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/CS/SB 1174

SPONSOR: Governmental Oversight & Productivity Committee, Natural Resources Committee, Comprehensive Planning Committee and Senator Bennett

SUBJECT: The 2005 Planning and Development Study Commission

DATE: April 19, 2004 REVISED: _____ _____ _____ _____

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

I. Summary:

The bill creates the 2005 Planning and Development Study Commission (commission). This bill requires the Governor, the Speaker of the House of Representatives, and the President of the Senate to each appoint 5 voting members representing specific interests and provides for the appointment of ex-officio members. The commission is required to review the implementation of the state's growth management programs and make recommendations relating to certain issues identified in the bill.

In addition, the bill requires the commission to hold at least eight public hearings throughout the state, which are scheduled every 60 days, to solicit input regarding better coordination of state and local growth management programs. It allows for the appointment of an executive director and technical advisory committees. The bill authorizes per diem and travel expenses for commission members and those members of a technical advisory committee. The Department of Community Affairs (DCA) must provide staff assistance to the executive director and the commission.

This bill requires the commission to provide a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 1, 2006. This report must address certain issues and the DCA is required to prepare legislative recommendations that are consistent with the report for consideration by the 2006 Legislature. Finally, the bill appropriates $300,000 from the General Revenue Fund to DCA for the implementation of the bill.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

A. Executive Branch Organization.

Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03 (10), F.S., defines a "commission," unless otherwise required by the State Constitution, to mean:

> . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.03(7), F.S., defines the term "council" or "advisory council" to mean:

> . . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Section 20.052, F.S., proves that advisory bodies, commission, boards of trustees and other collegial bodies created by statutory enactment must be established, evaluated, or maintained in accordance with specific standards:

- It may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.
- It must be terminated when it is no longer necessary and beneficial to the furtherance of a public purpose.
- The Legislature and the public must be kept informed of the numbers, purposes, membership, activities, and expenses of these entities.
- A collegial body may not be created or reestablished unless:
  - It meets a statutorily defined purpose.
  - Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.
  - Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and
  - Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S

Additionally, s. 20.052, F.S., requires the private citizen members of an advisory body that is adjunct to an executive agency to be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.

All meetings and records of such an entity are public under the requirements of s. 286.011, F.S., and ch. 119, F.S.

Under the section, upon termination, all records of the collegial body are to be appropriately stored by the executive agency to which it was adjunct, and any property assigned to it must be reclaimed by that agency. The collegial body is not authorized to perform any activities after the effective date of its abolition.

B. State, Regional, and Local Planning.

Beginning in 1972, Florida enacted a series of statutes that implemented a coordinated system of state, regional, and local planning. Chapter 163, F.S., provides a comprehensive growth management process that incorporates some principles of smart growth. The 1985 Growth Management Act added the concurrency requirement to ensure that facilities and services necessary to support development be made available concurrently with the impacts of development. However, many of Florida's communities continue to grapple with the issue of urban sprawl. Development, in many cases, has been directed to areas with adequate road capacity although the costs of development in those areas may be higher.

Florida's growth management system 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, (AAct@) 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 element; 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.).

Chapter 380, F.S., includes the Development of Regional Impact (DRI) program, enacted as part of the Florida Environmental Land and Water Management Act of 1972. The DRI Program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Rule 28-24, F.A.C.

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

Chapter 186, F.S., provides for the creation of 11 regional planning councils (RPCs) and for the adoption of strategic regional policy plans by the RPCs. These strategic regional policy plans must be consistent with the state comprehensive plan.

The state comprehensive plan, chapter 187, F.S., was enacted in 1985, to provide long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include: for example, land use; urban and downtown revitalization; public facilities; transportation; water resources; and natural systems and recreational lands. By October 1st of each odd-numbered year, the Governor=s Office is required to prepare any proposed revisions to the state comprehensive plan deemed necessary and present proposed revisions to the Administration Commission. The Administration Commission is then required to review such recommendations and forward to the Legislature any proposed amendments approved by the Commission.

Smart Growth

During the 2003 Regular Session, the Committee on Comprehensive Planning heard presentations on smart growth development strategies. The concept of smart growth involves redirecting growth in areas with adequate infrastructure which, in turn, leads to more efficient transportation, revitalization of neighborhoods, and preservation of surrounding green space. In contrast, sprawling development may result in higher taxes, traffic congestion, and investment dollars being diverted from older neighborhoods. The presentations to the committee focused on strategies for redirecting growth through infill and redevelopment and the use of urban growth boundaries as a method for targeting growth in areas with available infrastructure.

Urban Infill and Redevelopment

Strategies for promoting and encouraging urban infill and redevelopment may include regulatory changes to reduce barriers to these projects, reducing developer's costs, and improving the market for high density development.[1] The Legislative Committee on Intergovernmental Relations produced an interim project report in 1997 on developing a state urban policy. The committee reached consensus on the following strategies that should be part of the framework for the state's urban policy:

- Supporting and promoting fiscally strong, sustainable, and livable urban centers;
- Recognizing infill development and redevelopment is necessary to promote and support fiscally strong, sustainable, and livable centers;
- Supporting compact, multi-functional urban centers through the adoption and support of policies that reduce urban sprawl;

[1] *See* http://www.lcd.state.or.us/tgm/pub/1infill.htm, Transportation and Growth Management Program (Oregon).

