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 Rules

BILL:	CS/CS/SB 1190
INTRODUCER:	Rules Committee; Community Affairs Committee; and Senator Diaz de la Portilla
SUBJECT:	Growth Management
DATE:	March 1, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.	Gusky	Miller	ATD	**Recommend: Favorable**
3.	Jones	Hrdlicka	FP	**Favorable**
4.	Cochran	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1190 makes several changes to the state's growth management programs. Specifically, the bill:

- Adds that a county governing board may hold joint public meetings with the governing body or bodies of one or more adjacent municipalities or counties to consider multi-jurisdictional issues at any appropriate public place within the jurisdiction of any participating municipality or county upon the giving of due public notice within the jurisdiction of all participating entities;
- Allows the governing body of a county to designate specific tax increment areas, not exceeding 300 acres, to employ tax increment financing to fund economic development activities, and infrastructure projects that directly benefit the tax increment area;
- Revises the types of comprehensive plan amendments that must follow the state coordinated review process, and also establishes a procedure for issuing a final order if the state land planning agency fails to take action;
- Amends the minimum acreage for application of a sector plan from 15,000 to 5,000 acres;
- Changes the acreage for annexation of enclaves under certain circumstances from 10 to 110 acres;
- Replaces the Administration Commission with the state land planning agency as the reviewing entity for modifications and proposed changes dealing with plans and regulations for the Apalachicola Bay Area of Critical State Concern;

- Authorizes a developer, the Department of Economic Opportunity (DEO), and a local government to amend a development of regional impact (DRI) agreement when a project has been determined to be essentially built out without following the notice of proposed change process;
- Authorizes a local government to approve the exchange of one approved DRI land use for another so long as there is no increase in impacts to public facilities;
- Specifies that persons do not lose the right to complete DRIs upon certain changes to those developments;
- Provides that a substantial deviation to a previously approved DRI or development order condition is subject to further DRI review through the notice of proposed change process;
- 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; and
- 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 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 3 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, including DEO, the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.[6]

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

[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] Sections 163.3174(4)(a), and 163.3184, F.S.
[6] Section 163.3184, F.S.

the region" as well as adverse effects on regional resources or facilities.[7] 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.[8] 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 laws and agency rules.[9]

Development of Regional Impact Background

A development of regional impact (DRI) is defined 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.[10] The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting 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 law 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 years, the program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of exemptions 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.

[7] Section 163.3184(3)(b)3.a., F.S.
[8] Section 163.3184, F.S.
[9] Sections 163.3184(3)(c)4., and 163.3184(4)(e)4., F.S.
[10] Section 380.06, F.S.
[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.

- 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] In 2015, eight 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 development order must be consistent with the local government's comprehensive plan.[16] This 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.[17]

Approval of New DRIs

Section. 380.06, F.S., governing DRIs, was amended in 2015 to provide 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.[18]

Administrative Proceedings Related to Comprehensive Plan Amendments – Final Order Timeframes

In comprehensive plan amendment cases, the DEO enters final orders finding a plan amendment "in compliance" and the Administration Commission enters final orders finding a plan amendment "not in compliance." When an Administrative Law Judge (ALJ) issues a recommended order to find a plan amendment "in compliance," it is sent to the DEO. The DEO can then enter a final order finding the plan amendment in compliance or, if it disagrees with the ALJ's recommendation, it must refer the matter to the Administration Commission with its recommendation to find the plan amendment "not in compliance." The DEO must make every effort to enter the final order or refer the matter to the Administration Commission expeditiously but at a must be within 90 days after the recommended order is submitted.[19]

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[13] Section 380.06(29), F.S.
[14] Department of Economic Opportunity, List of Local Governments Qualifying as DULAs, available at 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 February 20, 2016).
[15] Section 163.3194(1)(a), F.S.
[16] *Bay Point Club, Inc., v. Bay County*, 890 So.2d 256 (Fla. 1st DCA 2004).
[17] For example, a 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. Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).
[18] Chapter 2015-30, L.O.F.
[19] Sections 120.569 and 163.3184, F.S.

