The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL:	CS/CS/SB 1122
INTRODUCER:	Environmental Preservation and Conservation Committee, Community Affairs Committee, and Senator Bennett
SUBJECT:	Growth Management
DATE:	April 14, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.	Wolfgang	Yeatman	EP	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) makes numerous changes to Florida's Growth Management Act. Most of these changes are designed to reduce state oversight of land use planning. Specifically, the major changes in the CS include:

- Making concurrency for parks and recreation, schools, and transportation facilities optional for local governments.
- Applying an expedited comprehensive plan amendment process statewide.
- Deleting the requirement that comprehensive plans be financially feasible.
- Deleting the twice a year limitation on comprehensive plan amendments.
- Revising the small scale amendment process.
- Specifying that population projections should be covered for a 10-year window and act as a floor for requisite development except for areas of critical state concern.
- Allowing additional planning periods for specific parts of the comprehensive plan.
- Abolishing 9J-5, F.A.C., and incorporating many of the substantive provisions into the bill.

- Removing many of the state specifications and requirements for optional elements in the comprehensive plan, but allowing local governments to continue to include optional elements.
- Allowing mass transit projects to extend outside a transportation deficiency area.
- Exempting transit-oriented developments from transportation impact review in the development of regional impact process.
- Expanding and revising the optional sector plan process.
- Reducing the requirements of the 7-year evaluation and appraisal process.
- Revising the rural land stewardship program.
- Restricting the state's ability to interpret joint planning agreements.
- Prohibiting local governments from increasing or creating new impact fees for nonresidential development for two years.
- Making DCA the sole agency for reviewing commercial/industrial uses for purposes of the Highway Beautification Act.
- Revising the make-up of the RPCs allowing for representation of the commercial and business entities.
- Reenacting language relating to the burden of proof for impact fees.
- Clarifying and broadening the window for permit extensions.
- Removing certain requirements relating to energy efficiency and green house gas reductions.
- Removing the optional provisions relating to recreational surface water use policies.
- Prohibiting local governments from:
  - having referenda for local comprehensive plan amendments;
  - requiring a super majority vote for the adoption of comprehensive plan amendments.
- Encouraging planning innovation technical assistance.
- Containing transition language and preservation of rights.
- Clarifying that a landowner seeking certification of a water and/or wastewater utility from the Public Service Commission for at least 1,000 acres may seek such certification for planning purposes, in order to be prepared to provide service on its property, without being required to show an immediate need for service.
- Expanding provisions relating to agricultural enclaves.
- Revising and sunsetting the Century Commission.
- Clarifying requirements for adopting criteria to address compatibility of lands relating to military installations.
- Specifying that the comprehensive plan or zoning ordinance that applies to a development is the plan or ordinance in place at the time the application for development is filed.

This bill substantially amends the following sections of the Florida Statutes: 163.3161, 163.3162, 163.3164, 163.3164, 163.3167, 163.3171, 163.3174, 163.3177, 163.31777, 163.3178, 163.3180, 163.31801, 163.3182, 163.3184, 163.3187, 163.3191, 163.3194, 163.3220, 163.3221, 163.3229, 163.3235, 163.3239, 163.3243, 163.3245, 163.32465, 186.504, 288.063, 339.155, 339.2819, 367.021, 369.303, and 380.06.

The bill conforms cross references in the following sections of the Florida Statutes: 163.360, 163.516, 186.513, 186.515, 189.415, 190.004, 190.005, 193.501, 287.042, 288.975, 290.0475,

311.07, 331.319, 369.321, 378.021, 380.031, 380.061, 380.065, 380.115, 403.50665, 420.9071, 420.9076, 720.403, and 1013.33

This bill creates ss. 163.3168 and 163.3248 of the Florida Statutes.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[1] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[2] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. Local governments may amend their comprehensive plans twice per year. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA). Generally, local governments can only affect comprehensive planning within their jurisdiction. However, under s. 163.3171, F.S., local governments may enter into a joint planning agreement authorizing one or both of the jurisdictions to exercise extrajurisdictional authority.

Amendments to the Comprehensive Plan

A local government may choose to amend its comprehensive plan for a host of reasons. It may wish to: expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government. The first step in the process is for the local government to develop a comprehensive plan amendment proposal.

Developing a Proposal – Public Hearings and Notice Requirements

Public participation is a critical part of the comprehensive planning process.[3] Citizens often want to be a part of planning their communities and landowners need to be aware of changes that could affect their property. A local government considering a plan amendment must hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment.[4] Notice must be published in a newspaper of general paid circulation in the jurisdiction of interest. The

[1] *See* Chapter 163, Part II, F.S.
[2] Section 163.3177(5), F.S.
[3] Section 163.3181, F.S., setting out the minimum requirements for public participation in the comprehensive planning process.
[4] Section 163.3184(15), F.S.

procedure for transmittal of a proposed or adopted comprehensive plan amendment requires the affirmative vote of a majority of the members of the governing body present at the hearing.

Submission of the Proposal

The local government must submit proposed amendments with supporting documentation to the following entities (hereinafter called the "reviewing agencies"):

- the Department of Community Affairs,
- the appropriate regional planning council,
- the appropriate water management district,
- the Department of Environmental Protection,
- the Department of State,
- the Department of Transportation, and,
- in the case of municipal plans, to the appropriate county,
- in the case of county plans, to:
  - the Fish and Wildlife Conservation Commission and
  - the Department of Agriculture and Consumer Services.[5]

The local government also sends copies to other government entities that have filed written requests. Upon transmission of the amendment, the local government may request a review by DCA. DCA has responsibility for plan review, coordination, and the preparation and transmission of comments. DCA also keeps a file on any proposed or adopted plan amendment along with any relevant correspondence. For most local government plan amendments, the local governments are limited to submitting plan amendment packets twice a year.

The reviewing agencies provide objections, recommendations, or comments to DCA. Public school facilities elements are also reviewed by Office of Educational Facilities of the Commissioner of Education. Written comments submitted by the public within 30 days after notice of transmittal by the local government of the proposed plan amendment are also considered.

DCA reviews a proposed plan amendment upon request of a regional planning council, affected person, or local government transmitting the plan amendment.[6] The request from the regional planning council or affected person must be received within 30 days after transmittal of the proposed plan amendment. DCA may review any proposed plan amendment regardless of whether a request for review has been made, if the agency gives notice to the local government, and any other person who has requested notice, of its intention to conduct such a review within 35 days after receipt of the complete proposed plan amendment.

Adopting a Plan Amendment

Upon receipt of written comments from DCA, the local government has a set time to adopt the plan amendment or adopt it with changes.[7] The decision whether to adopt a proposed plan amendment, other than an Evaluation and Appraisal Report (EAR) amendment, is done at a

[5] Section 163.3184, F.S.
[6] Section 163.3184, F.S.
[7] Section 163.3184, F.S. (120 days for an amendment that is part of the evaluation and appraisal report or 60 days for an ordinary comprehensive plan amendment).

public hearing. A plan amendment is adopted by enacting an ordinance. After adoption, the local government has 10 working days to transmit the plan amendment to DCA. The local governing body must also transmit a copy of the adopted comprehensive plan amendment to the regional planning agency and to any other unit of local government or governmental agency in the state that has filed a written request with the governing body for a copy of the plan or plan amendment.

If the transmittal letter correctly states that the plan amendment is unchanged and was not the subject of review or objections, DCA has 20 days after receipt of the transmittal letter to issue a notice of intent that the plan amendment is in compliance.

Except for uncontroverted amendments and small scale amendments, DCA has 45 days to review an adopted comprehensive plan amendment and to determine if it is in compliance with the Act. However, if the amendment is the result of a compliance agreement the time period for review and determination is be 30 days.

DCA issues a notice of intent to find that the plan or plan amendment is in compliance or not in compliance. DCA provides notification of its decision by: publishing it in a newspaper designated by the local government, mailing the notice to the local government (which must then publish the notice on its website), and posting a copy on the agency's website. The agency also mails information about the notices to people who left their names and addresses at a public hearing on the comprehensive plan amendment.[8]

If DCA finds the plan amendment in compliance, affected persons may challenge and receive an administrative hearing with the Division of Administrative Hearings (DOAH). If the DCA finds that the plan amendment is not in compliance, the notice of intent is forwarded to DOAH. DCA or the affected persons initiating a challenge may enter into a compliance agreement at any time.[9] Plan amendments enacted pursuant to a compliance agreement have different hearing and notice requirements, which are specified in s. 163.3184(16)(c)-(f), F.S.

