SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 16, 1998 Revised: _____ _____ _____ _____

Subject: Department of Community Affairs

	Analyst	Staff Director	Reference	Action
1.	Schmith	Yeatman	CA	Favorable/CS
2.			CM	
3.			WM	
4.				
5.				

I. Summary:

Committee Substitute (CS) for SB 1726 makes the following changes in state and federal programs administered by the Department of Community Affairs: renames the Division of Resource Planning and Management; modifies the de minimis exception for transportation concurrency; establishes recordkeeping requirements for the department; creates an optional sector planning process to address extra-jurisdictional impacts of large developments; implements the recommendations of the Evaluation and Appraisal Report technical committee; removes the responsibilities of the Executive Office of the Governor relating to strategic regional policy plans; directs the Governor to appoint a committee to study and make recommendations to revise the state comprehensive plan; requires a municipality to notify the county in which it is located when it adopts a voluntary annexation ordinance; exempts certain development from the requirements of the applicable comprehensive plan; revises criteria for military base reuse plans and revises standards for military base retention; repeals the state land development plan and deletes references thereto; adds day care facilities as an issue to be considered in the developments-of-regional-impact review process; expands the scope of federal consistency review to include projects in neighboring states in certain circumstances; creates the Transportation and Land Use Study Committee; and repeals the State Land Development Plan and the Apalachicola Bay Area Resources Planning and Management Committee.

This CS substantially amends the following sections of the Florida Statutes: 20.18, 163.3164, 163.3171, 163.3180, 163.3184, 163.3187, 163.3191, 171.044, 186.007, 186.008, 186.009, 186.507, 186.508, 186.511, 288.975, 288.980, 380.06, 380.061, 380.065, 380.23. This CS repeals sections 380.031(17), 380.0555(7) and 380.06(14)(a) and creates section 163.3245 of the Florida Statutes.

II. Present Situation:

The Department of Community Affairs is a multifaceted state agency which administers numerous federal and state programs to accomplish its mission of "Helping Floridians create safe, vibrant and sustainable communities." The department is organized into three divisions: Resource Planning and Management, Emergency Management, and Housing and Community Development. The Division of Resource Planning and Management houses the department's programs in local government comprehensive plan review, developments of regional impact (DRIs) and areas of critical state concern (ACSC). This CS affects statutes governing programs within the Division of Resource Planning and Management.

The Growth Management Act

Part II of chapter 163, Florida Statutes, is known as the "Local Government Comprehensive Planning and Land Development Regulation Act" (the act), and is commonly referred to as the Growth Management Act. The act requires local governments to adopt a comprehensive plan, subject to review and approval by the Department of Community Affairs. The act outlines the required and optional elements of local government comprehensive plans, provides for public participation in the local comprehensive planning process, requires local governments to follow specified procedures for adoption of the comprehensive plan and amendments thereto, and requires local governments to update their comprehensive plans at regular intervals.

Section 163.3177, F.S., requires that each comprehensive plan contain a capital improvements element; future land use element; traffic circulation (transportation) element; a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element; a conservation element for conservation, development, utilization, and protection of natural resources in the area; a recreation and open space element; a housing element; a coastal protection zone element for certain local governments close to the coast; and an intergovernmental coordination element.

Concurrency

The concurrency requirement of the act is a growth management tool designed to accommodate development by ensuring that adequate facilities are available as growth occurs. The "cornerstone" of the concurrency requirement is the concept that development should be coordinated with capital improvements planning to ensure that the necessary public facilities are available with, or within a reasonable time of, the impacts of new development. Under the requirements for local comprehensive plans, each local government must adopt levels of service (LOS) standards for certain types of public services and facilities. *See* s. 163.3180, F.S. Generally, these LOS standards apply to sanitary sewer, solid waste, drainage, potable water, parks and recreation, roads and mass transit. Pursuant to s. 163.3180(2)(c), F.S., the local government must ensure that transportation facilities needed to serve new development are in place or under actual construction within three years after issuance of the certificate of occupancy. The intent is to keep

new development from significantly reducing the adopted LOS by increasing the capacity of the infrastructure to meet the demands of new development.

Subsection (6) of s. 163.3180, F.S., provides an exception from transportation concurrency requirements for a development which constitutes a "de minimis impact." A de minimis impact is one that would not affect more than one percent of the maximum volume at the adopted LOS standard of the affected transportation facility as determined by the local government. That standard was increased from one-tenth of one percent by the 1997 Legislature in response to local government complaints that the percentage was too difficult to calculate. In 1997, the statute was further amended to provide that no impact will be considered de minimis if it exceeds 110 percent of the sum of *existing volumes* and the projected volumes from approved projects on a transportation facility. The impact of a single family home on an existing lot is always considered a de minimis impact, regardless of the level of deficiency of the roadway. Because "existing volumes" on a roadway are constantly changing, local governments complain that this standard makes it impossible to calculate the 110 percent it is being calculated against a moving target.

Comprehensive Plan Amendments

Section 163.3184, F.S., governs the adoption and review, including public participation and required time frames, of local government comprehensive plan amendments. This section provides various requirements and time frames for different types of amendments.
Generally, this section requires the following: a local government notices and holds a public hearing on its proposed ordinance to amend its comprehensive plan, and transmits the proposed amendments to the department. The department may review the plan amendment upon request of a regional planning council (RPC), affected person, or local government, or if it gives notice that it is going to conduct such a review within 30 days of transmittal of the plan amendment by the local government. The department's review, or ORC report, is mailed to the local government, which reviews the report and has 60 days to adopt or adopt with changes the proposed comprehensive plan amendment. During this period, the local government advertises and holds a public hearing at which it must take its final action on the proposed amendment. The local government then transmits its adopted comprehensive plan amendment to the department for compliance review. The department has 45 days to determine if the amendment is "in compliance" with applicable statutes and rules, and issue its Notice of Intent.

