into an

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interlocal agreement with the district school board which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated. ~~The interlocal agreements shall be submitted to the state land planning agency and the Office of Educational Facilities in accordance with a schedule published by the state land planning agency.~~

~~(b) The schedule must establish staggered due dates for submission of interlocal agreements that are executed by both the local government and the district school board, commencing on March 1, 2003, and concluding by December 1, 2004, and must set the same date for all governmental entities within a school district. However, if the county where the school district is located contains more than 20 municipalities, the state land planning agency may establish staggered due dates for the submission of interlocal agreements by these municipalities. The schedule must begin with those areas where both the number of districtwide capital-outlay full-time-equivalent students equals 80 percent or more of the current year's school capacity and the projected 5-year student growth is 1,000 or greater, or where the projected 5-year student growth rate is 10 percent or greater.~~

~~(c) If the student population has declined over the 5-year period preceding the due date for submittal of an interlocal agreement by the local government and the district school board, the local government and the district school board may petition the state land planning agency for a waiver of one or more requirements of subsection (2). The waiver must be granted if the procedures called for in subsection (2) are unnecessary~~

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~~because of the school district's declining school age population, considering the district's 5-year facilities work program prepared pursuant to s. 1013.35. The state land planning agency may modify or revoke the waiver upon a finding that the conditions upon which the waiver was granted no longer exist. The district school board and local governments must submit an interlocal agreement within 1 year after notification by the state land planning agency that the conditions for a waiver no longer exist.~~

~~(d) Interlocal agreements between local governments and district school boards adopted pursuant to s. 163.3177 before the effective date of this section must be updated and executed pursuant to the requirements of this section, if necessary. Amendments to interlocal agreements adopted pursuant to this section must be submitted to the state land planning agency within 30 days after execution by the parties for review consistent with this section.~~ Local governments and the district school board in each school district are encouraged to adopt a single interlocal agreement to which all join as parties. ~~The state land planning agency shall assemble and make available model interlocal agreements meeting the requirements of this section and notify local governments and, jointly with the Department of Education, the district school boards of the requirements of this section, the dates for compliance, and the sanctions for noncompliance. The state land planning agency shall be available to informally review proposed interlocal agreements. If the state land planning agency has not received a proposed interlocal agreement for informal review, the state land planning agency shall, at least 60 days before the deadline~~

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~~for submission of the executed agreement, renotify the local government and the district school board of the upcoming deadline and the potential for sanctions.~~

(2) At a minimum, the interlocal agreement must address ~~interlocal-agreement requirements in s. 163.3180(13)(g), except for exempt local governments as provided in s. 163.3177(12), and must address~~ the following issues:

(a) A process by which each local government and the district school board agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of jurisdiction-wide growth forecasts is a major objective of the process.

(b) A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.

(c) Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.

(d) A process for determining the need for and timing of onsite and offsite improvements to support new, proposed

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expansion, or redevelopment of existing schools. The process must address identification of the party or parties responsible for the improvements.

(e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules relating to measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.

(f) Participation of the local governments in the preparation of the annual update to the district school board's 5-year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.

(g) A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

(h) A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.

(i) An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.

~~(3)(a) The Office of Educational Facilities shall submit any comments or concerns regarding the executed interlocal agreement to the state land planning agency within 30 days after receipt of the executed interlocal agreement. The state land planning agency shall review the executed interlocal agreement~~

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~~to determine whether it is consistent with the requirements of subsection (2), the adopted local government comprehensive plan, and other requirements of law. Within 60 days after receipt of an executed interlocal agreement, the state land planning agency shall publish a notice of intent in the Florida Administrative Weekly and shall post a copy of the notice on the agency's Internet site. The notice of intent must state whether the interlocal agreement is consistent or inconsistent with the requirements of subsection (2) and this subsection, as appropriate.~~

~~(b) The state land planning agency's notice is subject to challenge under chapter 120; however, an affected person, as defined in s. 163.3184(1)(a), has standing to initiate the administrative proceeding, and this proceeding is the sole means available to challenge the consistency of an interlocal agreement required by this section with the criteria contained in subsection (2) and this subsection. In order to have standing, each person must have submitted oral or written comments, recommendations, or objections to the local government or the school board before the adoption of the interlocal agreement by the school board and local government. The district school board and local governments are parties to any such proceeding. In this proceeding, when the state land planning agency finds the interlocal agreement to be consistent with the criteria in subsection (2) and this subsection, the interlocal agreement shall be determined to be consistent with subsection (2) and this subsection if the local government's and school board's determination of consistency is fairly debatable. When the state planning agency finds the interlocal agreement to be~~

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~~inconsistent with the requirements of subsection (2) and this subsection, the local government's and school board's determination of consistency shall be sustained unless it is shown by a preponderance of the evidence that the interlocal agreement is inconsistent.~~

~~(c) If the state land planning agency enters a final order that finds that the interlocal agreement is inconsistent with the requirements of subsection (2) or this subsection, it shall forward it to the Administration Commission, which may impose sanctions against the local government pursuant to s. 163.3184(11) and may impose sanctions against the district school board by directing the Department of Education to withhold from the district school board an equivalent amount of funds for school construction available pursuant to ss. 1013.65, 1013.68, 1013.70, and 1013.72.~~

~~(4) If an executed interlocal agreement is not timely submitted to the state land planning agency for review, the state land planning agency shall, within 15 working days after the deadline for submittal, issue to the local government and the district school board a Notice to Show Cause why sanctions should not be imposed for failure to submit an executed interlocal agreement by the deadline established by the agency. The agency shall forward the notice and the responses to the Administration Commission, which may enter a final order citing the failure to comply and imposing sanctions against the local government and district school board by directing the appropriate agencies to withhold at least 5 percent of state funds pursuant to s. 163.3184(11) and by directing the Department of Education to withhold from the district school~~

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~~board at least 5 percent of funds for school construction available pursuant to ss. 1013.65, 1013.68, 1013.70, and 1013.72.~~

~~(5) Any local government transmitting a public school element to implement school concurrency pursuant to the requirements of s. 163.3180 before the effective date of this section is not required to amend the element or any interlocal agreement to conform with the provisions of this section if the element is adopted prior to or within 1 year after the effective date of this section and remains in effect until the county conducts its evaluation and appraisal report and identifies changes necessary to more fully conform to the provisions of this section.~~

~~(6) Except as provided in subsection (7), municipalities meeting the exemption criteria in s. 163.3177(12) are exempt from the requirements of subsections (1), (2), and (3).~~

~~(7) At the time of the evaluation and appraisal report, each exempt municipality shall assess the extent to which it continues to meet the criteria for exemption under s. 163.3177(12). If the municipality continues to meet these criteria, the municipality shall continue to be exempt from the interlocal agreement requirement. Each municipality exempt under s. 163.3177(12) must comply with the provisions of this section within 1 year after the district school board proposes, in its 5-year district facilities work program, a new school within the municipality's jurisdiction.~~

Section 10. Subsection (9) of section 163.3178, Florida Statutes, is amended to read:

163.3178 Coastal management.—

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(9)(a) ~~Local governments may elect to comply with rule 9J-5.012(3)(b)6. and 7., Florida Administrative Code, through the process provided in this section.~~ A proposed comprehensive plan amendment shall be found in compliance with state coastal high-hazard provisions ~~pursuant to rule 9J-5.012(3)(b)6. and 7., Florida Administrative Code,~~ if:

1. The adopted level of service for out-of-county hurricane evacuation is maintained for a category 5 storm event as measured on the Saffir-Simpson scale; or

2. A 12-hour evacuation time to shelter is maintained for a category 5 storm event as measured on the Saffir-Simpson scale and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available; or

3. Appropriate mitigation is provided that will satisfy the provisions of subparagraph 1. or subparagraph 2. Appropriate mitigation shall include, without limitation, payment of money, contribution of land, and construction of hurricane shelters and transportation facilities. Required mitigation shall not exceed the amount required for a developer to accommodate impacts reasonably attributable to development. A local government and a developer shall enter into a binding agreement to memorialize the mitigation plan.

(b) For those local governments that have not established a level of service for out-of-county hurricane evacuation by July 1, 2008, ~~but elect to comply with rule 9J-5.012(3)(b)6. and 7., Florida Administrative Code,~~ by following the process in paragraph (a), the level of service shall be no greater than 16 hours for a category 5 storm event as measured on the Saffir-

Simpson scale.

(c) This subsection shall become effective immediately and shall apply to all local governments. No later than July 1, 2008, local governments shall amend their future land use map and coastal management element to include the new definition of coastal high-hazard area and to depict the coastal high-hazard area on the future land use map.

Section 11. Section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(1)~~(a)~~ Sanitary sewer, solid waste, drainage, and potable water~~, parks and recreation, schools, and transportation facilities, including mass transit, where applicable,~~ are the only public facilities and services subject to the concurrency requirement on a statewide basis. Additional public facilities and services may not be made subject to concurrency on a statewide basis without ~~appropriate study and~~ approval by the Legislature; however, any local government may extend the concurrency requirement so that it applies to additional public facilities within its jurisdiction. If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues is not subject to state review. The local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can

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be reasonably met. Infrastructure needed to ensure that adopted level-of-service standards are achieved and maintained for the 5-year period of the capital improvement schedule must be identified pursuant to the requirements of s. 163.3177(3).

~~(b) Local governments shall use professionally accepted techniques for measuring level of service for automobiles, bicycles, pedestrians, transit, and trucks. These techniques may be used to evaluate increased accessibility by multiple modes and reductions in vehicle miles of travel in an area or zone. The Department of Transportation shall develop methodologies to assist local governments in implementing this multimodal level-of-service analysis. The Department of Community Affairs and the Department of Transportation shall provide technical assistance to local governments in applying these methodologies.~~

(2)~~(a)~~ Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Health to serve new development.

~~(b) Consistent with the public welfare, and except as otherwise provided in this section, parks and recreation facilities to serve new development shall be in place or under actual construction no later than 1 year after issuance by the local government of a certificate of occupancy or its functional equivalent. However, the acreage for such facilities shall be dedicated or be acquired by the local government prior to issuance by the local government of a certificate of occupancy or its functional equivalent, or funds in the amount of the developer's fair share shall be committed no later than the local government's approval to commence construction.~~

~~(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation.~~

(3) Governmental entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on governmental entities that do bear those responsibilities. ~~This subsection does not limit the authority of any agency to recommend or make objections, recommendations, comments, or determinations during reviews conducted under s. 163.3184.~~

(4)~~(a)~~ The concurrency requirement as implemented in local comprehensive plans applies to state and other public facilities and development to the same extent that it applies to all other facilities and development, as provided by law.

~~(b) The concurrency requirement as implemented in local comprehensive plans does not apply to public transit facilities. For the purposes of this paragraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this paragraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.~~

~~(c) The concurrency requirement, except as it relates to transportation facilities and public schools, as implemented in local government comprehensive plans, may be waived by a local government for urban infill and redevelopment areas designated pursuant to s. 163.2517 if such a waiver does not endanger public health or safety as defined by the local government in its local government comprehensive plan. The waiver shall be adopted as a plan amendment pursuant to the process set forth in s. 163.3187(3)(a). A local government may grant a concurrency exception pursuant to subsection (5) for transportation facilities located within these urban infill and redevelopment areas.~~

(5)(a) If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.

(b) Local governments shall use professionally accepted

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studies to determine appropriate levels of service, which shall be based on a schedule of facilities that will be necessary to meet level of service demands reflected in the capital improvement element.

(c) Local governments shall use professionally accepted techniques for measuring levels of service when evaluating potential impacts of a proposed development.

(d) The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level of service standard. A comprehensive plan that imposes transportation concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period.

(e) If a local government applies transportation concurrency in its jurisdiction, it is encouraged to develop policy guidelines and techniques to address potential negative impacts on future development:

1. In urban infill and redevelopment, and urban service areas.

2. With special part-time demands on the transportation system.

3. With de minimis impacts.

4. On community desired types of development, such as redevelopment, or job creation projects.

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation

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concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.

2. Adoption of an areawide level of service not dependent on any single road segment function.

3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.

4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.

5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.

6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed use development in certain areas or districts, or for affordable or workforce housing.

(g) Local governments are encouraged to coordinate with adjacent local governments for the purpose of using common methodologies for measuring impacts on transportation facilities.

(h) Local governments that implement transportation concurrency must:

1. Consult with the Department of Transportation when

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proposed plan amendments affect facilities on the strategic intermodal system.

2. Exempt public transit facilities from concurrency. For the purposes of this subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this subparagraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

3. Allow an applicant for a development of regional impact development order, a rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

a. The applicant enters into a binding agreement to pay for or construct its proportionate share of required improvements.

b. The proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility.

c. The local government has provided a means by which the landowner will be assessed a proportionate share of the cost of providing the transportation facilities necessary to serve the proposed development.

When an applicant contributes or constructs its

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proportionate share, pursuant to this subparagraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts. The proportionate share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service. When the provisions of this paragraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase shall be deemed fully mitigated in any cumulative transportation analysis for a subsequent stage or phase of development. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis. The applicant is not responsible for the cost of reducing or eliminating deficits that exist prior to the filing of the application and shall receive a credit on a dollar-for-dollar basis for transportation impact fees payable in the future for the project. This subparagraph does not require a local government to approve a development that is not otherwise qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

~~(a) The Legislature finds that under limited circumstances, countervailing planning and public policy goals may come into conflict with the requirement that adequate public transportation facilities and services be available concurrent with the impacts of such development. The Legislature further finds that the unintended result of the concurrency requirement for transportation facilities is often the discouragement of urban infill development and redevelopment. Such unintended results directly conflict with the goals and policies of the state comprehensive plan and the intent of this part. The Legislature also finds that in urban centers transportation cannot be effectively managed and mobility cannot be improved solely through the expansion of roadway capacity, that the expansion of roadway capacity is not always physically or financially possible, and that a range of transportation alternatives is essential to satisfy mobility needs, reduce congestion, and achieve healthy, vibrant centers.~~

~~(b)1. The following are transportation concurrency exception areas:~~

~~a. A municipality that qualifies as a dense urban land area under s. 163.3164;~~

~~b. An urban service area under s. 163.3164 that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area under s. 163.3164; and~~

~~c. A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area under s. 163.3164, but does not have an urban service area designated in the local comprehensive plan.~~

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~~2. A municipality that does not qualify as a dense urban land area pursuant to s. 163.3164 may designate in its local comprehensive plan the following areas as transportation concurrency exception areas:~~

~~a. Urban infill as defined in s. 163.3164;~~

~~b. Community redevelopment areas as defined in s. 163.340;~~

~~c. Downtown revitalization areas as defined in s. 163.3164;~~

~~d. Urban infill and redevelopment under s. 163.2517; or~~

~~e. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14).~~

~~3. A county that does not qualify as a dense urban land area pursuant to s. 163.3164 may designate in its local comprehensive plan the following areas as transportation concurrency exception areas:~~

~~a. Urban infill as defined in s. 163.3164;~~

~~b. Urban infill and redevelopment under s. 163.2517; or~~

~~c. Urban service areas as defined in s. 163.3164.~~

~~4. A local government that has a transportation concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. shall, within 2 years after the designated area becomes exempt, adopt into its local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. Local governments are encouraged to adopt complementary land use and transportation strategies that reflect the region's shared vision for its future. If the state land planning agency finds insufficient cause for the failure to adopt into its comprehensive plan land~~

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~~use and transportation strategies to support and fund mobility within the designated exception area after 2 years, it shall submit the finding to the Administration Commission, which may impose any of the sanctions set forth in s. 163.3184(11)(a) and (b) against the local government.~~

~~5. Transportation concurrency exception areas designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. do not apply to designated transportation concurrency districts located within a county that has a population of at least 1.5 million, has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district.~~

~~6. Transportation concurrency exception areas designated under subparagraph 1., subparagraph 2., or subparagraph 3. do not apply in any county that has exempted more than 40 percent of the area inside the urban service area from transportation concurrency for the purpose of urban infill.~~

~~7. A local government that does not have a transportation concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. may grant an exception from the concurrency requirement for transportation facilities if the proposed development is otherwise consistent with the adopted local government comprehensive plan and is a project that promotes public transportation or is located within an area designated in the comprehensive plan for:~~

~~a. Urban infill development;~~

~~b. Urban redevelopment;~~

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~~c. Downtown revitalization;~~

~~d. Urban infill and redevelopment under s. 163.2517; or~~

~~e. An urban service area specifically designated as a transportation concurrency exception area which includes lands appropriate for compact, contiguous urban development, which does not exceed the amount of land needed to accommodate the projected population growth at densities consistent with the adopted comprehensive plan within the 10-year planning period, and which is served or is planned to be served with public facilities and services as provided by the capital improvements element.~~

~~(c) The Legislature also finds that developments located within urban infill, urban redevelopment, urban service, or downtown revitalization areas or areas designated as urban infill and redevelopment areas under s. 163.2517, which pose only special part-time demands on the transportation system, are exempt from the concurrency requirement for transportation facilities. A special part-time demand is one that does not have more than 200 scheduled events during any calendar year and does not affect the 100 highest traffic volume hours.~~

~~(d) Except for transportation concurrency exception areas designated pursuant to subparagraph (b)1., subparagraph (b)2., or subparagraph (b)3., the following requirements apply:~~

~~1. The local government shall both adopt into the comprehensive plan and implement long-term strategies to support and fund mobility within the designated exception area, including alternative modes of transportation. The plan amendment must also demonstrate how strategies will support the purpose of the exception and how mobility within the designated~~

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~~exception area will be provided.~~

~~2. The strategies must address urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization. The comprehensive plan amendment designating the concurrency exception area must be accompanied by data and analysis supporting the local government's determination of the boundaries of the transportation concurrency exception area.~~

~~(c) Before designating a concurrency exception area pursuant to subparagraph (b)7., the state land planning agency and the Department of Transportation shall be consulted by the local government to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities identified pursuant to s. 186.507, including the Strategic Intermodal System and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall provide a plan for the mitigation of impacts to the Strategic Intermodal System, including, if appropriate, access management, parallel reliever roads, transportation demand management, and other measures.~~

~~(f) The designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. This subsection does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except as provided in s. 380.06(29)(e).~~

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~~(g) The Office of Program Policy Analysis and Government Accountability shall submit to the President of the Senate and the Speaker of the House of Representatives by February 1, 2015, a report on transportation concurrency exception areas created pursuant to this subsection. At a minimum, the report shall address the methods that local governments have used to implement and fund transportation strategies to achieve the purposes of designated transportation concurrency exception areas, and the effects of the strategies on mobility, congestion, urban design, the density and intensity of land use mixes, and network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.~~

~~(6) The Legislature finds that a de minimis impact is consistent with this part. A de minimis impact is an impact that would not affect more than 1 percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the local government. No impact will be de minimis if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility; provided however, that an impact of a single family home on an existing lot will constitute a de minimis impact on all roadways regardless of the level of the deficiency of the roadway. Further, no impact will be de minimis if it would exceed the adopted level-of-service standard of any affected designated hurricane evacuation routes. Each local government shall maintain sufficient records to ensure that the 110-percent criterion is not exceeded. Each local government shall submit~~

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~~annually, with its updated capital improvements element, a summary of the de minimis records. If the state land planning agency determines that the 110-percent criterion has been exceeded, the state land planning agency shall notify the local government of the exceedance and that no further de minimis exceptions for the applicable roadway may be granted until such time as the volume is reduced below the 110 percent. The local government shall provide proof of this reduction to the state land planning agency before issuing further de minimis exceptions.~~

~~(7) In order to promote infill development and redevelopment, one or more transportation concurrency management areas may be designated in a local government comprehensive plan. A transportation concurrency management area must be a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips. A local government may establish an areawide level-of-service standard for such a transportation concurrency management area based upon an analysis that provides for a justification for the areawide level of service, how urban infill development or redevelopment will be promoted, and how mobility will be accomplished within the transportation concurrency management area. Prior to the designation of a concurrency management area, the Department of Transportation shall be consulted by the local government to assess the impact that the proposed concurrency management area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819.~~

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~~Further, the local government shall, in cooperation with the Department of Transportation, develop a plan to mitigate any impacts to the Strategic Intermodal System, including, if appropriate, the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d). Transportation concurrency management areas existing prior to July 1, 2005, shall meet, at a minimum, the provisions of this section by July 1, 2006, or at the time of the comprehensive plan update pursuant to the evaluation and appraisal report, whichever occurs last. The state land planning agency shall amend chapter 9J-5, Florida Administrative Code, to be consistent with this subsection.~~

~~(8) When assessing the transportation impacts of proposed urban redevelopment within an established existing urban service area, 110 percent of the actual transportation impact caused by the previously existing development must be reserved for the redevelopment, even if the previously existing development has a lesser or nonexisting impact pursuant to the calculations of the local government. Redevelopment requiring less than 110 percent of the previously existing capacity shall not be prohibited due to the reduction of transportation levels of service below the adopted standards. This does not preclude the appropriate assessment of fees or accounting for the impacts within the concurrency management system and capital improvements program of the affected local government. This paragraph does not affect local government requirements for appropriate development permits.~~

~~(9)(a) Each local government may adopt as a part of its plan, long-term transportation and school concurrency management~~

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~~systems with a planning period of up to 10 years for specially designated districts or areas where significant backlogs exist. The plan may include interim level-of-service standards on certain facilities and shall rely on the local government's schedule of capital improvements for up to 10 years as a basis for issuing development orders that authorize commencement of construction in these designated districts or areas. The concurrency management system must be designed to correct existing deficiencies and set priorities for addressing backlogged facilities. The concurrency management system must be financially feasible and consistent with other portions of the adopted local plan, including the future land use map.~~

~~(b) If a local government has a transportation or school facility backlog for existing development which cannot be adequately addressed in a 10-year plan, the state land planning agency may allow it to develop a plan and long-term schedule of capital improvements covering up to 15 years for good and sufficient cause, based on a general comparison between that local government and all other similarly situated local jurisdictions, using the following factors:~~

~~1. The extent of the backlog.~~

~~2. For roads, whether the backlog is on local or state roads.~~

~~3. The cost of eliminating the backlog.~~

~~4. The local government's tax and other revenue-raising efforts.~~

~~(c) The local government may issue approvals to commence construction notwithstanding this section, consistent with and in areas that are subject to a long-term concurrency management~~

~~system.~~

~~(d) If the local government adopts a long-term concurrency management system, it must evaluate the system periodically. At a minimum, the local government must assess its progress toward improving levels of service within the long-term concurrency management district or area in the evaluation and appraisal report and determine any changes that are necessary to accelerate progress in meeting acceptable levels of service.~~

~~(10) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted~~

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~~methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.~~

~~(11) In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy transportation concurrency, when all the following factors are shown to exist:~~

~~(a) The local government with jurisdiction over the property has adopted a local comprehensive plan that is in compliance.~~

~~(b) The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.~~

~~(c) The local plan includes a financially feasible capital improvements element that provides for transportation facilities adequate to serve the proposed development, and the local government has not implemented that element.~~

~~(d) The local government has provided a means by which the landowner will be assessed a fair share of the cost of providing the transportation facilities necessary to serve the proposed development.~~

~~(e) The landowner has made a binding commitment to the local government to pay the fair share of the cost of providing~~

~~the transportation facilities to serve the proposed development.~~

~~(12)(a) A development of regional impact may satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06 by payment of a proportionate-share contribution for local and regionally significant traffic impacts, if:~~

~~1. The development of regional impact which, based on its location or mix of land uses, is designed to encourage pedestrian or other nonautomotive modes of transportation;~~

~~2. The proportionate-share contribution for local and regionally significant traffic impacts is sufficient to pay for one or more required mobility improvements that will benefit a regionally significant transportation facility;~~

~~3. The owner and developer of the development of regional impact pays or assures payment of the proportionate-share contribution; and~~

~~4. If the regionally significant transportation facility to be constructed or improved is under the maintenance authority of a governmental entity, as defined by s. 334.03(12), other than the local government with jurisdiction over the development of regional impact, the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity having maintenance authority or to otherwise assure construction or improvement of the facility.~~

~~The proportionate-share contribution may be applied to any transportation facility to satisfy the provisions of this subsection and the local comprehensive plan, but, for the~~

~~purposes of this subsection, the amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed development expected to reach roadways during the peak hour from the complete buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. For purposes of this subsection, "construction cost" includes all associated costs of the improvement. Proportionate-share mitigation shall be limited to ensure that a development of regional impact meeting the requirements of this subsection mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs. This subsection also applies to Florida Quality Developments pursuant to s. 380.061 and to detailed specific area plans implementing optional sector plans pursuant to s. 163.3245.~~

~~(b) As used in this subsection, the term "backlog" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.~~

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~~(13) School concurrency shall be established on a districtwide basis and shall include all public schools in the district and all portions of the district, whether located in a municipality or an unincorporated area unless exempt from the public school facilities element pursuant to s. 163.3177(12).~~

(6)(a) If concurrency is applied to public education facilities, ~~The application of school concurrency to development shall be based upon the adopted comprehensive plan, as amended.~~ all local governments within a county, except as provided in paragraph (i) ~~(f)~~, shall include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and ~~adopt and transmit to the state land planning agency~~ ~~the necessary plan amendments, along with the~~ interlocal agreements. If the county and one or more municipalities have adopted school concurrency into its comprehensive plan and interlocal agreement that represents at least 80 percent of the total countywide population, the failure of one or more municipalities to adopt the concurrency and enter into the interlocal agreement does not preclude implementation of school concurrency within the school district. ~~agreement, for a compliance review pursuant to s. 163.3184(7) and (8). The minimum requirements for school concurrency are the following:~~

~~(a) *Public school facilities element.*—A local government shall adopt and transmit to the state land planning agency a plan or plan amendment which includes a public school facilities element which is consistent with the requirements of s. 163.3177(12) and which is determined to be in compliance as defined in s. 163.3184(1)(b).~~ All local government provisions included in comprehensive plans regarding school concurrency

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~~public school facilities plan elements~~ within a county must be consistent with each other as well as the requirements of this part.