Citizens' Roles in Comprehensive Planning

Citizens are afforded several opportunities to challenge decisions that may be inconsistent with the Growth Management Act and local government comprehensive plans. Pursuant to s. 163.3184, F.S., an "affected person" has the right to petition for an administrative hearing to challenge the DCA's decision that a comprehensive plan or plan amendment is, or is not, in compliance with the Growth Management Act. "Affected persons" are:

- the local government that adopted the plan or plan amendment;
- an adjoining local government that can demonstrate substantial impacts;
- persons who own property, reside, or own or operate a business within the boundaries of the local government that adopted the plan or plan amendment and submit comments between the proposed hearing and the adopted hearing; and

[8] Section 163.3184(8), F.S.
[9] Section 163.3184(16), F.S. Prior to its execution of a compliance agreement, the local government must approve the compliance agreement at a public hearing advertised at least 10 days before the public hearing in a newspaper of general circulation.

- for future land use map amendments, persons who own property outside of the local government jurisdiction, and that property abuts the property affected by the future land use map amendment.

The petition must be filed with the Agency Clerk, DCA, within 21 days after publication of the DCA's Notice of Intent.

Section 163.3213, F.S., provides that substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan. A substantially affected person, within 12 months after adoption of the land development regulation, may challenge a land development regulation on the basis that it is inconsistent with the local comprehensive plan, by filing a petition with the local government outlining the facts on which the petition is based and the reasons the substantially affected person considers the land development regulation to be inconsistent with the local comprehensive plan. The local government has 30 days to respond to the petition. Thereafter, the substantially affected person may petition the DCA not later than 30 days after the local government has responded.

The Act gives no regulatory authority to the DCA to "enforce" local government development order consistency with the provisions of their adopted comprehensive plans. However, s. 163.3215, F.S., provides that any "aggrieved or adversely affected party" can challenge a development order issued by a local government that is believed not to be consistent with the adopted comprehensive plan. An "aggrieved or adversely affected party" must show that they have an interest protected by the local government's comprehensive plan, and that this interest will be adversely affected in some degree greater than that suffered by the general public. The term includes the owner, developer, or applicant for a development order.

Small Scale Amendments

Small scale amendments require only one public hearing before the governing board. The local government is required to meet the publication of notice requirements. The local government is only required to send copies of the notice and amendment to the DCA, the RPC, and any other person or entity requesting a copy. The notice must include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.[10]

A small scale development amendment:

- Involves a use of 10 acres or fewer (20 acres for rural areas of critical economic concern); and
- The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government does not exceed:
  - 120 acres within specially designated urban areas;[11] if the local government has a specially designated urban area, but if the local government is designating areas outside

[10] Section 163.3187(3), F.S.

[11] Areas designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, F.S., urban infill and redevelopment areas designated under s. 163.2517, F.S., transportation concurrency exception areas approved pursuant to s. 163.3180(5), F.S., or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e), F.S.

the area the amount of land designated through small scale amendments is no more than 60 acres.
- A maximum of 80 acres in a local government that does not contain specially designated urban areas.
- A maximum of 120 acres in Duval County. [12]

If either of the following has occurred in the prior 12 months, the amendment may not be small scale:
- The same property was already granted a change.
- The same owner's property within 200 feet of property was already granted a change.

The proposed amendment may not:
- Involve a text change to the goals, policies, and objectives of the local government's comprehensive plan;
- Involve an area located within an area of critical state concern; or
- Allow more than 10 residential units per acre (not within a specially designated urban area), unless the amendment involves the construction of affordable housing units.

Standard of Review

The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or "standard of review." In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.[13] The preponderance of the evidence (also known as the "greater weight of evidence") standard of review requires that the fact finder determine whether a fact sought to be proved is more probable than not. Under the "fairly debatable" standard, in cases of doubtful or debatable reasonableness or validity, courts will and must sustain the government's decision. This standard is most often used in zoning cases.[14] Pursuant to s. 163.3184, F.S., if an affected party challenges a comprehensive plan amendment that DCA found to be in compliance then the local government's enactment of the plan amendment is upheld if it is fairly debatable that the amendment is in compliance.[15] If DCA found the amendment not in compliance, then the amendment will be upheld against a challenge unless the affected party can prove by a preponderance of the evidence that the amendment is not in compliance.[16] Under the alternative state review process (see below), a plan amendment will be upheld unless an affected party can prove by a preponderance of the evidence that the amendment is not in compliance.

Alternative State Review Process

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with limited state agency review. Pilot communities transmit plan amendments, along with supporting data and analyses to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state

[12] Section 163.3187, F.S.
[13] 5 Fla. Prac., Civil Practice s. 16:1 (2009 ed.).
[14] *See* 8A McQuillin Mun. Corp. § 25.281 (3rd ed.).
[15] Section 163.3184(9), F.S.
[16] Section 163.3184(10), F.S.

agencies may include technical guidance on issues of agency jurisdiction as it relates to the Growth Management Act. Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment.

Following a second public hearing that shall be an adoption hearing on the plan amendment, the local government transmits the amendment with supporting data and analyses to DCA and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., or DCA may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the DCA to focus its challenges on issues of regional or statewide importance. DCA does not issue a report detailing its objections, recommendations, and comments. The alternative state review process shortens the statutorily prescribed timeline for the comprehensive plan amendment process from 136 days to 65 days.

Rule 9J-5, F.A.C.

As part of the Act, the Legislature commissioned DCA to create rule 9J-5, F.A.C., to implement and clarify the provisions of the Act.[17] Chapter 9J-5, F.A.C., mirrors statutory language and directly addresses issues such as:

- The determination of whether a comprehensive plan amendment is in compliance with the Growth Management Act;
- Conflict resolution provisions;
- Definitions;
- Public participation procedures;
- Format requirements;
- Data and analysis requirements;
- Requirements that the plan:
    - contain level of service standards to ensure adequate capacity of public facilities for the projected population;
    - have two planning periods of at least 5 years and at least 10 years;
    - be internally consistent;
    - identify goals and implementing provisions;
    - monitor effectiveness; and
    - recognize private property rights
- A concurrency management system overview; and
- Data and analysis requirements for the required elements of the comprehensive plan.

One of the most significant provisions in ch. 9J-5, F.A.C., is the "urban sprawl" rule. As part of this rulemaking process, a working group came up with the primary indicators of urban sprawl, which are whether the plan or plan amendment:

- Promotes, allows or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses in excess of demonstrated need.

[17] Section 163.3177(9) & (10), F.S.

- Promotes, allows or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development.
- Promotes, allows or designates urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments.
- As a result of premature or poorly planned conversion of rural land to other uses, fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.
- Fails to adequately protect adjacent agricultural areas and activities, including silviculture, and including active agricultural and silvicultural activities as well as passive agricultural activities and dormant, unique and prime farmlands and soils.
- Fails to maximize use of existing public facilities and services.
- Fails to maximize use of future public facilities and services.
- Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.
- Fails to provide a clear separation between rural and urban uses.
- Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.
- Fails to encourage an attractive and functional mix of uses.
- Results in poor accessibility among linked or related land uses.
- Results in the loss of significant amounts of functional open space.

Urban Service Areas

Urban service areas are defined as built-up areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are committed in the first 3 years of the capital improvement schedule. Urban service areas and their functional equivalent that were in existence in 2009 were grandfathered into the definition. An urban service area generally delineates the area where a local government intends to plan for growth as opposed to natural and agricultural areas where the local government does not intend to significantly extend infrastructure. If a local government adopts an urban service area into its comprehensive plan, the urban service area is a transportation concurrency exception area and is exempt from development of regional impact review.

Capital Improvements Element – Financial Feasibility

In 2005, the Legislature implemented the requirement that municipalities annually adopt a financially feasible Capital Improvements Element (CIE). The deadline for adoption of a financially feasible CIE is December 1, 2011. The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The principle is that local governments should be prepared to commit the financial resources necessary to provide the infrastructure to support planned development. Failure to update the CIE can result in penalties.

