

By Senator Bennett

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1 A bill to be entitled
2 An act relating to developments of regional impact;
3 amending s. 163.3184, F.S.; requiring that plan
4 amendments proposing a development that is exempt from
5 review as a development of regional impact follow the
6 state coordinated review process; amending s. 380.06,
7 F.S.; requiring that reviewing agencies make only
8 recommendations and comments regarding a proposed
9 development which are consistent with statutes, rules,
10 or adopted local ordinances that are applicable to all
11 developments in the jurisdiction where the proposed
12 development is located; providing legislative intent
13 regarding the issues that may be considered during the
14 development-of-regional-impact review process;
15 revising provisions relating to regional reports
16 prepared and submitted by a regional planning agency;
17 requiring that a regional planning agency make
18 recommendations in its regional report which are
19 consistent with the standards of state permitting
20 agencies and the water management district or the
21 adopted local government land development regulations
22 if such standards are not applicable; providing that
23 changes to a development order which do not increase
24 the number of external peak hour trips and do not
25 reduce open space and conserved areas within a project
26 are not substantial deviations; providing an exemption
27 from development-of-regional-impact review for any
28 proposed development that a local government elects
29 not to apply the review process if a comprehensive

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30 plan amendment for the development is adopted pursuant
31 to the state coordinated review process; providing
32 exceptions; amending s. 380.115, F.S.; requiring that
33 a local government having jurisdiction rescind a
34 development-of-regional-impact development order, upon
35 request, and upon a showing that all required
36 mitigation related to the amount of development that
37 existed on the date of rescission will be completed
38 under a permit or other authorization issued by a
39 governmental agency; providing an effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

43 Section 1. Paragraph (c) of subsection (2) of section
44 163.3184, Florida Statutes, is amended to read:

45 163.3184 Process for adoption of comprehensive plan or plan
46 amendment.—

47 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

48 (c) Plan amendments that are in an area of critical state
49 concern designated pursuant to s. 380.05; propose a rural land
50 stewardship area pursuant to s. 163.3248; propose a sector plan
51 pursuant to s. 163.3245; update a comprehensive plan based on an
52 evaluation and appraisal pursuant to s. 163.3191; propose a
53 development pursuant to s. 380.06(24)(x); or are new plans for
54 newly incorporated municipalities adopted pursuant to s.
55 163.3167 shall follow the state coordinated review process in
56 subsection (4).

57 Section 2. Paragraphs (a) and (b) of subsection (7),
58 subsection (12), and paragraph (e) of subsection (19) of section

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59 380.06, Florida Statutes, are amended, and paragraph (x) is
60 added to subsection (24) of that section, to read:

61 380.06 Developments of regional impact.—

62 (7) PREAPPLICATION PROCEDURES.—

63 (a) Before filing an application for development approval,
64 the developer shall contact the regional planning agency having
65 ~~with~~ jurisdiction over the proposed development to arrange a
66 preapplication conference. Upon the request of the developer or
67 the regional planning agency, other affected state and regional
68 agencies shall participate in this conference and shall identify
69 the types of permits issued by the agencies, the level of
70 information required, and the permit issuance procedures as
71 applied to the proposed development. The levels of service
72 required in the transportation methodology shall be the same
73 levels of service used to evaluate concurrency in accordance
74 with s. 163.3180. The regional planning agency shall provide the
75 developer information about the development-of-regional-impact
76 process and the use of preapplication conferences to identify
77 issues, coordinate appropriate state and local agency
78 requirements, and otherwise promote a proper and efficient
79 review of the proposed development. If an agreement is reached
80 regarding assumptions and methodology to be used in the
81 application for development approval, the reviewing agencies may
82 not subsequently object to those assumptions and methodologies
83 unless subsequent changes to the project or information obtained
84 during the review make those assumptions and methodologies
85 inappropriate. The reviewing agencies may make only
86 recommendations or comments regarding a proposed development
87 which are consistent with the statutes, rules, or adopted local

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88 government ordinances that are applicable to all developments in
89 the jurisdiction where the proposed development is located.

