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/Senate Bills 310 and 380

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee, and Senators Constantine and Carlton

SUBJECT: Growth Management

DATE: April 4, 2001 REVISED: _____ _____ _____ _____

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

I. Summary:

The bill makes a number of changes to sections of the Local Government Comprehensive Planning and Land Development Regulation Act that streamline comprehensive plan amendment review, provide enhanced notice and grant standing to substantially affected persons. The bill converts the Sustainable Communities Program to a Livable Communities certification program. The bill also contains a Sustainable Rural Florida Program and permits the designation of certain lands as rural stewardship areas.

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. The bill requires that an elected school member sit on each regional planning council.

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 potentially expands the capacity to which local governments and school boards may issue bonds by removing limits currently set in law. 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.

This bill substantially amends sections 163.3174, 163.3177, 163.3180, 163.3181, 163.3184, 163.3187, 163.3191, 163.3215, 163.3244, 186.008, 186.504, 218.25, 235.002, 235.15,235.175, 235.18, 235.185, 235.188, 235.19, 235.193, 235.218, 235.231, 236.25, 380.06, and 380.0651; creates 163.31776, 163.31777, 163.3198, 163.3215, 163.32446, 236.255, 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.

Sustainable Communities Demonstration Program

The other exception to the process required by s. 163.3184, F.S., for the review of comprehensive plan amendments is authorized in the Sustainable Communities Demonstration Project created in 1996 by chapter 96-416, Laws of Florida. Section 163.3244, F. S., authorizes the designation of five local governments to participate in the project. The purpose of the project is to further six principles of sustainability: restoring key ecosystems; achieving a more clean, healthy environment; limiting urban sprawl; protecting wildlife and natural areas; advancing the efficient use of land and other resources; and creating quality communities and jobs.

The designation criteria of the program require that the local government has set an urban development boundary that will: 1) encourage urban infill and discourage sprawl; 2) assure protection of key natural areas and agricultural lands and 3) ensure the cost-efficient provision of public infrastructure and services. In addition, the department was to evaluate the extent to which the local government adopted programs within its comprehensive plan that further certain planning goals such as: promoting urban infill; providing low-income housing; supporting public transit; encouraging mixed-use development and promoting economic diversity while preserving rural areas and protecting the environment.

Communities receiving the sustainable communities designation are granted several types of regulatory relief. First, proposed comprehensive plan amendments within the urban growth boundary are exempt from state and regional review, including DCA's review of such amendments and issuance of objections, recommendations, and comments report or a notice of intent on proposed comprehensive plan amendments. Instead, a local government is able to adopt a proposed comprehensive plan amendment at a single adoption hearing. Affected persons may, however, file a petition for administrative hearing to challenge the compliance of an adopted comprehensive plan amendment using the same procedure employed for challenging small-scale amendments. Any affected person may file a petition for administrative hearing to challenge the compliance of the amendment with the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, s. 163.3161, et. seq., within 30 days of the local

government's adoption of the amendment. The local government's determination that the amendment is in compliance is presumed to be correct and will be sustained unless the petitioner shows by a preponderance of the evidence that the amendment is not in compliance with the act.

Second, developments within the urban growth boundary and outside the coastal high-hazard area could be exempt from Development of Regional Impact (DRI) review to the extent established in a designation agreement. DRI projects and amendments outside of the urban growth boundary and comprehensive plan amendments that would change the adopted urban development boundary, impact lands outside the urban development boundary, or impact lands within the coastal high-hazard area continue to be subject to state and regional review.

The vehicle for designating a sustainable agreement by DCA is a written designation agreement between DCA and the local government. The agreement must include: the basis of the designation, any conditions necessary to comply with s. 163.3244, F.S., procedures for the mitigation of extra jurisdictional impacts from DRIs where DRIs would be abolished or modified, and criteria for evaluating the success of the designation. Affected persons are authorized to petition for administrative review of a local government's compliance with the terms of the designation agreement.

After a competitive application process, DCA chose Boca Raton, Martin County, Ocala, Orlando, and Tampa/Hillsborough County for participation in the program. Designation agreements were negotiated with each of the communities which identified: planning projects that the local government agreed to undertake; whether the local government is delegated DRI review responsibilities; a list of evaluation indicators; and the responsibilities of DCA. Each of the local governments selected initially received $100,000 to assist in the implementation of the designation agreement. Since then, an additional $150,000 has been distributed between the communities.

The elimination of DCA review of proposed comprehensive plan amendments appears to have been very successful. The department only identified two amendments that they would have objected to if such amendments had been subject to state review. The City of Ocala was the designated community that adopted these amendments, and the background of the challenges is described under the discussion of the Ocala sustainable project.

