SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/CS/SB 310 and 380

SPONSOR: Appropriations Subcommittee on General Government, Finance and Taxation Committee and Comprehensive Planning, Local & Military Affairs Committee and Senators Constantine and Carlton

SUBJECT: Growth Management

DATE: April 26, 2001 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.	Fournier	Johansen	FT	Favorable/CS
3.			NR	Withdrawn
4.	Hayes	Martin	AGG	Favorable/CS
5.			AP	
6.			RC	Withdrawn

I. Summary:

The bill makes a number of changes to sections of the Local Government Comprehensive Planning and Land Development Regulation.

The bill creates a required school educational facility planning process that requires local governments and school boards to adopt educational facilities plans and enter into an interlocal agreement requiring that school boards and local governments identify information they will use to determine whether school capacity is available to accommodate new development. When such capacity is not available, the appropriate local government must deny an application for a comprehensive plan amendment unless the applicant provides proportionate share mitigation to address the additional demand created by the development. This requirement does not take effect, however, until the local governments and the school board have entered into an interlocal agreement as provided for in the bill, the local government has adopted a public education facilities element which has been found to be in compliance, the school board has revised its district education facilities plan to comply with s. 235.185, F.S., and the half-cent school capital outlay surtax authorized by s. 212.055(6), F.S., or some other broad-based revenue source has been dedicated to the implementation of the school district work program. The bill requires that an elected school member sit on each regional planning council.

The bill allows the Local Government Infrastructure Surtax and School Capital Outlay Surtax authorized by s. 212.055, F.S, to be imposed by supermajority vote of the respective governing boards.

The bill directs the Department of Community Affairs to develop a fiscal-impact-analysis model for evaluating the cost of infrastructure to support development.

The development of the regional impact program is modified to clarify substantial deviation standards and to remove the acreage threshold for certain types of development; make an annual reporting requirement biennial and require the Department of Community Affairs to designate a lead regional planning council where a development lies within the jurisdiction of multiple regional planning councils.

The bill provides for exempting certain waterports from Development-of-Regional-Impact review.

The bill requires all counties with a population in excess of 100,000 to negotiate with all of the municipalities and relevant special districts within the county, interlocal agreements governing the provision of services.

The bill appropriates $500,000 to fund the development of a fiscal impact model and $500,000 to fund the Urban Infill and Redevelopment Grant Program.

The bill also:

- authorizes school boards to direct the county commission to call an election for approval of an ad valorem tax millage;
- directs the Legislative Committee on Intergovernmental Relations to conduct a study of the bonding capacity of local governments and school boards;
- allows a school district to levy by referendum additional millage for school operational purposes.

This bill substantially amends sections 163.3174, 163.3177, 163.3180, 163.3184, 163.3187, 163.3191, 186.504, 212.055, 235.002, 235.15, 235.175, 235.18, 235.185, 235.188, 235.19, 235.193, 235.218, 235.231, 236.25, 236.31, 236.32, 380.06, and 380.0651; creates 163.31776, 163.31777, 163.3198, and repeals section 235.194 of the Florida Statutes.

II. 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.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, 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; 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.).

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. "Affected persons are defined, by s. 163.3184(1), F.S., to include:

> …the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review, and the adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

The definition of "affected person" requires that the individual seeking to challenge the comprehensive plan or plan amendment has participated in some capacity during the public hearing process through the submission of oral or written comments. Persons residing outside of the jurisdiction of the local government offering the amendment, accordingly, lack standing under this definition.

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.

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 and 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.

Urban Infill and Redevelopment Program

In 1999, the legislature enacted the "Growth Policy Act", ss. 163.2514-163.2526, F.S., which authorizes municipalities & counties to designate urban infill and redevelopment areas based on specified criteria and to provides economic incentives for the these areas. The act creates an Urban Infill and Redevelopment Assistance Grant Program to be used by local governments to develop community participation processes for the development of an urban infill and redevelopment plan. Matching grants funds are also provided for implementing urban infill and redevelopment projects that assist the goals identified in a local governments, urban infill and redevelopment plan.