During both the ORC and compliance review stages, the department receives comments on plan amendments from various state agencies, and may receive comments from the public and affected landowners. The act does not directly address the distribution or maintenance of these comments; however, the department is governed by the Administrative Procedures Act (ch. 120, F.S.) and has complied with the uniform rules of procedure (ch. 28-101 through 28-110, F.A.C.) which govern the procedural aspects of all state agency business.

The Evaluation and Appraisal Process and EAR Technical Committee

Section 163.3191, F.S., requires each local government to prepare an Evaluation and Appraisal Report (EAR) no later than seven years after it adopts its comprehensive plan, and every 5 years thereafter. The EAR assesses the comprehensive plan and recommends changes needed to update the plan, including reformulated objectives, policies, and standards.

The department has adopted, pursuant to this section, a phased schedule for submittal of EARs by local governments. The department is authorized to conduct a sufficiency review of the EAR within 60 days of receipt from a local government, but only conducts a compliance review, pursuant to s. 163.3184, F.S., on any plan amendment recommended in the report and adopted by the local government pursuant to s. 163.3189, F.S. The Administration Commission may impose sanctions against a local government which fails to implement its report through timely and sufficient amendments to its local plan. The department may delegate sufficiency review to a regional planning council by written agreement. When review has been so delegated, any local government within the region may choose to have its EAR reviewed by the council rather than the department.

For 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 appropriation was reduced to approximately $1.2 million; distributed among 89 local governments, each received $14,069. In FY 1996-97 the appropriation was further reduced to approximately $1 million, but distributed among 74 local governments, the grant remained at $14,069. The department requested an appropriation for FY 1997-98 that will fund the remaining 39 local governments at an equivalent level.

Subsection (12) of s. 163.3191, F.S., authorizes the department, at the request of the local government, to enter into written agreements with small municipalities (fewer than 5,000 residents) and small counties (fewer than 50,000 residents) so that those jurisdictions may focus resources on selected issues or elements when preparing their EARs. However, paragraph (e) requires that the land use, intergovernmental coordination, conservation, and capital improvements elements, and coastal element where applicable, be updated at a minimum. The statute lists the following factors for the department to consider in evaluating such requests:

- 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.

The agreement shall set forth the findings that are the basis for the decision and the elements or portions thereof to be updated, as well as those not to be updated. Further, the local government shall agree within 18 months of termination of the agreement, to adopt plan amendments updating those portions of the plan 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. According to the department, no small municipality or small county has ever taken advantage of the agreement provided by this subsection.

However, 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 provisions of chapter 163, part II, F.S. It appears that many of these resolutions were prompted by the high cost small municipalities must pay to consultants for preparing their EARs compared to the relatively small amount of the technical assistance grants. In response to these requests, and other issues related to EARs, the department requested that the Legislature authorize a study commission to review the statutory provisions governing the EAR process.

The 1997 Legislature directed the department to create the EAR Technical Committee to evaluate statutory provisions relating to the EAR process and consider changes to the statute and implementing rules. *See* ch. 97-253, *Laws of Florida*. The technical committee issued its final report in December 1997, which contains 14 recommendations in the following 4 issue areas:

- Streamlined Process - the purpose of the EAR must be streamlined, clarified, and made more meaningful for local governments, state and regional agencies. Both public and submittal timeframes should be adjusted as appropriate.

- Increased Flexibility - amendments to local comprehensive plans during and after the EAR review must be adjusted to provide flexibility.

- Systematic Review - the EAR process itself should be regularly reviewed for substantive and fiscal concerns to ensure the effectiveness, and utility, of the process in the updating of local comprehensive plans.

- Sufficient Funding - adequate funding, either in the form of a trust fund or annual appropriations, is critical to the EAR process, as is the flexibility to allow local governments to determine how best to use the funds provided.

Strategic Regional Policy Plans

Section 186.507, F.S., requires the development of a long range guide for physical, economic, and social development of a planning district through the identification of regional goals and policies. Each of the eleven RPCs located within the state must prepare and adopt a Strategic Regional Policy Plan (SRPP).

Subsection 186.507(2), F.S., requires the Executive Office of the Governor (EOG), to adopt, by rule, the minimum criteria to be addressed in each SRPP and create a uniform format for each plan. The required criteria must emphasize that each RPC, when preparing and adopting a SRPP, focus on regional resources and facilities, rather than on local resources and facilities.

Section 186.508, F.S., requires regional planning councils throughout the state to submit strategic plans to the EOG for inclusion in the state comprehensive plan. The processes for adoption are as follows:

- The EOG, or its designee, is required to coordinate implementation of the SRPP with the Evaluation and Appraisal Reports (EAR) required by s. 163.3191, F.S.

- Within 60 days, the EOG, or its designee, must review the proposed SRPP for consistency with the adopted state comprehensive plan and return the proposed SRPP, along with any recommend revisions, to the RPC.

- Rules adopting the SRPP are not subject to rule challenges under s. 120.56(2), F.S., or to drawout proceedings under s. 120.54(3)(c)2., F.S.

- Once the rules are adopted, they are subject to an invalidity challenge, by substantially affected persons, under s. 120.56(3), F.S. Substantially affected persons include, but are not limited to, the EOG.

- The rules are adopted by the RPC within 90 days after receipt of the revisions recommended by the EOG.

- The rules are effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(3)6., F.S.

