

# 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.)

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Prepared By: Environmental Preservation Committee

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BILL: CS/SB 976

SPONSOR: Environmental Preservation Committee and Senator Jones

SUBJECT: Hazard Mitigation for Coastal Redevelopment

DATE: April 19, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/1 amendment</b>
2.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<b>Favorable</b>
3.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<b>Fav/CS</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute authorizes a demonstration project for up to five local governments or a combination of local governments that would allow them to amend their comprehensive plans to permit the redevelopment of coastal areas within designated high hazard areas. The committee substitute provides eligibility criteria for the demonstration project and gives the Department of Community Affairs (DCA) authority over the administration of the project.

For local governments participating in the demonstration project, the committee substitute increases the planning requirements on coastal counties and municipalities by requiring these local governments to include additional provisions in the coastal management element of their comprehensive plans. The committee substitute provides more flexibility to local government participants to increase density and intensity within coastal high hazard areas beyond what is allowed under the existing comprehensive plan provided a redevelopment strategy and local mitigation strategies are in place.

In addition, the bill defines “local mitigation strategy” and integrates local hazard mitigation planning into the comprehensive planning process.

This bill substantially amends the following sections of the Florida Statutes: 163.3164, 163.3177, 163.3178, 186.515, 288.975, and 369.303, F.S.

## II. Present Situation:

The Local Government Comprehensive Planning and Land Development Regulation Act, contained in ss. 163.3161-163.3246, 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. 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.

Those local governments in coastal areas of the state are also required to include a “coastal management element.”<sup>1</sup> 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) to facilitate deepwater commercial navigation and other related activities.
- Preservation, including sensitive adaptive use of historic and archaeological resources.<sup>2</sup>

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.<sup>3</sup> Further, it must identify public access to beach and shoreline areas and address the need for water-dependent and water-related facilities.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.

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<sup>1</sup> Section 163.3177(6)(g), F.S.

<sup>2</sup> Section 163.3177(6)(g)1.-10., F.S.

<sup>3</sup> Section 163.3178(2)(f), F.S.

<sup>4</sup> Section 163.3178(2)(g), F.S.

<sup>5</sup> Section 163.3178(2)(j), F.S.

<sup>6</sup> Section 163.3178(2)(h), F.S.

### **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.<sup>7</sup> “Hazard mitigation”, as defined in 44 C.F.R. s. 201.2 (2002), means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards. Federal funding sources available for hazard mitigation include the Pre-Disaster Mitigation Program (PDM), the Hazard Mitigation Grant Program (HMGP), and the Flood Mitigation Assistance Program (FMA).<sup>8</sup> Eligibility for a project grant under these programs is contingent upon a local government having a local mitigation strategy (plan) approved by the Federal Emergency Management Agency. Approximately 60 percent of Florida’s local governments have completed a local mitigation strategy.<sup>9</sup> The remaining local governments are expected to have a local mitigation strategy completed by May 1, 2005.

The Division of Emergency Management and the Division of Community Planning within the DCA are working with local governments to incorporate a local mitigation strategy into their local comprehensive plans. At this time, there is no requirement that a local government revise its comprehensive plan to address findings and recommendations in a local mitigation strategy. However, a local government can use the Evaluation and Appraisal Report (EAR) process to evaluate hazard mitigation strategies. The DCA is encouraging coordination of the EAR update with revisions to the local mitigation strategy for purposes of implementing those strategies into the local government’s comprehensive plan.<sup>10</sup>

### **Coastal Barrier Resources Act**

Congress enacted the Coastal Barrier Resources Act in 1982 to designate various undeveloped coastal barrier islands for inclusion in the Coastal Barrier Resources System Area (COBRA).<sup>11</sup> This legislation was reauthorized in 1990 as the Coastal Barrier Improvement Act. Areas subject to the act are ineligible for direct or indirect federal funding, including flood insurance programs, which support development in those areas. However, this limitation on funding does not apply to emergency life-saving activities in those areas. The purpose of this legislation is to minimize loss of human life, limit the loss of federal revenues, and protect wildlife and other natural resources by prohibiting new federal expenditures and financial assistance programs in these designated areas.

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<sup>7</sup> 42 U.S.C. § 165 (2000).

<sup>8</sup> See Florida Department of Community Affairs, Division of Community Planning, *Hazard Mitigation Planning* (visited March 3, 2005) <<http://www.dca.state.fl.us/fdcp/dcp/hazardmitigation/index.cfm>>.

<sup>9</sup> Conversation on March 3, 2005, with Leroy Thompson, Division of Emergency Management, Department of Community Affairs.

<sup>10</sup> See Florida Department of Community Affairs, *supra* note 8.

<sup>11</sup> 16 U.S.C. 3501 et seq. See also U.S. Fish and Wildlife Service, *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service*, <<http://laws.fws.gov/lawsdigest/coasbar.html>>.

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3164, F.S., to define “local mitigation strategy” as a local plan required under the Robert T. Stafford Disaster Relief and Emergency Assistance Act to promote hazard mitigation and to manage disaster redevelopment.

**Section 2** amends s. 163.3177, F.S., to include vulnerability to natural hazards and hazard mitigation as part of the data on which a local government will base its future land use plan. This committee substitute requires a coastal management element to address the implementation of hazard-mitigation strategies.

**Section 3** amends s. 163.3178, F.S., to require a coastal management element to outline principles for the protection of property. It also requires the coastal management element to include a component that outlines local mitigation strategies.