Discretionary Sales Surtaxes

Section 212.055, F.S., authorizes the imposition of discretionary sales surtaxes by local governments for various purposes. These surtaxes may be levied only if they are authorizes by general law, and many are limited to local governments meeting specific requirements. The Charter County Transit System Surtax may be imposed by a charter county which adopted its charter before June 1, 1976 and a county the government of which is consolidated with that of one or more of its municipalities, by referendum, up to a rate of 1 percent. The Local Government Infrastructure Surtax may be levied by a county at the rate of 0.5 or 1 percent, by referendum. Proceeds of the surtax are distributed to the county and the municipalities within the county. The Small County Surtax may be levied by the governing authority in a county that has a population of 50,000 or less on April 1, 1992, by extraordinary vote of the members of the governing authority if the proceeds are used for operating expenses, or by referendum if the proceeds are pledged to repay bonds. The indigent Care and Trauma Center Surtax may be levied by a county which is not consolidated with one or more municipalities, which has a population of at least 800,000, and is not authorized to levy the County Public Hospital Surtax. This tax, which may not exceed 0.5 percent, may be levied by referendum or extraordinary vote of the governing authority. The 0.5 percent County Public Hospital Surtax may be levied by a county as defined in s. 125.011(1) (Dade County), by referendum or extraordinary vote of the commission. The School Capital Outlay Surtax may be levied in any county, by referendum, not to exceed 0.5 percent. The Voter-Approved Indigent Care Surtax may be levied by referendum in a county with population less than 800,000, at a rate not to exceed 0.5 percent. All of these surtaxes are levied county-wide.

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.

State and Regional Planning

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. These strategic regional policy plans must be consistent with the 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.

The Coordination of School Facility Planning and Local Government Comprehensive Planning

When the local government comprehensive planning act was originally enacted in 1985, the provision of school facilities was identified as a type of infrastructure for which concurrency was required pursuant to s. 163.3180, F.S. However, over the years, amendments were made to the Act to require a minimum level of coordination between school boards and local governments, particularly in the area of school facility siting. For example, local governments are required to identify on their future land use map, land use categories where public schools are an allowable use, including land proximate to residential development to meet the projected needs for schools. S. 163.3177(6)(a), F.S. In addition, the future land use element must include criteria that encourages the location of schools proximate to residential development as well as encouraging the collocation of public facilities, parks, libraries and community centers with schools.

In addition, the interlocal coordination element, required by s. 163.3177(6)(h), F.S., requires a local government to establish principles and guidelines to be used in the coordination of the adopted comprehensive plan with the plans of school boards. Finally, s. 163.3191,F.S., requiring local governments to prepare evaluation and appraisal reports requires the coordination of the comprehensive plans and school facilities. Section 163.3191(2)(k), F.S., requires an evaluation of the coordination of the comprehensive plan with existing public schools and those identified in the 5-year school district facilities work program. The evaluation must address the success or failure of the coordination of the future land use map and associated planned residential development with public schools and joint decision making processes engaged in by the local government and the school board.

In 1998, the legislature gave local governments the option to implement school concurrency. Section 163.3180(13), F.S., includes the minimum requirements for school concurrency. First, in order to implement concurrency on a district wide basis, all local governments within the county must adopt a public school facilities element and enter into an interlocal agreement. The public facilities element must include data including the 5-year school district facilities work plan; the educational plant survey; information on projected long-term development; and a discussion of how level-of-service standards with be established and maintained. Next, local governments implementing concurrency must adopt a financially feasible public school capital facilities program, in conjunction with the school board, that shows that the adopted level of service standards will be maintained. Finally, a local government may not deny a development permit

authorizing residential development for failure to achieve the level-of-service standard for school capacity where adequate school facilities will be in place or under construction within 3 years of permit issuance.

Only two counties have attempted to implement school concurrency, Broward and Palm Beach Counties. The Broward County concurrency plan was found to be out of compliance with Chapter 163 in the case of *Economic Development Council of Broward Inc. v. Department of Community Affairs, DOAH Case No. 96-6138GM.* Palm Beach County has recently transmitted to the Department of Community Affairs for review, proposed comprehensive plan amendments to adopt school concurrency within Palm Beach County. School concurrency has proved to be difficult to accomplish because of the requirement that a financially feasible capital improvements plan must basically ensure that school construction will keep pace with development. In a fast growing county, the financial resources may not be available to back up such a plan.

