HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1361 Growth Management
SPONSOR(S): Economic Affairs Committee; Local Government Affairs Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 1 N	Lukis	Duncan
2) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
3) Economic Affairs Committee	14 Y, 0 N, As CS	Lukis	Pitts

SUMMARY ANALYSIS

The bill seeks to alter various provisions of state law related to growth management as described below.

Administrative Challenges to Comprehensive Plan Amendments

- The bill provides that a recommended order submitted to the Department of Economic Opportunity (DEO) by an administrative law judge regarding a challenged comprehensive plan amendment becomes final within 90 days without agency action or an agreement to extend the time.
- The bill requires a 45 day time limit for certain expedited administrative proceedings.

Developments of Regional Impact (DRI)

- The bill authorizes DRIs to reduce height, density, or intensity without losing vested rights.
- The bill specifies that a proposed development that would otherwise require DRI review must follow the state coordinated review process, but only if it requires an amendment to the comprehensive plan.
- The bill allows a developer, DEO, and local government, to amend their agreement that a development is "essentially built-out" without a notification of proposed change necessary for a substantial deviation.
- The bill provides that certain unbuilt land uses specified in an agreement establishing that a development is "essentially built out," may be substituted for another land use.
- The bill provides that phase date extensions are not substantial deviations under certain circumstances.
- The bill provides that previously developed lands acquired for development as part of an existing DRI are not subject to aggregation under certain circumstances.
- The bill authorizes DRIs to rescind their DRI development order.

Sector Plans

- The bill decreases the minimum required acreage of sector plans from 15,000 acres to 5,000 acres.

Annexation of Enclaves

- The bill authorizes enclaves that are 110 acres in size to be annexed on an expedited basis.

Tax Increment Financing

- The bill authorizes the governing body of a county to designate specific areas, not to exceed 300 acres, to employ tax increment financing for economic development purposes.
- The bill provides that the Department of Transportation or Florida's Turnpike Enterprise may not impose any fees on a commercial or retail development within the tax increment areas authorized by the bill.

Apalachicola Bay Area of Critical State Concern (Apalachicola Bay)

- The bill provides that comprehensive plan amendments and modifications to land development regulations within Apalachicola Bay do not require approval from the Administration Commission.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Administrative Challenges to Comprehensive Plan Amendments

Comprehensive Plan Background and the Comprehensive Plan Amendment Process

In 1985, the Florida Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.[1] A local government's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A development that does not conform to the comprehensive plan may not be approved by a local government unless the local government first amends its comprehensive plan.[2]

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first of which is held by the local planning board.[3] 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,[4] including the Department of Economic Opportunity (DEO), the appropriate Regional Planning Council (RPC), and adjacent local governments that request to participate.

Upon receipt of the proposed plan amendment, state agencies review the proposed amendment for impacts related to their statutory purview.[5] The RPC reviews the amendment specifically for "extra-jurisdictional 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. The affected state agencies and the RPC then issue a report of their review to the local government, which then holds a second public hearing at which the governing body votes to approve the amendment or not.[6] If the amendment receives a favorable vote it is transmitted to DEO for final review.[7] 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.[8]

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[9] Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review Process.[10] The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.[11]

Administrative Challenges to Plan Amendments

[1] Chapter 85-55, Laws of Fla.
[2] *See* s. 163.3163, F.S.
[3] Sections 163.3184 and 163. 3181, F.S.
[4] Section 163.3184, F.S.
[5] Section 163.3184(3), (4), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ch. 2011-139, s. 17, Laws of Fla.
[10] *Id.*
[11] Section 163.3184(3), (4), F.S.

Any "affected person" as defined in s. 163.3184(1)(a), F.S., may file a petition with the Division of Administrative Hearings (Division), to request a formal hearing to challenge whether a plan amendment is "in compliance" with law.[12] The petition must be filed with the Division within 30 days after the local government adopts the amendment.[13]

The state land planning agency (DEO) may also file a petition with the Division to request a formal hearing to challenge whether the plan amendment is in compliance.[14] Under the expedited state review process, this petition must be filed with the Division within 30 days after the DEO notifies the local government that the plan amendment package is complete. Under the state coordinated review process, this petition must be filed with the division within 45 days after DEO notifies the local government that the plan amendment package is complete.[15]

Once filed, an administrative law judge (ALJ) must hold a hearing on the petition in the affected local jurisdiction to determine whether to make a recommendation that the challenged plan amendment is in compliance or not in compliance.[16] In challenges filed by an affected person, the ALJ must determine a plan amendment to be in compliance if the local government's determination of compliance is "fairly debatable."[17] Conversely, in challenges filed by DEO, a plan amendment is presumed to be in compliance and will only be found not in compliance by a preponderance of the evidence.[18] Absent a showing of extraordinary circumstances, the ALJ must issue the recommended order within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.[19]

If the ALJ recommends that the amendment be found *not* in compliance, the ALJ must submit the recommended order to the Administration Commission for final agency action.[20] Upon submittal of the recommended order, the Administration Commission must enter a final order within 90 days.[21] Conversely, if the ALJ recommends that the amendment be found *in* compliance, the ALJ must submit its recommended order to DEO.[22]

