SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 382

SPONSOR: Finance and Taxation Committee and Comprehensive Planning, Local & Military Affairs Committee

SUBJECT: Growth Management

DATE: January 30, 2002 REVISED:

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

I. Summary:

The bill makes a number of changes to sections of the Local Government Comprehensive Planning and Land Development Regulation Act of 1985.

The bill requires local governments to amend their intergovernmental coordination, potable water and conservation elements to consider the appropriate water management district's regional water supply plan and to develop a 10-year or more workplan for constructing water supply facilities that are necessary to meet projected demand.

The bill requires local governments and school boards within the geographic jurisdiction of a school district to enter an interlocal agreement that addresses school siting, coordination between school board and local governments, and participation of the school district in the local government comprehensive plan-amendment, rezoning, and development approval processes. The interlocal agreement must be entered by deadlines established by DCA, beginning March 1, 2003 and concluding December 1, 2004. The Administration Commission is authorized to impose the withholding of at least 5% of state revenue available for infrastructure spending within the local government if the local government fails to comply with the interlocal agreement requirement and withhold from a district school board at least 5% in state education dollars.

The bill also creates an optional school educational facility planning process whereby local governments and school boards adopt educational facilities plans and enter into an interlocal agreement, for which the obligations of the interlocal agreement are incorporated into the intergovernmental coordination element, requiring that school boards and local governments identify information they will use to determine whether school capacity is available to accommodate new development. The bill requires that an elected school board member sit on

each regional planning council and that local planning agencies include a nonvoting representative of the district school board.

The bill requires local governments and special districts within counties with a population greater than 100,000 to prepare an inventory of existing or proposed interlocal service-delivery agreements, identify deficits or duplication in service-delivery. These local governments must submit the inventory to the Department of Community Affairs by January 1, 2004. In addition, by February 1, 2003, representatives of cities and counties are required to submit recommendations on statutory changes to annexation.

The bill allows the Local Government Infrastructure Surtax and School Capital Outlay Surtax authorized by s. 212.055, F.S., to be imposed by supermajority vote of the respective governing boards. The School Capital Outlay Surtax may be levied by supermajority vote of the school board only where the district school board and local governments: have adopted the interlocal agreement required by ss. 163.3177(6)(h) and 163.31777, F.S., and the public educational facilities element defined by s. 163.31776, F.S.; the district school board has adopted a district educational facilities plan pursuant to s. 235.185, F.S.; and the proceeds of the sales surtax are used for the construction of schools that meet the SIT cost per student station criteria. The proceeds of the infrastructure sales surtax, when levied by supermajority vote, may only be spent for infrastructure within the urban service area, when such infrastructure is identified in the local governments local government comprehensive plan, or for the construction of schools identified in the school board's educational facilities plan.

The bill modifies a number of sections of chapter 235, F.S., governing the planning and siting of educational facilities. Parallel language requiring school boards to enter interlocal agreements with local governments is included, that is identical to the language in s. 163.31777, F.S., and district school boards are subject to the withholding of certain state education dollars if the school board fails to comply with the adoption schedule which begins March 1, 2003.

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

This bill substantially amends sections 163.3174, 163.3177, 163.3180, 163.3184, 163.3187, 163.3191, 186.504, 212.055, 235.002, 235.15, 235.175, 235.18, 235.185, 235.118, 235.19, 235.193, 235.218, 235.2197, 235.321, 236.25, 380.06, and 380.0651; creates 163.31776, 163.31777 and repeals sections 163.31775 and 235.194 of the Florida Statutes.

II. Present Situation:

Florida has a system of growth management that includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; ss. 163.3161-163.3244, F.S.; chapter 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs; chapter 186,

F.S., establishing regional planning councils and requiring the development of state and regional plans; and chapter 187, F.S., the State Comprehensive Plan.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.).

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Comprehensive Plan Amendment Process

Under chapter 163, F.S., the process for the adoption of a comprehensive plan and comprehensive plan amendments is essentially the same. A local government or property owner initiates the process by proposing an amendment to the designated local planning agency (LPA). After holding at least one public hearing, the LPA makes recommendations to the governing body regarding the amendments. Next, the governing body holds a transmittal public hearing at which the proposed amendment must be voted on affirmatively by a majority of the members of the governing body of the local government. Following the public hearing, the local government must "transmit" the amendment to the department, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of Transportation and any other local government or state agency that has requested a copy of the amendment.

Next, the decision is made whether to review the proposed amendment. If the local government does not request a review, the department requests that the appropriate water management districts, Department of Transportation and Department of Environmental Protection advise the

DCA as to whether the amendment should be reviewed, within 21 days after transmittal of the amendment by the local government. Based on this information, the department decides whether to review the amendment. The department must review the proposed amendment if the local government transmitting the amendment, a regional planning council or an "affected person" requests review within 30 days after transmittal of the amendment. Finally, even if a request by one of the above parties is not made, the department may elect to review the amendment by giving the local government notice of its intention to review the amendment within 30 days of receipt of the amendment.

If review is not requested by the local government, the regional planning council, or any affected person, and the department decides not to review it, the local government is notified that it may proceed immediately to adopt the amendment. If, however, review of the amendment is initiated, the department transmits, pursuant to Rule 9J-1.009, F.A.C., a copy of the amendment to: the Department of State; the Fish & Wildlife Conservation Commission; the Department of Agriculture and Consumer Affairs, Division of Forestry for county amendments; and the appropriate local planning agency. In addition, the department may circulate a copy of the amendment to other government agencies, as appropriate. Commenting agencies have 30 days from receipt of the proposed amendment to provide in written comments to the department and, in addition, written comments submitted by the public within 30 days after notice of transmittal by the local government are considered by the department as if they were submitted by governmental agencies.

Upon receipt of the comments described above, the department has 30 days to send its objections, recommendations and comments report to the local government body (commonly referred to as the "ORC Report"). In its review, the department considers whether the amendment is consistent with the requirements of the Act, Rule 9J-5, Florida Administrative Code, the State Comprehensive Plan and the appropriate regional policy plan.

After receiving the ORC report from the department, the local government has 60 days (120 days for amendments based on Evaluation and Appraisal "EAR" Reports or compliance agreements) to adopt the amendment, adopt the amendment with changes, or decide that it will not adopt the amendment. The decision must be made at a public hearing. Within 10 days after adoption, the local government transmits the adopted plan amendment to the department, the commenting agencies, the regional planning council and anyone else who has requested notice of the adoption.