Orange County, under former Commission Chairman Mel Martinez, has developed its own approach to addressing issues of school capacity in making land use decisions. If a proposed comprehensive plan amendment or rezoning seeks to increase the density of residential development allowed on a parcel of property, the Commission has a policy of denying the application if school capacity is not available to service that development.

Chapter 235 School Facility Requirements

Section 235.193, F.S. requires some degree of coordination between school boards and local governments. Subsection (1) of s. 235.193, F.S., requires the integration of the educational plant survey with the local comprehensive plan and land development regulations. School boards are required to share information regarding existing and planned facilities, and infrastructure required to support the educational facilities. The location of public educational facilities must be consistent with the comprehensive plan and the land development regulations of the local governing body. At least 60 days prior to acquiring or leasing property to be used for a new educational facility, the school board is required to notify the local government. Within 45 days of receipt of that notice, the local government shall notify the board if the site proposed for acquisition is consistent with the land use categories and policies of the local government's comprehensive plan and within 90 days of receiving a school board's request for determination, whether the proposed educational facility is consistent with the comprehensive plan.

Local governments are prohibited from denying site plan approval for an educational facility based on the adequacy of the site plan as it relates to the needs of the school. Further, existing schools are considered consistent with the applicable local government's comprehensive plan. If the collocation of a new proposed public educational facility with an existing educational facility or the expansion of an existing facility is not inconsistent with the local government comprehensive plan, the local government must find is consistent with the comprehensive plan's future land use policies and categories in which public schools are identified as an allowable use. If a school board submits an application to expand an existing school site, the local government "may impose reasonable development standards and conditions on the expansion only." s. 235.193(8), F.S.

Section 235.194, F.S., requires each school board to annually submit a school facilities report to each local government within the school board's jurisdiction. The report must include information detailing existing facilities, projected needs and the board's capital improvement plan, including planned facility funding over the next 3 years, as well as the district's unmet need. The district must also provide the local government with a copy of its educational plan survey.

Growth Management Study Commissions

Over the years, a number of blue-ribbon study commissions have examined problems associated with growth management in Florida. In 1972, the Florida Legislature, pursuant to s. 380.09(5), F.S. (1972), created the Florida Environmental Land Management Study Committee, which issued a final report in 1973. Included in its recommendations was a proposal that the Legislature should adopt a "Local Government Comprehensive Planning Act of 1974," requiring each county and local government to adopt a local government comprehensive plan. In 1982, Governor Graham created, by executive order 82-95, the Second Environmental Land Management Study Committee (ELMS II). The ELMS II Committee issued its final report in February 1984, which recommended the adoption of state and regional comprehensive plans and the requirement that local plans must be consistent with these state and regional plans. Many of the recommendations of the ELMS II Committee were enacted into law as part of the Local Government Comprehensive Planning and Land Development Regulation Act of 1985.

In 1991 Governor Chiles created by Executive Order 91-291, the third Environmental Land Management Study Committee (ELMS III). The ELMS III Committee issued a final report in December 1992, which recommended a number of adjustments to the Local Government Comprehensive Planning and Land Development Regulation Act of 1985. Some of these recommendations included: improving the intergovernmental coordination element of local comprehensive plans as part of eliminating the Development of Regional Impact (DRI) process; the adoption by the state of a strategic growth and development plan; and adjustments to the review process for local comprehensive plan amendments.

In July 2000, Governor Bush issued Executive Order 2000-196 appointing a twenty-three member Growth Management Study Commission to review Florida's growth management system in order to "assure that the system meets the needs of a diverse and growing State and to make adjustments as necessary based on the experience of implementing the current system."[1] The 23-member study commission included representatives of local government, the development community, agriculture, and the environmental community. The commission conducted 12 meetings throughout the state to hear citizen comment, expert opinion, and deliberate on the question of how to adjust Florida's system of growth management. There was general consensus among members of the commission, as well as members of the public, that the current system of local comprehensive planning in Florida has fallen short of addressing problems associated with growth, including: traffic congestion, school overcrowding, loss of natural resources, decline of urban areas and conversion of agricultural lands. Finally, the commission was organized into five subcommittee working groups:

[1] *"A Liveable Florida for Today and Tomorrow, Florida's Growth Management Study Commission Final Report"--February 2001.*

- State, Regional and Local Roles
- Infrastructure
- Citizen Involvement
- Rural Policy
- Urban Revitalization.

