HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1151	**FINAL HOUSE FLOOR ACTION:**			
SUBJECT/SHORT TITLE	Developments of Regional Impact	110	**Y's**	1	**N's**
SPONSOR(S):	Commerce Committee; Agriculture & Property Rights Subcommittee; La Rosa	**GOVERNOR'S ACTION:**		Approved	
COMPANION BILLS:	CS/CS/SB 1244				

SUMMARY ANALYSIS

CS/CS/HB 1151 passed the House on March 2, 2018, and subsequently passed the Senate on March 9, 2018. Developments of Regional Impact (DRIs) are defined as "any development which, because of its character, magnitude, or location, would have a substantial effect on 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 DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.

The bill eliminates state and regional review of existing Developments of Regional Impact (DRIs), eliminates the Florida Quality Development (FQD) program, and transfers the responsibility for implementation of, and amendments to, DRI and FQD development orders to the local governments in which the developments are located.

The bill preserves existing DRI letters, development orders, agreements, and vested rights.

The bill transfers the DRI exemptions and partial exemptions currently found in s. 380.06, F.S., to s. 380.0651, F.S., which contains the statewide guidelines and standards for determining whether a proposed development is a DRI-sized development subject to state coordinated review.

The bill deletes the criteria for determining when two or more developments must be "aggregated" and treated as a single development for the purposes of DRI review and deletes the substantial deviation criteria for development order changes.

The bill ends all DRI appeals to the Florida Land and Water Adjudicatory Commission except for decisions by local governments to abandon an approved DRI. However, no changes are made regarding the authority of the Commission to review development orders in areas of critical state concern.

The bill repeals the Department of Economic Opportunity's DRI and FQD rules in Chapter 73C-40, F.A.C., and Administration Commission rules related to DRI aggregation.

The bill has no fiscal impact on state or local funds.

The bill was approved by the Governor on April 6, 2018, ch. 2018-158, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Developments of Regional Impact (DRIs) are defined as "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[1] Given their size, DRIs are subject to a special review process and often require an amendment to a comprehensive plan.

The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.[2] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.

In 2015,[3] the Legislature amended the DRI law to provide that new proposed DRI-sized developments must be approved by comprehensive plan amendment in lieu of the review process in s. 380.06, F.S. The Legislature also amended the comprehensive plan law to require that such plan amendments to be reviewed under the state coordinated review process.[4]

Further changes were made to the DRI statutes in 2016 that, in part, specified a proposed development, or amendments thereto, otherwise requiring a DRI review, must follow the state coordinated review process if the development or amendment to the development requires an amendment to the comprehensive plan.[5]

Present Situation

Developments of Regional Impact Application and Review

Under current law, only existing DRIs that received local government development orders prior to July 1, 2015, and have not been abandoned or rescinded are subject to the provisions of s. 380.06, F.S., including the application and pre-application processes for reviewing proposed DRIs, binding letters, and clearance letters. Other DRI-sized projects must be reviewed and approved by the local government pursuant to a comprehensive plan amendment processed under the state coordinated review process.

Exemptions and Partial Exemptions

The DRI statute includes a number of exemptions and partial exemptions of projects from DRI review. The most recent and significant exemption was created in 2009 for Dense Urban Land Areas (DULAs) characterized by certain population densities.[6] The following list, although not comprehensive, illustrates the various statutory DRI program development exemptions:[7]

- Proposed hospital, electrical transmission line, or electrical power plant;

[1] s. 380.06(1), F.S.
[2] 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).
[3] Ch. 2015-30, Laws of Fla.
[4] s. 163.3184(2)(c), F.S.
[5] Ch. 2016-148, Laws of Fla.
[6] s. 380.06(29), F.S.
[7] s. 380.06(24), F.S.

- Proposed addition to existing sports facility complex meeting specific characteristics or conditions;
- Certain expansion to port harbors, port transportation facilities, and intermodal transportation facilities;
- Facilities for the storage of any petroleum product or any expansion of an existing facility;
- Renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use;
- Development within a rural land stewardship area created under s. 163.3248, F.S.; and
- Establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S.

