

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill adds to the content required in comprehensive plans and creates a voluntary demonstration project where governments choosing to participate can amend their comprehensive plans to allow redevelopment of coastal high hazard areas if certain criteria are met to address issues such as hurricane evacuation clearance times and shelter capacity. These changes could lead to increased density and increased property values within the effected areas.

Maintain Public Security – The bill requires the consideration of hazard mitigation strategies in comprehensive plans and creates a voluntary demonstration project where governments choosing to participate can amend their comprehensive plans to allow redevelopment of coastal high hazard areas if certain criteria are met to address issues such as hurricane evacuation clearance times and shelter capacity. This could lead to a reduction in hurricane evacuation clearance times and/or increases in hurricane shelter capacity within communities implementing mitigation strategies.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

The bill authorizes a demonstration project of up to 5 local governments, or combinations of local governments, to amend their comprehensive plan to allow for the adoption of redevelopment strategies within the coastal high hazard area (CHHA). Redevelopment principles for hazard mitigation to eliminate inappropriate and unsafe development in the coastal areas are already required for all local governments in coastal areas.

The bill requires local governments seeking to participate in the demonstration project to apply to the Department of Community Affairs (DCA) and stipulates what should be in the application.

The bill creates eligibility criteria for the demonstration project, including the following:

- The comprehensive plan delineates the Flood Insurance Rate Map zones⁶;
- The comprehensive plan delineates the Coastal Construction Control Line⁷;
- The comprehensive plan delineates the Coastal Barrier Resources System Area (COBRA)⁸;

⁶ *Flood Insurance Rate Maps* are produced in conjunction with the National Flood Insurance Program (NFIP) to depict areas subject to frequent flooding. The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages. Participation in the NFIP is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an insurance alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods.

⁷ *Coastal construction control lines (CCCL)* are established on a county basis along the sand beaches in 24 of Florida's 35 coastal counties to depict that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. Seaward of an established CCCL, a permit from the Department of Environmental Protection, or local government where the Department has delegated such authority, is required for any alteration, excavation, or construction activity in order to review the design and siting of such activities to prevent potential adverse impacts to the beach-dune system and nesting sea turtles and hatchlings and their habitat. Ch. 161, F.S.

⁸ Coastal Barrier Resources System Areas are delineated in furtherance of the Federal Coastal Barrier Resources System Act (CBRA) and the subsequent Coastal Barrier Improvement Act (CBIA) which recognized that the coastal barriers are unique landforms that serve as a protective barrier against the forces of wind and tidal actions caused by coastal storms. In addition, coastal barriers provide a protective habitat for a variety of aquatic species. The CBRA was initially enacted to reduce or restrict Federal actions that were believed to encourage development in certain undeveloped coastal barrier

- The area has a redevelopment strategy incorporated into the comprehensive plan;
- The area has been designated in the comprehensive plan as an “urban infill and redevelopment area” under s. 163.2517, F.S., or an adopted community redevelopment plan under s. 163.360, F.S., which is incorporated as a component of the comprehensive plan;
- The area is not within a Area of Critical State Concern⁹;
- The comprehensive plan delineates the coastal high hazard area¹⁰; and
- The county emergency management agency affirms in writing that it intends to participate in the demonstration project.

The bill also requires the adoption of a redevelopment strategy as a part of the comprehensive plan for those local governments participating in the demonstration project. This redevelopment strategy will include the following components:

