By the Committee on Community Affairs; and Senator Bennett

578-02950-12 20121180c1

A bill to be entitled

An act relating to growth management; amending s. 163.3184, F.S.; requiring that comprehensive plan amendments proposing certain developments follow the state coordinated review process; amending s. 380.06, F.S.; limiting the scope of certain recommendations and comments by reviewing agencies regarding proposed developments; revising certain review criteria for reports and recommendations on the regional impact of proposed developments; requiring regional planning agency reports to contain recommendations consistent with the standards of state permitting agencies and water management districts; providing that specified changes to a development order are not substantial deviations; providing an exemption from development-of-regional-impact review for proposed developments that meet specified criteria and are located in certain jurisdictions; providing applicability; amending s. 380.115, F.S.; revising conditions under which a local government is required to rescind a development-of-regional-impact development order; creating s. 163.3165, F.S.; providing for application and approval of an amendment to the local comprehensive plan by the owner of land that meets certain criteria as an agricultural enclave; creating a 2-year permit extension; providing an effective date.

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

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

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

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

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

Section 2. Paragraph (a) of subsection (7), subsection (12), and paragraph (e) of subsection (19) of section 380.06, Florida Statutes, are amended, and paragraph (x) is added to subsection (24) of that section, to read:

380.06 Developments of regional impact.—

(7) PREAPPLICATION PROCEDURES.—

(a) Before filing an application for development approval, the developer shall contact the regional planning agency having ~~with~~ jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as

applied to the proposed development. The levels of service required in the transportation methodology shall be the same levels of service used to evaluate concurrency in accordance with s. 163.3180. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If an agreement is reached regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate. The reviewing agencies may make only recommendations or comments regarding a proposed development which are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.

(12) REGIONAL REPORTS.—

(a) Within 50 days after receipt of the notice of public hearing required in paragraph (11)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional

issues, specifically considering whether, and the extent to which:

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

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

3. As one of the issues considered in the review in subparagraphs 1. and 2., the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment if the regional planning agency has adopted an affordable housing policy as part of its strategic regional policy plan. The determination should take into account information on factors that are relevant to the availability of reasonably accessible adequate housing. Adequate housing means housing that is available for occupancy and that is not substandard.

(b) The regional planning agency report must contain recommendations that are consistent with the standards required by the applicable state permitting agencies or the water

management district.

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

(d) ~~(c)~~ The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations.

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

(19) SUBSTANTIAL DEVIATIONS.—

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which ~~that~~ individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which ~~that~~ involves an extension of the

buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice must ~~shall~~ include a description of previous individual changes made to the development, including changes previously approved by the local government, and must ~~shall~~ include appropriate amendments to the development order.

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

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

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

c. Changes to minimum lot sizes.

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

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

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

g. Changes to eliminate an approved land use, if ~~provided~~

~~that~~ there are no additional regional impacts.

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

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

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before ~~prior to~~ the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

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

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

This subsection does not require the filing of a notice of

proposed change but requires ~~shall require~~ an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-subparagraph l. and if the agency ~~it~~ believes that the change creates a reasonable likelihood of new or additional regional impacts.

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

4. Any submittal of a proposed change to a previously approved development must ~~shall~~ include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-

regional-impact review.

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

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

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

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

(24) STATUTORY EXEMPTIONS.—

(x) Any proposed development that is located in a local government jurisdiction that does not qualify for an exemption based on the population and density criteria in s.

380.06(29)(a), that is approved as a comprehensive plan amendment adopted pursuant to s. 163.3184(4), that qualifies for an incentive program pursuant to chapter 288, and for which the developer, the local government, and the Department of Economic Opportunity agree in writing that the development-of-regional-impact review process does not apply is exempt from this section. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, within the boundary of the Wekiva Study Area as described in s. 369.316, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2).

If a use is exempt from review as a development of regional impact under paragraphs (a)-(u), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Department of Economic Opportunity under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

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

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

(1) A change in a development-of-regional-impact guideline and standard does not abridge or modify any vested or other

right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact. A development that has received a development-of-regional-impact development order pursuant to s. 380.06, but is no longer required to undergo development-of-regional-impact review by operation of a change in the guidelines and standards or has reduced its size below the thresholds in s. 380.0651, or a development that is exempt pursuant to s. 380.06(24) or (29) ~~380.06(29)~~ shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to those developments which continue to be governed by a development order shall be approved pursuant to s. 380.06(19) as it existed before ~~prior to~~ a change in the development-of-regional-impact guidelines and standards, except that all percentage criteria shall be doubled and all other criteria shall be increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as

defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies.

Section 4. Section 163.3165, Florida Statutes, is created to read:

163.3165 Agricultural lands surrounded by other land uses.—

(1) Notwithstanding any provision of ss. 163.3162 and 163.3164 to the contrary, the owner of a parcel of land that qualifies under this section may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3184. The amendment is presumed not to be urban sprawl as defined in s.163.3164 if it proposes land uses and intensities of use which are consistent with the existing uses and intensities of use of, or consistent with the uses and intensities of use authorized for, the industrial, commercial, or residential areas that surround the parcel. If the parcel of land that is the subject of an application for an amendment under this section is abutted by land having only one land use designation, the same land use designation shall be presumed by the county to be appropriate for the parcel and the county shall grant the parcel the same land use designation as the surrounding parcel that abuts the parcel.

(2) In order to qualify as an agricultural enclave under this section, the parcel of land must be a parcel that:

(a) Is owned by a single person or entity;

(b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years before the date of any comprehensive plan amendment application;

(c) Is either:

1. Surrounded on at least 90 percent of its perimeter by property that the local government has designated as land that may be developed for industrial, commercial, or residential purposes; or

2. Surrounded within a 1-mile radius by existing or authorized residential development that will result in a density at build out of at least 1,000 residents per square mile; and

(d) Does not exceed 640 acres.

Section 5. (1) Except as provided in subsection (4), and in recognition of 2012 real estate market conditions, any building permit, and any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for a period of 2 years after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit, including certificates of levels of service. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension. Extensions granted pursuant to this section; section 14 of chapter 2009-96, Laws of Florida, as reauthorized by section 47 of chapter 2010-147, Laws of Florida; section 46 of chapter 2010-147, Laws of Florida; section 74 of chapter 2011-139, Laws of Florida; or section 79 of chapter 2011-139, Laws of Florida, may not exceed 4 years in total. Further, specific development order extensions granted pursuant to s. 380.06(19)(c)2., Florida Statutes, may not be further extended by this section.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension must notify the authorizing agency in writing by December 31, 2012, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

(4) The extension provided for in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

(b) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(c) A permit or other authorization that, if granted an extension, would delay or prevent compliance with a court order.

(5) Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued, except if it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit

which lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

(6) This section does not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to receive the extension of time granted pursuant to this section to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

Section 6. This act shall take effect July 1, 2012.