In its final report entitled "A Liveable Florida for Today and Tomorrow," the Growth Management Study Commission set forth 89 recommendations for reforming Florida's growth management system. A summary of the major recommendations of the commission is as follows:

- Replace the current State Comprehensive Plan set forth in chapter 187, F.S., with a vision statement stating that the "State of Florida's highest priority is to achieve a diverse, healthy, vibrant and sustainable economy and quality of life which protects our natural resources and protects private property rights."[2]

- Developing a uniform fiscal impact analysis tool for evaluating the "true cost of new development." The final report also recommends the appointment of a 15-member commission to oversee the development of the model.

- Require that each local government adopt a financially feasible public school facilities element to reflect the integration of school board facilities, work programs, and the future land use element and capital improvement programs of the local government.[3] Requires that local governments shall ensure the availability of adequate public school facilities when considering the approval of plan amendments and rezoning that increase residential densities. Before a local government can deny a rezoning that increases density based on school capacity, the local school board must communicate to the local government that it has exhausted all reasonable options to provide adequate school facilities.

- Refocusing state review of local government comprehensive plan amendments to amendment that raise one or more "compelling state interests." These compelling state interests are limited to: natural resources of statewide significance; transportation systems and facilities of statewide significance; and disaster preparedness to reduce loss of life and property. Maps would be prepared which identify geographic areas that raise these compelling state interests.

- Establishment of Infrastructure Development Encouragement Area (IDEA) Priority Funding Areas where local governments would identify projects and areas that it wishes to promote. In turn, these areas and projects would receive certain incentives such as fast track permitting, state financial participation and priority in infrastructure development and waiver or reduction in development fees.

[2] *Id* at p. 10.
[3] *Id*. at p. 2

- Elimination and replacement of the Development of Regional Impact Program with a system of Regional Cooperation Agreements or Developments with Extra jurisdictional Impact to be negotiated by the eleven regional planning councils.

- Citizen participation provisions that enhance public notice, expand standing for certain "affected" owners of real property whose property is adjacent to a parcel of property, which is located in a neighboring jurisdiction and is the subject of a land use change, and provide a uniform process for challenging land development orders that are inconsistent with comprehensive plan amendments.

- Authorize incentives for an effective urban revitalization policy, including dedicated sources of revenues for "fix-it-first" backlog of infrastructure needs in targeted infill areas.[4]

- A Rural Lands Conservation Policy, including the public purchase of conservation and agricultural easements and the use of transferable density rights for rural property to be used for the implementation of clustered development in appropriate locations.

III. Effect of Proposed Changes:

The bill makes a number of changes to sections of the Local Government Comprehensive Planning Act that streamline comprehensive plan amendment review, provide enhanced notice and grant standing to substantially affected persons

The bill creates a new school educational facility planning process that requires local governments and school boards to adopt educational facilities plans and enter into an interlocal agreement requiring that school boards and local governments identify information they will use to determine whether school capacity is available to accommodate new development. When such capacity is not available, the appropriate local government must deny an application for a comprehensive plan amendment unless the applicant provides proportionate share mitigation to address the additional demand created by the development. The bill directs the Department of Community Affairs to develop a fiscal-impact-analysis model for evaluating the cost of infrastructure to support development.

The bill allows the Local Government Infrastructure Surtax and School Capital Outlay Surtax authorized by s. 212.055, F.S, to be imposed by supermajority vote of the respective governing boards.

The bill adds an elected school board member to the membership of each regional planning council.