(b) ~~*Level-of-service standards.*~~ ~~The Legislature recognizes that an essential requirement for a concurrency management system is the level of service at which a public facility is expected to operate.~~

~~1.~~ Local governments and school boards imposing school concurrency shall exercise authority in conjunction with each other to establish jointly adequate level-of-service standards~~,~~ ~~as defined in chapter 9J-5, Florida Administrative Code,~~ necessary to implement the adopted local government comprehensive plan, based on data and analysis.

(c)~~2.~~ Public school level-of-service standards shall be included and adopted into the capital improvements element of the local comprehensive plan and shall apply districtwide to all schools of the same type. Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.

(d)~~3.~~ Local governments and school boards may ~~shall have the option to~~ utilize tiered level-of-service standards to allow time to achieve an adequate and desirable level of service as circumstances warrant.

(e)~~4. For the purpose of determining whether levels of service have been achieved, for the first 3 years of school concurrency implementation,~~ A school district that includes relocatable facilities in its inventory of student stations shall include the capacity of such relocatable facilities as provided in s. 1013.35(2)(b)2.f., provided the relocatable

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facilities were purchased after 1998 and the relocatable facilities meet the standards for long-term use pursuant to s. 1013.20.

~~(c) *Service areas.* The Legislature recognizes that an essential requirement for a concurrency system is a designation of the area within which the level of service will be measured when an application for a residential development permit is reviewed for school concurrency purposes. This delineation is also important for purposes of determining whether the local government has a financially feasible public school capital facilities program that will provide schools which will achieve and maintain the adopted level-of-service standards.~~

(f)1. In order to balance competing interests, preserve the constitutional concept of uniformity, and avoid disruption of existing educational and growth management processes, local governments are encouraged, if they elect to adopt school concurrency, to ~~initially~~ apply school concurrency to development ~~only~~ on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide. ~~To ensure that development is coordinated with schools having available capacity, within 5 years after adoption of school concurrency,~~ 2. If a local government elects to ~~governments shall~~ apply school concurrency on a less than districtwide basis, by ~~such as~~ using school attendance zones or concurrency service areas:~~, as provided in subparagraph 2.~~

a.~~2.~~ ~~For local governments applying school concurrency on a less than districtwide basis, such as utilizing school attendance zones or larger school concurrency service areas,~~

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Local governments and school boards shall have the burden to demonstrate that the utilization of school capacity is maximized to the greatest extent possible in the comprehensive plan and amendment, taking into account transportation costs and court-approved desegregation plans, as well as other factors. In addition, in order to achieve concurrency within the service area boundaries selected by local governments and school boards, the service area boundaries, together with the standards for establishing those boundaries, shall be identified and included as supporting data and analysis for the comprehensive plan.

b.~~3.~~ Where school capacity is available on a districtwide basis but school concurrency is applied on a less than districtwide basis in the form of concurrency service areas, if the adopted level-of-service standard cannot be met in a particular service area as applied to an application for a development permit and if the needed capacity for the particular service area is available in one or more contiguous service areas, as adopted by the local government, then the local government may not deny an application for site plan or final subdivision approval or the functional equivalent for a development or phase of a development on the basis of school concurrency, and if issued, development impacts shall be subtracted from the ~~shifted to~~ contiguous service area's ~~areas with schools having available~~ capacity totals. Students from the development may not be required to go to the adjacent service area unless the school board rezones the area in which the development occurs.

(g)~~(d) *Financial feasibility.* The Legislature recognizes that financial feasibility is an important issue because~~ The

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premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard. ~~This part and chapter 9J-5, Florida Administrative Code, contain specific standards to determine the financial feasibility of capital programs. These standards were adopted to make concurrency more predictable and local governments more accountable.~~

~~1.~~ A comprehensive plan that imposes ~~amendment seeking to impose~~ school concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3) ~~and rule 9J-5.016, Florida Administrative Code~~. The capital improvements element shall set forth a financially feasible public school capital facilities plan ~~program,~~ established in conjunction with the school board, that demonstrates that the adopted level-of-service standards will be achieved and maintained.

(h)1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented

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that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

~~2. Such amendments shall demonstrate that the public school capital facilities program meets all of the financial feasibility standards of this part and chapter 9J-5, Florida Administrative Code, that apply to capital programs which provide the basis for mandatory concurrency on other public facilities and services.~~

~~3. When the financial feasibility of a public school capital facilities program is evaluated by the state land planning agency for purposes of a compliance determination, the evaluation shall be based upon the service areas selected by the local governments and school board.~~

2.~~(e) *Availability standard.* Consistent with the public welfare,~~ If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the

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developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. ~~subparagraph 1~~. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan ~~public school facilities element~~ and the interlocal agreement pursuant to s. 163.31777.

a.~~1.~~ Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b.~~2.~~ If the interlocal agreement ~~education facilities plan~~ and the local government comprehensive plan ~~public educational~~

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~~facilities element~~ authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

c.~~3.~~ Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the ~~a financially feasible~~ 5-year school board's educational facilities ~~district work~~ plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

~~4. If a development is precluded from commencing because there is inadequate classroom capacity to mitigate the impacts of the development, the development may nevertheless commence if there are accelerated facilities in an approved capital improvement element scheduled for construction in year four or later of such plan which, when built, will mitigate the proposed development, or if such accelerated facilities will be in the next annual update of the capital facilities element, the developer enters into a binding, financially guaranteed agreement with the school district to construct an accelerated facility within the first 3 years of an approved capital improvement plan, and the cost of the school facility is equal to or greater than the development's proportionate share. When~~

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~~the completed school facility is conveyed to the school district, the developer shall receive impact fee credits usable within the zone where the facility is constructed or any attendance zone contiguous with or adjacent to the zone where the facility is constructed.~~

3.~~5.~~ This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(i)~~(f) *Intergovernmental coordination.*~~

~~1. When establishing concurrency requirements for public schools, a local government shall satisfy the requirements for intergovernmental coordination set forth in s. 163.3177(6)(h)1. and 2., except that~~ A municipality is not required to be a signatory to the interlocal agreement required by paragraph (j) ~~ss. 163.3177(6)(h)2. and 163.31777(6)~~, as a prerequisite for imposition of school concurrency, and as a nonsignatory, shall not participate in the adopted local school concurrency system, if the municipality meets all of the following criteria for having no significant impact on school attendance:

1.~~a.~~ The municipality has issued development orders for fewer than 50 residential dwelling units during the preceding 5 years, or the municipality has generated fewer than 25 additional public school students during the preceding 5 years.

2.~~b.~~ The municipality has not annexed new land during the preceding 5 years in land use categories which permit residential uses that will affect school attendance rates.

3.~~c.~~ The municipality has no public schools located within its boundaries.

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4.~~d.~~ At least 80 percent of the developable land within the boundaries of the municipality has been built upon.

~~2. A municipality which qualifies as having no significant impact on school attendance pursuant to the criteria of subparagraph 1. must review and determine at the time of its evaluation and appraisal report pursuant to s. 163.3191 whether it continues to meet the criteria pursuant to s. 163.31777(6). If the municipality determines that it no longer meets the criteria, it must adopt appropriate school concurrency goals, objectives, and policies in its plan amendments based on the evaluation and appraisal report, and enter into the existing interlocal agreement required by ss. 163.3177(6)(h)2. and 163.31777, in order to fully participate in the school concurrency system. If such a municipality fails to do so, it will be subject to the enforcement provisions of s. 163.3191.~~

(j)~~(g)~~ ~~*Interlocal agreement for school concurrency.*~~ When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. ~~The interlocal agreement shall be submitted to the state land planning agency by the local government as a part of the compliance review, along with the other necessary amendments to the comprehensive plan required by this part. In~~

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~~addition to the requirements of ss. 163.3177(6)(h) and 163.31777,~~ The interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan ~~public school facilities element~~ with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

~~2. Establish a process for the development of siting criteria which encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities such as parks, libraries, and community centers to the extent possible.~~

2.~~3.~~ Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

~~4. Establish a process for the preparation, amendment, and joint approval by each local government and the school board of a public school capital facilities program which is financially feasible, and a process and schedule for incorporation of the public school capital facilities program into the local government comprehensive plans on an annual basis.~~

3.~~5.~~ Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. ~~The agreement shall also establish a process and schedule~~

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~~for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local government comprehensive plans.~~ The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors. ~~The agreement shall also ensure the achievement and maintenance of the adopted level-of-service standards for the geographic area of application throughout the 5 years covered by the public school capital facilities plan and thereafter by adding a new fifth year during the annual update.~~

4.~~6.~~ Establish a uniform districtwide procedure for implementing school concurrency which provides for:

a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;

b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and

c. The monitoring and evaluation of the school concurrency system.

~~7. Include provisions relating to amendment of the agreement.~~

5.~~8.~~ A process and uniform methodology for determining proportionate-share mitigation pursuant to subparagraph (h)~~(c)1~~.

(k)~~(h)~~ ~~*Local government authority.*~~ This subsection does not limit the authority of a local government to grant or deny a

development permit or its functional equivalent prior to the implementation of school concurrency.

~~(14) The state land planning agency shall, by October 1, 1998, adopt by rule minimum criteria for the review and determination of compliance of a public school facilities element adopted by a local government for purposes of imposition of school concurrency.~~

(15)(a) Multimodal transportation districts may be established under a local government comprehensive plan in areas delineated on the future land use map for which the local comprehensive plan assigns secondary priority to vehicle mobility and primary priority to assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit. Such districts must incorporate community design features that will reduce the number of automobile trips or vehicle miles of travel and will support an integrated, multimodal transportation system. Prior to the designation of multimodal transportation districts, the Department of Transportation shall be consulted by the local government to assess the impact that the proposed multimodal district area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall, in cooperation with the Department of Transportation, develop a plan to mitigate any impacts to the Strategic Intermodal System~~, including the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d).~~ Multimodal transportation districts

existing prior to July 1, 2005, shall meet, at a minimum, the provisions of this section by July 1, 2006, or at the time of the comprehensive plan update pursuant to the evaluation and appraisal report, whichever occurs last.

(b) Community design elements of such a district include: a complementary mix and range of land uses, including educational, recreational, and cultural uses; interconnected networks of streets designed to encourage walking and bicycling, with traffic-calming where desirable; appropriate densities and intensities of use within walking distance of transit stops; daily activities within walking distance of residences, allowing independence to persons who do not drive; public uses, streets, and squares that are safe, comfortable, and attractive for the pedestrian, with adjoining buildings open to the street and with parking not interfering with pedestrian, transit, automobile, and truck travel modes.

(c) Local governments may establish multimodal level-of-service standards that rely primarily on nonvehicular modes of transportation within the district, when justified by an analysis demonstrating that the existing and planned community design will provide an adequate level of mobility within the district based upon professionally accepted multimodal level-of-service methodologies. The analysis must also demonstrate that the capital improvements required to promote community design are financially feasible over the development or redevelopment timeframe for the district and that community design features within the district provide convenient interconnection for a multimodal transportation system. Local governments may issue development permits in reliance upon all planned community

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design capital improvements that are financially feasible over the development or redevelopment timeframe for the district, without regard to the period of time between development or redevelopment and the scheduled construction of the capital improvements. A determination of financial feasibility shall be based upon currently available funding or funding sources that could reasonably be expected to become available over the planning period.

(d) Local governments may reduce impact fees or local access fees for development within multimodal transportation districts based on the reduction of vehicle trips per household or vehicle miles of travel expected from the development pattern planned for the district.

~~(16) It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12).~~

~~(a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.~~

~~(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A developer may choose to satisfy all~~

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~~transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element. Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) and 163.3177(3) if additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.~~

~~2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.~~

~~(c) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government. Proportionate fair-share mitigation may be directed toward one or more specific transportation improvements reasonably related to the mobility demands created by the development and such improvements may address one or more modes~~

~~of travel. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation. Proportionate fair-share mitigation shall be limited to ensure that a development meeting the requirements of this section mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs.~~

~~(d) This subsection does not require a local government to approve a development that is not otherwise qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.~~

~~(e) Mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation.~~

~~(f) If the funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local government's concurrency management system, a local government and a developer may still enter into a binding proportionate-share agreement authorizing the developer to construct that amount of development on which the proportionate share is calculated if the proportionate-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvements funded by the proportionate-share component must be adopted into the 5-year~~

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~~capital improvements schedule of the comprehensive plan at the next annual capital improvements element update. The funding of any improvements that significantly benefit the impacted transportation system satisfies concurrency requirements as a mitigation of the development's impact upon the overall transportation system even if there remains a failure of concurrency on other impacted facilities.~~

~~(g) Except as provided in subparagraph (b)1., this section may not prohibit the Department of Community Affairs from finding other portions of the capital improvements element amendments not in compliance as provided in this chapter.~~

~~(h) The provisions of this subsection do not apply to a development of regional impact satisfying the requirements of subsection (12).~~

~~(i) As used in this subsection, the term "backlog" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.~~

~~(17) A local government and the developer of affordable workforce housing units developed in accordance with s. 380.06(19) or s. 380.0651(3) may identify an employment center or centers in close proximity to the affordable workforce housing units. If at least 50 percent of the units are occupied~~

~~by an employee or employees of an identified employment center or centers, all of the affordable workforce housing units are exempt from transportation concurrency requirements, and the local government may not reduce any transportation trip-generation entitlements of an approved development-of-regional-impact development order. As used in this subsection, the term "close proximity" means 5 miles from the nearest point of the development of regional impact to the nearest point of the employment center, and the term "employment center" means a place of employment that employs at least 25 or more full-time employees.~~

Section 12. Subsection (5) is reenacted to section 163.31801, Florida Statutes, and subsection (6) is added to that section to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or this section. The court may not use a deferential standard.

(6) Notwithstanding any law, ordinance, or resolution to the contrary, a county, municipality, or special district may not increase any existing impact fees or impose any new impact fees on nonresidential development. This subsection does not affect impact fees pledged or obligated to the retirement of debt; impact fee increases that were previously enacted by law, ordinance, or resolution and phased in over time or included a

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consumer price index or other yearly escalator; or impact fees for water or wastewater facilities. This subsection expires July 1, 2013.

Section 13. Section 163.3182, Florida Statutes, is amended to read:

163.3182 Transportation deficiencies ~~concurrency backlogs~~.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Transportation deficiency ~~concurrency backlog~~ area" means the geographic area within the unincorporated portion of a county or within the municipal boundary of a municipality designated in a local government comprehensive plan for which a transportation development ~~concurrency backlog~~ authority is created pursuant to this section. A transportation deficiency ~~concurrency backlog~~ area created within the corporate boundary of a municipality shall be made pursuant to an interlocal agreement between a county, a municipality or municipalities, and any affected taxing authority or authorities.

(b) "Authority" or "transportation development ~~concurrency backlog~~ authority" means the governing body of a county or municipality within which an authority is created.

(c) "Governing body" means the council, commission, or other legislative body charged with governing the county or municipality within which a transportation deficiency ~~concurrency backlog~~ authority is created pursuant to this section.

(d) "Transportation deficiency ~~concurrency backlog~~" means an identified need ~~deficiency~~ where the existing and projected extent of traffic or projected traffic volume exceeds the level of service standard adopted in a local government comprehensive

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plan for a transportation facility.

(e) "Transportation sufficiency ~~concurrency backlog~~ plan" means the plan adopted as part of a local government comprehensive plan by the governing body of a county or municipality acting as a transportation development ~~concurrency backlog~~ authority.

(f) "Transportation ~~concurrency backlog~~ project" means any designated transportation project that will mitigate a deficiency identified in a transportation deficiency plan ~~identified for construction within the jurisdiction of a transportation concurrency backlog authority~~.

(g) "Debt service millage" means any millage levied pursuant to s. 12, Art. VII of the State Constitution.

(h) "Increment revenue" means the amount calculated pursuant to subsection (5).

(i) "Taxing authority" means a public body that levies or is authorized to levy an ad valorem tax on real property located within a transportation deficiency ~~concurrency backlog~~ area, except a school district.

(2) CREATION OF TRANSPORTATION DEVELOPMENT ~~CONCURRENCY BACKLOG~~ AUTHORITIES.—

(a) A county or municipality may create a transportation development ~~concurrency backlog~~ authority if it has an identified transportation deficiency ~~concurrency backlog~~.

(b) Acting as the transportation development ~~concurrency backlog~~ authority within the authority's jurisdictional boundary, the governing body of a county or municipality shall adopt and implement a plan to eliminate all identified transportation deficiencies ~~concurrency backlogs~~ within the

authority's jurisdiction using funds provided pursuant to subsection (5) and as otherwise provided pursuant to this section.

(c) The Legislature finds and declares that there exist in many counties and municipalities areas that have significant transportation deficiencies and inadequate transportation facilities; that many insufficiencies and inadequacies severely limit or prohibit the satisfaction of adopted transportation level-of-service ~~concurrency~~ standards; that the transportation insufficiencies and inadequacies affect the health, safety, and welfare of the residents of these counties and municipalities; that the transportation insufficiencies and inadequacies adversely affect economic development and growth of the tax base for the areas in which these insufficiencies and inadequacies exist; and that the elimination of transportation deficiencies and inadequacies and the satisfaction of transportation level-of-service ~~concurrency~~ standards are paramount public purposes for the state and its counties and municipalities.

(3) POWERS OF A TRANSPORTATION DEVELOPMENT ~~CONCURRENCY BACKLOG~~ AUTHORITY.—Each transportation development ~~concurrency backlog~~ authority created pursuant to this section has the powers necessary or convenient to carry out the purposes of this section, including the following powers in addition to others granted in this section:

(a) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this section.

(b) To undertake and carry out transportation ~~concurrency backlog~~ projects for transportation facilities ~~that have~~

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designed to relieve transportation deficiencies ~~a concurrency backlog~~ within the authority's jurisdiction. ~~Concurrency backlog~~ Transportation projects may include transportation facilities that provide for alternative modes of travel including sidewalks, bikeways, and mass transit which are related to a deficient ~~backlogged~~ transportation facility.

(c) To invest any transportation ~~concurrency backlog~~ funds held in reserve, sinking funds, or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to the control of the authority and to redeem such bonds as have been issued pursuant to this section at the redemption price established therein, or to purchase such bonds at less than redemption price. All such bonds redeemed or purchased shall be canceled.

(d) To borrow money, including, but not limited to, issuing debt obligations such as, but not limited to, bonds, notes, certificates, and similar debt instruments; to apply for and accept advances, loans, grants, contributions, and any other forms of financial assistance from the Federal Government or the state, county, or any other public body or from any sources, public or private, for the purposes of this part; to give such security as may be required; to enter into and carry out contracts or agreements; and to include in any contracts for financial assistance with the Federal Government for or with respect to a transportation ~~concurrency backlog~~ project and related activities such conditions imposed under federal laws as the transportation deficiency ~~concurrency backlog~~ authority considers reasonable and appropriate and which are not inconsistent with the purposes of this section.

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(e) To make or have made all surveys and plans necessary to the carrying out of the purposes of this section; to contract with any persons, public or private, in making and carrying out such plans; and to adopt, approve, modify, or amend such transportation sufficiency ~~concurrency backlog~~ plans.

(f) To appropriate such funds and make such expenditures as are necessary to carry out the purposes of this section, and to enter into agreements with other public bodies, which agreements may extend over any period notwithstanding any provision or rule of law to the contrary.

(4) TRANSPORTATION SUFFICIENCY ~~CONCURRENCY BACKLOG~~ PLANS.—

~~(a)~~ Each transportation development ~~concurrency backlog~~ authority shall adopt a transportation sufficiency ~~concurrency backlog~~ plan as a part of the local government comprehensive plan within 6 months after the creation of the authority. The plan must:

(a)~~1.~~ Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency.

(b)~~2.~~ Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy ~~concurrency~~ requirements pursuant to s. 163.3180, and the applicable local government comprehensive plan.

(c)~~3.~~ Establish a schedule for financing and construction of transportation ~~concurrency backlog~~ projects that will eliminate transportation deficiencies ~~concurrency backlogs~~ within the jurisdiction of the authority within 10 years after the transportation sufficiency ~~concurrency backlog~~ plan adoption. If the utilization of mass transit is selected as all

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or part of the system solution, the improvements and service may extend outside the area of the transportation deficiency areas to the planned terminus of the improvement as long as the improvement provides capacity enhancements to a larger intermodal system. The schedule shall be adopted as part of the local government comprehensive plan.

~~(b) The adoption of the transportation concurrency backlog plan shall be exempt from the provisions of s. 163.3187(1).~~

Notwithstanding such schedule requirements, as long as the schedule provides for the elimination of all transportation deficiencies ~~concurrency backlogs~~ within 10 years after the adoption of the transportation sufficiency ~~concurrency backlog~~ plan, the final maturity date of any debt incurred to finance or refinance the related projects may be no later than 40 years after the date the debt is incurred and the authority may continue operations and administer the trust fund established as provided in subsection (5) for as long as the debt remains outstanding.

(5) ESTABLISHMENT OF LOCAL TRUST FUND.—The transportation development ~~concurrency backlog~~ authority shall establish a local transportation ~~concurrency backlog~~ trust fund upon creation of the authority. Each local trust fund shall be administered by the transportation development ~~concurrency backlog~~ authority within which a transportation deficiencies have ~~concurrency backlog~~ has been identified. Each local trust fund must continue to be funded under this section for as long as the projects set forth in the related transportation sufficiency ~~concurrency backlog~~ plan remain to be completed or

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until any debt incurred to finance or refinance the related projects is no longer outstanding, whichever occurs later. Beginning in the first fiscal year after the creation of the authority, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within each transportation deficiency ~~concurrency backlog~~ area to be determined annually and shall be a minimum of 25 percent of the difference between the amounts set forth in paragraphs (a) and (b), except that if all of the affected taxing authorities agree under an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 25 percent of the difference between the amounts set forth in paragraphs (a) and (b):

(a) The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation development ~~concurrency backlog~~ authority and within the transportation deficiency ~~backlog~~ area; and

(b) 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 each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property within the transportation deficiency ~~concurrency backlog~~ area as shown on the most recent assessment roll used in connection with the taxation of such property of each taxing authority prior to the effective date of the ordinance funding the trust fund.

