By the Committees on Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; and Community Affairs; and Senator Bennett

606-04274-12 20121180c2

1 A bill to be entitled
2 An act relating to growth management; amending s.
3 163.3184, F.S.; requiring that comprehensive plan
4 amendments proposing certain developments follow the
5 state coordinated review process; amending s. 380.06,
6 F.S.; limiting the scope of certain recommendations
7 and comments by reviewing agencies regarding proposed
8 developments; revising certain review criteria for
9 reports and recommendations on the regional impact of
10 proposed developments; requiring regional planning
11 agency reports to contain recommendations consistent
12 with the standards of state permitting agencies and
13 water management districts; providing that specified
14 changes to a development order are not substantial
15 deviations; providing an exemption from development-
16 of-regional-impact review for proposed developments
17 that meet specified criteria and are located in
18 certain jurisdictions; requiring that an agreement
19 under s. 288.106, F.S., which relates to a tax refund
20 program for qualified target industry businesses, be
21 executed as a condition for such exemption; providing
22 notice requirements; providing applicability; amending
23 s. 380.115, F.S.; revising conditions under which a
24 local government is required to rescind a development-
25 of-regional-impact development order; creating s.
26 163.3165, F.S.; providing for application and approval
27 of an amendment to the local comprehensive plan by the
28 owner of land that meets certain criteria as an
29 agricultural enclave; creating a 2-year permit

30 extension; providing an effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Paragraph (c) of subsection (2) of section
35 163.3184, Florida Statutes, is amended to read:
36 163.3184 Process for adoption of comprehensive plan or plan
37 amendment.—
38 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—
39 (c) Plan amendments that are in an area of critical state
40 concern designated pursuant to s. 380.05; propose a rural land
41 stewardship area pursuant to s. 163.3248; propose a sector plan
42 pursuant to s. 163.3245; update a comprehensive plan based on an
43 evaluation and appraisal pursuant to s. 163.3191; propose a
44 development pursuant to s. 380.06(24)(x); or are new plans for
45 newly incorporated municipalities adopted pursuant to s.
46 163.3167 shall follow the state coordinated review process in
47 subsection (4).
48 Section 2. Paragraph (a) of subsection (7), subsection
49 (12), and paragraph (e) of subsection (19) of section 380.06,
50 Florida Statutes, are amended, and paragraph (x) is added to
51 subsection (24) of that section, to read:
52 380.06 Developments of regional impact.—
53 (7) PREAPPLICATION PROCEDURES.—
54 (a) Before filing an application for development approval,
55 the developer shall contact the regional planning agency having
56 ~~with~~ jurisdiction over the proposed development to arrange a
57 preapplication conference. Upon the request of the developer or
58 the regional planning agency, other affected state and regional

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59 agencies shall participate in this conference and shall identify
60 the types of permits issued by the agencies, the level of
61 information required, and the permit issuance procedures as
62 applied to the proposed development. The levels of service
63 required in the transportation methodology shall be the same
64 levels of service used to evaluate concurrency in accordance
65 with s. 163.3180. The regional planning agency shall provide the
66 developer information about the development-of-regional-impact
67 process and the use of preapplication conferences to identify
68 issues, coordinate appropriate state and local agency
69 requirements, and otherwise promote a proper and efficient
70 review of the proposed development. If an agreement is reached
71 regarding assumptions and methodology to be used in the
72 application for development approval, the reviewing agencies may
73 not subsequently object to those assumptions and methodologies
74 unless subsequent changes to the project or information obtained
75 during the review make those assumptions and methodologies
76 inappropriate. The reviewing agencies may make only
77 recommendations or comments regarding a proposed development
78 which are consistent with the statutes, rules, or adopted local
79 government ordinances that are applicable to developments in the
80 jurisdiction where the proposed development is located.
81 (12) REGIONAL REPORTS.—
82 (a) Within 50 days after receipt of the notice of public
83 hearing required in paragraph (11)(c), the regional planning
84 agency, if one has been designated for the area including the
85 local government, shall prepare and submit to the local
86 government a report and recommendations on the regional impact
87 of the proposed development. In preparing its report and

