STORAGE NAME: h1641a.ca
DATE: April 15, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 1641

RELATING TO: Comprehensive Planning and Management

SPONSOR(S): Representative Livingston

STATUTE(S) AFFECTED: Sections 163.3187; 380.051; and 380.06, Florida Statutes

COMPANION BILL(S): SB 1024 (c); CS/SB 1466 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
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I. SUMMARY:

This bill provides that the limitation on the frequency of amendments to a local government's adopted comprehensive plan will not apply to amendments to, or amendments related to, the schedule of capital improvements of the capital improvements element. In addition, this bill provides that such amendments will require only one public hearing.

This bill directs the Department of Community Affairs (Department), to evaluate the statutory requirements for the evaluation and appraisal of comprehensive plans, in consultation with a technical committee appointed by the Secretary of the Department. This bill requires the Department to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives its recommendations for changes to the statutory requirements for the evaluation and appraisal of comprehensive plans.

This bill removes the statutory authorization of the Department to establish rules to create processes and procedures for the coordinated agency review of projects in the Florida Keys (an area of critical state concern). This bill also requires the Department, the Department of Environmental Protection, the Department of Health and other state and regional permitting agencies to enter into interagency agreements establishing the procedures for the coordinated agency review within 180 days of this bill becoming law.

This bill removes the requirement that the Department establish, by rule, procedures and criteria for a developer to petition for authorization to submit a proposed areawide development of regional impact (DRI) for a defined planning area.

This bill does not appear to have any direct, immediate, significant fiscal impact on state or local (counties and municipalities) governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Local Government Comprehensive Planning and Land Development Regulation Act

In 1985, the Legislature passed the Local Government Comprehensive Planning and Land Development Regulation Act (Act), found in chapter 163, part II, Florida Statutes. The Act has been amended in 1986, 1992, 1993, 1995, and 1996. The 1993 amendments to the Act were a result of recommendations of the third Environmental Land Management Study Committee (ELMS III), appointed by Governor Chiles to review the operation and implementation of Florida's growth management statutes.

The Act, as amended, requires that all local governments prepare comprehensive plans (plans), and submit them to be reviewed by the state land planning agency (the Department of Community Affairs). The plans must contain data, analyses, policies, goals, and objectives relating to eight mandatory elements on the following issues:

- Capital improvements;
- Future land use;
- Traffic Circulation;
- General sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge;
- Conservation;
- Recreation and open space;
- Housing; and
- Intergovernmental coordination.

In addition, each plan also must contain a capital improvements element. The capital improvements element must consider the need for, and the location of, public facilities. Further, general law requires that comprehensive plans of coastal local governments contain a coastal element.

Local governments submit their proposed plan or plan amendment(s) to the Department for review and approval. The Department evaluates the plan and prepares an Objections, Recommendations and Comments (ORC) report which is sent to the local government. The ORC points out to the local government any of the plans' inconsistencies with state laws or administrative rules. In addition, the ORC makes recommendations to the local government on ways to bring the plan or plan amendment(s) into compliance. The ORC addresses only those issues the Department is authorized to review.

After a local government adopts their plan, they are required to transmit copies of their plan to the Department. Upon receiving the plan, the Department reviews the plans for consistency with the following: the applicable regional policy plan; the State Comprehensive Plan; the Act and Rule 9J-5, F.A.C. (this rule establishes the minimum criteria for local comprehensive plans).

Amendments to Adopted Comprehensive Plans:

Section 163.3187, Florida Statutes, 1996 Supplement, places a twice a year limit on the ability of a local government to amendments to its plan. However, this section also contains several exceptions to the twice a year limit. The twice a year limit does not apply to the following amendment categories:

- Emergencies (as defined in this section);
- Amendments directly related to a proposed development of regional impact or a Florida Quality Development;
- Amendments directly related to a substantial deviation to a development of regional impact or Florida Quality Development;
- Small scale amendments (as defined in this section);
- Amendments required by compliance agreements; and
- Amendments to locate a state correctional facility.

