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 1190
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Growth Management
DATE:	January 25, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Pre-meeting**
2.			ATD	
3.			FP	

I. Summary:

SB 1190 makes a number of changes to the state's growth management programs. Specifically, the bill:

- Specifies that persons do not lose the right to complete DRIs upon certain changes to those developments.
- Revises the comprehensive plan amendments that must follow the state coordinated review process, and also establishes deadlines for the state land planning agency to take action on recommended orders relating to certain plan amendments. A procedure for issuing a final order if the state land planning agency fails to take action is provided.
- Amends the minimum acreage for application as a sector plan from 15,000 acres to 5,000 acres.
- Authorizes specified parties to amend certain agreements without the submission, review, or approval of a notification of proposed change when a project has been essentially built out. The exchange of one approved land use for another so long as there is no increase in net external transportation impacts is authorized.
- Provides that certain conditions constitute a rebuttable presumption of a substantial deviation rather than a deviation.
- Clarifies that certain proposed developments which are currently consistent with the local government comprehensive plan are not required to be reviewed pursuant to the State Coordinated Review Process for comprehensive plan amendments.
- Revises conditions under which the DRI aggregation requirements do not apply.
- Establishes procedures relating to rights, duties, and obligations related to certain development orders or agreements if a development elects to rescind a development order.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was adopted in 1985. The act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development.[2] Comprehensive plans contain chapters or "elements" that address topics including future land use, housing, transportation, conservation, and capital improvements, among others.[3] Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. The state land planning agency that administers these provisions is the Department of Economic Opportunity (DEO).[4]

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[5] The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies,[6] including DEO, the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.[7]

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for "extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region" as well as adverse effects on regional resources or facilities.[8] Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.[9] The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.[10]

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." The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting

[1] *See* ch. 163, part II, F.S.
[2] Section 163.3167, F.S.
[3] Section 163.3177, F.S.
[4] Section 163.3221(14), F.S.
[5] Section 163.3174(4)(a), F.S.
[6] Section 163.3184, F.S.
[7] *Id.*
[8] Section 163.3184(3)(b)(3)(a), F.S.
[9] Section 163.3184, F.S.
[10] *Id.*

programs. The DRI program provided a lengthy and complicated review process for proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed moment that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.[11] After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

However, over the ensuing years, the program was chipped away via the serial enactment of a number of exemptions. The following list of exemptions is not exhaustive, but it is illustrative of the number and variety of carve outs from the DRI program that have been enacted:[12]

- Certain projects that created at least 100 jobs that met certain qualifications – 1997.
- Certain expansions to port harbors, certain port transportation facilities and certain intermodal transportation facilities – 1999.
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as Rural Areas of Opportunity) – 2001.
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002.
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002.
- Certain waterport or marina developments – 2002.
- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).[13] By 2015, when the Legislature eliminated the requirement that new DRIs undergo the DRI review process, 8 counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.[14]

Consistency with Comprehensive Plans

DRI development orders are required to be consistent with a local government's comprehensive plan.[15] In *Bay Point Club, Inc. v. Bay County* the court held that any change to a DRI

[11] *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.
[12] Section 360.06(24), F.S.
[13] Section 380.06(29), F.S.
[14] Florida Department of Economic Opportunity, List of Local Governments Qualifying as DULAs, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas (last visited January 21, 2016).
[15] Section 163.3194(1)(a), F.S.

development order must be consistent with the local government's comprehensive plan.[16] That can create concerns for a developer where the DRI development order itself is no longer consistent with the local comprehensive plan because of plan amendments adopted after the DRI development order was approved (e.g., the DRI development order may authorize more density or greater building height than the current comprehensive plan allows, or the plan may require more stringent environmental protections potentially reducing the development footprint from what was allowed when the DRI development order was issued).[17]

Approval of New DRIs

In 2015, s. 380.06, F.S., governing DRIs was amended to add a new subsection (30) providing that new proposed DRI-sized developments shall be approved by comprehensive plan amendment in lieu of the review process in s. 380.06, F.S. Section 163.3184(2)(c), F.S., was amended to provide that such plan amendments will be reviewed under the state coordinated review process.

Administrative Proceedings Related to Comprehensive Plan Amendments – Final Order Timeframes

In plan amendment cases, DEO enters final orders finding a plan amendment "in compliance" and the Administration Commission enters final orders finding a plan amendment "not in compliance."[18] When an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) issues a recommended order to find a plan amendment "in compliance," DOAH sends the recommended order to DEO.[19] DEO can then enter a final order finding the plan amendment in compliance or, if it disagrees with the ALJ's recommendation, must refer the matter to the Administration Commission with its recommendation to find the plan amendment "not in compliance."[20] Section 163.3184(5)(3), F.S., requires that DEO make every effort to enter the final order or refer the matter to the Administration Commission expeditiously but at a minimum within the time period provided by s. 120.569, F.S., which is 90 days after the recommended order is submitted to the agency.

