

By Senator Dyer

14-1218B-98

1 A bill to be entitled
2 An act relating to the rulemaking authority of
3 the Department of Community Affairs and the
4 Florida Land and Water Adjudicatory Commission
5 (RAB); creating s. 14.2025, F.S.; creating the
6 Florida Land and Water Adjudicatory Commission
7 and authorizing the commission to adopt rules;
8 amending s. 163.3177, F.S.; including debt
9 management standards in local capital
10 improvements elements; providing local
11 comprehensive planning periods; amending s.
12 163.3184, F.S.; specifying agencies for
13 comprehensive plan amendment review; allowing
14 for adoption of separate and distinguished plan
15 amendments; providing for municipal review of
16 plan amendments that affect municipal plans;
17 authorizing a schedule for agency review of
18 comprehensive plans and plan amendments;
19 ensuring conformity with the uniform rules of
20 procedure; amending s. 163.3191, F.S.;
21 providing for copies of submitted evaluation
22 and appraisal reports; providing for local
23 governments to request substantive comments
24 during sufficiency review of evaluation and
25 appraisal reports; providing for requests for
26 delegation of review of evaluation and
27 appraisal reports; amending s. 163.3202, F.S.;
28 clarifying that all municipalities adopt land
29 development regulations to implement municipal
30 plans and plan amendments; providing for notice
31 by the department of the need to adopt required

1 land development regulations; supplementing
2 authority to adopt rules to allow schedules for
3 adoption of required land development
4 regulations; amending s. 380.06, F.S.; allowing
5 the department to issue clearance letters, upon
6 request, as to whether a development may be
7 required to undergo
8 development-of-regional-impact review;
9 preventing reviewing agencies from objecting to
10 the use of assumptions and methodologies agreed
11 upon during preapplication procedures; allowing
12 for another preapplication conference to be
13 held if an application for development approval
14 is not submitted within 1 year; supplementing
15 authority to adopt rules to include criteria
16 for abandonment of developments of regional
17 impact; amending s. 380.061, F.S.;

18 supplementing authority to adopt rules for
19 Florida Quality Development annual reports and
20 criteria for determining a substantial change
21 to an approved Florida Quality Development;
22 amending s. 380.07, F.S.; supplementing
23 authority to adopt rules regarding development
24 orders in designated areas of critical state
25 concern; amending s. 380.22, F.S.;

26 supplementing authority to adopt rules to
27 include procedures and criteria for evaluation
28 of subgrant applications under the federal
29 Coastal Zone Management Act; providing an
30 effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 14.2025, Florida Statutes, is
4 created to read:

5 14.2025 Florida Land and Water Adjudicatory
6 Commission.--There is created as part of the Executive Office
7 of the Governor the Florida Land and Water Adjudicatory
8 Commission composed of the Governor and Cabinet. The Governor
9 is chair of the commission. The Governor or Secretary of State
10 may call a meeting of the commission each time the need
11 therefor arises. The commission shall adopt rules in
12 accordance with chapter 120 to carry out its powers and
13 duties.

14 Section 2. Paragraph (a) of subsection (3) and
15 subsection (5) of section 163.3177, Florida Statutes, are
16 amended to read:

17 163.3177 Required and optional elements of
18 comprehensive plan; studies and surveys.--

19 (3)(a) The comprehensive plan shall contain a capital
20 improvements element designed to consider the need for and the
21 location of public facilities in order to encourage the
22 efficient utilization of such facilities and set forth:

23 1. A component which outlines principles for
24 construction, extension, or increase in capacity of public
25 facilities, as well as a component which outlines principles
26 for correcting existing public facility deficiencies, which
27 are necessary to implement the comprehensive plan. The
28 components shall cover at least a 5-year period.

29 2. Estimated public facility costs, including a
30 delineation of when facilities will be needed, the general
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1 location of the facilities, and projected revenue sources to
2 fund the facilities.

3 3. Standards to ensure the availability of public
4 facilities and the adequacy of those facilities including
5 acceptable levels of service.

