The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 842
INTRODUCER:	Committee on Community Affairs and Senator Bennett
SUBJECT:	Growth Management
DATE:	January 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.			CM	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute (CS) makes a number of non-substantive modifications and clarifications to ch. 2011-139, L.O.F, "The Community Planning Act" (the Act) that were compiled through various discussions and feedback received from stakeholders including the state land planning agency and local governments.

Modifications include fixing cross-references, updating outdated language, and removing provisions throughout the statutes that the Act made obsolete such as references to the twice-a-year limitation on adopting plan amendments that no longer exists and references to the evaluation and appraisal report that no longer is required.

This CS requires a regional planning council to determine before accepting a grant that the purpose of the grant is in furtherance of its functions. Also the CS prohibits a regional planning council from providing consulting services for a fee to any local government for a project for which the council will serve in a review capacity, as well as prohibits a regional planning council from providing consulting services to a private developer or landowner for a project for which the council may serve in a review capacity in the future.

This CS also addresses items that, although stemming from technical glitches, may have limited policy implications. These include:

- grandfathering of local government charter provisions in effect on June 1, 2011, relating to a local initiative or referendum process for the approval of development orders and comprehensive plan or map amendments;
- requiring comments by military installations to be considered by local governments in a manner consistent with s. 163.3184, F.S.
- removing criteria that exempts certain municipalities from being signatories to the school interlocal agreement as a prerequisite to implementing school concurrency, because school concurrency is now optional, and restoring criteria to exempt certain municipalities from being a party to the school interlocal agreement;
- extending the time for the state land planning agency and the Administration Commission to issue recommended and final orders, since the current time requirement is unworkable, and providing a time requirement for the state land planning agency to issue a notice of intent for a plan amendment adopted pursuant to a compliance agreement;
- deleting a required annual report by the Department of Economic Opportunity related to the optional sector plan pilot program.

This CS substantially amends the following sections of the Florida Statutes: 163.3167, 163.3174, 163.3175, 163.3177, 163.31777, 163.3178, 163.3180, 163.3184, 163.3191, 163.3245, 186.002, 186.007, 186.505, 186.508, 189.415, 288.975, 380.06, 380.115, 1013.33, 1013.35, 1013.351, and 1013.36.

II. Present Situation:

The Community Planning Act (ch. 2011-139, L.O.F.)
During the 2011 Session, the Legislature passed HB 7207, "The Community Planning Act" which became law on June 2, 2011. Ch. 2011-139, L.O.F., substantially reformed Florida's growth management system.

Part II of ch. 163, F.S., provides the minimum standards for Florida's comprehensive growth management system. Local governments are now primarily responsible for decisions relating to the future growth of their communities, and the state is now focused on protecting important state resources and facilities.

Local governments have the option to decide whether or not to continue implementing, pursuant to state guidelines, concurrency for transportation, school, and parks and recreation. A local government may continue applying concurrency in these areas without taking any action. If local governments wish to remove one of these forms of concurrency, a comprehensive plan amendment must be adopted, but it is not subject to state review. The Act also modified and attempted to clarify many of the provisions related to proportionate-share payments that local governments implementing transportation concurrency are required to implement.
Local governments must evaluate their comprehensive plans once every seven years and notify the state land planning agency, via a letter, whether or not update amendments are necessary. Local governments have the flexibility to adopt amendments to their comprehensive plan as needed, since there is no limit on the frequency in which plan amendments may be adopted.

Local governments are required to list their funded and unfunded capital improvements in the comprehensive plan.

The Act streamlined the comprehensive plan amendment process while maintaining public participation in the local government planning process. The Act focuses the state oversight role in growth management on protecting important state resources and facilities. State agencies, when reviewing plan amendments, may comment on adverse impacts to important state resources or facilities as they relate to areas within their jurisdiction. Further, the state land planning agency when challenging most plan amendments may only challenge based on an adverse impact to an "important state resource or facility."

SB 2156, which was signed into law as ch. 2011-142, L.O.F., created the Department of Economic Opportunity (DEO) that now serves as the state land planning agency. The Act requires the state land planning agency to provide direct and indirect technical assistance to help local governments find creative solutions to foster vibrant, healthy communities, while protecting the functions of important state resources and facilities.