Upon receipt of a local government's adopted comprehensive plan amendment, the department has 45 days (30 days for amendments based on compliance agreements) to determine whether the plan or plan amendment is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act. This compliance determination is also required when the department has not reviewed the amendment under s. 163.3184(6), F.S. During this time period, the department issues a notice of intent to find the plan amendment in compliance or not in compliance with the requirements of the Act. The notice of intent is mailed to the local government and the department is required to publish such notice in a newspaper which has been designated by the local government.

If the department finds the comprehensive plan amendment in compliance with the Act, any affected person may file a petition for administrative hearing pursuant to ss. 120.569 and 120.57, F.S., within 21 days after publication of the notice of intent. An administrative hearing is conducted by the Division of Administrative Hearing where the legal standard of review is that the plan amendment will be determined to be in compliance if the local government's determination of compliance is fairly debatable. The hearing officer submits a recommended order to the department. If the department determines that the plan amendment is in compliance, it issues a final order. If the department determines that the amendment is not in compliance, it submits the recommended order to the Administration Commission (the Governor and Cabinet) for final agency action.

If the department issues a notice of intent to find the comprehensive plan amendment not in compliance, the notice of intent is forwarded directly to the Division of Administrative Hearing in order to hold a ss. 120.569 and 120.57, F.S., administrative proceeding. The parties to the administrative proceeding include: the department; the affected local government, and any affected person who intervenes. "Affected persons" are defined, by s. 163.3184(1), F.S., to include:

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

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

In the administrative hearing, the decision of the local government that the comprehensive plan amendment is in compliance is presumed to be correct and must be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan amendment is not in compliance. The administrative law judge submits his decision directly to the Administration Commission for final agency action. If the Administration Commission determines that the plan amendment is not in compliance with the Act, it must specify remedial actions to bring the plan amendment into compliance.

Local governments are limited in the number of times per year they may adopt comprehensive plan amendments. Section 163.3187, F.S., provides that local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions which include, for example: amendments directly related to developments of regional impact; small scale development amendments; the designation of an urban infill and redevelopment area; and changes to the schedule of the capital improvements element.

Land Use and Water Issues

A significant "missing link" exists between the treatment of water supply issues in local government comprehensive plans and regional water supply plans and assessments prepared by Florida's five water management districts.

Role of Local Governments

While local governments are required in their local government comprehensive plans to address a number of issues related to water supply, most of these provisions focus on the transmission of water to new development and do not assess the underlying water supply. The first provision, s.163.3177(6)(c), F.S., requires local governments to prepare: "A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste and aquifer recharge protection requirements for the area." The element must include a topographic map showing groundwater recharge areas for the Floridan or Biscayne aquifers. Local governments are required to give special consideration to aquifer recharge areas. Where an area is served by septic tanks, the plan must include soil surveys.

Local governments must also prepare a conservation element addressing: "the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources." Local governments are also required to assess their current, and projected water needs and sources for a 10-year period. In addition, the land use map in the future land use element must identify existing and planned waterwells and cones of influence as well as other water resources such as surface water bodies and wetlands.

Local government comprehensive plans must contain a capital improvements element to address the availability of public facilities, and "which outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan" (s. 163.3177(3)(b), F.S.) The capital improvements element must cover at least a 5-year period.

Concurrency

The provision of potable water is one of the services subject to concurrency. Potable water, along with sanitary sewer, solid waste, and drainage must be in place and available to serve new

development no later than the issuance by the local government of a certificate of occupancy or its equivalent. In order to implement concurrency, the local government must adopt level of service standards by which to evaluate whether adequate potable water service necessary to support new development is available concurrent with the impacts of such development.

Rule 9J-5 Criteria

Chapter 9J-5, Florida Administrative Code (F.A.C.), establishes the minimum criteria for the Department of Community Affairs' review of local government comprehensive plans, plan amendments, evaluation and appraisal reports and land development regulations. The rule specifically requires that all goals, objectives, policies, standards, findings and conclusions within the comprehensive plan or amendments must be based on data and analysis applicable to each element. The data used shall be the best available existing data, unless the local government "desires original data or special studies." Moreover, the data must be taken from professionally accepted sources, "such as the United States Census, State Data Center, State University System of Florida, regional planning councils, water management districts or existing technical studies." Several provisions in this chapter affect the treatment of water supply issues by local governments in their comprehensive plans.

- Future Land Use Element (9J-5.006, F.A.C.):

  1. Requires an analysis of the availability of facilities and services as identified in potable water and natural groundwater aquifer recharge elements to accommodate existing development, land for which development orders have been issued, and an analysis of the amount of land needed to accommodate the projected population.
  2. Requires that existing and planned potable waterwells and wellhead protection areas be shown on the existing land use map or map series.
  3. Provides that facilities and services meet locally established level of service standards, and are available concurrent with the impacts of development.
  4. Protection of potable water wellfields by designating appropriate activities and land uses within wellhead protection areas, and environmentally sensitive land.

- Sanitary Sewer, Solid Waste, Stormwater Management, Potable Water and Natural Groundwater Aquifer Recharge Element (9J-5.011, F.A.C.):

  1. The local government must identify facilities that provide service within the local government's jurisdiction, including the design capacity, current demand and level of service provided by the facility. Potable water facilities are defined as "a system of structures designed to collect, treat, or distribute potable water, and includes water wells, treatment plants, reservoirs and distribution mains." (9J-5.003(93), F.A.C.)

2. A facility capacity analysis, for a planning period of at least 5 years in length, based on the projected demand at the current level of service for the facility, the projected population, land use distributions depicted in the future land use element, and available surplus capacity. The element must also address correcting existing facility deficiencies.
3. The element must address conserving potable water resources and protecting the functions of natural groundwater recharge areas and natural drainage features.
4. The element must establish level of service standards; for example, minimum design flow, storage capacity, and pressure for potable water facilities.
5. A strategy for regulating land use and development to protect the functions of natural drainage features and natural groundwater aquifer recharge areas.

Conservation Element (9J-5.013, F.A.C.)

- Current and projected water needs and sources for the next ten-year period based on the demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet these demands. "The analysis shall consider existing levels of water conservation, use and protection and applicable policies of the regional water management district."