The definition of financial feasibility in s. 163.3164(32), F.S., provides the framework for the DCA to review these CIE updates. It notes that sufficient revenues must comply with one of the following criteria:

- Currently available; or
- Will be available from committed funding sources for the first 3 years; or
- Will be available from committed or planned funding sources for years 4 and 5 of a five-year capital improvement schedule for financing capital improvements.

> One reasonable approach a local government could employ to comply with this requirement is to provide projections of committed funding sources used to finance capital improvements. The revenue projections could be based on historical trends or other professionally accepted methodologies that demonstrate that adequate revenue is available to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the five-year schedule of capital improvements.[18]

Many local governments have existing transportation concurrency deficiencies that require special attention and longer time frames to overcome. In such cases, local governments may adopt a long-term transportation concurrency management system with a planning period of up to 10 years.[19] This allows local governments time to set priorities and fund projects to reduce the backlog of transportation projects. For severe backlogs and under specific conditions, a local government may request DCA's approval for a planning period of up to 15 years.[20]

Population Projections – Needs Assessment

The needs assessment is a part of the land use planning process that provides a mechanism for local governments to determine the appropriate supply of land uses necessary to accommodate anticipated demand. The "need" issue is one of the factors to be considered in any urban sprawl analysis.[21] To determine need, the reviewer analyzes: the categories of land use and their densities or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.[22] This methodology is then submitted to DCA for review with the proposed comprehensive plan amendment. When reviewing this methodology, DCA reviews both the numerical population and policy factors.

Transportation Concurrency

The Growth Management Act of 1985 required local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place

[18] DEPT OF COMMUNITY AFFAIRS, CAPITAL IMPROVEMENTS ELEMENT, *available at* http://www.dca.state.fl.us/fdcp/dcp/cie/FAQ.cfm; see also DEPT. OF COMMUNITY AFFAIRS, A GUIDE TO THE ANNUAL UPDATE OF THE CAPITAL IMPROVEMENTS ELEMENT, *available at* http://www.dca.state.fl.us/fdcp/dcp/publications/Files/AnnualUpdateGuideCIE81606.pdf.
[19] Section 163.3180(9), F.S.
[20] *Id*.
[21] Rule 9J-5.006(5)(g)1, F.A.C.
[22] Rule 9J-5.006(2)(c), F.A.C. For an example of how the methodolgy is analyzed, see page 5.

to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems. Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to "reduce the adverse impact transportation concurrency may have on urban infill and redevelopment" by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

In 2009, Senate Bill 360, also known as the Community Renewal Act, made certain local government areas TCEAs.[23] Senate Bill 360 also requires those local governments to amend their comprehensive plans within two years of becoming a TCEA to address land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation (often referred to as a "mobility plan"). Several local governments have challenged the constitutionality of SB 360. The appeal is pending in the courts and the provisions of SB 360 remain in effect until the appellate court renders a decision.

School Concurrency

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

[23] These areas are municipalities that are designated as dense urban land areas and the urban service area of counties designated as dense urban land areas. Section 163.3164, F.S., defines "dense urban land area" as (1) "A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;" (2) "A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or" (3) "A county, including the municipalities located therein, which has a population of at least 1 million."

Certification Program

Authorized by the 2002 Florida Legislature, the Certification Program allows up to eight local governments per year to be exempt from comprehensive plan review by DCA. To be eligible, a local government must demonstrate a record of effectively adopting, implementing and enforcing its comprehensive plan and demonstrate technical, financial and administrative expertise. The local government must also demonstrate that it has adopted programs in the comprehensive plan and land development regulations that promote infill development and redevelopment; promote affordable housing, achieve effective intergovernmental coordination and address extrajurisdictional effects of development; promote economic diversity; provide and maintain public urban and rural open space and recreational opportunities; manage transportation and land uses to support public transit; use design principles; redevelop blighted areas, adopt a local mitigation strategy; encourage clustered mixed-use development, encourage urban infill, and assure protection of key natural areas and agricultural lands.

Control of Outdoor Advertising

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads.[24] The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System.
- States have the discretion to remove legal nonconforming signs[25] along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads.
- States and localities may enact stricter laws than stipulated in the HBA.
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

[24] The Highway Beautification Act of 1965, 23 U.S.C. § 131.

[25] A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices". Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement which includes definitions of certain relevant terms, such as "commercial and industrial zone" and "unzoned commercial and industrial areas".

Section 479.07, F.S., regulates sign permits. A person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from DOT and paying the annual fee as provided in this section. As used in this section, the term "on any portion of the State Highway System, interstate, or federal-aid primary system" means a sign located within the controlled area which is visible from any portion of the main-traveled way of such system.

Commercial and Industrial Areas

Outdoor advertising signs may legally be located in commercial or industrial areas. In conformance with the 1972 agreement, s. 479.01(4), F.S., also defines "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the local comprehensive plan and the land development regulations adopted pursuant to ch. 163, F.S. This allows FDOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas.

Unzoned Commercial and Industrial Areas

If a parcel is located in an area designated for multiple uses on the FLUM, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area and outdoor advertising signs may be permitted there provided three or more separate commercial or industrial activities take place. However, the following criteria must be met:

- One of the commercial or industrial activities must be located within 800 feet of the sign and on the same side of the highway,
- The commercial or industrial activity must be within 660 feet of the right-of-way, and
- The commercial or industrial activities must be within 1600 feet of each other.

Regardless of whether the criteria above are met, the following activities are specifically excluded from being recognized as commercial or industrial activities and therefore cannot be considered when determining whether a parcel is an unzoned commercial or industrial area:

- Signs.
- Agriculture, forestry, ranching, grazing, and farming.
- Transient or temporary activities.
- Activities not visible from the traveled way.
- Activities taking place more than 660 feet from the right of way.
- Activities in a building principally used as a residence.
- Railroad tracks and sidings.
- Communication Towers.

With the exception of communication towers, the exclusion of these activities is specifically required by the 1972 agreement between the State and USDOT.

Home Rule Powers

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[26] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[27] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[28]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[29] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitutions or law.[30]

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[31] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[32]

[26] FLA. CONST. art VIII, s. 1(f).

[27] FLA. CONST. art VIII, s. 1(g).

[28] FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

[29] Section 125.01, F.S.

[30] Section 166.021, F.S.

[31] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution specifically prevents them from doing so. *See* FLA. CONST. art. VII, s. 1. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule source meets the relevant legal sufficiency tests.

[32] For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

Impact Fees

Impact fees are enacted by local home rule ordinance. These fees require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost of the fee's earmarked purposes.

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. By statute, an impact fee ordinance adopted by local government must, at a minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures; if a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of a new or increased impact fee.[33]

In impact fee cases, the dual rational nexus test states that the government must prove: (1) a rational nexus between the need for additional capital facilities and the growth in population generated by the development and (2) a rational nexus between the expenditures of the funds collected and the benefits accruing to the development.[34] Some parties have argued that prior to 2009 the standard being adopted by Florida courts was that an impact fee will be upheld if it is "fairly debatable" that the fee satisfies the dual rational nexus test.[35] In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court rephrased the standard as a "reasonableness" test.[36] Although the standard was not clearly defined, prior to 2009 the courts generally did not require a local government to defend its impact fee by as high of a standard as preponderance of the evidence.

