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 Committee on Community Affairs

BILL:	CS/SB 1244
INTRODUCER:	Community Affairs Committee and Senator Lee
SUBJECT:	Developments of Regional Impact
DATE:	January 23, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.			ATD	
3.			AP	

I. Summary:

CS/SB 1244 makes several changes to the state's development of regional impact (DRI) statutes after the program was ended in 2015. Specifically, the bill:

- Adds minimum population criteria for converting certain independent special districts into a municipality;
- Deletes obsolete language for the application and review of DRIs;
- Changes the process for existing DRIs to change a development order;
- Retains statewide guidelines and standards for determining when a development is subject to state coordinated review;
- Updates reporting requirements;
- Preserves certain unexpired letters, development orders, and agreements;
- Ends all DRI appeals to the Administration Commission except decisions by local governments under the DRI abandonment process;
- Repeals state land planning agency rules related to DRIs and Administration Commission rules related to aggregation of developments for the purpose of DRI review;
- Repeals the Florida Quality Developments (FQD) program and allows FQD development orders to be replaced by local government development orders; and
- Makes technical and conforming changes.

II. Present Situation:

Development of Regional Impact

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." The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for

proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed law that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.[1] After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

In 2015, the Florida Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process for the review of local government comprehensive plan amendments.[2]

DRI Review

Before the program ended, all developments that met the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] were required to undergo DRI review, unless the Legislature provided an exemption for that particular type of project, the development was located within a "dense urban land area,"[5] or the development was located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area. The types of developments required to undergo DRI review upon meeting the specified thresholds and standards included attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, and recreational vehicle developments.[6] Over the years, the Legislature enacted many exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.

Florida's 11 RPCs coordinated the multi-agency review of proposed DRIs. A DRI review began by a developer contacting the RPC with jurisdiction over a proposed development to arrange a pre-application conference.[7] The developer or the RPC could request other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that the agency would require in the application to assess those issues. At the pre-application conference, the RPC provided the developer with information about the DRI process and used the pre-application conference to identify issues and to coordinate the appropriate state and local agency requirements.

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[1] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[2] Section 380.06(30), F.S. Chapter 2015-30, L.O.F.
[3] Section 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] The criteria for qualification as a dense urban land area are contained in s. 380.06(29), F.S. Currently, eight counties and 243 cities qualify as dense urban land areas that are exempt from the DRI program.
[6] Section 380.0651, F.S.
[7] Section 380.06(7), F.S.

Upon completion of the pre-application conference with all parties, the developer filed an application for development approval with the local government, the RPC, and the state land planning agency (DEO). The RPC reviewed the application for sufficiency and could request additional information (no more than twice) if the application was deemed insufficient.[8]

When the RPC determined the application was sufficient or the developer declined to provide additional information, the local government had to hold a public hearing on the application for development within 90 days.[9] Within 50 days after receiving notice of the public hearing, the RPC was required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[10] The RPC was required to identify regional issues specifically examining the extent to which:

- The development would 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;
- The development would significantly impact adjacent jurisdictions; and
- 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.[11]

If the proposed project will have impacts within the purview of other state agencies, those agencies would also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdiction. These reports became part of the RPC's report, but the RPC could attach dissenting views.[12] When water management district (WMD) and Department of Environmental Protection (DEP) permits had been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC could comment on the regional implications of the permits but could not offer conflicting recommendations.[13] Finally, the state land planning agency also reviewed 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.[14]

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

- The development was consistent with its comprehensive plan and land development regulations;
- The development was consistent with the report and recommendations of the RPC; and
- The development was consistent with the state comprehensive plan.[15]

[8] Section 380.06(10), F.S.
[9] Section 380.06(11), F.S.
[10] Section 380.06(12), F.S.
[11] Section 380.06(12)(a), F.S.
[12] Section 380.06(12)(b), F.S.
[13] *Id*.
[14] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sept. 2011.
[15] Section 380.06(13), F.S. DRIs located in areas of critical state concern must also comply with the land development regulations in s. 380.05, F.S.

Within 30 days of the public hearing on the application for development approval, the local government had to decide whether to issue a development order or not. Within 45 days after a development order was or was not rendered, the owner or developer of the property or the state land planning agency could appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[16] An "aggrieved or adversely affected party" could appeal and challenge the consistency of a development order with the local comprehensive plan.[17]

Completion of this entire process could take one to two years and require the expenditure of significant resources, both on the part of private developers and state agencies, resulting in costs totaling in the millions of dollars.

Substantial Deviation

After a development order was issued, any proposed change to a previously approved DRI development order that creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, constitutes a "substantial deviation" and requires such proposed change to be subject to further DRI review. To determine whether a proposed change requires further DRI review, Florida law establishes the following:

- Certain threshold criteria beyond which a change constitutes a substantial deviation;
- Certain changes in development that do not amount to a substantial deviation;
- Scenarios in which a substantial deviation is presumed; and
- Scenarios in which a change is presumed not to create a substantial deviation.