Essentially Built Out DRIs

Section 380.06(15)(g), F.S., prohibits a local government from issuing permits for development in a DRI after the buildout date in the development order except under certain circumstances. For an essentially built out DRI, the developer, the local government, and DEO may enter into an agreement establishing the terms and conditions for continued development, after which the development proceeds pursuant to the local comprehensive plan and land development regulations without further DRI review.[21] In practice, from DEO's perspective, an agreement can

[16] 890 So.2d 256 (Fla. 1st DCA 2004).
[17] Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).
[18] Section 163.3184, F.S.
[19] Section 163.3184(5)(e), F.S.
[20] Section 163.3184(5)(e)(1), F.S.
[21] Section 380.06(15)(g)(4), F.S.

be modified on request, with the consent of all the parties to the agreement and without a formal application process.[22]

Substantial Deviations and Notice of Proposed Changes

Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the proposed change to be subject to further DRI review.[23] Section 380.06(19), F.S., identifies changes to a DRI that, based on numerical standards, are substantial deviations, which means that further DRI review is required. Section 380.06(19)(e)(2), F.S., then identifies specific changes that do not require further DRI review (e.g., changes in the name of the project, changes to certain setbacks, changes to minimum lot sizes, changes that do not increase external peak hour trips and do not reduce open space or conserved areas, and any other changes that DEO agrees in writing are similar to the enumerated changes and do not increase regional impacts).

Aggregation

Section 380.0651(4), F.S., provides that two or more developments shall be aggregated and treated as a single DRI when they are determined to be part of a unified plan of development and are physically proximate to one another. Section 380.0651(4)(c), F.S., identifies exceptions to aggregation: DRIs that have already received development approval; developments that were authorized before September 1, 1988, and could not have been aggregated under the law existing at that time; and developments exempt from DRI review.

Vested Rights; Rescinding a DRI Development Order

Changes in statutes or in a developer's development program may result in a development that was a DRI when approved no longer being a DRI. Section 380.115, F.S., preserves the vested rights of those developments and establishes a procedure under which the developers of such projects may seek to rescind the DRI development orders. Developments subject to this provision are those that are no longer defined as DRIs under the applicable guidelines and standards, developments that have reduced their size below the DRI guidelines and standards, and developments that are exempt from DRI review.

Sector Plans – Minimum Acreage

Section 163.3245, Florida Statutes, authorizes local governments to adopt sector plans into their comprehensive plans.[24] Section 163.3164(42), F.S., defines a sector plan as follows:

> "Sector plan" means the process authorized by s. 163.3245 in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development

[22] Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).
[23] Section 380.06(19)(a), F.S.
[24] Florida Department of Economic Opportunity, Sector Planning Program, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/sector-planning-program (last visited January 19, 2016).

> strategies, furthering the purposes of this part and part I of chapter 380, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts. The term includes an optional sector plan that was adopted before June 2, 2011.

Sector plans are intended for substantial geographic areas of at least 15,000 acres and must emphasize urban form and protection of regionally significant resources and public facilities.[25] A sector plan may not be adopted in an area of critical state concern.[26]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3167, F.S., to provide that a person does not lose their right to proceed with a development authorized as a DRI if a change is made to the development that only has the effect of reducing height, density, or intensity of the development from that originally approved.

Section 2 amends s. 163.3184, F.S., to clarify that a development that is subject to the review process under s. 380.06(30), F.S., must follow the state coordinated review process in s. 163.3184(4), F.S. Additionally, if the state land planning agency determines a plan amendment should be found not in compliance, the agency shall refer the recommended order and its determination to the Administration Commission for final agency action within 30 days after the agency receives the order. If the agency determines the amendment is in compliance, the agency shall enter its final order within 30 days after receiving the recommended order. If the agency fails to comply with these deadlines, and if written consent has not been obtained from all parties to extend time, the recommended denial of the plan amendment shall be transmitted by the Division of Administrative Hearings to the Administration Commission for final agency action; or if recommending a finding that the plan amendment is in compliance, the order shall be entered as the final order in the proceeding.

Section 3 amends s. 163.3245, F.S., to decrease the acreage minimum to apply as a sector plan from 15,000 to 5,000 acres.

Section 4 amends s. 380.06, F.S., allowing parties to amend an essentially built out agreement between the developer, state land planning agency, and the local government without the submission, review, or approval of a notification of proposed change pursuant to s. 380.06(19), F.S. Additionally, one approved land use may be exchanged for another approved land use in developing the unbuilt land uses specified in the agreement. This exchange must be implemented at a ratio ensuring there is no increase in net external transportation impacts. Before the issuance of a building permit pursuant to this exchange, the developer must demonstrate to the local government that the exchange ratio will not result in an increase in net external transportation impacts. This section states there is a rebuttable presumption that any proposed change to a previously approved DRI or development order condition which, either individually or cumulatively with other changes, exceeds the criteria in s. 380.06(19), F.S., creates a substantial deviation. If the presumption is not rebutted, the development shall be subject to further DRI review through the notice of proposed change process under s. 380.06(19), F.S. A phase date

[25] *Id*.
[26] *Id*.

extension, if the state land planning agency, in consultation with the regional planning council and with the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules, is not a substantial deviation. Finally, this section clarifies that a proposed development that is consistent with the existing comprehensive plan is not required to undergo review pursuant to the state coordinated review process for comprehensive plan amendments. This subsection does not apply to amendments to a development order governing an existing DRI.

Section 5 amends s. 380.0651, F.S., stating that aggregation review is not triggered when newly acquired lands comprise an area that is less than or equal to 10 percent of the total acreage that is subject to the existing DRI development order, if these lands were acquired subsequent to the development of an existing DRI.

Section 6 amends s. 380.115, F.S., to clarify the right of rescission of existing DRI orders. A development that elects to rescind a development order shall be governed by the provisions of s. 380.115, F.S.

Section 7 provides that the bill shall take effect upon becoming a law.

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:

None.

C. Government Sector Impact:

The bill is likely to have minimal impact to expenditures due to reduction in the number and types of situations that result in DRI amendments or extensive review of amendments.

VI. Technical Deficiencies:

In line 21, reference to a "standard deviation" should read as "substantial deviation."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3184, 163.3245, 380.06, 380.0651, and 380.115.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.