- Measures to reduce, replace or eliminate unsafe structures, properties, and infrastructure, subject to repetitive damage from coastal storms and floods;
- Measures to reduce exposure of infrastructure to hazards, including relocation and structural modification of threatened coastal infrastructure;
- Operational or capacity improvements to maintain or reduce the county hurricane evacuation clearance times;
- Measures to increase the county shelter capacity if the hurricane evacuation clearance times are more than 16 hours for a Category 3 storm event;
- Requirements that development provides shelter mitigation proportional to its impact to offset the increased demand on evacuation clearance times and shelter capacity;
- Limitation on public expenditures that subsidize development in the most vulnerable areas of the CHHA to those needed to provide public access to the beach and shoreline, beach and dune restoration, correction of existing hurricane evacuation deficiencies, and those that make facilities more disaster resistant;
- Measures that commit to standards that exceed National Flood Insurance Standards, and require participation in the Community Rating System program of the National Flood Insurance Program;
- Measures to ensure protection of coastal resources and public access;
- Data and analysis regarding potential damage and the potential costs of damage to structures, property, and infrastructure, including a comparison of the estimated damage before and after redevelopment;
- Data and analysis regarding impacts on hurricane shelter capacity and evacuation clearance times based on the population anticipated by redevelopment;
- The execution of an interlocal agreement between the local government or a combination of local governments participating in the demonstration project, together with their respective county emergency management agency and any affected municipalities, to implement

areas, including both islands and mainland property. While the CBRA and CBIA do not prevent private financing and development within the CBRS, they do limit financial assistance by Federal agencies. Any form of expenditure of federal funds for a loan, grant, guarantee, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance within the CBRS is prohibited, with specific and limited exceptions.

⁹ Florida has five *Areas of Critical State Concern (ACSC)* which are established pursuant to s. 380.06 F.S., and depict areas of the state that contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance the uncontrolled private or public development of which would cause substantial deterioration of such resources. The five ACSC areas are: City of Apalachicola, City of Key West, Green Swamp, Florida Keys, and the Big Cypress Swamp.

¹⁰ *Coastal high hazard area* means the evacuation zone for a Category 1 hurricane as established in the regional hurricane evacuation study applicable to the local government. Rule 9J-5.003(17), F.A.C.

mitigation strategies to reduce hurricane evacuation clearance times and deficits in public shelters; and

- The preferred character of the community, and how this character will be achieved.

If the local government meets the eligibility requirements, the DCA and the selected local government must execute a written agreement that is a final agency action subject to challenge under s. 120.569, F.S., of the Administrative Procedure Act. The written agreement must:

- Identify the area subject to the increase in development potential, including residential and transient residential development;
- State the amount of such increase;
- Identify the most vulnerable areas not subject to increases in development; and
- Describe how the required minimum components redevelopment strategy will be adopted into the comprehensive plan.

The DCA must coordinate the review of hazard mitigation strategies with the Federal Emergency Management Agency and the Division of Emergency Management and include in the written agreement conditions necessary to be addressed in the comprehensive plan to meet the requirements of hurricane evacuation, shelter, and hazard mitigation. The agreement must specify procedures for public participation and intergovernmental coordination with the county emergency management agency and any affected municipalities regarding hurricane evacuation and shelter requirements.

The local governments may propose comprehensive plan amendments after the agreement is executed but may not adopt them until all challenges under s. 120.569, F.S. are complete.

The bill authorizes DCA to adopt rules governing the submission, review, and selection of applications from local governments, and allows for a phased schedule for review of applications. The DCA must begin accepting applications no later than July 1, 2006. The DCA is also required to provide the Federal Emergency Management Agency and the Division of Emergency Management with an opportunity to comment.

The bill provides a definition for Local Mitigation Strategy as one required under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, enacted by Section 104 of the Disaster Mitigation Act of 2000.

The bill requires DCA to provide a progress report to the Governor, President of the Senate, and Speaker of the House by February 1, 2007 assessing whether the demonstration program has successfully implemented mitigation strategies and whether the program should continue or be expanded to include additional communities.

In addition to provisions related to the demonstration project, the bill requires:

- All local comprehensive plans to consider the vulnerability of the area to natural hazards and mitigation needs;
- Adding the implementation of hazard mitigation strategies to the objectives contained with the coastal management elements of all local comprehensive plans that are required to include that element; and
- Adding “property” to the component of the coastal management element that outlines principles for hazard mitigation and protection, and including local mitigation strategies that consider the capability to safely evacuate the density of coastal population.

The bill contains several corrections to statutory cross-references.