If a plan amendment may adversely impact an important state resource or facility, upon request by the local government, the state land planning agency must coordinate multi-agency assistance, if needed, to develop an amendment to minimize any adverse impacts. The Act changed the requirements associated with the large-scale planning tools of sector plans and rural land stewardship areas.

Local Referendums and Initiatives

The Act modified current law to prohibit a local government from adopting any initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment. Prior to this, a local government was prohibited only from adopting an initiative or referendum process for approval of development orders or comprehensive plan amendments or future land use map amendments that affected five or fewer parcels of land. There were a number of already existing local government referendum processes that the Act made invalid.[1]

Town of Yankeetown, FL v. Department of Economic Opportunity

In August of 2011, the town of Yankeetown, FL, filed a complaint for declaratory judgment in Leon County Circuit Court naming the former Department of Community Affairs (DCA), then-DCA Secretary Billy Buzzett, and the Administration Commission as defendants.[2] In September of 2011, Yankeetown and the department reached a proposed settlement that was contingent on a legislative amendment to the Community Planning Act becoming law that would grandfather in local referendum or initiative requirements in regard to development orders or in regard to local

[1] In addition to Yankeetown, other local governments with a referendum or initiative process that were reportedly affected by the prohibition include Longboat Key, Key West, and Miami Beach.

[2] *See Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, Case No. 37 2011 CA 002036 (Fla. 2d Cir. Ct. 2011). The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in Article III, s. 6 of the Florida Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The city of St. Pete Beach has also filed a motion to intervene as a defendant in the case, on the same side as the state.

comprehensive plan amendments or map amendments that were in existence on June 2, 2011, when the Act became law.

Military Compatibility

There are several sections of law that deal with military compatibility with local land uses. Military bases can interfere with local land uses, and conversely, local land uses can interfere with the proper functioning of military bases. Section 163.3175, F.S., requires the exchange of information between local communities and military installations when land use decisions may affect operations at an installation. Section 163.3175, F.S., also specifies issues that the installation's commanding officer may address in commenting on a proposed land use change and requires a local government to consider the commanding officer's comments. It also requires a representative of the military installation to be included as an ex-officio, nonvoting member of the affected local government's land planning or zoning board.

The Act modified current law regarding the military base commander's comments to the local government. Section 163.3175, F.S., now states that commanding officer's comments, underlying studies, and reports are not binding on the local government. The affected local government shall take into consideration any comments provided by the commanding officer or his or her designee and must also be sensitive to private property rights and not be unduly restrictive on those rights. The affected local government shall forward a copy of any comments regarding comprehensive plan amendments to the state land planning agency.

School Interlocal Agreement

Interlocal agreements between a county, the municipalities within, and a school board exist in order to coordinate plans and processes of the local governments and school boards. Section 163.31777, F.S., provides that "[t]he county and municipalities located within the geographic area of a school district shall enter into an interlocal agreement with the district school board which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated." The Act removed state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. If a local government chooses to maintain optional school concurrency within its jurisdiction, the interlocal agreement must also meet additional requirements. Certain outdated provisions relating to state oversight and review of interlocal agreements inadvertently still remain in s. 1013.33 and 1013.51, F.S.

The Act inadvertently removed the provision that exempted certain municipalities from entering into the school interlocal agreement.[3] However the Act maintained the language in s. 163.3180(6)(i), F.S., which provided that municipalities meeting certain criteria for having no significant impact on school attendance are not required to be a signatory to the interlocal agreement, as a prerequisite for imposition of school concurrency.

[3] The Act inadvertently removed 163.31777(6), F.S., (2010), which provided: "Except as provided in subsection (7), municipalities meeting the exemption criteria in s. 163.3177(12) are exempt from the requirements of subsections (1), (2), and (3)." The provisions within 163.3177(12), F.S., (2010) were also removed by the Act. The end result created a conflict with language in s. 163.3180(6)(i), F.S., (2011), and required every municipality to enter into an interlocal agreement.

