By the Committee on Comprehensive Planning, Local and Military Affairs; and Senator Clary

316-2335-02

A bill to be entitled

An act relating to growth management; amending s. 163.3177, F.S.; revising provisions governing regulation of intensity of use; requiring certain local governments to prepare an inventory of service-delivery interlocal agreements; requiring local governments to provide the Legislature with recommendations regarding annexation; amending s. 163.3180, F.S.; providing for the waiver of concurrency requirements; amending s. 163.3184, F.S.; revising definitions; revising provisions governing the process for adopting comprehensive plans and plan amendments; amending s. 380.04, F.S.; revising the definition of "development" with regard to operations that do not involve development to include federal interstate highways and the transmission of electricity; amending s. 380.06, F.S., relating to developments of regional impact; removing a rebuttable presumption with respect to application of the statewide guidelines and standards and revising the fixed thresholds; providing for designation of a lead regional planning council; providing for submission of biennial, rather than annual, reports by the developer; authorizing submission of a letter, rather than a report, under certain circumstances; providing for amendment of development orders with respect to report frequency; revising provisions governing

substantial deviation standards for developments of regional impact; providing that an extension of the date of buildout of less than 6 years is not a substantial deviation; providing that certain renovation or redevelopment of a previously approved development of regional impact is not a substantial deviation; providing a statutory exemption from the development-of-regional-impact process for petroleum storage facilities and certain renovation or redevelopment; amending s. 380.0651, F.S.; revising the guidelines and standards for office development, and retail and service development; changing certain thresholds for multi-use development; providing definitions relevant to determining whether two or more developments may be aggregated and treated as a single development; providing application with respect to developments that have received a development-of-regional-impact development order or that have an application for development approval or notification of proposed change pending; creating s. 235.1851, F.S.; providing legislative intent; authorizing the creation of educational facilities benefit districts pursuant to interlocal agreement; providing for creation of an educational facilities benefit district through adoption of an ordinance; specifying content of such ordinances; providing for the creating entity

to be the local general purpose government within whose boundaries a majority of the educational facilities benefit district's lands are located; providing that educational facilities benefit districts may only be created with the consent of the district school board, all affected local general purpose governments, and all landowners within the district; providing for the membership of the governing boards of educational facilities benefit districts; providing the powers of educational facilities benefit districts; authorizing community development districts, created pursuant to ch. 190, F.S., to be eligible for financial enhancements available to educational facilities benefit districts; conditioning such eligibility upon the establishment of an interlocal agreement; creating s. 235.1852, F.S.; providing funding for educational facilities benefit districts and community development districts; creating s. 235.1853, F.S.; providing for the utilization of educational facilities built pursuant to this act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (h) of subsection (6) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. Each ~~The~~ future land use category must be defined in terms of uses included and must ~~plan shall~~ include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives. ~~Each land use category shall be defined in terms of the types of uses included and specific standards for the density or intensity of use.~~ The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community; and, in rural communities, the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy. The future land use plan

may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act. In addition, for rural communities, the amount of land designated for future planned industrial use shall be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and shall not be limited solely by the projected population of the rural community. The future land use plan of a county may also designate areas for possible future municipal incorporation. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use. All comprehensive plans must comply with the school siting requirements of this paragraph no later than October 1, 1999. The failure by a local government to comply with these school siting requirements by October 1, 1999, will result in the prohibition of the local government's ability to

amend the local comprehensive plan, except for plan amendments described in s. 163.3187(1)(b), until the school siting requirements are met. An amendment proposed by a local government for purposes of identifying the land use categories in which public schools are an allowable use is exempt from the limitation on the frequency of plan amendments contained in s. 163.3187. The future land use element shall include criteria which encourage the location of schools proximate to urban residential areas to the extent possible and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible. For schools serving predominantly rural counties, defined as a county with a population of 100,000 or fewer, an agricultural land use category shall be eligible for the location of public school facilities if the local comprehensive plan contains school siting criteria and the location is consistent with such criteria.

(h)1. An intergovernmental coordination element showing relationships and stating principles and guidelines to be used in the accomplishment of coordination of the adopted comprehensive plan with the plans of school boards and other units of local government providing services but not having regulatory authority over the use of land, with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, and with the state comprehensive plan, as the case may require and as such adopted plans or plans in preparation may exist. This element of the local comprehensive plan shall demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities,

the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require.

a. The intergovernmental coordination element shall provide for procedures to identify and implement joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas.

b. The intergovernmental coordination element shall provide for recognition of campus master plans prepared pursuant to s. 240.155.

c. The intergovernmental coordination element may provide for a voluntary dispute resolution process as established pursuant to s. 186.509 for bringing to closure in a timely manner intergovernmental disputes. A local government may develop and use an alternative local dispute resolution process for this purpose.

2. The intergovernmental coordination element shall further state principles and guidelines to be used in the accomplishment of coordination of the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element shall describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement. Within 1 year of adopting their intergovernmental coordination elements, each county, all the municipalities within that county, the district school board,

and any unit of local government service providers in that county shall establish by interlocal or other formal agreement executed by all affected entities, the joint processes described in this subparagraph consistent with their adopted intergovernmental coordination elements.

3. To foster coordination between special districts and local general-purpose governments as local general-purpose governments implement local comprehensive plans, each independent special district must submit a public facilities report to the appropriate local government as required by s. 189.415.

4. The state land planning agency shall establish a schedule for phased completion and transmittal of plan amendments to implement subparagraphs 1., 2., and 3. from all jurisdictions so as to accomplish their adoption by December 31, 1999. A local government may complete and transmit its plan amendments to carry out these provisions prior to the scheduled date established by the state land planning agency. The plan amendments are exempt from the provisions of s. 163.3187(1).

5. By January 1, 2004, any county having a population greater than 100,000, and the municipalities and special districts within that county, shall submit a report to the Department of Community Affairs which:

a. Identifies all existing or proposed interlocal service-delivery agreements regarding the following: education; sanitary sewer; public safety; solid waste; drainage; potable water; parks and recreation; and transportation facilities.

b. Identifies any deficits or duplication in the provision of services within its jurisdiction, whether capital

or operational. Upon request, the Department of Community Affairs shall provide technical assistance to the local governments in identifying deficits or duplication.

6. Within 6 months after submission of the report, the Department of Community Affairs shall, through the appropriate regional planning council, coordinate a meeting of all local governments within the regional planning area to discuss the reports and potential strategies to remedy any identified deficiencies or duplications.

7. Each local government shall update its intergovernmental coordination element based upon the findings in the report submitted pursuant to subparagraph 5. The report may be used as supporting data and analysis for the intergovernmental coordination element.

8. By February 1, 2003, representatives of municipalities and counties shall provide to the Legislature recommended statutory changes for annexation, including any changes that address the delivery of local government services in areas planned for annexation.

