

# 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/SB 1464

SPONSOR: Comprehensive Planning, Local & Military Affairs Committee and Senator Constantine

SUBJECT: Growth Management

DATE: February 26, 2002      REVISED: \_\_\_\_\_

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

## I. Summary:

The bill creates a Local Government Comprehensive Planning Certification Program to be administered by the Department of Community Affairs (DCA). The purpose of the program is to reward local governments who: 1) identify a geographic area for certification within which they commit to directing growth; 2) have a demonstrated record of effectively adopting, implementing, and enforcing their comprehensive plan; and 3) have a commitment to implement exemplary planning practices; with less state and regional oversight of the comprehensive plan amendment process. Certification areas must be compact, contiguous, appropriate for urban growth and development and include areas within which public infrastructure is existing or planned within a 10-year time-frame. The bill contains eligibility criteria, requires the execution of a certification agreement, and provides for the revocation of the certification if the local government does not substantially comply with the agreement.

Upon certification, comprehensive plan amendments for lands within the boundaries of the certification area will be exempt from state and regional review. The bill provides for third party challenges to adopted comprehensive plan amendments and to challenge the compliance of the local government with the certification agreement.

The bill provides for state and regional review of certain types of comprehensive amendments to be retained to the state, even when the amendment relates to lands within the certification area. These amendments include plan amendments to change the boundaries of the certification area, propose a rural land stewardship area, propose an optional sector plan, propose a school facilities element, are based on an evaluation and appraisal report, impact lands outside of the certification boundary, implement new statutory requirements, or increase hurricane evacuation times or the need for additional hurricane shelters.

The bill requires DCA to review a local government's certification as part of the evaluation and appraisal process and to renew or revoke the certification within one year of deadline for the local government to adopt comprehensive plan amendments based on that review. The bill requires DCA to submit biennial reports to the Governor, the President of the Senate and the Speaker of the House of Representatives on the progress of the program and requires the Office of Program Policy Analysis and Accountability to evaluate the program and submit a report to the Governor and Legislature by December 1, 2007.

The bill requires local governments with areas within the coastal high hazard area to address certain issues concerning redevelopment following a natural disaster in their evaluation and appraisal report.

This bill creates a new section 163.3246 and amends section.163.3191 of the Florida Statutes.

## **II. Present Situation:**

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, F.S., 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 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 local 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 in 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.

#### *The Sustainable Communities Demonstration Project*

The 1996 Florida Legislature enacted the Sustainable Communities Demonstration Project, Chapter 96-416, Laws of Florida, to test a more flexible approach to local government comprehensive planning. The stated intent of the legislation in creating the program is to further six broad principles of sustainability: 1) restoring key ecosystems; 2) achieving a more clean, healthier environment; 3) limiting urban sprawl; 4) protecting wildlife and natural areas; 5) advancing the efficient use of land and other resources; and 6) creating quality communities and jobs. Section 163.3244, F.S., authorized DCA to designate up to five local governments to participate in the program. Three of the five local governments were to be located within the boundaries, at least partially, of the South Florida Water Management District.

In selecting the five local governments to participate in the program, DCA is directed to: assure that the local government in question has set an urban development boundary, consider the extent to which the local government has the support of its regional planning council governing board in favor of the designation and consider the extent to which the local government has adopted good planning practices in its local government comprehensive plan or land development regulations. These positive planning programs or practices are identified as those which:

1. Promote infill development and redevelopment, including prioritized and timely permitting processes to promote such development;
2. Promote the development of low and very-low income housing or specialized housing to assist elders and the disabled;

3. Achieve effective intergovernmental coordination;
4. Promote economic diversity and growth while encouraging the retention of rural character and the protection and restoration of the environment;
5. Provide and maintain public urban and rural open space and recreational opportunities;
6. Manage transportation and land uses to support public transit and promote opportunities for pedestrian and nonmotorized transportation;
7. Use urban design principles to foster individual community identity, create a sense of place, and promote pedestrian-oriented safe neighborhoods and town centers;
8. Redevelop blighted areas;
9. Improve disaster preparedness programs and the ability to protect lives and property, especially in coastal high-hazard areas;
10. Encourage mixed-use development;
11. Demonstrate financial and administrative capabilities to implement the designation; and
12. Demonstrate a record of effectively adopting, implementing, and enforcing its comprehensive plan.