To date, 10 out of the 11 RPCs have adopted by rule their SRPPs, all of which were reviewed by the EOG. The one outstanding SRPP is for the East Central Florida RPC, which has entered into an Memorandum of Agreement with the department and the EOG outlining the dates by which the plan must be finalized.

Section 186.511, F.S., provides for the evaluation process of the SRPPs. Each RPC is required to prepare an EAR on its SRPP at least once every five years. The EAR should do the following:

- Assess the successes or failures of the SRPP;
- Address changes to the state comprehensive plan; and
- Prepare and adopt, by rule amendments, revisions, or updates to the plan.

The EAR is required to be prepared and submitted for review on a schedule established by rule by the EOG. The schedule is required to facilitate and be coordinated with, to the maximum extent feasible, the EAR of local government comprehensive plans pursuant to s. 163.3191, F.S., for local governments within each comprehensive planning district.

Municipal Annexation

Section 171.044, F.S., provides that the owners of real property in an unincorporated area that is contiguous to a municipality and is reasonably compact may petition the municipality for voluntary annexation. This section provides that the municipality must adopt a nonemergency ordinance to annex property and redefine the boundaries of the municipality to include the new property. This section provides for the notice by publication of the annexation ordinance.

State Land Development Plan

Section 380.031(17), F.S., defines the "State land development plan." That definition was created by ch. 85-55, Laws of Florida, and was one of three "agency functional plans" recommended by the Second Environmental and Land Management Study Commission, or ELMS II. It appears that the state land development plan was created as a partner to the state water plan and the state transportation plan. According to the Final Report of the Governor's Growth Management Advisory Committee (1986), the role of these agency functional plans was to address the same strategic issues upon which the State Comprehensive Plan was built; to review the agencies' strategies for addressing the goals and policies of the state plan. However, the state land development plan was never adopted by rule as recommended by ELMS II. In 1993, the ELMS III Committee recommended that the state land development plan be integrated with the other "translational plans," and consolidated into a strategic growth and development plan which would address state concerns pertaining to physical growth and development. This recommendation has not been implemented. Pursuant to s. 380.06, F.S., developments of regional impact are required to be consistent with the state land development plan. However, the department reports that it rarely utilizes that provision because the plan was never adopted by rule.

Military Base Reuse Plans

Section 288.975, F.S., provides an optional, alternative base reuse planning process for the reuse of military bases that supersedes review as a DRI.

Section 288.975(2)(f), F.S., defines the term "Regional policy plan."

Section 288.975(3), F.S., establishes the procedures and timeframes for host governments to provide notice of intent to use the optional provisions of the act. No later than 6 months after May 31, 1994, or 6 months after the designation of a military base for closure by the Federal Government the host local government must notify the secretary of the DCA and the director of the Office of Tourism, Trade, and Economic Development (OTTED). A decision not to use the optional provisions of this act results in all activities within the jurisdiction of the host government becoming subject to all land use planning statutes and regulations, including those of chapters 163 and 380, F.S.

Section 288.975(8), F.S., permits the host local government to request OTTED to coordinate a resubmission workshop concerning a military base reuse plan within the jurisdiction of the host local government for the purpose of coordination of planning and review efforts with various state agencies, water management districts, regional planning councils, and affected local governments.

Section 288.975(9), F.S., requires host local governments to, no later than 12 months after notifying the agencies of its intent to use the optional provisions of this section to:

- Send a copy of the proposed military base reuse plan for review to any affected local governments, DEP, OTTED, DCA, Department of Transportation (DOT); Department of Health and Rehabilitative Services (DHRS), Department of Agriculture and Consumer Services (DACS); Department of State (DOS); Florida Game and Fresh Water Fish Commission (FGFWFC); and any applicable water management district (WMD) and regional planning councils; or

- Petition the secretary of DCA for an extension of the deadline for submitting a reuse plan based on changes or delays in the closure process by the federal Department of Defense or for reasons otherwise deemed to promote the orderly and beneficial planning of the subject military base reuse. The secretary may grant up to a one year date of submission extension.

Section 288.975(10), F.S., establishes the following procedures for the adoption of a proposed military reuse plan:

- The review entities (affected local governments, DEP, OTTED, DCA, DOT, DHRS, DACS, DOS, FGFWFC, applicable WMDs, and applicable RPCs), review and provide comments to host government within 60 days after receipt of the proposed reuse plan;

- Commencement of the review period is advertised in newspapers of general circulation within the host local government;

- Any affected local government is permitted public comment;

- No later than 60 days after the receipt and consideration of all comments, and two public hearings, the host local government adopts the plan;

- The host government complies with the notice requirements contained in s. 163.3184(15), F.S.

Notwithstanding the procedures listed above, a host local government may waive the 60-day adoption deadline and extend the timeframe for adoption to 180 days after the 60th day following the receipt, consideration of all comments, and second public hearing.

Any action taken by a local government to adopt a military base reuse plan after the 60-day deadline is deemed to be a waiver of the 60-day deadline.

Section 288.975(12), F.S., provides the following process for resolving disputes of the parties:

- The petitioning party(ies) and host local government have 45 days to resolve the issues in dispute;

- By mutual consent of the petitioning parties and the host local government, other affected parties that previously submitted comments on the proposed military base reuse plan may be given the opportunity to formally participate in the decisions and agreements made in these and subsequent proceedings; and

- A third-party mediator may be used to help resolve the issues.

In the event the resolution of the dispute cannot be reached within 45 days, the following process will occur:

- The petitioning party(ies) and host local government may extend dispute resolution for up to 45 days; and

- If the resolution of the dispute is not resolved within the 45 days, the disputed issues are submitted to DCA (if the disputed issues stem from multiple petitions, the mediation will be consolidated into a single proceeding at DCA).