The development of regional impact program is modified to clarify substantial deviation standards and to remove the acreage threshold for certain types of development; makes an annual reporting requirement biennial and requires the Department of Community Affairs to designate a

[4] *Id*. at. p.2

lead regional planning council where a development lies within the jurisdiction of multiple regional planning councils.

The bill exempts certain waterports from the Development-of-Regional-Impact review.

The bill appropriates $500,000 to fund the development of a fiscal-impact-analysis model and $500,000 to fund the Urban infill and Redevelopment Grant Program.

Section 1 amends s. 163.3174, F.S., to require that all local planning agencies include a district school board representative as a nonvoting or voting member.

Section 2 amends s. 163.3177, F.S., regarding required and optional comprehensive plan elements to:

- Require the coordination of the local comprehensive plans with the appropriate water management district's water supply plan.

- Exempt educational facilities elements from the limitation on the frequency of plan amendment submissions.

- Modify the intergovernmental coordination element criteria to state that the new chapter 163 provisions governing school facility planning govern the relationship between local governments and the local school board.

- Require, beginning October 1, 2002, that the potable water supply element to be based on data and analysis from the appropriate water management district's water supply plan.

Section 3 creates a new s. 163.31776, F.S., stating the contents of a Public Educational Facilities Element, and requiring certain high growth counties, defined by population and growth rate would be required to transmit their public facilities element to the Department of Community Affairs (DCA) no later than January 1, 2003. A local government must meet this deadline if:

a) the county where the local government is located has a population of 900,000 or more based on the 2000 census;
b) has a population equal to or more than 100,000 and fewer than 900,000, based on the 2000 census, and the county population has increased by more than 20 percent over the last 10 years; or
c) has a population of fewer than 100,000 and the county population has increased by 35 percent or more in the last ten years according to United States Census, if projected 5 year student growth is 1,000 or greater.

The Department of Education shall issue a report notifying the state land planning agency and each county and school district that meets the criteria required in this section on June 1 of each year and local governments must comply with the requirements within 18 months of being notified.

By January 1, 2007, remaining local governments who have not met the threshold, shall adopt, in cooperation with the applicable school district, a limited public educational facilities element.

Municipalities may adopt their own element or adopt the county plan. Certain municipalities that generate few students, have no public schools within their boundaries and are built out are exempt from the requirement. School boards and local governments are required to enter into an interlocal agreement, which establishes a process to develop coordinated, and consistent local government public educational facilities elements and district education facilities plan.

The interlocal agreement shall include a process for:

- Agreement on data on the amount, type and distribution of population growth and student enrollment.
- The coordination and sharing of information.
- Ensuring that school siting decisions are consistent with the local government comprehensive plan.
- Providing comments on adoption of each local government's public educational facilities element and educational facilities plan.
- Criteria for development of a methodology for determining if school capacity will be available, including district-wide level of service standards.
- Methodology for determining proportionate share mitigation.
- Dispute resolution between the school board and local government.

The public educational facilities element shall include:

- Strategies to address improvements to infrastructure, safety and community conditions.
- The provision of adequate infrastructure such as potable water, wastewater, drainage, and transportation, among others.
- The collocation of other public facilities such as parks, libraries and community centers with public schools.
- Use of public schools as emergency shelters.
- Consideration of existing capacity of schools in the review of comprehensive plan amendments and rezoning actions that increase intensity.
- Uniform methodology for determining proportionate share mitigation.

If a local government does not comply with the requirement to transmit a public educational facilities element or enter into an interlocal agreement with the school board, the local government may not amend its comprehensive plan until the public schools facility element is adopted. Failure to comply shall also result in sanctions imposed by the Administration Commission pursuant to s. 163.3185(11), for example, the withholding of revenue-sharing dollars.

Local governments that have adopted a public school element to implement voluntary school concurrency are not required to amend the public school element or intergovernmental coordination element to comply with the bill.