  1. "Protection of water quality by restriction of activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas and surface waters used as a source of public water supply."
  2. Emergency conservation of water sources in accordance with the plans of the regional water management district.

- Concurrency Management System (9J-5.0055, F.A.C.)

  1. For potable water facilities, in order to demonstrate concurrency, a local government must demonstrate either: a) at the time a development order or permit is issued, a certificate of occupancy is issued that the necessary facilities and services are available to serve the new development, or b) the necessary facilities and services are guaranteed in an enforceable development agreement (under s. 163.3220, F.S.) or development order (pursuant to chapter 380, F.S.) such that the service will be available to serve new development at the time of the issuance of the certificate of occupancy.

  2. Level of service standards are adopted, such as the minimum design flow, storage capacity, and pressure for potable water facilities.

Strategic Regional Policy Plans

Section 186.507, F.S., requires regional planning councils to adopt strategic regional policy plans (SRPPs) that identify and address significant regional resources. The purpose of the SRPPs is to provide guidance to their region and local governments within the region on multijurisdictional issues, including natural resources of regional significance. In addition, the SRPPs must be consistent with the State Comprehensive Plan. The SRPPs cannot establish binding level of service standards for public facilities and services provided or regulated by local governments.

Role of the Water Management Districts in Reviewing Comprehensive Plan Amendments

Pursuant to s.163.3184, F.S., the water management districts along with other agencies, including the Department of Environmental Protection, the Department of Transportation and the Regional Planning Councils, are required to provide comments to the Department of Community Affairs on certain comprehensive plans and plan amendments. If review of a proposed comprehensive plan amendment is requested by a regional planning council, affected person, the local government transmitting the plan amendment, or DCA elects to review an amendment, the appropriate water management district is required to provide comments to the Department of Community Affairs within 30 days of receipt of the proposed plan amendment.

Chapter 373, F.S., Provisions

Chapter 373, F.S., contains a comprehensive framework for water supply planning in Florida. First, s. 373.036, F.S., requires the development of a Florida Water Plan by the Department of Environmental Protection (DEP). The Florida Water Plan includes: a) the programs and activities of DEP related to water supply, water quality, flood protection, and natural systems; b) the water quality standards of DEP; c) the district water management plans; d) guidance for the development of programs and rules related to water resources.
Each water management district is required to adopt a water management plan for water resources within its region, which addresses water supply, water quality, flood protection and floodplain management, and natural systems. The plan is based on a 20-year planning horizon and must be updated every 5 years. The plan must include:

1. Methodologies for adopting minimum flows and levels, and any established minimum flows and levels;
2. Identification of one or more water supply planning regions;
3. Required technical data;
4. A districtwide water supply assessment to be completed no later than July 1, 1998 which determines for each water supply planning region whether "existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for all existing legal uses and reasonably anticipated future needs and to sustain the water resources and related natural systems," (s. 373.036 (2)(b), F.S.); and
5. Any completed regional water supply plans.

In 1997, chapter 97-160, Laws of Florida, was enacted which required the five water management districts to prepare regional water supply plans for each water supply planning region identified in the district water management plan, "where it determines the sources of

water are not adequate for the planning period to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems." Regional water supply planning is required to be conducted in coordination with local governments, regional water supply authorities, government-owned and privately owned water utilities, self-suppliers, and other affected parties.

A regional water supply must cover at least a 20-year planning period and must include a water supply development and a water resource development component. The water supply component must include:

- A quantification of water supply needs for all existing and "reasonable projected" future uses within the planning horizon, including meeting water supply needs for a 1-in-10-year drought event.
- A list of water source options for water supply development, including alternative sources.
- For each identified water source options, the estimated amount of water available for use and the estimated costs and funding for water supply development.
- A list of water supply development projects which receive priority consideration for state or water management district funding assistance; for example, projects that implement reuse, storage, recharge or conservation of water, or limits adverse water resource impacts.

The water resource development component of a regional water supply plan must include:

- A listing of water resource development projects that support water supply development.
- For each water resource development project listed an estimate of the amount of water to become available through the project; the timetable and costs of constructing and maintaining the project; sources of funding and who will construct the project.
- The recovery and prevention strategy for water bodies expected to fall below an established minimum flow and level.
- A funding strategy for water resource development.
- How the options identified serve the public interest or save costs by preventing the loss of natural resources or avoiding greater future expenditures for water resource development or water supply development.
- Technical data to support the regional water supply plan.
- Minimum flows and levels established for water resources within the planning regions.

Section 373.036, F.S., contains several important limitations on the applicability of regional water supply plans. First, the adoption of a regional water supply plan by the governing board of a water management district is not subject to chapter 120, F.S. Second, s. 373.0391(6), F.S., contains the disclaimer that nothing in the water supply component of the district water management plan requires local governments, government-owned or privately owned water utilities, or other water suppliers to select a water supply development option because it is in the plan.

Chapter 373, F.S., also contains several requirements that water management districts provide technical information and assistance to local governments. First, water management districts are required, pursuant s. 373.0391, F.S., to assist local governments in the development and future revision of local government comprehensive plan elements or public facilities required of independent special districts. Second, each water management district is required to develop a groundwater basin resource availability inventory and provide each affected municipality, county and regional planning agency with the inventory. (s. 373.3095, F.S.) Local governments are required to review the inventory for consistency with the local government comprehensive plan and consider the inventory in future revisions of the plan.

Educational Facility Planning

During the 2001 legislative session, the public school facility planning recommendations of the Growth Management Study Commission were drafted into proposed legislation. These recommendations included the following:

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

Legislative language was developed and incorporated into CS/CS/CS/SB 310 2nd Engrossed and CS/HBs 1617 & 1487 2nd Engrossed. Generally, the bills required local governments in counties with school capacity problems to adopt a public educational facilities element and to enter an interlocal agreement that provides a methodology for determining whether school capacity will be available to serve development. Upon adoption of the public education facilities element and the interlocal agreement, the Senate Bill and early versions of the House Bill required local governments to deny rezonings and comprehensive plan amendments that increase the density or intensity of residential development.