In 2009, House Bill 227 required that local governments prove by a preponderance of the evidence that the impact fee levied by the local government is valid. A number of local governments have challenged House Bill 227 as a mandate. Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. In order to eliminate the uncertainty regarding whether the subsection of law enacted by HB 227 was an unconstitutional mandate,

[33] Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. *See* ss. 163.3202(3), 191.009(4), and 380.06, F.S.
[34] *See St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991).
[35] *See* FLORIDA IMPACT REVIEW TASK FORCE, February 1, 2006, Final Report & Recommendations, 15, *available at* http://www.floridalcir.gov/taskforce.cfm.
[36] *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla. 2000).

the reenactment of the standard of review implemented by House Bill 227 requires approval of each house of the Legislature by two-thirds of the membership.[37]

Optional Sector Planning

The optional sector plan process was established as an alternative to the development of regional impact process (see below). Optional sector plans may be initiated by the local government upon written agreement with the DCA. An optional sector plan includes two levels of planning: a conceptual, long-term build-out overlay; and one or more detailed specific area plans. An annual monitoring report will be submitted to the DCA and the affected regional planning council. Additionally, optional sector plans combine the purposes of chapters 380 and 163, Florida Statutes; require public participation throughout the process; emphasize urban form and the protection of regional resources and facilities; and apply to areas greater than 5,000 acres. There are currently four optional sector plans in effect. They are located in Bay County, Orange County, the City of Bartow, and Escambia County.[38]

Metropolitan Planning Organizations

Metropolitan Planning Organizations[39] provide a forum for elected officials of various local governments within an urban area to meet on a regular basis, in order to work toward a coordinated and comprehensive transportation planning process. This process is critical to providing a safe, effective, and cost-efficient transportation system. Under federal and state laws, urban areas with at least 50,000 residents must form Metropolitan Planning Organizations to be eligible for federal Highway Trust Fund dollars for surface transportation projects. Florida has 26 Metropolitan Planning Organizations (sometimes called Transportation Planning Organizations).

As part of their mission to conduct cooperative and comprehensive transportation planning, the Metropolitan Planning Organizations study ways to move both people and goods by various modes of travel, including highways, public transportation, bicycles, and foot. They also plan for the connections that link these modes together, such as airports, seaports, or bus, railroad, and pipeline terminals. To assist with the many complex issues before it, each Metropolitan Planning Organization typically has a Technical Advisory Committee, a Citizens Advisory Committee, and a Bicycle/Pedestrian/Greenways Advisory Committee.

Each Metropolitan Planning Organization sets priorities for the use of state or federal funding for surface transportation improvement projects within its area. To qualify for federal funds, the Metropolitan Planning Organization must endorse a Transportation Improvement Program identifying projects to be done in the next several years.[40] Metropolitan Planning Organizations

[37] If provisions of a law were unconstitutionally enacted, the Legislature can reenact those provisions using proper constitutional methods so long as the substance of the law is constitutional. *See Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991); *see also State v. Johnson*, 616 So. 2d 1 (Fla. 1993).
[38] Dept. of Community Affairs, Optional Sector Plans, http://www.dca.state.fl.us/fdcp/DCP/optionalsectorplans/index.cfm.
[39] For more information see Florida Metropolitan Planning Organization Advisory Council website available at http://www.mpoac.org/index.shtml.
[40] Dept. of Community Affairs, Transportation Planning, http://www.dca.state.fl.us/fdcp/dcp/transportation/OtherAgencies.cfm#MTPO.

also adopt long-range transportation plans that identify both funded and unfunded projects for as much as 20 years.[41]

The plan includes both long-range and short-range strategies and must comply with all other state and federal requirements. The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the MPO. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum:

- Identify transportation facilities that will function as an integrated metropolitan transportation system.
- Include a financial plan and cooperatively develop estimates of funds that will be available to support implementation of the long-range transportation plan.
- Assess capital investment and other measures.
- Indicate, as appropriate, proposed transportation enhancement activities, including, but not limited to, pedestrian and bicycle facilities, scenic easements, landscaping, historic preservation, mitigation of water pollution due to highway runoff, and control of outdoor advertising.
- In metropolitan areas that are classified as nonattainment areas for ozone or carbon monoxide, the MPO must coordinate the development of the long-range transportation plan with the State Implementation Plan developed pursuant to the requirements of the federal Clean Air Act.

In the development of its long-range transportation plan, each MPO must provide the public, affected public agencies, and transportation entities with a reasonable opportunity to comment on the long-range transportation plan.[42]

Water Supply Planning

The Legislature has established a process for water supply planning through Florida's Growth Management Act[43] and the Water Protection and Sustainability Program.[44] Under this system, the state's five water management districts must periodically evaluate whether adequate water supplies exist to meet the needs of their areas. If a district finds that the water supply will not be adequate, it must prepare regional water supply plans for those areas, identifying how water supply needs can be met for the next 20 years. Local governments that fall within the area of a regional water supply plan are required to ensure that adequate water supplies will be available to meet future demand, by developing 10-year water supply facilities work plans. These work plans include alternative water supplies, water reuse and conservation programs, and they are incorporated into the local governments' comprehensive plans. In addition, all local governments

[41] Section 339.175(7), F.S.
[42] *Id*.
[43] Chapter 163, Part II, F.S.
[44] Chapter 373, F.S.

- regardless of whether they are in one of these planning areas - must address water supply in their concurrency management programs.[45]

Consumptive Use Permits

A consumptive use permit (CUP) allows water to be withdrawn from surface and groundwater supplies for reasonable and beneficial uses such as public supply (drinking water), agricultural and landscape irrigation, and industry and power generation. Permits may be granted for a period of 20 years, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided.[46]

The CUP program benefits all people by requiring water conservation to prevent wasteful uses, requiring reuse of reclaimed water (treated wastewater and storm water) instead of higher quality groundwater, and setting limits on how much water can be withdrawn at each location in the aquifer. These limits protect existing residents' water supplies and protect aquifers, lakes and rivers from harm.[47]

Rural Land Stewardship Area Program

The Legislature originally enacted the RLSA Program as a pilot program in 2001.[48] The RLSA program provides incentives for conserving agriculture and environmentally sensitive lands.[49] The primary goals of the program have been the "restoration and maintenance of the economic value of rural land; control of urban sprawl; identification and protection of ecosystems, habitats and natural resources; promotion of rural economic activity; maintenance of the viability of Florida's agriculture economy; and protection of the character of the rural areas of Florida."[50] The program allows land owners to transfer stewardship credits from sending areas to receiving areas. Sending areas have high resource values in their existing states, while receiving areas are deemed more suitable for development. Sending areas are protected from future development through the use of stewardship easements that run with the land in perpetuity. [51] The statute was amended in 2002, 2004, 2005 and 2006.[52] It is no longer considered a pilot program and several local governments have explored using RLSAs to augment their comprehensive plans. Collier, Highlands, Osceola and St. Lucie Counties have all expressed interest in developing RLSAs. As of today, only Collier and St. Lucie have RLSA programs. Since Collier's program predates the creation of the RLSA program, only St. Lucie's RLSA is statutorily approved.[53]

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[45] Dept of Community Affairs, Water Supply Planning, http://www.dca.state.fl.us/fdcp/DCP/WaterSupplyPlanning/index.cfm.
[46] Section 337.236, F.S.
[47] St. John's River Water Management District, Permitting, http://www.sjrwmd.com/permitting/index.html.
[48] Section 163.3177(11)(d), F.S. See also Chapter 2001-279, Laws of Fla.
[49] Florida Dep't of Community Affairs, *Rural Land Stewardship Program 2007 Annual Report* (Dec. 2007), available at http://www.dca.state.fl.us/fdcp/dcp/RuralLandStewardship/Files/RLSA2007ReportLegislature.pdf (last visited 03/21/2011).
[50] Section 163.3177(11)(d)2, F.S.
[51] *See supra* note 4, at 1-2.
[52] See *supra* note 4, at 3.
[53] Florida Dep't of Community Affairs, *Rural Land Stewardship Area Program 2009 Annual Report* (Dec. 2009), available at http://www.dca.state.fl.us/fdcp/dcp/RuralLandStewardship/Files/RLSA2009AnnualReport.pdf (last visited 03/21/2011).

The DCA administers the program for the state. Due to several statutory changes, including the RLSA program shedding its "pilot" status, the DCA initiated rule making in June 2007. The rules, RLSA Rule 9J-5.026 and 9J-11.023, were challenged twice. Despite the first challenge being dismissed in an administrative law hearing, the DCA revised the rules to address some of the petitioners' concerns. The petitioners filed a second challenge, which was also denied,[54] after discussions with the DCA regarding additional rule modifications ceased. The rule became effective on October 18, 2009.[55]

Evaluation and Appraisal Reports

Section 163.3191, F.S., requires local governments to periodically assess the effectiveness of their comprehensive plans and complete major plan updates to reflect changing conditions and new legislative requirements. Every seven years, local governments must submit Evaluation and Appraisal Reports to DCA prior to undertaking the required periodic revision of their plans.[56] Based on this evaluation, the report suggests how the plan should be revised to better address community objectives, changing conditions and trends affecting the community, and changes in state requirements. DCA has established a phased schedule for the adoption of EARs, and municipalities are scheduled to adopt their EARs approximately 12 to 18 months after the county in which they are located adopts its EAR. This phasing allows municipalities to benefit from updated information that may be collected and analyzed by the county, particularly regarding major community-wide planning issues. DCA also holds a scoping meeting to identify the items that need to be addressed in the EAR.[57] Section 163.3191, F.S., contains a list of specific issues the report must address.

