



The Florida Senate

Interim Project Report 2008-111

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Committee on Community Affairs

LOCAL GOVERNMENT COMPREHENSIVE PLANNING CERTIFICATION PROGRAM

SUMMARY

Although the Local Government Comprehensive Planning Certification Program gives local governments an opportunity to have their planning efforts recognized and to adopt plan amendments with limited state and regional oversight, few local governments have applied for the program. In general, it appears that local governments do not perceive enough benefits associated with the certification program compared to the lengthy process required for certification.

The certification program provides a process for a local government to identify an area appropriate for urban growth for a 10-year planning period. As an incentive for identifying such an area, the local government may adopt certain types of comprehensive plan amendments with limited state and regional review. To date, there are four certified communities.

Rather than revising the certification program during the past several years, the Legislature has created two additional options for a local government to adopt a comprehensive plan amendment with reduced state and regional oversight. These options are the adoption of an urban service boundary and community vision and the new alternative to state review process pilot program.

Staff recommends not making any changes to the statutory methods that currently exist for limiting state and regional review of certain comprehensive plan amendments until the required review of the alternative state review process pilot program is completed in 2008. Following the required review, staff recommends that the committee consider statutory revisions to provide only one process for obtaining limited review of plan amendments. Staff does not recommend any revisions to the certification program at this time, but suggests using some of the criteria for evaluating applicants for certification as part of any streamlined or consolidated process for limiting state and regional review of comprehensive plan amendments.

BACKGROUND

In 2002, the Legislature created s. 163.3246, F.S., the Local Government Comprehensive Planning Certification Program, as a successor to the Sustainable Communities Demonstration Project.¹ Although the Department of Community Affairs (DCA or state land planning agency) may approve up to eight certifications per year, only the Cities of Orlando, Lakeland, and Miramar have executed a certification agreement.² (The City of Freeport was statutorily designated as a certified community in 2005 as discussed later in this report.) The purpose of the certification program is to identify those areas that are appropriate for urban growth within a 10-year planning timeframe and reduce state and regional oversight of certain types of plan amendments in those areas.

Application Process for Certification

Section 163.3246, F.S., and ch. 9J-35, F.A.C., govern DCA's review and evaluation of applications to participate in the certification program. The application period for the program runs for one month each year beginning on January 5 or the next business day thereafter. The application must be accompanied by copies of the applicable local comprehensive plan, land development regulations, interlocal agreements, and any other relevant materials that demonstrate the applicant (local government or group of local

¹ See also Ch. 96-416, Laws of Florida. The Sustainable Communities Demonstration Project focused on six principles of sustainability: restoration of key ecosystems; a cleaner, healthier environment; discouragement of urban sprawl; protection of wildlife and natural areas; efficient use of land and other resources; and the creation of quality jobs and communities. Twenty-eight communities applied for designation as a sustainable community. The project was limited to five participants and those were the: City of Boca Raton, Hillsborough County and City of Tampa as joint applicants, City of Orlando, City of Ocala, and Martin County.

² The City of Orlando's and Lakeland's certification agreement took effect in 2004 and the City of Miramar's was executed in 2005.

governments) meets the eligibility criteria. The applicant is notified in writing of receipt and timeliness of the application.³ DCA then has ninety days to review the application and provide an initial response.

An applicant must satisfy the following to be eligible for certification:

- Demonstrate a history of effectively adopting, implementing, and enforcing the local comprehensive plan;
- Demonstrate sufficient technical, financial, and administrative skills to implement the provisions of part II of ch 163, F.S., the Growth Management Act, without state oversight;
- Obtain comments from state and regional agencies on the appropriateness of the certification;
- Hold at least one public hearing to solicit public comment on the proposed certification; and
- Demonstrate that its comprehensive plan and land development regulations address specific issues, including, but not limited to, promoting urban infill, providing more affordable housing, redeveloping blighted areas, improving disaster preparedness, encouraging mixed-use development, and protecting key natural areas and agricultural lands.⁴

Following its review, DCA submits a written assessment of the application to the applicant, describing the basis for finding the applicant does or does not meet the eligibility criteria and the basis for finding the area proposed for certification does or does not meet the statutory criteria. The applicant has 30 days from the date of the written assessment to clarify or explain how the information in its application satisfies the criteria. The applicant may not submit any new information to DCA.⁵

