

CS/HB 979

2012

1 A bill to be entitled
2 An act relating to developments of regional impact;
3 amending s. 163.3184, F.S.; requiring that
4 comprehensive plan amendments proposing certain
5 developments follow the state coordinated review
6 process; amending s. 380.06, F.S.; limiting the scope
7 of certain recommendations and comments by reviewing
8 agencies regarding proposed developments; revising
9 certain review criteria for reports and
10 recommendations on the regional impact of proposed
11 developments; requiring regional planning agency
12 reports to contain recommendations consistent with the
13 standards of state permitting agencies and water
14 management districts; providing that specified changes
15 to a development order are not substantial deviations;
16 providing an exemption from development-of-regional-
17 impact review for proposed developments that meet
18 specified criteria and are located in certain
19 jurisdictions; providing applicability; amending s.
20 380.115, F.S.; revising conditions under which a local
21 government is required to rescind a development-of-
22 regional-impact development order; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (c) of subsection (2) of section
28 163.3184, Florida Statutes, is amended to read:

29 | 163.3184 Process for adoption of comprehensive plan or
 30 | plan amendment.—

31 | (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

32 | (c) Plan amendments that are in an area of critical state
 33 | concern designated pursuant to s. 380.05; propose a rural land
 34 | stewardship area pursuant to s. 163.3248; propose a sector plan
 35 | pursuant to s. 163.3245; update a comprehensive plan based on an
 36 | evaluation and appraisal pursuant to s. 163.3191; propose a
 37 | development pursuant to s. 380.06(24)(x); or are new plans for
 38 | newly incorporated municipalities adopted pursuant to s.
 39 | 163.3167 shall follow the state coordinated review process in
 40 | subsection (4).

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

45 | 380.06 Developments of regional impact.—

46 | (7) PREAPPLICATION PROCEDURES.—

47 | (a) Before filing an application for development approval,
 48 | the developer shall contact the regional planning agency having
 49 | ~~with~~ jurisdiction over the proposed development to arrange a
 50 | preapplication conference. Upon the request of the developer or
 51 | the regional planning agency, other affected state and regional
 52 | agencies shall participate in this conference and shall identify
 53 | the types of permits issued by the agencies, the level of
 54 | information required, and the permit issuance procedures as
 55 | applied to the proposed development. The levels of service
 56 | required in the transportation methodology shall be the same

CS/HB 979

2012

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

74 | (12) REGIONAL REPORTS.—

75 | (a) Within 50 days after receipt of the notice of public
76 | hearing required in paragraph (11)(c), the regional planning
77 | agency, if one has been designated for the area including the
78 | local government, shall prepare and submit to the local
79 | government a report and recommendations on the regional impact
80 | of the proposed development. In preparing its report and
81 | recommendations, the regional planning agency shall identify
82 | regional issues based upon the following review criteria and
83 | make recommendations to the local government on these regional
84 | issues, specifically considering whether, and the extent to

85 which:

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

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

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

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

113 | management district.

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

125 | ~~(e)~~ (d) The regional planning agency shall afford the
 126 | developer or any substantially affected party reasonable
 127 | opportunity to present evidence to the regional planning agency
 128 | head relating to the proposed regional agency report and
 129 | recommendations.

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

135 | (19) SUBSTANTIAL DEVIATIONS.—

136 | (e)1. Except for a development order rendered pursuant to
 137 | subsection (22) or subsection (25), a proposed change to a
 138 | development order which ~~that~~ individually or cumulatively with
 139 | any previous change is less than any numerical criterion
 140 | contained in subparagraphs (b)1.-10. and does not exceed any

CS/HB 979

2012

141 other criterion, or which ~~that~~ involves an extension of the
142 buildout date of a development, or any phase thereof, of less
143 than 5 years is not subject to the public hearing requirements
144 of subparagraph (f)3., and is not subject to a determination
145 pursuant to subparagraph (f)5. Notice of the proposed change
146 shall be made to the regional planning council and the state
147 land planning agency. Such notice must ~~shall~~ include a
148 description of previous individual changes made to the
149 development, including changes previously approved by the local
150 government, and must ~~shall~~ include appropriate amendments to the
151 development order.