90 (b) The regional planning agency shall establish by rule a
91 procedure by which a developer may enter into binding written
92 agreements with the regional planning agency to eliminate
93 questions from the application for development approval when
94 those questions are found to be unnecessary for development-of-
95 regional-impact review. It is the legislative intent of this
96 subsection to encourage the reduction of paperwork, to
97 discourage the unnecessary gathering of data, and to encourage
98 the coordination of the development-of-regional-impact review
99 process with federal, state, and local environmental reviews
100 when such reviews are required by law. It is also the
101 legislative intent of this subsection to limit development-of-
102 regional-impact review to issues directly related to land use,
103 environmental protection, and public facilities, including
104 transportation. However, issues regarding hurricane preparedness
105 and affordable housing may be considered if the local government
106 has adopted an ordinance that generally applies to all other
107 developments. Any other issue may not be considered during the
108 development-of-regional-impact review.

109 (12) REGIONAL REPORTS.—

110 (a) Within 50 days after receipt of the notice of public
111 hearing required in paragraph (11)(c), the regional planning
112 agency, if one has been designated for the area including the
113 local government, shall prepare and submit to the local
114 government a report and recommendations on the regional impact
115 of the proposed development. In preparing its report and
116 recommendations, the regional planning agency shall identify

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117 regional issues based upon the following review criteria and
118 make recommendations to the local government on these regional
119 issues, specifically considering whether, and the extent to
120 which:

121 1. The development will have a favorable or unfavorable
122 impact on state or regional resources or facilities identified
123 in the applicable state or regional plans. As used in ~~For the~~
124 ~~purposes of~~ this subsection, the term "applicable state plan"
125 means the state comprehensive plan. As used in ~~For the purposes~~
126 ~~of~~ this subsection, the term "applicable regional plan" means an
127 adopted comprehensive regional policy plan until the adoption of
128 a strategic regional policy plan pursuant to s. 186.508, and
129 thereafter means an adopted strategic regional policy plan.

130 2. The development will significantly impact adjacent
131 jurisdictions. At the request of the appropriate local
132 government, regional planning agencies may also review and
133 comment upon issues that affect only the requesting local
134 government.

135 3. As one of the issues considered in the review in
136 subparagraphs 1. and 2., the development will favorably or
137 adversely affect the ability of people to find adequate housing
138 reasonably accessible to their places of employment if the local
139 government has adopted an affordable housing ordinance that
140 generally applies to all other developments. The determination
141 should take into account information on factors that are
142 relevant to the availability of reasonably accessible adequate
143 housing. Adequate housing means housing that is available for
144 occupancy and that is not substandard.

145 4. As one of the issues considered in the review in

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146 subparagraphs 1. and 2., the development will favorably or
147 adversely affect hurricane preparedness if the local government
148 has adopted a hurricane preparedness ordinance that generally
149 applies to all other developments.

150 (b) The regional planning agency report must contain
151 recommendations that are consistent with the standards required
152 by the applicable state permitting agencies or the water
153 management district or that are consistent with the land
154 development regulations adopted by the local government if a
155 state permitting agency or water management district standard is
156 not applicable. The regional planning agency may not recommend a
157 standard unless the local government has adopted the same
158 standard in its land development regulations or in an ordinance
159 that generally applies to all other developments or unless the
160 standard is required by state permitting agencies or the water
161 management district.

162 (c) ~~(b)~~ At the request of the regional planning agency,
163 other appropriate agencies shall review the proposed development
164 and shall prepare reports and recommendations on issues that are
165 clearly within the jurisdiction of those agencies. Such agency
166 reports shall become part of the regional planning agency
167 report; however, the regional planning agency may attach
168 dissenting views. When water management district and Department
169 of Environmental Protection permits have been issued pursuant to
170 chapter 373 or chapter 403, the regional planning council may
171 comment on the regional implications of the permits but may not
172 offer conflicting recommendations.

173 (d) ~~(e)~~ The regional planning agency shall afford the
174 developer or any substantially affected party reasonable

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175 opportunity to present evidence to the regional planning agency
176 head relating to the proposed regional agency report and
177 recommendations.

178 ~~(e)-(d)~~ If ~~When~~ the location of a proposed development
179 involves land within the boundaries of multiple regional
180 planning councils, the state land planning agency shall
181 designate a lead regional planning council. The lead regional
182 planning council shall prepare the regional report.