Public Service Commission – Certificate of Need

Under ch. 367, F.S., the Florida Public Service Commission (PSC) exercises exclusive jurisdiction over the economic regulation of investor-owned and private water and wastewater utilities, with the exception of those utilities that are regulated by counties that have opted to retain regulatory jurisdiction. When a utility applies for an initial certificate of authorization from the PSC, s. 367.045(1)(b), F.S., requires an examination of the need for service in the requested area, and s. 25-30.033(1)(e), F.A.C., requires an applicant for original certificate to provide a statement showing the need for service in the proposed area.

Pending Ordinance Doctrine

In many states, the law in effect at the time of the permit application governs the issuance of the permit. Local governments may not reject a building permit based on pending zoning restrictions. However, in Florida, some courts and a number of local governments (by ordinance) have adopted the "pending ordinance doctrine."[58] The doctrine holds that a building permit or

[54] *Florida Chamber of Commerce v. Department of Community Affairs*, Case No. 09-3488RP (Fla. DOAH 2009).
[55] *See supra* note 9, at 3
[56] Section 163.3191, F.S.
[57] *See* DEPARTMENT OF COMMUNITY AFFAIRS, SCOPING MEETINGS FOR EVALUATION AND APPRAISAL REPORTS, *available at* http://www.dca.state.fl.us/fdcp/DCP/EAR/files/EARBroc11-18-02.pdf.
[58] *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980); *City of Pompano Beach v. Yardarm Restaurant, Inc*., 509 So. 2d 1295 (Fla. 4th DCA 1987).

development order application established on or after the date when a local government has publicly declared its intent to change its zoning scheme may be denied or held until after the enactment of the new zoning ordinance.

In Florida, the rule was set out by the court in *Smith v. City of Clearwater* (*Smith*)[59] and has been explicitly adopted in a number of local government ordinances.[60] The *Smith* court developed the rule in an effort to clarify Florida case law.[61] The Supreme Court has yet to explicitly adopt the pending ordinance doctrine. The policy behind the doctrine is to prevent developers from entering into a "race of diligence" to try to obtain a permit before the local government can complete its zoning ordinance.[62] In addition, the doctrine avoids situations in which mandamus proceedings are instituted to compel issuance of a permit, only to be rendered moot by a zoning change.[63] This can occur because even after issuance of a permit, the local government can revoke the permit if a change in zoning has been effectuated that would conflict with the intended use.[64] The owner has no right to retain their permit absent a case for equitable estoppel or abuse of discretion on the part of the local government.[65]

III. Effect of Proposed Changes:

The CS repeals the administrative rules implementing the growth management laws (9J-5, F.A.C. and 9J-11.023, F.A.C.). The CS incorporates numerous provisions of the administrative code into the Florida Statutes.

The CS also removes the state mandated concurrency requirements for parks and recreation, schools, and transportation facilities and revises parts of the Florida Statutes accordingly.

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[59] 383 So. 2d 681 (Fla. 2d DCA 1980) (upholding the permit denial against the landowners' claims that refusing their permit was a taking for a public purpose without just compensation and the claim that the government was equitably estopped from applying zoning ordinance amendments to the property owners in question).

[60] *See, e.g.*, Aventura, L.D.R., s. 31-77; Daytona Beach, L.D.C., Art. 1, s. 6.1; Cocoa Beach, L.D.C., Ch. VII, Art. II; Clearwater, Community Development Code, ss. 4-303, 4-407 (authorizing the community development director to consider whether an ordinance is pending that would significantly affect the project); DeBary, L.D.C. s. 1-4 (placing a moratorium in effect for developments that would be nonconforming if the pending land development code went into effect); Monroe County, Code of Ordinances, Part II, Ch. 102, Art. IV., Div. 3 (stating that landowners do not have "good faith" and thus their rights do not vest if there was notice or knowledge of an imminent or pending change in zoning); Lauderdale-By-The-Sea, Code of Ordinances, Part II, Ch. 30, Art. IX, s. 30-531.

[61] *Smith*, 383 So. 2d at 688 ("While the decided cases state that the rights of the parties are fixed at the time of the application for the building permit, that a municipality cannot suspend the operation of the existing law, and that the city may not take advantage of its own acts to prevent the acquisition of a vested right, so that no actual change of position is necessary to enforce the right to the building permit, nevertheless, the opposite conclusion is reached by logically applying the principles that no one has a vested right in the continuance of a law and that the ordinance applicable at the time of the decision governs.") (quoting *Phillips Petroleum Co. v. City of Park Ridge*, 16 Ill.App.2d 555, 565 (Ill.App. 1 Dist., 1958).

[62] Edward H. Ziegler, Jr., Minority view: At time of permit application—Good faith or pending ordinance exception, 4 Rathkopf's The Law of Zoning and Planning § 70:17 (4th ed. 2010).

[63] *Action Outdoor Advertising v. Destin*, 2005 WL 2338804 (N.D. Fla. 2005); 83 Am. Jur. 2d Zoning and Planning § 575 (2010).

[64] *Coral Springs Street Systems, Inc. v. City of Sunrise*, 371 F.3d 1320 (11th Cir. 2004); *Sakolsky v. City of Coral Gables*, 151 So. 2d 433 (Fla.1963); *City of Boynton Beach v. Carroll*, 272 So. 2d 171, 173 (Fla. 4th DCA 1973); *Villas of Lake Jackson, Ltd. v. Leon County*, 796 F.Supp. 1477 (N.D. Fla. 1992); *Marine One, Inc. v. Manatee County*, 877 F.2d 892 (11th Cir. 1989) (finding that revocation of a permit does not make the permit a species of property for due process or taking clause purposes); *Action Outdoor Advertising v. Destin*, 2005 WL 2338804 (N.D. Fla. 2005).

[65] For more information, *see* Senate Committee on Community Affairs, Senate Issue Brief 2011-211: Pending Ordinance Doctrine (Oct. 2011).

The CS eliminates the twice-a-year restriction on plan amendments and deletes references to this restriction throughout the statutes.

Section 1 amends s. 70.51, F.S., to delete a reference to the twice-a-year restriction on plan amendments.

Section 2 amends s. 163.06, F.S., to remove the requirement for the Miami River Commission to coordinate a joint planning agreement between the Department of Community Affairs, the city, and the county.

Section 3 amends s. 163.2517, F.S., to delete a reference to the twice-a-year restriction on plan amendments.

Section 4 amends s. 163.3161, F.S., redesignating the "Local Government Comprehensive Planning and Land Development Regulation Act" as the "Community Planning Act". The CS revises the intent and purpose of act. The CS includes language stating that new statutory requirements should be adopted into the comprehensive plan during the evaluation and appraisal period.

Section 5 revises s. 163.3162, F.S., related to agricultural enclaves to remove references to rule 9J-5.006(5), F.A.C., and to specify plan amendments are presumed not to be urban sprawl as defined in s. 163.3164, F.S. An agricultural enclave will occur if the agricultural parcel is surrounded by existing or *authorized* industrial, commercial, or residential uses. This means that the agricultural area may not be surrounded by developed area if the surrounding land is authorized in the comprehensive plan for additional uses. If a parcel is abutted by only one land use designation, it shall be presumed that the same land use designation is appropriate for the parcel and no negotiation is required.

Section 6 amends s. 163.3164, F.S., to revise and alphabetize the definitions section. A number of definitions are added from ch. 9J-5, F.A.C., including:

- capital improvement
- compatibility
- deepwater ports
- floodprone areas
- goal
- intensity
- level of service
- objective
- policy

Affordable housing is revised to include only s. 420.0004(3), F.S., which states that “Affordable” means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income. This definition is narrower than the definition in ch. 9J-5, F.A.C., which also includes affordable housing definitions that are prescribed by other affordable housing

programs administered by either the United States Department of Housing and Urban Development or the State of Florida.