DCA has 45 days to hold an informal hearing. At the hearing DCA identifies the issues in dispute, prepares a record of the proceedings, and provides recommended solutions to the parties. If the parties fail to implement the recommended solutions within 45 days, DCA will submit the matter to the Administration Commission for final action. The report to the Administration

Commission lists each issue in dispute, identifies the recommended solutions provided to the parties, and makes recommendations for actions the Administration Commission should take to resolve the disputes.

If DCA is a party to the dispute then the dispute is be resolved by a party jointly selected by DCA and the host local government. The selected party also complies with the responsibilities that would have been placed on DCA.

Within 45 days after receiving the report from DCA, the Administration Commission will take action to resolve the dispute. In deciding on the resolution, the Administration Commission considers the nature of the dispute, the compliance of the parties, the extent of the conflict between the parties, and the public interests involved.

In the event the Administration Commission, in its final order, includes a term or condition that requires any local government to amend its local government comprehensive plan, the local government will amend its plan within 60 days after the order is issued. Any such amendment is exempt from the limitation of the frequency of plan amendments contained in s. 163.3187(2), F.S., and a public hearing, pursuant to s. 163.3184(15)(b)1., F.S., is not required. A final order of the Administration Commission is subject to appeal pursuant to s. 120.68, F.S. In the event of an appeal of the Administration Commission's final order, the 60 day deadline for adoption of the local government's comprehensive plan amendment is tolled during the pendency of any local, state, or federal administrative or judicial proceeding relating to the military base reuse plan.

Military Base Closure, Retention, Realignment, or Defense-related Readjustment and Diversification

Section 288.980(1), F.S., provides the legislative intent to assist communities with military installations from being adversely affected by federal base realignment or closure actions.

Section 288.980(2)(a), F.S., authorizes OTTED to award grants from specifically appropriated funds to applicant's eligible projects that are:

- Related to the retention of military installations potentially affected by federal base closure or alignment; or

- Activities related to preventing the potential realignment or closure of a military installation officially identified by the Federal Government for potential realignment or closure.

Section 288.980(2)(b), F.S., defines "activities" eligible for grant funds to include: studies, presentations, analyses, plans, and modeling. "Activities" does not include: travel, costs incidental to travel, and staff salaries.

Section 288.980(2)(c), F.S., provides that grants provided to an applicant in any one year may not exceed $250,000. Applicants for the grants are required to:

- Represent a community with a military installation(s) that could be adversely affected by federal base realignment or closure;
- Match at least 25 percent of any grant award in cash or in-kind services (in-kind matches must be directly related to the activities for which the grant is sought);
- Prepare a coordinated program or plan which delineates how the eligible project will be administered;
- Provide documentation describing the potential for realignment or closure of a military installation located in the applicant's community; and
- Provide documentation describing the adverse impacts realignment or closure would have on the applicant's community.

Section 288.980(2)(d), F.S., provides the factors OTTED will consider, at a minimum, in making awards:

- The relative value of the particular military installation in terms of its importance to the local and state economy relative to other military installations vulnerable to closure;
- The potential job displacement with the local community if the military installation should close; and
- The potential adverse impact on industries and technologies which service the military installation.

Section 288.980(2)(e), F.S., defines the term "applicant," as used in this section.

Military Base closure, retention, realignment, or defense-related readjustment and diversification - grants programs

The Florida Economic Reinvestment Initiative was established to respond to the need to develop alternative economic diversification strategies in the wake of base closures. The initiative consists of following three grant programs:

The *Florida Defense Planning Grant Program* (funds are used to analyze the extent of the state's dependency on defense infrastructure by defense-dependent communities);

The *Florida Defense Implementation Grant Program* (funds are made available to defense-dependent communities to implement diversification strategies); and

The *Florida Military Installation Reuse Planning and Marketing Grant Program* (funds are used to help counties, cities, and local economic development councils).

The Defense-Related Business Adjustment Program was established to assist defense-related companies in the creation of increased commercial technology development.

Office of Tourism, Trade, and Economic Development

The Office of Tourism, Trade, and Economic Development (OTTED), is required to establish rules to implement the Base closure, retention, realignment, or defense-related readjustment and diversification program.

Areas of Critical State Concern

Section 380.05, F.S., provides that the DCA may from time to time recommend to the Governor and Cabinet, sitting as the Administration Commission, specific Areas of Critical State Concern (ACSC). It also provides a process by which the DCA reviews the Land Development Regulations (LDR) and the local comprehensive plan submitted by a local government for consistency and compliance with the principles for guiding development of the area specified by the Administration Commission (commission) by rule.

Section 380.05(8), F.S., provides a process for DCA to follow when a local government fails to submit a LDR or a local government comprehensive plan, or if its LDR or comprehensive plan does not comply with the principles for guiding development in an ACSC.

The portions of the Apalachicola Bay ACSC which included Franklin County and the City of Carrabelle have successfully implemented the program and were designated as part of the critical area in 1993. The City of Apalachicola was to remain designated until completion of improvements to the central wastewater treatment system. The 1993 Legislature granted $3.7 million, which was leveraged by the City of Apalachicola to a $7.6 million loan from the state revolving loan trust fund for completion of the central wastewater system.

Developments of Regional Impact

Section 380.06, F.S., creates the DRI review process. 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.

Section 380.06(12), F.S., provides for a regional planning agency, if designated, or the local government to prepare and submit to the local government a report and recommendations on the regional impacts of the proposed development. The report will consider whether the development’s impact on state or regional resources or facilities identified in applicable state or regional plans is favorable or unfavorable.