Because of the reduced state oversight of comprehensive plan amendments, citizen enforcement of compliance with the Act takes on increased significance. In the case of the Ocala amendments, a citizen group came forward to challenge amendments viewed by some as inappropriate. However, the citizen group was deemed to not have adequate standing to challenge the comprehensive amendment in at least one of the cases. Accordingly, if the sustainable communities model is applied to more communities, it may be appropriate to adjust citizen standing requirements.

The second opportunity for designated communities to receive reduced oversight from DCA is in the review of DRIs. Under s. 163.3244(5)(b), F.S., designated communities within the urban growth boundary and outside the coastal high-hazard are exempt from DRI review to the extent established in the designation agreement. While Ocala and Orlando received delegation to review amendments to existing DRIs, Tampa/Hillsborough County were the only communities to

receive delegation to review both new DRIs and amendments to existing DRIs. One of the reasons for the success of the DRI delegation in Tampa/Hillsborough is that the communities have experienced staff with the technical expertise necessary to perform the delegated DRI review function.

According to department staff, the DRI delegations have worked well and have not generated concerns over local governments reviewing DRIs inappropriately. In fact, staff of DCA are disappointed that more of the designated communities chose not to seek the DRI review delegation.

As a potential model for growth management reform, the major strength of the Sustainable Communities Demonstration Project is the collaborative and constructive relationship created between DCA and participating local governments.

- State/Local Partnership: Perhaps the major success story of the demonstration project has been improvement in the relationship between DCA and the designated communities. The project allows for the formation of partnerships that create the opportunity for state and local government staff to work together to solve problems and promote positive changes.

- Reduction of State Oversight: One of the major successes of the demonstration project is that the reduction in state oversight of comprehensive plan amendments, DRI projects, and amendments to existing DRIs did not result in decisions by the local governments that DCA would have objected to but for the project. In fact, DCA found that local governments continued to act in a responsible manner in their approach to community planning even though state oversight was removed.

- Negotiated Agreements as a Tool: The designation agreements proved to have a benefit beyond a contractual statement of each party's responsibilities. The agreements enabled the local governments to shift their planning resources from regulatory compliance to results oriented projects. The agreements appeared to lead to a greater commitment from local city and county commissions to follow through on longer-term projects and to give local officials guidance on development proposals that were inconsistent with the designation agreements. Finally, the agreements enabled the creation of a partnership between DCA and the sustainable community that the participants viewed as more constructive than the traditional regulatory oversight role required by chapter 163, F.S.

- Design-Oriented Community Planning: The project encouraged a number of design oriented community planning initiatives such as the Orlando Naval Training Center Urban Design Plan that are being integrated into many local government's approaches to comprehensive planning. For example, while not required by its designation agreement, Hillsborough County is implementing a neighborhood level community planning process. In addition, the Florida Sustainable Communities Network has provided a forum for information sharing and dialogue on better community planning.

- Citizen Participation: Some of designated communities have created citizen participation processes that have resulted in outreach and participation by groups who have not

previously participated in the comprehensive planning process and lead to better communication between stakeholder groups.

- Leveraging of Technical Assistance Dollars: The Florida Sustainable Communities Network has provided a very effective means of providing low cost technical assistance and outreach to communities on best planning practices. The major benefit of the Network is that it has allowed all communities and not just designated communities to benefit from the demonstration project. The acquisition of the INDEX community indicator software provides members of the NETWORK with a tool to measure the outcomes of their planning efforts.

- Sustainability as an Organizing Principle: In implementing the demonstration project, DCA declined to define sustainability, but rather, to let each community define sustainability on their own terms. This approach had both advantages and disadvantages. Most communities felt that the lack of a top down definition allowed for experimentation at the local level and, for several communities, provided a framework for stakeholder participation in collaborative planning. The disadvantage of this approach is that it makes it more difficult to assess the effectiveness of the program across communities.

Judicial Review of Development Orders based on Consistency

A. Description of Current Process and Problems.

Section 163.3215, F.S., creates a civil court action for an aggrieved or adversely affected party to maintain an action for injunctive relief against a local government to prevent the local government from taking any action on a development order which: "materially alters the use or density or intensity of use on a particular piece of property that is not consistent with the comprehensive plan..." The definition of "an aggrieved or adversely affected party" who may maintain an action under this section differs from the definition of affected person under s. 163.3184(1), F.S. "Aggrieved or affected party" is defined as:

> any person or local government which will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection services, or environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.