Certification Agreements

If the applicant satisfies the eligibility criteria, DCA and the applicant must execute a written agreement that includes:

- The basis for certification;
- The boundary of the certification area which contains a contiguous, compact area

appropriate for urban growth and development and which will be served by existing or planned public infrastructure within a 10-year planning timeframe;

- A demonstration that the capital improvements plan is updated annually;
- A visioning plan or the schedule for the development of a visioning plan;
- A description of the baseline conditions related to the evaluation criteria;
- A work program with specific planning strategies and projects to achieve improvement in the baseline conditions;
- Criteria to evaluate the effectiveness of the certification in achieving community-development goals.
- A commitment to change land development regulations within the certification area which restrict compact development;
- A plan for increasing public participation in comprehensive planning and land use decision making;
- A demonstration that the intergovernmental coordination element of the local government's comprehensive plan includes joint processes for coordination between the school board and the local government;
- A method of addressing the extrajurisdictional effects of development within the certification area and which is incorporated into the intergovernmental coordination element;
- A requirement for an annual report on the plan amendments adopted during the year and progress towards meeting the terms and conditions of the certification agreement⁶; and
- An expiration date that does not exceed 10 years.

Plan amendments, with some exceptions, which are adopted by a certified local government are exempt from state and regional review. DCA does not prepare an objections, recommendations, and comments report on the exempt plan amendments. However, an affected person, as defined in s. 163.3184(1)(a), F.S., may still

³ Rule 9J-35.005(2), Fla. Admin. Code.

⁴ Section 163.3246(2), F.S.

⁵ See Rule 9J-35.005(4), Fla. Admin. Code.

⁶ Prior to submitting the annual report, the local government must hold a public hearing to solicit public input on the local government's progress in complying with the certification agreement. An affected person, as defined in s. 163.3184(1)(a), F.S., may petition for an administrative hearing alleging the local government is not substantially complying with the agreement. The petition must be filed no later than 30 days after the public hearing. See Section 163.3246(8), F.S.

challenge the compliance of a plan amendment adopted by a certified local government.

The following types of plan amendments submitted by certified local governments are not exempt and must be reviewed by DCA using the regular plan amendment process:

- Changes to the boundary of the certification area;
- Those that create a rural land stewardship area;
- Those proposing an optional sector plan;
- Those proposing a school facilities element;
- Updates based on an Evaluation and Appraisal Report (EAR);
- Those with impacts on lands outside the certification area, including changes to the Future Land Use Map and text changes to a local comprehensive plan which would affect or apply to lands outside the certification area;
- Those that implement new statutory requirements requiring specific plan amendments;
- Those increasing hurricane evacuation times or the need for shelter capacity within the coastal high-hazard area;⁷ and
- Those applying to lands within an area of critical state concern.⁸

Renewal or Revocation

As part of the EAR process that occurs every seven years, the local government and DCA review the local government's certification.⁹ Within one year after the deadline for the local government to amend its comprehensive plan based on the EAR, the DCA is required to either renew or revoke a local government's certification. The revocation or renewal shall be considered final agency action that is subject to challenge under the Administrative Procedure Act.¹⁰

Reporting Requirement

Section 163.3246(13), F.S., requires DCA to submit a report to the Governor, President of the Senate, and the Speaker of the House of Representatives by July 1 of each odd-numbered year which lists the certified local governments and evaluates the effectiveness of the

certification. The report should also include any recommended legislative actions.¹¹

In addition to the three local governments that were certified using the process in s. 163.3246, F.S., the Legislature designated the City of Freeport as a certified local government effective January 1, 2006.¹² Freeport will remain a certified community during the effect of its designation as a rural area of critical economic concern.

The boundary for Freeport's certification area was stipulated in DCA's written notice of certification. The reporting requirement for Freeport allows for an annual or biennial report that, at a minimum, includes the number of plan amendments adopted, the number of plan amendments challenged, and the outcome of those challenges.