6 4. Standards for the management of debt.

7 (5)(a) Each local government comprehensive plan must
8 include at least two planning periods, one covering at least
9 the first 5-year period occurring after the plan's adoption
10 and one covering at least a 10-year period.

11 (b) The comprehensive plan and its elements shall
12 contain policy recommendations for the implementation of the
13 plan and its elements.

14 Section 3. Subsections (3), (4), and (5), paragraph
15 (c) of subsection (6), and paragraph (b) of subsection (9) of
16 section 163.3184, Florida Statutes, are amended to read:

17 163.3184 Process for adoption of comprehensive plan or
18 plan amendment.--

19 (3) LOCAL GOVERNMENT TRANSMITTAL OF PROPOSED PLAN OR
20 AMENDMENT.--

21 (a) Each local governing body shall transmit the
22 complete proposed comprehensive plan or plan amendment to the
23 state land planning agency, the appropriate regional planning
24 council and water management district, the Department of
25 Environmental Protection, and the Department of Transportation
26 immediately following a public hearing pursuant to subsection
27 (15) as specified in the state land planning agency's
28 procedural rules. The local governing body shall also transmit
29 a copy of the complete proposed comprehensive plan or plan
30 amendment to any other unit of local government or government
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1 agency in the state that has filed a written request with the
2 governing body for the plan or plan amendment.

3 (b) A local governing body shall not transmit portions
4 of a plan or plan amendment unless it has previously provided
5 to all state agencies designated by the state land planning
6 agency a complete copy of its adopted comprehensive plan
7 pursuant to subsection (7) and as specified in the agency's
8 procedural rules. In the case of comprehensive plan
9 amendments, the local governing body shall transmit to the
10 state land planning agency, the appropriate regional planning
11 council and water management district, the Department of
12 Environmental Protection, and the Department of Transportation
13 the materials specified in the state land planning agency's
14 procedural rules and, in cases in which the plan amendment is
15 a result of an evaluation and appraisal report adopted
16 pursuant to s. 163.3191, a copy of the evaluation and
17 appraisal report. Local governing bodies shall consolidate all
18 proposed plan amendments into a single submission for each of
19 the two plan amendment adoption dates during the calendar year
20 pursuant to s. 163.3187.

21 (c) A local government may adopt a proposed plan
22 amendment previously transmitted pursuant to this subsection,
23 unless review is requested or otherwise initiated pursuant to
24 subsection (6).

25 (d) In cases in which a local government transmits
26 multiple individual amendments that can be clearly and legally
27 separated and distinguished for the purpose of determining
28 whether to review the proposed amendment, and the state land
29 planning agency elects to review several or a portion of the
30 amendments and the local government chooses to immediately
31 adopt the remaining amendments not reviewed, the amendments

1 immediately adopted and any reviewed amendments that the local
2 government subsequently adopts together constitute one
3 amendment cycle in accordance with s. 163.3187(1).

4 (4) INTERGOVERNMENTAL REVIEW.--If review of a proposed
5 comprehensive plan amendment is requested or otherwise
6 initiated pursuant to subsection (6), the state land planning
7 agency within 5 working days of determining that such a review
8 will be conducted shall transmit a copy of the proposed plan
9 amendment to various government agencies, as appropriate, for
10 response or comment, including, but not limited to, the
11 Department of Environmental Protection, the Department of
12 Transportation, the water management district, and the
13 regional planning council, and, in the case of municipal
14 plans, to the county land planning agency. These governmental
15 agencies shall provide comments to the state land planning
16 agency within 30 days after receipt of the proposed plan
17 amendment. The appropriate regional planning council shall
18 also provide its written comments to the state land planning
19 agency within 30 days after receipt of the proposed plan
20 amendment and shall specify any objections, recommendations
21 for modifications, and comments of any other regional agencies
22 to which the regional planning council may have referred the
23 proposed plan amendment.

