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:	SB 842
INTRODUCER:	Senator Bennett
SUBJECT:	Growth Management
DATE:	January 17, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Pre-meeting**
2.			CM	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill 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Modifications include fixing cross-references, updating outdated language, and removing provisions throughout the statutes that the Act made obsolete such as references to the twice-a-year limitation on adopting plan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 bill also requires 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, 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.

This bill repeals ss. 163.03, 163.2523, F.S., and substantially amends the following sections of the Florida Statutes: 163.065, 163.2511, 163.2514, 163.2517, 163.2523, 163.3167, 163.3174, 163.3177, 163.3178, 163.3184, 163.3191, 163.3204, s. 163.3221, 163.3246, 163.3247, 163.336, 163.458, 163.460, 163.461, 163.462, 163.5055, 163.506, 163.508, 163.511, 163.512, 186.002, 186.007, 186.505, 186.508, 189.415, 288.975, 342.201, 380.06, 1013.33, 1013.35, and 1013.351.

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

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.

[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.

(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.[3]

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.[4] Also, the regional planning council has the power to provide technical assistance to local governments on growth management matters.[5]

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 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.[6] 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

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

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 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.,[7] 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.

III. Effect of Proposed Changes:

Section 1 repeals s. 163.03, F.S., relating to the powers and duties of the Secretary of Community Affairs and functions of the Department of Community Affairs with respect to federal grant-in-aid programs.

Section 2 amends s. 163.065, F.S., conforming cross-references to changes made by the Act.

Section 3 amends s. 163.2511, F.S., conforming cross references to changes made by the Act.

Section 4 amends s. 163.2514, F.S., conforming cross-references to changes made by the Act.

Section 5 amends s. 163.2517, F.S., replacing references to the Department of Community Affairs with state land planning agency.

Section 6 repeals s. 163.2523, F.S., relating to the Urban Infill and Redevelopment Assistance Grant Program.

Section 7 amends s. 163.3167, F.S., authorizing a local government to retain certain charter provisions that were in effect as of a specified date and that relate to an initiatives or referendum process.

Section 8 amends s. 163.3174, F.S., requiring a local land planning agency to periodically evaluate a comprehensive plan.

Section 9 amends s. 163.3177, F.S., making technical and grammatical changes.

Section 10 amends s. 163.3178, F.S., replacing reference to the Department of Community Affairs with the state land planning agency, deleting provisions relating to the Coastal Resources Interagency Management Committee.

[7] 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.

Section 11 amends s. 163.3180, F.S., deleting provisions excluding a municipality that is not a signatory to a certain interlocal agreement from participating in a school concurrency system.

Section 12 amends s. 163.3184, F.S., clarifying the time in which a local government must transmit an amendment to a comprehensive plan to the reviewing agencies, deleting the deadlines in administrative challenges to comprehensive plans and plan amendments for the entry of final orders and referrals of recommended orders, specifying 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 13 amends s. 163.3191, F.S., conforming a cross-reference to changes made by the Act.

Section 14 amends s. 163.3204, F.S., replacing a reference to the Department of Community Affairs with the state land planning agency.

Section 15 amends s. 163.3221, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 16 amends s. 163.3246, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity, and providing for a local government to update its comprehensive plan based on an evaluation and appraisal review.

Section 17 amends s. 163.3247, F.S., replacing a reference to the Secretary of Community Affairs with the executive director of the state land planning agency, and replacing a reference to the Department of Community Affairs with the state land planning agency.

Section 18 amends s. 163.336, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 19 amends s. 163.458, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 20 amends s. 163.460, F.S., replacing references to the Department of Community Affairs with the Department of Economic Opportunity.

Section 21 amends s. 163.461, F.S., replacing references to the Department of Community Affairs with the Department of Economic Opportunity.

Section 22 amends s. 163.462, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 23 amends s. 163.5055, F.S., replacing references to the Department of Community Affairs with the Department of Economic Opportunity.

Section 24 amends s. 163.506, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 25 amends s. 163.508, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 26 amends s. 163.511, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 27 amends s. 163.512, F.S., replacing a reference to the Department of Community Affairs with the Department of Economic Opportunity.

Section 28 amends s. 186.002, F.S., deleting a requirement for the Governor to consider evaluation and appraisal reports in preparing certain plans and amendments.

Section 29 amends s. 186.007, F.S., deleting a requirement for the Governor to consider certain evaluation and appraisal reports when reviewing the state comprehensive plan.

Section 30 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, 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 31 amends s. 186.508, F.S., requiring regional planning councils to coordinate implementation of the strategic regional policy plans with the evaluation and appraisal process.

Section 32 amends s. 189.415, F.S., requiring an independent special district to update its public facilities report every 7 years and at least 12 months before the submission date of the evaluation and appraisal notification letter, requiring the Department of Economic Opportunity to post a schedule of the due dates for public facilities reports and updates that independent special districts must provide to local governments.

Section 33 amends s. 288.975, F.S., deleting a provision exempting local government plan amendments to initially adopt the military base reuse plan from a limitation on the frequency of plan amendments.

Section 34 amends s. 342.201, F.S., replacing a reference to the Department of Environmental Protection with the Department of Economic Opportunity.

Section 35 amends s. 380.06, F.S., conforming cross-references to changes made by the Act, deleting provisions subjecting recreational vehicle parks that increase in area to potential development-of-regional impact review, exempting development within an urban service boundary and development identified in an airport master plan from development-of-regional-impact review under certain circumstances, and correcting cross-references.

Section 36 amends s. 1013.33, F.S., deleting requirements for interlocal agreements relating to public education facilities, conforming cross-references to changes made by the Act.

Section 37 amends s. 1013.35, F.S., conforming cross references to changes made by the Act.

Section 38 amends s. 1013.351, F.S., deleting a requirement for the School for the Deaf and the Blind to send an interlocal agreement with the municipality in which the school is located to the state land planning agency and the Office of Educational Facilities.

Section 39 provides that this bill would take effect 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.)

None.

B. Amendments:

None.