Evaluation and Appraisal Reports (EARs):

Section 163.3191, F.S., 1996 Supplement, requires that, no later than seven years after a local government has adopted its plan, each local government must prepare an Evaluation and Appraisal Report (EAR). The EAR assesses the plan for the following:

- The need to be updated to reflect changes in state policy on planning and growth management;
- The success and failure of the plan;
- The major problems of development; physical deterioration, and the location of land uses and the social and economic effects of such uses in the area;
- The condition of each element in the comprehensive plan at the time of adoption and at the time of the report;
- The effect on the plan due to changes to: the state comprehensive plan, the requirements of this part, the minimum criteria contained in the rules, and the appropriate strategic regional policy plan;
- A description of the public participation process used by the local government in preparing the report.

In addition to the above, the EAR must include, reformulated objectives, policies, and standards. Pursuant to this section, the Department has adopted a phased schedule for local governments to submit their EARs for review.

The Department is authorized to conduct a sufficiency review of the EAR within 60 days of receipt from a local government. Sufficiency reviews are defined by the statute. In general, a sufficiency review determines whether the required components of the EAR are present; whether the report was timely submitted; and examines whether the EAR provides adequate amounts of information to show what the community was like at the time of the adoption of the plan and what the community is like now. A sufficiency review looks at how the community has changed since the adoption of the plan and determines the adequacy of the plan in dealing with those changes.

When the local government submits recommended amendments to the Department in response to the sufficiency review, the Department then conducts a compliance review of the amendments. A compliance review looks at whether the amendments are consistent with the findings and recommendations of the EAR. If a local government should fail to implement its EAR, general law authorizes the Administration Commission to impose sanctions against them.

The Department may delegate the sufficiency review of EARs to a regional planning council (RPC) by written agreement. If the Department has delegated EAR sufficiency review to a RPC delegated, any local government within the region may choose to have its EAR reviewed by the RPC instead of the Department.

In FY 1994-95, the Legislature appropriated $1.8 million for distribution as technical assistance grants to local governments for preparation of their EARs. Eighty-nine local governments qualified for a total of $20,224 each. In FY 1995-96, the legislature reduced the appropriation to approximately $1.2 million; distributed among 89 local governments and each received $14,069. In FY 1996-97, the Legislature again reduced the appropriation to approximately $1 million, distributed among only 74 local governments and so the grant remained at $14,069. For FY 1997-98, the Department has requested an appropriation that will fund the remaining 39 local governments at approximately the same level.

The Act authorizes the Department to allow certain qualified local governments to focus their EAR on a few selected issues or elements. To qualify a municipality (with fewer than 5,000 residents), or a county (with fewer than 50,000 residents), must request this consideration and enter into an agreement with the Department.

The written agreement must contain the Department's findings that are the basis for the decision. The agreement must list the elements or portions of elements which are to be updated, as well as those elements which are not to be updated. In addition, the local government must agree that within 18 months of termination of the agreement, it will adopt plan amendments updating the portions of the plan that were specifically excluded from the EAR. The agreement must be approved by the local government after a public hearing. The Department's decision to grant, modify or terminate an agreement is subject to a formal administrative hearing.

The statute lists the following factors for the Department to consider in evaluating a local government's request to limit the EAR review:

- Population growth rate or changes in land area since adoption of the administrative rules implementing the act.
- The extent of vacant and undevelopable land and land vested for development.
- The need for redevelopment.
- The extent to which public services and facilities for residents are supplied by providers other than the local government.
- Past performance in local plan implementation.
- Presence in the jurisdiction of natural resources with state or regional significance as identified in the applicable state or regional plans.
- Infrastructure backlog.

While some elements may be excluded from the review, certain elements are still required to be included. The required elements are land use, intergovernmental coordination, conservation, and capital improvements. In addition, communities which are required to have a coastal element are also required to include their coastal element in their EAR. According to the Department, no small municipality or small county has ever taken advantage of the agreement provided by this subsection.

In addition to the above listed exclusions, prior to the 1997 Legislative session, several small municipalities adopted resolutions requesting their legislative delegation to sponsor legislation exempting certain local governments (based on their population size and percent of built-out land area), from the EAR review process. It appears that many of these resolutions were sought due to the high cost to small municipalities to hire consultants to prepare their EARs. In response to these requests, and other issues related to EARs, the Department has requested the Legislature to authorize a study commission to review the statutory provisions governing the EAR process.

Areas of Critical State Concern -- Coordinated Agency Review (Florida Keys Area):

In 1972, the Legislature adopted chapter 72-317, Laws of Florida, which created the Environmental Land and Water Management Act of 1972. This act created the areas of critical state concern (ACSC) program and established procedures for increased protection of lands of statewide importance, including wildlife refuges, wilderness areas, and critical habitat of threatened and endangered species.