Section 4 creates a new section 163.31777, F.S., that requires public school capacity to be evaluated as part of the review process for plan amendments and rezoning actions that increase residential densities. School boards are required, as part of the review of a comprehensive plan amendment or rezoning, to provide the local government with a school capacity report. The school capacity report is to be based on the district education facilities plan adopted by the school board. The report must include information on the capacity and enrollment of affected schools, any proposed new public school facilities or improvements for affected schools and the expected date of availability of such facilities, and "available reasonable options" for providing school capacity to students generated if the rezoning or comprehensive plan amendment is approved. Finally, the available options shall include but are not limited to:

- School schedule modification
- School attendance zone modification
- School facility modification
- Creation of charter schools

Following the effective dates of the interlocal agreement and public educational facilities element and the levy of a 0.5 percent School Capital Outlay Surtax, the local government shall deny a request for a comprehensive plan amendment or rezoning that would increase the density of residential development allowed on the property subject to the comprehensive plan amendment or rezoning, if the school facility capacity will not be reasonably available at the time of projected school impacts. However, if the applicant for rezoning executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities, the application for rezoning or comprehensive plan amendment be approved. The school board's determination of school facility capacity constitutes competent substantial evidence to support the denial of the rezoning or comprehensive plan amendment.

Options for proportionate share mitigation must be established in the educational facilities plan and public educational facilities element. Appropriate mitigation options include: the contribution of land; construction of a public school facility; or the creation of mitigation banking based on the construction of a public school facility. To take advantage of proportionate share mitigation, the applicant and the local government must execute a binding development agreement pursuant to ss. 163.3220-163.3243, F.S. Local governments are required to credit the value of a proportionate share mitigation option toward any impact fee imposed for the same need on a dollar for dollar basis. The subsections requiring local governments to deny rezoning and comprehensive planning requests and the provisions regarding proportionate share mitigation does not take effect, however, until the local governments and the school board have entered into an interlocal agreement as provided for in the bill, the local government has adopted a public education facilities element which has been found to be in compliance, the school board has revised its district education facilities plan to comply with s. 235.185, F.S., and the half-cent school capital outlay surtax authorized by s. 212.055(6), F.S., or some other broad-based revenue source has been dedicated to the implementation of the school district work program.

Section 5 amends s. 163.3180, F.S., to exempt urban infill and redevelopment areas from concurrency requirements at the election of the local government where such a waiver does not adversely affect human health and welfare.

Section 6 amends s. 163.3184, F.S., to include an abutting property owner in the definition of affected persons. In addition, this section adds a cross reference to s. 163.31776, F.S., the requirement that local governments adopt public educational facilities plans, to the definition of "in compliance" so that a local government is not in compliance with local government comprehensive planning requirements unless they have satisfied the requirements of that section.

The section also streamlines the process used by the Department of Community Affairs to review comprehensive plan amendments to speed up the intergovernmental review of comprehensive plan amendments to require that commenting agencies must provide comments to the department within 30 days of DCA's receipt of the amendment. If the plan or plan amendment relates to the new public school facilities element, the department must send the amendment to the Office of Educational Facilities of the Commissioner of Education for review and comment. In addition, if the department is required or elects to review a proposed amendment, it must issue its report stating its objections, recommendations and comments within 60 days of its receipt of the amendment.

The section permits the department to delegate comprehensive plan amendment review to a regional planning council. Upon such delegation, a local government may elect to have its comprehensive plan amendments reviewed by the regional planning council rather than by the department.

Section 7 amends s. 163.3184, F.S, to authorize the department to publish copies of its notices of intent on the Internet in addition to legal notice type advertising. The section deletes existing language that required advertisements of the notice of intent to be no less than 2 columns wide by 10 inches long. This change will significantly reduce the department's advertising expenses. Finally, the section requires local governments to provide a sign-in form at the comprehensive plan transmittal and adoption hearing.

Section 8 amends s. 163.3187, F.S., to exempt a comprehensive plan amendment adopting a public educational facilities element from the twice a year limitation of the frequency in which a local government may amend its comprehensive plan.

Section 9 amends s. 163.3191, F.S., regarding the preparation by local governments of an Evaluation and Appraisal Report, to conform the requirement that local governments coordinate their comprehensive plans with those of school districts to conform to the new educational facilities planning requirements of the bill. The section also requires local governments whose jurisdiction is located within the coastal high hazard area to address whether any past reductions in density affects the property rights of residents in the event of redevelopment following a natural disaster or other type of redevelopment.

