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 Committee on Community Affairs

BILL:	SB 372
INTRODUCER:	Senator Galvano
SUBJECT:	Developments of Regional Impact
DATE:	January 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Pre-meeting**
2.			ATD	
3.			AP	
4.			RC	

I. Summary:

SB 372 reduces the minimum population and density requirements for counties to qualify as a dense urban land area (DULA). Land development projects are exempt from development of regional impact (DRI) review if they are located in a DULA. This bill would designate an additional 7 counties and 20 municipalities as DULAs.

The bill also eliminates the adoption of an urban service area as criteria for designation for a DULA.

II. Present Situation:

Development of Regional Impact Background

A development of regional impact is defined in s. 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[1] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

[1] Section 380.07(2), F.S.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in their local plans.[2] After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program in the past for various reasons.

DRI Review

All developments that meet the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a DULA, or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.[5] The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.[6] The state land planning agency, a RPC, or the local government may request the Administration Commission to increase or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.[7] Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.[8] A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a pre-application conference.[9] A developer or the RPC may also request other affected state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the pre-application conference, the RPC is to provide the developer with information about the DRI process and use the pre-application conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval, and if an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and

[2] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[3] Section 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] *See* the section "DRI Exemptions."
[6] Section 380.0651, F.S.
[7] Section 380.06(3), F.S.
[8] Section 186.502, F.S.
[9] Section 380.06(7), F.S.

methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review. 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.[10]

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the pre-application conference with all parties, the developer then files an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[11]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.[12] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[13] The RPC is required to identify regional issues[14] specifically examining the extent to which:

- the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
- the development will significantly impact adjacent jurisdictions; and
- in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[15]

[10] *Id.*
[11] Section 380.06(10), F.S.
[12] Section 380.06(11), F.S.
[13] Section 380.06(12), F.S.
[14] Rule 73C-40.024, F.A.C., states in part: "In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order."
[15] Section 380.06(12)(a), F.S.

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.[16] When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[17]

The state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[18] Rule 73C-40, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the development's impact on:

- hurricane preparedness;[19]
- conservation of listed plan and wildlife resources;[20]
- treatment of archaeological and historical resources;[21]
- hazardous material usage, potable water, wastewater, and solid waste facilities;[22]
- transportation;[23]
- air quality;[24] and
- adequate housing.[25]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which:

- the development is consistent with its comprehensive plan and land development regulations;
- the development is consistent with the report and recommendations of the RPC; and
- the development is consistent with the state comprehensive plan.[26]

Local governments are required by s. 163.3177(6)(f), F.S., to adopt a housing element in the local comprehensive plan that expresses principles, guidelines, standards, and strategies related to affordable housing for all current and anticipated future residents.

[16] Section 380.06(12)(b), F.S.
[17] *Id*.
[18] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.
[19] Rule 73C-40.0256, F.A.C.
[20] Rule 73C-40.041, F.A.C.
[21] Rule 73C-40.043, F.A.C.
[22] Rule 73C-40.044, F.A.C.
[23] Rule 73C-40.045, F.A.C.
[24] Rule 73C-40.046, F.A.C.
[25] Rule 73C-40.048, F.A.C.
[26] Section 380.06(13), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.

Within 30 days of the public hearing on the application for development, the local government must render a decision on the application. Within 45 days after a development order is rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[27] An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[28]

Substantial Deviations

DRIs are designed to be built out over many years, which increases the likelihood of necessary changes to the development due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable likelihood of additional regional impact, or creates a reasonable likelihood of a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is required to be subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the state land planning agency.[29] The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.[30]

Section 380.06(19), F.S., provides the specific criteria that constitutes a substantial deviation and causes a development to be subject to additional review.[31] The numerical standards are also automatically increased if a project is a job-creating one or is located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development.[32] Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes are not substantial deviations.

DRI Exemptions

The Legislature has exempted many types of development from DRI review.[33] The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a DULA.[34] There are currently eight counties and 242 cities that meet, or have met, the

[27] Section 380.07(2), F.S.
[28] Section 163.3215, F.S.
[29] Section 380.06(19)(e)1., F.S.
[30] *Id*.
[31] Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).
[32] Ch. 2011-139, L.O.F.; HB 7207 (2011).
[33] *See* 380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.
[34] Section 380.06(29), F.S. (see section Dense Urban Land Areas).

population and density criteria necessary to qualify as a DULA.[35] The exemption for projects within a DULA reflects state policy to encourage development within urban areas and the increased sophistication of local staffs and the progress, since the DRI program was instituted in 1972, which larger, urban counties and municipalities have made in the area of large-scale land use planning. Additionally, the Legislature has also provided two alternative large-scale planning tools known as the sector plan[36] and rural land stewardship program.[37] Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

Dense Urban Land Areas

Under current law the following are exempt from DRI review as DULAs:

- Any proposed development in 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;
- Any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan;
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan; or
- Any proposed development within a county, including the municipalities located therein, which has a population of at least 1 million and is located within an urban service area as defined in s. 163.3164, F.S., which has been adopted into the comprehensive plan.

The Office of Economic and Demographic Research (EDR) within the Legislature annually calculates the population and density criteria needed to determine which jurisdictions meet the density criteria to be a DULA by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates from EDR.

III. Effect of Proposed Changes:

Section 1 amends s. 380.06(29), F.S., by first deleting two of the current criteria for the DULA exemption. One of the exemptions being eliminated would be any proposed development within a county, including the municipalities located in the county, that has an average of at least 1,000 people per square mile of land area and is located within an urban service area. The second exemption being deleted would be for any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, that has an average of at least 1,000 people per square mile of land area, but which does not have an urban service area designated in the comprehensive plan.

[35] The following counties currently qualify as a DULA: Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Seminole. For a complete list of municipalities qualifying as a DULA see http://edr.state.fl.us/Content/local-government/reports/DULA-21June2013.pdf (last accessed January 2, 2014).
[36] Section 163.3245, F.S.
[37] Section 163.3248, F.S.

This section of the bill also revises the criteria of a DULA exemption so that it would apply to any proposed development within a county that has a population of at least 300,000 and an average population of at least 400 people per square mile. Under the existing criteria for a local government to be considered a DULA, eight counties and 242 municipalities are designated. The revised language in the bill would designate an additional seven counties as DULAs, for a total of 15 counties.[38] The municipalities located within a county that meets that criteria are also designated as DULAs. As a result, twenty additional municipalities would be designated, for a total of 262 municipalities.

The bill also makes a technical change to the name of the United States Census Bureau.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

This bill may allow for more developments to be exempt from the DRI review process, thus reducing costs for developers who wish to pursue these types of developments.

C. Government Sector Impact:

Indeterminate, but expected to be minimal. Increasing the number of local governments who are exempt from the DRI review process might reduce the workload on the staffs who review these projects.

[38] The seven additional counties are: Brevard, Escambia, Lee, Manatee, Pasco, Sarasota, and Volusia.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 380.06 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.