HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 979 (CS/CS/SB 1180)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Economic Affairs Committee; Community & Military Affairs Subcommittee; and Diaz (Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Community Affairs; and Bennett)	87 **Y's**	31 **N's**
COMPANION BILLS:	CS/CS/SB 1180	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 979 passed the House on February 29, 2012, the bill was amended by the Senate, and subsequently passed by the House on March 8, 2012. The bill makes changes to provisions of law relating to developments of regional impact (DRIs).

The bill exempts from the DRI review process any proposed development, in local government jurisdictions that are not designated as dense urban land areas, which is approved as a comprehensive plan amendment adopted pursuant to the state coordinated review process in s. 163.3184(4), F.S., and which is the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S.

The exemption only takes effect if the applicant, local government, and the state land planning agency execute a written agreement. In order to be a party to the agreement, the state land planning agency must make a determination that the development is the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S., and that the local government has the capacity to assess the impacts of the proposed development. The local government, in order to be a party to the agreement, must receive approval from its governing body and must provide at least 21 days' notice to adjacent local governments that includes, at a minimum, the location, density and intensity of use, and timing of the proposed development. The exemption does not apply to areas within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within two miles of the boundary of the Everglades Protection Area. The bill also amends s. 163.3184(2)(c), F.S., to reference this new exemption.

The bill limits the reviewing agencies' recommendations or comments regarding a proposed development, during the preapplication conference, to comments and recommendations that are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.

The bill provides that the regional planning council (RPC) report may only review affordable housing issues if the regional planning council has adopted an affordable housing policy as part of its strategic regional policy plan. The bill specifies that the RPC report recommendations must be consistent with the standards required by the applicable state permitting agencies or the water management district.

The bill provides that changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted are not substantial deviations, and therefore do not require a notice of proposed change.

The bill allows certain types of DRI-exempt developments to be eligible for the procedures relating to development order rescission. The bill also adds flexibility to the requirement for a project's mitigation to be completed before the DRI development order may be rescinded; by providing that the development order may be rescinded if the required mitigation related to the amount of development existing on the date of rescission will be completed under an existing permit or equivalent authorization issued by a governmental agency, as long as the permit or authorization is subject to enforcement through administrative or judicial remedies.

With limited applicability, the bill provides that certain agricultural parcels may receive the same land use designation as the surrounding parcels, along with a presumption against urban sprawl for proposed land uses and intensities of use that are consistent with surrounding parcels.

The bill does not appear to have any fiscal impact on state or local government.

The bill was approved by the Governor on April 6, 2012, ch. 2012-75, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

A development of regional impact (DRI) is defined in s. 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO), as the state land planning agency, for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[1] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in the local plans.[2] After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program on almost a yearly basis and most changes relate to providing more exemptions, increasing threshold requirements, and providing more lenient standards for avoiding substantial deviations.

DRI Review

Present Situation:

All developments that meet the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a dense urban land area (DULA), or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.[5] The types of development required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.[6] The state land planning agency, a RPC, or the local government may request the Administration Commission to increase or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.[7] Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments,

[1] Section 380.07(2), F.S.
[2] *See* RICHARD G. RUBINO AND EARL M. STARNES, LESSONS LEARNED? THE HISTORY OF PLANNING IN FLORIDA, 371, (Sentry Press, Inc.) (2008).
[3] Section 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] *See* "DRI Exemptions."
[6] Section 380.0651, F.S.
[7] Section 380.06(3), F.S.

and meets other needs of the communities in each region.[8] A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a preapplication conference.[9] A developer or the RPC may also request other affected state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the preapplication conference, the RPC is to provide the developer with information about the DRI process and use the preapplication conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval, and if an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review.

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the preapplication conference with all parties, the developer then files an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[10]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.[11] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[12] The RPC is required to identify regional issues,[13] specifically examining the extent to which:

1. the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
2. the development will significantly impact adjacent jurisdictions; and
3. in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[14]

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.[15] When water management district and Department of

[8] Section 186.502, F.S.
[9] Section 380.06(7), F.S.
[10] Section 380.06(10), F.S.
[11] Section 380.06(11), F.S.
[12] Section 380.06(12), F.S.
[13] Rule 9J-2.024, F.A.C., states in part: "In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order."
[14] Section 380.06(12)(a), F.S.
[15] Section 380.06(12)(b), F.S.

Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits, but may not offer conflicting recommendations.[16]

The state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[17] Rule 9J-2, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the developments impact on:

- hurricane preparedness;[18]
- conservation of listed plan and wildlife resources;[19]
- treatment of archaeological and historical resources;[20]
- hazardous material usage, potable water, wastewater, and solid waste facilities;[21]
- transportation;[22]
- air quality;[23] and
- adequate housing.[24]

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

1. the development is consistent with its comprehensive plan and land development regulations;
2. the development is consistent with the report and recommendations of the RPC; and
3. the development is consistent with the state comprehensive plan.[25]

Within 30 days of the public hearing on the application for development, the local government must render a decision on the application. Within 45 days after a development order is rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[26] An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[27]

Effect of Changes:

The bill amends s. 380.06(7)(a), F.S., to provide that during the preapplication conference, reviewing agencies may only make recommendations or comments regarding a proposed development that are consistent with the statutes, rules, or adopted local government ordinances that are applicable to developments in the jurisdiction where the proposed development is located.

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[16] *Id*.
[17] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.
[18] Rule 9J-2.0256, F.A.C.
[19] Rule 9J-2.041, F.A.C.
[20] Rule 9J-2.043, F.A.C.
[21] Rule 9J-2.044, F.A.C.
[22] Rule 9J-2.045, F.A.C.
[23] Rule 9J-2.046, F.A.C.
[24] Rule 9J-2.048, F.A.C.
[25] Section 380.06(14), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.
[26] Section 380.07(2), F.S.
[27] Section 163.3215, F.S.; s. 163.3215(2) defines, "Aggrieved or adversely affected party" as "any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order."

The bill amends section 380.06(12), F.S., to provide that issues reviewed in the RPC report may only include affordable housing if the regional planning council has adopted an affordable housing policy as part of its strategic regional policy plan. The bill also specifies that the RPC report must contain recommendations that are consistent with the standards required by the applicable state permitting agencies or the water management district. This change is expected to increase consistency for developers in anticipating the standards that will apply to a proposed development.

Substantial Deviations

Present Situation:

DRIs are designed to be built out over many years, which increase the likelihood of necessary changes to the development due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable likelihood of additional regional impact, or creates a reasonable likelihood of a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is required to be subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the state land planning agency.[28] The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.[29]

Section 380.06(19), F.S., provides the specific criteria that constitutes a substantial deviation and causes a development to be subject to additional review.[30] The numerical standards are also automatically increased if a project is a job-creating one or is located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development.[31] Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes, are not substantial deviations.

Effect of Changes:

The bill amends s. 380.06(19)(e)2., F.S., and adds to the list of changes that are not substantial deviations, "Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j."[32] This limits the types of changes that constitute a substantial deviation to two primary changes associated with DRIs - environmental and transportation impacts. Changes to a DRI project that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project would not be required to submit a notice of proposed change to the RPC and state land planning agency, but would be required to submit an application to the local government to amend the development order, which the local government may adopt or deny. If adopted, the amendment to the development order is submitted to the state land planning agency. The state land planning agency may appeal the amendment pursuant to s.

[28] Section 380.06(19)(e)1., F.S.
[29] *Id*.
[30] Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).
[31] Ch. 2011-139, L.O.F.; HB 7207 (2011).
[32] Section 380.06(19)(e)2.f. provides that changes that modify boundaries in subparagraph (b)11. (*see* note 30), due to science-based refinement of such areas by survey, habitat evaluation, by other recognized assessment methodology, or by an environmental assessment do not constitute a substantial deviation. The changes must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

380.07(3), F.S., if it believes that the change creates a reasonable likelihood of new or additional regional impacts.