Section 10 creates s. 163.3198, F.S., to direct the Department of Community Affairs to develop a uniform fiscal-impact-analysis model ("model") for evaluating the cost of infrastructure to support development. The purpose of the model is to give local governments a tool they can use to determine the costs and benefits of new development. The model is to estimate the costs associated with the provision of schools; transportation facilities; water supply; sewer; storm water; solid waste and publicly provided telecommunications. Estimated revenues are to include all revenues attributable to the proposed development, which are used to construct, operate and

maintain the listed infrastructure. The bill provides for the creation of an advisory committee composed of three members to be appointed by the Governor, the Senate President and Speaker of the House of Representatives, respectively, to provide advise on the development of the model. The department is to select six communities in which to pilot the model. By February 1, 2003, the department is to report to the Governor, President of the Senate and Speaker of the House of Representatives a report on the results of the pilot project and recommendations for statewide implementation of the model. The model is not intended to serve as a replacement for concurrency.

Section 11 appropriates $500,000 to the Department of Community Affairs to implement the uniform fiscal analysis model.

Section 12 amends s. 186.504, F.S., to require that an elected school board member from the geographic area covered by the regional planning council be selected by the Florida School Board Association.

Section 13 amends s. 212.055, F.S., to allow the Local Government Infrastructure Surtax and School Capital Outlay Surtax to be imposed by supermajority vote of the respective governing boards.

Section 14 amends s. 235.002, F.S., modifying legislative intent language on the importance of sharing information regarding educational facilities between school boards and local governments.

Section 15 amends s. 235.15, F.S., regarding the education plan survey which school boards must prepare to require that the school district's survey must be submitted as part of the district educational facilities plan defined in s. 235.185, F.S. The section also deletes language, which required that the survey be based on capacity information reported in the Florida Inventory of School Houses.

Section 16 amends s. 235.175, F.S., regarding SMART schools to state legislative intent to require each school district to annually adopt an educational facilities plan that provides an integrated long-range facilities plan, including the survey of projected needs and the 5-year work program.

Section 17 amends s. 235.18, F.S., to require that each district school board must prepare its tentative district education facilities plan, as opposed to "facilities work plan" before adopting the capital outlay budget.

Section 18 amends s. 235.185, F.S., to set forth the requirements of the school district educational facilities plan in order to be consistent with the required content of the local government educational facilities element. The terms "adopted educational facilities plan," "district facilities work program" and "tentative educational facilities plan" are defined.

Section 19 amends s. 235.188, F.S., to provide conforming language on the district educational facilities plan.

Section 20 amends s. 235.19, F.S., regarding school site planning and selection to provide that site planning must be consistent with the local comprehensive plan and the school district educational facilities plan.

Section 21 amends s. 235.193, F.S., regarding the coordination of planning with local governments, requiring school boards to enter into an interlocal agreement that establishes a process for developing coordinated local government public educational facilities elements and a district educational facilities plan. If the school board fails to enter such an interlocal agreement, the state will withhold construction funding available pursuant to ss. 235.187, 235.216, 235.2195 and 235.42, F.S. In addition, the section requires school boards to issue school capacity reports to local governments as provided in s. 163.31777, F.S.

Section 22 repeals s. 235.194, F.S, which provided that school boards annually provide each local government within its jurisdiction with a general educational facilities report.

Sections 23, 24, and 25 amend ss. 235.218, 235.321, and 236.25 F.S., respectively, to provide conforming language referencing the school district educational facilities plan.

Section 26 amends s. 236.31, F.S., to authorize school boards to direct the county commission to call an election for approval of an ad valorem tax millage as authorized under s. 236.25 (6), F.S. Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever is earlier.

Section 27 amends s. 236.32, F.S., to substantially reword the section and provides procedures for holding and conducting school district millage elections.

Section 28 makes several changes to the Developments of Regional Impact (DRI) Program set forth in s. 380.06, F.S. These changes include the following: designation by DCA of a lead regional planning council in the case of a development that spans the jurisdictions of multiple regional planning councils; a reduction in the frequency of the reporting requirement on developers regarding the status of a DRI from annually to biennially; elimination of the acreage substantial deviation threshold for office development and commercial development; and provision that proposed changes to a development order that either individually or cumulatively with any previous change are less than the numerical thresholds defined for substantial deviations are considered not to be a substantial deviation.