The committee substitute amends the redevelopment component of the coastal management element to create a “demonstration project” for up to five local governments or combinations of local governments that would amend their comprehensive plans to allow for the redevelopment of coastal areas within the designated coastal high-hazard area. The local government would submit an application for the demonstration project to the DCA with the participation of the county emergency management agency. To be eligible for the demonstration project, the project would have to meet certain conditions, including:

- the comprehensive plan delineates the Flood Insurance Map zones, the Coastal Construction Control line, and the Coastal Barrier Resources System Area (COBRA) units for the area that is subject to the redevelopment strategy;
- the area is part of a comprehensive redevelopment strategy that will be incorporated into the comprehensive plan;
- the area has been designated as an urban infill and redevelopment area under s. 163.2517;
- the area is part of an adopted community redevelopment plan under s. 163.360, F.S., and is included in the comprehensive plan;
- the area is not within a designated area of critical state concern;
- the comprehensive plan delineates the coastal high hazard area consistent with part II of ch. 163, F.S.; and
- the county emergency management agency affirms in writing its intent to participate in the project.

In order for redevelopment to be allowed under the existing comprehensive plan, the local government(s) would be required to adopt into the plan a redevelopment strategy, consistent with s. 163.3177(6)(a), F.S., and local mitigation strategies, that includes the following components:

- measures to reduce, replace or eliminate unsafe structures and properties subject to repetitive damage from coastal storms and floods;
- measures to reduce exposure of infrastructure to hazards including relocation or structural modifications to threatened coastal infrastructure;

- operational and capacity improvements to ensure the redevelopment strategy maintains or reduces throughout the planning timeframe hurricane evacuation clearance times as established in the most recent hurricane evacuation study or transportation analysis;
- for counties where the hurricane evacuation clearance times exceed 16 hours for a Category 3 storm event, measures to ensure the redevelopment strategy reduces county shelter deficit and hurricane clearance times within the planning timeframe to adequate levels below 16 hours;
- measures that provide for county evacuation shelter space to ensure that development authorized within the redevelopment area provides for mitigation proportional to its impact to offset the increased demand on evacuation clearance times and public shelter space;
- measures to ensure that public expenditures which subsidize development in the most vulnerable areas of the coastal high hazard area are limited, except for that needed to provide for public access to the beach and shoreline, restore beaches and dunes and other natural systems, correct existing hurricane evacuation deficiencies, or to make facilities more disaster resistant;
- measures that commit to planning and regulatory standards which exceed minimum National Flood Insurance Standards;
- measures to ensure that the redevelopment strategy does not allow increases in development, including residential and transient residential development, within the most vulnerable areas of the coastal high hazard area;
- measures to ensure the protection of coastal resources, including beach and dune systems, and to provide for public access to the beach and shoreline consistent with estimated public needs;
- data and analysis that show what costs, including the potential or proportionate costs of the damage to structures, property and infrastructure, would be less than expected without the redevelopment strategy;
- data and analysis forecasting the impacts of the redevelopment on shelter capacity and hurricane evacuation clearance times based on the population anticipated by the redevelopment strategy; and
- execution of an interlocal agreement between the local governments and county emergency management agencies participating in the demonstration project and any affected municipalities to implement mitigation strategies that reduce hurricane evacuation clearance times and public shelter deficit.

Also, the redevelopment strategy must establish the preferred character of the community and how to achieve it.

The DCA is given authority to adopt procedural rules governing the submission and review of the applications. The DCA may establish a phased schedule for the review of applications. The DCA would be required to begin taking applications on July 1, 2006. The DCA must give its Division of Emergency Management and the Federal Emergency Management Agency an opportunity to comment on the application.

A local government that meets the required conditions shall enter into a written agreement with the DCA. The agreement must: (1) delineate the area that will be subject to the increase in

development potential and state the amount of the increase; (2) identify the most vulnerable areas of the coastal high hazard area not subject to increases in development; and (3) describe how certain required conditions are to be met.

The DCA is to coordinate the review of hazard mitigation strategies with its Division of Emergency Management and FEMA and include in the written agreement the conditions necessary to be addressed in the local comprehensive plan to meet the requirements of hurricane evacuation, shelter, and hazard mitigation. Also, the agreement must specify procedures for public participation and intergovernmental coordination with the county emergency management agency and any affected municipalities. The committee substitute requires a public hearing prior to execution of the agreement. Once the agreement is executed, the local government may propose such amendments to its comprehensive plan as are authorized by the agreement.

The department is required to file a progress report on the demonstration project with the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2007.

**Section 4** amends s. 186.515, F.S., to conform a cross-reference with the provisions of this bill.

**Section 5** amends s. 288.975, F.S., to conform a cross-reference with the provisions of this bill.

**Section 6** amends s. 369.303, F.S., to conform a cross-reference with the provisions of this bill.

**Section 7** provides the act 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.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The redevelopment of properties in coastal areas may have a significant positive fiscal impact on property owners and developers in those areas.

**C. Government Sector Impact:**

The redevelopment of properties in coastal areas could have a significant positive impact on local government property tax revenues as a result of increases in property values.

In the event of a natural disaster, state and federal funding sources are often needed to assist storm victims in these coastal areas.

The bill requires the Department of Community Affairs to review applications for the demonstration project and review comprehensive plan amendments resulting from a project itself.

**VI. Technical Deficiencies:**

An amendment adopted by the Environmental Protection Committee had the effect of reverting portions of the committee substitute back to the original language of the bill. A technical amendment (Barcode 905210) adopted by the Community Affairs Committee would need to be re-filed.

**VII. Related Issues:**

None.



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## **VIII. Summary of Amendments:**

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

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