- Encouraging communities to include a redesign step, involving citizens in the redesign initiative prior to redevelopment;
- Adopting macro-level urban policies and providing local governments with the flexibility to determine and address their urban priorities;
- Enhancing the linkages between land and water use planning and transportation planning for current and future designated urban areas;
- Amending existing concurrency requirements for urban areas in order to promote redevelopment efforts where such changes do not jeopardize public health and safety;
- Requiring that all proposed developments receive a full-cost accounting review in order to provide a more accurate estimate of the true development costs incurred by the local government;
- Requiring general-purpose local governments, school boards, and local community colleges to coordinate on educational issues, including planning functions and the development of joint facilities;
- Promoting mass transit systems for urban centers, including multi-modal transportation feeder systems;
- Integrating state programs that have been developed to promote economic development and neighborhood revitalization through incentives in order to promote the development of designated urban infill areas; and
- Encouraging the location of appropriate public facilities within urban centers.[2]

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.[3] The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The bill provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated $2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program.

In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. The Florida Local Government Development Agreement Act was revised to provide certain assurances to the developer of a brownfields site. Also, it amended annexation laws to allow for the annexation of an unincorporated area through a single referendum of the residents in the area proposed for annexation. The bill authorized the use of eminent domain for an unincorporated enclave surrounded by a community development district. It also established procedures for a county or combination of counties and municipalities to develop and adopt plans to improve efficiency, coordination, and delivery of local services. Finally, the legislation created the State Housing Tax Credit Program authorizing tax credits to be issued against the state corporate income tax and established the Urban Homesteading Program within the Governor's Office to make single-family housing properties available to eligible low-income buyers.

[2] Report on the Development of a State Urban Policy, Legislative Committee on Intergovernmental Relations, February 1998 at 99-102.
[3] Ch. 99-378, s. 1, Laws of Fla.

The Legislature has provided incentives for a local government that has adopted an urban infill and redevelopment plan.[4] These incentives include the issuance of revenue bonds under s. 163.385, F.S., and the option of employing tax increment financing under s. 163.387, F.S., to finance the implementation of the plan. Further, a local government that has adopted an urban infill and redevelopment plan may exercise the powers of a community redevelopment neighborhood improvement district under s. 163.514, F.S., which includes the authority to levy a special assessment. An area designated as an urban infill and redevelopment area is given a priority in the allocation of private activity bonds from the state pool under s. 159.807, F.S. Notwithstanding the incentives for urban infill and redevelopment, there are persistent barriers to urban infill and redevelopment projects.

III. Effect of Proposed Changes:

Section 1 creates the 2005 Planning and Development Study Commission. The commission consists of 15 voting members with the Governor, President of the Senate, and the Speaker of the House of Representatives each appointing 5 members. The chair of the commission is to be selected by the Governor from his or her appointees and will vote only if there is a tie vote. The commission shall also have the following ex officio members: the secretaries of the Department of Transportation, DCA, and the Department of Environmental Protection, the executive director of the Fish and Wildlife Conservation Commission, and the Commissioner of Agriculture or their designees; 2 members of the House of Representatives appointed by the Speaker; and 2 Senators appointed by the President of the Senate.

The members of the commission are to be appointed by July 1, 2004, and the first meeting held by September 1, 2004. A vacancy on the commission will be filled in the same manner as the original appointment. The Governor, Speaker of the House of Representatives, and the President of the Senate must each appoint members that represent each of the following:

- Business interests, including development and real estate;
- Agricultural interests, including farming, aquaculture, ranching, and forestry;
- Municipal and county governments;
- Environmental interests, including nonprofit organizations that promote conservation or protection of natural resources; and
- Citizens organizations, including community associations, citizen groups, and affordable housing groups.

The bill specifies voting procedures. Each member is entitled to one vote. Actions taken by the commission require a two-thirds approval. A majority of the members constitutes a quorum and is required for the commission to take action. The commission is tasked with reviewing the operation and implementation of the state's growth management programs and laws, including, but not limited to, chapters 163, 186, 187, and 380, F.S. Following this review, the bill requires the commission to make specific recommendations relating to:

[4] Section 163.2520, F.S.