In 1993, the Third Environmental Land Management Study Committee, or ELMS III as it is commonly known, recommended termination of the DRI review process in certain jurisdictions upon implementation of new requirements for the intergovernmental coordination elements of local comprehensive plans. The ELMS III committee recommended that the Department of Community Affairs (DCA) provide the minimum criteria for local intergovernmental coordination elements within six months of the recommended statutory amendment, and that the phase out should be completed by the end of 1995.

In 1996, upon the recommendation of the Intergovernmental Coordination Element (ICE) Technical Review Committee, the Legislature passed HB 2705 (CS/SB 2376) which severed the link between elimination of the DRI review process and strengthening local government intergovernmental coordination elements. The legislation restored the DRI review process substantially to its pre-1993 status. The ICE Committee recommended that the DRI review process should continue *subject to review and evaluation.*

During the interim period following the 1997 Legislative Session, the staff of the Senate Committee on Community Affairs conducted a review and evaluation of the DRI process and recommended alternatives for revising that process. A final report titled *Streamlining the Developments of Regional Impact Review Process (s. 380.06, F.S.)* concluded that, despite the myriad of legislative initiatives to refine the DRI review process, criticisms of the process persist. The report included substantive recommendations to revise the process to accomplish the goals for which DRI review was created while addressing the most common criticisms.

One of the recommendations was to consider replacing the DRI review process with specific plans as the method for addressing the extrajurisdictional impacts of large developments. The committee suggested the legislature consider a pilot project to test the use of specific plans in Florida, and suggested that a Legislative proposal to implement this recommendation must address the following issues:

- Whether specific plans will be optional or mandatory.
- Regardless of whether specific plans are mandatory or optional, local governments must be provided with a mechanism to recoup the costs of preparation, or a funding source.
- Whether, and under what circumstances, specific plans must be adopted as an amendment to the comprehensive plan.
- The legislative requirements for a specific plan.
- The relationship between a specific plan master development plan and the local government's future land use map. This will be important in determining what circumstances will require further plan amendments (similar to substantial deviation criteria).

- In the case of developer-initiated projects, the thresholds which will determine if a specific plan is needed. (The current statewide guidelines and standards, or a form which incorporates character and locational standards.)

- How to reduce the costs of land assembly to ensure that specific plans provide an incentive for developing at the planned location and in conformity with the plan.

- Whether current exemptions from plan amendment requirements, or other provisions in ch. 163, part II, F.S., conflict with the model and require revision; particular attention should be paid to the need for ORC review of specific plans.

- The requirements for third party standing in specific plan amendments.

- The status of existing approved DRIs.

- The status of specific plans in Sustainable Communities Demonstration jurisdictions.

The final report was presented to the Committee in September 1997, and the staff was directed to work with the department to develop a legislative proposal to implement this recommendation.

Coastal Planning and Management - Federal Consistency

Section 380.23, F.S., creates the federal consistency review process. Activities and uses of various federal projects are reviewed to ensure that such activities and uses comply with the state's coastal management program.

Florida Communities Trust

The Florida Communities Trust (FCT) was created by the Legislature in 1989, to serve as a non-regulatory agency to assist local governments in implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans, and in conserving natural resources and resolving land use conflicts. The Trust's current mission is to assist local governments with redevelopment, resource enhancement, public access to waterways, urban waterfront restoration, and site preservation, through funding of projects, land acquisition, and technical assistance. As designed, the Trust is to use Preservation 2000 dollars to match local government contributions for land acquisitions, but the match percentages vary.

Village of Key Biscayne v. DCA and Metro-Dade County

On October 13, 1994, Metro-Dade County adopted an amendment to its comprehensive plan to revise the text of the Parks and Recreation land use category to accommodate the Miami Seaquarium project. This land use amendment was precipitated by a Third District Court ruling that the expansion and renovation of the Miami Seaquarium was inconsistent with the comprehensive plan. DCA issued a notice of intent to find the plan amendment "in compliance,"

which was challenged by the Village of Key Biscayne. A final administrative hearing in the matter was held March 25 and 26, 1996, and on July 31, 1996, the hearing officer recommended that the plan amendment be found "in compliance." Subsequently, DCA entered a final order finding the plan amendment "in compliance." The Village of Key Biscayne appealed that final order to the Third District Court, which held on July 2, 1997, that DCA erred in finding the plan amendment "in compliance" because it did not meet the statutory requirement that each land use category include a specific density or intensity standard. On November 18, 1997, the Administration Commission entered a final order finding the plan amendment not "in compliance" and suggested that the county repeal the ordinance by which the amendment was adopted. *See Village of Key Biscayne v. Department of Community Affairs*, Final Order No. AC-97-011 (November 18, 1997). The commission further stated that if the county elected to make the amendment effective, the commission would impose sanctions against the county, pursuant to s. 163.3184(11), F.S.

III. Effect of Proposed Changes:

Section 1 renames the Division of Resource Planning and Management as the Division of Community Planning. The department notes that this name more accurately reflects the current responsibilities and activities of the division.

Section 2 amends s. 163.3164, F.S., by defining an "optional sector plan" as an optional process by which one or local government may address DRI impact issues by agreement with the department within designated geographic areas identified in the local government's comprehensive plan. The purposes of the optional process are to foster innovative planning and development strategies, furthering the purposes of the growth management act and the land and water management act, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extra-jurisdictional impacts. The process is established in s. 163.3245, F.S.

Section 3 amends s. 163.3171, F.S., relating to the department's authority to enter into agreements, by inserting a cross-reference to s. 163.3245, F.S., which creates the optional sector planning process.