Background

The Local Government Comprehensive Planning and Land Development Regulation Act, contained in ss. 163.3161-163.3246, F.S., established a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan. The local government comprehensive plan is intended to be the policy document guiding local governments

in their land use decision-making. Section 163.3177, F.S., requires each comprehensive plan to include certain “elements” that address different aspects of growth management, including the following: a capital improvements; future land use plan; traffic circulation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; and intergovernmental coordination elements.

Coastal Management Element

Those local governments in coastal areas of the state are also required to include a “coastal management element.” The coastal management element must include policies to guide the local government’s decisions and implementation of the following objectives:

- Maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.
- Continued existence of viable populations of all species of wildlife and marine life.
- The orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.
- Avoidance of irreversible and irretrievable loss of coastal zone resources.
- Ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.
- Proposed management and regulatory techniques.
- Limitation of public expenditures that subsidize development in high-hazard coastal areas.
- Protection of human life against the effects of natural disasters.
- The orderly development, maintenance, and use of ports identified in s. 403.021(9), F.S., to facilitate deepwater commercial navigation and other related activities.
- Preservation, including sensitive adaptive use of historic and archaeological resources.

In addition, the coastal management element must outline principles to be used in eliminating inappropriate and unsafe development in coastal areas as the opportunity arises. Further, it must identify public access to beach and shoreline areas and address the need for water-dependent and water-related facilities. This element must identify regulatory and management techniques that a local government will use in order to mitigate the threat to human life and to control proposed development and redevelopment in order to protect the coastal environment, considering impacts cumulatively. A coastal local government is also required to include, in its coastal element, the designation of “high-hazard coastal areas,” which consist of category 1 evacuation zones. Under current growth management law, local governments are restricted from allowing development in these areas that would increase the density or intensity of the current land use.

Currently, any coastal redevelopment must meet all the planning requirements of s. 163.3177 and 163.3178, F.S., and Rule 9J-5, F.A.C., including statutory requirements to limit public expenditures that subsidize development in high-hazard coastal areas; and rule requirements to limit densities in coastal high hazard areas and maintain or reduce hurricane evacuation times. Current hurricane evacuation times are based on current population, not the amount of population for the development potential authorized by the future land use plan.

The statute and rule also require the preparation of a redevelopment plan that reduces or eliminates the exposure of human life, the public and private property to natural hazards. In practice however, there is little incentive to prepare post-disaster redevelopment plans because coastal densities are limited to levels authorized under current comprehensive plans. Further, post disaster redevelopment plans are not required to be integrated into the comprehensive plan.

Hazard Mitigation

Section 322, Mitigation Planning, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Act”) requires hazard mitigation planning to remain eligible for disaster assistance. Federal

funding sources available for hazard mitigation have included the Pre-Disaster Mitigation Program (PDM), the Hazard Mitigation Grant Program (HMGP), and the Flood Mitigation Assistance Program (FMA). According to the DCA, these grant programs and others may be encouraging growth in the coastal high hazard area by subsidizing the true cost of coastal development. According to the DCA, "Within coastal areas, the priorities and policies of the State are not balanced with policies for growth, redevelopment, efficiency in the provision of infrastructure and adequate evacuation and sheltering causing problems for implementation of growth management and emergency management programs."¹¹

The language of this bill was proposed in the 2004 Legislative session as HB 409/SB 686. HB 409 was amended through the process to address the concerns of the DCA then substituted on the House floor for SB 686. SB 686 died on third reading at the end of the 2004 Legislative Session.

C. SECTION DIRECTORY:

Section 1. Amends s. 163.3164, F.S. creating a definition for "local mitigation strategy" and renumbers subsequent definitions.

Section 2. Amends ss. 163.3177(6)(a) and (g), F.S., relating to the future land use element of local comprehensive plans.

Section 3. Amends ss. 163.3178, F.S. relating to the demonstration project and the required coastal management element of local comprehensive plans.

Section 4. Amends s. 186.515, F.S., regarding regional planning councils, to correct cross-references.