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88 recommendations, the regional planning agency shall identify
89 regional issues based upon the following review criteria and
90 make recommendations to the local government on these regional
91 issues, specifically considering whether, and the extent to
92 which:
93 1. The development will have a favorable or unfavorable
94 impact on state or regional resources or facilities identified
95 in the applicable state or regional plans. As used in For the
96 purposes of this subsection, the term “applicable state plan”
97 means the state comprehensive plan. As used in For the purposes
98 of this subsection, the term “applicable regional plan” means an
99 adopted comprehensive regional policy plan until the adoption of
100 a strategic regional policy plan pursuant to s. 186.508, and
101 thereafter means an adopted strategic regional policy plan.
102 2. The development will significantly impact adjacent
103 jurisdictions. At the request of the appropriate local
104 government, regional planning agencies may also review and
105 comment upon issues that affect only the requesting local
106 government.
107 3. As one of the issues considered in the review in
108 subparagraphs 1. and 2., the development will favorably or
109 adversely affect the ability of people to find adequate housing
110 reasonably accessible to their places of employment if the
111 regional planning agency has adopted an affordable housing
112 policy as part of its strategic regional policy plan. The
113 determination should take into account information on factors
114 that are relevant to the availability of reasonably accessible
115 adequate housing. Adequate housing means housing that is
116 available for occupancy and that is not substandard.

117 <u>(b) The regional planning agency report must contain</u>
118 <u>recommendations that are consistent with the standards required</u>
119 <u>by the applicable state permitting agencies or the water</u>
120 <u>management district.</u>
121 <u>(c)</u>~~(b)~~ At the request of the regional planning agency,
122 other appropriate agencies shall review the proposed development
123 and shall prepare reports and recommendations on issues that are
124 clearly within the jurisdiction of those agencies. Such agency
125 reports shall become part of the regional planning agency
126 report; however, the regional planning agency may attach
127 dissenting views. When water management district and Department
128 of Environmental Protection permits have been issued pursuant to
129 chapter 373 or chapter 403, the regional planning council may
130 comment on the regional implications of the permits but may not
131 offer conflicting recommendations.
132 <u>(d)</u>~~(c)~~ The regional planning agency shall afford the
133 developer or any substantially affected party reasonable
134 opportunity to present evidence to the regional planning agency
135 head relating to the proposed regional agency report and
136 recommendations.
137 <u>(e)</u>~~(d)~~ <u>If</u> ~~When~~ the location of a proposed development
138 involves land within the boundaries of multiple regional
139 planning councils, the state land planning agency shall
140 designate a lead regional planning council. The lead regional
141 planning council shall prepare the regional report.
142 (19) SUBSTANTIAL DEVIATIONS.—
143 (e)1. Except for a development order rendered pursuant to
144 subsection (22) or subsection (25), a proposed change to a
145 development order <u>which</u> ~~that~~ individually or cumulatively with

146 any previous change is less than any numerical criterion
147 contained in subparagraphs (b)1.-10. and does not exceed any
148 other criterion, or which ~~that~~ involves an extension of the
149 buildout date of a development, or any phase thereof, of less
150 than 5 years is not subject to the public hearing requirements
151 of subparagraph (f)3., and is not subject to a determination
152 pursuant to subparagraph (f)5. Notice of the proposed change
153 shall be made to the regional planning council and the state
154 land planning agency. Such notice must ~~shall~~ include a
155 description of previous individual changes made to the
156 development, including changes previously approved by the local
157 government, and must ~~shall~~ include appropriate amendments to the
158 development order.
159 2. The following changes, individually or cumulatively with
160 any previous changes, are not substantial deviations:
161 a. Changes in the name of the project, developer, owner, or
162 monitoring official.
163 b. Changes to a setback which ~~that~~ do not affect noise
164 buffers, environmental protection or mitigation areas, or
165 archaeological or historical resources.
166 c. Changes to minimum lot sizes.
167 d. Changes in the configuration of internal roads which
168 ~~that~~ do not affect external access points.
169 e. Changes to the building design or orientation which ~~that~~
170 stay approximately within the approved area designated for such
171 building and parking lot, and which do not affect historical
172 buildings designated as significant by the Division of
173 Historical Resources of the Department of State.
174 f. Changes to increase the acreage in the development, if

