SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1174

SPONSOR: Comprehensive Planning Committee and Senator Bennett

SUBJECT: Developments of Regional Impact

DATE: March 29, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/CS
2.			NR	
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

The committee substitute (CS) increases the applicable guidelines and standards by 100 percent for certain multiuse projects in urban central business districts and regional activity centers. It provides that regional planning agencies have primary responsibility for the coordination, management, and oversight of the development-of-regional-impact review process. The CS limits the review process to those issues that are adopted by rule in the applicable regional plan. The CS provides that the Department of Community Affairs (DCA) and other resource agencies may not impose any requirement or condition in the development order except as authorized by law. The CS requires the funds, lands, or facilities necessary to serve new development to be provided over a reasonable period of time period considering the development's impact and the type of mitigation being provided.

In addition, the CS revises requirements for a local jurisdiction that annexes a property that is covered under a development of regional impact (DRI). This CS provides that an airport authority or other governing body operating a publicly owned, public-use airport must apply the noise-exposure map most recently approved by the Federal Aviation Administration when applying such map to certain developments, development orders, land development regulations, or laws. It revises thresholds for certain airport expansions and proposed changes to a previously approved development of regional impact when determining whether such change constitutes a substantial deviation that requires further DRI review. It revises certain notice and hearing requirements.

The CS deletes language exempting any waterport, that is not subject to a development or marina development, from DRI review if the relevant county or municipality has adopted a boating facility siting plan or policy that meets certain criteria into its comprehensive plan. Instead, it exempts a marina or waterport that is expanded or constructed after July 1, 2004, that is not the

subject of a development order under s. 380.06(15), F.S., and has fewer than 300 new parking spaces, unless located in a county enumerated in s. 370.12, F.S., that has not adopted a manatee protection plan. Finally, it provides that the minimum threshold for a development-of-regional-impact review is 625 residential dwelling units. The 625 residential-dwelling-unit review criterion is not subject to the 150-percent multiplier permitted in rural areas of economic concern.

This bill substantially amends sections 380.06 and 380.0651 of the Florida Statutes.

II. Present Situation:

Section 380.06, F.S., governs the Development of Regional Impact (DRI) program and establishes the basic process for DRI review. 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.[1] For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Chapter 28-24, Florida Administrative Code. Examples of the land uses for which guidelines are established include: airports; attractions and recreational facilities; industrial plants and industrial parks; office parks; port facilities, including marinas; hotel or motel development; retail and service development; recreational vehicle development; multi-use development; residential development; and schools.

The Administration Commission is required to adopt statewide guidelines and standards to be used in determining whether particular developments shall undergo development-of-regional-impact review, considering:

- The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise;
- The amount of pedestrian or vehicular traffic likely to be generated;
- The number of persons likely to be residents, employees, or otherwise present.
- The size of the site to be occupied;
- The likelihood that additional or subsidiary development will be generated; and
- The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments; and
- The unique qualities of particular areas of the state.

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; and

[1] S. 380.06(1), F.S.

- The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[2]

Guidelines and Standards

Percentage thresholds, as defined in 380.06(2)(d), F.S., are applied to the guidelines and standards. These fixed thresholds provide that if a development is at or below 100% of all numerical thresholds in the guidelines, the project is not required to undergo DRI review.[3] If a development is at or above 120% of the guidelines, it is required to undergo DRI review.[4] A rebuttable presumption is established whereby a development at 100% of a numerical threshold or between 100-120% of a numerical threshold is presumed to require DRI review. The applicable guidelines and standards are increased by 150 percent for development in any area designated by the Governor as a rural area of economic concern pursuant to s. 288.0656, F.S.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a reasonable likelihood of additional regional impact or any type of regional impact, resulting from a change not previously reviewed by the regional planning council, constitutes a "substantial deviation" that subjects the development to further DRI review and entry of a new or amended local development order. Section 380.06(19), F.S., provides that a proposed change to a previously approved DRI which, either individually or cumulatively with other changes, exceeds specified criteria, constitutes a substantial deviation and is subject to further DRI review.