If DEO determines that the plan amendment should be found in compliance, it must enter its final order within 90 days.[23] If DEO determines that the plan amendment should be found not in compliance, it must submit its recommended order to the Administration Commission for final action within 90 days.[24]

If the Administration Commission finds that the plan amendment is not in compliance with law, the Commission must specify remedial actions that would bring the plan amendment into compliance.[25] The Commission may also specify certain sanctions to which the local government will be subject if it elects to make the amendment effective notwithstanding the Commission's determination of noncompliance.[26]

<u>Mediation and Expedited Challenges</u>

[12] Section 163.3184(5)(a), F.S. See definition of "in compliance" in s. 163.3184(1)(b), F.S.
[13] Section 163.3184(5)(a), F.S. At any time after the filing of a challenge, the state land planning agency and the local government may voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the proceedings. Section 163.3184(6), F.S.
[14] Section 163.3184(5)(b), F.S.
[15] *Id.*
[16] Section 163.3184(5)(c), F.S.
[17] *Id.*
[18] *Id.*
[19] Section 163.3184(7)(c), F.S.
[20] Section 163.3184(5)(d), F.S. The Administration Commission consists of the Governor and Cabinet. S. 14.202, F.S.
[21] *Id.;* s. 120.569(2)(l), F.S.
[22] Section 163.3184(5)(e), F.S.
[23] *Id.*
[24] *Id.*
[25] Section 163.3184(8)(a), F.S.
[26] Section 163.3184(8)(b), F.S.

Challenges to comprehensive plans may also go through mediation or an expedited process.[27] At any time after the matter has been forwarded to the Division, the local government proposing the amendment may demand formal mediation.[28] Additionally, any time after the matter has been forwarded to the Division, the local government proposing the amendment or an affected person who is a party to the proceeding may demand informal mediation or expeditious resolution of the proceedings.[29] In either case, the party demanding mediation or expedited review must serve written notice on all other parties to the proceeding and the ALJ.

Upon receipt of the notice, the ALJ must set the matter for final hearing within 30 days.[30] Once a final hearing has been set, no continuance in the hearing, and no additional time for post-hearing submittals, may be granted without the written agreement of the parties absent a finding by the administrative law judge of extraordinary circumstances.[31]

Absent a showing of extraordinary circumstances, the ALJ must issue a recommended order within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.[32] Absent a showing of extraordinary circumstances, the Administration Commission, upon receiving a recommended order of not in compliance (from the ALJ or DEO), must issue a final order within 45 days unless the parties agree in writing to a longer time.[33]

Developments of Regional Impact

Developments of Regional Impact Background

Section 380.06, F.S., defines a Development of Regional Impact (DRI) 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." Given their size, DRIs are subject to a special review process and often require an amendment to a comprehensive plan.

The Legislature initially created the DRI program in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.[34] However, the DRI program remained until 2015. In 2015,[35] the Legislature determined that *new* developments that would otherwise require DRI review must adhere to the state coordinated review process.[36] Accordingly, although there would be no additional DRIs, existing DRIs would remain intact and must adhere to existing DRI laws and review requirements.

DRI Review

Florida law requires all developments (prior to the abovementioned 2015 change in law) that meet the DRI thresholds and standards provided by statute and rules adopted by the Administration Commission to undergo DRI review, unless an exemption applies.[37] The developments that are exempt from DRI review include the following:

- particular types of developments for which the Legislature has provided an exemption (e.g., hospitals are exempt from DRI review);
- developments that are located within a "dense urban land area" (DULA)[38]; and

[27] Section 163.3184(7)(a), F.S.
[28] *Id.*
[29] *Id.*
[30] Section 163.3184(7)(b), F.S.
[31] *Id.*
[32] Section 163.3184(7)(c), F.S.
[33] Section 163.3184(7)(d), F.S.
[34] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in Growth Management in Florida: Planning for Paradise, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T.Higgins eds. 2005).
[35] Chapter 2015-30, Laws of Fla.
[36] Section 380.06(30), F.S.
[37] Section 380.06(24), (28), (29), F.S.
[38] Dense urban land areas are characterized by certain population densities. Section 380.06(29), F.S.

- developments that are located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area.[39]

The types of developments required to undergo DRI review may include attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, or recreational vehicle developments. Over the years, the Legislature has enacted new exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.[40]

The review process is a joint effort between Florida's 10 Regional Planning Councils (RPCs), the Department of Economic Opportunity (DEO or department), other state agencies, and local governments.[41]

A DRI review begins by a developer contacting the appropriate RPC to arrange a pre-application conference.[42] The developer or the RPC may request that other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that the agency will require in the application to assess those issues.[43] At the pre-application conference, the RPC provides the developer with information about the DRI process and uses the pre-application conference to identify issues and to coordinate the appropriate state and local agency requirements.[44]

The RPC and developer may reach an agreement regarding assumptions and methodology to be used in the application for development approval.[45] If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant.[46]

Upon completion of the pre-application conference with all parties, the developer files an application for development approval with the local government, the RPC, and the state land planning agency.[47] The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[48]

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.[49] 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.[50] The RPC is required to identify regional issues specifically examining the following:

- whether 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;
- whether the development will significantly impact adjacent jurisdictions; and

[39] *Id.*
[40] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, at 2. September 2011.
[41] *See* s. 380.06, F.S.
[42] Section 380.06(6)-(9), F.S.
[43] Section 380.06(7)-(8), F.S.
[44] Section 380.06(7), F.S.
[45] Section 380.06(8), F.S.
[46] *Id.*
[47] Section 380.06(7)-(10), F.S.
[48] Section 380.06(10), F.S.
[49] Section 380.06(11), F.S.
[50] Section 380.06(12), F.S.