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

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

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

159 c. Changes to minimum lot sizes.

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

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

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

169 added.

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

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

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

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

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

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

197 impact.

198

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

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

222 4. Any submittal of a proposed change to a previously
 223 approved development must ~~shall~~ include a description of
 224 individual changes previously made to the development, including

225 changes previously approved by the local government. The local
 226 government shall consider the previous and current proposed
 227 changes in deciding whether such changes cumulatively constitute
 228 a substantial deviation requiring further development-of-
 229 regional-impact review.

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

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

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

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

253 impact.

254 (24) STATUTORY EXEMPTIONS.—

255 (x) Any proposed development that is located in a local

256 government jurisdiction that does not qualify for an exemption

257 based on the population and density criteria in s.

258 380.06(29) (a), that is approved as a comprehensive plan

259 amendment adopted pursuant to s. 163.3184(4), that qualifies for

260 an incentive program pursuant to chapter 288, and for which the

261 developer, the local government, and the Department of Economic

262 Opportunity agree in writing that the development-of-regional-

263 impact review process does not apply is exempt from this

264 section. This exemption does not apply to areas within the

265 boundary of any area of critical state concern designated

266 pursuant to s. 380.05, within the boundary of the Wekiva Study

267 Area as described in s. 369.316, or within 2 miles of the

268 boundary of the Everglades Protection Area as defined in s.

269 373.4592(2).

270

271 If a use is exempt from review as a development of regional

272 impact under paragraphs (a)-(u), but will be part of a larger

273 project that is subject to review as a development of regional

274 impact, the impact of the exempt use must be included in the

275 review of the larger project, unless such exempt use involves a

276 development of regional impact that includes a landowner,

277 tenant, or user that has entered into a funding agreement with

278 the Department of Economic Opportunity under the Innovation

279 Incentive Program and the agreement contemplates a state award

280 of at least \$50 million.

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

283 380.115 Vested rights and duties; effect of size
 284 reduction, changes in guidelines and standards.—

285 (1) A change in a development-of-regional-impact guideline
 286 and standard does not abridge or modify any vested or other
 287 right or any duty or obligation pursuant to any development
 288 order or agreement that is applicable to a development of
 289 regional impact. A development that has received a development-
 290 of-regional-impact development order pursuant to s. 380.06, but
 291 is no longer required to undergo development-of-regional-impact
 292 review by operation of a change in the guidelines and standards
 293 or has reduced its size below the thresholds in s. 380.0651, or
 294 a development that is exempt pursuant to s. 380.06(24) or (29)
 295 ~~380.06(29)~~ shall be governed by the following procedures:

296 (a) The development shall continue to be governed by the
 297 development-of-regional-impact development order and may be
 298 completed in reliance upon and pursuant to the development order
 299 unless the developer or landowner has followed the procedures
 300 for rescission in paragraph (b). Any proposed changes to those
 301 developments which continue to be governed by a development
 302 order shall be approved pursuant to s. 380.06(19) as it existed
 303 before ~~prior to~~ a change in the development-of-regional-impact
 304 guidelines and standards, except that all percentage criteria
 305 shall be doubled and all other criteria shall be increased by 10
 306 percent. The development-of-regional-impact development order
 307 may be enforced by the local government as provided by ss.
 308 380.06(17) and 380.11.

CS/HB 979

2012

309 (b) If requested by the developer or landowner, the
310 development-of-regional-impact development order shall be
311 rescinded by the local government having jurisdiction upon a
312 showing that all required mitigation related to the amount of
313 development that existed on the date of rescission has been
314 completed or will be completed under an existing permit or
315 equivalent authorization issued by a governmental agency as
316 defined in s. 380.031(6), provided such permit or authorization
317 is subject to enforcement through administrative or judicial
318 remedies.

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