An additional benefit for the City of Freeport is that a development of regional impact (DRI) proposed to be located within the certification boundary is not subject to review as a DRI under s. 380.06, F.S., unless the city requests a review by DCA.¹³ In order to qualify for this exemption, the developer must notify in writing the regional planning council with jurisdiction concurrent with filing the application. The regional planning council is required to ensure the DRI satisfies concurrency and complies with all federal, state, and local environmental permit requirements.

METHODOLOGY

Staff discussed the certification process, success of the program, and possible revisions or alternatives to the program with DCA staff, as well as planning staff from the Cities of Freeport, Lakeland, Miramar, Orlando, and Sarasota.

FINDINGS

Although the certification program gives local governments an opportunity to have their planning efforts recognized and to adopt plan amendments with limited state and regional oversight, very few local governments have applied for certification. In general, it appears that local governments do not perceive enough benefits associated with the certification program compared to the lengthy process required for certification. This may be in part because those local

⁷ Section 163.3246(9)(b), F.S.

⁸ Section 163.3246(3), F.S.

⁹ Section 163.3246(12), F.S.

¹⁰ Section 163.3246(12), F.S.

¹¹ Section 163.3246(13), F.S. The Senate is expecting to receive the report for 2007 soon. The report is currently being completed by DCA.

¹² Section 163.3246(10), F.S.

¹³ Section 163.3246(11), F.S.

governments that have the staff and sufficient planning expertise to become certified have little difficulty during the process of plan amendment review by DCA. Therefore, the benefit of having certain plan amendments exempt from DCA review is not significant. The biggest benefit, instead, seems to be the recognition of a local government's planning expertise. Each of the applicants for certification indicated the prestige of being a certified community was important to them.

The certification program likely does not reduce the staff time required by the local government preparing to adopt a plan amendment. The annual reporting requirement and the process of advertising and submitting two sets of amendments, those that are exempt under the certification program and those that are not, actually may require additional staff time.

The real benefit of the certification program may be to the developer because of the shortened time frame for adoption of the plan amendment. Estimates of the amount of time saved by limiting state and regional review vary. Even with a reduced time-frame for adopting a plan amendment, it is unlikely this draws a project to a certified community. However, planning staff for the City of Freeport indicated that being designated as a certified community has "stimulated economic development." Other stakeholders have indicated that there are larger issues, especially with regard to concurrency, that are influencing where development occurs rather than a shorter process for adopting plan amendments.

As far as the application process, applicants for certification indicated that there was little information available regarding how to apply for the program. For some of the applicants, the statute did not offer sufficient guidance on what exactly needed to be demonstrated to DCA to meet the eligibility criteria for certification. Some thought that an application would have been helpful. Another suggestion was that DCA provide a list of steps an applicant must take in order to become certified rather than providing a list of reasons why the applicant did not qualify. It was also suggested that it would be helpful for DCA to hold workshops for newly-certified communities.

Stakeholder Suggestions

Specific suggestions for streamlining the process of adopting plan amendments for certified local governments include using the small-scale amendment process for the submission of exempt plan amendments. As far as providing additional incentives

for certification and improving the process of becoming certified, suggestions included:

- Increasing the parcel size for small-scale amendments.
- Allowing increased density for certified areas without a plan amendment.
- Providing a list of needed actions or a work plan that must be satisfied for certification in response to an application that does not meet the standards for certification.
- Providing an orientation session for newly-certified communities to provide information on the process of dealing with plan amendments that are exempt under the certification program, reporting requirements, etc.
- Providing greater technical assistance to certified communities.
- Requiring DCA to adopt an application by rule.

Because the certification program has had so few applicants, it may be helpful to look at other legislative efforts aimed at reducing the time for reviewing plan amendments. Instead of revising the certification program, the Legislature has created other options for local governments seeking a more streamlined plan amendment review process. Two of these options are the designation of urban service boundaries under s. 163.3177(14), F.S., and the newly-created alternative state review process pilot program in s. 163.32465, F.S.