- 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.[51]

If the proposed project will have impacts within the purview of other state agencies, those agencies will also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdiction.[52] These reports become part of the RPC's report, but the RPC may attach dissenting views.[53] 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.[54] Finally, the state land planning agency (DEO) also reviews DRIs for compliance with state laws to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[55]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well.[56] When considering whether the development is approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the following:

- whether the development is consistent with its comprehensive plan and land development regulations;
- whether the development is consistent with the report and recommendations of the RPC; and
- whether the development is consistent with the state comprehensive plan.[57]

Within 30 days of the public hearing on the application for development approval, the local government must decide whether to issue a development order or not.[58] Within 45 days after a development order is or is not 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. An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[59]

DRI review requires significant time and expense. Moreover, because DRIs (like all developments) must maintain consistency with the local government's comprehensive plan, changes to the DRI development order may meet further delay and expense if a change to the DRI triggers the need for a plan amendment.[60]

Local Government Development Order: Buildout Date and "Essentially Built Out"

Local government development orders, at a minimum, must include the following:

- the monitoring procedures and the local official responsible for assuring compliance with the development order;
- compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and a buildout date that reasonably reflects the time anticipated to complete the development;

[51] *Id.*
[52] Section 380.06(9),(12), F.S.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] Section 380.06(10)-(11), F.S.
[57] *Id.*
[58] Section 380.06(15), F.S.
[59] *Id.*
[60] *Bay Point Club, Inc. v. Bay County*, 820 So. 2d 256 (Fla. 1st DCA 2004).

- a date until which the local government agrees that the approved DRI is not subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare; and
- a legal description of the property.[61]

A local government may only issue permits for development subsequent to the buildout date under certain circumstances.[62] One of those circumstances includes when a project has been determined to be an "essentially built out" DRI through an agreement executed by the developer, DEO, and the local government.[63] An "essentially built-out" development of regional impact means the developers are in compliance with all applicable terms and conditions of the development order except the buildout date and either:

- the amount of development that remains to be built is less than the substantial deviation threshold for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or
- DEO and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.[64]

If the project is determined to be essentially built out, development may proceed after the termination or expiration date contained in the development order without further DRI review subject to the local government comprehensive plan and land development regulations or subject to a modified development-of-regional-impact analysis.[65]

Substantial Deviation

Any proposed change to a previously approved DRI development order that 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, constitutes a "substantial deviation" and requires such proposed change to be subject to further DRI review.[66] To determine whether a proposed change requires further DRI review, Florida law establishes the following:

- certain threshold criteria beyond which a change constitutes a substantial deviation;[67]
- certain changes in development that do not amount to a substantial deviation;[68]
- scenarios in which a substantial deviation is presumed;[69] and
- scenarios in which a change is presumed not to create a substantial deviation.[70]

In addition, Florida law directs DEO to establish by rule standard forms for submittal of proposed changes to a previously approved DRI development order.[71] At a minimum, the form must require the developer to provide the precise language that the developer proposes to delete or add as an

[61] Section 380.06(15)(c), F.S.
[62] Section 380.06(15)(g), F.S.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Section 380.06(19)(a), F.S.
[67] Section 380.06(19)(b), F.S.
[68] Section 380.06(19)(e), F.S.
[69] Section 380.06(19)(c), F.S.
[70] Section 380.06(19)(d), F.S.
[71] Section 380.06(19)(f), F.S.

amendment to the development order.[72] The developer must submit the form to the local government, the regional planning agency, and DEO.[73]

After the developer submits the form, the appropriate regional planning agency or DEO must review the proposed change and, no later than 45 days after submittal of the proposed change, must advise the local government in writing whether it objects to the proposed change, specifying the reasons for its objection, and must provide a copy to the developer.[74]

In addition, the local government must give 15 days' notice and schedule a public hearing to consider the change.[75] This public hearing must be held within 60 days after submittal of the proposed changes, unless the developer wishes to extend the time.[76]

At the public hearing, the local government must determine whether the proposed change requires further DRI review based on the thresholds and standards set out in law.[77] The local government may also deny the proposed change based on matters relating to local issues, such as if the land on which the change is sought is plat restricted in a way that would be incompatible with the proposed change, and the local government does not wish to change the plat restriction as part of the proposed change.[78]

If the local government determines that the proposed change does not require further DRI review and is otherwise approved, the local government must issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change.[79] If, however, the local government determines that proposed change does require further DRI review, the local government must determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development.[80]

Aggregation of Developments

Section 380.0651, F.S., directs the Administration Commission to adopt statewide guidelines and standards for developments to undergo DRI review. As part of such guidelines and standards, the law provides for when two or more developments must be "aggregated" and treated as a single development.[81]