(6) EXEMPTIONS.—

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(a) The following public bodies or taxing authorities are exempt from the provisions of this section:

1. A special district that levies ad valorem taxes on taxable real property in more than one county.

2. A special district for which the sole available source of revenue is the authority to levy ad valorem taxes at the time an ordinance is adopted under this section. However, revenues or aid that may be dispensed or appropriated to a district as defined in s. 388.011 at the discretion of an entity other than such district shall not be deemed available.

3. A library district.

4. A neighborhood improvement district created under the Safe Neighborhoods Act.

5. A metropolitan transportation authority.

6. A water management district created under s. 373.069.

7. A community redevelopment agency.

(b) A transportation development ~~concurrency exemption~~ authority may also exempt from this section a special district that levies ad valorem taxes within the transportation deficiency ~~concurrency backlog~~ area pursuant to s. 163.387(2)(d).

(7) TRANSPORTATION DEFICIENCY ~~CONCURRENCY~~ SATISFACTION.—Upon adoption of a transportation sufficiency ~~concurrency backlog~~ plan as a part of the local government comprehensive plan, and the plan going into effect, the area subject to the plan shall be deemed to have achieved and maintained transportation level-of-service standards, and to have met requirements for financial feasibility for transportation facilities~~, and for the purpose of proposed development~~

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~~transportation concurrency has been satisfied~~. Proportionate fair-share mitigation shall be limited to ensure that a development inside a transportation deficiency ~~concurrency backlog~~ area is not responsible for the additional costs of eliminating deficiencies ~~backlogs~~.

(8) DISSOLUTION.—Upon completion of all transportation ~~concurrency backlog~~ projects identified in the transportation sufficiency plan and repayment or defeasance of all debt issued to finance or refinance such projects, a transportation development ~~concurrency backlog~~ authority shall be dissolved, and its assets and liabilities transferred to the county or municipality within which the authority is located. All remaining assets of the authority must be used for implementation of transportation projects within the jurisdiction of the authority. The local government comprehensive plan shall be amended to remove the transportation deficiency ~~concurrency backlog~~ plan.

Section 14. Section 163.3184, Florida Statutes, is amended to read:

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

(1) DEFINITIONS.—As used in this section, the term:

(a) "Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment

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will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

(b) "In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, ~~and~~ 163.3245, and 163.3248 ~~with the state comprehensive plan~~, with the appropriate strategic regional policy plan, ~~and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part~~ and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.

(c) "Reviewing agencies" means:

1. The state land planning agency;

2. The appropriate regional planning council;

3. The appropriate water management district;

4. The Department of Environmental Protection;

5. The Department of State;

6. The Department of Transportation;

7. In the case of plan amendments relating to public schools, the Department of Education;

8. In the case of plans or plan amendments that affect a military installation listed in s. 163.3175, the commanding

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officer of the affected military installation;

9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and

10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

(2) COORDINATION.—Each comprehensive plan or plan amendment proposed to be adopted pursuant to this part, except amendments adopted pursuant to ss. 163.32465 or 163.3187(1)(c) and (3), shall be transmitted, adopted, and reviewed in the manner prescribed in this section. The state land planning agency shall have responsibility for plan review, coordination, and the preparation and transmission of comments, pursuant to this section, to the local governing body responsible for the comprehensive plan. The state land planning agency shall maintain a single file concerning any proposed or adopted plan amendment submitted by a local government for any review under this section. Copies of all correspondence, papers, notes, memoranda, and other documents received or generated by the state land planning agency must be placed in the appropriate file. Paper copies of all electronic mail correspondence must be placed in the file. The file and its contents must be available for public inspection and copying as provided in chapter 119.

(3) LOCAL GOVERNMENT TRANSMITTAL OF PROPOSED PLAN OR AMENDMENT.—

(a) Each local governing body shall transmit the complete proposed comprehensive plan or plan amendment to the reviewing agencies ~~state land planning agency, the appropriate regional planning council and water management district, the Department~~

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~~of Environmental Protection, the Department of State, and the Department of Transportation, and, in the case of municipal plans, to the appropriate county, and, in the case of county plans, to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services,~~ immediately following a public hearing pursuant to subsection (15) ~~as specified in the state land planning agency's procedural rules~~. The local governing body shall also transmit a copy of the complete proposed comprehensive plan or plan amendment to any other unit of local government or government agency in the state that has filed a written request with the governing body for the plan or plan amendment. The local government may request a review by the state land planning agency pursuant to subsection (6) at the time of the transmittal of an amendment.

(b) A local governing body shall not transmit portions of a plan or plan amendment unless it has previously provided to all state agencies designated by the state land planning agency a complete copy of its adopted comprehensive plan pursuant to subsection (7) ~~and as specified in the agency's procedural rules~~. In the case of comprehensive plan amendments, the local governing body shall transmit to the state land planning agency, the other reviewing agencies ~~appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of State, and the Department of Transportation, and, in the case of municipal plans, to the appropriate county and, in the case of county plans, to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services~~ the supporting materials ~~specified in the state land planning agency's~~

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~~procedural rules~~ and, in cases in which the plan amendment is a result of an evaluation and appraisal report adopted pursuant to s. 163.3191, a copy of the evaluation and appraisal report. Local governing bodies shall consolidate all proposed plan amendments into a single submission for each of the two plan amendment adoption dates during the calendar year pursuant to s. 163.3187.

(c) A local government may adopt a proposed plan amendment previously transmitted pursuant to this subsection, unless review is requested or otherwise initiated pursuant to subsection (6).

(d) In cases in which a local government transmits multiple individual amendments that can be clearly and legally separated and distinguished for the purpose of determining whether to review the proposed amendment, and the state land planning agency elects to review several or a portion of the amendments and the local government chooses to immediately adopt the remaining amendments not reviewed, the amendments immediately adopted and any reviewed amendments that the local government subsequently adopts together constitute one amendment cycle in accordance with s. 163.3187(1).

(e) At the request of an applicant, a local government shall consider an application for zoning changes that would be required to properly enact the provisions of any proposed plan amendment transmitted pursuant to this subsection. Zoning changes approved by the local government are contingent upon the comprehensive plan or plan amendment transmitted becoming effective.

(4) INTERGOVERNMENTAL REVIEW.—The governmental agencies

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specified in paragraph (3)(a) shall provide comments to the state land planning agency within 30 days after receipt by the state land planning agency of the complete proposed plan amendment. ~~If the plan or plan amendment includes or relates to the public school facilities element pursuant to s. 163.3177(12), the state land planning agency shall submit a copy to the Office of Educational Facilities of the Commissioner of Education for review and comment.~~ The appropriate regional planning council shall also provide its written comments to the state land planning agency within 30 days after receipt by the state land planning agency of the complete proposed plan amendment and shall specify any objections, recommendations for modifications, and comments of any other regional agencies to which the regional planning council may have referred the proposed plan amendment. Written comments submitted by the public within 30 days after notice of transmittal by the local government of the proposed plan amendment will be considered as if submitted by governmental agencies. All written agency and public comments must be made part of the file maintained under subsection (2).

(5) REGIONAL, COUNTY, AND MUNICIPAL REVIEW.—The review of the regional planning council pursuant to subsection (4) shall be limited to effects on regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts which would be inconsistent with the comprehensive plan of the affected local government. However, any inconsistency between a local plan or plan amendment and a strategic regional policy plan must not be the sole basis for a notice of intent to find a local plan or plan amendment not in

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compliance with this act. A regional planning council shall not review and comment on a proposed comprehensive plan it prepared itself unless the plan has been changed by the local government subsequent to the preparation of the plan by the regional planning agency. The review of the county land planning agency pursuant to subsection (4) shall be primarily in the context of the relationship and effect of the proposed plan amendment on any county comprehensive plan element. Any review by municipalities will be primarily in the context of the relationship and effect on the municipal plan.

(6) STATE LAND PLANNING AGENCY REVIEW.—

(a) The state land planning agency shall review a proposed plan amendment upon request of a regional planning council, affected person, or local government transmitting the plan amendment. The request from the regional planning council or affected person must be received within 30 days after transmittal of the proposed plan amendment pursuant to subsection (3). A regional planning council or affected person requesting a review shall do so by submitting a written request to the agency with a notice of the request to the local government and any other person who has requested notice.

(b) The state land planning agency may review any proposed plan amendment regardless of whether a request for review has been made, if the agency gives notice to the local government, and any other person who has requested notice, of its intention to conduct such a review within 35 days after receipt of the complete proposed plan amendment.

(c) ~~The state land planning agency shall establish by rule a schedule for receipt of comments from the various government~~

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~~agencies, as well as written public comments, pursuant to subsection (4).~~ If the state land planning agency elects to review the amendment or the agency is required to review the amendment as specified in paragraph (a), the agency shall issue a report giving its objections, recommendations, and comments regarding the proposed amendment within 60 days after receipt of the complete proposed amendment by the state land planning agency. When a federal, state, or regional agency has implemented a permitting program, the state land planning agency shall not require a local government to duplicate or exceed that permitting program in its comprehensive plan or to implement such a permitting program in its land development regulations. Nothing contained herein shall prohibit the state land planning agency in conducting its review of local plans or plan amendments from making objections, recommendations, and comments or making compliance determinations regarding densities and intensities consistent with the provisions of this part. In preparing its comments, the state land planning agency shall only base its considerations on written, and not oral, comments, from any source.

(d) The state land planning agency review shall identify all written communications with the agency regarding the proposed plan amendment. If the state land planning agency does not issue such a review, it shall identify in writing to the local government all written communications received 30 days after transmittal. The written identification must include a list of all documents received or generated by the agency, which list must be of sufficient specificity to enable the documents to be identified and copies requested, if desired, and the name

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of the person to be contacted to request copies of any identified document. The list of documents must be made a part of the public records of the state land planning agency.

(7) LOCAL GOVERNMENT REVIEW OF COMMENTS; ADOPTION OF PLAN OR AMENDMENTS AND TRANSMITTAL.—

(a) The local government shall review the written comments submitted to it by the state land planning agency, and any other person, agency, or government. Any comments, recommendations, or objections and any reply to them shall be public documents, a part of the permanent record in the matter, and admissible in any proceeding in which the comprehensive plan or plan amendment may be at issue. The local government, upon receipt of written comments from the state land planning agency, shall have 120 days to adopt or adopt with changes the proposed comprehensive plan or s. 163.3191 plan amendments. In the case of comprehensive plan amendments other than those proposed pursuant to s. 163.3191, the local government shall have 60 days to adopt the amendment, adopt the amendment with changes, or determine that it will not adopt the amendment. The adoption of the proposed plan or plan amendment or the determination not to adopt a plan amendment, other than a plan amendment proposed pursuant to s. 163.3191, shall be made in the course of a public hearing pursuant to subsection (15). The local government shall transmit the complete adopted comprehensive plan or plan amendment, including the names and addresses of persons compiled pursuant to paragraph (15)(c), to the state land planning agency ~~as specified in the agency's procedural rules~~ within 10 working days after adoption. The local governing body shall also transmit a copy of the adopted comprehensive plan or plan

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amendment to the regional planning agency and to any other unit of local government or governmental agency in the state that has filed a written request with the governing body for a copy of the plan or plan amendment.

(b) If the adopted plan amendment is unchanged from the proposed plan amendment transmitted pursuant to subsection (3) and an affected person as defined in paragraph (1)(a) did not raise any objection, the state land planning agency did not review the proposed plan amendment, and the state land planning agency did not raise any objections during its review pursuant to subsection (6), the local government may state in the transmittal letter that the plan amendment is unchanged and was not the subject of objections.

(8) NOTICE OF INTENT.—

(a) If the transmittal letter correctly states that the plan amendment is unchanged and was not the subject of review or objections pursuant to paragraph (7)(b), the state land planning agency has 20 days after receipt of the transmittal letter within which to issue a notice of intent that the plan amendment is in compliance.

(b) Except as provided in paragraph (a) or in s. 163.3187(3), the state land planning agency, upon receipt of a local government's complete adopted comprehensive plan or plan amendment, shall have 45 days for review and to determine if the plan or plan amendment is in compliance with this act, unless the amendment is the result of a compliance agreement entered into under subsection (16), in which case the time period for review and determination shall be 30 days. If review was not conducted under subsection (6), the agency's determination must

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be based upon the plan amendment as adopted. If review was conducted under subsection (6), the agency's determination of compliance must be based only upon one or both of the following:

1. The state land planning agency's written comments to the local government pursuant to subsection (6); or

2. Any changes made by the local government to the comprehensive plan or plan amendment as adopted.

(c)1. During the time period provided for in this subsection, the state land planning agency shall issue, through a senior administrator or the secretary~~, as specified in the agency's procedural rules,~~ a notice of intent to find that the plan or plan amendment is in compliance or not in compliance. A notice of intent shall be issued by publication in the manner provided by this paragraph and by mailing a copy to the local government. The advertisement shall be placed in that portion of the newspaper where legal notices appear. The advertisement shall be published in a newspaper that meets the size and circulation requirements set forth in paragraph (15)(e) and that has been designated in writing by the affected local government at the time of transmittal of the amendment. Publication by the state land planning agency of a notice of intent in the newspaper designated by the local government shall be prima facie evidence of compliance with the publication requirements of this section. The state land planning agency shall post a copy of the notice of intent on the agency's Internet site. The agency shall, no later than the date the notice of intent is transmitted to the newspaper, send by regular mail a courtesy informational statement to persons who provide their names and addresses to the local government at the transmittal hearing or

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at the adoption hearing where the local government has provided the names and addresses of such persons to the department at the time of transmittal of the adopted amendment. The informational statements shall include the name of the newspaper in which the notice of intent will appear, the approximate date of publication, the ordinance number of the plan or plan amendment, and a statement that affected persons have 21 days after the actual date of publication of the notice to file a petition.

2. A local government that has an Internet site shall post a copy of the state land planning agency's notice of intent on the site within 5 days after receipt of the mailed copy of the agency's notice of intent.

(9) PROCESS IF LOCAL PLAN OR AMENDMENT IS IN COMPLIANCE.—

(a) If the state land planning agency issues a notice of intent to find that the comprehensive plan or plan amendment transmitted pursuant to s. 163.3167, s. 163.3187, s. 163.3189, or s. 163.3191 is in compliance with this act, any affected person may file a petition with the agency pursuant to ss. 120.569 and 120.57 within 21 days after the publication of notice. In this proceeding, the local plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable.

(b) The hearing shall be conducted by an administrative law judge of the Division of Administrative Hearings of the Department of Management Services, who shall hold the hearing in the county of and convenient to the affected local jurisdiction and submit a recommended order to the state land planning agency. The state land planning agency shall allow for the filing of exceptions to the recommended order and shall issue a

final order after receipt of the recommended order if the state land planning agency determines that the plan or plan amendment is in compliance. If the state land planning agency determines that the plan or plan amendment is not in compliance, the agency shall submit the recommended order to the Administration Commission for final agency action.

(10) PROCESS IF LOCAL PLAN OR AMENDMENT IS NOT IN COMPLIANCE.—

(a) If the state land planning agency issues a notice of intent to find the comprehensive plan or plan amendment not in compliance with this act, the notice of intent shall be forwarded to the Division of Administrative Hearings of the Department of Management Services, which shall conduct a proceeding under ss. 120.569 and 120.57 in the county of and convenient to the affected local jurisdiction. The parties to the proceeding shall be the state land planning agency, the affected local government, and any affected person who intervenes. No new issue may be alleged as a reason to find a plan or plan amendment not in compliance in an administrative pleading filed more than 21 days after publication of notice unless the party seeking that issue establishes good cause for not alleging the issue within that time period. Good cause shall not include excusable neglect. In the proceeding, the local government’s determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct. The local government’s determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance. The local government’s determination that elements of its plans are related to and

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consistent with each other shall be sustained if the determination is fairly debatable.

(b) The administrative law judge assigned by the division shall submit a recommended order to the Administration Commission for final agency action.

(c) Prior to the hearing, the state land planning agency shall afford an opportunity to mediate or otherwise resolve the dispute. If a party to the proceeding requests mediation or other alternative dispute resolution, the hearing may not be held until the state land planning agency advises the administrative law judge in writing of the results of the mediation or other alternative dispute resolution. However, the hearing may not be delayed for longer than 90 days for mediation or other alternative dispute resolution unless a longer delay is agreed to by the parties to the proceeding. The costs of the mediation or other alternative dispute resolution shall be borne equally by all of the parties to the proceeding.

(11) ADMINISTRATION COMMISSION.—

(a) If the Administration Commission, upon a hearing pursuant to subsection (9) or subsection (10), finds that the comprehensive plan or plan amendment is not in compliance with this act, the commission shall specify remedial actions which would bring the comprehensive plan or plan amendment into compliance. The commission may direct state agencies not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of those local governmental entities which have comprehensive plans or plan elements that are determined not to be in compliance. The commission order may also specify that the local government

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shall not be eligible for grants administered under the following programs:

1. The Florida Small Cities Community Development Block Grant Program, as authorized by ss. 290.0401-290.049.

2. The Florida Recreation Development Assistance Program, as authorized by chapter 375.

3. Revenue sharing pursuant to ss. 206.60, 210.20, and 218.61 and chapter 212, to the extent not pledged to pay back bonds.

(b) If the local government is one which is required to include a coastal management element in its comprehensive plan pursuant to s. 163.3177(6)(g), the commission order may also specify that the local government is not eligible for funding pursuant to s. 161.091. The commission order may also specify that the fact that the coastal management element has been determined to be not in compliance shall be a consideration when the department considers permits under s. 161.053 and when the Board of Trustees of the Internal Improvement Trust Fund considers whether to sell, convey any interest in, or lease any sovereignty lands or submerged lands until the element is brought into compliance.

(c) The sanctions provided by paragraphs (a) and (b) do ~~shall~~ not apply to a local government regarding any plan amendment, except for plan amendments that amend plans that have not been finally determined to be in compliance with this part, and except as provided in s. 163.3189(2) or s. 163.3191(9) ~~s. 163.3191(11)~~.

(12) GOOD FAITH FILING.—The signature of an attorney or party constitutes a certificate that he or she has read the

pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive reasons, or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the administrative law judge, upon motion or his or her own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(13) EXCLUSIVE PROCEEDINGS.—The proceedings under this section shall be the sole proceeding or action for a determination of whether a local government's plan, element, or amendment is in compliance with this act.

(14) AREAS OF CRITICAL STATE CONCERN.—No proposed local government comprehensive plan or plan amendment which is applicable to a designated area of critical state concern shall be effective until a final order is issued finding the plan or amendment to be in compliance as defined in this section.

(15) PUBLIC HEARINGS.—

(a) The procedure for transmittal of a complete proposed comprehensive plan or plan amendment pursuant to subsection (3) and for adoption of a comprehensive plan or plan amendment pursuant to subsection (7) shall be by affirmative vote of not less than a majority of the members of the governing body

present at the hearing. The adoption of a comprehensive plan or plan amendment shall be by ordinance. For the purposes of transmitting or adopting a comprehensive plan or plan amendment, the notice requirements in chapters 125 and 166 are superseded by this subsection, except as provided in this part.

(b) The local governing body shall hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment as follows:

1. The first public hearing shall be held at the transmittal stage pursuant to subsection (3). It shall be held on a weekday at least 7 days after the day that the first advertisement is published.

2. The second public hearing shall be held at the adoption stage pursuant to subsection (7). It shall be held on a weekday at least 5 days after the day that the second advertisement is published.

(c) The local government shall provide a sign-in form at the transmittal hearing and at the adoption hearing for persons to provide their names and mailing addresses. The sign-in form must advise that any person providing the requested information will receive a courtesy informational statement concerning publications of the state land planning agency’s notice of intent. The local government shall add to the sign-in form the name and address of any person who submits written comments concerning the proposed plan or plan amendment during the time period between the commencement of the transmittal hearing and the end of the adoption hearing. It is the responsibility of the person completing the form or providing written comments to accurately, completely, and legibly provide all information

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needed in order to receive the courtesy informational statement.

(d) The agency shall provide a model sign-in form for providing the list to the agency which may be used by the local government to satisfy the requirements of this subsection.

(e) If the proposed comprehensive plan or plan amendment changes the actual list of permitted, conditional, or prohibited uses within a future land use category or changes the actual future land use map designation of a parcel or parcels of land, the required advertisements shall be in the format prescribed by s. 125.66(4)(b)2. for a county or by s. 166.041(3)(c)2.b. for a municipality.

(16) COMPLIANCE AGREEMENTS.—

(a) At any time following the issuance of a notice of intent to find a comprehensive plan or plan amendment not in compliance with this part or after the initiation of a hearing pursuant to subsection (9), 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. Affected persons who have initiated a formal proceeding or have intervened in a formal proceeding may also enter into the compliance agreement. All parties granted intervenor status shall be provided reasonable notice of the commencement of a compliance agreement negotiation process and a reasonable opportunity to participate in such negotiation process. Negotiation meetings with local governments or intervenors shall be open to the public. The state land planning agency shall provide each party granted intervenor status with a copy of the compliance agreement within 10 days after the agreement is executed. The compliance agreement shall list each

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portion of the plan or plan amendment which is not in compliance, and shall specify remedial actions which the local government must complete within a specified time in order to bring the plan or plan amendment into compliance, including adoption of all necessary plan amendments. The compliance agreement may also establish monitoring requirements and incentives to ensure that the conditions of the compliance agreement are met.

(b) Upon filing by the state land planning agency of a compliance agreement executed by the agency and the local government with the Division of Administrative Hearings, any administrative proceeding under ss. 120.569 and 120.57 regarding the plan or plan amendment covered by the compliance agreement shall be stayed.

(c) Prior to its execution of a compliance agreement, the local government must approve the compliance agreement at a public hearing advertised at least 10 days before the public hearing in a newspaper of general circulation in the area in accordance with the advertisement requirements of subsection (15).

(d) A local government may adopt a plan amendment pursuant to a compliance agreement in accordance with the requirements of paragraph (15)(a). The plan amendment shall be exempt from the requirements of subsections (2)-(7). The local government shall hold a single adoption public hearing pursuant to the requirements of subparagraph (15)(b)2. and paragraph (15)(e). Within 10 working days after adoption of a plan amendment, the local government shall transmit the amendment to the state land planning agency as specified in the agency’s procedural rules,

and shall submit one copy to the regional planning agency and to any other unit of local government or government agency in the state that has filed a written request with the governing body for a copy of the plan amendment, and one copy to any party to the proceeding under ss. 120.569 and 120.57 granted intervenor status.

(e) The state land planning agency, upon receipt of a plan amendment adopted pursuant to a compliance agreement, shall issue a cumulative notice of intent addressing both the compliance agreement amendment and the plan or plan amendment that was the subject of the agreement, in accordance with subsection (8).

(f)1. If the local government adopts a comprehensive plan amendment pursuant to a compliance agreement and a notice of intent to find the plan amendment in compliance is issued, the state land planning agency shall forward the notice of intent to the Division of Administrative Hearings and the administrative law judge shall realign the parties in the pending proceeding under ss. 120.569 and 120.57, which shall thereafter be governed by the process contained in paragraphs (9)(a) and (b), including provisions relating to challenges by an affected person, burden of proof, and issues of a recommended order and a final order, except as provided in subparagraph 2. Parties to the original proceeding at the time of realignment may continue as parties without being required to file additional pleadings to initiate a proceeding, but may timely amend their pleadings to raise any challenge to the amendment which is the subject of the cumulative notice of intent, and must otherwise conform to the rules of procedure of the Division of Administrative Hearings.

Any affected person not a party to the realigned proceeding may challenge the plan amendment which is the subject of the cumulative notice of intent by filing a petition with the agency as provided in subsection (9). The agency shall forward the petition filed by the affected person not a party to the realigned proceeding to the Division of Administrative Hearings for consolidation with the realigned proceeding.

2. If any of the issues raised by the state land planning agency in the original subsection (10) proceeding are not resolved by the compliance agreement amendments, any intervenor in the original subsection (10) proceeding may require those issues to be addressed in the pending consolidated realigned proceeding under ss. 120.569 and 120.57. As to those unresolved issues, the burden of proof shall be governed by subsection (10).