Designation of Urban Service Boundaries

As an incentive for local governments to adopt a community vision and establish an urban service boundary under subsections (13) and (14) of s. 163.3177, F.S., respectively, a local government may adopt an amendment to its comprehensive plan with limited state and regional agency review.¹⁴ Section 163.3177(14), F.S., provides that a local government establishing an urban service boundary must identify an area on the future land use map which is appropriate

¹⁴ Section 163.3184(17), F.S. DCA does review the adoption of the urban service boundary into the local comprehensive plan, but does not review most plan amendments within an urban service boundary after it has been established. Under s. 163.3177(14)(d), F.S., local governments that adopted an urban service boundary before July 1, 2005, are eligible for the exemption from state and regional review of certain plan amendments if DCA determines the boundary substantially complies with the criteria of subsection (14).

for compact, contiguous urban development within a 10-year planning timeframe. Land within the urban service boundary must be served or planned to be served by adequate public facilities that meet the applicable level-of-service standard. The local government must demonstrate the public facilities will be available by adopting a 10-year facilities plan in the capital improvements element which is financially feasible.

Also, the local government must demonstrate that the amount of land within the urban service boundary does not exceed the amount of land needed to accommodate projected population growth at densities consistent with the local comprehensive plan. The local government must hold at least two public meetings with one of those meetings occurring before the local planning agency.¹⁵ Prior to the first public meeting, a local government must hold at least one public workshop with stakeholder groups to discuss the establishment of an urban service boundary.¹⁶ Following the required workshop and public meetings, a local government may amend its comprehensive plan to include the urban service boundary.¹⁷ The establishment of an urban service boundary does not preclude development outside the boundary. However, local governments are encouraged to require a full-cost accounting analysis for new development outside the boundary.¹⁸

Section 163.3177(13), F.S., provides a process for developing a community vision which is very similar to establishing an urban service boundary, both of which must be accomplished before a local government may adopt certain plan amendments with limited state and regional oversight. This subsection requires a local government to discuss a minimum of five topics out of a list of nine topics listed in paragraph (a) of subsection (13) during at least one workshop with stakeholders and two public meetings with at least one of those meetings before the local planning agency.¹⁹ In addition to discussing strategies to address the selected topics at the workshop and public meetings, the local government must also discuss strategies to:

- Preserve open space and environmentally sensitive lands, and to promote a strong agricultural economy;
- Provide incentives for mixed-use development;
- Provide incentives for workforce housing;
- Designate an urban service boundary; and
- Improve mobility within the community while protecting the Strategic Intermodal System.²⁰

Following the required workshop and public meetings, a local government may amend its comprehensive plan to include the community vision it has developed as part of the local comprehensive plan.²¹

As an incentive, a local government that meets the requirements of subsections (13) and (14) of s. 163.3177, F.S., is exempt from state and regional agency review when adopting a future land use map amendment relating solely to property within the urban service boundary. A map amendment adopted in this manner requires only one public hearing. DCA may not issue an objections, recommendations, and comments report on these plan amendments.²² An affected person, as defined in s.163.3184(1), F.S., may file a petition with the Division of Administrative Hearings challenging the compliance of an amendment with part II of ch. 163, F.S.²³

¹⁵ Section 163.3177(14)(a), F.S.

¹⁶ Section 163.3177(14)(a), F.S.

¹⁷ Section 163.3177(14)(b)1., F.S.

¹⁸ Section 163.3177(14)(b)2., F.S.

¹⁹ The topics listed in s. 163.3177(13)(a), F.S., include population forecasts, economic development opportunities, preservation of conservation lands and agricultural lands, mixed-use development, high density commercial and residential development, workforce housing, and multimodal transportation opportunities.

²⁰ Section 163.3177(13)(c), F.S.

²¹ Section 163.3177(13)(e), F.S. Amendments to incorporate a community vision developed under s. 163.3177(13), F.S., into a local comprehensive plan are exempt from the limitation on the frequency of plan amendments. *See* Section 163.3177(13)(f), F.S. A local government that developed a community vision before between July 1, 2000 and July 1, 2005 which substantially accomplishes the goals of subsection (13) and has incorporated those goals, policies, and objectives into the local comprehensive plan is also eligible to adopt certain plan amendments without state agency or regional review if other criteria are met. *See* Sections 163.3177(13)(g) and 163.3184(17), F.S.

²² This process is similar to that of adopting a small-scale development amendment that requires only one public hearing before the governing board. *See* Section 163.3187(1)(c)3., F.S.