Once an area was designated as an ACSC principles for guiding development (principles), for that area were adopted. The ACSC designation required that local government land development regulations (LDRs) and local government comprehensive plans be consistent with the principles. An ASCS designation also subjected local government comprehensive plans and LDRs to review and amendment by the state.

In 1986, the Legislature adopted chapter 86-170, Laws of Florida, created the procedures for coordinated agency review for all permit applications in the Florida Keys area of critical state concern.

Developments of Regional Impact (DRI) -- Areawide Development of Regional Impact:

The DRI review process was also created as part of the Environmental Land and Water Management Act of 1972. As defined by general law, a DRI is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health and safety, or welfare of citizens of more than one county." The purpose of the DRI review process was not to prohibit development, but to manage it in order to address the multi-jurisdictional impacts and to protect natural resources.

This act authorizes a developer to submit an Areawide DRI to be reviewed under the special provisions of this section. These DRIs are subject to review under a specific time schedule and have different requirements from other DRIs.

B. EFFECT OF PROPOSED CHANGES:

This bill makes several revisions to the statutes governing Florida's growth management process.

Amendments to Adopted Comprehensive Plans:

This bill creates another exception from the twice a year limit to amend a comprehensive plan. However, this exception applies only to schedule changes and updates to the Capital Improvements Element.

This bill should encourage local governments' to update the schedule in their CIE and keep their plans updated.

Evaluation and Appraisal Reports (EARs):

This bill requires the Department to create a 15-member committee to evaluate statutory and rule provisions relating to the EARs of local government comprehensive plans. In addition, this bill requires the Department to submit the report to the Governor, the President of the Senate, and the Speaker of the House on or before December 15, 1997.

Areas of Critical State Concern -- Coordinated Agency Review (Florida Keys Area):

This bill deletes the Department's rulemaking authority for adopting procedural rules for the coordinated agency review process in the Florida Keys. In addition, this bill deletes references made to the rulemaking authority and makes minor technical change to a reference to another state agency.

This bill requires the Department of Community Affairs, the Department of Environmental Protection, and the Department of Health, along with other state and regional agencies that require permits in the Florida Keys ACSC, to enter into interagency agreements to

to create a coordinated agency review process. This bill requires the agencies to enter into the agreement within 180 days after the effective date of the act.

Developments of Regional Impact (DRI) -- Areawide Development of Regional Impact:

This bill deletes the Department's rulemaking authority to establish procedures and criteria for reviewing petitions to develop areawide DRIs. In addition, this bill limits the Department's criteria for evaluating a petition for an areawide DRI to those criteria listed in the statute.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. This bill **directly decreases the Department's authority to make rules** (in coordinated agency review of the Florida Keys ACSC, and in areawide DRI review). This bill allows Department to repeal additional rule sections, in order to comply with various rule reduction executive orders.

This bill **indirectly enables other agencies to repeal their agency rules** related to the coordinated agency permit review process of the Florida Keys ACSC and, therefore, **reducing other agencies' need to also make or maintain rules.**

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. This bill requires the Department to: repeal rules; enter into interagency agreements within 180 days; and form a committee to evaluate the EAR review process.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Local governments' will likely be encouraged to change and update the capital improvements element of their comprehensive plan on an annual basis.

The Department and other state and regional agencies will need to review their statutes to determine if they are: sufficiently explicit to conduct their agency business; and sufficiently explicit to provide regulated parties adequate guidance to comply with the statute.

Reduction of the Department's rulemaking authority will require local governments, if they choose: to bear the burden of developing standards and to acquire expertise to monitor and enforce standards and enforcement in those areas where the Department previously exercised rulemaking authority.

(2) what is the cost of such responsibility at the new level/agency?

Indeterminate.

(3) how is the new agency accountable to the people governed?

Not applicable (N/A).

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

N/A

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION RESEARCH:

Section 1: Creates paragraph (f) in subsection (1) of section 163.3187, Florida Statutes, 1996 Supplement, to create a new exemption from the current requirement that local governments amend their comprehensive plans only twice a year. The exemption authorizes a local government to adopt changes to the schedule in the Capital Improvements Element (and any amendments directly related to the schedule), once a calendar year on a date different than the regular two times per year. This will allow the local government to make changes in their Capital Improvements Element at the adoption of their annual budget and capital improvements program.