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, F.S., 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.

#### *Boca Raton*

The Boca Raton designation agreement focuses on planning projects related to economic development, urban infill and redevelopment, emergency preparedness, and neighborhood preservation. The city committed to the preparation of a mixed-use zoning ordinance to promote the preservation, development or redevelopment of specific residential, commercial and industrial areas. In addition, the city agreed to prepare and implement redevelopment and emergency management plans to define post disaster redevelopment. Finally, the city agreed to support the Eastward Ho! Initiative and to focus on the redevelopment of the North Federal Highway.

#### *Martin County*

Martin County agreed to undertake a public participation process that was to result in a "Visioning Plan." The purpose of the citizen participation process was to review alternative future scenarios and to reach consensus on the desired goals and strategies that result in a Sustainable Martin County by the year 2020. In addition, Martin County agreed to develop a "Martin House" to illustrate sustainable housing design and complete and adopt a hazard mitigation plan.

The Vision Plan map depicts desired locations and types of development through the year 2020 and identifies twenty key principles to serve as indicators of progress for the plan. For each of these principles, the plan includes indicators for measuring whether the principle is achieved. For example, Principle 5 of the plan is to "Encourage compact, mixed-use residential, commercial, institutional pedestrian-oriented development." The indicators identified to measure achievement of the principle include: a) Percentage of mixed-use land use in CRA's (single family, multifamily, commercial); b) Increase in areas developed in mixed-use; and c) Distance to neighborhood stores.

Martin County elected to retain the state oversight role over DRIs and asked DCA to informally review its proposed comprehensive plan amendments.

### *Ocala*

The boundary for the City of Ocala's Sustainable Community is that portion of the area described as the City's Potable Water and Sanitary Sewer Urban Service Area in the City's Comprehensive Plan. The city agreed to undertake specific projects such as: developing green space within the urban area; using urban design principles to foster individual identity and promote pedestrian oriented safe neighborhoods; promote low income housing; and provide infrastructure for, and otherwise encourage, urban infill and redevelopment.

Unlike the agreements with Boca Raton and Martin County, the City of Ocala accepted the DRI review exemption afforded by the Sustainable Communities Program. Amendments to existing DRIs and Florida Community Developments (FQDs) within the Urban Development Boundary were to be subject to a revised review process to be developed and implemented by the city. In contrast, new DRIs and FQDs were to remain subject to state review pursuant to ss. 380.06 and 380.061, F.S

The designation agreement lists evaluation criteria for the Ocala project as the extent to which the project increases the: 1) Amount of development occurring within the Community Redevelopment Area; 2) Amount of transit ridership; 3) Acres of city park space acquired or enhanced; 4) Number of infrastructure improvements made; 5) Number of affordable housing units provided; 6) Interlocal agreements in Urban Service Area; 7) Total recycled water used, 8) Recycling rate; 9) Net job rate; and, 10) Number of flood problem areas corrected.

Two amendments to the city's future land use map within the designation area have been challenged since the designation. One of these amendments was challenged by a third party in the case of *Shady Historic and Scenic Trails Association, Inc. v. City of Ocala*, DOAH Case No. 98-5019GM (Recommended Order July 28, 2000). In this case, a citizen's group challenged the change in land use designation of a 40-acre piece of property from low-density residential to public buildings and facilities. While the hearing officer upheld the amendment on the grounds that the petitioner lacked standing to challenge the amendment, the hearing officer rejected the petitioner's argument that the amendment should be evaluated against sustainability principles, finding that: "The six broad principles pertain to demonstration project goals, and it does not appear that they were intended to be additional criteria for compliance determinations."

In the second case, DCA formally intervened, because of concerns about sprawl, in a challenge by the same citizen's group over a comprehensive plan amendment that would allow the conversion of the Red Oak Farm from low density residential to DRI or near DRI scale development. That case is currently held in abeyance at the Division of Administrative Hearings.