Concurrency
Concurrency requires public facilities and services to be available concurrent with the impacts of development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water. Concurrency is tied to provisions requiring local governments to adopt level-of-service standards, address existing service deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan. The Act removed the mandatory requirement for transportation facilities, public education facilities, and parks and recreation to be available concurrent with development impacts, and a local government now has the flexibility to decide whether or not to maintain these forms of concurrency. If a local government chooses to remove any optional concurrency provisions from its comprehensive plan, an amendment is required. An amendment removing any optional concurrency is not subject to state review.

Regional Planning Councils
A regional planning council exists in each of the several comprehensive planning districts of the state. Only one agency shall exercise the responsibilities within the geographic boundaries of any one comprehensive planning district. Membership on the regional planning council shall be as follows:
(a) Representatives appointed by each of the member counties in the geographic area covered by the regional planning council.
(b) Representatives from other member local general-purpose governments in the geographic area covered by the regional planning council.
(c) Representatives appointed by the Governor from the geographic area covered by the regional planning council, including an elected school board member from the geographic area covered by the regional planning council, to be nominated by the Florida School Board Association.[4]

Any regional planning council has the power to accept and receive, in furtherance of its functions, funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of state, municipal, or local government, or from private or civic sources. Each regional planning council shall render an accounting of the receipt and disbursement of all funds received by it, pursuant to the federal Older Americans Act, to the Legislature no later than March 1 of each year.[5] Also, the regional planning council has the power to provide technical assistance to local governments on growth management matters.[6]

Coordination of Planning with Local Governing Bodies
Currently the policy for the State of Florida is to require the coordination of planning between boards and local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development, concurrently with other necessary services. Such planning must include the integration of the educational facilities plan and applicable policies and procedures of a board with the local comprehensive plan and land development regulations of local governments. The planning must include the consideration of allowing students to attend the school located nearest their homes when a new housing development is constructed near a county boundary and it is

[4] Section 186.504(2), F.S.
[5] Section 186.505(8), F.S.
[6] Section 186.505(20), F.S.

more feasible to transport the students a short distance to an existing facility in an adjacent county than to construct a new facility or transport students longer distances in their county of residence. The planning must also consider the effects of the location of public education facilities, including the feasibility of keeping central city facilities viable, in order to encourage central city redevelopment and the efficient use of infrastructure and to discourage uncontrolled urban sprawl. In addition, all parties to the planning process must consult with state and local road departments to assist in implementing the Safe Paths to Schools program administered by the Department of Transportation.

State Coordinated Review Process

Section 163.3184, F.S., provides the processes for review of comprehensive plans and most plan amendments.[7] The "expedited state review process" is the process that most plan amendments are reviewed under. The expedited state review process requires two public hearings, one at the proposed phase and one at the adopted phase, and plan amendments are transmitted to reviewing agencies including the state land planning agency that may provide comments on the proposed plan amendment to the local government. The process may be used for all plan amendments except those that are specifically required to undergo the state coordinated review process. After adopting an amendment, the local government must transmit the plan amendment to the state land planning agency within 10 days of the second public hearing, and the state land planning agency must notify the local government of any deficiencies with the plan amendment within 5 working days. Unless timely challenged, an amendment adopted under the expedited state review process does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete.

The "state coordinated review process" is designed for new comprehensive plans and for amendments that require a more comprehensive review. Amendments that are in an area of critical state concern designated pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on an evaluation and appraisal review pursuant to s. 163.3191, F.S., and new plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S., are required to follow the state coordinated review process. The state coordinated review process also requires two public hearings and a proposed plan or plan amendment is transmitted to the reviewing agencies within 10 days after the initial public hearing. Under the state coordinated review process, reviewing agency comments are sent to the state land planning agency that may elect to issue an Objections, Recommendations, and Comments (ORC) report to the local government within 60 days after receiving the proposed plan or plan amendment. The state land planning agency's ORC report details whether the proposed plan or plan amendment is in compliance and whether the proposed plan or plan amendment will adversely impact important state resources and facilities. Once a local government receives the ORC report, it has 180 days to hold a second public hearing on whether to adopt the plan or plan amendment. After a plan or amendment is adopted, the local government must transmit the plan or plan amendment to the state land planning agency within 10 days of the second public hearing, and the state land planning agency must notify the local government of any deficiencies within 5 working days. The state land planning agency then has 45 days to determine if the adopted plan or plan

