

STORAGE NAME: h0139.ca
DATE: March 10, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 139

RELATING TO: Growth Management

SPONSOR(S): Representative Albright

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC)
 - (2) ENVIRONMENTAL PROTECTION (RLC)
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

HB 139 provides, with respect to any changes made to any state or local comprehensive plan after July 1, 2000, that all 67 counties must have in place a comprehensive plan for growth management. The bill provides, with respect to any changes made to any state or local comprehensive plans after July 1, 2000, that any future modifications to the plans must be made by the county rather than the Department of Community Affairs.

The bill provides that it is the intent of the Legislature that there be a systematic review of the developments-of-regional-impact (DRI) process and the Florida Quality Developments (FQD) program process in order to greatly simplify and streamline the processes and address the current threshold issues that govern the processes.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/a <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/a <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/a <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/a <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/a <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida has a system of growth management that includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; ss. 163.3161-163.3244, F.S.; chapter 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs; chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and chapter 187, F.S., the State Comprehensive Plan.

Local Comprehensive Plan

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") sections 163.3161-163.3244, Florida Statutes, (F.S.), establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.). In 1999, the department reviewed 12,000 local comprehensive plan amendments.

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is

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required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Comprehensive Plan Amendment Process

Under chapter 163, the process for the adoption of a comprehensive plan and comprehensive plan amendments is essentially the same. A local government or property owner initiates the process by proposing an amendment to the designated local planning agency (LPA). After holding at least one public hearing, the LPA makes recommendations to the governing body regarding the amendments. Next, the governing body holds a transmittal public hearing at which the proposed amendment must be voted on affirmatively by a majority of the members of the governing body of the local government. Following the public hearing, the local government must "transmit" the amendment to the department, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of Transportation and any other local government or state agency that has requested a copy of the amendment.

Next, the decision is made whether to review the proposed amendment. If the local government does not request a review, the department requests that the appropriate water management districts, Department of Transportation and Department of Environmental Protection advise the DCA as to whether the amendment should be reviewed, within 21 days after transmittal of the amendment by the local government. Based on this information, the department decides whether to review the amendment. The department must review the proposed amendment if the local government transmitting the amendment, a regional planning council or an "affected person" requests review within 30 days after transmittal of the amendment. Finally, even if a request by one of the above parties is not made, the department may elect to review the amendment by giving the local government notice of its intention to review the amendment within 30 days of receipt of the amendment.

If review is not requested by the local government, the regional planning council, or any affected person, and the department decides not to review it, the local government is notified that it may proceed immediately to adopt the amendment. If, however, review of the amendment is initiated, the department next transmits, pursuant to Rule 9J-1.009, F.A.C., a copy of the amendment to: the Department of State; the Fish & Wildlife Conservation Commission; the Department of Agriculture and Consumer Affairs, Division of Forestry for county amendments; and the appropriate land planning agency. In addition, the department may circulate a copy of the amendment to other government agencies, as appropriate. Commenting agencies have 30 days from receipt of the proposed amendment to provide its written comments to the department and, in addition, written comments submitted by the public within 30 days after notice of transmittal by the local government are considered by the department as if they were submitted by governmental agencies.

Upon receipt of the comments described above, the department has 30 days to send its objections, recommendations and comments report to the local government body (commonly referred to as the "ORC Report"). In its review, the department considers whether the amendment is consistent with the requirements of the Act, Rule 9J-5, Florida Administrative Code, the State Comprehensive Plan and the appropriate regional policy plan.

After receiving the ORC report from the department, the local government has 60 days (120 days for amendments based on Evaluation and Appraisal "EAR" Reports or compliance agreements) to adopt the amendment, adopt the amendment with changes, or decide that it will not adopt the amendment. The decision must be made at a public hearing. Within 10 days after adoption, the local government transmits the adopted plan amendment to the

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department, the commenting agencies, the regional planning council and anyone else who has requested notice of the adoption.

Upon receipt of a local government's adopted comprehensive plan amendment, the department has 45 days (30 days for amendments based on compliance agreements) to determine whether the plan or plan amendment is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act. This compliance determination is also required when the department has not reviewed the amendment under s. 163.3184(6), F.S. During this time period, the department issues a notice of intent to find the plan amendment in compliance or not in compliance with the requirements of the Act. The notice of intent is mailed to the local government and the department is required to publish such notice in a newspaper which has been designated by the local government.

