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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
ANALYSIS

BILL #: HB 1433

RELATING TO: Growth management

SPONSOR(S): Representative(s) Bennett

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) TRANSPORTATION YEAS 9 NAYS 2
(2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

Currently, airports, petroleum storage facilities and marinas are among the types of large-scale developments that must go through a "development of regional impact" (DRI) review prior to being built or expanded, pursuant to ss. 380.06 and 380.0651, F.S. The DRI review process allows the Department of Community Affairs and regional boards to scrutinize an eligible project's impact on the health, safety and welfare of the citizenry, and to determine if it is consistent with the area's approved land-uses and comprehensive plans.

HB 1433 eliminates DRI review of: airports; petroleum storage facilities that are consistent with a local comprehensive plan or a port master plan; and, under certain conditions, marinas. The bill requires the owners of publicly owned airports that are licensed by the Department of Transportation to submit by July 1, 2001, an airport master plan to the relevant local government, for inclusion in its comprehensive plan by July 1, 2002. The marina exemption applies, at least initially, to all but 13 counties statutorily identified as being inhabited by manatees "on a regular or continuous basis." Marina projects in each of these 13 counties would be exempt from DRI review either after the county in question has adopted a manatee protection plan and submitted it to the Fish and Wildlife Conservation Commission, or on October 1, 2002, whichever is earlier.

HB 1433 also addresses the status of airports, petroleum storage facilities, and marinas that have received a DRI development order, but would no longer be required to undergo DRI review, because of passage of the bill. In such cases, the development would continue to be governed by the terms of the development order, which may be enforced by the appropriate local government. The landowner or development may request that the DRI development be amended or rescinded, consistent with the local comprehensive plan and land-development regulations. Airports, petroleum storage facilities, and marinas with an application for development approval, or notification of approval, pending as of the effective date of this act, may decide to continue with the review. In any event, the resulting development order would be governed by the provisions of this act.

Finally, the bill deletes language that creates presumptions of whether or not a project is subject to DRI review based on the percentage above or below numeric thresholds established in statute or rule.

HB 1433 has no apparent impact on state government funding, nor does it raise constitutional issues. HB 1433 takes effect upon becoming a law.

(The Transportation Committee on April 11, 2001, considered HB 1433, adopted four amendments, then passed the bill. The amendments are traveling with the bill. They are explained in the section, "VI. Amendments and Committee Substitute Changes:" below.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background on DRI

Chapter 380, F.S., includes the Development of Regional Impact (DRI) program, enacted as part of the Florida Environmental Land and Water Management Act of 1972. The DRI program provides state and regional review of local land-use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Those developments that review guidelines have been established for are found in s. 380.0651(3), F.S., and include: airports; attractions and recreation facilities; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; office development; port facilities; retail and service development; hotel or motel development; recreational vehicle development; multi-use development; residential development; and schools. Guidelines for hospitals, mining operations, and petroleum storage facilities are established by rule of the Administration Commission under chapter 28-24, F.A.C. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Rule 28-24, F.A.C.

Examples of numeric thresholds that trigger a DRI review include: 10,000 permanent spectator seats in a stadium; an office park to be operated under common ownership that will encompass 30 or more acres; and recreational vehicle parks that will accommodate 500 or more parking spaces.

There are percent thresholds in s. 380.06(2)(d), F.S., that are applied to the guidelines and standards in s. 380.0651(3). If a development is at or below 80 percent of all numerical thresholds in the guidelines, then that development is not required to undergo DRI review. If a development is at or above 120 percent of the guidelines, the development is required to undergo DRI review. This is also known as the "fixed thresholds" for DRI review.

In addition to "fixed thresholds," there are also "rebuttable presumptions." If a development is between 80 percent and 100 percent of a numerical threshold, the development is presumed not to require DRI review. If a development is at 100 percent or between 100 percent and 120 percent of a numerical threshold, then the development is presumed to require DRI review. But being "rebuttable," these presumptions can be challenged before DCA. For example, a developer whose project is at 105 percent of the threshold can make a case to DCA that the project should not be treated as a DRI, because of other circumstances.

The intent in creating fixed thresholds and rebuttable presumptions were twofold. To encourage developers to stay below the maximum numbers for parking spaces, housing units, arena seats, or whatever the thresholds are for their specific projects, the DRI trigger was set at below 100 percent. But acknowledging extenuating circumstances, the statutes built in flexibility for DCA to allow a developer to exceed the threshold, by less than 20 percent, if the developer could make a convincing case.

Further complicating the issue is that if a development is within 2 miles of a boundary between two counties, the development is reviewed under the standards and guidelines of the less-populous county.

There are seven steps within the DRI review process. Those steps are the preapplication conference, application for development approval, sufficiency determination by the RPC, local governments notice of public hearing, RPC report, local government public hearing, and issuance of the development order by the local government. It is a lengthy, time-consuming and expensive process.

This summer, the Governor's Growth Management Study Commission evaluated the DRI process as one of its tasks. The Commission recommended eventually replacing DRIs with less-cumbersome "regional cooperation agreements."

Airport Planning and Development

Florida currently has 111 general aviation airports, 29 commercial airports, and more than 700 private airports. Construction of new airports, and major expansions of existing airports, undergo an extensive local, state and federal review outside of the DRI process.

Every city and county in Florida must adopt and enforce a comprehensive plan, pursuant to Chapter 163, Part II, F.S. Section 163.3177, F.S., requires that each comprehensive plan contain a future land-use element designating the proposed future general distribution, location and extent of lands for public facilities, which includes airports. The comprehensive plan must also contain a traffic circulation element, which for municipalities having populations greater than 50,000 and counties having populations greater than 75,000, must include as part of the circulation element, or as a separate element, plans for port, aviation and related facilities, which are coordinated with the general circulation and transportation elements.

