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HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS

BILL #: HB 2095

RELATING TO: Local Government Comprehensive Planning

SPONSOR(S): Representative Bush

TIED BILL(S): None

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

(1) COMMUNITY AFFAIRS (PRC)
(2)
(3)
(4)
(5)

I. SUMMARY:

This bill allows local governments within Monroe County [an area of critical state concern] to adopt amendments to the comprehensive plan more than twice per year, if they directly relate to affordable housing.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

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

B. PRESENT SITUATION:

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 is 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 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 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 ScaleDevelopment 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 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.

Currently, s. 163.3187(1)(c)1.e, F.S., prohibits small scale amendments in Areas of Critical State Concern (ACSC). Small scale amendments are currently not allowed within Areas of Critical State Concern so that the Department can ensure they are reviewed for consistency with the principles for guiding development.

Areas of Critical State Concern

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

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

the State that are designated as areas of critical state concern. Those areas are the Florida Keys, the Big Cypress Area, and the Green Swamp Area.

In 1986, the Legislature adopted chapter 86-170, Laws of Florida, created the procedures for coordinated agency review for all permit applications in the Florida Keys area of critical state concern. The Department of Community Affairs, the Department of Environmental Protection, and the Department of Health, along with other state and regional agencies that require permits in the Florida Keys ACSC, to enter into interagency agreements to create a coordinated agency review process.

Section 380.05(6), F.S., currently states that plan amendments to plans for areas of critical state concern shall not become effective until approved by the Department.

Monroe County is located within an area of critical state concern, pursuant to section 380.0552, F.S., and is currently experiencing a critical shortage of affordable housing. Factors cited by the Monroe County Commission as contributing to this shortage include:

- The county's status as an Area of Critical State Concern;
- The geographic uniqueness of Monroe County, including its dependence on bridges and causeways for connection to the mainland;
- Monroe County's Rate of Growth Ordinance (ROGO) that limits the number of new residential units that can be built on a yearly basis based on hurricane evacuation capacity;
- A shortage of areas appropriately zoned to accommodate moderate or high density development;
- The application of one of the state's most restrictive building codes; and
- Cost factors, including the highest median housing cost, the highest cost of living, and the highest construction costs in Florida.

A blue ribbon commission created by the Monroe County Board of County Commissioners, the Blue Ribbon Committee on Affordable Housing, issued a report making a number of recommendations regarding how state law and the rules of the Housing Finance Corporation could be changed to encourage the construction of affordable housing in Monroe county. The report is available by contacting the Monroe County Board of County Commissioners.

C. EFFECT OF PROPOSED CHANGES:

This bill allows local governments, located within Monroe County, to adopt small scale amendments to the comprehensive plan more than twice per yearthat are directly related to affordable housing provided in chapter 420, F.S. Currently, s. 163.3187(1)(c)1.e, F.S., prohibits small scale amendments in Areas of Critical State Concern (ACSC). In addition to allowing certain local governments to adopt small scale amendments, this bill also exempts such amendments from the Department of Community Affairs review under the Area of Critical State Concern program.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Permits the adoption of comprehensive plan amendments more than twice a year in Monroe County, if the amendments directly relate to a proposed small scale development activity involving affordable housing provided in chapter 420, F.S (Housing).

Section 2: Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Even though small scale amendments are exempt from compliance review under chapter 163, F.S., compliance review is still required for such amendments under chapter 380, F.S. Therefore, additional advertising costs will be incurred for the small scale amendments. There is no way to estimate the number of small scale amendments that will be submitted as a result of this legislation and therefore no way to estimate the additional fiscal impact to the Department of Community Affairs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Local governments within Monroe County may experience decreased expenditures due to the submittal of small scale amendments, rather than amendments being reviewed under chapter 163, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill reduces time in processing plan amendments and thus, may result in cost savings for the private sector.

D. FISCAL COMMENTS:

None

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:

This bill is similar to HB 1797, a local bill by Representative Sorensen. The major differences between the two bills are that this bill clarifies what is considered “affordable housing” and is applicable to all local governments within Monroe County.

Without further modification, the proposed exception for small scale amendments in Monroe County appears to conflict with section 163.3187(3)(a), F.S., which states that small scale amendments shall not undergo compliance review by the Department.

In addition, the proposed legislation may not have as significant an effect on facilitating the availability of sites for affordable housing as is desired. This is due to the acreage and density restrictions which apply to small scale amendments. Currently, small scale amendments are limited to 10 acres or less and are limited to a density of 10 dwelling units per acre or less. The 10 acre limit may not be an obstacle since most housing sites in the Keys tend to be comparatively small because of the limited land area. However, the density limit may be a problem. In order to take advantage of economies of scale, affordable housing is often built at higher densities, and this can mean more than 10 units an acre.

Rather than allowing small scale amendments relating to affordable housing for Monroe County without restriction on the number of times per year, the Department of Community Affairs has stated that the proposed bill could be modified to require the Department's approval by final order. Approval by final order is recommended rather than the standard Chapter 163, F.S., compliance review process because of the significant savings in time that could be achieved. Monroe County planning staff indicate that having the ability to

quickly respond to emerging opportunities for the provision of affordable housing sites is the primary benefit this legislation seeks. Approval by final order allows the Department to quickly assess the amendment for compliance with the Area of Critical State Concern program's principles for guiding development and issue an approval in a matter of weeks, rather than the several months it takes for the Chapter 163, F.S., process. The Department already approves land development regulations in Areas of Critical State Concern by final order pursuant to Section 380.05(6), F.S. Moreover, to more effectively promote affordable housing, the proposed legislation could be modified so that the small scale amendments are not subject to the 10 unit per acre density limitation. Although the concerns regarding using affordable housing as a criterion for approving a land use amendment are legitimate, this is an issue that is best addressed by Monroe County.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Staff Director:
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