3. If the local government adopts a comprehensive plan amendment pursuant to a compliance agreement and a notice of intent to find the plan amendment not in compliance is issued, the state land planning agency shall forward the notice of intent to the Division of Administrative Hearings, which shall consolidate the proceeding with the pending proceeding and immediately set a date for hearing in the pending proceeding under ss. 120.569 and 120.57. Affected persons who are not a party to the underlying proceeding under ss. 120.569 and 120.57 may challenge the plan amendment adopted pursuant to the compliance agreement by filing a petition pursuant to subsection (10).

(g) If the local government fails to adopt a comprehensive plan amendment pursuant to a compliance agreement, the state

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land planning agency shall notify the Division of Administrative Hearings, which shall set the hearing in the pending proceeding under ss. 120.569 and 120.57 at the earliest convenient time.

(h) This subsection does not prohibit a local government from amending portions of its comprehensive plan other than those which are the subject of the compliance agreement. However, such amendments to the plan may not be inconsistent with the compliance agreement.

(i) Nothing in this subsection is intended to limit the parties from entering into a compliance agreement at any time before the final order in the proceeding is issued, provided that the provisions of paragraph (c) shall apply regardless of when the compliance agreement is reached.

(j) Nothing in this subsection is intended to force any party into settlement against its will or to preclude the use of other informal dispute resolution methods, such as the services offered by the Florida Growth Management Dispute Resolution Consortium, in the course of or in addition to the method described in this subsection.

~~(17) COMMUNITY VISION AND URBAN BOUNDARY PLAN AMENDMENTS.—A local government that has adopted a community vision and urban service boundary under s. 163.3177(13) and (14) may adopt a plan amendment related to map amendments solely to property within an urban service boundary in the manner described in subsections (1), (2), (7), (14), (15), and (16) and s. 163.3187(1)(c)1.d. and e., 2., and 3., such that state and regional agency review is eliminated. The department may not issue an objections, recommendations, and comments report on proposed plan amendments or a notice of intent on adopted plan amendments; however,~~

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~~affected persons, as defined by paragraph (1)(a), may file a petition for administrative review pursuant to the requirements of s. 163.3187(3)(a) to challenge the compliance of an adopted plan amendment. This subsection does not apply to any amendment within an area of critical state concern, to any amendment that increases residential densities allowable in high-hazard coastal areas as defined in s. 163.3178(2)(h), or to a text change to the goals, policies, or objectives of the local government's comprehensive plan. Amendments submitted under this subsection are exempt from the limitation on the frequency of plan amendments in s. 163.3187.~~

~~(18) URBAN INFILL AND REDEVELOPMENT PLAN AMENDMENTS.—A municipality that has a designated urban infill and redevelopment area under s. 163.2517 may adopt a plan amendment related to map amendments solely to property within a designated urban infill and redevelopment area in the manner described in subsections (1), (2), (7), (14), (15), and (16) and s. 163.3187(1)(c)1.d. and e., 2., and 3., such that state and regional agency review is eliminated. The department may not issue an objections, recommendations, and comments report on proposed plan amendments or a notice of intent on adopted plan amendments; however, affected persons, as defined by paragraph (1)(a), may file a petition for administrative review pursuant to the requirements of s. 163.3187(3)(a) to challenge the compliance of an adopted plan amendment. This subsection does not apply to any amendment within an area of critical state concern, to any amendment that increases residential densities allowable in high-hazard coastal areas as defined in s. 163.3178(2)(h), or to a text change to the goals, policies, or~~

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~~objectives of the local government's comprehensive plan. Amendments submitted under this subsection are exempt from the limitation on the frequency of plan amendments in s. 163.3187.~~

~~(19) HOUSING INCENTIVE STRATEGY PLAN AMENDMENTS.—Any local government that identifies in its comprehensive plan the types of housing developments and conditions for which it will consider plan amendments that are consistent with the local housing incentive strategies identified in s. 420.9076 and authorized by the local government may expedite consideration of such plan amendments. At least 30 days prior to adopting a plan amendment pursuant to this subsection, the local government shall notify the state land planning agency of its intent to adopt such an amendment, and the notice shall include the local government's evaluation of site suitability and availability of facilities and services. A plan amendment considered under this subsection shall require only a single public hearing before the local governing body, which shall be a plan amendment adoption hearing as described in subsection (7). The public notice of the hearing required under subparagraph (15)(b)2. must include a statement that the local government intends to use the expedited adoption process authorized under this subsection. The state land planning agency shall issue its notice of intent required under subsection (8) within 30 days after determining that the amendment package is complete. Any further proceedings shall be governed by subsections (9)-(16).~~

Section 15. Subsection (6) of section 163.3187, Florida Statutes, is amended to read:

163.3187 Amendment of adopted comprehensive plan.—

~~(6)(a) No local government may amend its comprehensive plan~~

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~~after the date established by the state land planning agency for adoption of its evaluation and appraisal report~~ unless it has ~~submitted its report or addendum to the state land planning agency as prescribed by s. 163.3191, except for plan amendments described in paragraph (1)(b) or paragraph (1)(h).~~

~~(b) A local government may amend its comprehensive plan after it has submitted its adopted evaluation and appraisal report and for a period of 1 year after the initial determination of sufficiency regardless of whether the report has been determined to be insufficient.~~

~~(c) A local government may not amend its comprehensive plan, except for plan amendments described in paragraph (1)(b), if the 1-year period after the initial sufficiency determination of the report has expired and the report has not been determined to be sufficient.~~

~~(d) When the state land planning agency has determined that the report has sufficiently addressed all pertinent provisions of s. 163.3191, the local government may amend its comprehensive plan without the limitations imposed by paragraph (a) or paragraph (c).~~

~~(e) Any plan amendment which a local government attempts to adopt in violation of paragraph (a) or paragraph (c) is invalid, but such invalidity may be overcome if the local government readopts the amendment and transmits the amendment to the state land planning agency pursuant to s. 163.3184(7) after the report is determined to be sufficient~~.

Section 16. Section 163.3189, Florida Statutes, is repealed.

Section 17. Section 163.3191, Florida Statutes, is amended

to read:

163.3191 Evaluation and appraisal of comprehensive plan.—

(1) The planning program shall be a continuous and ongoing process. As the first step in adopting an updated comprehensive plan, each ~~Each~~ local government shall prepare ~~adopt~~ an evaluation and appraisal report once every 7 years assessing the progress in implementing the local government's comprehensive plan~~.~~ unless:

(a) The local government qualifies as a municipality of special financial concern, as defined in s. 200.185(1)(b), with a per capital taxable value of assessed property of $58,000 or less; or

(b) The local government is a municipality with a population under 20,000 with a per capita taxable value of assessed property of $46,000 or less; or

(c) The local government qualifies as a small county as that term is defined in s. 120.52(19).

The report, including the data and analysis included in the report, shall be one basis for updating the local comprehensive plan. The updated comprehensive plan shall be adopted after the preparation of the report. A local government not required to prepare a report is not required to update its comprehensive plan as set forth in this section.

(2) Furthermore, it is the intent of this section that:

(a) Adopted comprehensive plans be updated ~~reviewed~~ through such evaluation process to respond to changes in state, regional, and local policies on planning and growth management and changing conditions and trends, to ensure effective intergovernmental coordination, and to identify major issues

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regarding the community's achievement of its goals.

(b) The initial evaluation and appraisal report shall be based on the original comprehensive plan. After completion of the initial ~~evaluation and appraisal~~ report and any supporting plan amendments, each subsequent ~~evaluation and appraisal~~ report must evaluate the comprehensive plan as amended by the most recent evaluation and appraisal report update amendments ~~in effect at the time of the initiation of the evaluation and appraisal report process~~.

(c) Local governments identify the major issues as part of~~, if applicable, with input from state agencies, regional agencies, adjacent local governments, and the public in~~ the evaluation and appraisal report process. The Legislature encourages local governments to incorporate visioning, as set forth at s. 163.3167(11), or other similar techniques, as part of the process to foster public participation and to aid in identifying the major issues.

(d) It is also the intent of this section to establish minimum requirements for information to ensure predictability, certainty, and integrity in the growth management process. The report is intended to serve as a summary audit of the actions that a local government has undertaken and identify changes that it may need to make. The report should be based on the local government's analysis of major issues to further the community's goals ~~consistent with statewide minimum standards~~. The report is not intended to require a comprehensive rewrite of the elements within the local plan, unless a local government chooses to do so.

(3) ~~(2)~~ The report shall present an evaluation and

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assessment of the comprehensive plan and is encouraged to ~~shall~~ contain appropriate statements to update the comprehensive plan~~,~~ ~~including, but not limited to, words, maps, illustrations, or other media,~~ related to:

(a) Community-wide assessment

1.~~(a)~~ Population growth and changes in land area, ~~including annexation,~~ including projections for the next long-term planning timeframe ~~since the adoption of the original plan or the most recent update amendments~~.

2.~~(b)~~ The extent of vacant and developable land for each future land use category included in the plan.

3.~~(c)~~ An evaluation of the extent to which ~~The financial feasibility of implementing the comprehensive plan and of providing~~ needed infrastructure was provided during the evaluation period to address infrastructure backlogs and meet the demands of growth on public services and facilities ~~to achieve and maintain~~ through the achievement and maintenance of adopted level-of-service standards and ~~sustain~~ sustainment of concurrency management systems through the capital improvements element~~, as well as the ability to address infrastructure backlogs and meet the demands of growth on public services and facilities~~.

4.~~(d)~~ The location of existing development in relation to the location of development as anticipated in the original plan, or in the plan as amended by the most recent evaluation and appraisal report update amendments, such as within areas designated for urban growth.

~~(e) An identification of the major issues for the jurisdiction and, where pertinent, the potential social,~~

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~~economic, and environmental impacts.~~

5.~~(f)~~ Relevant changes to the state comprehensive plan, the requirements of this part~~, the minimum criteria contained in chapter 9J-5, Florida Administrative Code,~~ and the appropriate strategic regional policy plan since the adoption of the original plan or the most recent evaluation and appraisal report update amendments.

~~(g) An assessment of whether the plan objectives within each element, as they relate to major issues, have been achieved. The report shall include, as appropriate, an identification as to whether unforeseen or unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues identified in each element and the social, economic, and environmental impacts of the issue.~~

6.~~(h)~~ A brief assessment of successes and shortcomings related to each element of the plan.

7. A summary of the public participation program and activities undertaken by the local government in preparing the report.

(b) Evaluation of Major Community Planning Issues.

1. An identification of the major issues for the jurisdiction and, where pertinent, the potential social, economic, and environmental impacts.

2. An assessment of whether the plan objectives within each element, as they relate to major issues, have been achieved. The report shall include, as appropriate, identification as to whether unforeseen or unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues identified in each element and the social, economic, and

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environmental impacts of the issue.

3.~~(i)~~ The identification of any actions or corrective measures, including ~~whether~~ plan amendments, ~~are anticipated~~ to address the major issues identified and analyzed in the report. Such identification shall include, as appropriate, new population projections, new ~~revised~~ updated planning timeframes, ~~a~~ updated ~~revised~~ future conditions map or map series, an updated capital improvements element, and any new and ~~revised~~ updated goals, objectives, and policies for major issues identified within each element. Recommended changes to the comprehensive plan shall be summarized in a single section of the report. ~~This paragraph shall not require the submittal of the plan amendments with the evaluation and appraisal report.~~

~~(j) A summary of the public participation program and activities undertaken by the local government in preparing the report.~~

~~(k) The coordination of the comprehensive plan with existing public schools and those identified in the applicable educational facilities plan adopted pursuant to s. 1013.35. The assessment shall address, where relevant, the success or failure of the coordination of the future land use map and associated planned residential development with public schools and their capacities, as well as the joint decisionmaking processes engaged in by the local government and the school board in regard to establishing appropriate population projections and the planning and siting of public school facilities. For those counties or municipalities that do not have a public schools interlocal agreement or public school facilities element, the assessment shall determine whether the local government~~

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~~continues to meet the criteria of s. 163.3177(12). If the county or municipality determines that it no longer meets the criteria, it must adopt appropriate school concurrency goals, objectives, and policies in its plan amendments pursuant to the requirements of the public school facilities element, and enter into the existing interlocal agreement required by ss. 163.3177(6)(h)2. and 163.31777 in order to fully participate in the school concurrency system.~~

~~(l) The extent to which the local government has been successful in identifying alternative water supply projects and traditional water supply projects, including conservation and reuse, necessary to meet the water needs identified in s. 373.709(2)(a) within the local government's jurisdiction. The report must evaluate the degree to which the local government has implemented the work plan for building public, private, and regional water supply facilities, including development of alternative water supplies, identified in the element as necessary to serve existing and new development.~~

~~(m) If any of the jurisdiction of the local government is located within the coastal high-hazard area, an evaluation of whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs, including, but not limited to, redevelopment following a natural disaster. The property rights of current residents shall be balanced with public safety considerations. The local government must identify strategies to address redevelopment feasibility and the property rights of affected residents. These strategies may include the authorization of redevelopment up to the actual built density in existence on the property prior to the natural~~

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~~disaster or redevelopment.~~

4.~~(n)~~ An assessment of whether the criteria adopted pursuant to s. 163.3177(6)(a) were successful in achieving compatibility with military installations.

~~(o) The extent to which a concurrency exception area designated pursuant to s. 163.3180(5), a concurrency management area designated pursuant to s. 163.3180(7), or a multimodal transportation district designated pursuant to s. 163.3180(15) has achieved the purpose for which it was created and otherwise complies with the provisions of s. 163.3180.~~

~~(p) An assessment of the extent to which changes are needed to develop a common methodology for measuring impacts on transportation facilities for the purpose of implementing its concurrency management system in coordination with the municipalities and counties, as appropriate pursuant to s. 163.3180(10).~~

~~(3) Voluntary scoping meetings may be conducted by each local government or several local governments within the same county that agree to meet together. Joint meetings among all local governments in a county are encouraged. All scoping meetings shall be completed at least 1 year prior to the established adoption date of the report. The purpose of the meetings shall be to distribute data and resources available to assist in the preparation of the report, to provide input on major issues in each community that should be addressed in the report, and to advise on the extent of the effort for the components of subsection (2). If scoping meetings are held, the local government shall invite each state and regional reviewing agency, as well as adjacent and other affected local~~

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~~governments. A preliminary list of new data and major issues that have emerged since the adoption of the original plan, or the most recent evaluation and appraisal report-based update amendments, should be developed by state and regional entities and involved local governments for distribution at the scoping meeting. For purposes of this subsection, a "scoping meeting" is a meeting conducted to determine the scope of review of the evaluation and appraisal report by parties to which the report relates.~~

(4) The local planning agency shall prepare the evaluation and appraisal report and updated comprehensive plan and shall make recommendations to the governing body regarding adoption of the ~~proposed report~~ plan. ~~The local planning agency shall prepare the report in conformity with its public participation procedures adopted as required by s. 163.3181. During the preparation of the proposed report and prior to making any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed report. At a minimum, the format and content of the proposed report shall include a table of contents; numbered pages; element headings; section headings within elements; a list of included tables, maps, and figures; a title and sources for all included tables; a preparation date; and the name of the preparer. Where applicable, maps shall include major natural and artificial geographic features; city, county, and state lines; and a legend indicating a north arrow, map scale, and the date.~~

~~(5) Ninety days prior to the scheduled adoption date, the local government may provide a proposed evaluation and appraisal report to the state land planning agency and distribute copies~~

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~~to state and regional commenting agencies as prescribed by rule,~~ ~~adjacent jurisdictions, and interested citizens for review. All~~ ~~review comments, including comments by the state land planning~~ ~~agency, shall be transmitted to the local government and state~~ ~~land planning agency within 30 days after receipt of the~~ ~~proposed report.~~

~~(6) The governing body, after considering the review~~ ~~comments and recommended changes, if any, shall adopt the~~ ~~evaluation and appraisal report by resolution or ordinance at a~~ ~~public hearing with public notice. The governing body shall~~ ~~adopt the report in conformity with its public participation~~ ~~procedures adopted as required by s. 163.3181. The local~~ ~~government shall submit to the state land planning agency three~~ ~~copies of the report, a transmittal letter indicating the dates~~ ~~of public hearings, and a copy of the adoption resolution or~~ ~~ordinance. The local government shall provide a copy of the~~ ~~report to the reviewing agencies which provided comments for the~~ ~~proposed report, or to all the reviewing agencies if a proposed~~ ~~report was not provided pursuant to subsection (5), including~~ ~~the adjacent local governments. Within 60 days after receipt,~~ ~~the state land planning agency shall review the adopted report~~ ~~and make a preliminary sufficiency determination that shall be~~ ~~forwarded by the agency to the local government for its~~ ~~consideration. The state land planning agency shall issue a~~ ~~final sufficiency determination within 90 days after receipt of~~ ~~the adopted evaluation and appraisal report.~~

(5) ~~(7)~~ The intent of the evaluation and appraisal process is the preparation of a plan update that clearly and concisely achieves the purpose of this section. The evaluation and

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appraisal report shall be submitted as data and analysis in support of the evaluation and appraisal report based amendments. ~~Toward this end, the sufficiency review of the state land planning agency shall concentrate on whether the evaluation and appraisal report sufficiently fulfills the components of subsection (2). If the state land planning agency determines that the report is insufficient, the governing body shall adopt a revision of the report and submit the revised report for review pursuant to subsection (6).~~

~~(8) The state land planning agency may delegate the review of evaluation and appraisal reports, including all state land planning agency duties under subsections (4)-(7), to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region may elect to have its report reviewed by the regional planning council rather than the state land planning agency. The state land planning agency shall by agreement provide for uniform and adequate review of reports and shall retain oversight for any delegation of review to a regional planning council.~~

~~(9) The state land planning agency may establish a phased schedule for adoption of reports. The schedule shall provide each local government at least 7 years from plan adoption or last established adoption date for a report and shall allot approximately one-seventh of the reports to any 1 year. In order to allow the municipalities to use data and analyses gathered by the counties, the state land planning agency shall schedule municipal report adoption dates between 1 year and 18 months later than the report adoption date for the county in which~~

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~~those municipalities are located.~~ ~~A local government may adopt its report no earlier than 90 days prior to the established adoption date. Small municipalities which were scheduled by chapter 9J-33, Florida Administrative Code, to adopt their evaluation and appraisal report after February 2, 1999, shall be rescheduled to adopt their report together with the other municipalities in their county as provided in this subsection.~~

(6) ~~(10)~~ Local governments subject to this section shall update their comprehensive plans based on the requirements of this section at least once every 7 years. The governing body shall amend its comprehensive plan ~~based on the recommendations in the report and shall update the comprehensive plan based on the components of subsection (2)~~, pursuant to the provisions of ss. 163.3184, and 163.3187, ~~and 163.3189~~. Amendments to update a comprehensive plan ~~based on the evaluation and appraisal report~~ shall be adopted during a single amendment cycle. within ~~18 months after the report is determined to be sufficient by the state land planning agency, except the state land planning agency may grant an extension for adoption of a portion of such amendments. The state land planning agency may grant a 6-month extension for the adoption of such amendments if the request is justified by good and sufficient cause as determined by the agency. An additional extension may also be granted if the request will result in greater coordination between transportation and land use, for the purposes of improving Florida's transportation system, as determined by the agency in coordination with the Metropolitan Planning Organization program. beginning July 1, 2006, failure to timely adopt and transmit update amendments to the comprehensive plan based on~~

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~~the evaluation and appraisal report shall result in a local government being prohibited from adopting amendments to the comprehensive plan until the evaluation and appraisal report update amendments have been adopted and transmitted to the state land planning agency. The prohibition on plan amendments shall commence when the update amendments to the comprehensive plan are past due. The comprehensive plan as amended shall be in compliance as defined in s. 163.3184(1)(b).~~ Within 6 months after the effective date of the update amendments to the comprehensive plan, the local government shall provide to the state land planning agency ~~and to all agencies designated by rule~~ a complete copy of the updated comprehensive plan.

~~(11) The Administration Commission may impose the sanctions provided by s. 163.3184(11) against any local government that fails to adopt and submit a report, or that fails to implement its report through timely and sufficient amendments to its local plan, except for reasons of excusable delay or valid planning reasons agreed to by the state land planning agency or found present by the Administration Commission. Sanctions for untimely or insufficient plan amendments shall be prospective only and shall begin after a final order has been issued by the Administration Commission and a reasonable period of time has been allowed for the local government to comply with an adverse determination by the Administration Commission through adoption of plan amendments that are in compliance. The state land planning agency may initiate, and an affected person may intervene in, such a proceeding by filing a petition with the Division of Administrative Hearings, which shall appoint an administrative law judge and conduct a hearing pursuant to ss.~~

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~~120.569 and 120.57(1) and shall submit a recommended order to the Administration Commission. The affected local government shall be a party to any such proceeding. The commission may implement this subsection by rule.~~

(7) ~~(12)~~ The state land planning agency shall not adopt rules to implement this section, other than procedural rules.

~~(13) The state land planning agency shall regularly review the evaluation and appraisal report process and submit a report to the Governor, the Administration Commission, the Speaker of the House of Representatives, the President of the Senate, and the respective community affairs committees of the Senate and the House of Representatives. The first report shall be submitted by December 31, 2004, and subsequent reports shall be submitted every 5 years thereafter. At least 9 months before the due date of each report, the Secretary of Community Affairs shall appoint a technical committee of at least 15 members to assist in the preparation of the report. The membership of the technical committee shall consist of representatives of local governments, regional planning councils, the private sector, and environmental organizations. The report shall assess the effectiveness of the evaluation and appraisal report process.~~

~~(14) The requirement of subsection (10) prohibiting a local government from adopting amendments to the local comprehensive plan until the evaluation and appraisal report update amendments have been adopted and transmitted to the state land planning agency does not apply to a plan amendment proposed for adoption by the appropriate local government as defined in s. 163.3178(2)(k) in order to integrate a port comprehensive master plan with the coastal management element of the local~~

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~~comprehensive plan as required by s. 163.3178(2)(k) if the port comprehensive master plan or the proposed plan amendment does not cause or contribute to the failure of the local government to comply with the requirements of the evaluation and appraisal report~~.

Section 18. Present subsections (3), (4), (5), and (6) of section 163.3194, Florida Statutes, are renumbered as subsections (4), (5), (6), and (7), respectively, and a new subsection (3) is added to that section, to read:

163.3194 Legal status of comprehensive plan.—

(3) A governing body may not issue a development order or permit to erect, operate, use, or maintain a sign authorized by s. 479.07 unless the sign is located in an area designated for commercial or industrial use in a zoned or unzoned area or on a zoned or unzoned parcel.

(a) As used in this subsection, the term:

1. "Commercial or industrial use" means a parcel of land designated predominately for commercial or industrial uses under both the future land use map approved by the state land planning agency and the land use development regulations adopted pursuant to this chapter.

2. "Zoned or unzoned area" means an area that is not specifically designated for commercial or industrial uses under the land development regulations and is located in an area designated by the future land use map of a plan approved by the state land planning agency for multiple uses that include commercial or industrial uses on which three or more separate and distinct conforming activities are located.

3. "Zoned or unzoned parcel" means a parcel of land in a

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zoned or unzoned area.

(b) If a parcel is located in an area designated for multiple uses on the future land use map of the comprehensive plan and the zoning category of the land development regulations does not clearly designate that parcel for a specific use, the parcel will be considered an unzoned commercial or industrial parcel if it meets the criteria of this subsection.

(c) A development order or permit issued pursuant to a plan approved by the state land planning agency in a zoned or unzoned area or on a zoned or unzoned parcel authorized for commercial or industrial use is in compliance with s. 479.02, and the Department of Transportation may rely upon such determination by the local permitting agency.