Section 2. Paragraph (c) is added to subsection (4) of section 163.3180, Florida Statutes, to read:

163.3180 Concurrency.--

(4)

(c) The concurrency requirement, except as it relates to transportation facilities, as implemented in local government comprehensive plans may be waived by a local government for urban infill and redevelopment areas designated pursuant to s. 163.2517 if such a waiver does not endanger public health or safety as defined by the local government in its local government comprehensive plan. The waiver shall be adopted as a plan amendment pursuant to the process set forth

in s. 163.3187(3)(a). A local government may grant a concurrency exception pursuant to subsection (5) for transportation facilities located within these urban infill and redevelopment areas.

Section 3. Paragraph (a) of subsection (1), subsections (3), (4), (6), (7), (8), and (15), and paragraph (d) of subsection (16) of section 163.3184, Florida Statutes, are amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.--

(1) DEFINITIONS.--As used in this section:

(a) "Affected person" includes 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; owners of real property abutting real property that is the subject of a proposed change to a future land use map;and 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 protection or 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.

(3) LOCAL GOVERNMENT TRANSMITTAL OF PROPOSED PLAN OR AMENDMENT.--

(a) Each local governing body shall transmit the complete proposed comprehensive plan or plan amendment to the state land planning agency, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of State,and the Department of Transportation and, in the case of municipal plans, to the appropriate county and, in the case of county plans, to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services immediately following a public hearing pursuant to subsection (15) as specified in the state land planning agency's procedural rules. The local governing body shall also transmit a copy of the complete proposed comprehensive plan or plan amendment to any other unit of local government or government agency in the state that has filed a written request with the governing body for the plan or plan amendment. The local government may request a review by the state land planning agency pursuant to subsection (6) at the time of the transmittal of an amendment.

(b) A local governing body shall not transmit portions of a plan or plan amendment unless it has previously provided to all state agencies designated by the state land planning agency a complete copy of its adopted comprehensive plan pursuant to subsection (7) and as specified in the agency's procedural rules. In the case of comprehensive plan amendments, the local governing body shall transmit to the state land planning agency, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of State,and the Department of Transportation and, in the case of municipal plans, to the appropriate county and, in the case of county

plans, to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services the materials specified in the state land planning agency's procedural rules and, in cases in which the plan amendment is a result of an evaluation and appraisal report adopted pursuant to s. 163.3191, a copy of the evaluation and appraisal report. Local governing bodies shall consolidate all proposed plan amendments into a single submission for each of the two plan amendment adoption dates during the calendar year pursuant to s. 163.3187.

(c) A local government may adopt a proposed plan amendment previously transmitted pursuant to this subsection, unless review is requested or otherwise initiated pursuant to subsection (6).

(d) In cases in which a local government transmits multiple individual amendments that can be clearly and legally separated and distinguished for the purpose of determining whether to review the proposed amendment, and the state land planning agency elects to review several or a portion of the amendments and the local government chooses to immediately adopt the remaining amendments not reviewed, the amendments immediately adopted and any reviewed amendments that the local government subsequently adopts together constitute one amendment cycle in accordance with s. 163.3187(1).

(4) INTERGOVERNMENTAL REVIEW.--The ~~If review of a proposed comprehensive plan amendment is requested or otherwise initiated pursuant to subsection (6), the state land planning agency within 5 working days of determining that such a review will be conducted shall transmit a copy of the proposed plan amendment to various government agencies, as appropriate, for response or comment, including, but not~~

~~limited to, the Department of Environmental Protection, the Department of Transportation, the water management district, and the regional planning council, and, in the case of municipal plans, to the county land planning agency. These~~ governmental agencies specified in paragraph (3)(a)shall provide comments to the state land planning agency within 30 days after receipt by the state land planning agency of the complete proposed plan amendment. The appropriate regional planning council shall also provide its written comments to the state land planning agency within 30 days after receipt by the state land planning agency of the complete proposed plan amendment and shall specify any objections, recommendations for modifications, and comments of any other regional agencies to which the regional planning council may have referred the proposed plan amendment. Written comments submitted by the public within 30 days after notice of transmittal by the local government of the proposed plan amendment will be considered as if submitted by governmental agencies. All written agency and public comments must be made part of the file maintained under subsection (2).

(6) STATE LAND PLANNING AGENCY REVIEW.--

(a) The state land planning agency shall review a proposed plan amendment upon request of a regional planning council, affected person, or local government transmitting the plan amendment. The request from the regional planning council or affected person must be ~~if the request is~~ received within 30 days after transmittal of the proposed plan amendment pursuant to subsection (3). ~~The agency shall issue a report of its objections, recommendations, and comments regarding the proposed plan amendment.~~ A regional planning council or affected person requesting a review shall do so by submitting

a written request to the agency with a notice of the request to the local government and any other person who has requested notice.

(b) The state land planning agency may review any proposed plan amendment regardless of whether a request for review has been made, if the agency gives notice to the local government, and any other person who has requested notice, of its intention to conduct such a review within 35 ~~30~~ days after receipt ~~of transmittal~~ of the complete proposed plan amendment ~~pursuant to subsection (3)~~.

(c) The state land planning agency shall establish by rule a schedule for receipt of comments from the various government agencies, as well as written public comments, pursuant to subsection (4). If the state land planning agency elects to review the amendment or the agency is required to review the amendment as specified in paragraph (a), the agency shall issue a report giving its objections, recommendations, and comments regarding the proposed amendment within 60 days after receipt of the complete proposed amendment by the state land planning agency.~~The state land planning agency shall have 30 days to review comments from the various government agencies along with a local government's comprehensive plan or plan amendment. During that period, the state land planning agency shall transmit in writing its comments to the local government along with any objections and any recommendations for modifications.~~ When a federal, state, or regional agency has implemented a permitting program, the state land planning agency shall not require a local government to duplicate or exceed that permitting program in its comprehensive plan or to implement such a permitting program in its land development regulations. Nothing contained herein shall prohibit the

state land planning agency in conducting its review of local plans or plan amendments from making objections, recommendations, and comments or making compliance determinations regarding densities and intensities consistent with the provisions of this part. In preparing its comments, the state land planning agency shall only base its considerations on written, and not oral, comments, from any source.

(d) The state land planning agency review shall identify all written communications with the agency regarding the proposed plan amendment. If the state land planning agency does not issue such a review, it shall identify in writing to the local government all written communications received 30 days after transmittal. The written identification must include a list of all documents received or generated by the agency, which list must be of sufficient specificity to enable the documents to be identified and copies requested, if desired, and the name of the person to be contacted to request copies of any identified document. The list of documents must be made a part of the public records of the state land planning agency.