The CS creates a new definition of "new town." Under the CS a new town is an urban activity center and community designated on the future land use map of sufficient size, population and land use composition to support a variety of economic and social activities consistent with an urban area designation. New towns shall include basic economic activities; all major land use categories, with the possible exception of agricultural and industrial; and a centrally provided full range of public facilities and services that demonstrate internal trip capture. A new town shall be based on a master development plan.

Urban sprawl is redefined as a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses. This definition is different than the definition currently in ch. 9J-5, F.A.C., which would have discouraged "the premature or poorly planned conversion of rural land to other uses" and "[t]he creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided. Urban sprawl is typically manifested in one or more of the following land use or development patterns: Leapfrog or scattered development; ribbon or strip commercial or other development; or large expanses of predominantly low-intensity, low-density, or single-use development."

The CS includes the following new definitions:

"Adaptation action area" or "adaptation area" means a designation in the coastal management element of a local government's comprehensive plan which identifies one or more areas that experience coastal flooding due to extreme high tides and storm surge, and that are vulnerable to the related impacts of rising sea levels for the purpose of prioritizing funding for infrastructure needs and adaptation planning.

"Antiquated subdivision" means a subdivision that was recorded or approved more than 20 years ago and that has substantially failed to be built and the continued buildout of the subdivision in accordance with the subdivision's zoning and land use purposes would cause an imbalance of land uses and would be detrimental to the local and regional economies and environment, hinder current planning practices, and lead to inefficient and fiscally irresponsible development patterns as determined by the respective jurisdiction in which the subdivision is located.

"Internal trip capture" means trips generated by a mixed-use project which travel from one on-site land use to another on-site land use without using the external road network.

"Mobility plan" means an integrated land use and transportation plan that promotes compact, mixed-use, and interconnected development served by a multimodal transportation system that includes roads, bicycle and pedestrian facilities, and, where feasible and appropriate, frequent transit and rail service, to provide individuals with viable transportation options without sole reliance upon a motor vehicle for personal mobility.

"Transit-oriented development" means a project or projects, in areas identified in a local government comprehensive plan, which are or will be served by existing or planned transit service. These designated areas shall be compact, moderate to high density developments, of mixed-use character, interconnected with other land uses, bicycle and pedestrian friendly, and designed to support frequent transit service operating through, collectively or separately, rail, fixed guideway, streetcar, or bus systems on dedicated facilities or available roadway connections.

The CS revises the following existing definitions:

"Agricultural enclave" is expanded to include parcels:

- surrounded on at least 90 percent of its perimeter by property that the local government has designated in the local government's comprehensive plan and future land use map as land that is to be developed for industrial, commercial, or residential purposes; or
- surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile.

"Urban service area" means areas identified in the comprehensive plan where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are identified in the capital improvements element. Urban service area includes any areas identified in the comprehensive plan as urban service areas, regardless of local government limitation.

The "optional sector plan" (a pilot program, which is expanded in the CS) is changed to "sector plan" means the process authorized by s. 163.3245, F.S., in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development strategies, furthering the purposes of this part and part I of chapter 380, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts. "Sector plan" includes an optional sector plan that was adopted pursuant to the Optional Sector Plan pilot program.

The definition of "financial feasibility" is revised to expand the timeframe that capital improvements must have committed or planned funding sources from 5 to 10 years.

The definitions of "dense urban land area" and "financial feasibility" are deleted.

Section 7 amends s. 163.3167, F.S., to delete the role of the regional planning council in creating new comprehensive plans. The CS deletes the retroactive effect of the section. Under the CS, local governments may not have in place an initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment. The CS prohibits local governments from adopting a super majority voting requirement for the adoption of amendments to the comprehensive plan.

The CS specifies that development orders, including zoning and other land use approvals, are based on the comprehensive plan, zoning and land use code, and regulations in effect at the time each respective application is filed. The exceptions are if:

- the local government can demonstrate that the ordinance, rule, or regulation in effect when the application was filed would create an immediate and imminent threat to the public safety or health, or
- the application must be not filed in good faith.

Section 8 creates s. 163.3168, F.S., entitled "planning innovations and technical assistance" to encourage local governments use innovative planning tools. The CS authorizes the state land planning agency and other appropriate state and regional agencies to provide local governments with technical assistance.

Section 9 amends s. 163.3171, F.S., to clarify that joint planning agreements should be broadly construed, that courts have sole jurisdiction to interpret joint planning agreements, and that the validity of a joint planning agreement may not be a basis for finding plan amendments not in compliance.

Section 10 amends subsection (1) of s. 163.3174, F.S., to delete certain notice requirements relating to the establishment of local planning agencies by a governing body.

Section 11 amends s. 163.3175, F.S., to modify the local government assessment of compatibility of land uses with military installations. The CS includes language explicitly directing local governments to consider private property rights in making their compatibility assessment. The CS allows military installation compatibility to be addressed during the evaluation and appraisal period.

Section 12 rewrites s. 163.3177, F.S. This CS changes the format of the future land use element provisions to increase readability. The comprehensive plans must still include the local government's goals and policies. The CS deletes the optional elements of the comprehensive plan, but specifically allows local governments to have optional elements. The comprehensive plan must be justified by professionally accepted data. The plan must accommodate at least the minimum amount of land required to accommodate the resident and seasonal population projections. Population data gives the minimum amount of land required except in areas of critical state concern.

The CS deletes the requirement that the capital improvements element be financially feasible but does specify that, "Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding." Updates to the capital improvements schedule may be accomplished by ordinance rather than comprehensive plan amendment.

Specific requirements from rule 9J-5, F.A.C., have been added, including provisions relating to urban sprawl. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements and each such map must be included in the comprehensive plan. This CS requires the future land use element to clearly identify the land use categories in which public schools are an allowable use, but deletes language related to school citing. This CS also

removes requirements relating to energy efficiency and green house gas reductions. Further, the CS addresses population projections, the issue of identified need for future development, and highlights the need to address outdated land uses, such as antiquated subdivisions.

The CS allows different parts of the comprehensive plan to have different planning periods. The CS makes one of the goals of the future land use category the need to modify land uses and development patterns within antiquated subdivisions.

This CS incorporates, from rule 9J-5, F.A.C., the thirteen primary indicators that a plan or plan amendment does not discourage urban sprawl. In addition, this CS adds eight indicators that a plan or plan amendment achieves the discouragement of urban sprawl. If the future land use element or a plan amendment achieves four of these eight indicators within its development pattern or urban form it will automatically be determined to discourage the proliferation of urban sprawl. These indicators are whether the amendment:

- Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.
- Promotes the efficient and cost-effective provision or extension of public infrastructure and services.
- Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.
- Promotes conservation of water and energy.
- Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.
- Preserves open space and natural lands and provides for public open space and recreation needs.
- Creates a balance of land uses based upon demands of residential population for the nonresidential needs of an area.
- Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164, F.S.

This CS revises and combines the multiple subsections of the transportation element into one subsection of law. This provision contains language promoting coordination of transportation planning between an MPO and the local government plan. The plan will also include mass-transit provisions and an airport master plan.

The CS revises provisions related to the

- sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element,
- the conservation element,
- the housing element, and
- intergovernmental coordination.

The CS deletes:
- the public schools facilities element and most portions of the schools interlocal agreement.
- the optional elements of the coastal management element.
- the requirement that the intergovernmental coordination element recognize campus master plans and airport master plans.
- provisions related to visioning and urban service boundaries.

Provisions related to rural land stewardship are moved to s. 163.3248, F.S.

Section 13 amends s. 163.31777, F.S. to retain interlocal agreements between a county, the municipalities within, and a school board. However, the CS removes state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. If a local government chooses to maintain optional school concurrency within its jurisdiction, this CS specifies that the interlocal agreement must also meet further requirements.

Section 14 makes conforming changes to s. 163.3178, F.S.

Section 15 amends s. 163.3180, F.S., to remove requirement that local governments have concurrency for parks and recreation, schools, and transportation facilities. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues is not subject to state review.