Courts have construed this definition as providing standing for property owners adjacent to a proposed development but excluding groups of citizens with a general interest in a proposed development order. *Southwest Ranches Homeowner's Association v. Broward County*, 502 So.2d 931 (Fla. 4th DCA), rev. denied, 511 So.2d 99 (Fla. 1987). In addition, merely owning land or a business in the jurisdiction rendering the decision at issue or having an interest in how the decision might affect one's quality of life is insufficient to afford standing. *Florida Rock Properties v. Keyser*, 709 So. 2d 177 (Fla. 5th DCA 1998).

In order to maintain the action, the complaining party must first file a verified complaint with the local government whose actions are complained of describing the complaint and relief sought which must be filed no later than 30 days after the local government action has been taken. The local government must respond within 30 days after receiving the complaint and the lawsuit must be filed no later than 30 days after the expiration of the 30-day period in which the local government has to act.

1. *Certiorari vs. De Novo Review--Poulos v. Martin County*

Case law construing s. 163.3215, F.S., has limited the availability of the cause of action only to third party intervenors to the exclusion of landowners or developers who were the subject of the development order at issue. The Florida Supreme Court, in *Parker v. Leon County*, 627 So.2d 476 (Fla. 1993), held that a landowner denied approval of preliminary subdivision plats based on inconsistency with the local government comprehensive plan did not have a cause of action under the section. Instead, the landowners would have to exercise their common law right to petition for certiorari review in circuit court. *Id* at. p. 479.

However, the standard of review of actions brought under s. 163.3215, F.S., by third-party intervenors has been determined by the courts to be an original de novo review. In *Poulos v. Martin County*, 700 So.2d 163 (Fla. 4th DCA 1997), the court reasoned that a reading of section 163.3215 to:

> authorize the invocation of the circuit court's certiorari jurisdiction more than 30 days after the agency action being challenged would make the section unconstitutional.. . . . Accordingly, we hold that section 163.3215 does not provide for appellate review by the circuit court, but rather provides for an original de novo action. *Id* at p. 165-6

At the same time, a third-party may raise issues other than the consistency of a development order with the comprehensive plan through common law certiorari review. See *Education Development Center, Inc. v. Palm Beach County*, 721 So. 2d 1240, (Fla. 4th DCA 1998). Hence, a situation has been created by these cases where a third-party intervenor challenging a development order decision, has different remedies for different aspects of a particular local government decision.

2. *Relationship between review standard and Quasi-Judicial requirement for non-legislative land development decisions.*

In *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993), the Supreme Court opined that rezoning actions that have a limited impact on the public and can be characterized as policy applications rather than policy setting, are quasi-judicial decisions. As quasi-judicial decisions, review of the local government's action is reviewable by petition for certiorari and subject to strict scrutiny. In a quasi-judicial rezoning proceeding, the landowner has the burden of proving that the rezoning is consistent with the comprehensive plan and complies with the procedural requirements of the zoning order before the burden shifts to the local government to prove that maintaining the existing zoning accomplishes a legitimate public purpose. Id. at 476.

As a consequence of this decision, many local governments have changed the way they conduct zoning hearings so that a factual record of their decision-making is created. Meetings of the local governing body where quasi-judicial proceedings have come to resemble court proceedings where witnesses are sworn and expert testimony is elicited. This type of proceeding is not very user friendly for individuals who wish to express their opinion in a particular rezoning or development order matter. In addition, because s. 163.3215, F.S., has been interpreted as requiring a de novo rather than certiorari review, an applicant for a development order and third-party challengers face the prospect of having to develop a factual record twice, once before the local government and a second time before the circuit judge conducting the de novo proceeding.

Rural Land Issues

Section 163.3177(11)(b), F.S., provides that local governments in their comprehensive plans may provide planning processes which:

> allow for the conversion of rural lands to other uses where appropriate….through the application of innovative and flexible planning, and development strategies and creative land planning techniques, which may include, but are not limited to, urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, mixed use development and sector planning.

Local governments are currently employing a number of different techniques directed at rural lands preservation. In March of 2001, the Legislative Committee on Intergovernmental Relations conducted a survey on rural lands policy. The survey asked whether the local government has enacted policies or programs to encourage rural or agricultural land preservation in the local comprehensive plan. Initially, 33 of 67 counties responded, and 82% of those counties responding identified such policies. While many of these local governments have statements in their comprehensive plan supporting rural lands preservation, other local governments identified specific incentive-based policies to support rural lands preservation. For example, Palm Beach County has a land acquisition program that leases the land acquired back to farmers, a transferable development rights program for environmentally sensitive and agricultural lands, clustered development options with increases in density by right on agricultural lands; and an agricultural economic development program. And in Highlands County, the county has employed TDRs where 100 acres of agricultural land was placed under a conservation easement in exchange for 20 development units that were purchased by a developer and clustered on another site. While over half of the responding counties report that their county's comprehensive plan allows for the used of transferable development rights, very few of the counties have actually used these techniques.