DRI Exemptions and State Coordinated Review Process

Present Situation:

DRI Exemptions

The Legislature has exempted many types of development from DRI review.[33] Many of the types of projects exempted are subject to other forms of state and federal regulations and were exempted in an effort to avoid duplicative regulation and burdensome time delays. The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a "dense urban land area" (DULA).[34] There are currently eight counties and 242 cities that meet, or have met, the population and density criteria necessary to qualify as a dense urban land area.[35] The exemption for projects within a DULA reflects state policy to encourage development within urban areas and the increased sophistication of local staffs and the progress, since the DRI program was instituted in 1972, which larger, urban counties and municipalities have made in the area of large-scale land use planning. Additionally, the Legislature has also provided two alternative large-scale planning tools known as the sector plan[36] and rural land stewardship program.[37] Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

Qualified Target Industry Tax Refund Program

The Qualified Target Industry (QTI) tax refund program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs. To be eligible for the program, a business must, among other criteria, fall under an industry classification that has been included on the approved list of targeted industries for the state.[38] Section 288.106(5), F.S., requires each qualified target industry business to enter into a written agreement with DEO outlining requirements and conditions of the tax refund agreement.

The program requires that a project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at the business. The jobs proposed to be created or retained must pay an average annual wage of at least 115 percent of the average private sector wage in the area where the business is located or the statewide private sector average wage. The statewide private sector average wage being used currently is $40,555.[39]

The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee and the maximum amount is $11,000 per employee over the term of the incentive agreement.

The program requires that 20 percent of the annual tax refund for a qualified target industry business be paid by the local government entity supporting the project unless an exemption or waiver is approved. The

[33] *See* 380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.
[34] Section 380.06(29), F.S.
[35] For a complete list of counties and municipalities qualifying as a DULA see http://www.floridajobs.org/community-planning-and-development/programs/developments-of-regional-impact-and-florida-quality-developments/list-of-local-governments-qualifying-as-dense-urban-land-areas (last accessed March 19, 2012).
[36] Section 163.3245, F.S.
[37] Section 163.3248, F.S.
[38] Qualified targeted industries include manufacturing, corporate headquarters, and research and development. *See* Enterprise Florida, 2011 Annual Incentives Report, Appendix A.
[39] Enterprise Florida, *Incentive Average Wage Requirements*, 2010.

remaining 80 percent of the annual tax refund would be paid by the state. Currently, the Department of Economic Opportunity may approve a reduction for the local financial support requirement by one-half for a qualified target industry business located in Bay County, Escambia County, Franklin County, Gadsden County, Gulf County, Jefferson County, Leon County, Okaloosa County, Santa Rosa County, Wakulla County, or Walton County, if it is determined that such reduction of the local financial support requirement is in the best interest of the state and facilitates economic development, growth, or new employment opportunities in such county. The amount of the tax refund for a qualified target industry business would be reduced by the amount of the reduced local financial support, and the state would only be responsible for 80 percent of the annual tax refund for a qualified target industry business participating in the program and meeting the performance requirements.

State Coordinated Review Process for Comprehensive Plan Amendments

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 requires two public hearings and a proposed plan or plan amendment is transmitted to the reviewing agencies[40] 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, which 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 five 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 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 Division of Administrative Hearings (DOAH) within 30 days after the local government adopts the plan or plan amendment.

Effect of Changes:

The bill exempts from the DRI review process any proposed development, in local government jurisdictions that are not designated as DULAs, which is approved as a comprehensive plan amendment adopted

[40] Section 163.3184(c), F.S., defines "reviewing agencies" as: the state land planning agency; the appropriate regional planning council; the appropriate water management district; the Department of Environmental Protection; the Department of State; the Department of Transportation; in the case of plan amendments relating to public schools, the Department of Education; in the case of plans or plan amendments that affect a military installation listed in s. 163.3175, the commanding officer of the affected military installation; in the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and in the case of municipal plans and plan amendments, the county in which the municipality is located.

pursuant to the state coordinated review process in s. 163.3184(4), F.S., and which is the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S.

The exemption only takes effect if the applicant, local government, and the state land planning agency[41] execute a written agreement. In order to be a party to the agreement, the state land planning agency must make a determination that the development is the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S., and that the local government has the capacity to assess the impacts of the proposed development. The local government, in order to be a party to the agreement, must receive approval from its governing body and must provide at least 21 days' notice to adjacent local governments that includes, at a minimum, the location, density and intensity of use, and timing of the proposed development. The exemption does not apply to areas within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within two miles of the boundary of the Everglades Protection Area. The bill also amends s. 163.3184(2)(c), F.S., to reference this new exemption.