Section 19. Subsection (3) of section 163.3220, Florida Statutes, is amended to read:

163.3220 Short title; legislative intent.—

(3) In conformity with, in furtherance of, and to implement the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act and the Florida State Comprehensive Planning Act of 1972, it is the intent of the Legislature to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

Section 20. Subsections (2) and (11) of section 163.3221, Florida Statutes, are amended to read:

163.3221 Florida Local Government Development Agreement Act; definitions.—As used in ss. 163.3220-163.3243:

(2) "Comprehensive plan" means a plan adopted pursuant to

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the Community ~~"Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act.~~"~~

(11) "Local planning agency" means the agency designated to prepare a comprehensive plan or plan amendment pursuant to the Community ~~"Florida Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act.~~"~~

Section 21. Section 163.3229, Florida Statutes, is amended to read:

163.3229 Duration of a development agreement and relationship to local comprehensive plan.—The duration of a development agreement may ~~shall~~ not exceed 20 years, unless it is~~. It may be~~ extended by mutual consent of the governing body and the developer, subject to a public hearing in accordance with s. 163.3225. No development agreement shall be effective or be implemented by a local government unless the local government's comprehensive plan and plan amendments implementing or related to the agreement are ~~found~~ in compliance ~~by the state land planning agency~~ in accordance with s. 163.3184~~, s. 163.3187, or s. 163.3189~~.

Section 22. Section 163.3235, Florida Statutes, is amended to read:

163.3235 Periodic review of a development agreement.—A local government shall review land subject to a development agreement at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of the development agreement. ~~For each annual review conducted during years 6 through 10 of a development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land~~

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~~planning agency. The state land planning agency shall adopt rules regarding the contents of the report, provided that the report shall be limited to the information sufficient to determine the extent to which the parties are proceeding in good faith to comply with the terms of the development agreement.~~ If the local government finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the local government.

Section 23. Section 163.3239, Florida Statutes, is amended to read:

163.3239 Recording and effectiveness of a development agreement.—Within 14 days after a local government enters into a development agreement, the local government shall record the agreement with the clerk of the circuit court in the county where the local government is located. ~~A copy of the recorded development agreement shall be submitted to the state land planning agency within 14 days after the agreement is recorded.~~ A development agreement shall not be effective until it is properly recorded in the public records of the county ~~and until 30 days after having been received by the state land planning agency pursuant to this section~~. The burdens of the development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

Section 24. Section 163.3243, Florida Statutes, is amended to read:

163.3243 Enforcement.—Any party or~~, any~~ aggrieved or adversely affected person as defined in s. 163.3215(2)~~, or the~~

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~~state land planning agency~~ may file an action for injunctive relief in the circuit court where the local government is located to enforce the terms of a development agreement or to challenge compliance of the agreement with the provisions of ss. 163.3220-163.3243.

Section 25. Section 163.3245, Florida Statutes, is amended to read:

163.3245 ~~Optional~~ sector plans.—

(1) In recognition of the benefits of ~~conceptual~~ long-range planning for ~~the buildout of an area, and detailed planning for~~ specific areas, ~~as a demonstration project, the requirements of s. 380.06 may be addressed as identified by this section for up to five~~ local governments or combinations of local governments ~~which~~ may adopt into their ~~the~~ comprehensive plans a ~~plan an optional~~ 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 the intent of s. 163.3177(11), which supports 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. ~~Optional~~ Sector plans are intended for substantial geographic areas that

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include ~~including~~ at least 15,000 ~~5,000~~ acres of one or more local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and public facilities. ~~The state land planning agency may approve optional sector plans of less than 5,000 acres based on local circumstances if it is determined that the plan would further the purposes of this part and part I of chapter 380. Preparation of an optional sector plan is authorized by agreement between the state land planning agency and the applicable local governments under s. 163.3171(4). An optional sector plan may be adopted through one or more comprehensive plan amendments under s. 163.3184. However, an optional~~ A sector plan may not be adopted ~~authorized~~ in an area of critical state concern.

(2) ~~The state land planning agency may enter into an agreement to authorize preparation of an optional sector plan upon the request of one or more local governments based on consideration of problems and opportunities presented by existing development trends; the effectiveness of current comprehensive plan provisions; the potential to further the state comprehensive plan, applicable strategic regional policy plans, this part, and part I of chapter 380; and those factors identified by s. 163.3177(10)(i).~~ Upon the request of a local government with jurisdiction, the applicable regional planning council shall conduct a scoping meeting with affected local governments and those agencies identified in s. 163.3184(4) before preparation of the sector plan ~~execution of the agreement authorized by this section~~. The purpose of this meeting is to assist the state land planning agency and the local government in the identification of the relevant planning issues to be

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addressed and the data and resources available to assist in the preparation of the sector plan. In the event that a scoping meeting is conducted, ~~subsequent plan amendments.~~ the regional planning council shall make written recommendations to the state land planning agency and affected local governments, on the issues requested by the local government. The scoping meeting shall be noticed and open to the public. In the event that the entire planning area proposed for the sector plan is within the jurisdiction of two or more local governments, some or all of them may enter into a joint planning agreement pursuant to s. 163.3171 with respect to ~~including whether a sustainable sector plan would be appropriate. The agreement must define~~ the geographic area to be subject to the sector plan, the planning issues that will be emphasized, procedures ~~requirements~~ for intergovernmental coordination to address extrajurisdictional impacts, supporting application materials including data and analysis, ~~and~~ procedures for public participation, or other issues. ~~An agreement may address previously adopted sector plans that are consistent with the standards in this section. Before executing an agreement under this subsection, the local government shall hold a duly noticed public workshop to review and explain to the public the optional sector planning process and the terms and conditions of the proposed agreement. The local government shall hold a duly noticed public hearing to execute the agreement. All meetings between the department and the local government must be open to the public.~~

(3) ~~Optional~~ Sector planning encompasses two levels: adoption pursuant to ~~under~~ s. 163.3184 of a ~~conceptual~~ long-term master plan for the entire planning area as part of the

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comprehensive plan; and adoption by local development order of two or more ~~buildout overlay to the comprehensive plan, having no immediate effect on the issuance of development orders or the applicability of s. 380.06, and adoption under s. 163.3184 of~~ detailed specific area plans that implement the ~~conceptual~~ long-term master plan ~~buildout overlay and authorize issuance of development orders,~~ and within which s. 380.06 is waived. ~~Until such time as a detailed specific area plan is adopted, the underlying future land use designations apply.~~

(a) In addition to the other requirements of this chapter, a long-term master plan pursuant to this section ~~conceptual long-term buildout overlay~~ must include maps, illustrations, and text supported by data and analysis to address the following:

1. A ~~long-range conceptual~~ framework map that, at a minimum, generally depicts ~~identifies anticipated~~ areas of urban, agricultural, rural, and conservation land use; identifies allowed uses in various parts of the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern in developed areas with graphic illustrations based on a hierarchy of places and functional place-making components.

2. 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.

3. A general identification of the transportation facilities to serve the future land uses in the long-term master plan, including guidelines to be used to establish each modal

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component intended to optimize mobility.

4. A general identification of other regionally significant public facilities ~~consistent with chapter 9J-2, Florida Administrative Code, irrespective of local governmental jurisdiction~~ necessary to support ~~buildout of~~ the ~~anticipated~~ future land uses, which may include central utilities provided on-site within the planning area, and policies setting forth the procedures to be used to mitigate the impacts of future land uses on public facilities.

5. ~~3.~~ A general identification of regionally significant natural resources within the planning area based on the best available data 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 ~~consistent with chapter 9J-2, Florida Administrative Code~~.

6. ~~4.~~General principles and guidelines addressing ~~that address~~ the urban form and the interrelationships of ~~anticipated~~ future land uses; the protection and, as appropriate, restoration and management of lands identified for permanent preservation through recordation of conservation easements consistent with s. 704.06, which shall be phased or staged in coordination with detailed specific area plans to reflect phased or staged development within the planning area; ~~and a discussion, at the applicant's option, of the extent, if any, to which the plan will address restoring key ecosystems,~~ achieving a more clean, healthy environment;~~,~~ limiting urban sprawl; providing a range of housing types;~~,~~ protecting wildlife and natural areas;~~,~~ advancing the efficient use of land and other

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resources;~~, and~~ creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.

7. ~~5.~~ Identification of general procedures and policies to facilitate ~~ensure~~ intergovernmental coordination to address extrajurisdictional impacts from the future land uses ~~long-range conceptual framework map~~.

A long-term master plan adopted pursuant to this section shall be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan, shall specify the projected population within the planning area during the chosen planning period, 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. It shall not be a requirement for a long-term master plan adopted pursuant to this section to demonstrate need based upon projected population growth or on any other basis.

(b) In addition to the other requirements of this chapter, ~~including those in paragraph (a),~~ the detailed specific area plans shall be consistent with the long-term master plan and must include conditions and commitments which provide for:

1. Development or conservation of an area of ~~adequate size to accommodate a level of development which achieves a functional relationship between a full range of land uses within the area and to encompass~~ at least 1,000 acres consistent with the long-term master plan. The local government ~~state land planning agency~~ may approve detailed specific area plans of less than 1,000 acres based on local circumstances if it is

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determined that the detailed specific area plan furthers the purposes of this part and part I of chapter 380.

2. Detailed identification and analysis of the maximum and minimum densities and intensities of use, and the distribution, extent, and location of future land uses.

3. Detailed identification of water resource development and water supply development projects and related infrastructure, and water conservation measures to address water needs of development in the detailed specific area plan.

4. Detailed identification of the transportation facilities to serve the future land uses in the detailed specific area plan.

5. Detailed identification of other regionally significant public facilities, including public facilities outside the jurisdiction of the host local government, ~~anticipated~~ impacts of future land uses on those facilities, and required improvements consistent with the long-term master plan ~~chapter 9J-2, Florida Administrative Code~~.

6. ~~4.~~Public facilities necessary to serve development in the detailed specific area plan ~~for the short term~~, including developer contributions in a ~~financially feasible~~ 5-year capital improvement schedule of the affected local government.

7. ~~5.~~ Detailed analysis and identification of specific measures to assure the protection or conservation of lands identified in the long-term master plan to be permanently preserved within the planning area through recordation of a conservation easement consistent with s. 704.06 and, as appropriate, restored or managed, ~~of regionally significant natural resources~~ and other important resources both within and

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outside the host jurisdiction~~, including those regionally significant resources identified in chapter 9J-2, Florida Administrative Code~~.

8. ~~6.~~ Detailed principles and guidelines addressing ~~that address~~ the urban form and the interrelationships of ~~anticipated~~ future land uses; ~~and a discussion, at the applicant's option, of the extent, if any, to which the plan will address restoring key ecosystems,~~ achieving a more clean, healthy environment;~~,~~ limiting urban sprawl;~~,~~ providing a range of housing types; protecting wildlife and natural areas;~~,~~ advancing the efficient use of land and other resources;~~, and~~ creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs.

9. ~~7.~~ Identification of specific procedures to facilitate ~~ensure~~ intergovernmental coordination to address extrajurisdictional impacts from ~~of~~ the detailed specific area plan.

A detailed specific area plan adopted by local development order pursuant to this section may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan and shall specify the projected population within the specific planning area during the chosen planning period. It shall not be a requirement for a detailed specific area plan adopted pursuant to this section to demonstrate need based upon projected population growth or on any other basis.

(c) In its review of a long-term master plan, the state

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land planning agency shall consult with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, and the applicable water management district regarding the design of areas for protection and conservation of regionally significant natural resources and for the protection and, as appropriate, restoration and management of lands identified for permanent preservation.

(d) In its review of a long-term master plan, the state land planning agency shall consult with the Department of Transportation, the applicable metropolitan planning organization, and any urban transit agency regarding the location, capacity, design, and phasing or staging of major transportation facilities in the planning area.

(e) The state land planning agency may initiate a civil action pursuant to s. 163.3215 with respect to a detailed specific area plan which is not consistent with a long-term master plan adopted pursuant to this section. For purposes of such a proceeding, the state land planning agency shall be deemed an aggrieved and adversely affected party. Regardless of whether the local government has adopted an ordinance that establishes a local process which meets the requirements of s. 163.3215(4), judicial review of a detailed specific area plan initiated by the state land planning agency shall be de novo pursuant to s. 163.3215(3) and not by petition for writ of certiorari pursuant to s. 163.3215(4). Any other aggrieved or adversely affected party shall be subject to s. 163.3215 in all respects when initiating a consistency challenge to a detailed specific area plan.

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(f) This subsection does ~~may~~ not ~~be construed to~~ prevent preparation and approval of the ~~optional~~ sector plan and detailed specific area plan concurrently or in the same submission.

(4) Upon the long-term master plan becoming legally effective:

(a) Any long-range transportation plan developed by a metropolitan planning organization pursuant to s. 339.175(7) must be consistent, to the maximum extent feasible, with the long-term master plan, including but not limited to the projected population, the approved uses and densities and intensities of use and their distribution within the planning area. The transportation facilities identified in adopted plans pursuant to subparagraphs (3)(a)3. and (3)(b)4. must be developed in coordination with the adopted M.P.O. long-range transportation plan.

(b) The water needs, sources and water resource development and water supply development projects identified in adopted plans pursuant to sub-subparagraphs (3)(a)2. and (3)(b)3. shall be incorporated into the applicable district and regional water supply plans adopted in accordance with ss. 373.036 and 373.709. Accordingly, and notwithstanding the permit durations stated in s. 373.236, an applicant may request and the applicable district may issue consumptive use permits for durations commensurate with the long-term master plan. The permitting criteria in s. 373.223 shall be applied based upon the projected population, the approved densities and intensities of use and their distribution in the long-term master plan.

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~~The host local government shall submit a monitoring report to the state land planning agency and applicable regional planning council on an annual basis after adoption of a detailed specific area plan. The annual monitoring report must provide summarized information on development orders issued, development that has occurred, public facility improvements made, and public facility improvements anticipated over the upcoming 5 years.~~

(5) When a ~~plan amendment adopting~~ a detailed specific area plan has become effective for a portion of the planning area governed by a long-term master plan adopted pursuant to this section ~~under ss. 163.3184 and 163.3189(2)~~, the provisions of s. 380.06 do not apply to development within the geographic area of the detailed specific area plan. However, any development-of-regional-impact development order that is vested from the detailed specific area plan may be enforced pursuant to ~~under~~ s. 380.11.

(a) The local government adopting the detailed specific area plan is primarily responsible for monitoring and enforcing the detailed specific area plan. Local governments shall not issue any permits or approvals or provide any extensions of services to development that are not consistent with the detailed specific ~~sector~~ area plan.

(b) If the state land planning agency has reason to believe that a violation of any detailed specific area plan~~, or of any agreement entered into under this section,~~ has occurred or is about to occur, it may institute an administrative or judicial proceeding to prevent, abate, or control the conditions or activity creating the violation, using the procedures in s. 380.11.

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(c) In instituting an administrative or judicial proceeding involving an ~~optional~~ sector plan or detailed specific area plan, including a proceeding pursuant to paragraph (b), the complaining party shall comply with the requirements of s. 163.3215(4), (5), (6), and (7), except as provided by paragraph (3)(d).

(d) The detailed specific area plan shall establish a buildout date until which the approved development shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that implementation of the plan is not continuing in good faith based on standards established by plan policy, or that substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred, or that the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or that the change is clearly established to be essential to the public health, safety, or welfare.

(6) Concurrent with or subsequent to review and adoption of a long-term master plan pursuant to subsection (3)(a), an applicant may apply for master development approval pursuant to s. 380.06(21) for the entire planning area in order to establish a buildout date until which the approved uses and densities and intensities of use of the master plan shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that implementation of the master plan is not continuing in good faith based on standards established by plan policy, or that substantial changes in the conditions underlying the approval of the master

plan have occurred, or that the master plan was based on substantially inaccurate information provided by the applicant, or that change is clearly established to be essential to the public health, safety, or welfare. Review of the application for master development approval shall be at a level of detail appropriate for the long-term and conceptual nature of the long-term master plan and, to the maximum extent possible, shall only consider information provided in the application for a long-term master plan. Notwithstanding any provision of s. 380.06 to the contrary, an increment of development in such an approved master development plan shall be approved by a detailed specific area plan pursuant to subsection (3)(b) and shall be exempt from review pursuant to s 380.06. ~~Beginning December 1, 1999, and each year thereafter, the department shall provide a status report to the Legislative Committee on Intergovernmental Relations regarding each optional sector plan authorized under this section.~~

(7) A developer within an area subject to a long-term master plan which meets the requirements of paragraph (3)(a) and subsection (6) or a detailed specific area plan which meets the requirements of paragraph (3)(b) may enter into a development agreement with a local government pursuant to ss. 163.3220-163.3243. The duration of such a development agreement may be through the planning period of the long-term master plan or the detailed specific area plan, as the case may be, notwithstanding the limit on the duration of a development agreement pursuant to s. 163.3229.

(8) Any owner of property within the planning area of a proposed long-term master plan may withdraw his consent to the

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master plan at any time prior to local government adoption, and the local government shall exclude such parcels from the adopted master plan. Thereafter, the long-term master plan, any detailed specific area plan, and the exemption from development-of-regional-impact review under this section shall 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 adopted and reviewed pursuant to s. 163.3184.

(9) The adoption of a long-term master plan or a detailed specific area plan pursuant to this section shall not limit the right to continue existing agricultural or silvicultural uses or other natural resource-based operations or to establish similar new uses that are consistent with the plans approved pursuant to this section.

(10) Notwithstanding any provision to the contrary of s. 380.06; chapter 163, Part II; or any planning agreement or plan policy, a landowner or developer who has received approval of a master development of regional impact development order pursuant to s. 380.06(21) may apply to implement this order by filing one or more applications to approve detailed specific area plan pursuant to subparagraph (3)(b) of this section.

(11) Notwithstanding the provisions of this act, a detailed specific area plan to implement a conceptual long-term buildout overlay adopted by a local government and found in compliance prior to July 1, 2011, shall be governed by the provisions of this section.

(12) This section may not be construed to abrogate the rights of any person under this chapter.

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Section 26. Section 163.3246 of the Florida Statutes is repealed.

Section 27. Section 163.3248, Florida Statutes, is created to read:

163.3248 Rural land stewardship areas.—

(1) Rural land stewardship areas are designed to establish a long-term incentive based strategy to balance and guide the allocation of land so as to accommodate future land uses in a manner that protects the natural environment, stimulates economic growth and diversification, and encourages the retention of land for agriculture and other traditional rural land uses.

(2) Upon written request by one or more landowners to designate lands as a rural land stewardship area, or pursuant to a private sector initiated comprehensive plan amendment, local governments may adopt by a majority vote a future land use overlay, which shall not require a demonstration of need based on population projections or any other factor, to designate all or portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area within which planning and economic incentives are applied to encourage the implementation of innovative and flexible planning and development strategies and creative land use planning techniques to support a diverse economic and employment base.

(3) Rural land stewardship areas may be used to further the following broad principles of rural sustainability: restoration and maintenance of the economic value of rural land; control of

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urban sprawl; identification and protection of ecosystems, habitats, and natural resources; promotion and diversification of economic activity and employment opportunities within the rural areas; maintenance of the viability of the state's agricultural economy; and protection of private property rights in rural areas of the state. Rural land stewardship areas may be multicounty in order to encourage coordinated regional stewardship planning.

(4) A local government or one or more property owners may request assistance in participation of the development of a plan for the rural land stewardship area from the state land planning agency, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the appropriate water management district, the Department of Transportation, the regional planning council, private land owners, and stakeholders.

(5) A rural land stewardship area shall be not less than 10,000 acres and shall be located outside of municipalities and established urban service areas, and shall be designated by plan amendment by each local government with jurisdiction over the rural land stewardship area. The plan amendment or amendments designating a rural land stewardship area shall be subject to review pursuant to s. 163.3184 and shall provide for the following:

(a) Criteria for the designation of receiving areas which shall at a minimum provide for the following: adequacy of suitable land to accommodate development so as to avoid conflict with significant environmentally sensitive areas, resources, and habitats; compatibility between and transition from higher

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density uses to lower intensity rural uses; and the establishment of receiving area service boundaries which provide for a transition from receiving areas and other land uses within the rural land stewardship area through limitations on the extension of services.

(b) Innovative planning and development strategies to be applied within rural land stewardship areas pursuant to the provisions of this section.

(c) A process for the implementation of innovative planning and development strategies within the rural land stewardship area, including those described in this subsection, which provide for a functional mix of land uses through the adoption by the local government of zoning and land development regulations applicable to the rural land stewardship area.

(d) A mix of densities and intensities that would not be characterized as urban sprawl through the use of innovative strategies and creative land use techniques.

(6) A receiving area may only be designated pursuant to procedures established in the local government's land development regulations. At the time of designation of a stewardship receiving area, a listed species survey will be performed. If listed species occur on the receiving area site, the applicant shall coordinate with each appropriate local, state, or federal agency to determine if adequate provisions have been made to protect those species in accordance with applicable regulations. In determining the adequacy of provisions for the protection of listed species and their habitats, the rural land stewardship area shall be considered as a whole, and the potential impacts and protective measures taken

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within areas to be developed as receiving areas shall be considered in conjunction with the substantial benefits derived from lands set aside and protective measures taken outside of the designation of receiving areas.

(7) Upon the adoption of a plan amendment creating a rural land stewardship area, the local government shall, by ordinance, establish a rural land stewardship overlay zoning district, which shall provide the methodology for the creation, conveyance, and use of transferable rural land use credits, hereinafter referred to as stewardship credits, the assignment and application of which shall not constitute a right to develop land, nor increase density of land, except as provided by this section. The total amount of stewardship credits within the rural land stewardship area must enable the realization of the long-term vision and goals for the rural land stewardship area, which may take into consideration the anticipated effect of the proposed receiving areas. The estimated amount of receiving area shall be projected based on available data and the development potential represented by the stewardship credits created within the rural land stewardship area must correlate to that amount.

(8) Stewardship credits are subject to the following limitations:

(a) Stewardship credits may only exist within a rural land stewardship area.

(b) Stewardship credits may only be created from lands designated as stewardship sending areas and may only be used on lands designated as stewardship receiving areas and then solely for the purpose of implementing innovative planning and development strategies and creative land use planning techniques

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adopted by the local government pursuant to this section.

(c) Stewardship credits assigned to a parcel of land within a rural land stewardship area shall cease to exist if the parcel of land is removed from the rural land stewardship area by plan amendment.

(d) Neither the creation of the rural land stewardship area by plan amendment nor the adoption of the rural land stewardship zoning overlay district by the local government shall displace the underlying permitted uses, density or intensity of land uses assigned to a parcel of land within the rural land stewardship area that existed before adoption of the plan amendment or zoning overlay district; however, once stewardship credits have been transferred from a designated sending area for use within a designated receiving area, the underlying density assigned to the designated sending area shall cease to exist.

(e) The underlying permitted uses, density, or intensity on each parcel of land located within a rural land stewardship area shall not be increased or decreased by the local government, except as a result of the conveyance or stewardship credits, as long as the parcel remains within the rural land stewardship area.

(f) Stewardship credits shall cease to exist on a parcel of land where the underlying density assigned to the parcel of land is used.

(g) An increase in the density or intensity of use on a parcel of land located within a designated receiving area may occur only through the assignment or use of stewardship credits and shall not require a plan amendment. A change in the type of agricultural use on property within a rural land stewardship

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area shall not be considered a change in use or intensity of use and shall not require any transfer of stewardship credits.

(h) A change in the density or intensity of land use on parcels located within receiving areas shall be specified in a development order which reflects the total number of stewardship credits assigned to the parcel of land and the infrastructure and support services necessary to provide for a functional mix of land uses corresponding to the plan of development.

(i) Land within a rural land stewardship area may be removed from the rural land stewardship area through a plan amendment.

(j) Stewardship credits may be assigned at different ratios of credits per acre according to the natural resource or other beneficial use characteristics of the land and according to the land use remaining following the transfer of credits, with the highest number of credits per acre assigned to the most environmentally valuable land or, in locations where the retention of open space and agricultural land is a priority, to such lands.

(k) The use or conveyance of stewardship credits must be recorded in the public records of the county in which the property is located as a covenant or restrictive easement running with the land in favor of the county and either the Department of Environmental Protection, Department of Agriculture and Consumer Services, a water management district, or a recognized statewide land trust.