(7) LOCAL GOVERNMENT REVIEW OF COMMENTS; ADOPTION OF PLAN OR AMENDMENTS AND TRANSMITTAL.--

(a) The local government shall review the written comments submitted to it by the state land planning agency, and any other person, agency, or government. Any comments, recommendations, or objections and any reply to them shall be public documents, a part of the permanent record in the matter, and admissible in any proceeding in which the comprehensive plan or plan amendment may be at issue. The local government, upon receipt of written comments from the

state land planning agency, shall have 120 days to adopt or adopt with changes the proposed comprehensive plan or s. 163.3191 plan amendments. In the case of comprehensive plan amendments other than those proposed pursuant to s. 163.3191, the local government shall have 60 days to adopt the amendment, adopt the amendment with changes, or determine that it will not adopt the amendment. The adoption of the proposed plan or plan amendment or the determination not to adopt a plan amendment, other than a plan amendment proposed pursuant to s. 163.3191, shall be made in the course of a public hearing pursuant to subsection (15). The local government shall transmit the complete adopted comprehensive plan or ~~adopted~~ plan amendment, including the names and addresses of persons compiled pursuant to paragraph (15)(c), to the state land planning agency as specified in the agency's procedural rules within 10 working days after adoption. The local governing body shall also transmit a copy of the adopted comprehensive plan or plan amendment to the regional planning agency and to any other unit of local government or governmental agency in the state that has filed a written request with the governing body for a copy of the plan or plan amendment.

(b) If the adopted plan amendment is unchanged from the proposed plan amendment transmitted pursuant to subsection (3) and an affected person as defined in paragraph (1)(a) did not raise any objection, the state land planning agency did not review the proposed plan amendment, and the state land planning agency did not raise any objections during its review pursuant to subsection (6), the local government may state in the transmittal letter that the plan amendment is unchanged and was not the subject of objections.

(8) NOTICE OF INTENT.--

(a) If the transmittal letter correctly states that the plan amendment is unchanged and was not the subject of review or objections pursuant to paragraph (7)(b), the state land planning agency has 20 days after receipt of the transmittal letter within which to issue a notice of intent that the plan amendment is in compliance.

(b)~~(a)~~ Except as provided in paragraph (a) or in s. 163.3187(3), the state land planning agency, upon receipt of a local government's complete adopted comprehensive plan or plan amendment, shall have 45 days for review and to determine if the plan or plan amendment is in compliance with this act, unless the amendment is the result of a compliance agreement entered into under subsection (16), in which case the time period for review and determination shall be 30 days. If review was not conducted under subsection (6), the agency's determination must be based upon the plan amendment as adopted. If review was conducted under subsection (6), the agency's determination of compliance must be based only upon one or both of the following:

1. The state land planning agency's written comments to the local government pursuant to subsection (6); or

2. Any changes made by the local government to the comprehensive plan or plan amendment as adopted.

(c)~~(b)~~1. ~~During the time period provided for in this subsection, the state land planning agency shall issue, through a senior administrator or the secretary, as specified in the agency's procedural rules, a notice of intent to find that the plan or plan amendment is in compliance or not in compliance. A notice of intent shall be issued by publication in the manner provided by this paragraph and by mailing a copy~~

~~to the local government and to persons who request notice. The required advertisement shall be no less than 2 columns wide by 10 inches long, and the headline in the advertisement shall be in a type no smaller than 12 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper which meets the size and circulation requirements set forth in paragraph (15)(c) and which has been designated in writing by the affected local government at the time of transmittal of the amendment. Publication by the state land planning agency of a notice of intent in the newspaper designated by the local government shall be prima facie evidence of compliance with the publication requirements of this section.~~

~~2. For fiscal year 2001-2002 only, the provisions of this subparagraph shall supersede the provisions of subparagraph 1.~~During the time period provided for in this subsection, the state land planning agency shall issue, through a senior administrator or the secretary, as specified in the agency's procedural rules, a notice of intent to find that the plan or plan amendment is in compliance or not in compliance. A notice of intent shall be issued by publication in the manner provided by this paragraph and by mailing a copy to the local government. The advertisement shall be placed in that portion of the newspaper where legal notices appear. The advertisement shall be published in a newspaper that meets the size and circulation requirements set forth in paragraph (15)(e)~~(c)~~and that has been designated in writing by the affected local government at the time of transmittal of the amendment. Publication by the state land planning agency of a notice of intent in the newspaper designated by the local

government shall be prima facie evidence of compliance with the publication requirements of this section. The state land planning agency shall post a copy of the notice of intent on the agency's Internet site. The agency shall, no later than the date the notice of intent is transmitted to the newspaper, send by regular mail a courtesy informational statement to persons who provide their names and addresses to the local government at the transmittal hearing or at the adoption hearing where the local government has provided the names and addresses of such persons to the department at the time of transmittal of the adopted amendment. The informational statements shall include the name of the newspaper in which the notice of intent will appear, the approximate date of publication, the ordinance number of the plan or plan amendment, and a statement that affected persons have 21 days after the actual date of publication of the notice to file a petition. ~~This subparagraph expires July 1, 2002.~~

2. A local government that has an Internet site shall post a copy of the state land planning agency's notice of intent on the site within 5 days after receipt of the mailed copy of the agency's notice of intent.

(15) PUBLIC HEARINGS.--

(a) The procedure for transmittal of a complete proposed comprehensive plan or plan amendment pursuant to subsection (3) and for adoption of a comprehensive plan or plan amendment pursuant to subsection (7) shall be by affirmative vote of not less than a majority of the members of the governing body present at the hearing. The adoption of a comprehensive plan or plan amendment shall be by ordinance. For the purposes of transmitting or adopting a comprehensive plan or plan amendment, the notice requirements in chapters

125 and 166 are superseded by this subsection, except as provided in this part.

(b) The local governing body shall hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment as follows:

1. The first public hearing shall be held at the transmittal stage pursuant to subsection (3). It shall be held on a weekday at least 7 days after the day that the first advertisement is published.

2. The second public hearing shall be held at the adoption stage pursuant to subsection (7). It shall be held on a weekday at least 5 days after the day that the second advertisement is published.

(c) The local government shall provide a sign-in form at the transmittal hearing and at the adoption hearing for persons to provide their names and mailing addresses. The sign-in form shall advise that any person providing the requested information will receive a courtesy informational statement concerning publications of the state land planning agency's notice of intent. The local government shall add to the sign-in form the name and address of any person who submits written comments concerning the proposed plan or plan amendment during the time period between the commencement of the transmittal hearing and the end of the adoption hearing. It is the responsibility of the person completing the form or providing written comments to accurately, completely, and legibly provide all information needed in order to receive the courtesy informational statement.

(d) The agency shall provide a model sign-in form for providing the list to the agency that may be used by the local government to satisfy the requirements of this subsection.

(e)~~(c)~~ If the proposed comprehensive plan or plan amendment changes the actual list of permitted, conditional, or prohibited uses within a future land use category or changes the actual future land use map designation of a parcel or parcels of land, the required advertisements shall be in the format prescribed by s. 125.66(4)(b)2. for a county or by s. 166.041(3)(c)2.b. for a municipality.