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 the 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.[20] The DEO believes an agreement can be modified on request, with the consent of all the parties to the agreement and without a formal application process.[21]

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 a change not previously reviewed by the regional planning agency, constitutes a substantial deviation and will cause the proposed change to be subject to further DRI review.[22] 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. Certain changes do not require further DRI review, for example:

- 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,
- Changes that do not reduce open space or conserved areas, and
- Any other changes that DEO agrees in writing are similar to the enumerated changes that do not increase regional impacts.[23]

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. Aggregation is not applicable when:

- 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.[24]

Vested Rights; Rescinding a DRI Development Order

Statutory changes or changes in a developer's development program may result in a development that was a DRI when approved no longer being subject to the DRI review process. Section

[20] Section 380.06(15)(g)4., F.S.
[21] Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).
[22] Section 380.06(19)(a), F.S.
[23] Section 380.06(19)(e)2., F.S.
[24] Section 380.0651(4)(c), F.S.

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;
- Have reduced their size below the DRI guidelines and standards; and
- Are exempt from DRI review.[25]

Sector Plans – Minimum Acreage

Section 163.3245, Florida Statutes, authorizes local governments to adopt sector plans into their comprehensive plans. A sector plan is defined as:

> 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 strategies, furthering the purposes of [part II of ch. 163, F.S.,] 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.[26]

Sector plans are intended for substantial geographic areas of at least 15,000 acres and emphasize urban form and protection of regionally significant resources and public facilities. A sector plan may not be adopted in an area of critical state concern.[27]

Annexation of Enclaves

Florida law defines annexation as the adding of real property to the boundaries of an incorporated municipality.[28] The purpose of annexation varies. Historically, annexation was typically used to provide rural communities with access to municipal services—a proposition grounded in the notion that only cities could effectively deliver essential services such as police, fire, and water and sewer.[29] Presently, in addition to seeking out appropriate levels of essential services, annexation is often used by a developer to find the most favorable laws and regulations for a development or by a municipality to increase its tax base.[30]

There are three threshold requirements to annex land: the annexed land must be unincorporated, contiguous, and compact.[31] "Contiguous" is defined to mean a substantial part of a boundary of

[25] Section 380.115, F.S.
[26] Section 163.3164(42), F.S
[27] Florida Department of Economic Opportunity, Sector Planning Program, available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/sector-planning-program (last visited February 20, 2016).
[28] Section 171.031(1), F.S.
[29] Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 Stetson L. Rev. 699 (1996).
[30] *Id.*
[31] Section 171.043, F.S. Section 171.042, F.S., lays out many "prerequisites to annexation."

the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality.[32] "Compactness" means a concentration of a piece of property in a single area and precludes any action which would create enclaves (discussed below), pockets, or finger areas in serpentine patterns.[33]

Assuming the land to be annexed is contiguous and compact, there are two primary methods of annexation procedures—involuntary and voluntary—and one exceptional method—expedited annexation of certain enclaves.[34] An enclave is any unincorporated improved or developed area lying within a single municipality, or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality.[35]

Enclaves can create significant problems in planning, growth management, and service delivery, and s. 171.046, F.S., provides that it is the policy of the state to eliminate enclaves. In order to expedite the annexation of enclaves of 10 acres or less into the most appropriate incorporated jurisdiction, based upon existing or proposed service provision arrangements, a municipality may annex an enclave:

- By interlocal agreement with the county; or
- With fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.[36]

Tax Increment Financing

Community redevelopment agencies (CRAs) are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF).[37] The TIF mechanism requires taxing authorities to annually appropriate an amount to the redevelopment trust fund by January 1 each year. This revenue is used to pay debt service on bonds issued to finance redevelopment projects in accordance with a redevelopment plan.[38] The incremental revenue amount is calculated annually as 95 percent of the difference between:

- The amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of a community redevelopment area; and
- The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the community redevelopment area as shown upon the most recent assessment roll used in connection with

[32] Section 171.031(11), F.S.
[33] Section 171.031(12), F.S.
[34] Section 171.046, F.S.
[35] Section 171.031(13), F.S.
[36] Section 171.046, F.S.
[37] Through tax increment financing, a baseline tax amount is chosen, and then in future years, any taxes generated above that baseline amount are transferred into the trust fund. Section 163.387, F.S.
[38] Section 163.387(1)(a), F.S.

the taxation of such property by each taxing authority prior to the effective date of the ordinance providing for the funding of the trust fund.