In addition, Florida law directs DEO to establish by rule standard forms for submittal of proposed changes to a previously approved DRI development order. At a minimum, the form must require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order. The developer must submit the form to the local government, the regional planning agency, and DEO.

After the developer submits the form, the appropriate regional planning agency or DEO must review the proposed change and, no later than 45 days after submittal of the proposed change, must advise the local government in writing whether it objects to the proposed change, specifying the reasons for its objection, and must provide a copy to the developer.

In addition, the local government must give 15 days' notice and schedule a public hearing to consider the change. This public hearing must be held within 60 days after submittal of the proposed changes, unless the developer wishes to extend the time.

At the public hearing, the local government must determine whether the proposed change requires further DRI review based on the thresholds and standards set out in law. The local government may also deny the proposed change based on matters relating to local issues.

[16] Section 380.07(2), F.S.
[17] Section 163.3215, F.S.

If the local government determines that the proposed change does not require further DRI review and is otherwise approved, the local government must issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. If, however, the local government determines that proposed change does require further DRI review, the local government must determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development.

DRI Exemptions

Over the years, the DRI program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of the exemptions from the DRI program that have been enacted:

- Certain projects that created at least 100 jobs that met certain qualifications – 1997;
- Certain expansions to port harbors, certain port transportation facilities, and certain intermodal transportation facilities – 1999;
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as rural areas of opportunity) – 2001;
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002;
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002;
- Certain waterport or marina developments – 2002; and
- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).[18] In 2015, 8 counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.[19]

Comprehensive Plans and the Comprehensive Plan Amendment Process

The Growth Management Act of 1985 required every city and county to create and implement a comprehensive plan to guide future development.[20] A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government first amends its comprehensive plan.

[18] Chapter 2009-96, L.O.F.
[19] Department of Economic Opportunity, Community Planning, Development, and Services, Community Planning, *Community Planning Table of Content: List of Local Governments Qualifying as Dense Urban Land Areas*, (June 11, 2015), available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas (last visited January 19, 2018).
[20] Chapter 1985-55, L.O.F.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[21] The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.[22]

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for "extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region" as well as adverse effects on regional resources or facilities.[23] The DEO will compile reports from the various involved agencies and issue an Objections, Recommendation, and Comments Report.[24] The report is a consolidated report comprised of objections, recommendations, and comments from the involved agencies. Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.[25] The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.[26]

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[27] Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.

Florida Quality Developments

Florida Quality Developments (FQDs) are DRI-sized projects that receive a Florida Quality Development designation if they meet certain statutory criteria. The criteria is designed to enhance the developments, e.g., protect and preserve environmentally sensitive lands including wildlife habitat and wetlands; participate in a downtown reuse or redevelopment program to improve and rehabilitate a declining downtown area; provide for construction and maintenance of all onsite infrastructure necessary to support the project; include open space, recreation areas,

[21] Section 163.3174(4)(a), F.S.
[22] Section 163.3184, F.S.
[23] Section 163.3184(3)(b)3.a., F.S.
[24] Florida Department of Economic Opportunity, State Coordinated Review Amendment Process, http://floridajobs.org/docs/default-source/2015-community-development/community-planning/comp-plan/statecoordinatedreviewprocessflowchart.pdf?sfvrsn=2 (last visited January 19, 2018).
[25] Section 163.3184(3)(c) and (4)(e), F.S.
[26] *Id*.
[27] Chapter 2011-14, L.O.F. *See* s. 163.3184(3) and (4), F.S.

Florida-friendly landscaping as defined in s. 373.185, F.S., and energy conservation and minimize impermeable surfaces as appropriate to the location and type of project; and similar enhancements. The state land planning agency issues the development orders for FQDs. According to the Department's records, the last FQD development order was issued in 2002, which was also the last time an FQD development order was requested.[28]

III. Effect of Proposed Changes:

The bill grants local governments the responsibility for implementation of amendments to DRIs and FQD development orders.

Section 1 amends s. 165.0615, F.S., to add a minimum population standard for qualified electors of an independent special district to commence a certain municipal conversion proceeding. Specifically, it requires an independent special district wishing to convert to a municipality to have a minimum population of 1,500 people if the population of the county is less than 75,000 people or, if the county has more than 75,000 people, then the independent special district wishing to convert to a municipality must have a population of at least 5,000. There is currently no population standard.