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.[8] 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;[9]
- Certain changes in development that do not amount to a substantial deviation;[10]
- Scenarios in which a substantial deviation is presumed;[11] and
- Scenarios in which a change is presumed not to create a substantial deviation.[12]

In addition, Florida law directs the Department of Economic Opportunity (DEO) to establish by rule standard forms for submittal of proposed changes to a previously approved DRI development order.[13] At a minimum, the form must require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.[14] The developer must submit the form to the local government, the regional planning agency, and DEO.[15] Applicable review and notice deadlines are outlined in statute for regional planning agencies, DEO, and public hearings to consider the change. [16]

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.[17] 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 prosed change.[18]

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.[19] If, however, the

[8] s. 380.06(19)(a), F.S.
[9] s. 380.06(19)(b), F.S.
[10] s. 380.06(19)(e), F.S.
[11] s. 380.06(19)(c), F.S.
[12] s. 380.06(19)(d), F.S.
[13] s. 380.06(19)(f), F.S.
[14] *Id.*
[15] s. 380.06(19)(f)2., F.S.
[16] s. 380.06(19)(f)3-4., F.S.
[17] s. 380.06(19)(f)5., F.S.
[18] *Id.*
[19] s. 380.06(19)(f)6., F.S.

local government determines that the 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.[20]

The owner, developer, or state land planning agency are authorized to file an administrative challenge to the adopted development order or a development order amendment with the Florida Land and Water Adjudicatory Commission on the ground that it is not consistent with statutory requirements of ch. 380, F.S., and applicable rules governing DRIs.[21]

Aggregation of Developments

Section 380.0651, F.S., directs the Administration Commission[22] to adopt statewide guidelines and standards for developments to undergo DRI review. As part of such guidelines and standards, the law addresses when two or more developments must be "aggregated" and treated as a single development.[23]

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.[24] Three of the following four criteria must be met to determine that a "unified plan of development" exists:

1. The same person has retained or shared control of the development, 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;
2. There is reasonable closeness in time between the completion of 80 percent or less of one development and the submission to a governmental agency of a master plan or series of plans or drawings for the other development which is indicative of a common development effort;
3. Master plan or series of plans or drawings exists covering the developments sought to be aggregated which have been submitted to certain government bodies; and
4. There is a common advertising scheme or promotion plan in effect for the developments.[25]

However, despite the finding of physical proximity and the existence of a unified plan, Florida law also provides for circumstances in which aggregation is not applicable.[26]

Florida Quality Development Program

The Legislature created the Florida Quality Development (FQD) program to encourage development which has been thoughtfully planned to take into consideration protection of Florida's natural amenities, the cost to local government of providing services to a growing community, and the high quality of life Floridians desire. The law intended for the developer to be provided, through a cooperative and coordinated effort, an expeditious and timely review by all agencies with jurisdiction over the proposed development.[27]

[20] s. 380.06(19)(g), F.S.
[21] s. 380.07, F.S.
[22] The Administration Commission is part of the Executive Office and is composed of the Governor and Cabinet, s. 14.202, F.S.
[23] s. 380.0651(4), F.S.
[24] *Id.*
[25] s. 380.0651(4)(a), F.S.
[26] s. 380.0651(4)(c), F.S.
[27] s. 380.061(1), F.S.

To be eligible for a designation under the Florida Quality Developments program the developer must comply with certain requirements if applicable to the site of qualified development, including, but not limited to:

- Donating or entering into a binding commitment to donate the fee or a lesser interest sufficient to protect, in perpetuity, the natural attributes of certain types of lands such as wetlands, beaches, and lands with protected animals or plant species;
- Downtown reuse or redevelopment program to rehabilitate a declining downtown area;
- Include open space, reaction areas, Florida-friendly landscaping and energy conservation and minimize impermeable surfaces as appropriate to the location and type of project; and
- Design and construct the development in a manner consistent with the adopted state plan, the applicable strategic regional policy plan, and the applicable adopted local government comprehensive plan.[28]

In 2002, DEO issued the last Florida Quality Development order. The department has not received any further development order requests since that time.[29]

Effect of Proposed Changes

The bill eliminates state and regional review of existing Developments of Regional Impact (DRIs) and transfers the responsibility for implementation of, and amendments to, DRI development orders to the local governments in which the developments are located.