The idea is that as the time period of the CRA increases, the property values within the CRA increase, and in turn the tax increment revenue increases, which is then available to repay public infrastructure and redevelopment costs of the CRA. Tax increment revenues can be used when they are related to development in the designated redevelopment area.[39]

TIF Limitations and Exemptions

CRAs created before July 1, 2002, appropriate tax increment revenues to the redevelopment trust fund for a period not exceeding 30 years, unless the community redevelopment plan is amended. For CRAs created after July 1, 2002, the taxing authorities make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the plan is approved or adopted.[40] The following taxing authorities are exempt from paying the incremental revenues:

- A special district that levies ad valorem taxes on taxable real property in more than one county;
- A special district for which ad valorem taxes are the sole available source of revenue the district has the authority to levy at the time the ordinance is adopted;
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984;
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority;
- A water management district created under s. 373.069, F.S.; and
- A special district specifically made exempt by the local governing body that created the CRA, if the exemption is made in accordance with the requirements of s. 163.387(2)(d), F.S., which include a public hearing, public notice, and an interlocal agreement.[41]

In addition to CRAs, TIF is allowed for conservation lands and transportation projects.[42]

Areas of Critical State Concern

State law provides that the state land planning agency (DEO) may from time to time recommend to the Administration Commission specific areas of critical state concern.[43] In its recommendation, DEO must include the following:

- Recommendations with respect to the purchase of lands situated within the boundaries of the proposed area as environmentally endangered lands and outdoor recreation lands under the Land Conservation Act of 1972;
- Any report or recommendation of a resource planning and management committee appointed pursuant to s. 380.054, F.S.;

[39] Harry M. Hipler, *Tax Increment Financing in Florida: A Tool for Local Government Revitalization, Renewal, and Redevelopment*, Fla. Bar J., Volume 81, No. 7 (July/August 2007).
[40] Section 163.387(2)(a), F.S.
[41] Section 163.387(2)(c), F.S.
[42] Sections 259.042, F.S. and 163.3182, F.S.
[43] Section 380.05(1), F.S.

- The dangers that would result from uncontrolled or inadequate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner;
- A detailed boundary description of the proposed area;
- Specific principles for guiding development within the area;
- An inventory of lands owned by the state, federal, county, and municipal governments within the proposed area;
- A list of the state agencies with programs that affect the purpose of the designation; and
- Actions which the local government and state and regional agencies must accomplish in order to implement the principles for guiding development.[44]

An area of critical state concern may only be designated for the following types of areas:
- An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance;
- An area containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or
- An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment.[45]

There are currently four areas of critical state concern: the Big Cypress Area; the Green Swamp Area; the Florida Keys Area; and the Apalachicola Bay Area.[46]

State Land Development Regulations and Comprehensive Plan Amendments

Local governments within each area of critical state concern must abide by certain requirements when adopting land development regulations and amending their comprehensive plans. However, such requirements vary for each area.

Apalachicola Area

The land planning requirements for the Apalachicola Area differ most from the other three areas; namely, the Apalachicola Area is the only area in which the Administration Commission must approve its land development regulations.