Specifically, two or more developments must be aggregated when they are determined to be part of a unified plan of development and are physically proximate to one other.[82] Three of the following four criteria must be met to determine that a "unified plan of development" exists:

- the same person has retained or shared control of the developments, the same person has ownership or a significant legal interest in the developments, or the developments share common management controlling the form of physical development or disposition of parcels of the development;
- there is a reasonable proximity in time between the completion of 80 percent or less of one development and the submission to a governmental agency of plans or drawings for the other development which is indicative of a common development effort;
- plans or drawings exist covering the developments sought to be aggregated which have been submitted to certain government bodies; and
- there is a common advertising scheme or promotional plan in effect for the developments.[83]

[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] Section 380.06(19)(g), F.S.
[81] Section 380.0651(4), F.S.
[82] *Id.*

However, despite the finding of physical proximity and the existence of a unified plan, Florida law provides for the following circumstances in which aggregation is not applicable:

- developments which are otherwise subject to aggregation with a DRI, which has received approval through the issuance of a final development order may not be aggregated with the approved DRI;
- two or more developments, each of which is independently a DRI that has or will obtain a development order;
- completion of any development that has been vested;
- the developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date; and
- any development that qualifies for an exemption as a DULA.[84]

Rescission

Certain developments or portions of developments that have received a DRI development order may not have to undergo subsequent DRI-impact review. This may occur on account of a change in statutory guidelines and standards, because the DRI has reduced its size below certain legal thresholds, or because a development becomes exempt from DRI review, for example in the case of a DULA.[85]

If one of these scenarios ensues, the development must continue to be governed by the DRI development order and may be completed pursuant to the development order unless the developer or landowner has followed the procedures for rescission.[86] Upon request by the developer or landowner, the DRI development order must be rescinded by the local government having jurisdiction "upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed" under an existing permit or some other equivalent authorization.[87]

Sector Plans

Background and History

Sector planning is a tool for large-area planning through which one or more local governments engage in long-term planning for areas of at least 15,000 acres.[88] Sector plans are intended to promote and encourage long-term planning for conservation, development, and agriculture on a landscape scale, to further support innovative and flexible planning and development strategies, to facilitate and emphasize protection of regionally significant resources, and to avoid duplication of effort in terms of the level of data and analysis required for a DRI.[89]

Prior to the creation of sector planning, such large scale plans were primarily left to DRIs and traditional comprehensive plans.[90] However, once Florida's population, and thus development began to dramatically increase in the 1990s, planners and lawmakers sought new approaches for a more long

[83] Section 380.0615(4)(a), F.S.
[84] Section 380.0615(4)(c), F.S.
[85] Section 380.115(1), F.S.
[86] Section 380.115(1)(a), F.S.
[87] Section 380.115(1)(b), F.S.
[88] Section 163.3245(1), F.S.
[89] *Id.*
[90] David L. Powell, Gary K. Hunter, Jr., & Robert M. Rhodes, *Sector Plans*, Florida Environmental and Land Use Law, The Florida Bar, June 2014. Page 33.1-1 to 33.1-2. Article on file with House Economic Development & Tourism Subcommittee staff.

term and flexible approach to planning that maintained a principled focus on conservation.[91] This brought about the advent of sector plans in 1998.[92]

Sector Plan Process

The sector planning process encompasses two levels: adoption in the local government's comprehensive plan of a long-term master plan and subsequent adoption by local development order of two or more detailed specific area plans (DSAP) that implement the master plan.[93] Both levels require review and approval by affected local governments, and appropriate regional and state authorities.[94]

In addition to other requirements, a long-term master plan must include maps, illustrations, data, and analysis to address the following:

- a framework map that, at a minimum, generally depicts conservation land use, identifies allowed uses in the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern;
- a general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures needed to meet the projected demand of the future land uses in the long-term master plan;
- a general identification of the transportation facilities to serve the future land uses in the long-term master plan;
- a general identification of other regionally significant public facilities necessary to support the future land uses;
- a general identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area;
- general principles and guidelines addressing, among other things, future land uses, the use of lands identified for permanent preservation through recordation of conservation easements, achieving a healthy environment, limiting urban sprawl, enhancing the prospects for the creation of jobs, and providing housing types; and
- identification of general procedures and policies to facilitate intergovernmental coordination to address extra-jurisdictional impacts from the future land uses.[95]

Additionally, a long-term master plan may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan, and may include a phasing or staging schedule that allocates a portion of the local government's future growth to the planning area through the planning period.[96] A long-term master plan must specify the projected population within the planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.[97]

The DSAPs must be consistent with the long-term master plan and generally must include conditions and commitments that provide for the following:

- development or conservation of an area of at least 1,000 acres;
- detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses;

[91] *Id.*
[92] Section 163.3245, F.S.
[93] Section 163.3245(3), F.S.
[94] Section 163.3245, F.S.
[95] Section 163.3245(3)(a), F.S.
[96] *Id.*
[97] *Id.*