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175 ~~provided that~~ no development is proposed on the acreage to be
176 added.
177 g. Changes to eliminate an approved land use, if ~~provided~~
178 ~~that~~ there are no additional regional impacts.
179 h. Changes required to conform to permits approved by any
180 federal, state, or regional permitting agency, if ~~provided that~~
181 these changes do not create additional regional impacts.
182 i. Any renovation or redevelopment of development within a
183 previously approved development of regional impact which does
184 not change land use or increase density or intensity of use.
185 j. Changes that modify boundaries and configuration of
186 areas described in subparagraph (b)11. due to science-based
187 refinement of such areas by survey, by habitat evaluation, by
188 other recognized assessment methodology, or by an environmental
189 assessment. In order for changes to qualify under this sub-
190 subparagraph, the survey, habitat evaluation, or assessment must
191 occur before ~~prior to~~ the time that a conservation easement
192 protecting such lands is recorded and must not result in any net
193 decrease in the total acreage of the lands specifically set
194 aside for permanent preservation in the final development order.
195 k. Changes that do not increase the number of external peak
196 hour trips and do not reduce open space and conserved areas
197 within the project except as otherwise permitted by sub-
198 subparagraph j.
199 l.~~k.~~ Any other change that ~~which~~ the state land planning
200 agency, in consultation with the regional planning council,
201 agrees in writing is similar in nature, impact, or character to
202 the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that
203 ~~which~~ does not create the likelihood of any additional regional

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204 impact.

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206 This subsection does not require the filing of a notice of
207 proposed change but requires ~~shall require~~ an application to the
208 local government to amend the development order in accordance
209 with the local government’s procedures for amendment of a
210 development order. In accordance with the local government’s
211 procedures, including requirements for notice to the applicant
212 and the public, the local government shall either deny the
213 application for amendment or adopt an amendment to the
214 development order which approves the application with or without
215 conditions. Following adoption, the local government shall
216 render to the state land planning agency the amendment to the
217 development order. The state land planning agency may appeal,
218 pursuant to s. 380.07(3), the amendment to the development order
219 if the amendment involves sub-subparagraph g., sub-subparagraph
220 h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-
221 subparagraph l. and if the agency ~~it~~ believes that the change
222 creates a reasonable likelihood of new or additional regional
223 impacts.

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

229 4. Any submittal of a proposed change to a previously
230 approved development must ~~shall~~ include a description of
231 individual changes previously made to the development, including
232 changes previously approved by the local government. The local

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233 government shall consider the previous and current proposed
234 changes in deciding whether such changes cumulatively constitute
235 a substantial deviation requiring further development-of-
236 regional-impact review.
237 5. The following changes to an approved development of
238 regional impact shall be presumed to create a substantial
239 deviation. Such presumption may be rebutted by clear and
240 convincing evidence.
241 a. A change proposed for 15 percent or more of the acreage
242 to a land use not previously approved in the development order.
243 Changes of less than 15 percent shall be presumed not to create
244 a substantial deviation.
245 b. Notwithstanding any provision of paragraph (b) to the
246 contrary, a proposed change consisting of simultaneous increases
247 and decreases of at least two of the uses within an authorized
248 multiuse development of regional impact which was originally
249 approved with three or more uses specified in s. 380.0651(3)(c),
250 (d), and (e) and residential use.
251 6. If a local government agrees to a proposed change, a
252 change in the transportation proportionate share calculation and
253 mitigation plan in an adopted development order as a result of
254 recalculation of the proportionate share contribution meeting
255 the requirements of s. 163.3180(5)(h) in effect as of the date
256 of such change shall be presumed not to create a substantial
257 deviation. For purposes of this subsection, the proposed change
258 in the proportionate share calculation or mitigation plan may
259 ~~shall~~ not be considered an additional regional transportation
260 impact.
261 (24) STATUTORY EXEMPTIONS.—