183 (19) SUBSTANTIAL DEVIATIONS.—

184 (e)1. Except for a development order rendered pursuant to
185 subsection (22) or subsection (25), a proposed change to a
186 development order which ~~that~~ individually or cumulatively with
187 any previous change is less than any numerical criterion
188 contained in subparagraphs (b)1.-10. and does not exceed any
189 other criterion, or which ~~that~~ involves an extension of the
190 buildout date of a development, or any phase thereof, of less
191 than 5 years is not subject to the public hearing requirements
192 of subparagraph (f)3., and is not subject to a determination
193 pursuant to subparagraph (f)5. Notice of the proposed change
194 shall be made to the regional planning council and the state
195 land planning agency. Such notice must ~~shall~~ include a
196 description of previous individual changes made to the
197 development, including changes previously approved by the local
198 government, and must ~~shall~~ include appropriate amendments to the
199 development order.

200 2. The following changes, individually or cumulatively with
201 any previous changes, are not substantial deviations:

202 a. Changes in the name of the project, developer, owner, or
203 monitoring official.

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204 b. Changes to a setback which ~~that~~ do not affect noise
205 buffers, environmental protection or mitigation areas, or
206 archaeological or historical resources.

207 c. Changes to minimum lot sizes.

208 d. Changes in the configuration of internal roads which
209 ~~that~~ do not affect external access points.

210 e. Changes to the building design or orientation which ~~that~~
211 stay approximately within the approved area designated for such
212 building and parking lot, and which do not affect historical
213 buildings designated as significant by the Division of
214 Historical Resources of the Department of State.

215 f. Changes to increase the acreage in the development, if
216 ~~provided that~~ no development is proposed on the acreage to be
217 added.

218 g. Changes to eliminate an approved land use, if ~~provided~~
219 ~~that~~ there are no additional regional impacts.

220 h. Changes required to conform to permits approved by any
221 federal, state, or regional permitting agency, if ~~provided that~~
222 these changes do not create additional regional impacts.

223 i. Any renovation or redevelopment of development within a
224 previously approved development of regional impact which does
225 not change land use or increase density or intensity of use.

226 j. Changes that modify boundaries and configuration of
227 areas described in subparagraph (b)11. due to science-based
228 refinement of such areas by survey, by habitat evaluation, by
229 other recognized assessment methodology, or by an environmental
230 assessment. In order for changes to qualify under this sub-
231 subparagraph, the survey, habitat evaluation, or assessment must
232 occur before ~~prior to~~ the time that a conservation easement

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233 protecting such lands is recorded and must not result in any net
234 decrease in the total acreage of the lands specifically set
235 aside for permanent preservation in the final development order.

236 k. Changes that do not increase the number of external peak
237 hour trips and do not reduce open space and conserved areas
238 within the project except as otherwise permitted by sub-
239 subparagraph j.

240 l.k. Any other change that ~~which~~ the state land planning
241 agency, in consultation with the regional planning council,
242 agrees in writing is similar in nature, impact, or character to
243 the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that
244 ~~which~~ does not create the likelihood of any additional regional
245 impact.

246
247 This subsection does not require the filing of a notice of
248 proposed change but requires ~~shall require~~ an application to the
249 local government to amend the development order in accordance
250 with the local government's procedures for amendment of a
251 development order. In accordance with the local government's
252 procedures, including requirements for notice to the applicant
253 and the public, the local government shall either deny the
254 application for amendment or adopt an amendment to the
255 development order which approves the application with or without
256 conditions. Following adoption, the local government shall
257 render to the state land planning agency the amendment to the
258 development order. The state land planning agency may appeal,
259 pursuant to s. 380.07(3), the amendment to the development order
260 if the amendment involves sub-subparagraph g., sub-subparagraph
261 h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-

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262 subparagraph 1. and if the agency ~~it~~ believes that the change
263 creates a reasonable likelihood of new or additional regional
264 impacts.

265 3. Except for the change authorized by sub-subparagraph
266 2.f., any addition of land not previously reviewed or any change
267 not specified in paragraph (b) or paragraph (c) shall be
268 presumed to create a substantial deviation. This presumption may
269 be rebutted by clear and convincing evidence.

270 4. Any submittal of a proposed change to a previously
271 approved development must ~~shall~~ include a description of
272 individual changes previously made to the development, including
273 changes previously approved by the local government. The local
274 government shall consider the previous and current proposed
275 changes in deciding whether such changes cumulatively constitute
276 a substantial deviation requiring further development-of-
277 regional-impact review.