- detailed identification of plans to address water needs of development in the DSAP;
- detailed identification of the transportation facilities to serve the future land uses in the DSAP;
- detailed identification of other regionally significant public facilities;
- detailed identification of public facilities necessary to serve development in the DSAP;
- detailed analysis and identification of specific measures to ensure the protection, restoration and management of lands within the boundary of the DSAP identified for permanent preservation through recordation of conservation easements;
- detailed principles and guidelines addressing, among other things, the future land uses, achieving a healthy environment, limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, and advancing the efficient use of resources; and
- identification of specific procedures to facilitate intergovernmental coordination to address extra-jurisdictional impacts from the DSAP.[98]

A landowner, developer, or the state land planning agency may appeal a local government development order implementing a DSAP to the Florida Land and Water Adjudicatory Commission.[99] In addition**,** any owner of property within the planning area of a proposed long-term master plan may withdraw his or her consent to the master plan at any time prior to local government adoption, and the local government must exclude such parcels from the adopted master plan.[100] Thereafter, the long-term master plan and any DSAP do not apply to the subject parcels. After adoption of a long-term master plan, an owner may withdraw his or her property from the master plan only with the approval of the local government by plan amendment.[101]

As of July 1, 2014 there were seven approved sector plans in Florida:

- the Bay County (West Bay Area Vision) Sector Plan;
- the Orange County (Horizon West) Sector Plan;
- the City of Bartow (Clear Springs) Sector Plan;
- the Escambia County Sector Plan;
- the Nassau County (East Nassau County) Sector Plan;
- the Hendry County (Rodina) Sector Plan; and
- the Osceola County (Northeast District) Sector Plan.[102]

Annexation of Enclaves

Annexation Background

Florida law defines annexation as the adding of real property to the boundaries of an incorporated municipality.[103] 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.[104] Presently, in addition to seeking out appropriate levels of service, annexation is often used either by developers to

[98] Section 163.3245(3)(b), F.S. Like a long-term master plan, a DSAP may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan. Again, like a long term master plan, a DSAP must specify the projected population within the specific planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.
[99] Section 163.3245(3)(e), F.S.
[100] Section 163.3245(8), F.S.
[101] *Id.*
[102] 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 January 21, 2016).
[103] Section 171.031(1), F.S.
[104] Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 Stetson L. Rev. 669 (1996).

find the most favorable laws and regulations for a development, or by a municipality to increase its tax base.[105]

There are three threshold requirements to annex land: the annexed land must be unincorporated, "contiguous", and "compact."[106] Under Florida law, "contiguous" means that "a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality."[107] "Compactness" means "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."[108]

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.[109] All three methods are discussed below; however, it is important to note that Florida law may allow certain special acts to supersede general laws related to annexation, and charter counties may have special annexation procedures.[110]

Involuntary Annexation

Involuntary annexation originates from a municipality wishing to annex unincorporated territory. The process begins with the municipality adopting an ordinance proposing to annex an area of contiguous, compact, and unincorporated territory.[111] Once the governing body of the municipality adopts the ordinance, a majority of the electors in the area to be annexed must vote in favor of the annexation in a referendum.[112]

The referendum must be conducted and paid for by the municipality seeking annexation and may not take place sooner than 30 days following the final adoption of the annexation ordinance.[113] Further, the governing body of the annexing municipality must publish notice of the referendum at least once each week for two consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held.[114] The notice must contain several details including the ordinance number, the time and places for the referendum, and a general description of the area proposed to be annexed with an illustrating map.[115]

If more than 70 percent of the land to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, such area shall not be annexed unless the owners of more than 50 percent of the land consent to the annexation.[116] Otherwise, the annexation will become effective upon a simple majority vote in the referendum.

Voluntary Annexation

Voluntary annexation, in contrast to involuntary annexation, is born out of petition by the owner or owners of real property.[117] That is, the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.[118]

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[105] *Id.*
[106] Section 171.043, F.S. Florida law also lays out many "prerequisites to annexation" in s. 171.042, F.S.
[107] Section 171.031(11), F.S.
[108] Section 171.031(12), F.S.
[109] Section 171.046, F.S.
[110] Sections 171.0413(4) and s. 171.044(4), F.S.
[111] Section 171.0413(1), F.S.
[112] Section 171.0413(2), F.S. If there are no electors in the area, there is no need for a referendum, but owners of more than 50 percent of the parcels of land in the area proposed to be annexed must consent to annexation. Section 171.0413(6), F.S.
[113] Section 171.0413(2), F.S.
[114] *Id.*
[115] *Id.*
[116] Section 171.0413(5), F.S.
[117] Section 171.044(1), F.S.
[118] *Id.*

Typically, upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property.[119]

However, the process for voluntary annexation may differ as the laws relating to voluntary annexation in the Florida statutes are supplemental to any other procedure provided in general or special law.[120] Moreover, charter counties may provide (in their charter) for an exclusive method of municipal annexation.[121]

Annexation of Enclaves

The other method of annexation provided for in the Florida statutes deals with the annexation of "enclaves."[122] Florida law defines "enclave" as follows:

- any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.[123]

The Legislature expressly recognizes in s. 171.046, F.S., that, "enclaves can create significant problems in planning, growth management, and service delivery, and therefore declare that it is the policy of the state to eliminate enclaves."[124] Accordingly, the Legislature authorizes two expedited methods of annexing enclaves of less than 10 acres into the municipality in which they exist:

- a municipality may annex such an enclave by interlocal agreement with the county having jurisdiction over the enclave; or
- a municipality may annex such an enclave 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.[125]

Tax Increment Financing

Tax Increment Financing (TIF) is a funding mechanism available to local governments for certain purposes. Though the precise operation of TIF may vary, TIF funds are generated by the resulting increase of ad valorem tax revenue within a particularly defined area from investments that increase the value of real property in such area. Florida law currently authorizes local governments to employ TIF for community redevelopment, conservation lands, and transportation "deficiencies."[126]

Community Redevelopment Agencies

Local governments utilize TIF for community redevelopment through community redevelopment agencies (CRAs). CRAs are public bodies corporate and politic created by a county or municipality for the purpose of carrying out a community redevelopment plan[127] within a designated community redevelopment area,[128] which are characterized by slum, blight, or shortage of affordable housing.[129]

[119] Section 171.044(2), F.S.
[120] Section 171.044(4), F.S.
[121] *Id.*
[122] Section 171.046, F.S.
[123] Section 171.031(13), F.S.
[124] Section 171.046(1), F.S.
[125] *See id.*
[126] Sections 163.387, 259.042, and 163.3182, F.S. Florida law also authorizes the board of Space Florida to "execute intergovernmental agreements and development agreements consistent with prevailing statutory provisions, including but not limited to, special benefits or tax increment financing initiatives." Section 331.310(1)(h), F.S.
[127] Section 163.360, F.S.
[128] Section 163.356, F.S.
[129] Section 163.340(10), F.S.

In order to finance or refinance any community redevelopment the CRA undertakes pursuant to the community redevelopment plan, the local governing body in which the CRA is located may establish a community redevelopment trust fund sustained by TIF.[130] The TIF mechanism, as described in s. 163.387, F.S., requires taxing authorities to annually appropriate TIF revenue to the redevelopment trust fund by January 1 each year.[131] 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 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.[132]

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.[133]

Conservation Lands

Two or more counties, or a combination of at least one county and one or more municipalities, may establish, through an inter-local agreement a tax increment area for conservation lands.[134] The interlocal agreement, at a minimum, must:

- identify the geographic boundaries of the tax increment area;
- identify the real property to be acquired as conservation land within the tax increment area;
- establish the percentage of tax increment financing for each jurisdiction in the tax increment area which is a party to the interlocal agreement;
- identify the governing body of the jurisdiction that will administer a separate reserve account in which the tax increment will be deposited;

[130] Section 163.387(1), F.S.
[131] Section 163.387(2)(a), F.S.
[132] Section 163.387(1)(a), F.S.
[133] Section 163.387(2)(c), F.S.
[134] Section 259.042(1), F.S. It is the policy of the state that the citizens of this state be assured public ownership of natural areas for purposes of maintaining the state's unique natural resources. In recognition of such policy, it is express intent of the Legislature to provide such public lands for the people residing in urban and metropolitan areas of the state, as well as those residing in less populated, rural areas. Section 259.032 (1), F.S.

- require that any tax increment revenues not used to purchase conservation lands by a date certain be refunded to the parties to the interlocal agreement;
- provide for an annual audit of the separate reserve account;
- designate an entity to hold title to any conservation lands purchased using the tax increment revenues;
- provide for a continuing management plan for the conservation lands; and
- identify the entity that will manage the conservation lands.[135]

The governing body of the jurisdiction that will administer the separate reserve account must provide documentation to DEO identifying the boundary of the tax increment area.[136] Then, DEO must issue a letter of approval stating that the establishment of the tax increment area and the proposed purchases would benefit property owners within the boundary and serve a public purpose before any tax increment funds are deposited into the separate reserve account.[137]

In addition, prior to the purchase of conservation lands, the Department of Environmental Protection must determine whether the proposed purchase is sufficient to provide additional recreational and ecotourism opportunities for residents in the tax increment area.[138]

The tax increment authorized for conservation lands are calculated in the same manner as the tax increment authorized for CRAs described above.[139] Also, the same public bodies and taxing authorities that are exempt from the tax increment mechanism for CRAs are exempt for conservation lands.[140]

Transportation Deficiencies

State law also authorizes local governments to employ TIF to address "transportation deficiencies"—an identified need where existing and projected extent of traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility.[141]

Specifically, if a county or municipality identifies a transportation deficiency or deficiencies, it may create a transportation development authority and (acting as the authority) adopt and implement a "transportation sufficiency plan" to eliminate the deficiency or deficiencies using TIF.[142]

To do so, the transportation development authority must establish a local transportation trust fund upon creation of the authority.[143] Each trust fund is funded by the proceeds of an ad valorem tax increment collected within each transportation deficiency area. The increment must be a minimum of 25 percent of the difference between the following amounts:

- the amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation development authority and within the transportation deficiency 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 within the transportation deficiency area as shown on the most recent assessment roll used in connection with the