In addition to the above, the Senate Bill provided that, before the mandate to local governments to deny rezonings and comprehensive plan amendments that increase residential density and intensity because of inadequate capacity takes effect, the local government must either levy the one-half-cent school capital outlay surtax, or an equivalent amount of new broad-based revenue from state or local sources, equivalent to the amount that would be raised from the school capital outlay surtax, is available and dedicated to the implementation work program adopted by the school board.

The Coordination of School Facility Planning and Local Government Comprehensive Planning

When the Local Government Comprehensive Planning Act was originally enacted in 1985, the provision of school facilities was identified as a type of infrastructure for which concurrency was

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

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

In 1998, the Legislature gave local governments the option to implement school concurrency. Section 163.3180(13), F.S., includes the minimum requirements for school concurrency. First, in order to implement concurrency on a district wide basis, all local governments within the county must adopt a public school facilities element and enter into an interlocal agreement. The public facilities element must include data including the 5-year school district facilities work plan; the educational plant survey; information on projected long-term development; and a discussion of how level-of-service standards will be established and maintained. Next, local governments implementing concurrency must adopt a financially feasible public school capital facilities program, in conjunction with the school board, that shows that the adopted level of service standards will be maintained. Finally, a local government may not deny a development permit authorizing residential development for failure to achieve the level-of-service standard for school capacity where adequate school facilities will be in place or under construction within 3 years of permit issuance.

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

As an alternative to school concurrency, Orange County adopted a policy, originally advanced by former County Commission Chairman Mel Martinez in a memorandum of March 29, 2000 to the Orange County Board of County Commissioners, whereby proposed developments which

require rezonings or comprehensive plan amendments that increase the density or intensity of development are denied where inadequate school capacity is available to serve the new development. Applying the policy, the Orange County Commission has denied several rezoning or comprehensive plans amendment requests. Two of the applicants sued the commission and one of these cases resulted in a circuit court decision that is presently on appeal.

In the case of *Betty Jean Mann, v. Board of County Commissioners of Orange County, Florida, and Orange County Public Schools*, the petitioner challenged the commission's denial of her application for a change in zoning designation from agricultural to single family residential. The record for the public hearing where the commission considered the rezoning shows that the planning staff for the commission recommended denial of the application finding that the lack of adequate school capacity rendered the development plan inconsistent with two elements of Orange County's local government comprehensive plan, the Future Land Use Element and an objective of the Public Schools Facilities Element which provides that the commission may "Manage the timing of new development to coordinate with adequate school capacity." In addition, a member of the Orange County School Board testified that the attendant elementary school for the proposed development was over capacity and that the school board had no funds available to improve the facility or construct a new facility.

At trial, the petitioner argued that the Legislature's enactment of a statutory school concurrency program in s. 163.3180(13), F.S., preempts any other power the Board of County Commissioners has to deny a request based on school overcrowding. In contrast, Orange County argued that it did not deny the petitioner's zoning request based on lack of school concurrency, but based on the county's constitutional and statutory "home rule powers." In upholding the county's decision, the Court found that the county had the statutory authority to deny the zoning request based on the rezoning's inconsistencies with the elements of the county's local government comprehensive plan, rather than basing its decision on the county's home rule powers. The case is presently on appeal before the Fifth District Court of Appeal.

Chapter 235, F.S., Educational Facilities

Chapter 235, F.S., contains planning and design requirements for educational facilities. Administrative rules adopted under the authority of the chapter are currently undergoing review as part of the reorganization of educational governance for K-20. For example, under current law, s. 235.193, F.S., requires some degree of coordination between school boards and local governments. Subsection (1) of s. 235.193, F.S., requires the integration of the educational plant survey with the local comprehensive plan and land development regulations. School boards are required to share information regarding existing and planned facilities, and infrastructure required to support the educational facilities. The location of public educational facilities must be consistent with the comprehensive plan and the land development regulations of the local governing body.

Local governments are prohibited from denying site plan approval for an educational facility based on the adequacy of the site plan as it relates to the needs of the school. Further, existing schools are considered consistent with the applicable local government's comprehensive plan. If a school board submits an application to expand an existing school site, the local government

"may impose reasonable development standards and conditions on the expansion only." (s. 235.193(8), F.S.)

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

Discretionary Sales Surtaxes

Local Government Infrastructure Sales Surtax

Section 212.055, F.S., authorizes the imposition of discretionary sales surtaxes by local governments for various purposes. These surtaxes may be levied only if they are authorized by general law, and many are limited to local governments meeting specific requirements. S. 212.055(1), F.S., authorizes the Charter County Transit System Surtax, not to exceed 1 %. This tax, which must be approved by a referendum of the voters, may be levied by Broward, Dade, Duval, Sarasota, and Volusia Counties, but only Duval levies the tax at a rate of 0.5%. S. 212.055(2), F.S., authorizes the Local Government Infrastructure Surtax, which may be levied by a county at the rate of 0.5 or 1%, by referendum. Proceeds of the surtax are distributed to the county and the municipalities within the county. As of July 1, 2001, 3 counties were levying the infrastructure surtax at a rate of .5% and 25 counties were levying the surtax at a rate of 1%, for a total of 28 counties levying the surtax. Beginning January 1, 2002, Alachua County will levy the infrastructure sales surtax at the rate of 1%. S. 212.055(3), F.S., authorizes the Small County Surtax of 0.5% or 1% for counties with population less than or equal to 50,000 as of April 1, 1992. This tax may be enacted by an extraordinary vote of the County Commissioners, and may be expended for operating purposes. If the tax is approved by a referendum of the voters it may be pledged to repay bonds. Seventeen counties levy this tax at 1%. S. 212.055(4), F.S., authorizes an indigent care surtax of up to 0.5% for certain counties. Only Hillsborough County levies this tax. S 212.055(5), F.S., authorizes Miami-Dade County to levy a 0.5% surtax to provide funds to the county public general hospital. In any county the sum of taxes imposed under subsections (2), (3), (4), and (5) may not exceed 1%.

The proceeds of the infrastructure sales surtax levied under s. 212.055(2), F.S., must be distributed to the county and the municipalities within the county, either according to an interlocal agreement between the county, municipalities within the county representing a majority of the county's municipal population, and may include a school district, or if there is no interlocal agreement, according to a formula set forth in s. 218.62, F.S. Revenues from the infrastructure sales surtax may be used for:

- Any fixed capital outlay expenditure or fixed capital outlay used for the construction, reconstruction, or improvement of public facilities (including the construction of schools) that have a life expectancy of 5 or more years, and associated land acquisition, land improvement, design, and engineering costs;

- Public safety (fire, emergency medical, police and sheriff) vehicles that have a life expectancy of 5 years or more;
- Funding economic development purposes;
- To finance, plan, and construct infrastructure and acquire land for public recreation or conservation or protection of natural resources or to finance the closure or certain county or municipally-owned landfills; and
- Other purposes authorized for selected counties.