Section 4 amends s. 163.3180, F.S., to revise the definition of a de minimis impact for purposes of exemption from transportation concurrency. The revised definition uses the maximum volume of traffic at the adopted LOS as the standard against which the impact of the proposed project must be measured. If the sum of existing volumes and the projected volume from approved projects exceed 110 percent of the maximum volume for the adopted LOS, then the proposal is not considered to have a de minimis impact on the affected transportation facility. This revision addresses the concern that some local governments have raised with calculating the impact.

Section 5 amends s. 163.3184, F.S., by revising the definition of "in compliance" to include consistency with ss. 163.3180 and 163.3245, F.S. Further this section is amended to create new record-keeping requirements for the department during ORC review of proposed local government comprehensive plan amendments.

Subsection (2) is amended to require that the department maintain a single file on each amendment which contains copies of all correspondence, papers, notes, memoranda, and all other documents received or generated by the department. The CS also requires the department to include in this file paper copies of all electronic mail correspondence, and to make the file and its contents available for public inspection and copying as provided in ch. 119, F.S.

Subsection (4) is amended to require that all written comments received by the department from a governmental agency or the public during the department's ORC review of a proposed plan amendment be included in the file. Further, the CS requires that written comments submitted by the public within 30 days after notice of the transmittal by the local government to the department *must be considered as if submitted by governmental agencies*. It is unclear what is meant by this language. The reviewing agencies, in their reviews of proposed plan amendments, are required to comment on the consistency of the proposed amendment with applicable state laws and rules. Those comments are often relied upon by parties to an amendment challenge as evidence of whether the amendment is in compliance. Certainly, comments from the public should not be given the same weight as those submitted by a reviewing agency.

Subsection (6) is amended to require the department to review written public comments on proposed amendments within 30 days of receipt, and to restrict the department to basing its ORC report on written comments only. New paragraph (d) is created to require the department to identify, as a part of its ORC report, all written communications with the department regarding the proposed plan amendment, including a list of all documents received or generated by the agency. If no ORC report is issued, the department must identify in writing to the local government all written communications received 30 days after transmittal. The department must make the list of documents a part of its public records.

Section 6 amends s. 163.3187, F.S., effective October 1, 1998, to implement the recommendations of the EAR Technical Committee, relating to amendment of the local government's comprehensive plan after the EAR due date has passed. Section 163.3187(6), F.S., is amended to authorize the following exceptions for amendment of comprehensive plans after the required date for adoption of a local government's evaluation and appraisal (EAR) report:

- Allows local governments to amend comprehensive plans after adopting an EAR regardless of its sufficiency for a period of 1 year;

- Prohibits amendments after 1 year until EAR found sufficient;

- Authorizes local governments to adopt amendments without the above listed limitation when the EAR has been determined to sufficiently address all pertinent provisions; and

- Provides that any improperly adopted plan amendments may be readopted and transmitted after the EAR is determined to be sufficient.

Section 163.3187, F.S., is further amended by creating subsection (8) to establish a statutory determination of consistency with the adopted comprehensive plan for renovations, expansions, or additions to a marine exhibition park complex, if the complex meets the following criteria:

- The complex has been in continuous existence for at least 30 years;
- The complex is located on land comprised of at least 25 contiguous acres; and
- The complex is owned in fee simple by a county or municipality.

The renovations, expansions, or additions may include the following: recreational and educational uses; restaurants; gift shops; marine or water amusements; environmentally related theaters; and any other compatible uses.

Section 7 amends s. 163.3191, F.S., effective October 1, 1998, to implement the recommendations of the EAR Technical Committee regarding streamlining the EAR review process. This section is rewritten to provide as follows:

- EARs are part of ongoing process to review local comprehensive plans in context of changing local, state, and regional policies and conditions and to identify major issues at the local level;
- EARs are required once every 7 years;
- EARs are to serve as summary audits, identifying major issues, and are to be based on local government analysis of the major issues;
- EARs must address population growth, extent of vacant land, financial feasibility of the plan and infrastructure needs, location of development, major local issues, statutory and administrative law changes, assessment of plan objectives related to major issues, successes and shortcomings of each plan element, corrective actions and public participation process;
- The Local planning agency is to prepare the EAR and make recommendations to the governing board after at least one public hearing;
- 90 days prior to the adoption date, the local government may submit a proposed EAR for review and comment;
- After the governing board has considered the state land planning agency's review comments and has adopted the EAR, the state land planning agency has 60 days to make a preliminary sufficiency review, and 30 additional days to make the final sufficiency review;

- The state land planning agency's sufficiency review must concentrate on the adequacy of the EAR in addressing update requirements in whole or as modified by the optional scoping process;

- The state land planning agency may delegate EAR review to regional planning councils by agreement(s);

- EAR adoption will be determined by a schedule prepared by the state land planning agency, with cities following counties so that cities may utilize pertinent data and information developed by the county in which they are located;

- The Administration Commission may impose sanctions against local governments for failing to adopt/submit EARs and/or subsequent amendments, except for excusable delays or planning reasons;

- No rules are required to implement the EAR provisions;

- The state land planning agency is required to prepare a report documenting how, and in what format, technical assistance can be rendered to local governments, including the provision of EAR templates;

- The state land planning agency is required to conduct EAR process assessments and to make reports to the Legislature on this subject;

- Local governments with EARs due before October 1, 1998, will be evaluated under the existing statutory and rule requirements;

- Local governments with EAR adoption dates between September 30, 1998, and February 2, 1999, have the option to decide which process will be used for review of their EARs; and

- An optional scoping process to focus EAR issues involving appropriate local, regional, and state agencies is created.