If local governments elect to have these concurrency programs, the CS specifies the framework of how concurrency is to operate. For example, local governments that implement transportation concurrency must:
- Consult with the DOT when proposed plan amendments affect facilities on the strategic intermodal system.
- Exempt public transit facilities from concurrency.
- Allow an applicant for a development of regional impact development order, a rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, F.S., when applicable.
- Calculate proportionate share according to a specific formula. Specifically, the CS modifies the calculation of proportionate share to specify that development does not pay for impacts on roadways that do not meet level of service standards or on roadways that are financed by tolls.

For those local governments that implement school concurrency, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:
- The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

- The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.
- The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

Section 16 reenacts s. 163.31801, F.S., relating to the burden of proof/standard of review for impact fees in response to ongoing litigation. To remove any doubt regarding whether this section is an unconstitutional mandate, this provision requires approval by each house of the Legislature by two-thirds of the membership.

Additionally, the CS creates a 2-year moratorium on impact fees. It does not affect impact fees pledged or obligated for the retirement of debt or impact fees for water or wastewater.

Section 17 amends s. 163.3182, F.S., to revise terminology. The CS then revises the definition of transportation deficiency to include areas where the projected traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility. This makes the definition consistent with other places in statute.

The CS would revise language relating to the schedule for financing and construction of projects that will eliminate deficiencies as part of a transportation deficiency plan. Specifically, the CS language states that if mass transit is selected as all or part of the system solution, the improvements and service may extend outside the transportation deficiency areas to the planned terminus of the improvement as long as the improvement provides capacity enhancements to a larger intermodal system.

Section 18 amends 163.3184, F.S., to revise the definition of "in compliance" with certain growth management laws to eliminate reference to the state comprehensive plan and ch. 9J-5, F.A.C., but include consistency with the rural land stewardship program. The CS defines "reviewing agencies." The CS deletes the expedited processes for community visioning, urban service boundaries, urban infill and redevelopment, and housing incentive strategy plan amendments because all plan amendments will be expedited under the CS.

Section 19 renames s. 163.3187, F.S., "Process for adoption of small-scale comprehensive plan amendment." The twice-a-year restriction on plan amendments is removed. The small-scale amendment process is expanded. The new process does not take into consideration the proximity of small-scale amendments to each other, which may allow land owners to get around the normal review process by splitting up their comprehensive plan amendments into smaller areas and submitting them separately as individual small-scale amendments. The CS deletes the penalty for failure to adopt amendments in accordance with the evaluation and appraisal report.

Section 20 amends s. 163.3191, F.S., to minimize and eliminate the requirements of the evaluation and appraisal report.

This CS continues to direct the local governments to evaluate their comprehensive plan once every seven years to determine if plan amendments are needed to reflect changes in state requirements. However, the CS substantially simplifies this process. Rather than requiring numerous statutory criteria to be considered, the new language focuses more on the needs and goals of the local governments.

Section 21 adds a new subsection to s. 163.3194, F.S. The CS attempts to put the state land planning agency in the posture of determining land use for the purposes of the HBA's authorization that signs/bill boards may be located on commercial or industrial, zoned or unzoned parcels. The CS contains a savings provision that if the U.S. Secretary of the Department of Transportation provides written notification to FDOT that implementation of the subsection will jeopardize federal funds then the subsection shall not be implemented.

Sections 22-24 make conforming changes.

Section 25 amends s. 163.3229, F.S., to change the allowable length of a development agreement from 20 years to 30 years.

Sections 26-28 revise ss. 163.3235, 163.3239, and 163.3243, F.S., to remove the state's role in reviewing and challenging development agreements.

Section 29 amends s. 163.3245, F.S., to make substantial changes to the optional sector plan process. The primary thrust of the CS is to develop a two-part planning process for large-scale, long-term planning. It consists of a long-term master plan adopted as part of the comprehensive plan and two or more detailed specific area plans adopted by development order. Other sections of law are amended to make conforming changes. The CS:

- Removes the limitation on the number of optional sector plans that can be in existence.
- Increases the acreage required to have an optional sector plan from 5,000 to 15,000 acres.
- Removes the requirement that DCA review and approve optional sector plans, including the requirement that the DCA enter into agreements based on the specific criteria of the local government.
- Removes the requirement that the local government hold a public workshop to review and explain to the public the optional sector planning process.
- Removes the requirement that the host local government(s) submit a monitoring report to DCA.
- Removes the requirement that DCA report to the Legislature annually on the optional sector planning process.

The CS contains language of legislative intent specifying that the new sector planning process is designed to promote and encourage long-term planning for conservation, development and agriculture on a landscape scale as well as facilitate protection of regionally significant resources, including but not limited to regionally significant water courses and wildlife corridors. If a scoping meeting is conducted by the RPC, it will be noticed and open to the public. If multiple local governments will be included in the sector plan, the CS gives them the option of entering into a joint planning agreement but it does not need to include the more prescriptive requirements in existing law for an agreement between the DCA and the local government(s).

The CS elaborates on the requirements that must be addressed in the long-term overlay plan. Each long-term overlay plan must include maps and text and be supported by data and analyses that address:

- The allowed uses in various parts of the planning area and the maximum and minimum densities and intensities of use and provides the framework for the development pattern.
- Identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, which are needed to meet the projected demand of the future land uses in the long-term conceptual overlay plan.
- Identification of the transportation facilities to serve the future land uses in the long-term master plan.
- Policies setting forth the procedures to be used to mitigate impacts on other regionally significant public facilities including utilities.
- Identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection and conservation of significant natural resources within the planning area.
- The protection and, as appropriate, restoration and management of lands identified for permanent preservation (however the CS deletes language suggesting that the plan address restoring key ecosystems) achieving a more clean, healthy environment, limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, advancing the efficient use of land and other resources, and creating quality communities with a design to promote travel by multiple transportation modes, and enhancing the creation of jobs.
- Identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from future land uses.

The long-term conceptual overlay plan shall be based on a planning period longer than the generally applicable planning period of the local comprehensive plan and does not have to demonstrate need based on population growth or any other basis.

The detailed specific area plan must contain similar criteria but with more detail.

In its review of a long-term master plan, the state land planning agency shall consult with the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, and the applicable water management district regarding the design of areas for protection and conservation of regionally significant natural resources and for the protection and, as appropriate, restoration and management of lands identified for permanent preservation.

The state land planning agency shall also consult with the Department of Transportation, the applicable metropolitan planning organization, and any urban transit agency regarding the location, capacity, design, and phasing or staging of major transportation facilities in the planning area.

The state land planning agency may initiate a civil action pursuant to s. 163.3215, F.S., with respect to a detailed specific area plan which is not consistent with a long-term master plan adopted pursuant to this section. Judicial review of a detailed specific area plan initiated by the

state land planning agency shall be de novo and not by petition for writ of certiorari. Any other aggrieved or adversely affected party shall be subject to s. 163.3215, F.S., (relating to enforcement of local comprehensive plans through development orders) when initiating a consistency challenge to a detailed specific area plan.

Once the overlay plan becomes effective, the metropolitan planning organization must be consistent to the maximum extent feasible with the long-term master plan.

The water management district must include the water resource development planned in the long-term master plan in the water management water supply plan. An applicant under an optional sector plan may receive CUPs for greater than 20 years. The permitting criteria will be applied based on the projected population and the approved densities and intensities of use and their distribution in the long-term conceptual overlay plan. Allocation of the water may be phased over the permit duration to correspond to actual projected needs. This provision does not supersede the public interest test set forth in s. 373.223, F.S.

The detailed specific area plan shall establish a buildout date until which the approved development is not subject to downzoning, unit density reduction, or intensity reduction. The local government may downzone if the local government can demonstrate that:

- implementation of the plan is not continuing in good faith,
- substantial changes in the conditions underlying the approval of the detailed specific area plan have occurred,
- the detailed specific area plan was based on substantially inaccurate information provided by the applicant, or
- the change is clearly established to be essential to the public health, safety, or welfare.

Although originally the sector planning process was a substitute for the development of regional impact process, the CS would allow DRIs to develop concurrent with or subsequent to adoption of a long-term master plan to establish a buildout date. However, an increment of development in an approved master development plan shall be approved as a detailed specific area plan and is exempt from DRI review. Approved DRIs may function under the detailed specific area plan instead of s. 380.06, F.S.