In other words, if a proposed development is located in a non-DULA jurisdiction, is approved as a comprehensive plan amendment adopted pursuant to the state coordinated review process, and is the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S.,[42] the bill allows the applicant, local government, and the state land planning agency to execute a written agreement that the DRI process will not apply to a development. DEO, in addition to determining that the development is the subject of a tax refund agreement, must make a determination that the local government has the capacity to assess the impacts of the proposed development. The local government governing body must approve the agreement and provide at least 21 days' notice to adjacent local governments.

The state coordinated review process is a more thorough review for plan amendments than the expedited state review process, however, it is not as thorough and lacks the technical assistance that the DRI review process provides, which will be a factor that DEO will have to consider when determining whether the local government has the capacity to assess the impacts of the proposed development.

Further, under the state coordinated review process, comments by state agencies (not including the state land planning agency) are limited to adverse impacts the adopted amendment would have on important state resources and facilities, instead of focusing on regional resources and facilities. However, the RPC would still be able to provide comments on the development, and its comments may discuss adverse effects on regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region.[43]

Vested Rights & Rescission

Present Situation:

One of the greatest benefits of a DRI is the vested rights that attach to the development. Since DRIs are large-scale, high-cost, and long-term projects that occur in multiple phases, it is vital that the rights and duties or obligations specified in the development order are vested and not altered due to a change in DRI guidelines or standards. This predictability is vital so that a developer has the assurance that a future change in standards will not prohibit or delay the full build-out of the project as planned. Section 380.115, F.S., provides the procedures for developments that received a DRI development order, but now are no longer required to undergo DRI review because of a change in the guidelines and standards, or a reduction in the project's size, or a development that is located in a DULA.

[41] Section 380.031(18), F.S., defines "state land planning agency" as the Department of Economic Opportunity.
[42] Incentive programs provided in ch. 288, F.S., include tax refunds for jobs created, cash grants to business in order to attract high-impact business projects to the state, and grants to eligible communities for infrastructure improvements.
[43] *See* s. 163.3184(3)3.a., F.S.

A development that was once subject to DRI review, but now is exempt may continue to be governed by the DRI development order.[44] Alternatively, the developer or landowner may request the development order to be rescinded upon a showing that all required mitigation has been completed related to the amount of development that existed on the date of rescission.[45]

Effect of Changes:

The bill amends s. 380.115, F.S., to allow developments exempt from DRI review listed in s. 380.06(24), F.S., to be eligible for the procedures relating to development order rescission. The bill also adds flexibility to the requirement for a project's mitigation to be completed before the DRI development order may be rescinded; by providing that the development order may be rescinded if the required mitigation related to the amount of development existing on the date of rescission will be completed under an existing permit or equivalent authorization issued by a governmental agency,[46] as long as the permit or authorization is subject to enforcement through administrative or judicial remedies.

This provision will provide increased flexibility for projects that wish to expedite the rescission of the development order by allowing the rescission to take place as long as a permit for the required mitigation has been issued. Further, the bill ensures any permits issued must be enforceable either through administrative or judicial remedies.

Land Surrounded By Single Land Use Designation

Current law allows the owner of a parcel of land defined as an "agricultural enclave" to apply for an amendment to the local government's comprehensive plan.[47] Such amendment is presumed not to be urban sprawl if it includes land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.[48] This presumption may be rebutted by clear and convincing evidence. If the parcel is larger than 640 acres, the development must include appropriate new urbanism concepts.[49]

An agricultural enclave is defined in s. 163.3164(4), F.S., as an unincorporated, undeveloped parcel that is owned by a single person or entity and that has been in continuous use for bona fide agricultural purposes, for a period of five years. The parcel must be surrounded on at least 75 percent of its perimeter by either property that has existing industrial, commercial, or residential development, or property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development. The parcel must have public services, including water, wastewater, transportation, schools, and recreation facilities, available or scheduled in the capital improvement element to be provided by the local government or provided by an alternative provider. Additionally, the parcel may not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.[50]

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[44] Section 380.115(a), F.S.
[45] Section 380.115(b), F.S.
[46] "Governmental agency" is defined in s. 380.031(6) as:
(a) The United States or any department, commission, agency, or other instrumentality thereof;
(b) This state or any department, commission, agency, or other instrumentality thereof;
(c) Any local government, as defined in this chapter, or any department, commission, agency, or other instrumentality thereof;
(d) Any school board or other special district, authority, or other governmental entity.
[47] Section 163.3162(4), F.S.
[48] *Id*.
[49] Such as clustering, mixed-use development, the creation of rural village and city centers and the transfer of development rights.
[50] Section 163.3164(4), F.S.