Section 8 creates s. 163.3245, F.S., to implement the optional sector planning process defined in Section 2 of the CS.

Subsection (1) creates a demonstration project by which the requirements of s. 380.06, F.S., may be addressed for up to five local governments which adopt optional sector plans into their comprehensive plans. This subsection restates the purposes included in the definition of optional sector plan. Such plans are intended for areas encompassing a minimum of 5,000 acres, although the department may approve such a plan for fewer than 5,000 acres if it determines, based upon local circumstances, that the plan would further the purposes of part II of ch. 163 and part I of ch. 380. Preparation of such a plan must be authorized by an agreement with the department, pursuant to s. 163.3171(4), F.S. Such a plan may be adopted through one or more comprehensive

plan amendments, but may not be allowed in an area of critical state concern. While this subsection indicates that it creates a demonstration project, it contains neither procedures for local governments to apply for designation, nor criteria by which the department selects those local governments.

Subsection (2) authorizes the department to enter into an agreement with one or more local governments to authorize preparation of an optional sector plan based upon enumerated factors. The applicable regional planning council must hold a scoping meeting, prior to execution of the agreement, to assist the department and the local government(s) to identify the relevant planning issues to be addressed and the resources available to assist in the preparation of subsequent plan amendments. The local government must hold a duly noticed public workshop prior to executing the agreement, and must hold a public hearing to execute the agreement. This section provides the requirements for the agreement.

Subsection (3) provides that optional sector planning encompasses two levels: a conceptual long-term buildout overlay within the comprehensive plan, and detailed specific area plans that implement the long-term conceptual plan. Both must be adopted as amendments to the comprehensive plan. Until the detailed specific area plans are adopted, the underlying land use designations apply. This section provides the minimum requirements for both the long-term buildout overlay and the specific area plans. Specific area plans must encompass at least 1,000 acres, although the department may approve a smaller area if it determines, based on local circumstances, that the plan furthers the purposes of part II, ch. 163 and part I, ch. 380, F.S. Both levels may be submitted as concurrent plan amendments.

Subsection (4) requires a “host local government” to submit an annual monitoring report to the department and the applicable regional planning council summarizing information on development orders issued, development that has occurred, public facility improvements made, and public facility improvements anticipated over the upcoming 5 years. It is unclear what is meant by a “host local government,” but it is assumed to mean a local government which enters into an agreement with the department to adopt an optional sector plan.

Subsection (5) provides that when a specific area plan amendment has become effective, the provisions of s. 380.06, F.S., regarding review of DRIs, do not apply to development within the area covered by the plan. The local government is responsible for monitoring and enforcing the detailed specific area plan and may not approve development or provide extensions of services to development that is inconsistent with the plan. However, the department has authority to initiate administrative or judicial action if it has reason to believe that the specific area plan has been violated. Any party initiating an action to enforce an optional sector plan or specific area plan must comply with the requirements set forth in s. 163.3215, F.S., which provides the procedure and prerequisites to enforce comprehensive plans through development order challenges.

Subsection (6) requires the department to provide yearly status reports to the Legislative Committee on Intergovernmental Relations, beginning December 1, 1999, regarding each optional sector plan authorized by this section.

Subsection (7) provides that this section does not abrogate the rights of any person under the growth management act.

Section 9 amends s. 171.044, F.S., by creating subsection (6) to require that a municipality send a copy of its annexation ordinance, via certified mail, to the county in which it is located.

Section 10 amends s. 186.003, F.S., by revising the definition of the "state comprehensive plan" to mean the state planning document in Art. III, s. 19 of the State Constitution and published as ss. 187.101 through 187.201, F.S.

Section 11 amends s. 186.007, F.S., by deleting a reference to the state land development plan, which is repealed in Section 24 of the CS, and by including the regional planning councils as an agency which must assist the EOG in its review of EARs. This section is further amended to require that the EOG be involved in the review of EARs for the strategic regional policy plans.

Finally, this section is amended to create a committee, appointed by the Governor, to review and make recommendations concerning the state comprehensive plan to the Administration Commission by October 1, 1999. In reviewing the state comprehensive plan, the committee must identify portions which have become outdated or have not been implemented, and, based upon the best available data, the state's progress toward achieving the goals and policies in the plan. The committee must consist of persons from the public and private sectors representing the broad range of interests covered by the plan. This section contains an appropriation of $50,000 in nonrecurring general revenue for the EOG to finance the travel and other costs associated with the committee.

Section 12 amends s. 186.008, F.S., relating to revising the state comprehensive plan, to delete obsolete references to dates which have passed.

Section 13 amends s. 186.009, F.S., by deleting a reference to the state land development plan.

Section 14 amends s. 186.507, F.S., by deleting the requirement that the EOG adopt rules establishing a uniform format and minimum criteria for SRPPs. The amended section retains the requirement that the regional planning councils, when preparing and adopting SRPPs, focus on regional rather than local resources and facilities.

Section 15 amends s. 186.508, F.S., by deleting requirements that the RPCs submit SRPPs to the EOG, that the EOG review the SRPPs for consistency with the state comprehensive plan, and submit its comments and recommended revisions to the RPC; that the EOG's comments and recommended revisions be included in the SRPP; and that the RPCs adopt the SRPPs by rule within 90 days after receipt of recommended revisions from the EOG.

The effect of these revisions is a reduction in rules promulgated by the EOG and a workload reduction for the EOG since it is no longer required to review and submit comments or

recommended revisions to SRPPs. The EOG continues to be authorized to file a rule challenge to any newly adopted SRPP, or any amendment adopted thereto, pursuant to s. 186.511, F.S.