262 (x) Any proposed development that is located in a local
263 government jurisdiction that does not qualify for an exemption
264 based on the population and density criteria in paragraph
265 (29)(a), that is approved as a comprehensive plan amendment
266 adopted pursuant to s. 163.3184(4), and that is the subject of
267 an agreement pursuant to s. 288.106(5) is exempt from this
268 section. This exemption becomes effective only upon a written
269 agreement executed by the applicant, the local government, and
270 the state land planning agency. The state land planning agency
271 shall be a party to the agreement only upon a determination that
272 the development is the subject of an agreement pursuant to s.
273 288.106(5) and that the local government has the capacity to
274 adequately assess the impacts of the proposed development. The
275 local government shall be a party to the agreement only upon
276 approval by its elected governing body and upon providing notice
277 at least 21 days before such approval to adjacent local
278 governments, which must include, at a minimum, information
279 regarding the location, density and intensity of use, and timing
280 of the proposed development. This exemption does not apply to
281 areas within the boundary of any area of critical state concern
282 designated pursuant to s. 380.05, within the boundary of the
283 Wekiva Study Area as described in s. 369.316, or within 2 miles
284 of the boundary of the Everglades Protection Area as defined in
285 s. 373.4592(2).
286
287 If a use is exempt from review as a development of regional
288 impact under paragraphs (a)-(u), but will be part of a larger
289 project that is subject to review as a development of regional
290 impact, the impact of the exempt use must be included in the

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291 review of the larger project, unless such exempt use involves a
292 development of regional impact that includes a landowner,
293 tenant, or user that has entered into a funding agreement with
294 the Department of Economic Opportunity under the Innovation
295 Incentive Program and the agreement contemplates a state award
296 of at least $50 million.
297 Section 3. Subsection (1) of section 380.115, Florida
298 Statutes, is amended to read:
299 380.115 Vested rights and duties; effect of size reduction,
300 changes in guidelines and standards.—
301 (1) A change in a development-of-regional-impact guideline
302 and standard does not abridge or modify any vested or other
303 right or any duty or obligation pursuant to any development
304 order or agreement that is applicable to a development of
305 regional impact. A development that has received a development-
306 of-regional-impact development order pursuant to s. 380.06, but
307 is no longer required to undergo development-of-regional-impact
308 review by operation of a change in the guidelines and standards
309 or has reduced its size below the thresholds in s. 380.0651, or
310 a development that is exempt pursuant to s. <u>380.06(24) or (29)</u>
311 ~~380.06(29)~~ shall be governed by the following procedures:
312 (a) The development shall continue to be governed by the
313 development-of-regional-impact development order and may be
314 completed in reliance upon and pursuant to the development order
315 unless the developer or landowner has followed the procedures
316 for rescission in paragraph (b). Any proposed changes to those
317 developments which continue to be governed by a development
318 order shall be approved pursuant to s. 380.06(19) as it existed
319 <u>before</u> ~~prior to~~ a change in the development-of-regional-impact

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320 guidelines and standards, except that all percentage criteria
321 shall be doubled and all other criteria shall be increased by 10
322 percent. The development-of-regional-impact development order
323 may be enforced by the local government as provided by ss.
324 380.06(17) and 380.11.
325 (b) If requested by the developer or landowner, the
326 development-of-regional-impact development order shall be
327 rescinded by the local government having jurisdiction upon a
328 showing that all required mitigation related to the amount of
329 development that existed on the date of rescission has been
330 completed or will be completed under an existing permit or
331 equivalent authorization issued by a governmental agency as
332 defined in s. 380.031(6), provided such permit or authorization
333 is subject to enforcement through administrative or judicial
334 remedies.
335 Section 4. Section 163.3165, Florida Statutes, is created
336 to read:
337 163.3165 Agricultural lands surrounded by a single land
338 use.—
339 (1) Notwithstanding any provision of ss. 163.3162 and
340 163.3164 to the contrary, the owner of a parcel of land located
341 in an unincorporated area of a county that qualifies under this
342 section may apply for an amendment to the local government
343 comprehensive plan pursuant to s. 163.3184. The amendment is
344 presumed not to be urban sprawl as defined in s.163.3164 if it
345 proposes land uses and intensities of use which are consistent
346 with the existing uses and intensities of use of, or consistent
347 with the uses and intensities of use authorized for, the
348 industrial, commercial, or residential areas that surround the