(16) COMPLIANCE AGREEMENTS.--

(d) A local government may adopt a plan amendment pursuant to a compliance agreement in accordance with the requirements of paragraph (15)(a). The plan amendment shall be exempt from the requirements of subsections (2)-(7). The local government shall hold a single adoption public hearing pursuant to the requirements of subparagraph (15)(b)2. and paragraph (15)(e)~~(c)~~. Within 10 working days after adoption of a plan amendment, the local government shall transmit the amendment to the state land planning agency as specified in the agency's procedural rules, and shall submit one copy to the regional planning agency and to any other unit of local government or government agency in the state that has filed a written request with the governing body for a copy of the plan amendment, and one copy to any party to the proceeding under ss. 120.569 and 120.57 granted intervenor status.

Section 4. Subsection (3) of section 380.04, Florida Statutes, is amended to read:

380.04 Definition of development.--

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or

railroad track, if the work is carried out on land within the boundaries of the right-of-way or any work or construction within the boundaries of the right-of-way on the federal interstate highway system.

(b) Work by any utility and other persons engaged in the distribution or transmission of electricity, gas, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

Section 5. Paragraph (d) of subsection (2), paragraph (b) of subsection (4), paragraph (a) of subsection (8),

subsection (12), paragraph (c) of subsection (15), subsection (18), and paragraphs (b), (c), (e), and (f) of subsection (19) of section 380.06, Florida Statutes, are amended, and paragraphs (i) and (j) are added to subsection (24) of that section, to read:

380.06 Developments of regional impact.--

(2) STATEWIDE GUIDELINES AND STANDARDS.--

(d) The guidelines and standards shall be applied as follows:

1. Fixed thresholds.--

a. A development that is at or below 100 ~~80~~ percent of all numerical thresholds in the guidelines and standards shall not be required to undergo development-of-regional-impact review.

b. A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

c. Projects certified under s. 403.973 which create at least 100 jobs and meet the criteria of the Office of Tourism, Trade, and Economic Development as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential, as described in s. 380.0651(3)(c), (d), and (i), are not required to undergo development-of-regional-impact review.

2. Rebuttable presumption ~~presumptions~~.--

~~a. It shall be presumed that a development that is between 80 and 100 percent of a numerical threshold shall not be required to undergo development-of-regional-impact review.~~

~~b.~~ It shall be presumed that a development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be required to undergo development-of-regional-impact review.

(4) BINDING LETTER.--

(b) Unless a developer waives the requirements of this paragraph by agreeing to undergo development-of-regional-impact review pursuant to this section, the state land planning agency or local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if~~:~~

~~1.~~ the development is at a presumptive numerical threshold or up to 20 percent above a numerical threshold in the guidelines and standards.~~; or~~

~~2. The development is between a presumptive numerical threshold and 20 percent below the numerical threshold and the local government or the state land planning agency is in doubt as to whether the character or magnitude of the development at the proposed location creates a likelihood that the development will have a substantial effect on the health, safety, or welfare of citizens of more than one county.~~

(8) PRELIMINARY DEVELOPMENT AGREEMENTS.--

(a) A developer may enter into a written preliminary development agreement with the state land planning agency to allow a developer to proceed with a limited amount of the total proposed development, subject to all other governmental approvals and solely at the developer's own risk, prior to issuance of a final development order. All owners of the land in the total proposed development shall join the developer as

parties to the agreement. Each agreement shall include and be subject to the following conditions:

1. The developer shall comply with the preapplication conference requirements pursuant to subsection (7) within 45 days after the execution of the agreement.

2. The developer shall file an application for development approval for the total proposed development within 3 months after execution of the agreement, unless the state land planning agency agrees to a different time for good cause shown. Failure to timely file an application and to otherwise diligently proceed in good faith to obtain a final development order shall constitute a breach of the preliminary development agreement.

3. The agreement shall include maps and legal descriptions of both the preliminary development area and the total proposed development area and shall specifically describe the preliminary development in terms of magnitude and location. The area approved for preliminary development must be included in the application for development approval and shall be subject to the terms and conditions of the final development order.

4. The preliminary development shall be limited to lands that the state land planning agency agrees are suitable for development and shall only be allowed in areas where adequate public infrastructure exists to accommodate the preliminary development, when such development will utilize public infrastructure. The developer must also demonstrate that the preliminary development will not result in material adverse impacts to existing resources or existing or planned facilities.

5. The preliminary development agreement may allow development which is:

a. Less than or equal to 100 ~~80~~ percent of any applicable threshold if the developer demonstrates that such development is consistent with subparagraph 4.; or

b. Less than 120 percent of any applicable threshold if the developer demonstrates that such development is part of a proposed downtown development of regional impact specified in subsection (22) or part of any areawide development of regional impact specified in subsection (25) and that the development is consistent with subparagraph 4.

6. The developer and owners of the land may not claim vested rights, or assert equitable estoppel, arising from the agreement or any expenditures or actions taken in reliance on the agreement to continue with the total proposed development beyond the preliminary development. The agreement shall not entitle the developer to a final development order approving the total proposed development or to particular conditions in a final development order.

7. The agreement shall not prohibit the regional planning agency from reviewing or commenting on any regional issue that the regional agency determines should be included in the regional agency's report on the application for development approval.

8. The agreement shall include a disclosure by the developer and all the owners of the land in the total proposed development of all land or development within 5 miles of the total proposed development in which they have an interest and shall describe such interest.

9. In the event of a breach of the agreement or failure to comply with any condition of the agreement, or if

the agreement was based on materially inaccurate information, the state land planning agency may terminate the agreement or file suit to enforce the agreement as provided in this section and s. 380.11, including a suit to enjoin all development.

10. A notice of the preliminary development agreement shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located. The notice shall include a legal description of the land covered by the agreement and shall state the parties to the agreement, the date of adoption of the agreement and any subsequent amendments, the location where the agreement may be examined, and that the agreement constitutes a land development regulation applicable to portions of the land covered by the agreement. The provisions of the agreement shall inure to the benefit of and be binding upon successors and assigns of the parties in the agreement.

11. Except for those agreements which authorize preliminary development for substantial deviations pursuant to subsection (19), a developer who no longer wishes to pursue a development of regional impact may propose to abandon any preliminary development agreement executed after January 1, 1985, including those pursuant to s. 380.032(3), provided at the time of abandonment:

a. A final development order under this section has been rendered that approves all of the development actually constructed; or

b. The amount of development is less than <u>100</u> ~~80~~ percent of all numerical thresholds of the guidelines and standards, and the state land planning agency determines in writing that the development to date is in compliance with all

applicable local regulations and the terms and conditions of the preliminary development agreement and otherwise adequately mitigates for the impacts of the development to date.

In either event, when a developer proposes to abandon said agreement, the developer shall give written notice and state that he or she is no longer proposing a development of regional impact and provide adequate documentation that he or she has met the criteria for abandonment of the agreement to the state land planning agency. Within 30 days of receipt of adequate documentation of such notice, the state land planning agency shall make its determination as to whether or not the developer meets the criteria for abandonment. Once the state land planning agency determines that the developer meets the criteria for abandonment, the state land planning agency shall issue a notice of abandonment which shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located.