In addition, DCA, at the request of the city, has been involved with the Heath Brook DRI. This request was seen by DCA and the city as a product of the partnership relationship created by the project. Although the location of the development is outside the urban development boundary, the city specifically asked DCA to review the proposed development plan against characteristics of sustainable development outlined in DCA's publication, Best Development Practices. The



proposed development is located in a high recharge area of the Floridan Aquifer and will create significant traffic effects on State Road 200.

### *Orlando*

The Orlando Sustainable Community is based on six areas of commitment: citizen participation, a sustainable housing demonstration project, environmental issues, light rail transit station area planning, economic development and major sustainability projects. The hallmark of the Orlando designation is sustainability projects including: the Southeast Orlando Development Plan, the Orlando Naval Training Center Urban Design and Transportation Plan, the Parramore Heritage Renovation Project, the Sustainable Neighborhood Project, and the City of Orlando Evaluation and Appraisal Report. Each of these projects was intended to incorporate sustainability ideals and new urbanism concepts into development and redevelopment proposals.

For example, the Southeast Orlando Sector Plan focuses on incorporating sustainability practices into a plan for the development of a 19,000-acre greenfield area adjacent to the Orlando International Airport. The city is creating incentives based on DCA's "Best Development Practices, Doing the Right Thing and Making Money at the Same Time," for environmental protection, mixed use, increased density, an interconnected road network, and the provision of schools, parks and civic uses in the planning area. In addition, the Sector Plan provides for the development of a Primary Conservation Network that preserves an interconnected system of wetlands, uplands, and wildlife corridors. This effort required implementing an ecosystem planning approach requiring coordination with the South Florida Water Management District, the Departments of Community Affairs and Environmental Protection and the Army Corps of Engineers.

In contrast, the Parramore Heritage Area sustainability project involves a major redevelopment initiative in a distressed urban neighborhood. In June 1999, the city approved a five-year action plan for the Parramore Heritage Area to increase public safety, create a community school, increase economic development, and improve housing and housing opportunities.

The success of the Orlando designation agreement is to be measured by progress in achieving a set of citywide indicators that include: land use, transportation, economic, public safety, population and resource based indicators. In addition, project specific indicators are provided for the Southeast Orlando Development ("Sector") Plan, Orlando Naval Training Center Area and Parramore Heritage Renovation Area projects.

While Orlando committed to developing a revised DRI review process to be submitted to DCA for review by July 1, 1998, Orlando never assumed a full delegation of DRI review from DCA. Rather, Orlando only assumed the limited responsibility for processing Notices of Changes related to existing DRIs.

### *Tampa/Hillsborough*

The City of Tampa and Hillsborough County represent the only joint city/county designation as a sustainable community. The Urban Development Boundary for purpose of this designation was defined as the adopted Urban Service Area of the City of Tampa along with that portion of the

adopted Urban Service Area of Hillsborough County that extends along I-75 a west county area and north of the Alafia River. In the designation agreement, Tampa and Hillsborough County committed to: 1) implement strategies to encourage infill development within the Urban Development Boundary; 2) provide 1,500 affordable housing units; 3) create a Sustainable Communities Advisory Committee; 4) develop an integrated environmental regulatory and permitting team with state, regional and local agencies for streamlining environmental permitting and implement principles of ecosystem management; 5) implement a greenway corridor plan; 6) implement trolley service between downtown Tampa and Ybor City; 7) encourage development in the Brandon core by implementing road improvements and developing a town center concept; 8) revitalize areas in need or redevelopment such as the Tampa Enterprise Community and areas adjacent to the University of South Florida; 9) incorporate DCA's Best Development Practices; 10) develop economic revitalization projects within the Central Business District; and, 11) adopt a Post Disaster Redevelopment Plan for the City of Tampa.

The Tampa/Hillsborough County Sustainable Community is the only community to assume full responsibility for DRI review within its adopted Urban Service Boundary.

Evaluation criteria by which the Tampa/Hillsborough County Sustainable Communities Project is to be measured include: amount of development occurring within and outside the Urban Development Boundary; number of affordable housing units provided within and outside the Urban Development Boundary; areas of natural areas preserved; transit ridership; amount of infill within distressed areas; total recycled water used; number of disaster mitigation projects completed; and net business start ups, among others.