The extension of the date of buildout of a development, or any phase thereof, of 5 years or more but less than 7 years is presumed not to create a substantial deviation. However, the extension of buildout by 7 or more years is presumed to create a substantial deviation and is subject to further DRI review. However, this presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.[5] When calculating whether a buildout date has been exceeded, time is tolled during the pendency of administrative or judicial proceedings relating to development permits.[6]

Multiuse Developments

Section 380.06(2)(e), F.S., increases the applicable guidelines and standards by 100 percent for multiuse projects in urban central business districts and regional activity centers if the local government's comprehensive plan is in compliance with part II of ch. 163, F.S., and one land use in the multiuse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. An urban central business district is defined as the urban core area of a municipality with a population of 25,000 or greater which is located within an urbanized area as identified in the 1990 census.[7] Such a district must contain high intensity, high density multi-use development which includes "retail, office, cultural, recreational and entertainment facilities, hotels or motels, or other appropriate industrial activities. A regional activity center is defined as a compact, high intensity, high density multi-use area that is designated appropriate for intensive growth by the local government. It includes the same uses as

[2] S. 380.06(12)(a), F.S.
[3] S. 380.06(2)(d)1.a., F.S.
[4] S. 380.06(2)(d)1.b., F.S.
[5] S. 380.06(19), F.S.
[6] S. 380.06(19)(c), F.S.
[7] Rule 28-24.014(10)(c)1., Fla. Admin. Code

an urban central business district.[8] Currently, the individual DRI threshold is increased 50 percent within an urban central business district or a regional activity center. However, the multi-use DRI threshold within such a district or center enjoys a 100 percent increase.

Section 288.0656, F.S., defines a rural area of critical economic concern.

Binding Letters of Interpretation
Under the provisions of s. 380.06(4), F.S., a developer may request a determination from DCA on whether a proposed development must undergo development-of-regional-impact review under the guidelines and standards, whether his or her rights have vested pursuant to s. 380.06(20), F.S., or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested would divest such rights. Unless a developer waives the requirements of this paragraph by agreeing to undergo DRI review, DCA or the local government with jurisdiction over the proposed development may require a developer to obtain a binding letter if the development is at a presumptive numerical threshold or up to 20 percent above a numerical threshold in the guidelines and standards. Also, a local government may petition DCA to require a binding letter of interpretation from the developer of a DRI located in an adjacent jurisdiction. The petition shall contain facts to support a finding that the development as proposed is a development of regional impact. A binding letter of interpretation issued by DCA binds all state, regional, and local agencies, as well as the developer.

Applications for Development Approval
Prior to undertaking any development, a developer that is required to undergo development-of-regional-impact review is required to file an application for development approval with the appropriate local government. If a developer seeks a comprehensive plan amendment related to a DRI, the developer must notify in writing the regional planning agency, the applicable local government, and DCA no later than the date of preapplication conference or the submission of the proposed change. When filing the application for development approval or the proposed change, the developer must include a written request for comprehensive plan amendments that would be necessitated by the development-of-regional-impact, including data and analysis. The local government must advertise a public hearing within 30 days after filing the application for development approval or the proposed change and make a determination within 60 days. The local government is required to hear both the application for development approval or the proposed change and the comprehensive plan amendments at the same hearing. However, the local government must take action separately on the application or the proposed change.

Regional Planning Agencies and DRIs
Before filing an application for development approval, the developer is required to contact the regional planning agency to arrange a preapplication conference. Other affected state and regional agencies, at the request of the developer or the regional planning agency, shall participate in the preapplication conference and identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The regional planning agency shall provide the developer information about the review process and the use of preapplication conferences to identify issues, coordinate

[8] Rule 28-24.014(10)(c)2., Fla. Admin. Code

appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development.

Regional planning agencies must establish by rule a process for a developer and the agency to enter into binding written agreements to eliminate questions from the application for development approval when those questions are found to be unnecessary for development-of-regional-impact review. The Legislature has expressed its intent to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the DRI review process with federal, state, and local environmental reviews when such reviews are required by law. The application for development approval must be submitted within 1 year after the preapplication conference or the regional planning agency, the affected local government, or the applicant may request another such conference.