(9) Owners of land within rural land stewardship sending areas should be provided other incentives, in addition to the use or conveyance of stewardship credits, to enter into rural

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land stewardship agreements, pursuant to existing law and rules adopted thereto, with state agencies, water management districts, the Fish and Wildlife Conservation Commission, and local governments to achieve mutually agreed upon objectives. Such incentives may include, but not be limited to, the following:

(a) Opportunity to accumulate transferable wetland and species habitat mitigation credits for use or sale.

(b) Extended permit agreements.

(c) Opportunities for recreational leases and ecotourism.

(d) Compensation for the achievement of specified land management activities of public benefit, including, but not limited to, facility siting and corridors, recreational leases, water conservation and storage, water reuse, wastewater recycling, water supply and water resource development, nutrient reduction, environmental restoration and mitigation, public recreation, listed species protection and recovery, and wildlife corridor management and enhancement.

(e) Option agreements for sale to public entities or private land conservation entities, in either fee or easement, upon achievement of specified conservation objectives.

(10) The provisions of paragraph (9)(d) constitute an overlay of land use options that provide economic and regulatory incentives for landowners outside of established and planned urban service areas to conserve and manage vast areas of land for the benefit of the state’s citizens and natural environment while maintaining and enhancing the asset value of their landholdings. It is the intent of the Legislature that the provisions of this section be implemented pursuant to law and

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rulemaking is not authorized.

(11) It is the intent of the legislature that the Rural Land Stewardship Area located in Collier County, which is consistent in all materials aspects with this section, be recognized as a Statutory Rural Land Stewardship Area, and be afforded the incentives as set forth in this section.

Section 28. Section 163.32465, Florida Statutes, is amended to read:

163.32465 State review of local comprehensive plans ~~in urban areas~~.—

(1) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that local governments in this state have a wide diversity of resources, conditions, abilities, and needs. The Legislature also finds that comprehensive planning has been implemented throughout the state and that it is appropriate for local governments to have the primary role in planning for their growth. ~~the needs and resources of urban areas are different from those of rural areas and that different planning and growth management approaches, strategies, and techniques are required in urban areas. The state role in overseeing growth management should reflect this diversity and should vary based on local government conditions, capabilities, needs, and extent of development.~~ Thus, the Legislature recognizes and finds that reduced state oversight of local comprehensive planning is justified ~~for some local governments in urban areas~~.

(b) The Legislature finds and declares that this state's local governments ~~urban areas~~ require a reduced level of state oversight ~~because of their high degree of urbanization and the~~

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~~planning capabilities and resources of many of their local governments~~. ~~An alternative state review process that is adequate to protect issues of regional or statewide importance should be created for appropriate local governments in these areas. Further, the Legislature finds that development, including urban infill and redevelopment, should be encouraged in these urban areas. The Legislature finds that an alternative~~ Accordingly, the process provided by this section for amending local comprehensive plans is ~~in these areas should be~~ established with the ~~an~~ objective of streamlining the process and recognizing local responsibility and accountability.

~~(c) The Legislature finds a pilot program will be beneficial in evaluating an alternative, expedited plan amendment adoption and review process. Pilot local governments shall represent highly developed counties and the municipalities within these counties and highly populated municipalities.~~

(2) APPLICABILITY ~~ALTERNATIVE STATE REVIEW PROCESS PILOT PROGRAM.~~ ~~Pinellas and Broward Counties, and the municipalities within these counties, and Jacksonville, Miami, Tampa, and Hialeah shall follow an alternative state review process provided in this section.~~ The process for amending a comprehensive plan described in this section is applicable statewide. ~~Municipalities within the pilot counties may elect, by super majority vote of the governing body, not to participate in the pilot program. In addition to the pilot program jurisdictions, any local government may use the alternative state review process to designate an urban service area as defined in s. 163.3164(29) in its comprehensive plan.~~

(3) PROCESS FOR ADOPTION OF COMPREHENSIVE PLAN AMENDMENTS

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~~UNDER THE PILOT PROGRAM.—~~

~~(a)~~ Plan amendments adopted by ~~the~~ local governments ~~pilot program jurisdictions shall follow the alternate,~~ are subject to the expedited process in subsections (4) and (5), except as follows ~~set forth in paragraphs (b)-(c) of this subsection~~.

(a) ~~(b)~~ Amendments that qualify as small-scale development amendments may continue to be adopted ~~by the pilot program jurisdictions~~ pursuant to s. 163.3187(1)(c) and (3).

(b) ~~(c)~~ Plan amendments that propose a rural land stewardship area pursuant to s. 163.3177(11)(d); propose an optional sector plan; update a comprehensive plan based on an evaluation and appraisal report; ~~implement new statutory requirements; or~~ new plans for newly incorporated municipalities are subject to state review as set forth in s. 163.3184; or are in an area of critical state concern designated pursuant to s. 380.05.

(c) ~~(d)~~ Local governments are ~~Pilot program jurisdictions shall be~~ subject to the frequency and timing requirements for plan amendments ~~set forth in ss. 163.3187 and 163.3191, except where otherwise stated in this section~~.

(d) ~~(e)~~ The mediation and expedited hearing provisions in s. 163.3189(3) apply to all plan amendments adopted pursuant to this section ~~by the pilot program jurisdictions~~.

(e) Local governments shall not combine plan amendments adopted pursuant to this section with plan amendments adopted pursuant to s. 163.3184 in the same amendment package. Each transmittal and adoption amendment package shall contain a cover letter stating whether the amendment or amendments contained within the package are adopted pursuant to this section or s.

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163.3184.

(4) INITIAL HEARING ON COMPREHENSIVE PLAN AMENDMENT ~~FOR PILOT PROGRAM~~.—

(a) The local government shall hold its first public hearing on a comprehensive plan amendment on a weekday at least 7 days after the day the first advertisement is published pursuant to the requirements of chapter 125 or chapter 166. Upon an affirmative vote of not less than a majority of the members of the governing body present at the hearing, the local government shall immediately transmit the amendment or amendments and appropriate supporting data and analyses to the state land planning agency; the appropriate regional planning council and water management district; the Department of Environmental Protection; the Department of State; the Department of Transportation; in the case of municipal plans, to the appropriate county; the Fish and Wildlife Conservation Commission; the Department of Agriculture and Consumer Services; when required by s. 163.3175, the applicable military installation or installations; and in the case of amendments that include or impact the public school facilities element, the Department of Education ~~Office of Educational Facilities of the Commissioner of Education~~. The local governing body shall also transmit a copy of the amendments and supporting data and analyses to any other local government or governmental agency that has filed a written request with the governing body.

(b) The agencies and local governments specified in paragraph (a) may provide comments regarding the amendment or amendments to the local government. The regional planning council review and comment shall be limited to effects on

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regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts that would be inconsistent with the comprehensive plan of the affected local government. A regional planning council shall not review and comment on a proposed comprehensive plan amendment prepared by such council unless the plan amendment has been changed by the local government subsequent to the preparation of the plan amendment by the regional planning council. County comments on municipal comprehensive plan amendments shall be ~~primarily~~ in the context of the relationship and effect of the proposed plan amendments on the county plan. Municipal comments on county plan amendments shall be ~~primarily~~ in the context of the relationship and effect of the amendments on the municipal plan. State agency comments must be limited to issues within the agency's jurisdiction as it relates to the requirements of this part and may include technical guidance ~~on issues of agency jurisdiction as it relates to the requirements of this part~~. Such comments shall clearly identify issues that, if not resolved, may result in an agency challenge to the plan amendment. ~~For the purposes of this pilot program,~~ Agencies are encouraged to focus potential challenges on issues of regional or statewide importance. Agencies and local governments must transmit their comments to the affected local government such that they are received by the local government not later than thirty days from the date on which the agency or government received the amendment or amendments.

(5) ADOPTION OF COMPREHENSIVE PLAN AMENDMENT ~~FOR PILOT AREAS~~.—

(a) The local government shall hold its second public

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hearing, which shall be a hearing on whether to adopt one or more comprehensive plan amendments, on a weekday at least 5 days after the day the second advertisement is published pursuant to the requirements of chapter 125 or chapter 166. Adoption of comprehensive plan amendments must be by ordinance and requires an affirmative vote of a majority of the members of the governing body present at the second hearing.

(b) All comprehensive plan amendments adopted by the governing body along with the supporting data and analysis shall be transmitted within 10 days of the second public hearing to the state land planning agency and any other agency or local government that provided timely comments under paragraph (4)(b).

(6) ADMINISTRATIVE CHALLENGES TO PLAN AMENDMENTS ~~FOR PILOT PROGRAM~~.—

(a) Any "affected person" as defined in s. 163.3184(1)(a) may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy served on the affected local government, to request a formal hearing to challenge whether the amendments are "in compliance" as defined in s. 163.3184(1)(b). This petition must be filed with the Division within 30 days after the state land planning agency notifies the local government that the plan amendment package is complete ~~the local government adopts the amendment~~. The state land planning agency may intervene in a proceeding instituted by an affected person if necessary to protect interests of regional or statewide importance.

(b) The state land planning agency may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy served on the affected local government,

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to request a formal hearing if necessary to protect interests of regional or statewide importance. This petition must be filed with the Division within 30 days after the state land planning agency notifies the local government that the plan amendment package is complete. For purposes of this section, an adopted amendment package shall be deemed complete if it contains a full, executed copy of the adoption ordinance or ordinances; in the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined, and words to be deleted lined through with hyphens; in the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and a copy of any data and analyses the local government deems appropriate. The state land planning agency shall notify the local government that the package is complete or ~~of any~~ that the package contains deficiencies within 5 working days of receipt of an amendment package.

(c) The state land planning agency's challenge shall be limited to those issues raised in the comments provided by the reviewing agencies pursuant to paragraph (4)(b). The state land planning agency may challenge a plan amendment that has substantially changed from the version on which the agencies provided comments. ~~For the purposes of this pilot program,~~ The ~~Legislature strongly encourages~~ The state land planning agency ~~to~~ shall focus any challenge on issues of regional or statewide importance.

(d) An administrative law judge shall hold a hearing in the affected local jurisdiction. The local government's

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determination that the amendment is "in compliance" is presumed to be correct and shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not "in compliance."

(e) If the administrative law judge recommends that the amendment be found not in compliance, the judge shall submit the recommended order to the Administration Commission for final agency action. The Administration Commission shall enter a final order within 45 days after its receipt of the recommended order.

(f) 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 refer, within 30 days of receipt of the recommended order, the recommended order and its determination to the Administration Commission for final agency action. If the commission determines that the amendment is not in compliance, it may sanction the local government as set forth in s. 163.3184(11).

2. If the state land planning agency determines that the plan amendment should be found in compliance, the agency shall enter its final order not later than 30 days from receipt of the recommended order.

(g) An amendment adopted under the expedited provisions of this section shall not become effective until 31 days after the state land plan agency notifies the local government that the plan amendment package is complete ~~adoption~~. If timely challenged, an amendment shall not become effective until the

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state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

(h) Parties to a proceeding under this section may enter into compliance agreements using the process in s. 163.3184(16). Any remedial amendment adopted pursuant to a settlement agreement shall be provided to the agencies and governments listed in paragraph (4)(a).

~~(7) APPLICABILITY OF PILOT PROGRAM IN CERTAIN LOCAL GOVERNMENTS.—Local governments and specific areas that have been designated for alternate review process pursuant to ss. 163.3246 and 163.3184(17) and (18) are not subject to this section.~~

~~(8) RULEMAKING AUTHORITY FOR PILOT PROGRAM.—Agencies shall not promulgate rules to implement this pilot program.~~

~~(9) REPORT.—The Office of Program Policy Analysis and Government Accountability shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2008, a report and recommendations for implementing a statewide program that addresses the legislative findings in subsection (1) in areas that meet urban criteria. The Office of Program Policy Analysis and Government Accountability in consultation with the state land planning agency shall develop the report and recommendations with input from other state and regional agencies, local governments, and interest groups. Additionally, the office shall review local and state actions and correspondence relating to the pilot program to identify issues of process and substance in recommending changes to the pilot program. At a minimum, the report and recommendations shall~~

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~~include the following:~~

~~(a) Identification of local governments beyond those participating in the pilot program that should be subject to the alternative expedited state review process. The report may recommend that pilot program local governments may no longer be appropriate for such alternative review process.~~

~~(b) Changes to the alternative expedited state review process for local comprehensive plan amendments identified in the pilot program.~~

~~(c) Criteria for determining issues of regional or statewide importance that are to be protected in the alternative state review process.~~

~~(d) In preparing the report and recommendations, the Office of Program Policy Analysis and Government Accountability shall consult with the state land planning agency, the Department of Transportation, the Department of Environmental Protection, and the regional planning agencies in identifying highly developed local governments to participate in the alternative expedited state review process. The Office of Program Policy Analysis and Governmental Accountability shall also solicit citizen input in the potentially affected areas and consult with the affected local governments and stakeholder groups.~~

Section 29. Section 163.3260, Florida Statutes, is created to read:

163.3260 Prohibition on duplication of local regulations.—It is the intent of the Legislature to eliminate the duplication of regulatory authority in certain environmental reviews and permitting. A local government may not adopt any ordinance, regulation, rule, or policy for environmental reviews or

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environmental resource permitting if such reviews or permitting are already regulated by the Department of Environmental Protection or a water management district. The water management districts may not duplicate any environmental reviews or environmental resource permitting carried out by the Department of Environmental Protection.

Section 30. Paragraph (a) of subsection (2) of section 163.360, Florida Statutes, is amended to read:

163.360 Community redevelopment plans.—

(2) The community redevelopment plan shall:

(a) Conform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act.

Section 31. Paragraph (a) of subsection (3) and subsection (8) of section 163.516, Florida Statutes, are amended to read:

163.516 Safe neighborhood improvement plans.—

(3) The safe neighborhood improvement plan shall:

(a) Be consistent with the adopted comprehensive plan for the county or municipality pursuant to the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act. No district plan shall be implemented unless the local governing body has determined said plan is consistent.

(8) Pursuant to ss. 163.3184~~,~~ and 163.3187~~, and 163.3189~~, the governing body of a municipality or county shall hold two public hearings to consider the board-adopted safe neighborhood improvement plan as an amendment or modification to the municipality's or county's adopted local comprehensive plan.

Section 32. Paragraph (c) of subsection (2) and subsection

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(3) of section 186.504, Florida Statutes, is amended to read:

186.504 Regional planning councils; creation; membership.—

(2) Membership on the regional planning council shall be as follows:

(c) Representatives appointed by the Governor from the geographic area covered by the regional planning council, including an elected school board member from the geographic area covered by the regional planning council, to be nominated by the Florida School Board Association and a representative of the civic and business community which shall be selected and recommended by the Florida Chamber of Commerce, the Office of Tourism, Trade, and Economic Development, and Enterprise Florida. These representatives must include two or more of the following: a representative of the region's business community, a representative of the commercial development community, a representative of the banking and financial community, and a representative of the agricultural community.

(3) Not less than two-thirds of the representatives serving as voting members on the governing bodies of such regional planning councils shall be elected officials of local general-purpose governments chosen by the cities and counties of the region, provided each county shall have at least one vote. The remaining one-third of the voting members on the governing board shall be appointed by the Governor~~, to include one elected school board member, subject to confirmation by the Senate, and shall reside in the region~~. No two appointees of the Governor shall have their places of residence in the same county until each county within the region is represented by a Governor’s appointee to the governing board. Nothing contained in this

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section shall deny to local governing bodies or the Governor the option of appointing either locally elected officials or lay citizens provided at least two-thirds of the governing body of the regional planning council is composed of locally elected officials.

Section 33. Section 186.513, Florida Statutes, is amended to read:

186.513 Reports.—Each regional planning council shall prepare and furnish an annual report on its activities to the state land planning agency as defined in s. 163.3164~~(20)~~ and the local general-purpose governments within its boundaries and, upon payment as may be established by the council, to any interested person. The regional planning councils shall make a joint report and recommendations to appropriate legislative committees.

Section 34. Section 186.515, Florida Statutes, is amended to read:

186.515 Creation of regional planning councils under chapter 163.—Nothing in ss. 186.501-186.507, 186.513, and 186.515 is intended to repeal or limit the provisions of chapter 163; however, the local general-purpose governments serving as voting members of the governing body of a regional planning council created pursuant to ss. 186.501-186.507, 186.513, and 186.515 are not authorized to create a regional planning council pursuant to chapter 163 unless an agency, other than a regional planning council created pursuant to ss. 186.501-186.507, 186.513, and 186.515, is designated to exercise the powers and duties in any one or more of ss. 163.3164~~(19)~~ and 380.031(15); in which case, such a regional planning council is also without

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authority to exercise the powers and duties in s. 163.3164~~(19)~~ or s. 380.031(15).

Section 35. Subsection (1) of section 189.415, Florida Statutes, is amended to read:

189.415 Special district public facilities report.—

(1) It is declared to be the policy of this state to foster coordination between special districts and local general-purpose governments as those local general-purpose governments develop comprehensive plans under the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act, pursuant to part II of chapter 163.

Section 36. Subsection (3) of section 190.004, Florida Statutes, is amended to read:

190.004 Preemption; sole authority.—

(3) The establishment of an independent community development district as provided in this act is not a development order within the meaning of chapter 380. All governmental planning, environmental, and land development laws, regulations, and ordinances apply to all development of the land within a community development district. Community development districts do not have the power of a local government to adopt a comprehensive plan, building code, or land development code, as those terms are defined in the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act. A district shall take no action which is inconsistent with applicable comprehensive plans, ordinances, or regulations of the applicable local general-purpose government.

Section 37. Paragraph (a) of subsection (1) of section 190.005, Florida Statutes, is 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 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

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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 shall not be 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 ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act.

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

Section 38. Paragraph (i) of subsection (6) of section 193.501, Florida Statutes, is amended to read:

193.501 Assessment of lands subject to a conservation easement, environmentally endangered lands, or lands used for outdoor recreational or park purposes when land development rights have been conveyed or conservation restrictions have been covenanted.—

(6) The following terms whenever used as referred to in

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this section have the following meanings unless a different meaning is clearly indicated by the context:

(i) "Qualified as environmentally endangered" means land that has unique ecological characteristics, rare or limited combinations of geological formations, or features of a rare or limited nature constituting habitat suitable for fish, plants, or wildlife, and which, if subject to a development moratorium or one or more conservation easements or development restrictions appropriate to retaining such land or water areas predominantly in their natural state, would be consistent with the conservation, recreation and open space, and, if applicable, coastal protection elements of the comprehensive plan adopted by formal action of the local governing body pursuant to s. 163.3161, the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act; or surface waters and wetlands, as determined by the methodology ratified in s. 373.4211.

Section 39. Subsection (15) of section 287.042, Florida Statutes, is amended to read:

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

(15) To enter into joint agreements with governmental agencies, as defined in s. 163.3164~~(10)~~, for the purpose of pooling funds for the purchase of commodities or information technology that can be used by multiple agencies.

(a) Each agency that has been appropriated or has existing funds for such purchase, shall, upon contract award by the department, transfer their portion of the funds into the department's Operating Trust Fund for payment by the department.

The funds shall be transferred by the Executive Office of the Governor pursuant to the agency budget amendment request provisions in chapter 216.

(b) Agencies that sign the joint agreements are financially obligated for their portion of the agreed-upon funds. If an agency becomes more than 90 days delinquent in paying the funds, the department shall certify to the Chief Financial Officer the amount due, and the Chief Financial Officer shall transfer the amount due to the Operating Trust Fund of the department from any of the agency's available funds. The Chief Financial Officer shall report these transfers and the reasons for the transfers to the Executive Office of the Governor and the legislative appropriations committees.

Section 40. Subsection (4) of section 288.063, Florida Statutes, is amended to read:

288.063 Contracts for transportation projects.—

(4) The Office of Tourism, Trade, and Economic Development may adopt criteria by which transportation projects are to be reviewed and certified in accordance with s. 288.061. In approving transportation projects for funding, the Office of Tourism, Trade, and Economic Development shall consider factors including, but not limited to, the cost per job created or retained considering the amount of transportation funds requested; the average hourly rate of wages for jobs created; the reliance on the program as an inducement for the project's location decision; the amount of capital investment to be made by the business; the demonstrated local commitment; the location of the project in an enterprise zone designated pursuant to s. 290.0055; the location of the project in a spaceport territory

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as defined in s. 331.304; the unemployment rate of the surrounding area; and the poverty rate of the community~~; and the adoption of an economic element as part of its local comprehensive plan in accordance with s. 163.3177(7)(j)~~. The Office of Tourism, Trade, and Economic Development may contact any agency it deems appropriate for additional input regarding the approval of projects.

Section 41. Paragraph (a) of subsection (2), subsection (10), and paragraph (d) of subsection (12) of section 288.975, Florida Statutes, are amended to read:

288.975 Military base reuse plans.—

(2) As used in this section, the term:

(a) "Affected local government" means a local government adjoining the host local government and any other unit of local government that is not a host local government but that is identified in a proposed military base reuse plan as providing, operating, or maintaining one or more public facilities as defined in s. 163.3164~~(24)~~ on lands within or serving a military base designated for closure by the Federal Government.

(10) Within 60 days after receipt of a proposed military base reuse plan, these entities shall review and provide comments to the host local government. The commencement of this review period shall be advertised in newspapers of general circulation within the host local government and any affected local government to allow for public comment. No later than 180 days after receipt and consideration of all comments, and the holding of at least two public hearings, the host local government shall adopt the military base reuse plan. The host local government shall comply with the notice requirements set

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forth in s. 163.3184~~(15)~~ to ensure full public participation in this planning process.

(12) Following receipt of a petition, the petitioning party or parties and the host local government shall seek resolution of the issues in dispute. The issues in dispute shall be resolved as follows:

(d) Within 45 days after receiving the report from the state land planning agency, the Administration Commission shall take action to resolve the issues in dispute. In deciding upon a proper resolution, the Administration Commission shall consider the nature of the issues in dispute, any requests for a formal administrative hearing pursuant to chapter 120, the compliance of the parties with this section, the extent of the conflict between the parties, the comparative hardships and the public interest involved. If the Administration Commission incorporates in its final order a term or condition that requires any local government to amend its local government comprehensive plan, the local government shall amend its plan within 60 days after the issuance of the order. Such amendment or amendments shall be exempt from the limitation of the frequency of plan amendments contained in s. 163.3187(1), and a public hearing on such amendment or amendments pursuant to s. 163.3184~~(15)~~(b)1. shall not be required. The final order of the Administration Commission is subject to appeal pursuant to s. 120.68. If the order of the Administration Commission is appealed, the time for the local government to amend its plan shall be tolled during the pendency of any local, state, or federal administrative or judicial proceeding relating to the military base reuse plan.

Section 42. Subsection (4) of section 290.0475, Florida

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Statutes, is amended to read:

290.0475 Rejection of grant applications; penalties for failure to meet application conditions.—Applications received for funding under all program categories shall be rejected without scoring only in the event that any of the following circumstances arise:

(4) The application is not consistent with the local government's comprehensive plan adopted pursuant to s. 163.3184~~(7)~~.

Section 43. Paragraph (c) of subsection (3) of section 311.07, Florida Statutes, is amended to read:

311.07 Florida seaport transportation and economic development funding.—

(3)

(c) To be eligible for consideration by the council pursuant to this section, a project must be consistent with the port comprehensive master plan which is incorporated as part of the approved local government comprehensive plan as required by s. 163.3178(2)(k) or other provisions of the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act, part II of chapter 163.

Section 44. Subsection (1) of section 331.319, Florida Statutes, is amended to read:

331.319 Comprehensive planning; building and safety codes.—The board of directors may:

(1) Adopt, and from time to time review, amend, supplement, or repeal, a comprehensive general plan for the physical development of the area within the spaceport territory in accordance with the objectives and purposes of this act and

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consistent with the comprehensive plans of the applicable county or counties and municipality or municipalities adopted pursuant to the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act, part II of chapter 163.