Section 2 amends s. 380.06, F.S., to retain statewide guidelines and standards and exemptions for DRIs to use them to determine whether a development is subject to the state coordinated review process. These guidelines will remain in effect unless repealed by statute. This section also:

- Deletes provisions that are obsolete with the removal if the DRI program;
- Maintains the guidelines and standards for thresholds that determine whether a development will be subject to state coordinated review;
- Preserves unexpired binding letters, essentially built out agreements, capital contribution front loading agreements between a developer and local government, any agreements between a local government and a developer to reimburse the developer for voluntary contributions paid in excess of his or her fair share, time extensions previously granted by statute, agreements related to projects that include more than one DRI, and areawide DRI development orders;
- Gives local governments the authority to amend a binding letter of vested rights pursuant to its comprehensive plan and land development regulations upon request by the developer;
- Amends the provision regarding the local government development order; authorizing development within a portion of the DRI that is not directly affected by a proposed change to continue during the review of the proposed change, and provides that review is limited to impacts created by the proposed change;
- Revises the provision relating to credits against local impact fees. The adoption of a change to a development order for an approved DRI does not diminish or otherwise alter any credits for a development order exaction or fee as against impact fees, mobility fees, or exactions when such credits are based upon the developer's contribution of land or a public facility. The subsection adds mobility fees to the types of fees a developer can petition;

[28] Florida Department of Economic Opportunity, *Senate Bill 1244 Analysis* (December 22, 2017).

- Requires a developer to follow whatever reporting requirements are set by the local government with jurisdiction over the development. (The requirement used to be a biennial report submitted by the developer in alternate years as specified by the development order.);
- Amends the former substantial deviations subsection, now titled "changes." This section requires any proposed change to a previously approved DRI to be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including but not limited to procedures for notice to the applicant and the public regarding issuance of development orders. There must be at least one public hearing for proposed changes, and the local governing body must approve any changes before it becomes effective. Development within a portion of the DRI that is not directly affected by a proposed change can continue during the review of the proposed change, and review is limited to impacts created by the proposed change. Changes to a phase date, buildout date, expiration date, or termination date may also extend any required mitigation (consistent with current law);
- Provides that abandonment of a DRI development order shall be deemed to have occurred when the required notice of abandonment is filed with the county clerk. Local governments must issue an abandonment order if requested by a developer if all development that exists at the time of abandonment has been mitigated or will be mitigated pursuant to an existing permit enforceable through an administrative or judicial proceeding;
- Moves the statutory exemptions, partial statutory exemptions, exemptions for DULAs from the DRI program to s. 380.0651, F.S., so they continue to be exempt from state coordinated review; and
- Prescribes that proposed developments that exceed the statewide guidelines and standards and are not otherwise exempt must be approved by a local government following the statewide coordinated review process in s. 163.3184(4), F.S.

Section 3 amends s. 380.061, F.S., and effectively repeals the FQD program, allowing FQD development orders to be replaced by local government development orders.

Section 4 amends s. 380.0651, F.S., maintaining the guidelines and standards formerly used for developments required to undergo DRI review. The guidelines and standards are retained to now determine whether developments are subject to state coordinated review.

Section 5 amends s. 380.07, F.S., removing DRIs from the Florida Land and Water Adjudicatory Commission's rulemaking authority. This provision provides that the state land planning agency may challenge a local order abandoning a DRI.

Section 6 amends s. 380.115, F.S., allowing developments that have received a DRI development order but are no longer required to undergo DRI review to elect to rescind the development order pursuant to certain procedures. Section 5 also adds that the local government issuing the development order must monitor the development and enforce the development order.

Section 8 amends s. 163. 3245, F.S., to correct cross references due to renumbering and provides that a development subject to a master plan remains subject to the master plan unless it is abandoned or rescinded.

Section 9 amends s. 163.3246, F.S., to update wording.

Section 10 amends s. 189.08, F.S., allowing those special districts building, improving, or expanding public facilities addressed by a development order issued to the developer pursuant to s. 380.06, F.S. to use the most recent local government report required by s. 380.06(6), F.S. to the extent needed to submit its own public facilities report required by s. 189.08(2), F.S.

Section 12 amends s. 190.012, F.S., to delete a reference related to the FQD program.

Section 19 repeals s. 380.065, F.S., which governed the certification of local government review of development.

Section 22 repeals the rules adopted by the state land planning agency governing DRIs codified in chapter 73C-40, Florida Administrative Code.

Section 23 states that the Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" with "the date this act takes effect" wherever it occurs in this act.

Sections 7, 11, 13, 15, 16, 17, and 21 correct various cross references due to renumbering.

Sections 14, 18, and 20 amend various sections to delete references to the DRI program.

Section 24 provides that the act shall 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:

The state land planning agency will have decreased review responsibilities over various processes for DRIs. Many of these responsibilities have been transferred to local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 380.06, 380.061, 380.0651, 380.07, 380.115, 125.68, 163.3245, 163.3246, 189.08, 190.005, 190.012, 252.363, 369.303, 369.307, 373.236, 373.414, 378.601, 380.11, and 403.524.

This bill repeals section 380.065 of the Florida Statutes.

IX. 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, 2018:

- Reinserts language omitted in the moving of the DRI exemptions from one section to the other.
- Adds a minimum population standard as a criteria that must be met before qualified electors of an independent special district commence a certain municipal conversion proceeding.
- Makes technical wording changes.

B. Amendments:

None.