Proposed Changes to a DRI

The developer is required to submit, simultaneously, to the local government, the regional planning agency, and the state land planning agency the request for approval of a proposed change. 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 must be held within 90 days after submittal of the proposed changes, unless that time is extended by the developer. The appropriate regional planning agency or DCA must review the proposed change. No later than 45 days after submittal by the developer, but prior to the public hearing at which the proposed change is to be considered, the regional planning agency or DCA must advise the local government in writing whether it objects to the proposed change, specifying the reasons for the objection, if any, and provide a copy to the developer.

At the public hearing, the local government shall determine whether the proposed change requires further DRI review based on the thresholds and presumptions of s. 380.06(19), F.S. If the local government determines that the proposed change does not require further DRI review and is otherwise approved, or if the proposed change is not subject to a hearing and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval.

Adoption of Rules for DRI Review

The DCA is required to adopt rules to ensure uniform review of DRIs under s. 380.06, F.S. The DCA, in consultation with the regional planning agencies, may also designate types of development or areas suitable for development in which reduced information requirements for DRI review shall apply. At the request of a regional planning council, DCA may adopt by rule different standards for a specific comprehensive planning district upon a finding that the statewide standard is inadequate to protect or promote the regional interest at issue. If such a regional standard is adopted by DCA, the regional standard shall be applied to all pertinent development-of-regional-impact reviews conducted in that region until rescinded.

Regional planning agencies that perform DRI review are authorized to assess and collect fees to fund the costs, direct and indirect, of conducting the review process. Fees may vary in relation to the type and size of a proposed project, but shall not exceed $75,000, unless DCA, after

reviewing any disputed expenses charged by the regional planning agency, determines that said expenses were reasonable and necessary for an adequate regional review of the impacts of a project.

Areawide Development of Regional Impact
Section 380.06(25), F.S., provides that an areawide DRI is to be reviewed under the standards of s. 380.06, F.S., but the review must include an areawide development plan. An areawide development plan must, at a minimum:

- Encompass a defined planning area approved and include at least two or more developments;
- Map and define the land uses proposed, including the amount of development by use and development phasing;
- Integrate a capital improvements program to ensure the availability of facilities and services for the development; and
- Incorporate land development regulations, covenants, and restrictions necessary to protect resources of statewide and regional significance.[9]

The criteria for evaluating a petition for a proposed areawide DRI are:

- Whether the developer is financially capable of processing an application for development approval through the final approval stage.
- Whether the defined area and proposed development within that area appear to be of a character, magnitude, and location such that an areawide DRI is in the public interest.[10]

The local government must hold a public hearing and issue a written order.[11]

Following approval of an areawide development plan and development order, individual developments that conform to the approved areawide development plan are not required to undergo further DRI review unless otherwise provided in the development order.[12] The percentage thresholds that determine whether a proposed change constitutes a substantial deviation are doubled for an areawide DRI.[13] As to whether the proposed extension of a buildout date for an areawide DRI constitutes a substantial deviation, if the term of years for the extension is 7 or more years, the extension is presumed to create a substantial deviation under the current provisions of s. 380.06(19)(c), F.S., and is subject to further review.

Marina Siting Plans
Section 163.3178 (6), F.S., encourages local governments to adopt countywide marina siting plans to designate sites for existing and future marinas. The Coastal Resources Interagency Management Committee has identified incentives to encourage local governments to adopt such siting plans and uniform criteria and standards to be used by local governments to implement

[9] S. 380.06(25)(a)1., F.S.
[10] S. 380.06(25)(b)3., F.S.
[11] S. 380.06(25)(b), F.S. and S. 380.06(25)(e), F.S.
[12] S. 380.06(25)(a), F.S.
[13] S. 380.06(25)(n), F.S

state goals, objectives, and policies relating to marina siting. Priority is given to water-dependent land uses. Countywide marina siting plans are required to be consistent with state and regional environmental planning policies and standards. Also, each local government in the coastal area that adopts a countywide marina siting plan must incorporate the plan into the coastal management element of its local comprehensive plan.