24 (5) REGIONAL, ~~AND~~ COUNTY, AND MUNICIPAL REVIEW.--The
25 review of the regional planning council pursuant to subsection
26 (4) shall be limited to effects on regional resources or
27 facilities identified in the strategic regional policy plan
28 and extrajurisdictional impacts which would be inconsistent
29 with the comprehensive plan of the affected local government.
30 However, any inconsistency between a local plan or plan
31 amendment and a strategic regional policy plan must not be the

1 sole basis for a notice of intent to find a local plan or plan
2 amendment not in compliance with this act. A regional
3 planning council shall not review and comment on a proposed
4 comprehensive plan it prepared itself unless the plan has been
5 changed by the local government subsequent to the preparation
6 of the plan by the regional planning agency. The review of the
7 county land planning agency pursuant to subsection (4) shall
8 be primarily in the context of the relationship and effect of
9 the proposed plan amendment on any county comprehensive plan
10 element. Any review by municipalities will be primarily in the
11 context of the relationship and effect on the municipal plan.

12 (6) STATE LAND PLANNING AGENCY REVIEW.--

13 (c) The state land planning agency shall establish by
14 rule a schedule for,~~upon~~ receipt of comments from the various
15 government agencies pursuant to subsection (4). The state land
16 planning agency,shall have 30 days to review comments from
17 the various government agencies along with a local
18 government's comprehensive plan or plan amendment. During
19 that period, the state land planning agency shall transmit in
20 writing its comments to the local government along with any
21 objections and any recommendations for modifications. When a
22 federal, state, or regional agency has implemented a
23 permitting program, the state land planning agency shall not
24 require a local government to duplicate or exceed that
25 permitting program in its comprehensive plan or to implement
26 such a permitting program in its land development regulations.
27 Nothing contained herein shall prohibit the state land
28 planning agency in conducting its review of local plans or
29 plan amendments from making objections, recommendations, and
30 comments or making compliance determinations regarding

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1 densities and intensities consistent with the provisions of
2 this part.

3 (9) PROCESS IF LOCAL PLAN OR AMENDMENT IS IN
4 COMPLIANCE.--

5 (b) The hearing shall be conducted by an
6 administrative law judge of the Division of Administrative
7 Hearings of the Department of Management Services, who shall
8 hold the hearing in the county of and convenient to the
9 affected local jurisdiction and submit a recommended order to
10 the state land planning agency. The state land planning
11 agency shall allow ~~10 days~~ for the filing of exceptions to the
12 recommended order and shall issue a final order ~~within 30 days~~
13 after receipt of the recommended order if the state land
14 planning agency determines that the plan or plan amendment is
15 in compliance. If the state land planning agency determines
16 that the plan or plan amendment is not in compliance, the
17 agency shall submit, ~~within 30 days after receipt,~~ the
18 recommended order to the Administration Commission for final
19 agency action.

20 Section 4. Subsections (4), (9), and (10) of section
21 163.3191, Florida Statutes, are amended to read:

22 163.3191 Evaluation and appraisal of comprehensive
23 plan.--

24 (4) The governing body shall adopt, or adopt with
25 changes, the report or portions thereof within 90 days after
26 receiving it from the local planning agency. The governing
27 body shall amend its comprehensive plan based on the
28 recommendations contained in the adopted evaluation and
29 appraisal report, pursuant to the procedures in ss. 163.3184,
30 163.3187, and 163.3189. Amendments to the plan and the
31 adoption of the report may be simultaneous. When amendments to

1 the plan do not occur simultaneously with the adoption of the
2 evaluation and appraisal report, the report shall contain a
3 schedule for adoption of proposed amendments within 1 year
4 after the report is adopted, except that the state land
5 planning agency may grant a 6-month extension for adoption of
6 such plan amendments if the request is justified by good and
7 sufficient cause as determined by the agency. Three copies of
8 the report shall be transmitted to the state land planning
9 agency, with the related amendments when the amendments are
10 transmitted pursuant to s. 163.3184.