The Sustainable Communities Demonstration Project afforded local governments two opportunities to receive reduced state oversight from DCA. First, comprehensive plan amendments within the designated urban boundary and outside the coastal high hazard area are no longer reviewed by DCA. Second, designated communities could seek delegation of DRI review. 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.

The Sustainable Communities Program sunset on June 30, 2001. Since the expiration of the program, the Department of Community Affairs has assumed the responsibility for reviewing all comprehensive plan amendments proposed by the five sustainable communities, including amendments occurring within their adopted urban development boundary.

### III. Effect of Proposed Changes:

**Section 1** of the bill creates a Local Government Comprehensive Planning Certification Program to be administered by the Department of Community Affairs. The purpose of the program is to create a certification process for local governments who have a demonstrated record of implementing and enforcing their comprehensive plan, display demonstrated technical planning expertise and express a commitment to implement exemplary planning practices in exchange for reduced state oversight of comprehensive plan amendments.

In order to be eligible for the program, the local government or combination of local governments must adopt a certification boundary that includes areas that are contiguous, compact and appropriate for urban growth and development and for which infrastructure is available or planned within a 10-year planning time frame.

Subsection (2) contains eligibility requirements for local government participation in the program. In order to be eligible, the local government must:

- Demonstrate a record of effectively adopting, implementing and enforcing its comprehensive plan;
- Demonstrate technical, financial and administrative expertise to implement the provisions of Part II of chapter 163 without state oversight;
- Obtain comments from the state and regional review agencies regarding the appropriateness of the proposed certification;

- Hold at least one public hearing soliciting public input concerning the local government's proposal for certification; and
- Demonstrate that it has adopted programs in its local comprehensive plan and land development regulations that promote: infill development; affordable housing; intergovernmental coordination; economic diversity; public urban and rural open space and recreational opportunities; revitalization of blighted areas; adoption of a local mitigation strategy to address disaster preparedness; mixed-use development; protection of key natural areas and agricultural lands; cost-efficient provision of public infrastructure.

Subsection (3) provides that lands within areas of critical state concern cannot be included in a certification area.

Subsection (4) provides that a local government or group of local governments seeking certification must submit an application to the Department of Community Affairs that includes a demonstration that the area to be certified meets the eligibility criteria, and includes copies of the applicable local government comprehensive plan, land development regulations, interlocal agreements and other relevant information. Upon receipt of a complete application, DCA must provide the local government with an initial response within 90 days of receipt of the application.

Subsection (5) specifies what must be included in a certification agreement and provides that the department's certification shall be considered final agency action subject to challenge under s. 120.569, F.S.

The agreement must include the following components:

- the basis for certification;
- the boundary of the certification area, which is to include areas that are contiguous, compact and appropriate for urban growth and development within a 10-year planning time-frame, that is appropriate for urban growth and where public infrastructure is existing or planned. The certification area must be adopted as part of the local government's comprehensive plan.
- a demonstration that the capital improvements plan governing the certified area is updated on an annual basis;
- a visioning plan or a schedule for the development of a visioning plan;
- a description of baseline conditions related to the evaluation criteria in paragraph (g) in the certified area;
- a work program setting forth specific planning strategies and projects which will be undertaken to achieve improvement in the baseline conditions as measured by the criteria identified in paragraph (g);