[135] *Id.*
[136] Section 259.042(3), F.S.
[137] *Id.*
[138] Section 259.042(4), F.S.
[139] Section 259.042(5), F.S.
[140] Section 259.042(9), F.S.
[141] Section 163.3182, F.S.
[142] Section 163.3182(2), F.S. The transportation sufficiency plan must be adopted into the local governments comprehensive plan. Section 163.3182(4), F.S.
[143] Section 163.3182(5), F.S.

taxation of such property of each taxing authority prior to the effective date of the ordinance funding the trust fund.[144]

The following public bodies or taxing authorities are exempt from paying the increment funds:

- a special district that levies ad valorem taxes on taxable real property in more than one county;
- a special district for which the sole available source of revenue is the authority to levy ad valorem taxes at the time an ordinance is adopted to create the transportation development authority;
- a library district;
- 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 CRA.[145]

Areas of Critical State Concern

Background

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.[146] 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.;
- 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.[147]

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

[144] *Id.* If all of the affected taxing authorities agree under an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment *greater* than 25 percent of the difference. *Id.*
[145] Section 163.3187(6)(a), F.S. (b) A transportation development authority may also exempt a special district that levies ad valorem taxes within the transportation deficiency area pursuant to s. 163.387(2)(d), F.S. Section 163.3187(6)(b), F.S.
[146] Section 380.05(1), F.S.
[147] *Id.*

- 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.[148]

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.[149]

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.

Big Cypress Area

In relation to the other areas, local governments within the Big Cypress Area have the least amount of state oversight when it comes to adopting land development regulations and amending comprehensive plans.[150] With few exceptions, such local governments, including Miami-Dade, Collier, and Monroe counties, follow the same planning laws as governing bodies that are not located within an area of critical state concern.

Two instances, in particular, in which the Administration Commission and DEO are involved in planning decisions as it relates to the Big Cypress Area, include boundary modifications and natural resource protection. First, no boundary may be modified without a specific finding by the commission that such changes are consistent with necessary resource protection.[151] Second, if DEO determines that the administration of the local land development regulations or local comprehensive plans within the area is inadequate to protect the state or regional interest, it may institute appropriate judicial proceedings to compel proper enforcement of the land development regulations or plans.[152]

Green Swamp Area

With respect to the Green Swamp Area, local governments must submit comprehensive plan amendments and land development regulations to DEO for approval. DEO then determines whether the land development regulations or plan amendments are consistent with the principles for guiding the development of the area specified under the rule designating the area.[153] In doing so DEO issues and publishes a final order to approve or reject the local government's proposed action; no proposed land development regulation within the area becomes effective until DEO issues its final order or, if the final order is challenged, until the challenge to the order is resolved pursuant to chapter 120, F.S.[154]

In addition, just as with the Big Cypress Area, no boundary may be modified without a specific finding by the Administration Commission that such changes are consistent with necessary resource protection,[155] and DEO may institute appropriate judicial proceedings to compel proper enforcement of the land development regulations or plans.[156]

Florida Keys Area

The land planning requirements for the Florida Keys Area are the same as described for the Green Swamp Area, but include several additional provisions, two of which are as follows.

- Amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance with the following:

[148] Section 380.05(2), F.S.
[149] Sections 380.055, 380.0551, 380.0552, and 380.0555, F.S.
[150] Section 380.055(4), F.S.
[151] Section 380.05(12), F.S.
[152] Section 380.05(15), F.S.
[153] Section 380.05(6), F.S.
[154] *Id.*
[155] Section 380.05(12), F.S.
[156] Section 380.05(15), F.S.

- construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed certain criteria; and
- goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.[157]

- DEO, after consulting with the appropriate local government, may, no more than once per year, recommend to the Administration Commission the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan.[158]

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.[159]

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 element of a comprehensive plan.[160] 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.[161] 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.[162]

Effect of Proposed Changes

The bill seeks to alter various provisions within the state's growth management laws as described below.

Administrative Challenges to Comprehensive Plan Amendments

- The bill provides that a recommended order to DEO by an administrative law judge that a challenged comprehensive plan amendment be found in compliance with law becomes a final order within 90 days after issuance unless:
  - DEO finds the plan amendment to be in compliance and issues its final order;
  - DEO finds the plan amendment not in compliance and it refers the recommended order to the Administration Commission for final action; or
  - all parties consent in writing to an extension of the 90 day period.
- The bill also specifies that a recommended order issued under expedited proceedings that recommends a plan amendment to be in compliance, becomes a final order 45 days after issuance unless all parties agree in writing to extend the 45 day period.