11 (9) The state land planning agency shall conduct a
12 sufficiency review of each report to determine whether it has
13 been submitted in a timely fashion and contains the prescribed
14 components. The agency shall complete the sufficiency
15 determination within 60 days of receipt of the report. The
16 agency shall not conduct a compliance review. However, a local
17 government may request that the department provide substantive
18 comments regarding the report or addendum during the
19 department's sufficiency review to assist the local government
20 in the adoption of its plan amendments based on the evaluation
21 and appraisal report. Comments provided during the sufficiency
22 review are not binding on the local government or the
23 department, and will not supplant or limit the department's
24 consistency review of the amendments based on the adopted
25 evaluation and appraisal report. A request for comments must
26 be made in writing by the local government and must be
27 submitted at the same time the adopted report is submitted for
28 sufficiency review.

29 (10) The state land planning agency may delegate the
30 review of reports to the appropriate regional planning
31 council. When the review has been delegated to a regional

1 planning council, any local government in the region, except
2 for areas of critical state concern, may elect to have its
3 report reviewed by the council rather than the agency. The
4 agency shall adopt rules for accepting requests for delegation
5 and for uniform and adequate review of reports. The agency ~~and~~
6 shall retain oversight for any delegation of review to a
7 regional planning council. Any plan amendment recommended by
8 the report shall be reviewed by the agency pursuant to s.
9 163.3184 and be adopted by the local government pursuant to s.
10 163.3189.

11 Section 5. Subsections (1), (4), and (5) of section
12 163.3202, Florida Statutes, are amended to read:

13 163.3202 Land development regulations.--

14 (1) Within 1 year after submission of its revised
15 comprehensive plan for review pursuant to s. 163.3167(2), each
16 county and, ~~each municipality required to include a coastal~~
17 ~~management element in its comprehensive plan pursuant to s.~~
18 ~~163.3177(6)(g), and each other municipality in this state~~
19 shall adopt or amend and enforce land development regulations
20 that are consistent with and implement their adopted
21 comprehensive plan.

22 (4) The state land planning agency may require a local
23 government to submit one or more land development regulations,
24 if it has reasonable grounds to believe that a local
25 government has totally failed to adopt any one or more of the
26 land development regulations required by this section. Once
27 ~~if~~ the state land planning agency determines after review and
28 consultation with local government whether ~~that~~ the local
29 government has adopted ~~failed to adopt~~ regulations required by
30 this section, the state land planning agency shall notify the
31 local government in writing within 30 calendar days after

1 receipt of the regulations from the local government. If the
2 state land planning agency determines that the local
3 government has failed to adopt regulations required by this
4 section, it may institute an action in circuit court to
5 require adoption of these regulations. This action shall not
6 review compliance of adopted regulations with this section or
7 consistency with locally adopted plans.

8 (5) The state land planning agency shall adopt rules
9 for review and schedules for adoption of land development
10 regulations.

11 Section 6. Paragraph (i) is added to subsection (4) of
12 section 380.06, Florida Statutes, and subsections (7) and (26)
13 of that section are amended to read:

14 380.06 Developments of regional impact.--

15 (4) BINDING LETTER.--

16 (i) In response to an inquiry from a developer, the
17 state land planning agency may issue an informal determination
18 in the form of a clearance letter as to whether a development
19 is required to undergo development-of-regional-impact review.
20 A clearance letter may be based solely on the information
21 provided by the developer, and the state land planning agency
22 is not required to conduct an investigation of that
23 information. If any material information provided by the
24 developer is incomplete or inaccurate, the clearance letter is
25 not binding upon the state land planning agency. A clearance
26 letter does not constitute final agency action.