Section 2: This section requires the Department to evaluate, in conjunction with a 15-member technical committee, statutory and rule provisions relating to the evaluation and appraisal of comprehensive plans. The committee, appointed by the Secretary of Community Affairs, is required to be representative of local governments, regional planning councils, the private sector, and environmental organizations. The evaluation must include the local government's overall character and should give special emphasis to the character of small local governments. The Department is required to report its recommendations regarding changes to EAR requirements, funding for local governments, and the role of state agencies in assisting local governments, to the Governor, the President of the Senate, and the Speaker of the House by December 15, 1997.

Section 3: This section amends the provisions of 380.051, F.S., 1996 Supp., to eliminate rulemaking requirements for coordinated agency review in the Florida Keys ACSC. This section requires the Department, the Department of Environmental Protection, and other state and regional agencies that require permits, to enter into an interagency agreement to coordinate agency review of the permits within 180 days after the effective date of this act.

Section 4: This section amends paragraphs (a), (b), (d), and (f) of subsection (25) of section 380.06, Florida Statutes, 1996 Supp., by deleting all references to required rulemaking provisions. In addition, the amendment clarifies that it is the statute alone that provides the minimum procedures and criteria that govern the areawide DRI application and review process.

Section 5: This section provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

This bill will enable the Department to repeal a number of rules, in furtherance of the state directive of Executive Orders 95-74 and 95-256. The Department will incur costs associated with the publication of the rules to be repealed in the Florida Administrative Weekly (FAW), as required by s. 120.54(3)(a), F.S. According to the Department of State, the cost for publication in the FAW is $.74 per line.

The Department is required to publish a short, plain explanation of the purpose and effect of the proposed action; the rule number; the rule title; identify the specific law implemented; and the rule history. However, the text of the rule sections being repealed is not required to be published.

This bill will allow other "affected agencies" to repeal their agency rules related to coordinated agency review of permits issued in the Florida Keys ACSC. Presumably, those agencies will also incur similar costs associated with publication of rules for repeal. Those agencies will now be required to enter into interagency agreements with the Department to implement the coordinated agency review process.

This bill also requires the Department to form a 15-member committee to review the EAR statutory requirements and produce a report. Presumably, this will require either additional personnel or additional hours from existing personnel (including professional and support staff).

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

   This bill may result in the shifting of the costs of obtaining expert environmental and planning review from the state to regional or local governments.

3. Long Run Effects Other Than Normal Growth:

   Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   This bill will likely reduce the private sector costs of development of areawide DRIs and in development in the Florida Keys ACSC.

2. Direct Private Sector Benefits:

   Reduction of state requirements for development and/or better agency coordination of permitting and review processes will likely promote development activity in the areas where the reduction or coordination has occurred. In addition, an increase in developmental activity will likely increase local jobs along with the ripple effect associated with those types of increases.

3. Effects on Competition, Private Enterprise and Employment Markets:

   See previous comments.

D. FISCAL COMMENTS:

   None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   This bill does not reduce the revenue raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

   This bill does not reduce state taxes shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One "strike everything after the enactment clause" amendment was adopted by the House Committee on Community Affairs on April 15, 1997. The committee **did not** adopt a committee substitute for this bill. The following is a section-by-section description of the changes contained in the "strike everything" amendment:

Section 1: This section amends subsection (6) of s. 163.3180, F.S., 1996 Supplement, by redefining the term "de minimis impact" for purposes of exempting development from transportation concurrency requirements. The impact is increased from one-tenth of a percent to one percent of the maximum volume at the adopted level of service of the affected transportation facility. The definition specifically *includes* impacts generated by a single family home on an existing lot, regardless of the level of deficiency of the roadway. Further, the definition specifically *excludes* impacts which would exceed the adopted level of service standard on a designated hurricane evacuation route, or if it would exceed 110 percent of the sum of existing volumes and projected volumes from approved projects on a transportation facility.

Section 2: This section amends s. 163.3184, F.S., 1996 Supplement, by revising the definition in subsection (1) of "in compliance," and by revising the method by which plans and plan amendments become effective in an area of critical state concern. The definition of "in compliance" is revised to include consistency with the principles for guiding development in an area of critical state concern. Subsection (14) is revised to clarify that plans and plan amendments in an area of critical state concern become effective when the Department issues a final order finding the plan or plan amendment "in compliance" (the Department's notice of intent).