Section 45. Paragraph (e) of subsection (5) of section 339.155, Florida Statutes, is amended to read:

339.155 Transportation planning.—

(5) ADDITIONAL TRANSPORTATION PLANS.—

(e) The regional transportation plan developed pursuant to this section must, at a minimum, identify regionally significant transportation facilities located within a regional transportation area and contain a prioritized list of regionally significant projects. ~~The level-of-service standards for facilities to be funded under this subsection shall be adopted by the appropriate local government in accordance with s. 163.3180(10).~~ The projects shall be adopted into the capital improvements schedule of the local government comprehensive plan pursuant to s. 163.3177(3).

Section 46. Paragraph (a) of subsection (4) of section 339.2819, Florida Statutes, is amended to read:

339.2819 Transportation Regional Incentive Program.—

(4)(a) Projects to be funded with Transportation Regional Incentive Program funds shall, at a minimum:

1. Support those transportation facilities that serve national, statewide, or regional functions and function as an integrated regional transportation system.

2. Be identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163, after July 1, 2005~~, or to implement~~

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~~a long-term concurrency management system adopted by a local government in accordance with s. 163.3180(9)~~. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.

3. Be consistent with the Strategic Intermodal System Plan developed under s. 339.64.

4. Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

Section 47. Subsection (5) of section 369.303, Florida Statutes, is amended to read:

369.303 Definitions.—As used in this part:

(5) "Land development regulation" means a regulation covered by the definition in s. 163.3164~~(23)~~ and any of the types of regulations described in s. 163.3202.

Section 48. Subsection (7) of section 369.321, Florida Statutes, is amended to read:

369.321 Comprehensive plan amendments.—Except as otherwise expressly provided, by January 1, 2006, each local government within the Wekiva Study Area shall amend its local government comprehensive plan to include the following:

(7) During the period prior to the adoption of the comprehensive plan amendments required by this act, any local comprehensive plan amendment adopted by a city or county that applies to land located within the Wekiva Study Area shall protect surface and groundwater resources and be reviewed by the Department of Community Affairs~~, pursuant to chapter 163 and chapter 9J-5, Florida Administrative Code,~~ using best available data, including the information presented to the Wekiva River

Basin Coordinating Committee.

Section 49. Subsection (1) of section 378.021, Florida Statutes, is amended to read:

378.021 Master reclamation plan.—

(1) The Department of Environmental Protection shall amend the master reclamation plan that provides guidelines for the reclamation of lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211. In amending the master reclamation plan, the Department of Environmental Protection shall continue to conduct an onsite evaluation of all lands mined or disturbed by the severance of phosphate rock prior to July 1, 1975, which lands are not subject to mandatory reclamation under part II of chapter 211. The master reclamation plan when amended by the Department of Environmental Protection shall be consistent with local government plans prepared pursuant to the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act.

Section 50. Subsection (10) of section 380.031, Florida Statutes, is amended to read:

380.031 Definitions.—As used in this chapter:

(10) "Local comprehensive plan" means any or all local comprehensive plans or elements or portions thereof prepared, adopted, or amended pursuant to the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act, as amended.

Section 51. Paragraph (b) of subsection (6), paragraphs (l), (m), and (s) of subsection (24), paragraph (e) of

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subsection (28), and paragraphs (a) and (e) of subsection (29) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(6) APPLICATION FOR APPROVAL OF DEVELOPMENT; CONCURRENT PLAN AMENDMENTS.—

(b) Any local government comprehensive plan amendments related to a proposed development of regional impact, including any changes proposed under subsection (19), may be initiated by a local planning agency or the developer and must be considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in s. 163.3187~~ or s. 163.3189~~ and applicable local ordinances, without regard to statutory or local ordinance limits on the frequency of consideration of amendments to the local comprehensive plan. Nothing in this paragraph shall be deemed to require favorable consideration of a plan amendment solely because it is related to a development of regional impact. The procedure for processing such comprehensive plan amendments is as follows:

1. If a developer seeks a comprehensive plan amendment related to a development of regional impact, the developer must so notify in writing the regional planning agency, the applicable local government, and the state land planning agency no later than the date of preapplication conference or the submission of the proposed change under subsection (19).

2. When filing the application for development approval or the proposed change, the developer must include a written request for comprehensive plan amendments that would be necessitated by the development-of-regional-impact approvals

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sought. That request must include data and analysis upon which the applicable local government can determine whether to transmit the comprehensive plan amendment pursuant to s. 163.3184.

3. The local government must advertise a public hearing on the transmittal within 30 days after filing the application for development approval or the proposed change and must make a determination on the transmittal within 60 days after the initial filing unless that time is extended by the developer.

4. If the local government approves the transmittal, procedures set forth in s. 163.3184 ~~(3)-(6)~~ must be followed.

5. Notwithstanding subsection (11) or subsection (19), the local government may not hold a public hearing on the application for development approval or the proposed change or on the comprehensive plan amendments sooner than 30 days from receipt of the response from the state land planning agency pursuant to s. 163.3184~~(6)~~. The 60-day time period for local governments to adopt, adopt with changes, or not adopt plan amendments pursuant to s. 163.3184(7) shall not apply to concurrent plan amendments provided for in this subsection.

6. The local government must hear both the application for development approval or the proposed change and the comprehensive plan amendments at the same hearing. However, the local government must take action separately on the application for development approval or the proposed change and on the comprehensive plan amendments.

7. Thereafter, the appeal process for the local government development order must follow the provisions of s. 380.07, and the compliance process for the comprehensive plan amendments

must follow the provisions of s. 163.3184.

(24) STATUTORY EXEMPTIONS.—

(l) Any proposed development within an urban service boundary established under s. 163.3177(14), which is not otherwise exempt pursuant to subsection (29), is exempt from the provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary, has entered into a binding agreement with jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities~~, and has adopted a proportionate share methodology pursuant to s. 163.3180(16)~~.

(m) Any proposed development within a rural land stewardship area created under s. 163.3248 ~~163.3177(11)(d) is exempt from the provisions of this section if the local government that has adopted the rural land stewardship area has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16)~~.

(s) Any development in a detailed specific area plan which is prepared and adopted pursuant to s. 163.3245 ~~and adopted into the comprehensive plan~~ is exempt from this section.

(u) Any transit-oriented development as defined in s. 163.3164 incorporated into the county or municipality comprehensive plan that has adopted land use and transportation strategies to support and fund the local government concurrency or mobility plan identified in the comprehensive plan, including

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alternative modes of transportation, is exempt from review for transportation impacts conducted pursuant to this section. This paragraph does not apply to areas:

1. Within the boundary of any area of critical state concern designated pursuant to s. 380.05;

2. Within the boundary of the Wekiva Study Area as described in s. 369.316; or

3. Within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2).

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

(28) PARTIAL STATUTORY EXEMPTIONS.—

(e) The vesting provision of s. 163.3167(5) ~~(8)~~ relating to an authorized development of regional impact shall not apply to those projects partially exempt from the development-of-regional-impact review process under paragraphs (a)-(d).

(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

(a) The following are exempt from this section:

1. Any proposed development in a municipality that has an average of at least 1,000 people per square mile of land area

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and a minimum total population of at least 5,000 ~~qualifies as a dense urban land area as defined in s. 163.3164~~;

2. Any proposed development within a county that has an average of at least 1,000 people per square mile of land area ~~qualifies as a dense urban land area as defined in s. 163.3164~~ and that is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan; or

3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area ~~which qualifies as a dense urban land area under s. 163.3164~~, but which does not have an urban service area designated in the comprehensive plan.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions meet the density criteria in subparagraphs 1.-3. by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and Demographic Research shall annually submit to the state land planning agency by July 1 a list of jurisdictions that meet the

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total population and density criteria. The state land planning agency shall publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that meet the density criteria of subparagraphs 1.-3. is effective upon publication on the state land planning agency's Internet website. Any area that meets the density criteria may not thereafter be removed from the list of areas that qualify.

(e) In an area that is exempt under paragraphs (a)-(c), any previously approved development-of-regional-impact development orders shall continue to be effective, but the developer has the option to be governed by s. 380.115(1). A pending application for development approval shall be governed by s. 380.115(2). ~~A~~ development that has a pending application for a comprehensive plan amendment and that elects not to continue development-of-regional-impact review is exempt from the limitation on plan amendments set forth in s. 163.3187(1) for the year following the effective date of the exemption.

Section 52. Paragraph (a) of subsection (8) of section 380.061, Florida Statutes, is amended to read:

380.061 The Florida Quality Developments program.—

(8)(a) Any local government comprehensive plan amendments related to a Florida Quality Development may be initiated by a local planning agency and considered by the local governing body at the same time as the application for development approval~~,~~ using the procedures provided for local plan amendment in s. 163.3187~~ or s. 163.3189~~ and applicable local ordinances, without regard to statutory or local ordinance limits on the frequency of consideration of amendments to the local comprehensive plan.

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Nothing in this subsection shall be construed to require favorable consideration of a Florida Quality Development solely because it is related to a development of regional impact.

Section 53. Paragraph (a) of subsection (2) of section 380.065, Florida Statutes, is amended to read:

380.065 Certification of local government review of development.—

(2) When a petition is filed, the state land planning agency shall have no more than 90 days to prepare and submit to the Administration Commission a report and recommendations on the proposed certification. In deciding whether to grant certification, the Administration Commission shall determine whether the following criteria are being met:

(a) The petitioning local government has adopted and effectively implemented a local comprehensive plan and development regulations which comply with ss. 163.3161-163.3215, the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act.

Section 54. Section 380.0685, Florida Statutes, is amended to read:

380.0685 State park in area of critical state concern in county which creates land authority; surcharge on admission and overnight occupancy.—The Department of Environmental Protection shall impose and collect a surcharge of 50 cents per person per day, or $5 per annual family auto entrance permit, on admission to all state parks in areas of critical state concern located in a county which creates a land authority pursuant to s. 380.0663(1), and a surcharge of $2.50 per night per campsite, cabin, or other overnight recreational occupancy unit in state

parks in areas of critical state concern located in a county which creates a land authority pursuant to s. 380.0663(1); however, no surcharge shall be imposed or collected under this section for overnight use by nonprofit groups of organized group camps, primitive camping areas, or other facilities intended primarily for organized group use. Such surcharges shall be imposed within 90 days after any county creating a land authority notifies the Department of Environmental Protection that the land authority has been created. The proceeds from such surcharges, less a collection fee that shall be kept by the Department of Environmental Protection for the actual cost of collection, not to exceed 2 percent, shall be transmitted to the land authority of the county from which the revenue was generated. Such funds shall be used to purchase property in the area or areas of critical state concern in the county from which the revenue was generated. An amount not to exceed 10 percent may be used for administration and other costs incident to such purchases. However, the proceeds of the surcharges imposed and collected pursuant to this section in a state park or parks located wholly within a municipality, less the costs of collection as provided herein, shall be transmitted to that municipality for use by the municipality for land acquisition or for beach renourishment and/or restoration, including, but not limited to, costs associated with any design, permitting, monitoring and mitigation of such work, as well as the work itself. The surcharges levied under this section shall remain imposed as long as the land authority is in existence.

Section 55. Subsection (3) of section 380.115, Florida Statutes, is amended to read:

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

(3) A landowner that has filed an application for a development-of-regional-impact review prior to the adoption of a ~~an optional~~ sector plan pursuant to s. 163.3245 may elect to have the application reviewed pursuant to s. 380.06, comprehensive plan provisions in force prior to adoption of the sector plan, and any requested comprehensive plan amendments that accompany the application.

Section 56. Subsection (1) of section 403.50665, Florida Statutes, is amended to read:

403.50665 Land use consistency.—

(1) The applicant shall include in the application a statement on the consistency of the site and any associated facilities that constitute a "development," as defined in s. 380.04, with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of such consistency. This information shall include an identification of those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the provisions of the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act provisions of chapter 163 and s. 380.04(3).

Section 57. Subsection (16) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(16) "Local housing incentive strategies" means local

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regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, assurance that permits as defined in s. 163.3164~~(7) and (8)~~ for affordable housing projects are expedited to a greater degree than other projects; an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption; and a schedule for implementing the incentive strategies. Local housing incentive strategies may also include other regulatory reforms, such as those enumerated in s. 420.9076 or those recommended by the affordable housing advisory committee in its triennial evaluation of the implementation of affordable housing incentives, and adopted by the local governing body.

Section 58. Paragraph (a) of subsection (4) of section 420.9076, Florida Statutes, is amended to read:

420.9076 Adoption of affordable housing incentive strategies; committees.—

(4) Triennially, the advisory committee shall review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan of the appointing local government and shall recommend specific actions or initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. The recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions, including recommendations to amend the local

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government comprehensive plan and corresponding regulations, ordinances, and other policies. At a minimum, each advisory committee shall submit a report to the local governing body that includes recommendations on, and triennially thereafter evaluates the implementation of, affordable housing incentives in the following areas:

(a) The processing of approvals of development orders or permits, as defined in s. 163.3164~~(7) and (8)~~, for affordable housing projects is expedited to a greater degree than other projects.

The advisory committee recommendations may also include other affordable housing incentives identified by the advisory committee. Local governments that receive the minimum allocation under the State Housing Initiatives Partnership Program shall perform the initial review but may elect to not perform the triennial review.

Section 59. Subsection (1) of section 720.403, Florida Statutes, is amended to read:

720.403 Preservation of residential communities; revival of declaration of covenants.—

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community ~~Local Government Comprehensive~~ Planning ~~and Land Development Regulation~~ Act, homeowners are encouraged to preserve existing residential communities, promote available and affordable housing, protect structural and aesthetic elements of their residential community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities,

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drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the residential community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

Section 60. Subsections (3), (7), and (8) of section 1013.33, Florida Statutes, are amended to read:

1013.33 Coordination of planning with local governing bodies.—

(3) At a minimum, the interlocal agreement must address interlocal agreement requirements in s. 163.31777 and, if applicable, s. 163.3180(6) ~~(13)(g), except for exempt local governments as provided in s. 163.3177(12)~~, and must address the following issues:

(a) A process by which each local government and the district school board agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of jurisdiction-wide growth forecasts is a major objective of the process.

(b) A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.

(c) Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local

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governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.

(d) A process for determining the need for and timing of onsite and offsite improvements to support new construction, proposed expansion, or redevelopment of existing schools. The process shall address identification of the party or parties responsible for the improvements.

(e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules regarding measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.

(f) Participation of the local governments in the preparation of the annual update to the school board’s 5-year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.

(g) A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

(h) A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.

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(i) An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.

~~(7) Except as provided in subsection (8), municipalities meeting the exemption criteria in s. 163.3177(12) are exempt from the requirements of subsections (2), (3), and (4).~~

~~(8) At the time of the evaluation and appraisal report, each exempt municipality shall assess the extent to which it continues to meet the criteria for exemption under s. 163.3177(12). If the municipality continues to meet these criteria, the municipality shall continue to be exempt from the interlocal agreement requirement. Each municipality exempt under s. 163.3177(12) must comply with the provisions of subsections (2)-(8) within 1 year after the district school board proposes, in its 5-year district facilities work program, a new school within the municipality's jurisdiction.~~

Section 61. Rules 9J-5 and 9J-11.023, Florida Administrative Code, are repealed, and the Department of State is directed to remove those rules from the Florida Administrative Code.

Section 62. Any permit or any other authorization that was extended under section 14, chapter 2009-96, Laws of Florida, as re-authorized by section 47, chapter 2010-147, Laws of Florida, is extended and renewed for an additional period of two years from its extended expiration date. The holder of a valid permit or other authorization that is eligible for the additional two-year extension must notify the authorizing agency in writing by December 31, 2011, identifying the specific authorization for which the holder intends to use the extension and the

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anticipated time frame for acting on the authorization.

Section 63. The Legislature finds that this act fulfills an important state interest.

Section 64. (1) The state land planning agency, within 60 days after the effective date of this act, shall review any administrative or judicial proceeding filed by the agency and pending on the effective date of this act to determine whether the issues raised by the state land planning agency are consistent with the revised provisions of part II of chapter 163, Florida Statutes. For each proceeding, if the agency determines that issues have been raised that are not consistent with the revised provisions of part II of chapter 163, Florida Statutes, the agency shall dismiss the proceeding. If the state land planning agency determines that one or more issues have been raised that are consistent with the revised provisions of part II of chapter 163, Florida Statutes, the agency shall amend its petition within 30 days after the determination to plead with particularity as to the manner in which the plan or plan amendment fails to meet the revised provisions of part II of chapter 163, Florida Statutes. If the agency fails to timely file such amended petition, the proceeding shall be dismissed.

(2) In all proceedings that were initiated by the state land planning agency before the effective date of this act, and continue after that date, the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct, and the local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance.

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Section 65. In accordance with s. 1.04, Florida Statutes, the provisions of law amended by this act shall be construed in pari materia with the provisions of law reenacted by Senate Bill 174 or HB 7001, 2011 Regular Session, whichever becomes law, and incorporated therein. In addition, if any law amended by this act is also amended by any other law enacted at the same legislative session or an extension thereof which becomes law, full effect shall be given to each if possible.

Section 66. The Division of Statutory Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 67. The reenactment of s. 163.31801(5) in section 12 of this act shall take effect upon becoming a law, and shall operate retroactively to July 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.

Section 68. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to growth management; amending s. 163.3161, F.S.; redesignating the "Local Government Comprehensive Planning and Land Development Regulation Act" as the "Community Planning Act"; revising and providing intent and purpose of act; amending

s.163.3162, F.S.; redesignating the "Agricultural Lands and Practices Act" as the "Agricultural Lands and Practices" section; replacing presumption of consistency with rule 9J-5.006(5), Florida Administrative Code with presumption of not being urban sprawl as defined in s. 163.3164, F.S.,; amending s. 163.3164, F.S.; revising and providing definitions relating to the Community Planning Act; amending s. 163.3167, F.S.; revising scope of the act; removing regional planning agencies from responsibility to prepare comprehensive plans; removing requirement for local governments to articulate a vision of the future physical appearance and qualities of the community as part of the local comprehensive plan; prohibiting initiative or referendum processes in regard to development orders, local comprehensive plan amendments, and map amendments; deleting retroactive effect; creating s. 163.3168, F.S.; encouraging local governments to apply for certain innovative planning tools; directing and authorizing the state land planning agency and other appropriate state and regional agencies to use direct and indirect technical assistance; amending s. 163.3171, F.S.; providing legislative intent; removing the state land planning agency's power to enter into joint local agreements; amending s. 163.3174, F.S.; deleting certain notice requirements relating to the establishment of local planning agencies by a governing body; amending s. 163.3177, F.S.; revising and providing duties of local governments; revising and providing required and optional elements of comprehensive plans; revising requirements of schedules of capital improvements; revising and providing provisions relating to capital improvements elements; revising major objectives of, and procedures relating to, the local

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comprehensive planning process; revising and providing required and optional elements of future land use plans; providing required transportation elements; revising and providing required sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge elements; revising and providing required conservation elements; revising and providing required housing elements; revising and providing required coastal management elements; revising and providing required intergovernmental coordination elements; removing optional comprehensive plan elements and related requirements and Legislative findings; amending s. 163.31777, F.S.; revising requirements relating to public schools' interlocal agreements; deleting duties of the Office of Educational Facilities, the state land planning agency, and local governments relating to such agreements; deleting an exemption; amending s. 163.3178, F.S.; deleting authority for local governments to comply with rule 9J-5.012(3)(b)6. and 7., Florida Administrative Code; amending s. 163.3180, F.S.; revising and providing provisions relating to concurrency; revising concurrency requirements; revising application and findings; revising local government requirements; revising and providing requirements relating to transportation concurrency, proportionate share, transportation concurrency exception areas, urban infill, urban redevelopment, urban service, downtown revitalization areas, transportation concurrency management areas, long-term transportation and school concurrency management systems, development of regional impact, school concurrency, service areas, financial feasibility, interlocal agreements, and multimodal transportation districts; removing duties of the Office of

Program Policy Analysis, local governments, and the state land planning agency; providing requirements for local plans; limiting the liability of local governments under certain conditions; reenacting subsection (5) of s. 163.31801, F.S., and amending s. 163.31801, F.S.,; prohibiting new impact fees by local governments for a specified period of time; amending s. 163.3182, F.S.; revising the definition of the term "transportation concurrency backlog" to "transportation deficiency"; revising other definitions and provisions to conform; revising provisions relating to transportation deficiency plans; revising requirements for transportation sufficiency plans; amending s. 163.3184, F.S.; providing a definition for "reviewing agencies"; amending the definition of "in compliance"; providing requirements for comprehensive plans and plan amendments; providing exceptions; removing references to procedural rules established by the state land planning agency; deleting provisions relating to community vision and urban boundary plan amendments, urban infill and redevelopment plan amendments, and housing incentive strategy plan amendments; amending s. 163.3187, F.S.; deleting provisions relating to the amendment of adopted comprehensive plans; revising the process for adopting updated comprehensive plans by statute rather than administrative rule; repealing s. 163.3189, F.S., relating to the process for amendment of adopted comprehensive plan; amending s. 163.3191, F.S., relating to the evaluation and appraisal of comprehensive plans; providing an exception for certain local governments; encouraging local governments to incorporate visioning; providing and revising local government requirements; removing regional planning councils and the state

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land planning agency from preparation of evaluation and appraisal reports; amending s. 163.3194, F.S.; regulating development orders for signs authorized by s. 479.07, F.S.; providing definitions; amending s. 163.3220, F.S.; conforming reference to the Community Planning Act; amending s. 163.3221, F.S.; conforming references to the Community Planning Act; amending s. 163.3229, F.S.; revising limitations on duration of development agreements; amending s. 163.3235, F.S.; revising requirements for periodic reviews of a development agreements; amending s. 163.3239, F.S.; revising recording requirements for development agreements; amending s. 163.3243, F.S.; removing the state land planning agency from parties who may file an action for injunctive relief; amending s. 163.3245, F.S.; revising provisions relating to optional sector plans; renaming 'optional sector plans" as "sector plans"; removing state land planning agency involvement in approval of sector plans; authorizing the adoption of sector plans under certain circumstances; providing and revising local government requirements including notice, amendments, and scoping meetings; revising and providing elements of sector plans; providing guidelines for adoption of long-term master plans; repealing s. 163.3246, F.S., relating to local government comprehensive planning certification program; creating s. 163.3248, F.S.; providing for the designation of rural land stewardship areas; providing purposes and requirements for the establishment of such areas; providing for the creation of rural land stewardship overlay zoning district and transferable rural land use credits; providing certain limitation relating to such credits; providing for incentives; providing legislative intent; amending s. 163.32465, F.S.;

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revising Legislative findings related to local government comprehensive planning; revising the process for amending a comprehensive plan; making the expedited review process applicable statewide and removing its status as a pilot program; revising the process and requirements for expedited review of plan amendments; replacing reference to "Office of Education Facilities of the Commissioner of Education" with "Department of Education"; limiting state agency comments on and challenges to plan amendments; creating s. 163.3260, F.S.; prohibiting duplication of local regulations; amending ss. 163.360, and 163.516, F.S. to conform to changes made by this act; amending s. 186.504, F.S.; revising membership requirements of regional planning councils; amending ss. 186.513, 186.515, 189.415, 190.004, 190.005, 193.501, and 287.042, F.S. to conform to changes made by this act; amending s. 288.063, F.S.; revising factors to be considered by the Office of tourism, Trade, and Economic Development in approving transportation projects for funding; amending ss. 288.975, 290.0475, 311.07, and 331.319 to conform to changes made by this act; amending s. 339.155; removing level-of-service-standards requirements from additional transportation plans; amending s. 339.2819; removing long-term concurrency management system from the Transportation Regional Incentive Program; amending s 369.303, F.S. to conform to changes made by this act; amending s. 369.321, F.S.; removing reference to chapter 163 and chapter 9J-5, Florida Administrative Code, relating to Wekiva Study Area; amending ss. 378.021 and 380.031, F.S., to conform to changes made by this act, amending s. 380.06; revising exemptions relating to developments of regional impact; revising provisions to conform

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to changes made by this act; requiring the Office of Economic and Demographic Research within the Legislature to calculate and publish population density; amending ss. 380.061, 380.065, 380.115, 403.50665, 420.9071, 420.9076, 720.403, and 1013.33, F.S., to conform to changes made by this act; repealing Rules 9J-5 and 9J-11.023, Florida Administrative Code, relating to minimum criteria for review of local government comprehensive plans and plan amendments, evaluation and appraisal reports, land development regulations and determinations of compliance; extending permits and other authorizations extended under section 14, chapter 2009-96, Laws of Florida; finding that this act fulfills an important state interest; requiring the state land planning agency to review pending actions filed by the agency for consistency with part II of chapter 163, F.S.; providing instructions for the construing of this act; instructing the Division of Statutory Revision; providing an effective date.