[157] Section 380.0552(9), F.S.
[158] *Id.*
[159] Section 380.0555(9), F.S.
[160] *Id.*
[161] *Id.*
[162] *Id.*

Developments of Regional Impact

- The bill specifies 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 has the effect only of reducing the height, density, or intensity of the originally approved development.
- The bill specifies that a proposed development or amendments thereto that would otherwise require DRI review must follow the state coordinated review process if the development or amendment to the development requires an amendment to the comprehensive plan.
- The bill allows a developer, DEO, and local government, to amend their agreement that a development is essentially built-out without the submission, review, or approval of a notification of proposed change necessary for a substantial deviation.
- The bill provides that unbuilt land uses specified in an agreement establishing that a development is essentially built out, may be developed in a manner by which one approved land use is substituted for another approved land use at a ratio that ensures there will be no increase in impacts on public facilities and will meet all applicable requirements of the comprehensive plan and land development code. Further, at the time of building permit issuance, the developer must demonstrate to the local government that the exchange ratio will not result in an increase in net impact on public facilities and will meet all applicable requirements of the comprehensive plan and land development code. The local government is required to consult with the Department of Transportation on any development previously determined to impact strategic intermodal facilities.
- The bill provides that the following is not a substantial deviation: a phase date extension, if DEO, in consultation with the appropriate regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.
- The bill provides that previously developed lands acquired for development as part of an existing DRI are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to the existing DRI development order.
- The bill authorizes DRIs to rescind their DRI development order. Such rescission would be subject to local government oversight as to what form of substituted entitlement replaces the DRI development order.

Sector Plans

- The bill decreases the minimum required acreage of sector plans from 15,000 acres to 5,000 acres.

Annexation of Enclaves

- The bill increases the size of enclaves which can be annexed on an expedited basis from 10 acres to 110 acres.

Tax Increment Financing

- The bill authorizes the governing body of a county to designate specific areas, not to exceed 300 acres, to employ tax increment financing for economic development purposes. For any of such tax increment areas, the governing body of the county must administer a separate reserve account in which the tax increment revenues will be deposited.
- The tax increment revenues, including the proceeds of any revenue bonds secured by, and repaid with, such tax increment revenues, must be used to fund economic development activities and infrastructure projects, which directly benefit the tax increment area. The funds may not be used for the construction of buildings that are used solely for commercial or retail purposes, ancillary facilities associated with such commercial or retail buildings, or for above

ground infrastructure projects where the sole use and sole benefit of the project is for a commercial or retail building. Further, tax increment funds may be used for any portion of a below ground infrastructure project, which solely benefits a commercial or retail building and does not generally benefit the tax increment area, only if approved by the governing body of the county in which the tax increment area is located.

- The tax increment authorized under this section must be determined annually and must 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 prior to establishment of the tax increment area.
- The bill also provides that the Department of Transportation or Florida's Turnpike Enterprise may not impose transportation infrastructure fees or any other fees on a commercial or retail development within a tax increment area.

Apalachicola Bay Area of Critical State Concern

- The bill revises the method by which the City of Apalachicola, an area of critical state concern, amends its comprehensive plan and adopts land development regulations. Specifically, the bill provides that such amendments and regulations must only be approved by the state land planning agency (DEO), not the Administration Commission.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.045, F.S., authorizing the governing body of a county to employ tax increment financing for economic development purposes; providing that the Department of Transportation or Florida's Turnpike Enterprise may not impose certain fees.

Section 2: Amends s. 163.3184, F.S., clarifying when certain developments are subject to the state coordinated review process; and establishing time limits related to challenges to proposed plan amendments.

Section 3: Amends s. 163.3245, F.S., decreasing the minimum required acreage for creating sector plans.

Section 4: Amends s. 171.046, F.S., increasing the maximum size of enclaves eligible for expedited annexation.

Section 5: Amends s. 380.0555, F.S., providing that comprehensive plan amendments and land development regulations within the Apalachicola Bay Area of Critical State Concern do not require approval from the Administration Commission.

Section 6: Amends s. 380.06, F.S., providing for the ability to avoid the notice of proposed change requirements necessary for a substantial deviation when amending an agreement that a development is essentially built-out; allowing for the substitution of an approved land use for another in a development that is essentially built out in certain circumstances; providing that certain criteria constitutes a substantial deviation and shall cause the

development to be subject to further review through the notice of proposed change process; providing that a phase date extension is not a substantial deviation in certain circumstances; and clarifying when certain developments are subject to the state coordinated review process.

Section 7: Amends s. 380.0651, F.S., providing that previously developed land acquired for development as a part of an existing DRI is not subject to aggregation in certain circumstances.

Section 8: Amends s. 380.115, F.S., expanding the projects subject to certain statutory vested rights protections and development order rescission procedures, to include developments that elect to rescind the development order.

Section 9: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its analysis of the bill, DEO stated that "[t]he bill should have a minimal impact to expenditures due to a reduction in the number and types of situations that result in DRI amendments or extensive review of amendments."[163]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

[163] Department of Economic Opportunity, 2016 Agency Legislative Bill Analysis, page 7. January 14, 2016. Analysis on file with House Economic Development & Tourism Subcommittee staff.

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Local Government Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes language creating a rebuttal presumption concerning substantial deviations and makes clarifying changes to the revised language.

On February 18, 2016, the Economic Affairs Committee adopted two amendments to the bill and reported the bill favorably as a committee substitute. The first authorizes counties to employ tax increment financing for certain economic development purposes in defined areas not to exceed 300 acres. The amendment also provides that the Department of Transportation or Florida's Turnpike Enterprise may not impose transportation infrastructure fees or any other fees on a commercial or retail development within such defined tax increment area.

The second amendment provides that comprehensive plan amendments and land development regulations in the Apalachicola Bay Area of critical state concern are to be reviewed and approved by the state land planning agency.

This analysis has been updated to reflect the adoption of the amendments.