These changes, along with those in Sections 4 and 5, conform the procedures applicable to plans and plan amendments in areas of critical state concern with the procedures applicable to all other local governments.

Section 3: This section amends subsection (1) of s. 163.3187, F.S., 1996 Supplement, by authorizing a consolidated local government to annually adopt ordinances amending the land use of up to 120 acres of small scale developments. This section applies only to Jacksonville/Duval County. This section exempts Jacksonville/Duval County from the prohibition against applying small scale amendments to no more than 60 acres outside of the following areas specifically designated in the local comprehensive plan: urban infill; urban redevelopment; or downtown revitalization; transportation concurrency exception areas; or regional activity centers and urban central business districts.

This section also amends subsection (1) of s. 163.3187, F.S., 1996 Supplement, by creating a new exemption from the requirement that local governments amend their plans only twice a year. This section authorizes a local government to adopt changes to the schedule in the Capital Improvements Element (CIE), and any changes directly related to the schedule, once

a calendar year on a different date than the two times per year, when necessary to coincide with the adoption of the local government's annual budget and capital improvements program. This section should encourage local governments to update the schedule in their CIE and keep their plans updated.

Section 4: This section amends subsection (2) of s. 163.3189, F.S., 1996 Supplement, by creating an exception, applicable in ACSC, from provisions allowing a local government to make a plan amendments effective after the Administration Commission has determined that the amendment is not "in compliance." This purpose of this change is to streamline the plan amendment process in an area of critical state concern.

Section 5: This section substantially amends the provisions of s. 380.05, F.S., 1996 Supplement, by eliminating rulemaking requirements for the Department to approve or reject local government plans, plan amendments, and land development regulations in an ACSC.

Subsection (6) is amended to require approval or rejection of land development regulations by agency final order, rather than rule. This subsection changes the Department's burden of proof at hearings. This subsection provides that the Department has the burden to prove the validity of its final order in any subsequent administrative challenge. In addition, this section provides that a proposed land development regulation is not effective in an ACSC concern until the Department issues its final order approving it. Further, in the event the order is challenged, the proposed land development regulation is not effective in the ACSC until the challenge is administratively resolved. Moreover, this section also makes it clear that the Department will issue a compliance determination on plans and plan amendments in an ACSC, just as it does to any other local government. Finally, this requirement eliminates the Department's statutory authority to adopt a rule approving or rejecting the plan or plan amendment.

Subsection (8) is amended to clarify when the Department may submit to the Administration Commission a recommended comprehensive plan, or portions thereof, or land development regulations upon the failure of a newly designated ACSC to adopt these provisions, or when they are adopted and found not to be in compliance. Specifically, the Department may submit proposed land development regulations within 120 days of an order rejecting proposed land development regulations and a local comprehensive plan or plan amendment or within 120 days of a recommended order on the compliance of a plan or plan amendment.

These changes conform the statute to the changes in Sections 2 and 4 which eliminate certain Departmental rulemaking requirements and streamline the comprehensive plan, plan amendment, and land development regulation adoption processes in areas of critical state concern.

Section 6: This section amends s. 380.051, F.S., by deleting all references to required rulemaking. In addition, this section requires all affected agencies to enter into interagency agreements with the Department for coordinated agency review of development in the Florida Keys ACSC within 180 days of this act becoming a law.

Section 7: This section amends paragraphs (a), (b), (d), and (f) of s. 380.06(25), F.S., 1996 Supplement, by deleting all references to required rulemaking. In addition, this section makes it clear only the procedures and criteria contained in the statute govern the application and review processes for Areawide DRIs.

Section 8: This section requires the Department to evaluate, in conjunction with a 15-member technical committee, the statutory and rule provisions relating to EARs. The evaluation must include the local government's overall character and should give special emphasis to the character of small local governments. The members of the technical committee shall be appointed by the Secretary of the Department, and shall represent local governments, regional planning councils, the private sector and environmental organizations. The Department shall report its recommendations regarding changes to EAR requirements, funding for local governments and the roles of state agencies in assisting local governments, to the Governor and Legislature by December 15, 1997.

Section 9: This section provides that this act shall take effect upon becoming a law.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by: Legislative Research Director:

Tonya Sue Chavis, Esquire

Jenny Underwood Dietzel