(12) REGIONAL REPORTS.--

(a) Within 50 days after receipt of the notice of public hearing required in paragraph (11)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:

1. The development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state or regional plans. For the purposes of this subsection, "applicable state plan" means the state comprehensive plan. For the purposes of this subsection, "applicable regional plan" means an adopted comprehensive regional policy plan until the adoption of a strategic regional policy plan pursuant to s. 186.508, and thereafter means an adopted strategic regional policy plan.

2. The development will significantly impact adjacent jurisdictions. At the request of the appropriate local government, regional planning agencies may also review and comment upon issues that affect only the requesting local government.

3. As one of the issues considered in the review in subparagraphs 1. and 2., the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment. The determination should take into account information on factors that are relevant to the availability of reasonably accessible adequate housing. Adequate housing means housing that is available for occupancy and that is not substandard.

(b) At the request of the regional planning agency, other appropriate agencies shall review the proposed development and shall prepare reports and recommendations on issues that are clearly within the jurisdiction of those agencies. Such agency reports shall become part of the regional planning agency report; however, the regional planning agency may attach dissenting views. When water management district and Department of Environmental Protection permits have been issued pursuant to chapter 373 or chapter

403, the regional planning council may comment on the regional implications of the permits but may not offer conflicting recommendations.

(c) The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations.

(d) When the location of a proposed development involves land within the boundaries of multiple regional planning councils, the state land planning agency shall designate a lead regional planning council. The lead regional planning council shall prepare the regional report.

(15) LOCAL GOVERNMENT DEVELOPMENT ORDER.--

(c) The development order shall include findings of fact and conclusions of law consistent with subsections (13) and (14). The development order:

1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.

2. Shall establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a termination date that reasonably reflects the time required to complete the development.

3. Shall establish a date until which the local government agrees that the approved development of regional impact shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions

underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare.

4. Shall specify the requirements for the biennial ~~annual~~ report designated under subsection (18), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.

5. May specify the types of changes to the development which shall require submission for a substantial deviation determination under subsection (19).

6. Shall include a legal description of the property.

(18) BIENNIAL ~~ANNUAL~~ REPORTS.--The developer shall submit a biennial ~~an annual~~ report on the development of regional impact to the local government, the regional planning agency, the state land planning agency, and all affected permit agencies in alternate years on the date specified in the development order, unless the development order by its terms requires more frequent monitoring. If the ~~annual~~ report is not received, the regional planning agency or the state land planning agency shall notify the local government. If the local government does not receive the ~~annual~~ report or receives notification that the regional planning agency or the state land planning agency has not received the report, the local government shall request in writing that the developer submit the report within 30 days. The failure to submit the report after 30 days shall result in the temporary suspension

of the development order by the local government. If no additional development pursuant to the development order has occurred since the submission of the previous report, then a letter from the developer stating that no development has occurred shall satisfy the requirement for a report. Development orders that require annual reports may be amended to require biennial reports at the option of the local government.

(19) SUBSTANTIAL DEVIATIONS.--

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 5 percent or 300 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 5 percent or 1,000 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates. However, if an airport is located in two counties, a 10-percent lengthening of an existing runway or a 20-percent increase in the number of gates of an existing terminal is the applicable criteria.

3. An increase in the number of hospital beds by 5 percent or 60 beds, whichever is greater.

4. An increase in industrial development area by 5 percent or 32 acres, whichever is greater.

5. An increase in the average annual acreage mined by 5 percent or 10 acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 5 percent or 300,000 gallons, whichever is greater. An increase in the size of the mine by 5 percent or 750 acres, whichever is less.

6. An increase in land area for office development by 5 percent ~~or 6 acres, whichever is greater,~~ or an increase of gross floor area of office development by 5 percent or 60,000 gross square feet, whichever is greater.

7. An increase in the storage capacity for chemical or petroleum storage facilities by 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.

8. An increase of development at a waterport of wet storage for 20 watercraft, dry storage for 30 watercraft, or wet/dry storage for 60 watercraft in an area identified in the state marina siting plan as an appropriate site for additional waterport development or a 5-percent increase in watercraft storage capacity, whichever is greater.

9. An increase in the number of dwelling units by 5 percent or 50 dwelling units, whichever is greater.

10. An increase in commercial development by ~~6 acres of land area or by~~ 50,000 square feet of gross floor area~~,~~ or of parking spaces provided for customers for 300 cars or a 5-percent increase of <u>either</u> ~~any~~ of these, whichever is greater.

11. An increase in hotel or motel facility units by 5 percent or 75 units, whichever is greater.

12. An increase in a recreational vehicle park area by 5 percent or 100 vehicle spaces, whichever is less.

13. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

14. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 100 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 100 percent has been reached or exceeded.

15. A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

16. Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The further refinement of such areas by survey shall be considered under sub-subparagraph (e)5.b.

The substantial deviation numerical standards in subparagraphs 4., 6., 10., 14., excluding residential uses, and 15., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to

its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 4., 6., 9., 10., 11., and 14. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(c) An extension of the date of buildout of a development, or any phase thereof, by 7 or more years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. An extension of the date of buildout, or any phase thereof, of ~~5 years or more but less than 7 years shall be presumed not to create a substantial deviation. These presumptions may be rebutted by clear and convincing evidence at the public hearing held by the local government. An extension of~~ less than 6 ~~5~~ years is not a substantial deviation. For the purpose of calculating when a buildout, phase, or termination date has been exceeded, the time shall be tolled during the pendency of administrative or judicial proceedings relating to development permits. Any extension of the buildout date of a project or a phase thereof shall automatically extend the commencement date of the project, the termination date of the development order, the expiration date of the development of regional impact, and the phases thereof by a like period of time.

(e)1. ~~A proposed change which, either individually or, if there were previous changes, cumulatively with those changes, is equal to or exceeds 40 percent of any numerical criterion in subparagraphs (b)1.-15., but which does not exceed such criterion, shall be presumed not to create a substantial deviation subject to further~~

~~development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government pursuant to subparagraph (f)5.~~

~~2.~~ Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order that individually or cumulatively with any previous change is less than ~~40 percent of~~ any numerical criterion contained in subparagraphs (b)1.-15. and does not exceed any other criterion, or that involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not a substantial deviation, is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice shall include a description of previous individual changes made to the development, including changes previously approved by the local government, and shall include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback that do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads that do not affect external access points.

e. Changes to the building design or orientation that stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, provided that no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, provided that there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, provided that these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

(j)~~i.~~ Any other change which the state land planning agency agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-i. ~~a.-h.~~and which does not create the likelihood of any additional regional impact.

This subsection does not require a development order amendment for any change listed in sub-subparagraphs a.-j.~~a.-i.~~unless such issue is addressed either in the existing development order or in the application for development approval, but, in the case of the application, only if, and in the manner in which, the application is incorporated in the development order.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development shall include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Except for the types of uses listed in subparagraph (b)16., any change which would result in the development of any area which was specifically set aside in the application for development approval or in the development order for preservation, buffers, or special protection, including habitat for plant and animal species, archaeological and historical sites, dunes, and other special areas.

c. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous

increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c), (d), (f), and (g) and residential use.