Specifically, any land development regulation or element of a local comprehensive plan in the Apalachicola Bay Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon the approval thereof by the Administration Commission.[47]

Also, DEO, after consulting with the appropriate local government, may, from time to time, recommend the enactment, amendment, or rescission of a land development regulation or

[44] *Id*.
[45] Section 380.05(2), F.S.
[46] Sections 380.055, 380.0551, 380.0552, and 380.0555, F.S.
[47] Section 380.0555(9), F.S.

element of a comprehensive plan.[48] Within 45 days following the receipt of such recommendation by DEO or enactment, amendment, or rescission by a local government, the Administration Commission must reject the recommendation, enactment, amendment, or rescission or accept it with or without modification and adopt, by rule, any changes.[49] Any such local land development regulation or comprehensive plan or part of such regulation or plan may be adopted by the Administration Commission if it finds that it is in compliance with the principles for guiding development.[50]

County Government Meeting Authority

The Florida Constitution provides non-charter counties the power of self-government as is provided by general or special law.[51] The legislative and governing body of a non-charter county has the power to carry on county government to the extent not inconsistent with general or special law.[52] Non-charter counties are further authorized to hold special and regular meetings at "any appropriate public place in the county," after giving proper public notice.[53] Charter counties have all powers of local self-government not inconsistent with general law or special law.[54] These provisions give charter and non-charter counties the authority to hold joint meetings with cities at any place within the county.

Municipal Government Meeting Authority

In 2014, the Legislature authorized the governing body of a municipality to hold a joint meeting outside its borders with the governing body of the county where the municipality is located when there are matters of mutual interest between the two bodies. The governing body of a municipality may also meet in another municipality to discuss or act upon matters of mutual interest. The time and place of the meetings must be prescribed by ordinance or resolution.[55]

The time and place of a joint meeting must be noticed, as provided for by ordinance or resolution.

Joint meetings between the governing bodies of cities and counties are common practice across the state. Counties currently do not have the ability to hold a joint meeting outside their jurisdiction.

III. Effect of Proposed Changes:

Section 1 amends s. 125.001, F.S., to add that a county governing board may hold joint public meetings with the governing body or bodies of one or more adjacent municipalities or counties to consider multi-jurisdictional issues at any appropriate public place within the jurisdiction of any participating municipality or county upon the giving of due public notice within the jurisdiction

[48] *Id*.
[49] *Id*.
[50] *Id*.
[51] Fla. Const. art. VIII, s. 1(f).
[52] Section 125.01, F.S.
[53] Section 125.001, F.S.
[54] Fla. Const. art VIII, s. 1(g).
[55] Chapter 2014-14, Laws of Fla.

of all participating entities. To participate in the joint public meeting, the governing body of a county or municipality must first pass a resolution authorizing such participation. Official votes may not be taken at the joint public meeting, and the meeting may not take the place of any public hearing required by law.

Section 2 creates s. 125.045(6), F.S., to allow the governing body of a county to designate specific tax increment areas, not to exceed 300 acres, to employ tax increment financing for the purpose of funding economic development activities, and infrastructure projects which directly benefit the tax increment area. The funds may not be used for construction of buildings used solely for commercial or retail purposes within the TIF area. The Florida Department of Transportation (FDOT) or the Florida Turnpike Enterprise may not impose any fee on a commercial or retail development within a TIF area to fund any transportation infrastructure improvement. The governing body must administer a separate reserve account for the deposit of tax increment revenues. The tax increment authorized must be determined annually and be the amount equal to a maximum of 95 percent of the difference between:

- The amount of ad valorem taxes levied each year by the county, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of the tax increment area; and
- The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for the county, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the tax increment area, as shown upon the most recent assessment roll used in connection with the taxation of such property by the county, before establishment of the tax increment area.

Section 3 amends s. 163.3184, F.S., to:

- Clarify that a development 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.;
- Provide that recommended orders submitted under s. 163.3184(5)(e), F.S., become final orders 90 days after issuance unless all parties agree to a time extension in writing or the state land planning agency acts pursuant to s. 163.3184(5)(e)1. or 2., F.S.;
- Provide that absent written consent of the parties, if the administrative law judge recommends that the amendment be found not in compliance, the Administration Commission must issue a final order within 45 days after the issuance of the recommended order; and
- Provide that if the administrative law judge recommends that the amendment be found in compliance, the state land planning agency shall issue a final order within 45 days after the issuance of the recommended order. If the agency fails to do so, the recommended order becomes final.