A time frame is outlined in statute for good faith negotiation between the parcel owner and local government in order to reach consensus as to the land uses and intensities of use that are consistent with the areas surrounding the parcel.[51] Whether consensus is reached or not, the amendment is to be transmitted to the state land planning agency for review and is presumed not to be urban sprawl as defined in s. 163.3164, F.S. This presumption may be rebutted by clear and convincing evidence. Current protections for property located within the Wekiva Study Area[52] or the Everglades Protection Area[53] are not affected by provisions relating to agricultural enclaves in s. 163.3162, F.S.

Currently, in order for a parcel to qualify as an agricultural enclave, it must be surrounded by some existing industrial, commercial, or residential development. The requirement for existing development was put into place in order to avoid urban sprawl and to facilitate a natural and timely buildout allowing public services to be available to meet the demands of development. There are instances, however, when certain agricultural enclaves abut lands that have been designated or authorized for a certain type of land use, but the development does not yet exist. Current law does little to assist parcels abutted by lands, such as DRIs that are authorized to be developed for certain purposes, but that may not be actually developed or built out for years to come, if ever. These types of parcels do not meet the definition of an "agricultural enclave" as defined by s. 163.3164, F.S., and are unable to take advantage of the benefits that agricultural enclaves receive until the land surrounding the parcel is developed for its authorized use.

Effect of Changes:

The bill authorizes certain qualifying agricultural lands located in an unincorporated area of a county to apply for an amendment to the local government comprehensive plan. This amendment is presumed not to be urban sprawl[54] if the amendment proposes land uses and intensities of use that are consistent with existing or authorized land uses and intensities for industrial, commercial, or residential areas that surround the parcel subject to the amendment. The bill provides that if the parcel of land is abutted on all sides by land having only one land use designation, the same land use designation must be presumed by the county to be appropriate for the parcel subject to the amendment. After considering the proposed density and intensity of use, the county is required to grant the same land use designation as the surrounding parcels that abut the parcel subject to the amendment unless the county finds by clear and convincing evidence that granting the same land use designation would be detrimental to the health, safety, and welfare of its residents.

This allows certain qualifying parcels to receive the same land use designation as the lands abutting it. Parcel owners whose land is abutted by land that has been authorized for industrial, commercial, or residential development, but that has not been developed yet, will no longer have to wait for the land abutting it, such as a DRI which is not yet completely built out, to be developed in order to receive the same land use designation from the local government as the abutting parcels. Counties are not required to grant the same land use designation if it is clear and convincing that doing so would be detrimental to the health, safety, and welfare of its residents.

In order for a parcel to qualify it must be: owned by a single person or entity; have been in continuous use for bona fide agricultural purposes[55] for at least five years; surrounded on at least 95 percent of its perimeter by property that the local government has designated as land that may be developed for industrial, commercial, or residential; and between 500 and 640 acres in size. The bill does not preempt or replace any current protections for property located within the Wekiva Study Area[56] or the Everglades Protection Area.[57] Parcels that qualify for this designation are required to submit a written application to the county where the parcel is located by January 1, 2013.

[51] *See* s. 163.3162(4)(a)-(d), F.S.
[52] As described in s. 369.316, F.S.
[53] As defined in s. 373.4592(2), F.S.
[54] As defined in s. 163.3164, F.S.
[55] As defined by s. 193.461, F.S.
[56] As described in s. 369.316, F.S.
[57] As defined in s. 373.4592(2), F.S.

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:
   Allowing the applicant, local government, and the state land planning agency to enter into a written agreement and use the state coordinated review process instead of the DRI review process for developments that are the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S., may provide significant cost and time savings for private developers.

D. FISCAL COMMENTS:
   None.