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349 parcel. If the parcel of land that is the subject of an
350 application for an amendment under this section is abutted on
351 all sides by land having only one land use designation, the same
352 land use designation shall be presumed by the county to be
353 appropriate for the parcel. The county shall, after considering
354 the proposed density and intensity, grant the parcel the same
355 land use designation as the surrounding parcels that abut the
356 parcel unless the county finds by clear and convincing evidence
357 that such grant would be detrimental to the health, safety, and
358 welfare of its citizens.
359 (2) In order to qualify as an agricultural enclave under
360 this section, the parcel of land must be a parcel that:
361 (a) Is owned by a single person or entity;
362 (b) Has been in continuous use for bona fide agricultural
363 purposes, as defined by s. 193.461, for a period of 5 years
364 before the date of any comprehensive plan amendment application;
365 (c) Is surrounded on at least 95 percent of its perimeter
366 by property that the local government has designated as land
367 that may be developed for industrial, commercial, or residential
368 purposes; and
369 (d) Does not exceed 650 acres but is not smaller than 500
370 acres.
371
372 In order to qualify for the redesignation as an enclave, the
373 owner of a parcel of land meeting the requirements of paragraphs
374 (a)-(d) must apply for the redesignation by January 1, 2014.
375 Section 5. (1) Except as provided in subsection (4), and in
376 recognition of 2012 real estate market conditions, any building
377 permit, and any permit issued by the Department of Environmental

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378 Protection or by a water management district pursuant to part IV
379 of chapter 373, Florida Statutes, which has an expiration date
380 from January 1, 2011, through January 1, 2014, is extended and
381 renewed for a period of 2 years after its previously scheduled
382 date of expiration. This extension includes any local
383 government-issued development order or building permit,
384 including certificates of levels of service. This section does
385 not prohibit conversion from the construction phase to the
386 operation phase upon completion of construction. This extension
387 is in addition to any existing permit extension. Extensions
388 granted pursuant to this section; section 14 of chapter 2009-96,
389 Laws of Florida, as reauthorized by section 47 of chapter 2010-
390 147, Laws of Florida; section 46 of chapter 2010-147, Laws of
391 Florida; section 74 of chapter 2011-139, Laws of Florida; or
392 section 79 of chapter 2011-139, Laws of Florida, may not exceed
393 4 years in total. Further, specific development order extensions
394 granted pursuant to s. 380.06(19)(c)2., Florida Statutes, may
395 not be further extended by this section.
396 (2) The commencement and completion dates for any required
397 mitigation associated with a phased construction project shall
398 be extended so that mitigation takes place in the same timeframe
399 relative to the phase as originally permitted.
400 (3) The holder of a valid permit or other authorization
401 that is eligible for the 2-year extension must notify the
402 authorizing agency in writing by December 31, 2012, identifying
403 the specific authorization for which the holder intends to use
404 the extension and the anticipated timeframe for acting on the
405 authorization.
406 (4) The extension provided for in subsection (1) does not

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407 apply to:
408 (a) A permit or other authorization under any programmatic
409 or regional general permit issued by the Army Corps of
410 Engineers.
411 (b) A permit or other authorization held by an owner or
412 operator determined to be in significant noncompliance with the
413 conditions of the permit or authorization as established through
414 the issuance of a warning letter or notice of violation, the
415 initiation of formal enforcement, or other equivalent action by
416 the authorizing agency.
417 (c) A permit or other authorization that, if granted an
418 extension, would delay or prevent compliance with a court order.
419 (5) Permits extended under this section shall continue to
420 be governed by the rules in effect at the time the permit was
421 issued, except if it is demonstrated that the rules in effect at
422 the time the permit was issued would create an immediate threat
423 to public safety or health. This provision applies to any
424 modification of the plans, terms, and conditions of the permit
425 which lessens the environmental impact, except that any such
426 modification does not extend the time limit beyond 2 additional
427 years.
428 (6) This section does not impair the authority of a county
429 or municipality to require the owner of a property that has
430 notified the county or municipality of the owner's intent to
431 receive the extension of time granted pursuant to this section
432 to maintain and secure the property in a safe and sanitary
433 condition in compliance with applicable laws and ordinances.
434 Section 6. This act shall take effect July 1, 2012.

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