Development agreements between the developer and the local government may exceed the 20-year limitation specified in s. 163.3229, F.S.

Any owner of property within the defined planning area may withdraw his consent to the long-term master plan at any time before the local government adoption, and the local government shall exclude such parcel from the adopted overlay plan. Thereafter, the overlay plan, any detailed specific area plan, and the exemption from development-of-regional-impact review under this section do not apply to the subject parcel. After adoption of the overlay plan, a landowner may withdraw his property from the overlay plan only with the approval of the local government by plan amendment.

The adoption of a long-term conceptual overlay plan or a detailed specific area plan pursuant to this section does not limit the right to continue existing agricultural or silvicultural uses or other

natural resource-based operations or to establish similar new uses that are consistent with the optional sector plan.

The state land planning agency may enter into an agreement with a local government which, on or before July 1, 2011, adopted a large-area comprehensive plan amendment consisting of at least 15,000 acres that meets the requirements for a long-term master plan. After notice and public hearing by the local government, the large-area plan shall be implemented through detailed specific area plans.

A detailed specific area plan to implement a conceptual long-term buildout overlay of less than 15,000 acres, adopted by a local government and found in compliance before the effective date of the act will be governed by this act.

Section 30 amends s. 163.3147, F.S., to revise the composition of the Century Commission, revise the objectives of the Century Commission, and ultimately sunset the commission in 2013.

Section 31 creates s. 163.3248, F.S., to set out the new rural land stewardship area (RLSA) scheme. The CS states that "rural land stewardship areas are designed to establish a long-term incentive based strategy to balance and guide the allocation of land so as to accommodate future land uses in a manner that protects the natural environment, stimulate economic growth and diversification, and encourage the retention of land for agriculture and other traditional rural land uses."

Plan amendments proposing a RLSA are subject to the full state review under s. 163.3184, F.S., and each local government with jurisdiction over a RLSA must designate the area through a plan amendment. RLSA's will not be subject to a "needs" assessment. The CS renames "transferable rural land use credits" as "stewardship credits" and creates a process for determining the amount of transferrable stewardship credits that may be assigned within a RLSA through the establishment of a rural land stewardship overlay zoning district. The CS recognizes that an area within Collier County, which is consistent with the new RLSA criteria, is a RLSA and shall receive the incentives in the section.

Section 32 amends s. 163.32465, F.S., to expand the alternative state review pilot program to the entire state. The program decreases the amount of time it takes to review comprehensive plan amendments by limiting state review in the process. It requires state entities to restrict their comments to issues within their jurisdiction and issues of state and regional significance. The following areas or updates would still be subject to review under s. 163.3184, F.S.:

- rural land stewardship areas;
- optional sector plans;
- evaluation and appraisal report updates;
- plans for newly incorporated municipalities;
- areas of critical state concern; and
- certain local governments that pass a resolution opting to utilize s. 163.3184 review.

Sections 33-35 make conforming changes.

Section 36 revises s. 186.504, F.S., to include representatives of the business, commercial development, banking and financial, and agricultural communities on the regional planning councils.

Sections 37-50 make conforming changes.

Section 51 amends s. 367.021, F.S., to add two definitions related to water and wastewater systems.

"Large landowner" means any applicant for a certificate pursuant to s. 367.045, F.S., who owns or controls at least 1,000 acres in a single county or adjacent counties which are proposed to be certified.

"Need" means, for the purposes of s. 367.045, F.S., a showing by a large landowner that the certificate is sought for planning purposes to allow the landowner to be prepared to provide service to its properties as and when needed to meet demands for any residential, commercial, or industrial service, or for such other lawful purposes as may arise within the territory to be certified. A large landowner is not required to demonstrate that the need for service is either immediate or imminent, or that such service will be required within a specific timeframe.

Sections 52-55 make conforming changes.

Section 56 amends s. 380.06, F.S., to exempt transit oriented development from the transportation part of the DRI review process. It revises the DRI section to exempt jurisdictions of certain densities from DRI review (replacing the DULA concept with specific densities).

Sections 57 and 58 make conforming changes.

Section 59 revises s. 380.0685, F.S., allowing certain municipalities to use surcharges from park entrance fees for land acquisition or beach renourishment.

Sections 60-70 make conforming changes.

Section 71 repeals 9J-5 and 9J-11.023, F.A.C.

Section 72 clarifies that certain permits are extended for an additional 2 years and expands the window to notify the permitting entity that the permit extension will be utilized.

Section 73 provides a finding of important state interest.

Section 74 contains transitional language allowing lawsuits to be covered by the statutes as amended by this CS.

Section 75 affirms statutory construction with respect to other legislation passed at the same session.

Section 76 directs the Division of Statutory Revision to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 77 provides that the reenactment of the impact fee burden of proof operates retroactively to the date when the burden of proof first became effective, July 1, 2009.

Section 78 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. Since the bill would reduce a county's or municipality's authority to raise revenue in the aggregate, it will require two-thirds vote of the membership of each house of the Legislature for passage. Impact fee moratoria are likely to reduce the local government's ability to raise revenues to pay for infrastructure improvements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Streamlining the comprehensive plan amendment process will likely save the development community time and money.

C. Government Sector Impact:

Impact fee moratoria are likely to reduce the local government's ability to raise revenues to pay for infrastructure improvements. These revenues may be passed on in the form of taxes to the general tax payer instead of new development.

DCA should see savings from the alternative state review process and the reduction in evaluation and appraisal requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on April 14, 2011:
Includes the following significant changes:

- Deletes the requirement that comprehensive plans be financially feasible.
- Deletes the twice a year limitation on comprehensive plan amendments.
- Revises the small scale amendment process.
- Expands provisions relating to agricultural enclaves.
- Revises and sunsets the Century Commission.
- Clarifies requirements for adopting criteria to address compatibility of lands relating to military installations.
- Specifies that the comprehensive plan or zoning ordinance that applies to a development is the plan or ordinance in place at the time the application for development is filed.
- Defines adaptation action area and allows it to be part of the housing element of the comprehensive plan.

CS by Community Affairs on March 28, 2011:
Includes the following significant changes:

- Making concurrency for parks and recreation, schools, and transportation facilities optional for local governments.
- Applying an expedited comprehensive plan amendment process statewide.
- Specifying that population projections should be covered for a 10-year window and act as a floor for requisite development except for areas of critical state concern.
- Allowing additional planning periods for specific parts of the comprehensive plan.
- Abolishing 9J-5, F.A.C., and incorporating many of the substantive provisions into the bill.
- Allowing the capital improvements element (CIE) to be updated by ordinance and moving the CIE deadline to 2013.
- Removing many of the state specifications and requirements for optional elements in the comprehensive plan, but allowing local governments to continue to include optional elements.
- Allowing for mass transit projects to extend outside a transportation deficiency area.
- Exempting transit-oriented developments from transportation impact review in the development of regional impact process.
- Expanding and revising the optional sector plan process.

- Reducing the requirements of the 7-year evaluation and appraisal process.
- Revising the rural land stewardship program.
- Restricting the state's ability to interpret joint planning agreements.
- Prohibiting local governments from increasing or creating new impact fees for nonresidential development for two years.
- Making DCA the sole agency for reviewing commercial/industrial uses for purposes of the Highway Beautification Act.
- Revising the make-up of the RPCs allowing for representation of the commercial and business entities.
- Reenacting language relating to the burden of proof for impact fees.
- Clarifying and broadening the window for permit extensions.
- Removing certain requirements relating to energy efficiency and green house gas reductions.
- Removing the optional provisions relating to recreational surface water use policies.
- Repealing the Local Government Comprehensive Planning Certification Program.
- Prohibiting local governments from:
  - having referenda for local comprehensive plan amendments;
  - requiring a super majority vote for the adoption of comprehensive plan amendments.
- Encouraging planning innovation technical assistance.
- Containing transition language and preservation of rights.
- Clarifying that a landowner seeking certification of a water and/or wastewater utility from the Public Service Commission for at least 1,000 acres may seek such certification for planning purposes, in order to be prepared to provide service on its property, without being required to show an immediate need for service.

B. Amendments:

None.