School Capital Outlay Surtax

District school boards may levy the School Capital Outlay Surtax, authorized under s. 212.055(6), F.S. by referendum, at a rate not to exceed 0.5 percent. A school board levying the surtax must establish a freeze on non-capital local school property taxes, at the millage rate imposed in the year prior to the initiation of the surtax for a period of at least 3 years. The surtax proceeds may be used to fund:

- Fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 years or more years, as well as related land acquisition, land improvement, design, and engineering costs;
- Costs of retrofitting and providing for technology improvements, including hardware and software; and
- Servicing of bond indebtedness used to finance authorized projects.

However, the proceeds may not be used to fund operational expenses.

To date, only 8 counties have levied the school capital sales surtax. These counties include: Bay, Escambia, Gulf, Hernando, Jackson, Monroe, Saint Lucie, and Santa Rosa.

Development of Regional Impact

Chapter 380, F.S., includes the Development of Regional Impact (DRI) program, enacted as part of the Florida Environmental Land and Water Management Act of 1972. The DRI Program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Rule 28-24, Florida Administrative Code, (F.A.C.). Examples of the land uses for which guidelines are established include: airports; industrial plants; office development; port facilities, including marinas; hotel or motel development; retail and service development; multi-use development; and residential development. In addition, guidelines for hospitals, mining operations, and petroleum storage facilities are established by rule of the Administration Commission by chapter 28-24, F.A.C.

Percentage thresholds are defined in 380.06(2)(d), F.S., that are applied to the guidelines and standards. First, fixed thresholds are defined where if a development is at or below 80% of all

numerical thresholds in the guidelines, the project is not required to undergo DRI review. If a development is at or above 120% of the guidelines, it is required to undergo review. Rebuttable presumptions are defined whereby a development between 80 and 100% of a numerical threshold is presumed not to require DRI review. A development that is at 100% or between 100-120% of a numerical threshold is presumed to require DRI review.

Section 380.06, F.S., establishes the basic process for DRI review. The DRI review process involves the regional review of proposed developments meeting the defined thresholds by the regional planning councils to determine the extent to which:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities.
- The development will significantly impact adjacent jurisdictions.
- The development will favorable or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

The local government where the project is located must hold a public hearing and issue a development order. The development order may require the developer to contribute land or funds for the construction of public facilities or infrastructure. The issuance of a final development order vests the developer with the right to construct the development as configured.

In addition, under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a substantial likelihood of additional regional impact, or any type of regional impact constitutes a "substantial deviation" which requires further DRI review and entry of a new or amended local development order. The statute sets out criteria for determining when certain changes are to be considered substantial deviations without need for a hearing, and provides that all such changes are considered cumulatively.

Revising the Development of Regional Impact Review Process

Integrating the DRI Review Process with the comprehensive planning process is one of the most popular and longstanding recommendations for revising the DRI program. As early as 1980, task forces and study committees began recommending integration of the two programs, and that recommendation has been repeated consistently through the history of the DRI program. For example, in 1992, ELMS III recommended that the DRI review process be better integrated into the local government comprehensive planning process and recommended termination of the program in certain jurisdictions upon implementation of new intergovernmental coordination element requirements. More recently, the Growth Management Study Commission recommended the “elimination and replacement of the Development of Regional Impact Program with a system of Regional Cooperation Agreements or Developments with Extra Jurisdictional Impact to be negotiated by the eleven regional planning councils.”

On October 1, 1997, staff of the Senate Committees on Community Affairs, Governmental Reform and Oversight, and Natural Resources issued a report entitled “Streamlining the Developments of Regional Impact Review Process.” This report includes a recommendation to “Consider replacing the DRI review process with specific plans as the method for addressing the

extra jurisdictional impacts of large development." In addition, the report recommended that the Legislature should consider a pilot project to test the use of specific plans in Florida.

In 1997, the Legislature enacted s. 163.3245, F.S., authorizing an optional sector planning process whereby up to five local governments can develop special area plans, or sector plans. These pilot projects are intended for substantial geographic areas including at least 5,000 acres and one or more local governmental jurisdictions. An optional sector plan addresses the same issues as the development of regional impact process, including intergovernmental coordination to address extra jurisdictional impacts; however, the sector plan is adopted as an amendment to the local government comprehensive plan. When the plan amendment adopting the special area plan becomes effective, the provisions of s. 380.06, F.S., do not apply to development within the geographic area of the special area plan. To date, four sector plans are being undertaken: Clay County—Brannon Field Corridor; Orange County—Horizon West; Palm Beach County—Central Western Communities; and Bay County—Airport Relocation.

III. Effect of Proposed Changes:

The bill makes a number of changes to sections of the Local Government Comprehensive Planning Act related to: integration of land use and water supply planning; intergovernmental coordination between school boards and local governments; the streamlining of comprehensive plan amendment review; local government infrastructure funding; and identification of gaps in interlocal service provision of public services between local governments. The bill amends chapter 235, regarding educational facilities, to integrate the educational plant survey and work program into an educational facilities plan and requires school boards to enter into interlocal agreements with local governments. In addition, the bill modifies certain DRI substantial deviation standards.

The bill requires local governments to amend their potable water and conservation elements to the appropriate water management district's regional water supply plan, and that local governments consider the applicable regional water supply plan when conducting an evaluation and appraisal review required by s. 163.3191, F.S.

The bill requires local governments and school boards to enter an interlocal agreement that addresses school siting, coordination between school board and local governments, and includes a process for the school board to inform the local government regarding capacity. In addition, the interlocal agreement must identify how the district school board will meet public school demand and provide that school capacity reporting is consistent with state rules governing measurement of school capacity.