The following existing letters, development orders, and agreements are preserved in the bill:

- Binding letters;
- Clearance letters issued by the state land planning agency as to whether a proposed development is subject to DRI review;
- Agreements with respect to an approved DRI previously classified as essentially built out;
- Capital contribution front-ending agreements between a local government and a developer as part of a DRI development order to reimburse the developer for voluntary contributions paid in excess of his or her fair share;
- Any previously granted extensions of time for DRI development orders;
- Agreements previously entered into by a developer, a regional planning agency, and a local government regarding a project that includes two or more DRIs; and
- Approvals of an authorized developer for an area wide DRI.

Upon request by the developer, the bill authorizes a local government to amend a binding letter of vested rights based on standards and procedures in the adopted local comprehensive plan or the adopted local land development code.

The bill provides that, notwithstanding any comprehensive plan or land development regulation, an amendment to a DRI development order by a local government may not amend to an earlier date, the date currently agreed to by the local government not to impose downzoning, unit density reduction, or intensity reduction on the development.

If a local government rescinds a development order for a DRI, the bill authorizes the developer to record notice of the rescission.

The bill provides that, notwithstanding any comprehensive plan or land development regulation, the adoption of an amendment to a DRI development order does not diminish or otherwise alter any credits

[28] s. 380.061(3)(a), F.S.
[29] Department of Economic Opportunity, Agency Analysis of 2018 SB 1244, p. 3 (Dec. 22, 2017).

for a development order exaction or fee against impact fees, mobility fees, or exactions when based upon the developer's contribution of land or a public facility.

The bill removes the requirement for a developer to submit a report on the DRI to the local government, the regional planning agency, the state land planning agency, and all affected permit agencies unless required to do so by the local government that has jurisdiction over the development.

Substantial deviation criteria for development order changes are deleted by the bill and replaced with the authorization for local governments to review proposed changes based on the standards and procedures in its adopted local comprehensive plan and local land development regulations including procedures for notice to the applicant and the public. However, if a change to a DRI has the effect of reducing the originally approved height, density, or intensity of the development and if the revised development would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.

For the abandonment of a DRI, the bill provides that abandonment will be deemed to have occurred when the required notice is filed by the local government with the county clerk. If requested by the owner, developer, or local government, the DRI development order must be abandoned by the local government if all required mitigation related to the amount of development which existed on the date of abandonment has been or will be completed under an existing permit or authorization enforceable through an administrative or judicial remedy.

The bill transfers the DRI exemptions and partial exemptions currently found in s. 380.06, F.S., to s. 380.0651, F.S., which contains the statewide guidelines and standards for determining whether a proposed development is a DRI-sized development subject to state coordinated review.

The bill deletes the criteria for determining when two or more developments must be "aggregated" and treated as a single development for the purposes of DRI review.

The bill amends the DRI appeals process to the Florida Land and Water Adjudicatory Commission to include only appeals from decisions by local governments to abandon an approved DRI. However, no changes are made regarding the authority of the commission to review development orders in areas of critical state concern.

The Florida Quality Developments program of s. 380.061, F.S., is amended by the bill, ending the program and requiring local governments with a currently approved Florida Quality Development within its jurisdiction to set a public hearing and adopt a local development order to replace and supersede the development order adopted by the state land planning agency. Thereafter, the Florida Quality Development must follow the same procedures established for DRI-sized development projects.

The term "master development plan" is defined within the bill as a planning document that integrates plans, orders, and other documents used to guide development, including authorized land uses, the amount of horizontal and vertical development, and public facilities such as local and regional water storage for water quality and water supply. The purpose of this definition is to alleviate tax implications with recently changed provisions of the Federal Tax Code. Under the recently changed provisions of the Federal Tax Code, amounts received by a corporation from a governmentl entity are taxable income unless payments are part of a "master development plan" approved by the governmental entity before December 22, 2017.

The bill repeals the Department of Economic Opportunity's DRI and FQD rules in Chapter 73C-40, F.A.C., and Administration Commission rules related to DRI aggregation.

The bill makes various conforming and cross-reference changes.

The bill has an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   None.

D. FISCAL COMMENTS:
   The bill eliminates the remaining responsibilities of DEO related to the review of DRI development order amendments and preparing FQD development order amendments. The time required for these functions has been minimal over the past few years according to the department.[30] Consequently, the bill should have a minimal fiscal impact on the department.

[30] Department of Economic Opportunity, Agency Analysis of 2018 SB 1244, p. 3 (Dec. 22, 2017).