Section 16 amends s. 186.511, F.S., to conform with the changes in s. 186.508, F.S., by deleting a requirement that the EOG adopt by rule a phased schedule for submittal by the RPCs of their SRPPs for review.

Section 17 makes the following changes to s. 288.975, F.S., relating to military base reuse plans:

- Makes technical and conforming changes, deleting obsolete dates and updating references to the former Department of Health and Rehabilitative Services;

- Deletes the 1 year limit on granting extensions to the required submission date for a reuse plan, increases from 60 days to 180 days the period in which the host local government must adopt the military base reuse plan after receipt and consideration of all comments, and deletes all language authorizing the department to grant any extension of that period.

- Authorizes the department to request a ch. 120 formal hearing of disputed issues related to a proposed military base reuse plan, prior to submitting the matter to the Administration Commission, if the parties cannot reach agreement through informal hearings after dispute resolution has failed.

Section 18 amends s. 288.980, F.S., relating to assistance to communities adversely affected by military base closures. The CS deletes a reference to local or regional base realignment or closure commissions; thereby retaining language encouraging communities to initiate a coordinated program of response and plan of action in advance of future actions of the federal Base Realignment and Closure Commission. Further, it authorizes OTTED to award grants from *any funds* available to it to support activities related to the retention of military installations potentially affected by federal base closure or realignment, rather than requiring that funds be specifically appropriated for each project. The CS deletes the limitation that the maximum grant provided to an applicant *in any one year* is $250,000; increases the required local government match from 25 to 50 percent; and deletes language allowing an in-kind match. The CS further expands the coordinated program or plan of action delineating how the project will be administered to also require a plan to ensure close cooperation between civilian and military authorities with regards to funded activities and a plan for public involvement. Finally, the CS deletes the definition of applicant for the purposes of base closure and realignment, and requires that grant applications for funding under the Florida Defense Planning, the Florida Defense Implementation, and the Florida Military Installation Reuse Planning and Marketing Grant Programs include a coordinated program of work or plan of action delineating how the eligible project will be administered and accomplished, which must include a plan for ensuring close cooperation between civilian and military authorities in the conduct of the funded activities and a plan for public involvement.

Section 19 amends s. 380.06, F.S., by adding the provision of day care facilities in proximity to employment as an issue which may be considered in DRI review. This section is also amended to

delete references to the state land development plan and remove a requirement that DRIs be reviewed for consistency with that plan.

Section 20 amends s. 380.061, F.S., to delete a requirement that an FQD be consistent with the state land development plan.

Section 21 amends s. 380.065, F.S., to delete a reference to the state land development plan.

Section 22 amends s. 380.23, F.S., to expand the scope of activities to be reviewed for consistency with the state's coastal management program to include federal activities within the territorial limits of neighboring states when the governor and the department determine that significant individual or cumulative impact to the land or water resources of the state would result from those activities.

Section 23 creates the Transportation and Land Use Study Committee; requires the department and the Department of Transportation (DOT) to evaluate the statutory provisions relating to land use and transportation coordination and to consider changes to the statutes and rules. The evaluation must include the roles of local government, RPCs, state agencies, and MPOs in addressing these subject areas. The secretaries of the department and the DOT must appoint a 15 member technical committee representing local governments, RPCs, the private sector, MPOs, and citizen and environmental organizations. The department and DOT must work in consultation with the technical committee and report to the Governor and the Legislature by January 15, 1999.

Section 24 repeals subsection (17) of section 380.031, F.S., which defines the state land development plan; subsection (7) of section 380.0555, F.S., which established the Apalachicola Bay Area Resources Planning and Management Committee, as the management committee has completed its work; and paragraph (a) of subsection (14) of section 380.06, F.S., which requires that a DRI development order not interfere with the achievement of objectives of an adopted state land development plan applicable to the area.

Section 25 provides for severability of the provisions of this act in the event that any provision, or application thereof, is held invalid.

Section 26 provides an effective date upon becoming a law, except as otherwise provided in the act. Sections 6 and 7 are effective October 1, 1998.

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:

That portion of Section 6 of the CS which creates an exemption from the comprehensive plan for the renovation, expansion, or addition to a marine exhibition park complex under certain circumstances, probably violates Art. III, s. 10 of the State Constitution. That constitutional provision prohibits the passage of any special law "unless notice of the intention to seek enactment thereof has been published in the manner provided by general law." However, no notice is required if the law is conditioned to become effective only upon approval by vote of the electors of the area affected.

The exemption is narrowly tailored to apply to a particular marine exhibition park and it is doubtful that the exemption will apply to any other facility. As such, that section constitutes a special act. There is no evidence that this provision has been noticed as required by general law, nor is this provision continent upon referendum approval.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department reports that an indeterminate fiscal impact will result from the recordkeeping requirements in section 5 of the CS. Consolidation of all correspondence into one file and inclusion of printed electronic mail will increase the rate at which the division's file storage reaches capacity. These requirements will also create an additional staff workload.

Creation of the Transportation and Land Use Study Committee will necessitate increased travel expenses of $21,000 for FY 1998-99.

The Executive Office of the Governor is appropriated $50,000 in nonrecurring general revenue for the costs associated with the review of the state comprehensive plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 5 of the CS requires the department to keep certain records relating to comments received from the public in connection with the review and approval of proposed local government comprehensive plan amendments. There are no similar requirements in the substantive statutes of other state "regulatory" agencies to keep such records. It is probably more appropriate for such requirements to be amended into the uniform rules of procedure, which would make them applicable to all agencies which have such contact with the public.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.