A local government and school board may opt out of the requirement that the interlocal agreement include a process for the school board to communicate with the local government on regarding capacity. The decision to "opt out" of the requirement must occur after a public hearing on the election, which may include the public hearing in which a district school board or local government adopts the interlocal agreement.. The interlocal agreement must be entered following a schedule to be established by DCA, beginning March 1, 2003 and ending December 1, 2004. The Administration Commission is authorized to impose the withholding of at least 5%

of state revenue available for infrastructure spending within the local government if the local government fails to comply with the interlocal agreement requirement, and at least 5% from the district school board of state education facility dollars.

The bill also creates an optional school educational facility planning process whereby local governments and school boards adopt educational facilities plans and enter into an interlocal agreement, which is reflected in the local government's intergovernmental coordination element, requiring that school boards and local governments identify information they will use to determine whether school capacity is available to accommodate new development. The bill requires that an elected school member sit on each regional planning council and that local planning agencies include a nonvoting representative of the district school board.

The bill requires local governments within counties with a population greater than 100,000 to prepare an inventory of existing or proposed interlocal service-delivery agreements, identify deficits or duplication in service-delivery. These local governments must submit the inventory to the Department of Community Affairs by January 1, 2004. In addition, by February 1, 2003, representatives of cities and counties are required to submit recommendations on changes to annexation law to the Florida Legislature.

The bill contains provisions streamlining the local government comprehensive plan amendment process by reducing the timeframes used by DCA to review such amendments and, where there are no objections to the amendment, to issue a Notice of Intent. The bill allows DCA to use the Internet, in conjunction with legal advertising, to provide notice of its actions on comprehensive plan amendments.

The bill allows the Local Government Infrastructure Surtax and School Capital Outlay Surtax authorized by s. 212.055, F.S., to be imposed by supermajority vote of the respective governing boards. The School Capital Outlay Surtax may be levied by a supermajority vote of the school board only where the condition is satisfied that the local governments within the county have adopted a public educational facilities element and interlocal agreement with the school board, the school board has revised its educational facilities plan pursuant to s. 235.185, F.S, and the proceeds of the levy are used for construction that meets certain SIT standards.

The bill adds an elected school board member to the membership of each regional planning council and a nonvoting representative of the district school board to the local planning agency.

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

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

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

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

- Require that by January 1, 2005, or the deadline established by the Department of Community Affairs for the local government to adopt its Evaluation and Appraisal Report, whichever occurs first, the potable water element must be based on data and analysis, including, but not limited to, the appropriate water management district's regional water supply plan. In addition, the element must include a workplan, covering at least a 10-year planning period, for building new water supply facilities that are necessary to serve existing and new development and over which the local government has control.

- Provide that a local governments assessment of their current, and project, water needs and sources for a 10-year period in its conservation element take into consideration the appropriate regional water supply plan.

The bill requires local governments adopting a public educational facilities element pursuant to s. 163.31776, F.S., (the content of which is defined in section 4 of the bill), to execute an interlocal agreement with the school board which meets the requirements of s. 163.31777, F.S., (the contents are defined in section 5 of the bill) and to amend their interlocal coordination element (ICE) to state the obligations of the local government under the public schools interlocal agreement. Amendments to the ICE to comply with this requirement are exempt from the limitation that a local government may only propose comprehensive plan amendments twice a year.

Subparagraph 163.3177(6)(h), F.S., is also amended to require local governments and special districts within counties with a population of 100,000 or greater to submit a report to the department, by January 1, 2004, that identifies existing or proposed interlocal service delivery agreements and which identifies 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.

Section 3 repeals s. 163.31775, F.S., an obsolete provision, which directed the Department of Community Affairs to report proposed changes to the rules governing intergovernmental coordination elements to the Legislature by December 15, 1995.

Section 4 creates s. 163.31776, F.S., to set forth the contents of an optional public educational facilities element. A county, in conjunction with the municipalities within the county may adopt an optional public educational facilities element in conjunction with the applicable school district. Certain municipalities that lack a public school within its jurisdiction and where the school district's 5, 10 and 20-year work programs indicate that no new schools are needed within the municipality are exempt from this section.

The public educational facilities element shall include:

- Strategies to address improvements to infrastructure, safety and community conditions.

- The provision of adequate infrastructure such as potable water, wastewater, drainage, and transportation, among others.
- The collocation of other public facilities such as parks, libraries and community centers with public schools.
- Use of public schools as emergency shelters.
- Consideration of existing capacity of schools in the review of comprehensive plan amendments and rezoning actions that increase intensity.

In addition, the element must include the interlocal agreement required by s. 163.3177(6)(h)4, and s. 163.31777, F.S., and the future land-use map series must incorporate maps that are the result of a collaborative process between the school board and the local governments in identifying school sites in the educational facilities plan adopted by the school board pursuant to s. 235.185, F.S.

Section 5 requires the county, municipalities and the school board within the geographic area of a school district to enter a public schools interlocal agreement which "jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated."

Mandatory Public Schools Interlocal Agreement
The bill authorizes DCA to establish a compliance schedule beginning March 1, 2003 and ending December 1, 2004 with schools districts facing capacity problems to be scheduled first.

A waiver process is established for district school boards and local governments where the student population has been declining over the five-year period preceding the due date for the submittal of the interlocal agreement. In this situation, the local government and school district may petition DCA for a waiver which must be granted if the coordination procedures to be established in an interlocal agreement are unnecessary because of the school district's declining school age population, considering the school district's educational facility plan. DCA may modify or revoke the waiver if the conditions justifying the waiver no longer exist. If the waiver is revoked, the local government and school board have 1 year to submit an interlocal agreement to DCA.

While local governments within the geographic area of a school district are encouraged to submit a single interlocal agreement, they may submit separate agreements. Municipalities are exempt from entering an interlocal agreement when the district has no public schools located within its boundaries, and where the school district's 5, 10 and 20-year work programs demonstrate that no new school is needed within the municipality.

Any local government that has implemented school concurrency pursuant to s. 163.3180, F.S., is not required to amend its public schools element or interlocal agreement to conform with the new requirements of this section if the public school element is adopted within 1 year after the effective date of the section and remains in effect. To date, Palm Beach County and the municipalities within Palm Beach County are the only local governments who have implemented school concurrency and are entitled to this exemption.

Content of Interlocal Agreement

The interlocal agreement between the local government and the school board must include a process for the school board to inform the local government regarding capacity. In addition, the interlocal agreement must identify how the district school board will meet public school demand and provide that school capacity reporting is consistent with state rules governing measurement of school capacity.