(f)1. The state land planning agency shall establish by rule standard forms for submittal of proposed changes to a previously approved development of regional impact which may require further development-of-regional-impact review. At a minimum, the standard form shall require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.

2. The developer shall submit, simultaneously, to the local government, the regional planning agency, and the state land planning agency the request for approval of a proposed change.

3. No sooner than 30 days but no later than 45 days after submittal by the developer to the local government, the state land planning agency, and the appropriate regional planning agency, the local government shall give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation. This public hearing shall be held within 90 days after submittal of the proposed changes, unless that time is extended by the developer.

4. The appropriate regional planning agency or the state land planning agency shall review the proposed change and, no later than 45 days after submittal by the developer of the proposed change, unless that time is extended by the developer, and prior to the public hearing at which the proposed change is to be considered, shall advise the local government in writing whether it objects to the proposed

change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer. ~~A change which is subject to the substantial deviation criteria specified in sub-subparagraph (e)5.c. shall not be subject to this requirement.~~

5. At the public hearing, the local government shall determine whether the proposed change requires further development-of-regional-impact review. The provisions of paragraphs (a) and (e), the thresholds set forth in paragraph (b), and the presumptions set forth in paragraphs (c) and (d) and subparagraph (e)3.~~subparagraphs (e)1. and 3.~~shall be applicable in determining whether further development-of-regional-impact review is required.

6. If the local government determines that the proposed change does not require further development-of-regional-impact review and is otherwise approved, or if the proposed change is not subject to a hearing and determination pursuant to subparagraphs 3. and 5. and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review shall be subject to the appeal provisions of s. 380.07. However, the state land planning agency may not appeal the local government decision if it did not comply with subparagraph 4. The state land planning agency may not appeal a change to a development order made pursuant to subparagraph (e)1. or subparagraph (e)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact

to a regionally significant archaeological, historical, or natural resource not previously identified in the original development-of-regional-impact review.

(24) STATUTORY EXEMPTIONS.--

(i) Any proposed facility for the storage of any petroleum product or any expansion of an existing facility is exempt from the provisions of this section, if the facility is consistent with a local comprehensive plan that is in compliance with s. 163.3177 or is consistent with a comprehensive port master plan that is in compliance with s. 163.3178.

(j) Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use.

Section 6. Paragraphs (d), (f), and (i) of subsection (3) and subsection (4) of section 380.0651, Florida Statutes, are amended to read:

380.0651 Statewide guidelines and standards.--

(3) The following statewide guidelines and standards shall be applied in the manner described in s. 380.06(2) to determine whether the following developments shall be required to undergo development-of-regional-impact review:

(d) Office development.--Any proposed office building or park operated under common ownership, development plan, or management that:

1. Encompasses 300,000 or more square feet of gross floor area; or

2. ~~Has a total site size of 30 or more acres; or~~

~~3.~~ Encompasses more than 600,000 square feet of gross floor area in a county with a population greater than 500,000 and only in a geographic area specifically designated as

highly suitable for increased threshold intensity in the approved local comprehensive plan and in the strategic regional policy plan.

(f) Retail and service development.--Any proposed retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite, operated under one common property ownership, development plan, or management that:

1. Encompasses more than 400,000 square feet of gross area; or

2. ~~Occupies more than 40 acres of land; or~~

~~3.~~ Provides parking spaces for more than 2,500 cars.

(i) Multiuse development.--Any proposed development with two or more land uses where the sum of the percentages of the appropriate thresholds identified in chapter 28-24, Florida Administrative Code, or this section for each land use in the development is equal to or greater than 175 ~~145~~ percent, provided that each such land use shall be equal to or greater than 20 percent of the applicable threshold. Any proposed development with three or more land uses, one of which residential and contains at least 100 dwelling units or 15 percent of the applicable residential threshold, whichever is greater, where the sum of the percentages of the appropriate thresholds identified in chapter 28-24, Florida Administrative Code, or this section for each land use in the development is equal to or greater than 200 ~~160~~ percent, provided that the two nonresidential land uses are equal to or greater than 15 and 10 percent of the respective applicable threshold. This threshold is in addition to, and does not preclude, a development from being required to undergo

development-of-regional-impact review under any other threshold.

(4) Two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development under this chapter when they are determined to be part of a unified plan of development and are physically proximate to one other.

(a) As used in this subsection, the term:

1. "Physically proximate" means location of any portion of each of two or more developments:

a. Not more than one-fourth mile apart in areas designated as urbanized areas in the latest decennial census, as revised by the U.S. Department of Commerce, Bureau of Census; or

b. No more than one-half mile apart in areas that are not designated as urbanized areas by the Census Bureau. When any portion of two or more developments is located within an area not designated as urbanized, the criteria in this sub-subparagraph applies. Notwithstanding anything in this section to the contrary, two or more developments will be considered physically proximate when they are separated by property contiguous to the developments which is owned or controlled by the same person or entity who owns of controls a significant legal or equitable interest in those developments sought to be aggregated, so long as the distance between the developments does not exceed 2 miles.

2. "Significant legal or equitable interest" means that the same person has an interest or an option to obtain an interest of more than 25 percent in each development for the following types of interest:

a. A fee simple estate;

b. A leasehold estate of more than 30 years' duration;

c. A life estate;

d. Mineral rights in mining developments; or

e. Similar equitable, beneficial, or real property interests in the development. A lessor's interest under a lease of more than 30 years' duration is not significant legal or equitable interest.

3. "Reasonable closeness in time" means within 5 years.

4. "Completion of 80 percent" means:

a. For purposes of residential development, when up to 80 percent of all improved lots or parcels have been constructed or have received certificates of occupancy or have been sold to bona fide third-party purchasers or when 80 percent of all dwelling units have received certificates of occupancy.

b. For purposes of all other types of development, up to 80 percent of all improved lots or parcels have been sold to bona fide third-party purchasers or when 80 percent of all of the development has receive certificates of occupancy, or, when no certificates of occupancy are required for the use of the development, when 80 percent of the physical development activity or construction has occurred.

c. For purposes of satisfying the 80 percent standard, the development and approval actions listed in sub-subparagraphs a. and b. may be added together.

5. "Sharing of infrastructure" means the voluntary joint use by two or more developments of internal roadways, internal recreational facilities or parks, amenities, or water, sewage, or drainage facilities specifically constructed

to accommodate the developments sought to be aggregated. Shared infrastructure does not include:

a. Any joint or shared use of private or public infrastructure specifically required under an established policy of general applicability as set forth under a comprehensive plan adopted pursuant to chapter 163, an adopted local government ordinance or resolution, state statute, or adopted rule of regional or state regulatory agencies;

b. Any joint or shared use of public recreational facilities or parks so long as they were not conveyed by a person with a significant legal or equitable interest in the developments sought to be aggregated;

c. Any joint or shared use of publicly financed drainage or stormwater management facilities, roadways, or water or sewer facilities that were not constructed or financed specifically to accommodate the developments considered for aggregation; or

d. Design features, financial arrangements, donations, or construction that is specified in and required by an agreement under paragraph (f).