Waterports or Marinas
Section 380.06(24)(k), F.S., provides that a waterport or marina is exempt from section 380.06, F.S., if the county or municipality has adopted a boating facility siting plan or policy which includes applicable criteria, considering factors such as natural resources, manatee protection needs, and recreation and economic needs as outlined in the Bureau of Protected Species Management Boat Facility Siting Guide dated August 2000. This plan or policy must be included in the coastal management or future land use element of the local government's comprehensive plan. An amendment for such purpose is exempt from the limitation on the frequency of plan amendments. Section 380.06(24), F.S., provides statutory exemptions from the provisions of the section. Waterports and marina developments located in counties or municipalities, that adopted boating facility siting plans or policies as part of the local government's comprehensive plan prior to April 1, 2002, are exempt from this section. This provision also requires the DCA, in cooperation with the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission (FWC), to provide technical assistance and guidelines, including model plans, policies, and criteria to a local government for the development of a siting plan.

The FWC is authorized under s. 370.12(2)(g), F.S., to provide written comments to a permitting agency regarding the expansion or construction of new marine facilities and mooring or docking slips, by the addition or construction of five or more powerboat slips. The FWC is also given rulemaking authority with regard to the operation and speed of motorboat traffic in specified areas where manatee sitings are frequent and certain data supports the conclusions that manatees frequent these areas. Section 370.12(2)(g), F.S., references certain areas within the following counties: Lee, Brevard, Indian River, St. Lucie, Palm Beach, Broward, Citrus, Volusia, Hillsborough, Sarasota, Collier, Manatee, and Miami-Dade.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 380.06(2), F.S., to provide that individual use guidelines and standards for residential, hotel, motel, office, and retail developments and multiuse guidelines and standards shall be increased by 100 percent in urban central business districts and regional activity centers for certain multiuse developments.

Section 380.06(12), F.S., is amended to provide that regional planning agencies have primary oversight of the development-of-regional-impact review process. The regional planning agency, after consultation with the local government and the applicant, will identify a lead agency to review specific resource issues. The lead agency shall act as the depository of information from all other agencies and make the final findings and recommendations that are to be supplied at least 10 days prior to the regional planning agency's report deadline. Only regional issues adopted by rule in the applicable regional plan shall be part of the review process.

Section 380.06(15), F.S., is amended to allow a local government development order to provide that no additional development may occur and certificates of occupancy will not be issued unless the biennial report is timely filed. The bill includes language that a DRI is not subject to a plan amendment, downzoning, or a reduction in intensity or density unless the local government can demonstrate that there are substantial changes in the conditions underlying the approval of the development order, the development order was based on substantially inaccurate information from the developer, or a change is necessary to prevent harm to the public health, safety, or welfare.

The bill amends s. 380.06(15)(d)3., F.S., to require that any funds or lands that are contributed are attributable to, and expended in a manner to benefit, the proposed development. Section 380.06(15)(e)2., F.S., is amended to require that funds, lands, or facilities necessary to serve new development be provided over a reasonable period of time considering the development's impact and the type of mitigation being provided. It prohibits a local government from requiring the developer of a DRI to pay for land acquisition or the construction or expansion of public facilities unless such requirement is part of a consistently enforced local ordinance that applies to any other development that is not subject to DRI review.

Section 380.06(15)(e)3., F.S., is amended to provide that DCA and other state or regional agencies may not impose any requirement or condition in the development order such as impact fees, land dedication, contribution, or other exaction, except as authorized by law. Also, s. 380.06(15)(h), F.S., is amended to require a local jurisdiction that annexes a property with a DRI to amend its future land use map and zoning district designation that are applicable to the property and adopt a new development order incorporating the rights and obligations of the prior order.

Section 380.06(15)(i), F.S., is created to provide that an airport authority or other governing body operating a publicly owned, public-use airport must apply the noise-exposure map most recently approved by the Federal Aviation Administration when applying such map to certain developments, development orders, land development regulations, or laws. Section 380.06(j), F.S., is created to require development orders to provide for the issuance of a certificate of completion. The certificate is to be rendered at the completion of the project upon the request of the developer and after a finding by the local government that the project is substantial compliance with the terms and conditions of the order. Upon recording of the certificate with the clerk of the circuit court, the project shall cease to be a DRI that is subject to s. 380.06, F.S.