Section 5. Amends s. 288.975, F.S., regarding military base reuse plans, to correct cross-references.

Section 6. Amends s. 369.303, F.S. to correct cross-references in the definition of "land development regulation."

Section 7. Creates an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a direct effect on state revenue.

2. Expenditures:

The bill does not appear to have a direct effect on state expenditures. However, the Department of Community Affairs will be required to adopt rules and review agreements and other documents from local governments that could have a small effect on expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a direct effect on the revenues of local governments. However, the bill does permit local governments participating in the demonstration project to amend their comprehensive plans to possibly allow increased density in coastal areas which could lead to increased property value and related taxes.

2. Expenditures:

The bill will require additional effort on the part of local governments but there was not enough information available at the time of analysis to estimate the potential costs. For local governments participating in the demonstration project, the potential revenue generated by increased property

¹¹ DCA Whitepaper titled Florida's Coastal Policy for Development in Coastal High Hazard Areas. (undated)

values may outweigh the potential costs of implementing the changes. While the bill does not directly impact local government expenditures, it could have an effect on them due to increased density and impacts from major storm events.

The bill could allow for increased density in coastal high hazard areas for those communities participating in the demonstration project. If increased density is permitted, it will most likely require increased shelter and road capacity and will increase the demands on local infrastructure. This could lead to an increase in expenditures for local governments that participate in the demonstration project. A major storm event could also increase costs to local communities that have allowed increased density under the demonstration project.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not have a direct effect on the private sector. However, if additional density is allowed in coastal areas as a result of the bill the private sector could experience increased property value. If increased density is permitted, it will also increase the potential private sector loss from a major storm event.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill expands the rule making authority of the Department of Community Affairs in relation to implementing the demonstration project and required agreements authorized by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

This bill *requires* the DCA to enter into an agreement with any local government, or group of local governments, that applies for the demonstration project and meets the eligibility requirements established by the bill. However, the bill only allows “up to five” local governments or combinations of local governments to amend their plans. The bill is unclear as to the process applied if more than five apply and meet the eligibility requirements.

Other Comments

The Florida League of Cities¹² stated that the bill has raised the concerns of some small communities in their group. At least one small community has expressed concern that the bill could affect the character of their community if a community in their area decides to redevelop using the provisions of the bill. Increased density in a neighboring community could increase the burden on the infrastructure of the surrounding communities and create undue pressure on the character and amenities of these communities.

¹² Rebecca O’Hara – Assistant General Counsel, Florida League of Cities.
STORAGE NAME: h0477c.LGC.doc
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Representatives of the Florida Association of Counties¹³ and the 1000 Friends of Florida¹⁴ have expressed concern that there is no provision in the bill to prevent increased density in coastal communities seaward of the coastal construction control line.

The 1000 Friends of Florida, Audubon of Florida, and the Caribbean Conservation Corporation jointly sent a letter, dated March 3, 2005, to Governor Jeb Bush calling for a comprehensive reassessment of Florida's coastal management policies.

The DCA created the Coastal Development Workgroup to address issues related to the development and redevelopment of coastal communities. The workgroup is intended to provide recommendations relating to economic development, environmental resource protection, and insurance related issues. The work group was to begin meeting in August of 2004 but was not able to meet until January 2005 due to the effects of the 2004 hurricane season.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2005, the Growth Management Committee adopted one technical amendment to correct the language of lines 421 - 422.

On April 20, 2005, the Local Government Council adopted one amendment to:

- Clarify the DCA's authority to adopt rules governing the selection of local governments;
- Require the DCA to begin accepting applications by July 1, 2006;
- Require data and analysis of the "proportionate" potential costs of damage under the redevelopment strategy which would need to be less than that "proportionately" expected without the redevelopment strategy; and
- Provide that a local government may be eligible if the area is part of an adopted community redevelopment plan which is incorporated as a complement of the comprehensive plan.

¹³ Eric Poole – Florida Association of Counties

¹⁴ Janet Bowman – 1000 Friends of Florida