6. "Common advertising scheme of promotional plan" means any depiction, illustration, or announcement that indicates a shared commercial promotion of two or more developments as components of a single development and is designed to encourage sales or leases of property.

7. "Same person" includes an individual; two or more persons having a joint or common economic interest; a corporation or foreign corporation; an unincorporated association; a business trust; an estate; a partnership; a trust; and a subsidiary or other entity that has a joint or common economic interest with a corporation.

(b)~~(a)~~ The criteria of two of the following subparagraphs must be met in order for the state land planning agency to determine that there is a unified plan of development:

1.a. The same person has retained or shared control of the developments;

b. The same person has ownership or a significant legal or equitable interest in the developments; or

c. There is common management of the developments controlling the form of physical development or disposition of parcels of the development.

2. There is a reasonable closeness in time between the completion of 80 percent or less of one development and the submission to a governmental agency of a master plan or series of plans or drawings for the other development which is indicative of a common development effort.

3. A master plan or series of plans or drawings exists covering the developments sought to be aggregated which have been submitted to a local general-purpose government, water management district, the Florida Department of Environmental Protection, or the Division of Florida Land Sales, Condominiums, and Mobile Homes for authorization to commence development. The existence or implementation of a utility's master utility plan required by the Public Service Commission or general-purpose local government or a master drainage plan shall not be the sole determinant of the existence of a master plan.

4. The voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments sought to be aggregated, except that which was implemented because it was

required by a local general-purpose government; water management district; the Department of Environmental Protection; the Division of Florida Land Sales, Condominiums, and Mobile Homes; or the Public Service Commission.

5. There is a common advertising scheme or promotional plan in effect for the developments sought to be aggregated.

(c)~~(b)~~ The following activities or circumstances shall not be considered in determining whether to aggregate two or more developments:

1. Activities undertaken leading to the adoption or amendment of any comprehensive plan element described in part II of chapter 163.

2. The sale of unimproved parcels of land, where the seller does not retain significant control of the future development of the parcels.

3. The fact that the same lender has a financial interest, including one acquired through foreclosure, in two or more parcels, so long as the lender is not an active participant in the planning, management, or development of the parcels in which it has an interest.

4. Drainage improvements that are not designed to accommodate the types of development listed in the guidelines and standards contained in or adopted pursuant to this chapter or which are not designed specifically to accommodate the developments sought to be aggregated.

(d)~~(c)~~ Aggregation is not applicable when the following circumstances and provisions of this chapter are applicable:

1. Developments which are otherwise subject to aggregation with a development of regional impact which has received approval through the issuance of a final development

order shall not be aggregated with the approved development of regional impact. However, nothing contained in this subparagraph shall preclude the state land planning agency from evaluating an allegedly separate development as a substantial deviation pursuant to s. 380.06(19) or as an independent development of regional impact.

2. Two or more developments, each of which is independently a development of regional impact that has or will obtain a development order pursuant to s. 380.06.

3. Completion of any development that has been vested pursuant to s. 380.05 or s. 380.06, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. Development-of-regional-impact review of additions to vested developments of regional impact shall not include review of the impacts resulting from the vested portions of the development.

4. The developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date.

(e)~~(d)~~ The provisions of this subsection shall be applied prospectively from September 1, 1988. Written decisions, agreements, and binding letters of interpretation made or issued by the state land planning agency prior to July 1, 1988, shall not be affected by this subsection.

(f)~~(e)~~ In order to encourage developers to design, finance, donate, or build infrastructure, public facilities, or services, the state land planning agency may enter into binding agreements with two or more developers providing that the joint planning, sharing, or use of specified public

infrastructure, facilities, or services by the developers shall not be considered in any subsequent determination of whether a unified plan of development exists for their developments. Such binding agreements may authorize the developers to pool impact fees or impact-fee credits, or to enter into front-end agreements, or other financing arrangements by which they collectively agree to design, finance, donate, or build such public infrastructure, facilities, or services. Such agreements shall be conditioned upon a subsequent determination by the appropriate local government of consistency with the approved local government comprehensive plan and land development regulations. Additionally, the developers must demonstrate that the provision and sharing of public infrastructure, facilities, or services is in the public interest and not merely for the benefit of the developments which are the subject of the agreement. Developments that are the subject of an agreement pursuant to this paragraph shall be aggregated if the state land planning agency determines that sufficient aggregation factors are present to require aggregation without considering the design features, financial arrangements, donations, or construction that are specified in and required by the agreement.

(g)~~(f)~~ The state land planning agency has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this subsection.

Section 7. (1) Nothing contained in this act abridges or modifies any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact on the effective date of this act. A development that has received a

development-of-regional-impact development order pursuant to section 380.06, Florida Statutes, but is no longer required to undergo development-of-regional-impact review by operation of this act, shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order. The development-of-regional-impact development order may be enforced by the local government as provided by sections 380.06(17) and 380.11, Florida Statutes.

(b) If requested by the developer or landowner, the development-of-regional-impact development order may be amended or rescinded by the local government consistent with the local comprehensive plan and land development regulations, and pursuant to the local government procedures governing local development orders.

(2) A development with an application for development approval pending, and determined sufficient pursuant to section 380.06(10), Florida Statutes, on the effective date of this act, or a notification of proposed change pending on the effective date of this act, may elect to continue such review pursuant to section 380.06, Florida Statutes. At the conclusion of the pending review, including any appeals pursuant to section 380.07, Florida Statutes, the resulting development order shall be governed by the provisions of subsection (1).

Section 8. Section 235.1851, Florida Statutes, is created to read:

235.1851 Educational facilities benefit districts.--

(1) It is the intent of the Legislature to encourage and authorize public cooperation among district school boards,

affected local general purpose governments, and benefited private interests in order to implement financing for timely construction and maintenance of school facilities, including facilities identified in individual district facilities work programs or proposed by approved charter schools. It is the further intent of the Legislature to provide efficient alternative mechanisms and incentives to allow for sharing costs of educational facilities necessary to accommodate new growth and development among public agencies, including district school boards, affected local general purpose governments, and benefited private development interests.

(2) The Legislature hereby authorizes the creation of educational facilities benefit districts pursuant to interlocal cooperation agreements between a district school board and all local general purpose governments within whose jurisdiction a district is located. The purpose of educational facilities benefit districts is to assist in financing the construction and maintenance of educational facilities.

(3)(a) An educational facilities benefit district may be created pursuant to this act and chapters 125, 163, 166, and 189. An educational facilities benefit district charter may be created by a county or municipality by entering into an interlocal agreement, as authorized by s. 163.01, with the district school board and any local general purpose government within whose jurisdiction a portion of the district is located and adoption of an ordinance that includes all provisions contained within s. 189.4041. The creating entity shall be the local general purpose government within whose boundaries a majority of the educational facilities benefit district's lands are located.