[7] Section 163.3187, F.S., provides the review process for small-scale amendments, and s. 163.3246, F.S., provides the review process for local governments eligible for the Local Government Comprehensive Planning Certification Program.

amendment is in compliance or not in compliance. The state land planning agency must issue a notice of intent (NOI) to find that the plan or plan amendment is in compliance or not in compliance and must post a copy of the NOI on its website. If a NOI is issued to find the plan or plan amendment not in compliance, the NOI is forwarded to the Division of Administrative Hearings (DOAH) for a compliance hearing.

In addition to challenges brought by the state land planning agency, under both the expedited state review process and the state coordinated review process any "affected person", as defined by s. 163.3184(1)(a), F.S., may challenge an adopted plan or plan amendment by filing a petition with the DOAH within 30 days after the local government adopts the plan or plan amendment. Section 163.3184(5), F.S., provides the process for administrative challenges to adopted plans and plan amendments. If the administrative law judge (ALJ), after a hearing, recommends that the plan or plan amendment be found "not in compliance" the recommended order is submitted to the Administration Commission, comprised of the Governor and the Cabinet, which has 45 days to issue a final order on whether or not the plan or plan amendment is in compliance. If the ALJ, after a hearing, recommends that the plan or plan amendment be found "in compliance" the recommended order is submitted to the state land planning agency. The state land planning agency then has 30 days to refer the recommended order to the Administration Commission if the agency finds the plan or plan amendment to be not in compliance or 30 days to enter a final order if the state land planning agency finds the plan or plan amendment in compliance. According to the state land planning agency, the current timing requirements for issuance of a recommended and final order are largely unworkable given the size and complexity of some cases, the other timing requirements that govern administrative hearings within ch. 120, F.S.,[8] and the limited number of meetings of the Administration Commission.

The standard timing requirements for issuing a final order in an administrative hearing are found in s. 120.569(2)(l), F.S., which requires the final order to be entered within 90 days from the time the hearing is concluded (if conducted by an agency) or after a recommended order is submitted to the agency and mailed to the parties (if the hearing is conducted by an ALJ). This time period can be waived or extended with the consent of all parties.

Section 163.3184(6), F.S., also provides a procedure after the filing of a challenge, for the state land planning agency and the local government to voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the challenge. An affected person involved in a challenge may also enter into the compliance agreement with the local government.

Sector Plan Report

Section 163.3245(7), F.S., requires DEO to provide a status report annually on December 1st to the Senate President and House Speaker regarding existing optional sector plans. The annual report was first required in December of 1999, when the optional sector plan was a pilot program. The Act removed the pilot program status of the sector plan process and streamlined it so that more local governments are able to efficiently use this long-term planning tool. The requirement for this report was removed by the Act, however other legislation passed during the

[8] For example s. 120.57(k), F.S., requires an agency to allow each party 15 days to submit written exceptions to the recommended order.

2011 Session inadvertently amended and retained the requirement, and therefore the requirement remains.[9]

III. Effect of Proposed Changes:

Section 1 amends subsection (8) of s. 163.3167, F.S., to authorize a local government to retain certain charter provisions that were in effect as of June 1, 2011, and that relate to an initiative or referendum process. This will grandfather in local government referendums and initiative processes that existed when the Act took effect while still prohibiting local governments from adopting new initiative or referendum processes regarding approval of development orders or local comprehensive plan amendments or map amendments.

Section 2 amends paragraph (b) of subsection (4) of s. 163.3174, F.S., to require a local land planning agency to periodically evaluate and appraise a comprehensive plan.

Section 3 amends s. 163.3175, F.S., requiring comments by military installations to be considered by local governments in a manner consistent with s. 163.3184, F.S., local governments should take into consideration comments as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base's operation, while also respecting private property.

Section 4 amends paragraphs (f) and (h) of subsection (6) of s. 163.3177, F.S., to revise the housing and intergovernmental coordination elements of comprehensive plans.