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.

Local Government Revenue Sharing

Section 218.25, F.S., limits the amount of revenue sharing dollars that a local government may use to assign pledge, or set aside as a trust for the payment of principle or interest on bond, tax anticipation notes certificates and or any other form of indebtedness to the guaranteed entitlement received from the state. While cities and counties receive revenue in excess of this guaranteed entitlement, this money cannot be pledged. The guaranteed entitlement is defined as the minimum amount established in s. 218.12(6), F.S., that the state must pay to eligible cities and counties.

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 districtwide 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:

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

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

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.

- 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.

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

- 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 converts the Sustainable Communities Program to a Livable Communities certification program. The bill also contains a sustainable rural Florida Program and allows the designation of certain lands as rural stewardship areas.

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

The bill potentially expands the capacity to which local governments and school boards may issue bonds by removing limits currently set in law. 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-analysis model and $500,000 to fund the Urban infill and Redevelopment Grant Program.

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

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

Section 2 amends s. 163.3777, 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.

- 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.

- Modify language regarding the use of innovative planning techniques to include a process where a local government may designate agricultural land as a rural stewardship area within which planning and economic incentives are applied to encourage implementation of innovative and flexible planning and development strategies. The bill allows for the use of transferable rural land use credits under certain circumstances and provides for other incentives to encourage property owners to enter rural stewardship agreements. The amount of credits assigned must correspond to the 25-year or greater population or projected build out of the rural land stewardship area. In addition, the bill states that owners of lands within rural land stewardship areas should be provided with incentives to enter into rural land stewardship agreements with state agencies, water management districts and local governments to achieve conservation objections. These incentives could include payment for land management services, recreation leases, long-term permits for the consumptive use of water and transferable mitigation credits.

Section 3 creates a new s. 163.31776, F.S., stating the contents of a Public Educational Facilities Element, and requiring all local governments to adopt a public educational facilities element by January 1, 2007. 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 earlier deadline if: a) the county where the local government is located has a population of 1 million or more based on the 2000 census; b) has a population equal to or more than 100,000 and fewer than 1 million, based on the 2000 census, and the county population has increased by more than 20 percent over the last 10 years; and c) has a population of fewer than 100,000 and the county population has increased by 40 percent or more in the last ten years according to United States Census.

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, 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 may not be disapproved based on school capacity. 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.

Section 5 exempts 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. 163.3181, F.S., regarding public participation in the comprehensive plan process, to require that public notices must identify in plain language the amendments or applications under consideration, and that notices of public hearings must be posted on site through the use of conspicuous signs. In addition, notice by publication and to property owners, as required by law, must occur simultaneously with the filing of an application for a development permit. The applicant shall bear the costs of any required signs. Local governments must adopt public participation procedures that encourage early public participation in land use matters. These procedures must include a requirement that applicants for land development approvals hold a community meeting if the applicant's project exceeds a size or impact threshold established by the local government.

Section 7 amends s. 163.3184, F.S., to include persons who are substantially affected by the amendment. This language significantly broadens citizen standing to potentially include individuals who do not reside within the jurisdiction proposing the comprehensive plan amendment and to individuals whose substantial interests are affected but who did not provide

oral or written comments to the local government. 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 8 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 9 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 10 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 11 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; stormwater; 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 12 appropriates $500,000 to the Department of Community Affairs to implement the uniform fiscal analysis model.

Section 13 amends section 163.3215, F.S., regarding legal actions to challenge the consistency of development orders with comprehensive plans. The section eliminates the verified pleading requirement; provides that adversely affected parties include the owner, developer or applicant for a development order, in addition to an adversely affected third party; and provides that challenges to the consistency of development orders with land development regulations as well as the consistency of development orders with the comprehensive plan may be brought in the same action. The section creates an optional special master process for quasi-judicial proceedings. If a local government adopts by ordinance the special master process, the standard of judicial review for the local government's decision is by a petition for certiorari. In contrast, if the local government chooses not to adopt the special master process, judicial review of the local government's decision on the development order is through a de novo proceeding.

The bill also requires that the special master have at least 5 years experience in land use law and states the required components of the special master process. These components include: a minimum of a 90-day period for the parties to prepare and present their case; a minimum of a 60-day discovery period; and the special master must be granted the authority to issue subpoenas and compel entry upon land.