(b) Creation of any educational facilities benefit district shall be conditioned upon the consent of the district school board, all local general purpose governments within whose jurisdiction any portion of the educational facilities benefit district is located, and all landowners within the district. The membership of the governing board of any educational facilities benefit district shall include representation of the district school board, each cooperating local general purpose government, and the landowners within the district. In the case of an educational facilities benefit district's decision to create a charter school, the board of directors of the charter school shall constitute the members of the governing board for the educational facilities benefit district.

(4) The educational facilities benefit district shall have, and its governing board may exercise, the following powers:

(a) To finance and construct educational facilities within the district's boundaries.

(b) To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire, by purchase, gift, devise, or otherwise, and to dispose of real and personal property or any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(c) To apply for coverage of its employees under the Florida Retirement System in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the state retirement fund.

(d) To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts shall be subject to the public bidding or competitive negotiations required of local general purpose governments.

(e) To borrow money and accept gifts; to apply for unused grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith; and to hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.

(f) To adopt resolutions and polices prescribing the powers, duties, and functions of the officers of the district, the conduct of the business of the district, and the maintenance of records and documents of the district.

(g) To maintain an office at such place or places as it may designate within the district or within the boundaries of the local general purpose government that created the district.

(h) To hold, control, and acquire by donation, purchase, or condemnation pursuant to chapter 73 or chapter 74 if authorized by all governmental entities that are party to the interlocal agreement, or dispose of any public easements, dedication to public use, platted reservations for public purposes, or any reservations for those purposes authorized by this act and to make use of such easements, dedications, or reservations for any of the purposes authorized by this act.

(i) To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or

private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for use of the district to carry out any of the purposes authorized by this act.

(j) To borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness pursuant to this act for periods not longer than 30 years, provided such bonds, certificates, warrants, notes, or other indebtedness shall only be guaranteed by non-ad valorem assessments legally imposed by the district and other available sources of funds provided in this act and shall not pledge the full faith and credit of any local general purpose government or the district school board.

(k) To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act and to accept funding from local and state agencies as provided in this act.

(l) To levy, impose, collect, and enforce non-ad valorem assessments, as defined by s. 197.3632(1)(d), pursuant to this act, chapters 125 and 166, and ss. 197.3631, 197.3632, and 197.3635.

(m) To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act.

(5) As an alternative to the creation of an educational facilities benefit district, the Legislature hereby recognizes and encourages the consideration of community development district creation pursuant to chapter 190 as a viable alternative for financing the construction and maintenance of educational facilities as described in this

act. Community development districts are therefore deemed eligible for the financial enhancements available to educational facilities benefit districts providing for financing the construction and maintenance of educational facilities pursuant to s. 235.1852. In order to receive such financial enhancements, a community development district must enter into an interlocal agreement with the district school board and affected local general purpose governments that specifies the obligations of all parties to the agreement.

Section 9. Section 235.1852, Florida Statutes, is created to read:

235.1852 Local funding for educational facilities benefit districts or community development districts.--Upon confirmation by a district school board of the commitment of revenues by an educational facilities benefit district or community development district necessary to construct and maintain an educational facility contained within an individual district facilities work program or proposed by an approved charter school, the following funds shall be provided to the educational facilities benefit district or community development district annually, beginning with the next fiscal year after confirmation until the district's financial obligations are completed:

(1) An annual amount equal to 1 mill of taxation for all taxable property within the educational facilities benefit district or community development district, contributed by the district school board.

(2) All educational facilities impact fee revenue collected for new development within the educational facilities benefit district or community development district.

Section 10. Section 235.1853, Florida Statutes, is created to read:

235.1853 Educational facilities benefit district or community development district facility utilization.--All facilities funded pursuant to this act shall reflect the racial balance of the school district pursuant to state and federal law. However, to the extent allowable pursuant to state and federal law, the interlocal agreement providing for the establishment of the educational facilities benefit district or the interlocal agreement between the community development district and the district school board and affected local general purpose governments may provide for the district school board to establish school attendance zones that allow students residing within a reasonable distance of facilities financed through the interlocal agreement to attend such facilities.

Section 11. This act shall take effect upon becoming a law.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2228

The bill makes a number of changes to Part II of chapter 163, the Local Government Comprehensive Planning and Land Development Act, and the Development-of-Regional-Impact program contained in Part I of chapter 380, F.S. In addition, the bill authorizes the creation of educational facilities benefit districts for the purposes of financing school construction through the levy of special assessments within an educational facilities benefit district or a community development district.

The bill revises provisions governing the regulation of intensity of use by local governments in the future land use element of their local government comprehensive plans.

The bill provides that the concurrency requirement, except for transportation facilities, as implemented in local government comprehensive plans, may be waived by a local government for urban infill and redevelopment areas, if such waiver does not endanger public health or safety as defined by the local government in its local government comprehensive plan.

By January 1, 2004, local governments within counties with a population of 100,000 or greater are required to inventory their service delivery agreements and identify deficits or duplication in the provision of services. In addition, by February 1, 2003 representatives of municipalities and counties are to recommend statutory changes regarding annexation to the Legislature.

This bill revises the process for adoption of local government comprehensive plans or plan amendments decreasing the timeframes required for state review in some circumstances. In addition, the bill allows the Department of Community Affairs to publish notices of intent on the Internet in addition to legal notice advertising as an alternative to publishing larger and more expensive newspaper advertisements.

The bill makes a number of changes to the development-of-regional-impact program. The bill revises the definition of what is not considered development under the DRI process; and provides a bright line test for developments that are at or below 100 percent of DRI thresholds by providing that they are not DRIs and are not required to go through the review process. The bill provides for biennial reports on DRIs rather than annual reports, unless otherwise specified. The bill provides a bright line test for buildout extensions by providing that an extension of less than 6 years is not a substantial deviation. The bill eliminates acreage standards for office development and retail developments and modifies thresholds for multiuse development. The bill exempts petroleum storage facilities and any renovation or redevelopment within the same land parcel

which does not change land use or increase density or intensity of use from DRI review under specified circumstances. Finally, the bill provides definitions that are relevant to whether two or more developments represent a unified plan of development which should be treated as a single development for purposes of development-of-regional-impact review.

The bill authorizes counties and municipalities to create educational facilities benefit districts (benefit districts) by entering into an interlocal agreement with the school board and any local general purpose government within whose jurisdiction a portion of the benefit district is located for the purpose of financing school construction through the levy of special assessments. The bill also authorizes community development districts (CDDs) to receive the financial enhancements available to benefit districts.

Upon confirmation by a school board of commitment of revenues by a benefit district or CDD necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the benefit district or CDD receives, until the benefit district's financial obligations are complete:

1) an annual amount equal to one mill of taxation for all taxable property within the benefit district or CDD to be paid to the school district.

2) all education facilities impact fee revenue collected for new development within the benefit district or CDD