If the department finds the comprehensive plan amendment in compliance with the Act, any affected person may file a petition for administrative hearing pursuant to ss. 120.569 and 120.57, F.S., within 21 days after publication of the notice of intent. An administrative hearing is conducted by the Division of Administrative Hearing where the legal standard of review is that the plan amendment will be determined to be in compliance if the local government's determination of compliance is fairly debatable. The hearing officer submits a recommended order to the department. If the department determines that the plan amendment is in compliance, it issues a final order. If the department determines that the amendment is not in compliance, it submits the recommended order to the Administration Commission (the Governor and Cabinet) for final agency action.

If the department issues a notice of intent to find the comprehensive plan amendment not in compliance, the notice of intent is forwarded directly to the Division of Administrative Hearing in order to hold a ss. 120.569 and 120.57, F.S., administrative proceeding. The parties to the administrative proceeding include: the department; the affected local government; and any affected person who intervenes. In the administrative hearing, the decision of the local government that the comprehensive plan amendment is in compliance is presumed to be correct and must be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan amendment is not in compliance.

The administrative law judge submits his decision directly to the Administration Commission for final agency action. If the Administration Commission determines that the plan amendment is not in compliance with the Act, it must specify remedial actions to bring the plan amendment into compliance.

Local governments are limited in the number of times per year they may adopt comprehensive plan amendments. Section 163.3187, F.S., provides that local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions which include, for example: amendments directly related to developments of regional impact; small scale development amendments; the designation of an urban infill and redevelopment area; and changes to the schedule of the capital improvements element.

Small Scale Development Amendments

There are two major exceptions to the process for the department's review of comprehensive plan amendments. The first exception applies to a category of comprehensive plan amendments designated by a local government as small-scale amendments. A small scale development amendment is defined by section 163.3187(1)(c), F.S., as a proposed amendment involving a use of 10 acres or less and

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where the cumulative acreage proposed for small scale amendments within a year must not exceed: a) 120 acres in a local government that contains areas designated in its comprehensive plan for urban infill, urban redevelopment or downtown revitalization, transportation concurrency exception areas, or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e), F.S.; b) 80 acres in a local government that does not include the designated areas described in (a); and c) 120 acres in consolidated Jacksonville/Duval County.

In addition to the above acreage limitations, amendments involving a residential land use must have a density of 10 units per acre or less unless located in an urban infill and redevelopment area.

The major advantage of a small scale amendment is that the adoption of the amendment by the local government only requires one public hearing before the governing board, and does not require compliance review by the department. The public notice procedure for local governments is also more streamlined so that the notice required by a local government for small scale amendments is that of a general newspaper notice of the meeting and notice by mail to each real property owner whose land would be redesignated by the proposed amendment.

While the department does not review or issue a notice of intent regarding the proposed amendment, small-scale amendments can be challenged by affected persons. Any affected person may file a petition for administrative hearing to challenge the compliance of the small scale development amendment with the act, within 30 days of the local government's adoption of the amendment. The administrative hearing must be held not less than 30 nor more than 60 days following the filing of the petition and the assignment of the administrative law judge. The parties to the proceeding are the petitioner, the local government and any intervenor.

The local government's determination that the small scale development agreement is in compliance is presumed to be correct and will be sustained unless, by a preponderance of the evidence, the petitioner shows that the amendment is not in compliance with the act. Small scale amendments do not become effective until 31 days after adoption by a local government. If a small-scale amendment is challenged following the procedure described above, the amendments do not become effective until a final order is issued finding the amendment in compliance with the act.

Developments of Regional Impact

Chapter 380, F.S., includes the Development of Regional Impact (DRI) program, enacted as part of the Florida Environmental Land and Water Management Act of 1972. The DRI Program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Rule 28-24, F.A.C.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a substantial likelihood of additional regional impact, or any type of regional impact constitutes a "substantial deviation" which requires further DRI review and requires a new or amended local development order. The statute sets out criteria for determining when certain changes are to be considered substantial deviations without need for a hearing, and provides that all such changes are considered cumulatively.

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Florida Quality Developments (FQD) program

The Florida Quality Developments (FQD) program, as contained in s. 380.061, F.S., was created to encourage development which has been thoughtfully planned to take into consideration protection of Florida's natural amenities, the cost to local government of providing services to a growing community and the high quality of life Floridians desire. The FQD process is intended to provide, through a cooperative and coordinated effort, the developer an expeditious and timely review by all agencies with jurisdiction over the project of his or her proposed development.

Regional Planning Councils

The State of Florida's 67 counties are divided into eleven planning regions, each of which is represented by a Regional Planning Council (RPC). Chapter 186, F.S., provides for the creation of 11 regional planning councils (RPCs) and for the adoption of strategic regional policy plans by the RPCs. The Strategic Regional Policy Plan, as required by Section 186.507, Florida Statutes, is a long range guide for physical, economic, and social development of a planning district through the identification of regional goals and policies.