278 5. The following changes to an approved development of
279 regional impact shall be presumed to create a substantial
280 deviation. Such presumption may be rebutted by clear and
281 convincing evidence.

282 a. A change proposed for 15 percent or more of the acreage
283 to a land use not previously approved in the development order.
284 Changes of less than 15 percent shall be presumed not to create
285 a substantial deviation.

286 b. Notwithstanding any provision of paragraph (b) to the
287 contrary, a proposed change consisting of simultaneous increases
288 and decreases of at least two of the uses within an authorized
289 multiuse development of regional impact which was originally
290 approved with three or more uses specified in s. 380.0651(3)(c),

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291 (d), and (e) and residential use.

292 6. If a local government agrees to a proposed change, a
293 change in the transportation proportionate share calculation and
294 mitigation plan in an adopted development order as a result of
295 recalculation of the proportionate share contribution meeting
296 the requirements of s. 163.3180(5)(h) in effect as of the date
297 of such change shall be presumed not to create a substantial
298 deviation. For purposes of this subsection, the proposed change
299 in the proportionate share calculation or mitigation plan may
300 ~~shall~~ not be considered an additional regional transportation
301 impact.

302 (24) STATUTORY EXEMPTIONS.—

303 (x) Any proposed development for which a local government
304 elects not to apply the development-of-regional-impact review
305 process, if a comprehensive plan amendment for the development
306 is adopted pursuant to the state coordinated review process in
307 s. 163.3184(4), is exempt from this section. This exemption does
308 not apply to areas within the boundary of any area of critical
309 state concern designated pursuant to s. 380.05, within the
310 boundary of the Wekiva Study Area as described in s. 369.316, or
311 within 2 miles of the boundary of the Everglades Protection Area
312 as defined in s. 373.4592(2).

313
314 If a use is exempt from review as a development of regional
315 impact under paragraphs (a)-(u), but will be part of a larger
316 project that is subject to review as a development of regional
317 impact, the impact of the exempt use must be included in the
318 review of the larger project, unless such exempt use involves a
319 development of regional impact that includes a landowner,

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320 tenant, or user that has entered into a funding agreement with
321 the Department of Economic Opportunity under the Innovation
322 Incentive Program and the agreement contemplates a state award
323 of at least \$50 million.

324 Section 3. Subsection (1) of section 380.115, Florida
325 Statutes, is amended to read:

326 380.115 Vested rights and duties; effect of size reduction,
327 changes in guidelines and standards.—

328 (1) A change in a development-of-regional-impact guideline
329 and standard does not abridge or modify any vested or other
330 right or any duty or obligation pursuant to any development
331 order or agreement that is applicable to a development of
332 regional impact. A development that has received a development-
333 of-regional-impact development order pursuant to s. 380.06, but
334 is no longer required to undergo development-of-regional-impact
335 review by operation of a change in the guidelines and standards
336 or has reduced its size below the thresholds in s. 380.0651, or
337 a development that is exempt pursuant to s. 380.06(24) or (29)
338 ~~380.06(29)~~ shall be governed by the following procedures:

339 (a) The development shall continue to be governed by the
340 development-of-regional-impact development order and may be
341 completed in reliance upon and pursuant to the development order
342 unless the developer or landowner has followed the procedures
343 for rescission in paragraph (b). Any proposed changes to those
344 developments which continue to be governed by a development
345 order shall be approved pursuant to s. 380.06(19) as it existed
346 before ~~prior to~~ a change in the development-of-regional-impact
347 guidelines and standards, except that all percentage criteria
348 shall be doubled and all other criteria shall be increased by 10

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349 percent. The development-of-regional-impact development order
350 may be enforced by the local government as provided by ss.
351 380.06(17) and 380.11.

352 (b) If requested by the developer or landowner, the
353 development-of-regional-impact development order shall be
354 rescinded by the local government having jurisdiction upon a
355 showing that all required mitigation related to the amount of
356 development that existed on the date of rescission has been
357 completed or will be completed under a permit or other
358 authorization issued by a governmental agency as defined in s.
359 380.031(6).

360 Section 4. This act shall take effect July 1, 2012.