780786

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (505192) (with title amendment)

Delete lines 618 - 643

and insert:

(8) ~~(11)~~ Each local government is encouraged to articulate a vision of the future physical appearance and qualities of its community as a component of its local comprehensive plan. The vision should be developed through a collaborative planning process with meaningful public participation and shall be adopted by the governing body of the jurisdiction. Neighboring communities, especially those sharing natural resources or

780786

physical or economic infrastructure, are encouraged to create collective visions for greater-than-local areas. Such collective visions shall apply in each city or county only to the extent that each local government chooses to make them applicable. The state land planning agency shall serve as a clearinghouse for creating a community vision of the future and may utilize the Growth Management Trust Fund, created by s. 186.911, to provide grants to help pay the costs of local visioning programs. When a local vision of the future has been created, a local government should review its comprehensive plan, land development regulations, and capital improvement program to ensure that these instruments will help to move the community toward its vision in a manner consistent with this act and with the state comprehensive plan. A local or regional vision must be consistent with the state vision, when adopted, and be internally consistent with the local or regional plan of which it is a component. The state land planning agency shall not adopt minimum criteria for evaluating or judging the form or content of a local or regional vision.

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

And the title is amended as follows:

Delete lines 7416 - 7419

and insert:

responsibility to prepare comprehensive plans; prohibiting initiative or

917160

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (505192)

Delete line 5156

and insert:

a per capita taxable value of assessed property of $58,000 or

575814

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (505192) (with title amendment)

Delete lines 5143 - 5144.

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

And the title is amended as follows:

Delete lines 7488 - 7489

and insert:

administrative rule;

520898

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (505192)

Delete line 5118

and insert:

~~adoption of its evaluation and appraisal report unless it has~~

889448

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (505192) (with title amendment)

Between lines 6894 and 6895

insert:

Section 47. Subsections (9), (10), (11), (12), and (13) of section 367.021, Florida Statutes, are renumbered as subsections (11), (12), (13), (14), and (15), respectively, and subsections (9) and (10) are added to that section, to read:

367.021 Definitions.—As used in this chapter, the following words or terms shall have the meanings indicated:

(9) "Large landowner" means any applicant for a certificate

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pursuant to s. 367.045 who owns or controls at least 1,000 acres in a single county or adjacent counties which are proposed to be certified.

(10) "Need" means, for the purposes of s. 367.045, a showing by a large landowner that the certificate is sought for planning purposes to allow the landowner to be prepared to provide service to its properties as and when needed to meet demands for any residential, commercial, or industrial service, or for such other lawful purposes as may arise within the territory to be certified. A large landowner is not required to demonstrate that the need for service is either immediate or imminent, or that such service will be required within a specific timeframe.

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

And the title is amended as follows:

Delete line 7546

and insert:

Incentive Program; amending s. 367.021, F.S.; providing definitions for the terms "large landowner" and "need"; amending s. 369.303, F.S., to conform

253366

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment to Amendment (505192) (with title amendment)

Delete lines 6531 - 6543.

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

And the title is amended as follows:

Delete lines 7532 - 7533

and insert:

plan amendments; amending ss. 163.360, and

473532

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Norman) recommended the following:

Senate Amendment

Delete lines 319 - 322

and insert:

s. 479.07 unless the sign is located in an area designated for commercial or industrial use or in a zoned or unzoned parcel.

160528

LEGISLATIVE ACTION

Senate . House

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The Committee on Community Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete lines 571 - 583.

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

And the title is amended as follows:

Delete lines 77 - 79

and insert:

providing effective dates.

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 Community Affairs Committee

BILL:	SB 1122
INTRODUCER:	Senator Bennett
SUBJECT:	Growth Management
DATE:	March 23, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill:

- Revises the definition of urban service area;
- Clarifies the way that joint planning agreements are to be interpreted;
- Extends the deadline for having a financially feasible capital improvements element;
- Clarifies that the amount of land designated for future land uses may not be limited solely by the projected population;
- Reenacts the burden of proof for impact fees;
- Places a moratorium on new or increased impact fees (with certain exceptions);
- Creates provisions related to signs and billboards in industrial or commercial areas;
- Requires the Office of Program Policy Analysis to analyze to comprehensive plan programs and setting a date when the certified communities program would terminate;
- Creates a new method reducing state oversight of comprehensive plans;
- Prohibits local governments from duplicating regulations by the Department of Environmental Protection (DEP) or a water management district; and
- Prohibits a water management district from duplicating DEP regulations or permitting.

This bill substantially amends the following sections of the Florida Statutes: 163.3164. 163.3171, 163.3177, 163.31801, 163.3194, and 163.3246.

This bill creates ss. 163.3250 and 163.3260 of the Florida Statutes.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[1] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[2] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA). Generally, local governments can only affect comprehensive planning within their jurisdiction. However, under s. 163.3171, F.S., local governments may enter into a joint planning agreement authorizing one or both of the jurisdictions to exercise extrajurisdictional authority.

Urban Service Areas

Urban service areas are defined as built-up areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are committed in the first 3 years of the capital improvement schedule. Urban service areas and their functional equivalent that were in existence in 2009 were grandfathered into the definition. An urban service area generally delineates the area where a local government intends to plan for growth as opposed to natural and agricultural areas where the local government does not intend to significantly extend infrastructure. If a local government adopts an urban service area into its comprehensive plan, the urban service area is a transportation concurrency exception area and is exempt from development of regional impact review.

Certification Program

Authorized by the 2002 Florida Legislature, the Certification Program allows up to eight local governments per year to be exempt from comprehensive plan review by DCA. To be eligible, a local government must demonstrate a record of effectively adopting, implementing and enforcing its comprehensive plan and demonstrate technical, financial and administrative expertise. The local government must also demonstrate that it has adopted programs in the comprehensive plan and land development regulations that promote infill development and redevelopment; promote affordable housing, achieve effective intergovernmental coordination and address extrajurisdictional effects of development; promote economic diversity; provide and maintain public urban and rural open space and recreational opportunities; manage transportation and land

[1] *See* Chapter 163, Part II, F.S.
[2] Section 163.3177(5), F.S.

uses to support public transit; use design principles; redevelop blighted areas, adopt a local mitigation strategy; encourage clustered mixed-use development, encourage urban infill, and assure protection of key natural areas and agricultural lands.

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads.[3] The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs[4] along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.
- States and localities may enact stricter laws than stipulated in the HBA.
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices". Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

[3] The Highway Beautification Act of 1965, 23 U.S.C. § 131.
[4] A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement which includes definitions of certain relevant terms, such as "commercial and industrial zone" and "unzoned commercial and industrial areas".

Section 479.07, F.S., regulates sign permits. A person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from DOT and paying the annual fee as provided in this section. As used in this section, the term "on any portion of the State Highway System, interstate, or federal-aid primary system" means a sign located within the controlled area which is visible from any portion of the main-traveled way of such system.

Commercial and Industrial Areas

Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., also defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S. This allows FDOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas.

Unzoned Commercial and Industrial Areas

If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be permitted there provided three or more separate commercial or industrial activities take place. However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway,
- The commercial or industrial activity must be within 660 feet of the right-of-way, and
- The commercial or industrial activity must be within 1600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered when determining whether a parcel is an unzoned commercial or industrial area:

- Signs.
- Agriculture, forestry, ranching, grazing, and farming.
- Transient or temporary activities.
- Activities not visible from the traveled way.
- Activities taking place more than 660 feet from the right of way.
- Activities in a building principally used as a residence.
- Railroad tracks and sidings.
- Communication Towers.

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and USDOT.

Home Rule Powers

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[5] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[6] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[7]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[8] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitutions or law.[9]

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[10] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[11]

Impact Fees

Impact fees are enacted by local home rule ordinance. These fees require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost of the fee's earmarked purposes.

[5] FLA. CONST. art VIII, s. 1(f).

[6] FLA. CONST. art VIII, s. 1(g).

[7] FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

[8] Section 125.01, F.S.

[9] Section 166.021, F.S.

[10] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution specifically prevents them from doing so. *See* FLA. CONST. art. VII, s. 1. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule source meets the relevant legal sufficiency tests.

[11] For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

Statutory Authority for Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. By statute, an impact fee ordinance adopted by local government must, at a minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures; if a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of a new or amended impact fee.[12]

Dual Rational Nexus Test

Impact fees have their roots in the common law. There have been a number of court decisions that address impact fee challenges.[13] For example, in *Hollywood, Inc. v. Broward County,*[14] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the benefit of the residents of the new development.[15] These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[16] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the impact fee ordinance.[17]

The Florida Supreme Court addressed the application of impact fees for school facilities in *St. Johns County v. Northeast Florida Builders Association, Inc.*[18] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to 'acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development.'"[19] Also, the ordinance provided for a system of credits to fee-payers for

[12] Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. *See* ss. 163.3202(3), 191.009(4), and 380.06, F.S.
[13] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).
[14] *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983).
[15] *Id.* at 611.
[16] *Id.* at 611-12.
[17] *Id.* at 614.
[18] *St. Johns County v. Northeast Florida Builders Association, Inc*., 583 So. 2d 635 (Fla. 1991).
[19] *Id.* at 637 (quoting St. Johns County, Fla., Ordinance 87-60, s. 10(B) (Oct. 20, 1987)).

land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[20] The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second.

The builders in *Northeast Florida Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of 44 students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[21]

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[22] In *City of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[23]

As developed under case law, a legally sufficient impact fee has the following characteristics:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportional share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.

Burden of Proof and Standard of Review

The obligation to prove a material fact in issue is known as the "burden of proof." Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established, and the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or "standard of review." In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.[24] The preponderance of the evidence (also known as

[20] *Id.* at 637.
[21] *Id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.
[22] *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 134 (Fla. 2000). Volusia County had imposed a school impact fee on a mobile home park for persons age 55 and older.
[23] *City of Zephyrhills v. Wood*, 831 So. 2d 223, 225 (Fla. 2d DCA 2002).
[24] 5 Fla. Prac., Civil Practice s. 16:1 (2009 ed.).

the "greater weight of evidence") standard of proof requires that the fact finder determine whether a fact sought to be proved is more probable than not.

For impact fee cases, the dual rational nexus test states that *the government* must prove: (1) a rational nexus between the need for additional capital facilities and the growth in population generated by the development and (2) a rational nexus between the expenditures of the funds collected and the benefits accruing to the development.[25] Although the challenger has to plead its case and allege a cause of action, beyond the pleading phase the courts' language seems to place the burden of proof on the local government. Some parties have argued that prior to 2009 the standard being adopted by Florida courts was that an impact fee will be upheld if it is "fairly debatable" that the fee satisfies the dual rational nexus test.[26] In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court rephrased the standard as a "reasonableness" test.[27] Although the standard was not clearly defined, prior to 2009 the courts generally did not require a local government to defend its impact fee by as high of a standard as preponderance of the evidence.

House Bill 227 (2009 Regular Session) amended s. 163.31801, F.S., to codify the burden of proof for impact fee ordinance challenges.[28] The bill placed the burden of proof on the government to prove by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or s. 163.31801, F.S. The bill also prohibited the courts from applying a deferential standard.

Litigation

A number of counties and the Florida Association of Counties sued the Florida House and Senate claiming the bill was unconstitutional.[29] The complainants are making the following arguments:

- The law violates the Separation of Powers Clause because it:
  - Changes the burden of proof,[30] and
  - Disallows a deferential standard of review.

- The law violates Section 18, Art. VII of the Florida Constitution, both:
  - Subsection (a) because the complainants argue that it requires local governments that want to levy impact fees to take action requiring the expenditure of funds because "they must assume additional burdens which would not normally exist prior to the adoption of that provision,"[31] and
  - Subsection (b) because the complainants argue that HB 227 reduced local governments' authority to raise revenues in the aggregate.

[25] *See St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991).
[26] *See* FLORIDA IMPACT REVIEW TASK FORCE, February 1, 2006, Final Report & Recommendations, 15, *available at* http://www.floridalcir.gov/taskforce.cfm.
[27] *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla. 2000).
[28] Chapter 2009-49, Laws of Fla.
[29] *Alachua County v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).
[30] In fact, HB 227 simply codified existing case law providing that the local government had the burden of proving whether an impact fee was valid. *See, e.g. Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla. 2000).
[31] *Alachua County v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).

Separation of Powers

House Bill 227 is being challenged on separation of powers grounds. The complainants are alleging that Chapter 2009-49, Laws of Florida, (HB 227 (2009 Regular Session)), which directs courts not to apply a deferential standard in impact fee challenges cases, violates the separation of powers provision in Section 3, Art. II of the Florida Constitution. They argue that the deference afforded to the legislative acts of local governments by the courts is derived from the Florida Constitution and specifically the home rule authority[32] granted to counties and municipalities, and therefore, the Legislature cannot by statute direct the courts not to apply a deferential standard to the validity of impact fee ordinances since that deference is derived from the Constitution itself.[33]

Section 2, Art. V of the Florida Constitution gives the Supreme Court the power to adopt rules relating to practice and procedure of the courts. The complainants in the pending lawsuit challenging House Bill 227 argue that the bill (1) changed the burden of proof and (2) changing the burden of proof violated the courts' exclusive right to adopt rules relating to practice and procedure. House Bill 227 did not change the burden of proof, just the standard of review. Moreover, it does not appear that the burden of proof and the standard of review are procedural issues falling squarely in the domain of the judiciary. Rather, the standard of review is often related to the underlying substantive issue and is often specified by statute.[34]

Section 3, Art. II of the Florida Constitution states that the "powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [in the Florida Constitution]." However, courts have held that "if a power is not exclusive to one branch, the exercise of that non-exclusive power is not unconstitutional."[35] Complainants argue that the provision in HB 227 prohibiting the courts from applying a deferential standard of review to the validity of impact fees infringes on the power of the judiciary.

One of the primary powers of the court is to interpret the constitution.[36] In a federal or state constitutional case, standards of review and burdens of proof can become constitutional issues. An impact fee is open to being challenged on a number of state and federal constitutional

[32] FLA. CONST. art VIII, s. 2.
[33] *Id.*
[34] *See, e.g.*, ss. 39.206, 39.407, 39.827, 57.105, 61.13001, 61.14, 68.09, 98.075, 101.048, 112.1815, 112.534, 120.56, 120.57, 163.3177, 163.31777, 163.3184, 163.3187, 163.32465, 194.301, 222.21, 287.133, 287.134, 320.6412, 322.2615, 322.2616, 322.64, 363.06, 376.305, 376.308, 379.337, 379.502, 390.01114, 400.023, 400.121, 403.121, 403.519, 403.706, 403.727, 408.08, 409.2558, 415.1045, 429.29, 440.104, 443.101, 448.110, 456.032, 552.40, 556.107, 556.116, 559.77, 560.123, 560.125, 569.23, 608.441, 627.062, 627.0628, 627.0651, 648.525, 655.50, 709.08, 732.805, 744.301, 765.109, 768.28, 768.81, and 775.082, F.S. (all applying the preponderance of evidence standard of review in different situations); s. 617.0126, F.S. (applying de no review standard to suits challenging certain action by the Department of State); and s. 120.57(1)(e), F.S. (providing a clearly erroneous standard of review related to an unadopted rule).
[35] *Simms v. Dep't of Health & Rehabilitative Servs.*, 641 So. 2d 957 (Fla. 3d DCA 1994) (citing *Dep't of Health & Rehabilitative Servs. v. Hollis*, 439 So. 2d 947, 948 (Fla. 1st DCA 1983)); *see also Florida House of Representatives v. Crist*, 999 So. 2d 601, 611 (Fla. 2008) (finding that a branch of government has the inherent right to accomplish all objects naturally within its orbit, not expressly limited by the fact of the existence of a similar power elsewhere or the express limitations in the constitution).
[36] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

grounds including: federal and state takings claims,[37] challenges that it is an improperly enacted tax,[38] and challenges that it violates the state constitutional requirement for free public schools.[39] While decreasing the standard of review might be viewed as a separation of powers problem, increasing the standard of review further protects the constitutional rights raised in these cases. Increasing constitutional protections is a function within the jurisdiction of the Legislature.

Furthermore, the Florida Supreme Court has held that a statute that attempts to control a court's judgment is valid where it merely establishes rebuttable presumptions, rather than setting forth mandatory guidelines.[40] While HB 227 does not allow a deferential standard, it still allows the court to come to its own judgment regarding the validity of the impact fee. In summary, the separation of powers challenge to the Legislature's delineation of the standard of review in impact fee cases will ultimately turn on a court's determination of whether this delineation of the standard of review infringes upon the judiciary's authority over practice and procedure.

Mandates

House Bill 227 (2009 Regular Session) has been challenged as an unconstitutional mandate. Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds with certain exceptions and exemptions. Although the complaint argues that HB 227 violated this provision, the bill does not require any action from the local governments. The complaint does not specify what "additional burdens" it is alleging local governments are required to carry out. Therefore, it is unlikely that HB 227 violated Article VII, Section 18(a) of the Florida Constitution.

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. House Bill 227 did not qualify for the exemptions provided in s. 18(d), Art. VII of the Florida Constitution and did not receive a two-thirds vote in the Senate. Versions of both the Senate and House staff analyses in 2009 stated that the bill reduced local governments' authority to raise revenues.[41] However, the bill did not restrict local governments from levying impact fees nor did it change the test by which impact fees are evaluated (the dual rational nexus test). Arguably, an impact fee that is valid under case law and statutory law should be upheld both before and after HB 227 became law. The bill only should affect local governments that levy invalid impact fees, which they never had the authority to levy. To the extent that the standard of review is determined by a court to reduce the authority of the government to raise revenues in the aggregate, the bill could be deemed an unfunded mandate. Practically, the bill may lead to more impact fees being struck down as invalid. Therefore, there are logical arguments on both sides.

[37] U.S. CONST. amend. V; FLA. CONST. art. I, s. 9.
[38] FLA. CONST. art. VII, s. 1.
[39] FLA. CONST. art. IX, s. 1.
[40] *Department of Agriculture and Consumer Services v. Bonanno*, 568 So. 2d 24 (Fla. 1990).
[41] House Economic Development and Community Affairs Policy Council, Staff Analysis for CS/CS/HB 227 (2009 Reg. Sess.); Senate Transportation and Economic Development Appropriations Committee, Bill Analysis for CS/SB 580 (2009 Reg. Sess.).

Creating a preponderance of the evidence standard of review for impact fee challenges *may* or *may not* reduce a local government's authority to raise revenues under the Florida Constitution.[42] In order to eliminate the uncertainty regarding whether the subsection of law enacted by HB 227 was an unconstitutional mandate, SB 410 requires approval of each house of the Legislature by two-thirds of the membership.[43]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3164, F.S., to clarify that an urban service area is any urban service area identified in the comprehensive plan regardless of local government limitation.

Section 2 amends s. 163.3171, F.S., to clarify that joint planning agreements should be broadly construed, that courts have sole jurisdiction to interpret joint planning agreements, and that the validity of a joint planning agreement may not be a basis for finding plan amendments not in compliance.

Section 3 amends s. 163.3177, F.S., to extend the deadline for compliance with the CIE financial feasibility requirement to 2013 and to specify that the amount of land designated for future land uses may not be limited solely by the projected population.

Section 4 reenacts s. 163.31801, F.S., relating to the burden of proof/standard of review for impact fees in response to ongoing litigation. To remove any doubt regarding whether this section is an unconstitutional mandate, this bill requires approval by each house of the Legislature by two-thirds of the membership.

Section 5 states that if a court of last resort finds that the retroactive application of the reenactment of s. 163.31801(5), Florida Statutes, is unconstitutional, it is the intent of the Legislature that section 4 of this act shall apply prospectively from July 1, 2011. This is an attempt to preserve the burden of proof/standard of review change from 2009 that is now the subject of litigation.

Section 6 amends s. 163.31801, F.S., to create a moratorium on impact fees. It does not affect impact fees pledged or obligated for the retirement of debt or impact fees for water or wastewater.

Section 7 adds a new subsection to s. 163.3194, F.S. The bill attempts to put the state land planning agency in the posture of determining land use for the purposes of the HBA's authorization that signs/billboards may be located on commercial or industrial, zoned or unzoned

[42] Additionally, in 2009 the revenue estimating conference estimated that the bill would have a negative but indeterminate affect on local governments. Section 18(d), Art. VII of the Florida Constitution has an exemption for insignificant fiscal impacts. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times 10 cents; the average fiscal impact, including any offsetting effects over the long term, is also considered. Therefore, if a court did find that the bill was a mandate, the impact of the bill's change in the standard of review would have to have an impact greater than $18.6 million in the applicable fiscal year to be an unconstitutional mandate.

[43] If provisions of a law were unconstitutionally enacted, the Legislature can reenact those provisions using proper constitutional methods so long as the substance of the law is constitutional. *See Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991); *see also State v. Johnson*, 616 So. 2d 1 (Fla. 1993).

parcels. However, the definitions are inconsistent with the provisions of s. 479.01, F.S. Paragraph (c) is unclear. Specifically, the reference to "development order or permit" does not specify what type of development order or permit or the significance of the development order or permit. The reference to 479.02, F.S., which covers all of the Department of Transportation's requirements for signs and billboards seems to supersede a number of statutory requirements. To the extent that this could be viewed as a violation of the federal-state agreement under the HBA, this could cost the state a significant amount of money (see fiscal impact). Finally, it is unclear what determination is intended when the bill refers to the "determination by the local government."

Section 8 amends s. 163.3246, F.S., revising the local government comprehensive planning certification program (the certified communities program). The bill would require the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study the certified communities program and the program implemented by section 9 of the bill. The bill provides that the certified communities program expires on December 1, 2015.

Section 9 creates s. 163.3250, F.S. to create an autonomous planning program. The autonomous planning program is modeled after the certified communities program and is designed to allow all local governments to designate all or a portion of their jurisdiction for relief from comprehensive plan amendment review. The state land planning agency shall approve any county or municipal designation of an autonomous planning area if all of the jurisdiction's plan amendments have been found in compliance by final order from the Administration Commission or a court of law within the preceding 2 years. Public hearings are held as part of the process. Plan amendments that apply to lands within an autonomous planning area follow the process set forth in this section, with specified exceptions.

Section 10 creates s. 163.3260, F.S., prohibits local governments from duplicating reviews by the Department of Environmental Protection or a water management district. It prohibits water management districts from duplicating reviews or permitting carried out by the Department of Environmental Protection.

Section 11 of the bill provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. Since the bill would reduce a county's or municipality's authority to raise revenue in the aggregate, it will require two-thirds vote of the membership of each house of the Legislature for passage.

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:

None.

C. Government Sector Impact:

Should the FHWA determine the provisions of the bill addressing the installation of signs on commercial or industrial land are not in compliance with the 1972 agreement between the State and USDOT, or otherwise result in a loss of effective control of outdoor advertising, section 131(b) of Title 23 U.S.C requires the withholding of up to 10% of federal highway funds (approximately $145 million). Further, if federal action results in the subsequent repeal of a provision, any signs legally erected under the provision would become legal nonconforming signs. The removal of such signs requires just (monetary) compensation.

Impact fee moratoria are likely to reduce the local government's ability to raise revenues to pay for infrastructure improvements. These revenues may be passed on in the form of taxes to the general tax payer instead of new development.

VI. Technical Deficiencies:

The language in section 7 of the bill is unclear (especially (3)(c), see discussion of effect of proposed changes) and inconsistent with chapter 479. If this language violates the state-federal agreement it could result in fines and other economic losses.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.