A local government and school board may opt out of the requirement that the interlocal agreement include a process for the school board to communicate with the local government on regarding capacity. The decision to "opt out" of the requirement must occur after a public hearing on the election, which may include the public hearing in which a district school board or local government adopts the interlocal agreement.

Approval and Challenge

After a public school's interlocal agreement is executed, it must be submitted to DCA. Within 30 days of receipt of the agreement, the Office of Educational Facilities and SMART Schools Clearinghouse is required to provide DCA with comments regarding the agreement. Within 60 days of receipt of the agreement, DCA must determine whether the agreement is consistent with the list of required contents for the agreement and publish a notice of intent to find the interlocal agreement consistent or inconsistent with such requirements. An "affected persons" as defined in s. 163.3184(1)(a), F.S., has standing to challenge the interlocal agreement in a chapter 120 administrative proceeding in which both the school board and local government are necessary parties. In order to have standing, the petitioner must have submitted oral or written comments to the local government or school board prior to the execution of the agreement. If DCA finds that the interlocal agreement is consistent with the statutory criteria, the local government's and school board's determination of consistency is fairly debatable. If DCA finds that the interlocal agreement is inconsistent with the statutory criteria, the local government's and school board's determination of consistency must be upheld unless it is shown by a preponderance of the evidence that the agreement is inconsistent with the statutory criteria.

Sanctions

DCA is required to issue a Notice to Show Cause if the executed interlocal agreement is not timely submitted within 15 days of the deadline. DCA then forwards the notice and responses to the Administration Commission. The Administration Commission is authorized to enter a final order finding the failure to comply and ordering the appropriate agencies to withhold at least 5 percent of state revenue sharing dollars pursuant to s. 163.3184(11), F.S., and the Department of Education to withhold at least 5 percent of state school construction funds available under s. 235.187, F.S. (Classrooms First Program); s. 235.216, F.S. (SIT program award eligibility); s. 235.2195, F.S. (1997 School Capital Outlay Program); and s. 235.42, F.S. (Public Education Capital Outlay and Debt Service Trust Fund).

Use of the Public Schools Interlocal Agreement

Subsection (8) provides that the public schools interlocal agreement may only establish interlocal coordination procedures between local governments and a district school board unless specific goals, objectives, and policies contained in the agreement are incorporated into the local government's comprehensive plan.

Section 6 amends s. 163.3180, F.S., to exempt urban infill and redevelopment areas from concurrency requirements at the election of the local government where such a waiver does not adversely affect human health and safety.

Section 7 amends s. 163.3184, F.S., to include an abutting property owner in the definition of affected persons. In addition, this section adds a cross reference to s. 163.31776, F.S., the optional educational facilities element, to the definition of "in compliance" for the purpose of evaluating whether the actions of local government are consistent with the act.

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

DCA is required to issue a notice of intent that the plan amendment is in compliance within 20 days rather than 45 days from receipt of the adopted comprehensive plan amendment where:

- a local government adopts a plan amendment that is unchanged from the proposed plan amendment transmitted to DCA for review;
- DCA did not review the proposed amendment or raise any objections to the amendment, and,
- an "affected person", as defined in s. 163. 3184(1)(a), F.S., did not object to the amendment.

The section also amends s. 163.3184, F.S., to permanently extend the authorization granted to the Department of Community Affairs for fiscal year 2001-2002, for the department to publish copies of its notices of intent on the Internet in addition to legal notice advertising. The section deletes existing language that required advertisements of the notice of intent to be no less than 2 columns wide by 10 inches long. This change will significantly reduce the department's advertising expenses. Finally, the section requires local governments to provide a sign-in form at the comprehensive plan transmittal and adoption hearing.

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

Section 9 amends s. 163.3191, F.S., to require local governments to consider, when conducting their evaluation and appraisal reports, the appropriate water management district's regional water supply plan. In addition, the potable water element must be revised to include a work plan, covering at least a 10-year period, for building any water supply facilities that are identified in the potable water element as necessary to service existing and new development and for which the local government is responsible.

Section 10 amends s. 186.504, F.S., to require that an elected school board member from the geographic area covered by the regional planning council be nominated by the Florida School Board Association be included as a Governor's appointee to the regional planning council.

Section 11 amends s. 212.055, F.S., to allow the Local Government Infrastructure Surtax and School Capital Outlay Surtax to be imposed by supermajority vote of the respective governing boards. When levied by supermajority vote, the proceeds of the infrastructure tax must be spent on infrastructure that is located within the urban service area that is identified in the capital improvements element of the comprehensive plan, or is identified in the school district's educational facilities plan.

In order to levy the half-cent School Capital Outlay Surtax by supermajority vote of the school board, the district school board and local governments where the school district is located must have adopted the interlocal agreement required by s. 163.3177(6)(h), F.S., and 163.31777, F.S., public educational facilities element required by s. 163.31776, F.S., and the district school board must have adopted a district educational facilities plan pursuant to s. 235.185, F.S. In addition, the school district's use of surtax proceeds for new construction must not exceed the cost-per-student criteria established for the SIT program in s. 235.216(2), F.S. Under this criteria, the cost per student station for the new construction of educational facilities shall be less than:

1. $11,600 for an elementary school,
2. $13,000 for a middle school, or
3. $17, 600 for a high school.

These figures are adjusted annually based on the Consumer Price Index.

Section 12 amends s. 235.002, F.S., modifying legislative intent language on the importance of sharing information regarding educational facilities between school boards and local governments.

Section 13 amends s. 235.15, F.S., regarding the education plant survey which school boards must prepare to require that the school district's survey must be submitted as part of the district educational facilities plan defined in s. 235.185, F.S. The section also deletes language, which required that the survey be based on capacity information reported in the Florida Inventory of School Houses.

Section 14 amends s. 235.175, F.S., regarding SMART schools to state legislative intent to require each school district to annually adopt an educational facilities plan that provides an integrated long-range facilities plan, including the survey of projected needs and the 5-year work program.

Section 15 amends s. 235.18, F.S., to require that each district school board must prepare its tentative district education facilities plan, as opposed to "facilities work plan" before adopting the capital outlay budget.