The SRPP must contain regional goals and policies for developing a coordinated program of regional actions directed at resolving identified problems and needs. As specified in Rule 27E-5, F.A.C., each SRPP must address, at a minimum, the following areas: Affordable Housing; Economic Development; Emergency Preparedness; Natural Resources of Regional Significance; and Regional Transportation. These strategic regional policy plans must be consistent with the state comprehensive plan.

State Comprehensive Plan

The state comprehensive plan, chapter 187, F.S., was enacted in 1985, to provide long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include: for example, land use; urban and downtown revitalization; public facilities; transportation; water resources; and natural systems and recreational lands. By October 1st of each odd-numbered year, the Governor's Office is required to prepare any proposed revisions to the state comprehensive plan deemed necessary and present proposed revisions to the Administration Commission. The Administration Commission is then required to review such recommendations and forward to the Legislature any proposed amendments approved by the Commission.

Chapter 98-176, Laws of Florida, required the Governor to appoint a committee to review the comprehensive plan and advise him on changes that were appropriate to include in the biannual review scheduled to occur in 1999. To date, this committee has not been appointed or convened by the Governor.

C. EFFECT OF PROPOSED CHANGES:

HB 139 provides, with respect to any changes made to any state or local comprehensive plan after July 1, 2000, that all 67 counties must have in place a comprehensive plan for growth management. The bill provides, with respect to any changes made to any state or local comprehensive plans after July 1, 2000, that any future modifications to the plans must be made by the county rather than the Department of Community Affairs.

The bill provides that it is the intent of the Legislature that there be a systematic review of the developments-of-regional-impact (DRI) process and the Florida Quality Developments

(FQD) program process in order to greatly simplify and streamline the processes and address the current threshold issues that govern the processes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Adds subsection 186.008(7), F.S., providing legislative intent that all 67 counties must have in place a comprehensive plan for growth management, and that any modifications of the state comprehensive plan or a local government comprehensive plan made after July 1, 2000, must be made by the county rather than the Department of Community Affairs.

Section 2: Adds paragraph 380.06(2)(f), F.S., providing legislative intent for a systematic review of the developments-of-regional-impact process and the Florida Quality Developments program process to greatly simplify and streamline the processes and address the current threshold issues that govern both.

Section 3: Renumbers and adds paragraph 380.061(1)(b), F.S., providing legislative intent for a systematic review of the developments-of-regional-impact process and the Florida Quality Developments program process to greatly simplify and streamline the processes and address the current threshold issues that govern both.

Section 4: Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

With the department no longer reviewing comprehensive plan amendments, staffing expenditures for the department should decrease.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

With counties being required to review its comprehensive plan amendments, there may be a need to increase county employees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The development community may be positively impacted by this bill since having comprehensive plan amendments reviewed by the county may decrease the time it takes to have amendments approved, thus saving the development community not only time, but money.

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D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

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

The bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill as it currently reads is not drafted properly. Under current statutes, the revision of the state comprehensive plan is a continuing process. On or before October 1 of every odd-numbered year, the EOG prepares and recommends to the Administration Commission (the Governor and Cabinet sitting as the Administration Commission), any proposed revisions to the state comprehensive plan.

Each section of the plan is required to be reviewed and analyzed biennially by the EOG in conjunction with the planning offices of other state agencies significantly affected by the provisions of the particular section under review.

On or before December 15 of every odd-numbered year, the Administration Commission must review the proposed revisions to the state comprehensive plan, adopt a resolution, and after public notice and a reasonable opportunity for public comment, transmit the proposed revisions to the state comprehensive plan to the Legislature, along with any amendments approved by the Commission and any dissenting reports. The Legislature adopts revisions to the comprehensive plan.

The Department of Community Affairs recently administered a statewide survey regarding growth management in the state. There were 3,700 responses to the DCA Growth

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Management Survey. The survey results are available at www.dca.state.fl.us. In addition, the department has recently finished holding regional growth forums throughout the state. The citizen comments from these forums will be available on the department's webpage in the near future.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Albright has stated that he is planning to offer a strike-everything amendment for discussion purposes, addressing the following issues:

- Developments of Regional Impact;
- Local government “opt” out provision allowing local government to review comprehensive plan amendments;
- School Concurrency;
- Regional Planning Councils;
- Small Scale Amendments; and
- Standing.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Laura L. Jacobs, Esq.

Staff Director:

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