This section also provides for an exemption from the Development-of-Regional-Impact review for certain waterports. This provision for exemption does not apply to any development at a waterport that is located within a county identified in s. 370.12(2)(f) , F.S., unless such county has adopted a manatee protection plan and submitted it for approval to the Fish and Wildlife Conservation Commission, or on October 1, 2002, whichever is earlier.

Section 29 amends s. 380.0651, F.S., to eliminate the DRI thresholds for office development and retail development that are based on acreage.

Section 30 creates an undesignated section of Florida Statutes, which requires counties over a population of 100,000 to negotiate and deliver a service-delivery interlocal agreement with all of

the municipalities within the county and the county school district by January 1, 2005. Each county and municipality must send a copy of the interlocal agreement to the Department of Community Affairs by February 15, 2005.

Section 31 appropriates $500,000 from the General Revenue Fund to the Department of Community Affairs to fund the Urban Infill and Redevelopment Assistance Grant Program established by s. 163.2523, F.S.

Section 32 states legislative intent that the integration of Florida's growth management system with the planning of public educational facilities is a matter of great public importance.

Section 33 requires the Legislative Committee on Intergovernmental Relations (LCIR) to conduct a study of existing bonding capacities of counties, municipalities, and school boards. The LCIR is required to report its findings and recommendations to the Governor and Legislature by January 1, 2002.

Section 34 prohibits a multi-county airport authority created as an independent special district from amending its development-of-regional-impact development order until after full compliance with commitments to acquire property from or otherwise mitigate property owners adversely affected by such development.

Section 35 provides that this act does not abridge or modify any vested or other right or any duty or obligation pursuant to any development order or agreement which is applicable to a development of regional impact on the effective date of this bill. It also provides governing procedures for marinas that are no longer required to undergo development-of-regional-impact review as a result of this bill.

Section 36 provides that except as otherwise expressly provided, the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill imposes a number of new planning requirements associated with water supply, educational facility planning and the negotiation and adoption of interlocal service agreements, that will require cities and counties to spend money in order to implement, the bill constitutes a mandate as defined in Article VIII, section 18(a):

> No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 …*the law requiring such expenditure is approved by two-thirds of the membership of each house of the legislature*…

For purposes of legislative application of Article VII, section 18, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Because the planning requirements associated with water supply, educational facility planning and the adoption of interlocal service agreements are phased in over a period of time, the total fiscal impact of these changes is difficult to calculate. However, based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate of in excess of $1,598,238 would be characterized as a mandate. As close to 400 municipalities and 67 counties will have to comply with these increased planning requirements, and assuming each unit of government spends $40,000 to comply with the requirements of the bill, the cost will likely exceed the threshold figure for significant impact.

As the bill does not provide an additional revenue source or an appropriation to fund compliance with its terms, the bill must have a two-third vote of the membership of each house of the legislature in order to require compliance of local governments. (This bill does make it easier for local governments to exercise existing taxing authority by allowing the Local Government Infrastructure Surtax and the School Capital Outlay Surtax to be imposed by a supermajority vote of the governing authority, but revenue from these sources may be used only for specific infrastructure needs.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill amends s. 212.055, F.S., to allow the Local Government Infrastructure Surtax and School Capital Outlay Surtax to be imposed by supermajority vote of the respective governing boards.

B. Private Sector Impact:

To the extent comprehensive plan amendments and rezonings that increase residential density are denied because of the lack of school capacity, property owners and developers may suffer adverse economic impacts from the educational facility planning requirements of the bill.

C. Government Sector Impact:

Cities, Counties and School Boards will incur significant planning, administrative and legal expenses in complying with the new planning requirements associated with water supply, and educational facility planning.

The Department of Community Affairs will incur expenses associated with the development of a fiscal impact analysis model. The bill appropriates $500,000 to fund the development of the model and testing of the model through pilot projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.