27 (7) PREAPPLICATION PROCEDURES.--

28 (a) Before filing an application for development
29 approval, the developer shall contact the regional planning
30 agency with jurisdiction over the proposed development to
31 arrange a preapplication conference. Upon the request of the

1 developer or the regional planning agency, other affected
2 state and regional agencies shall participate in this
3 conference and shall identify the types of permits issued by
4 the agencies, the level of information required, and the
5 permit issuance procedures as applied to the proposed
6 development. The regional planning agency shall provide the
7 developer information about the development-of-regional-impact
8 process and the use of preapplication conferences to identify
9 issues, coordinate appropriate state and local agency
10 requirements, and otherwise promote a proper and efficient
11 review of the proposed development. If agreement is reached
12 regarding assumptions and methodology to be used in the
13 application for development approval, the reviewing agencies
14 may not subsequently object to those assumptions and
15 methodologies unless subsequent changes to the project or
16 information obtained during the review make those assumptions
17 and methodologies inappropriate.

18 (b) The regional planning agency shall establish by
19 rule a procedure by which a developer may enter into binding
20 written agreements with the regional planning agency to
21 eliminate questions from the application for development
22 approval when those questions are found to be unnecessary for
23 development-of-regional-impact review. It is the legislative
24 intent of this subsection to encourage reduction of paperwork,
25 to discourage unnecessary gathering of data, and to encourage
26 the coordination of the development-of-regional-impact review
27 process with federal, state, and local environmental reviews
28 when such reviews are required by law.

29 (c) If the application for development approval is not
30 submitted within 1 year after the date of the preapplication
31 conference, the regional planning agency, the local government

1 having jurisdiction, or the applicant may request that another
2 preapplication conference be held.

3 (26) ABANDONMENT OF DEVELOPMENTS OF REGIONAL
4 IMPACT.--There is hereby established a process to abandon a
5 development of regional impact and its associated development
6 orders. A development of regional impact and its associated
7 development orders may be proposed to be abandoned by the
8 owner or developer. The local government in which the
9 development of regional impact is located also may propose to
10 abandon the development of regional impact, provided that the
11 local government gives individual written notice to each
12 development-of-regional-impact owner and developer of record,
13 and provided that no such owner or developer objects in
14 writing to the local government prior to or at the public
15 hearing pertaining to abandonment of the development of
16 regional impact. The state land planning agency is authorized
17 to promulgate rules that ~~which~~ shall include, but not be
18 limited to, criteria for determining whether to grant, grant
19 with conditions, or deny a proposal to abandon, and provisions
20 to ensure that the developer satisfies all applicable
21 conditions of the development order and adequately mitigates
22 for the impacts of the development. If there is no existing
23 development within the development of regional impact at the
24 time of abandonment and no development within the development
25 of regional impact is proposed by the owner or developer after
26 such abandonment, an abandonment order shall not require the
27 owner or developer to contribute any land, funds, or public
28 facilities as a condition of such abandonment order. The
29 rules shall also provide a procedure for filing notice of the
30 abandonment pursuant to s. 28.222 with the clerk of the
31 circuit court for each county in which the development of

1 regional impact is located. Any decision by a local
2 government concerning the abandonment of a development of
3 regional impact shall be subject to an appeal pursuant to s.
4 380.07. The issues in any such appeal shall be confined to
5 whether the provisions of this subsection or any rules
6 promulgated thereunder have been satisfied.

7 Section 7. Paragraph (b) of subsection (8) of section
8 380.061, Florida Statutes, is amended to read:

9 380.061 The Florida Quality Developments program.--

10 (8)

11 (b) The department shall adopt, by rule, standards and
12 procedures necessary to implement the Florida Quality
13 Developments program. The rules must include, but need not be
14 limited to, provisions governing annual reports and criteria
15 for determining whether a proposed change to an approved
16 Florida Quality Development is a substantial change requiring
17 further review.