- Determining methods to substantially improve, modify, or replace the current system of controls and incentives for managing growth with alternatives that have a higher likelihood of significantly improving the growth-management system;
- Implementing programs that provide necessary incentives, including financial incentives, to promote and encourage urban infill and redevelopment;
- Determining the most appropriate agency, or combination of agencies, or the creation of a new agency to effectively implement a partnership and appropriate oversight role with local and regional governments for growth management;
- Enhancing the public participation at all levels of decisionmaking involving growth management;
- Providing development interests with necessary certainty regarding where, when, and how development will be encouraged and promoted;
- Providing coordination, incentives, and funding programs that jointly share, among state, regional, and local government entities the responsibility for relieving overcrowded conditions in schools, easing traffic congestion, protecting the state's natural resources;
- Revising the development-of-regional-impact process to streamline and reduce duplication in the application for development approval and to make any necessary changes to the criteria used in determining whether a proposed change constitutes a substantial deviation requiring further review; and
- Maintaining existing private property rights in a growing economy so all sectors of the state's economy share in an improved quality of life.

The commission is required to hold at least eight public hearings that are conducted every 60 days at different locations throughout the state. At these hearings, the commission will solicit input from the public and interest groups on the effectiveness of Florida's growth-management system, with particular attention to suggestions for better coordination of local, state, and regional growth management programs.

By January 1, 2006, the commission shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report with specific recommendations concerning the issues identified above. The DCA shall prepare legislative recommendations consistent with the commission's report for consideration by the 2006 Legislature.

The commission may appoint technical advisory committees. Commission members and the members of any technical advisory committee that is appointed, may not receive remuneration for their services, but members other than public officers and employees are entitled to be reimbursed by the DCA for travel or per diem expenses pursuant to s. 112.062, F.S. Public officers and employees are entitled to be reimbursed by their respective agencies in accordance with s. 112.061, F.S.

The commission may appoint an executive director, who shall report to the commission and serve at its pleasure. The DCA shall provide the commission and the executive director with staff assistance. The department may, upon the request of the commission, reimburse consultants if such costs can be funded from the appropriation provided for in this act.

All agencies under the control of the Governor are directed, and all other agencies are requested, to render assistance and cooperation to the commission.

The commission shall continue in existence until its public hearings and written report are complete, but not later than January 1, 2006.

Section 2 of the bill appropriates $300,000 from the General Revenue Fund to DCA to implement the provisions of the bill.

Section 3 provides that the bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The manner of appointment of statutory officers may not unconstitutionally infringe upon the authority of the Governor to appoint executive branch officers.[5] The bill creates a "commission," which is required by s. 20.03(10), F.S., to be created within a department, the office of the Governor, or the Executive Office of the Governor. As such, the Governor is authorized to appoint all executive branch officers, though the Legislature is authorized to provide for Senate confirmation under Article IV, s. 6 of the State Constitution.[6] The bill provides for legislative officers, as well as the Governor, to appoint members.

While this entity is designated a "commission," however, its powers do not appear to meet the definition of a commission as it does not exercise limited quasi-legislative or quasi-judicial powers, or both, independently. Instead, the entity appears to be a council, as provided in s. 20.03, F.S. (see, *infra*). While the definition of a "council" does not specifically require it to be created within or adjunct to an executive branch entity, a council is still within the executive branch and the same appointment requirements would appear to apply.

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[5] *Jones v. Chiles*, 638 So.2d 48 (Fla. 1994).

[6] While the ultimate choice of an appointee to an executive branch office resides with the Governor, the Legislature has established processes which limit the choices that are available to the Governor for appointment to a statutory office. For example, the Governor is required to select the head of the Department of Transportation from a list of three nominees forwarded to him by the Florida Transportation Commission.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires DCA to provide staff assistance to the commission and its executive director. Commission members, as well as, members of technical advisory committees appointed by the commission, are entitled to per diem and travel expenses. In addition, the bill appropriates $300,000 from the General Revenue Fund for implementation of the provisions of the bill.

VI. Technical Deficiencies:

Chapter 20, F.S., establishes the structure of executive branch agencies. Section 20.03 (10), F.S., defines a "commission," unless otherwise required by the State Constitution, to mean:

> . . . a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and *exercising limited quasi-legislative or quasi-judicial powers, or both, independently* of the head of the department or the Governor *[emphasis added]*.

Section 20.03(7), F.S., defines the term "council" or "advisory council" to mean:

> . . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and *to provide recommendations* and policy alternatives *[emphasis added]*.

The entity that is created by the bill is called a "commission" but it does not appear to meet the statutory definition of a "commission" that is provided in s. 20.03(10), F.S. Instead, it appears to meet the definition of a "council" that is provided in s. 20.03(7), F.S., as its powers are stated on page 4, line 4 to page 5, line 3 to make ". . . specific recommendations relating to . . . ." particular issues and then to file a report with the Governor, the President of the Senate, and the Speaker of the House.

Further, under the definitions of a "council" and a "commission" provided under s. 20.03, F.S., a commission is a body created within a department, the office of the Governor, or the Executive Office of the Governor. The commission created by this bill is not created adjunct to any entity. The definition of "council" does not include a requirement that the entity be created within a department, the office of the Governor, or the Executive Office of the Governor.

Section 20.052(5)(a), F.S., requires the private citizen members of a commission or board of trustees that is adjunct to an executive agency to be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.

VII. Related Issues:

None.

VIII. Amendments:

None.