- criteria to evaluate the effectiveness of the certification process in achieving the community development goals for the certification area including:
  1. Measuring the compactness of growth, expressed as the ratio between population growth and land consumed;
  2. Increasing residential density and intensities of use;
  3. Measuring and reducing vehicle miles traveled; and increasing the interconnectedness of the street system, pedestrian access and mass transit;
  4. Measuring the balance between the location of jobs and housing;
  5. Improving the housing mix within the certification area, including the provision of mixed-use neighborhoods, affordable housing, and the creation of an affordable housing program if such a program is not already in place;
  6. Promoting mixed use developments as an alternative to single purpose centers;
  7. Promoting clustered development with dedicated open space;
  8. Linking commercial, educational, and recreational uses directly to residential growth;
  9. Reducing per capita water and energy consumption;
  10. Prioritizing environmental features to be protected and adopting measures or programs to protect identified features;
  11. Reducing hurricane shelter deficits and evacuation times and implementing the adopted mitigation strategies;
  12. Improving coordination between the local government and school board.
- a commitment to change any land development regulations that restrict compact development and adopt alternative design codes that encourage desirable densities and intensities of use and patterns of compact development identified in the agreement;
- a plan for increasing citizen participation in comprehensive planning and land use decision-making which includes outreach to neighborhood and civic associations through community planning initiatives;
- a demonstration that the intergovernmental coordination element of the local government's comprehensive plan includes joint processes for coordination between the school board and local government pursuant to s. 163.3177(6)(h)2. and other requirements of law;
- a method of addressing the extrajurisdictional effects of development within the certified area, that is integrated by amendment into the intergovernmental coordination element of the local government comprehensive plan;
- a requirement for the annual reporting to the department of plan amendments adopted during the year, and the progress of the local government in meeting the terms and conditions of the certification agreement. Prior to the deadline for the annual report, the local government must hold a public hearing soliciting public input on the progress of the local government in satisfying the terms of the certification agreement;

- an expiration date that is no later than 10 years after execution of the agreement.

Subsection (6) limits the number of certifications that the department may grant in a given fiscal year to 8. In addition, the department is granted rulemaking authority to adopt procedural rules governing the application and review of proposed certifications.

Subsection (7) requires the department to revoke a local government's certification if it determines it is not substantially complying with the terms of its agreement.

Subsection (8) allows an affected person, as defined in s. 163.3184(1), F.S., to file a petition for administrative hearing alleging that the local government is not in substantial compliance with its certification agreement. The petition must be filed within 30 days of the annual public hearing that a local government receiving the certification is required to hold pursuant to paragraph (5)(l).

Subsection (9) provides that, upon certification, all comprehensive plan amendments associated with the area certified are adopted without state and regional review. However, affected persons, as defined by s. 163.3194(1)(a), F.S., may file a petition for administrative review challenging the adopted plan amendment following the procedure for challenging a small-scale amendment set forth in s. 163.3187(3)(a), F.S.

In addition, several types of plan amendments still require state and regional review even if they apply to land within the certification area. These amendments include plan amendments that:

- change the boundaries of the certification area;
- propose a school facilities element;
- update a comprehensive plan based on an evaluation and appraisal report;
- impact lands outside of the certification boundary;
- implement new statutory requirements that require specific comprehensive plan amendments; and
- increase hurricane evacuation times or the need for shelter capacity on lands within the coastal high hazard area.

Subsection (10) requires the department to review a local government's certification as part of the evaluation and appraisal process. Within 1 year after the deadline for the local government to update its comprehensive plan based on the evaluation and appraisal report, the department shall renew or revoke the certification. The local government's failure to timely adopt the evaluation and appraisal report, or comprehensive plan amendments based on the report is a cause for revoking the certification.

Subsection (11) requires the department to submit a report by July 1 of each odd-numbered year to the Governor, the President of the Senate, and the Speaker of the House of Representatives, evaluating the effectiveness of the certification program and including suggested legislative changes.

Subsection (12) requires the Office of Program Policy Analysis and Government Accountability shall prepare a report evaluating the certification program, which shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representative by December 1, 2007.

**Section 2** of the bill requires local government jurisdictions that include coastal high-hazard areas to address, in their evaluation and appraisal report, certain issues regarding redevelopment after a natural disaster, including whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs.

**Section 3** provides that the bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

D. Tax/Fee Issues:

None.

E. Private Sector Impact:

The bill will have the effect of reducing the time necessary to adopt comprehensive plan amendments within certified areas.

F. Government Sector Impact:

The bill will streamline the comprehensive plan amendment process within a certification area, which will reduce the administrative cost and time associated with reviewing and adopting such plan amendments both by local governments and the Department of Community Affairs.

#### **VI. Technical Deficiencies:**

None.



**VII. Related Issues:**

None.

**VII. Amendments:**

None.

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

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