18 Section 8. Section 380.07, Florida Statutes, is
19 amended to read:

20 380.07 Florida Land and Water Adjudicatory
21 Commission.--

22 ~~(1) There is hereby created the Florida Land and Water~~
23 ~~Adjudicatory Commission, which shall consist of the~~
24 ~~Administration Commission.~~

25 (1)(2) Whenever any local government issues any
26 development order in any area of critical state concern, or in
27 regard to any development of regional impact, copies of such
28 orders as prescribed by rule by the state land planning agency
29 shall be transmitted to the state land planning agency, the
30 regional planning agency, and the owner or developer of the
31 property affected by such order. The state land planning

1 agency shall adopt rules describing development order
2 rendition and effectiveness in designated areas of critical
3 state concern. Within 45 days after the order is rendered, the
4 owner, the developer, or the state land planning agency may
5 appeal the order to the Florida Land and Water Adjudicatory
6 Commission by filing a notice of appeal with the commission.
7 The appropriate regional planning agency by vote at a
8 regularly scheduled meeting may recommend that the state land
9 planning agency undertake an appeal of a
10 development-of-regional-impact development order. Upon the
11 request of an appropriate regional planning council, affected
12 local government, or any citizen, the state land planning
13 agency shall consider whether to appeal the order and shall
14 respond to the request within the 45-day appeal period. Any
15 appeal taken by a regional planning agency between March 1,
16 1993, and the effective date of this section may only be
17 continued if the state land planning agency has also filed an
18 appeal. Any appeal initiated by a regional planning agency on
19 or before March 1, 1993, shall continue until completion of
20 the appeal process and any subsequent appellate review, as if
21 the regional planning agency were authorized to initiate the
22 appeal.

23 (2)~~(3)~~ The 45-day appeal period for a development of
24 regional impact within the jurisdiction of more than one local
25 government shall not commence until after all the local
26 governments having jurisdiction over the proposed development
27 of regional impact have rendered their development orders.
28 The appellant shall furnish a copy of the notice of appeal to
29 the opposing party, as the case may be, and to the local
30 government which issued the order. The filing of the notice
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1 of appeal shall stay the effectiveness of the order until
2 after the completion of the appeal process.

3 (3)~~(4)~~ Prior to issuing an order, the Florida Land and
4 Water Adjudicatory Commission shall hold a hearing pursuant to
5 the provisions of chapter 120. The commission shall encourage
6 the submission of appeals on the record made below in cases in
7 which the development order was issued after a full and
8 complete hearing before the local government or an agency
9 thereof.

10 (4)~~(5)~~ The Florida Land and Water Adjudicatory
11 Commission shall issue a decision granting or denying
12 permission to develop pursuant to the standards of this
13 chapter and may attach conditions and restrictions to its
14 decisions.

15 (5)~~(6)~~ If an appeal is filed with respect to any
16 issues within the scope of a permitting program authorized by
17 chapter 161, chapter 373, or chapter 403 and for which a
18 permit or conceptual review approval has been obtained prior
19 to the issuance of a development order, any such issue shall
20 be specifically identified in the notice of appeal which is
21 filed pursuant to this section, together with other issues
22 which constitute grounds for the appeal. The appeal may
23 proceed with respect to issues within the scope of permitting
24 programs for which a permit or conceptual review approval has
25 been obtained prior to the issuance of a development order
26 only after the commission determines by majority vote at a
27 regularly scheduled commission meeting that statewide or
28 regional interests may be adversely affected by the
29 development. In making this determination, there shall be a
30 rebuttable presumption that statewide and regional interests
31 relating to issues within the scope of the permitting programs

1 for which a permit or conceptual approval has been obtained
2 are not adversely affected.

3 Section 9. Subsection (3) of section 380.22, Florida
4 Statutes, is amended to read:

5 380.22 Lead agency authority and duties.--

6 (3) The department ~~Secretary of Community Affairs~~
7 shall adopt by rule procedures and criteria for the evaluation
8 of subgrant applications that seek to receive a portion of
9 those funds allotted to the state under the federal Coastal
10 Zone Management Act ~~a specific formula for allocation of~~
11 ~~federal funds for the administration of the program.~~

12 Section 10. This act shall take effect upon becoming a
13 law.

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15 SENATE SUMMARY

16 Authorizes the Department of Community Affairs to
17 supplement and ensure grants of authority to adopt rules
18 and administer specific laws in accordance with chapter
19 120. Creates the Florida Land and Water Adjudicatory
20 Commission and authorizes the commission to adopt rules.