The bill amends s. 380.06(19)(b), F.S., to revise the thresholds for determining if a proposed change to a DRI constitutes a substantial deviation that requires further DRI review. Specifically, it deletes language that provides a 10 percent lengthening of an existing runway or a 20 percent increase in the number of gates of an existing terminal for an airport that is located in two counties constitutes a substantial deviation. Also, it increases the threshold for watercraft storage capacity from 5 to 15 percent for an increase of development of a waterport that is located in an area identified in a marina siting plan as appropriate for additional waterport development.

It increases the threshold on dwelling units from 5 percent or 50 dwelling units to 10 percent or 100 dwelling units, whichever is greater. It provides for an increase in the commercial development thresholds from 50,000 square feet of gross floor area or of parking spaces

provided for 300 cars or a 5 percent increase in either, whichever is greater, to 75,000 square feet of gross floor area or 450 cars or a 10 percent increase. A multiuse DRI threshold, in which 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, is increased to 150 percent. Further, the percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 150 percent, as opposed to 100 percent in existing law, has been reached or exceeded.

This bill amends s. 380.06(19)(c), F.S., to provide that the extension of the date of buildout for an areawide DRI by more than 5 years but less than 10 years is presumed not to create a substantial deviation. This rebuttable presumption shifts the burden of proof. By extending the deadline by 3 years, a local government or DCA will have to demonstrate that there are additional regional impacts from the proposed change for years 5-10 instead of years 5-7 that require further DRI review. However, the agency imposed change may be subject to review pursuant to the comprehensive plan in place at the time of the change. It deletes language providing that the presumption may be rebutted by clear and convincing evidence at the local government's public hearing.

Section 380.06(19)(e)3., F.S., is amended to provide that the addition of 10 percent or 100 acres, whichever is less, of contiguous land that has not been previously reviewed or a change not specified in ss. 380.06(19)(b) and (c), F.S., is presumed not to create a substantial deviation unless additional density or intensity of development is requested. Existing law provides these specified additions or changes are presumed to create a substantial deviation. The additional acreage shall, if applicable, be subject to the comprehensive plan in place at the time the land is added.

In addition, this bill amends s. 380.06(19)(f)3., F.S., to reduce the time frame from 45 days to 30 days for a local government to give notice and schedule a public hearing after submittal by the developer of a request for approval of a proposed change. It reduces the time frame for holding the public hearing from 90 to 75 days following submittal of the proposed change. Existing law requires the local government, at the public hearing, to determine whether the proposed change is subject to further DRI review. The bill amends this provision to require the local government staff to notify the developer of its preliminary recommendation, on whether the proposed change requires further DRI review, ten days prior to the public hearing. It amends s. 380.06(19)f.6., F.S., to provide that local government approval of a change to the DRI does not divest any of the original development of regional impact.

Section 380.06(23), F.S., is amended to require DCA, prior to January 1, 2005, to commence rulemaking to streamline and reduce duplication by revising the questions in the application for development approval.

Finally, this bill amends s. 380.06(24)(k), F.S., to delete language that exempts any waterport that is not subject to a development or marina development from the provisions of s. 380.06, F.S., if the county or municipality has adopted a boating facility siting plan or policy which meets certain criteria into its comprehensive plan. Instead, the bill provides that a marina or waterport that is not subject to a development order issued under s. 380.06(15), F.S., and that is expanded or constructed after July 1, 2004, and that has fewer than 300 new parking spaces is

exempt from review under s. 380.06, F.S., unless the marina or waterport is located in a county enumerated in s. 370.12, F.S., and a manatee protection plan has not been adopted by the board of county commissioners. It makes technical changes throughout the CS.

Section 2 amends s. 380.0651(3)(j), F.S., to provide that the minimum threshold for DRI review is 625 dwelling units, effective January 1, 2005. This 625 residential-dwelling-unit criterion is not subject to the 150-percent multiplier permitted in rural areas of economic concern. A local government with a DRI threshold below 625 residential dwelling units shall receive financial assistance for third party planning and technical assistance in the form of application fees not to exceed $75,000 for residential development projects that fall between its current threshold and the 625 residential dwelling units.

Section 3 provides the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCA is required to promulgate rules to streamline and reduce duplication in the application for development approval.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.