Section 4 amends s. 163.3245, F.S., to decrease the minimum acreage threshold for a sector plan from 15,000 to 5,000 acres.

Section 5 amends s. 171.046, F.S., to change the acreage threshold for the expedited annexation of enclaves from 10 acres to 110 acres.

Section 6 amends s. 380.0555, F.S., to replace the Administration Commission with DEO as the reviewing entity for modifications to plans and regulations within the Apalachicola Bay Area of

Critical State Concern. DEO shall review the proposed change to determine if it complies with the principles for guiding development specified in 380.0555(7), F.S., and must approve or reject the requested change as provided in s. 380.05, F.S.

Section 7 amends s. 380.06, F.S., to:

- Provide that a person does not lose his or her 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.
- Allow 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. For the purposes of this paragraph, a DRI is essentially built out even if the developer is not in compliance with the reporting requirement. Additionally, one approved land use may be exchanged for another approved land use in developing the unbuilt land uses specified in the agreement. 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 increased impact to public facilities and will meet all applicable requirements of the comprehensive plan and land development code. For developments previously determined to impact strategic intermodal facilities as defined in s. 339.63, F.S., the local government shall consult with FDOT before approving the exchange.
- Provide that when any proposed change to a previously approved DRI or development order condition exceeds criteria in s. 380.06(19)(b), F.S., it will constitute a substantial deviation and will be subject to further DRI review through the notice of proposed change process.
- Provide that a phase date extension is not a substantial deviation 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.
- Clarify 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 does not apply to amendments to a development order governing an existing DRI.

Section 8 amends s. 380.0651, F.S., to provide 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 9 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 will be governed by the provisions of s. 380.115, F.S.

Section 10 provides that the bill is effective July 1, 2016.

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:

According to the Department of Economic Opportunity, the bill is likely to have a minimal, but indeterminate, fiscal impact due to a reduction in the number and types of situations that result in DRI amendments or extensive review of amendments.[56]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.001, 125.045, 163.3184, 163.3245, 171.046, 380.0555, 380.06, 380.0651, and 380.115.

[56] Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).

IX. Additional Information:

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

CS/CS by Rules on February 29, 2016:

- Adds that a county governing board may hold joint public meetings with the governing body or bodies of one or more adjacent municipalities or counties to consider multi-jurisdictional issues at any appropriate public place within the jurisdiction of any participating municipality or county upon the giving of due public notice within the jurisdiction of all participating entities;
- Allows the governing body of a county to designate specific tax increment areas, not exceeding 300 acres, to employ tax increment financing to fund economic development activities, and infrastructure projects that directly benefit the tax increment area;
- Replaces the Administration Commission with DEO as the reviewing entity for plan amendments and rezoning in the Apalachicola Bay Area of Critical State Concern;
- Provides that a DRI is essentially built out if developers are in compliance with the development order but not all the reporting requirements; and
- Adds a required consultation with FDOT when modifying essentially built out agreements in a manner that may impact strategic intermodal facilities.

CS by Community Affairs on January 26, 2016:

- Removes the 30 day requirement on the state land planning agency for final action on recommended orders;
- States that a recommended order becomes a final order 90 days after issuance unless the state has acted under subparagraph 1 or 2, or all parties consent to an extension;
- Adds that after an ALJ recommends an amendment be found not in compliance, the Administration Commission shall issue a final order within 45 days;
- Adds that after an ALJ recommends an amendment be found in compliance, the state land planning agency shall issue a final order within 45 days, and if it fails to do so, the recommended order shall become final;
- Changes the acreage threshold for the expedited annexation of enclaves from 10 acres to 110 acres;
- Provides that developers can exchange one approved land use for another for an essentially built out project if a resolution is adopted and the developer demonstrates the exchange will not result in an increase in any impacts to public facilities;
- Removes the rebuttable presumption for substantial deviations; and
- Adds a provision allowing a governing body of a county to employ tax increment financing to be used to fund economic development activities within the tax increment area. The increment may not exceed 95 percent of the difference in ad valorem taxes as provided in s. 163.387(1)(a), F.S.

B. Amendments:

None.