²³ Section 163.3177(13)(c), F.S. The exemption from state and regional review under s. 163.3184(17), F.S., does not apply to plan amendments that: are within an area of critical state concern; increase residential densities allowable in high-hazard coastal areas; or change the text of goals, policies, or objectives in a local comprehensive plan.

In addition to the exemption from review for certain plan amendments, local governments that have adopted a community vision and an urban service boundary under s. 163.3177, F.S., are exempt from development-of-regional-impact review for proposed developments within the urban service boundary provided certain criteria regarding transportation impacts are met.²⁴

To date, only two local governments have expressed an interest to DCA regarding the development of a community vision and adoption of an urban service boundary under ss. 163.3177(13) and (14), F.S., and no local governments have actually applied for the exemption. According to some stakeholders, one of the disincentives for establishing an urban service boundary is the requirement for a 10-year facilities plan that is financially feasible.

Alternative State Review Process Pilot Program

In 2007, the Legislature created the alternative state review process pilot program in s. 163.32465, F.S. Pinellas and Broward Counties, the municipalities within those two counties, and the Cities of Jacksonville, Miami, Tampa, and Hialeah were statutorily designated as pilot communities. Municipalities within the pilot counties may elect, by a super majority vote, not to participate in the pilot program. These pilot communities will follow an alternate, expedited process for plan amendments that provides for limited state agency review. Plan amendments, along with supporting data and analyses, will be transmitted to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state agencies may include technical guidance on issues of agency jurisdiction as it relates to part II of ch. 163, F.S., the Growth Management Act. Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment.

Following a second public hearing that is an adoption hearing on the plan amendment, the local government shall transmit the amendment with supporting data and analyses to DCA and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA may intervene in a proceeding initiated by an affected person or file a separate challenge within 30 days after notifying the local government that the plan amendment package is

complete. DCA’s challenge is limited to those issues raised in the comments by the reviewing agencies. The DCA is strongly encouraged to focus any challenge on issues of regional or statewide importance.²⁵

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to submit a report to the Legislature and the Governor by December 1, 2008, regarding reduced state oversight of local comprehensive planning in urban areas. The report and its recommendations must address specific, identified issues. OPPAGA must consult with specified entities while preparing the report and recommendations.

The table below shows some of the options available to a local government adopting a plan amendment. Based on the fact that we currently have 4 certified communities, two counties and 59 cities under the alternative state review process pilot program, and limited review for other types of plan amendments, the Legislature may wish to consolidate or streamline the available options.

Various Processes for a Local Government to Adopt a Plan Amendment²⁶

| | Requires a Transmittal Hearing | Requires an Adoption Hearing | DCA May Issue An Objections, Recommendations and Comments Report | DCA Must Issue a Notice of Intent |
|--|--------------------------------|------------------------------|--|-----------------------------------|
| Certified Community | √ | √ | | |
| Urban Service Boundary | | √ | | |
| Alternative State Review Process Pilot Program | √ | √ | | |
| Regular Amendment | √ | √ | √ | √ |
| Urban Infill and Redevelopment Area | | √ | | |

²⁵ Section 163.32465(6), F.S.

²⁶ There are also other processes for adopting specific types of plan amendments, including small-scale development amendments, housing incentive strategy plan amendments, and the annual update to the capital improvements schedule.

²⁴ Section 380.06(24)(1), F.S.

RECOMMENDATIONS

Staff recommends that the committee wait to make changes to any of the methods in Florida Statutes for limiting state and regional oversight for certain comprehensive plan amendments until the required review of the alternative state review process pilot program is completed in 2008. Following the required review, the committee should consider streamlining the methods for limiting review of certain comprehensive plan amendments so that only one method is available. For example, the committee may wish to consider:

- Eliminating the exemption from plan amendment review for those local governments that adopt an urban service boundary and community vision.
- Establishing criteria for local governments either to apply for the alternative state review process created in 2007 or to be selected for that process.
- Including certified communities in the alternative state review process program.

Staff does not recommend revising the certification program at this time, but suggests including some of the criteria used to evaluate an applicant for certification as part of any streamlined or consolidated process for limiting state and regional review of comprehensive plan amendments.