Section 5 adds subsections (3) and (4) to s. 163.31777, F.S., to exempt certain municipalities from the interlocal school agreement. This restores the four criteria, inadvertently removed in the Act, which a municipality must meet to show that it has no significant impact on school attendance. If a municipality meets all four criteria, it is exempt from the school interlocal agreement.

Section 6 amends subsection (3) and (6) of s. 163.3178, F.S., to conform to changes made by the Act and to delete provisions relating to the Coastal Resources Interagency Management Committee, a committee that no longer exists.

Section 7 amends paragraph (a) of subsection (1) and paragraphs (a), (i), (j), and (k) of subsection (6) of s. 163.3180, F.S., relating to concurrency to revise and provide requirements relating to public facilities and services, public education facilities, and local school concurrency system requirements; and to delete provisions excluding a municipality that is not a signatory to a certain interlocal agreement from participating in school concurrency. These four criteria are no longer needed since school concurrency is now implemented at the option of the local government.

Section 8 amends paragraphs (b) and (c) of subsection (3), paragraphs (b) and (e) of subsection (4), paragraphs (b), (d), and (e) of subsection (5), and paragraph (f) of subsection (6), and

[9] The optional sector plan report was repealed by s. 28, of ch. 2011-139 (The Act), however, s. 21, ch. 2011-34, amended the requirement and redesignated the subsection causing the report requirement to remain in statute.

subsection (12) of s. 163.3184, F.S., to revise provisions relating to the expedited state review process for adoption of comprehensive plan amendments; clarify the time in which a local government must transmit an amendment to a comprehensive plan and supporting data and analyses to the reviewing agencies; delete the deadlines in administrative challenges to comprehensive plans and plan amendments for the entry of final orders and referrals of recommended orders; and to specify a deadline for the state land planning agency to issue a notice of intent after receiving a complete comprehensive plan or plan amendment adopted pursuant to a compliance agreement.

Section 9 amends subsection (3) of s. 163.3191, F.S., to conform a cross-reference to changes made by the Act.

Section 10 redesignates subsections (8) through (14) of s. 163.3245, F.S., and amends subsections (1) and (7) of s. 163.3245, F.S., to delete an obsolete cross-reference; and to delete a required report relating to optional sector plans.

Section 11 amends paragraph (d) of subsection (2) of s. 186.002, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 12 amends subsection (8) of s. 186.007, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 13 amends s. 186.505, F.S., requiring a regional planning council to determine before accepting a grant that the purpose of the grant is in furtherance of its functions, prohibiting a regional planning council from providing consulting services for a fee to any local government for a project for which the council will serve in a review capacity, and prohibiting a regional planning council from providing consulting services to a private developer or landowner for a project for which the council may serve in a review capacity in the future.

Section 14 amends subsection (1) of s. 186.508, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 15 amends subsections (2) and (3) of s. 189.415, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 16 amends subsection (5) of s. 288.975, F.S., to conform to changes made by the Act regarding the limitation on the frequency of plan amendments.

Section 17 amends paragraph (b) of subsection (6), paragraph (e) of subsection (19), paragraphs (l) and (q) of subsection (24), and paragraph (b) of subsection (29) of s. 380.06, F.S., to correct cross-references.

Section 18 amends subsection (1) of s. 380.115, F.S., to add a cross-reference for exempt developments.

Section 19 amends s. 1013.33, F.S, to delete obsolete requirements for school interlocal agreements.

Section 20 amends paragraph (b) of subsection (2) of s. 1013.35, F.S., to delete a cross-reference to conform to changes made by the Act.

Section 21 amends subsections (3), (5), (6), (7), (8), (9), (10), and (11) of s. 1013.351, F.S., to delete redundant requirements for the submission of certain interlocal agreements with the Office of Educational Facilities and the state land planning agency and for review of the interlocal agreement by the office and the agency.

Section 22 amends subsection (6) of s. 1013.36, F.S., to delete an obsolete cross-reference.

Section 23 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Community Affairs on January 23, 2012.
This CS removes all of the sections fixing cross references to the former Department of Community Affairs. The CS adds a provision regarding the base commander's comments as they pertain to local governments.

B. Amendments:

None.