Section 14 amends s. 163.3244, F.S., to open up eligibility for local governments to participate in the sustainable communities program, renamed the "livable communities." The five existing sustainable communities are automatically designated livable communities for an initial five-year period. The bill removes the automatic repeal of the sustainable communities program and converts the sustainable communities program from a pilot project limiting the participation to five communities, to a livable communities program open to all local governments that meet the eligibility criteria. The eligibility criteria of the sustainable communities program are retained. In order to be eligible to participate in the program, a local government must demonstrate:

- That it has set an urban development boundary;
- That the local government has adopted programs in its local comprehensive plan or land development regulations which promote certain best planning practices; for example, the promotion of infill and redevelopment within the urban development boundary and mixed use development;
- That the local government has the support of its regional planning council governing board in favor of the designation.

Once the local government is determined to have met the eligibility criteria, the department and the local government are required to enter a certification agreement that lists the planning projects the local government agrees to undertake as well as whether the local government seeks delegation of the development of regional impact (DRI) process. If the local government seeks DRI delegation, the agreement must include procedures for the mitigation of extrajurisdictional impacts.

Upon execution of the livable communities certification agreement, the local government may adopt comprehensive plan amendments within the urban growth boundary without review of the proposed amendment by the department, other state agencies and the appropriate regional planning council. Affected persons may challenge the compliance of an adopted plan amendment using the same procedure employed to challenge small-scale amendments. However, plan amendments that change the urban development boundary, affect lands outside of the urban development boundary or affect lands within the coastal high hazard area continue to receive state and regional review pursuant to ss. 163.3184 and 163.3187, F.S.

The Executive Office of the Governor is directed to work with the Department of Community Affairs and other departments to set priorities for funding within areas certified under the livable communities program, including the following programs: education; environmental protection and restoration programs; transportation improvements; sewage treatment system improvements; and other programs that will direct development within the urban development boundary.

Communities certified under the livable communities program are required to provide a yearly status report to the department, which identifies plan amendments adopted during the year, updates the future land use map, and verifies compliance with the certification agreement.

A livable communities certification shall continue for a period of five years and may be renewed for an additional five years by the department if the local government is complying with the terms of its agreement.

Section 15 creates a new s. 163.32446, F.S., establishing a Sustainable Rural Communities Demonstration Project. The section authorizes the department to designate up to five local governments to participate in the program. This section is complementary to the language authorizing Rural Stewardship Areas pursuant to s. 163.3177(11), F.S. Hence, participants in the sustainable rural communities demonstration project must have established a rural land stewardship area. Once designated, executive agencies are required to work with the rural community to promote job creation, sewage-treatment system improvements, and prioritized funding for other programs that will assist local governments in creating self-sustaining rural communities. Designated communities are required to report each year to the Legislative Committee on Intergovernmental Relations and, beginning March 1, 2002, the department is required to submit a yearly report to the legislature.

Section 16 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 17 amends s. 186.008, F.S., to require the secretary of each affected state agency to, on or before September 1 of each odd-numbered year, suggest changes to the State Comprehensive Plan to the Governor, President of the Senate and Speaker of the House of Representatives.

Section 18 amends s. 218.25, F.S., to increase the amount of revenue-sharing dollars that counties may issue bonded indebtedness against, provided the indebtedness is used to finance infrastructure improvements for the types of infrastructure for which concurrency is required and is used within a designated urban service area.

Section 19 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 20 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 21 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 22 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 23 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 24 amends s. 235.188, F.S., to provide conforming language on the district educational facilities plan.

Section 25 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 26 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 27 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.

Section 28 and Section 29 and **Section 30** amend ss. 235.218, 235.321, and 236.25 F.S., respectively, to provide conforming language referencing the school district educational facilities plan.

Section 31 creates the School District Guaranty Program, s. 236.255, F.S., to enhance the borrowing capacity of school districts to the extend of their millage for the purpose of issuing certificates of participation. School districts may request the financial backing of the state or a county, which shall be limited to the amounts in excess of 50 percent of the school board's authorized millage**.**

Section 32 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.

Section 33 amends s. 380.0651, F.S., to eliminate the DRI thresholds for office development and retail development that are based on acreage.

Section 34 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 35 requires the Governor to report to the President of the Senate and the Speaker of the House on his progress in identifying "compelling state interests" for purposes of state review of comprehensive plan amendments.

Section 36 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 37 states legislative intent that the integration of Florida's of Florida's growth management system with the planning of public educational facilities is a matter of great public importance.

Section 38 provides that 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 appropriations 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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

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.