Section 16 amends s. 235.185, F.S., to set forth the requirements of the school district educational facilities plan in order to be consistent with the required content of the local government educational facilities element. The terms “adopted educational facilities plan,” “district facilities work program” and “tentative educational facilities plan” are defined. Annually, prior to the adoption of the school budget, each school board must prepare a tentative educational facilities plan that includes long-range planning for facilities needs over 5-year, 10-year and 20-year periods. The plan must include:

- Projected student population apportioned geographically at the local level.
- An inventory of existing school facilities, and anticipated expansion or closure of existing schools.
- Projections of facility space needs.
- Information on leased, loaned, donated space and relocatable classrooms.
- The general location of public schools proposed to be constructed over the 5-year, 10-year, and 20-year time periods, including a listing of the proposed schools’ site acreage needs and anticipated capacity.
- The identification of options deemed reasonable and approved by the school board which reduce the need for additional student stations.
- The criteria for determining the impact to public school capacity of proposed development.
- A financially feasible district facilities work program for a 5-year period.
- Identification of the number of relocatable student stations scheduled for replacement during the 5-year survey period and the total dollar amount needed for the replacement.

The district school board is required to submit a copy of its tentative district educational facilities plan to all affected local governments before adoption of the plan by the board. The affected local governments must review the tentative district educational facilities plan and comment to the district school board on the consistency of the plan with the local comprehensive plan, and whether a comprehensive plan amendment is necessary and acceptable to the local government.

Section 17 amends s. 235.188, F.S., to provide conforming language on the district educational facilities plan.

Section 18 amends s. 235.19, F.S., regarding school site planning and selection to provide that site planning must be consistent with the local comprehensive plan and the school district educational facilities plan. If the school board and local government have entered into an interlocal agreement and have developed a process to ensure consistency between the local government comprehensive plan and the school district educational facilities plan, site planning and selection must be consistent with such interlocal agreements and plans.

Section 19 amends s. 235.193, F.S., regarding the coordination of planning with local governments, providing for school boards to enter into an interlocal agreement with local governments when required by s. 163.31777, F.S. Subsections (2)-(9) contains language that is identical to s. 163.31777, F.S., (and which is discussed in Section 5) regarding the requirement for and procedure for adopting a public schools interlocal agreement. Failure of the school board to enter a required interlocal agreement by the deadline adopted by DCA, subjects the school

board to sanctions to be imposed by the Administration Commission, including the withholding of not less than 5% of funds for school construction dollars available under s. 235.187, F.S. (Classrooms First Program); s. 235.216, F.S. (SIT program award eligibility); s. 235.2195, F.S. (1997 School Capital Outlay Program); and s. 235.42, F.S. (Public Education Capital Outlay and Debt Service Trust Fund).

No later than 90 days prior to commencing construction of a school, the district school board must request in writing a determination of consistency with the local government's comprehensive plan. The local government must respond within 45 days (the time frame in current statute is 90 days) whether the proposed educational facility is consistent with the local comprehensive plan and land development regulations.

The school board is required to use data produced by the demographic, revenue, and educational estimating conferences pursuant to s. 216.136, F.S., when preparing the educational facilities plans.

Section 20 repeals s. 235.194, F.S, which provided that school boards annually provide each local government within its jurisdiction with a general educational facilities report.

Sections 21, 22, 23 and 24 amend ss. 235.218, 235.2197, 235.321, and 236.25 F.S., respectively, to provide conforming language referencing the school district educational facilities plan.

Section 25 makes several changes to the Developments of Regional Impact (DRI) Program set forth in s. 380.06, F.S. These changes include the following: designation by DCA of a lead regional planning council in the case of a development that spans the jurisdictions of multiple regional planning councils; a reduction in the frequency of the reporting requirement on developers regarding the status of a DRI from annually to biennially; elimination of the acreage substantial deviation threshold for office development and commercial development; and provision that proposed changes to a development order that either individually or cumulatively with any previous change are less than the numerical thresholds defined for substantial deviations are considered not to be a substantial deviation.

Section 26 amends s. 380.0651, F.S., to eliminate the DRI thresholds for office development and retail development that are based on acreage.

Section 27 contains a legislative finding that the integration of growth management and the planning of public educational facilities is a matter of great public importance**.**

Section 28 states legislative intent that the section 5 and section 19 of the bill, which include the requirement that local governments and school boards enter an interlocal agreement, shall not affect the outcome of any pending litigation pending on the effective date of the bill.

Section 29 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill imposes several new planning requirements associated with water supply, the development of a school planning interlocal agreements between local governments and school boards, and the preparation of an inventory of interlocal service provision agreements in counties with a population of 100,000 or more, that will require cities and counties to spend money in order to implement, the bill constitutes a mandate as defined in Article VIII, Section 18(a) of the Florida Constitution:

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

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill amends s. 212.055, F.S., to allow the Local Government Infrastructure Surtax and School Capital Outlay Surtax to be imposed by supermajority vote of the respective governing boards. Forty-three counties currently levy the maximum allowable 1% surtax under ss. 212.055(2) -(5), F.S, and two more levy 0.5% surtax under these subsections. Twenty-four counties would be eligible to levy additional local surtax under the amended s. 212.055(2), F.S. The maximum potential revenue available under this amendment to s. 212.055(2) is $1,380.9 million. Eight counties currently levy the School Capital Outlay Surtax. Escambia, Jackson, and Monroe Counties are currently levying the maximum local option surtaxes under s. 212.055, F.S. The maximum potential revenue available under this amendment to s. 212.055(6) is $1,066.6 million.

B. Private Sector Impact:

Where local governments elect to adopt an educational facilities element and enter an interlocal agreement with the school board, and levy the local option school capital outlay surtax, the desired outcome is for school capacity to be available at the same time as new development. In areas with serious school overcrowding problems, the adoption of an educational facilities element and interlocal agreement provide local governments with a means to deny comprehensive plan amendments and rezonings that increase density where school capacity is not available. Hence, in some cases, development may be delayed because of lack of adequate school capacity. However, over the long term, the school planning provisions of the bill should improve the provision of school capacity coincident with new development.

C. Government Sector Impact:

Cities, counties and school boards will incur planning, administrative and legal expenses in complying with the new planning requirements associated with educational facility planning. Cities and counties will incur planning, administrative and legal expenses in updating various elements of their comprehensive plan to take into consideration regional water supply plan information.

The extension of DCA's authority to provide Internet notice and use legal advertisements reduces the cost to the department of newspaper advertisement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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