Local governments, in adopting land development regulations to implement their comprehensive plans, are required to include specific and detailed provisions necessary or desirable to implement the plan which shall, as a minimum, ensure the compatibility of adjacent uses. Local governments with airports within their jurisdiction are given additional authority and direction concerning land-use compatibility. The creation or maintenance of an airport hazard and the incompatible use of land in the vicinity of an airport have been determined to be public nuisances. Local governments with airport hazards (as defined pursuant to federal obstruction standards) are given the power and direction to adopt airport-zoning regulations to minimize or eliminate the effect of those hazards. Where the airport and the hazard are in different political jurisdictions, the statute requires either interlocal agreement or creation of a joint airport zoning board to address the airport hazard issue. Where a local government has adopted land development regulations pursuant to Chapter 163, F.S., which addresses the use of land consistent with the airport zoning statutes, no land-use compatibility regulations pursuant to Chapter 333, F.S., need be adopted. Section 330.36, F.S., provides that no county or municipality of the state shall license airports or control their location except by zoning requirements.

There also is an extensive system of state oversight of aviation and airport facilities that is vested in the Florida Department of Transportation (DOT). The determination of suitable sites and standards of safety for airports is reserved to the state in accordance with the provisions of Chapter 330, F.S. Site approval is conditioned upon satisfaction of a number of items including adequacy of the proposed airport, conformance to standards of safety, compliance with applicable county or municipal zoning requirements, receipt and consideration of comments from nearby airports, property owners and adjacent jurisdictions, and safe air traffic patterns.

The Florida Airport Development and Assistance Act, Chapter 332, F.S., charges the DOT with the development and improvement of air routes, airport facilities and landing fields. To that end, the department has implemented aviation system planning to establish an integrated statewide aviation system. DOT also is charged with the development of a statewide Aviation System Plan which is periodically updated and which analyzes aviation needs on a five-, 10- and 20-year planning horizon. The Aviation System Plan must be consistent with the Florida Transportation Plan and does not preempt local airport master plans that are adopted in compliance with Federal and State requirements. Pursuant to the act, DOT also provides financial assistance to local sponsors in accordance with its work program. As part of its integrated planning effort, only projects that will contribute to the implementation of the State Aviation System Plan, are consistent with and contribute to the implementation of an airport master plan and are consistent, to the maximum extent feasible, with the approved local government comprehensive plan, are eligible for state funds.

There is also federal oversight in the implementation of the national policy for the promotion and operation of a national plan of integrated airport systems. See, generally, 49 U.S.C. 471, Airport Development. As a result of the federal involvement, a variety of funds have been established for the planning, construction and operation of a system of airports nationwide. These funds are administered by the Federal Aviation Administration (FAA) within the U.S. Department of Transportation. As with the state funds, federal funds cannot be expended except in conformance with certain planning requirements. The FAA requires as a condition precedent to funding any activity that the activity be included in an FAA-approved master plan for the airport facility.

The FAA-approved master plan is not a static document. The planning process requires an updated revision to the plan at least every five years. In practice, some airports revise their master plans more frequently, and, for the larger airports, the master plan is almost in a continual state of revision.

Federal planning and funding decisions for aviation development are subject to review under the National Environmental Policy Act (NEPA). As such, those developments must be reviewed as directed by NEPA and can result in the preparation of an environmental assessment (EA) or environmental impact statement (EIS) in order to implement an aviation project. That review is in addition to, and not in derogation of, local or state review of the activity.

The FAA also administers the National Aviation Noise Policy. This is one area where the Federal interest has preempted state and local regulation in favor of a consistent, coordinated policy for all of the nation's airports. Accordingly, neither the DRI program nor any other local or state regulatory program could have an effect in the area of airport noise impacts.

While there is a coordinated and extensive interlocking scheme of local, state and federal regulation of airports and aviation facilities, that scheme does not in and of itself exempt airports from the operation of other local, state and federal environmental regulatory programs. Those programs continue to apply to proposed activities of airport facilities. For example, the Clean Water Act and the Rivers and Harbors Act of 1899 require authorization from the U.S. Army Corps of Engineers for any construction or discharge of materials into waters of the United States. (33 U.S.C. 403, 33

U.S.C. 1444). Issuance of a permit under these programs requires assurance that all applicable water quality standards are maintained, habitat is preserved, and endangered and threatened species are protected. Issuance of the permit also requires an analysis of cumulative and secondary impacts that may result from the authorization. In addition, where applicable, the following programs also apply: National Pollutant Discharge Elimination System (NPDES) permitting, Federal Coastal Management Act, Fish and Wildlife Coordination Act and Endangered Species Act.

At the state level, any activity in jurisdictional wetlands requires issuance of an environmental resource permit (ERP) from either DEP or the appropriate water management district. This permit, issued pursuant to Part IV, Chapter 373, F.S., demonstrates reasonable assurance that the project complies with state adopted water quality standards, preserves habitats and protects endangered and threatened species and avoids unacceptable cumulative and secondary impacts. State and federal regulatory programs concerning the storage and handling of petroleum products and other potentially hazardous materials also apply in full to airport projects.

Regulation of Petroleum Storage Facilities

According to the Department of Environmental Protection's Division of Waste Management, there are 409 registered petroleum storage facilities ("tank farms") in Florida, containing a total 1,743 tanks with an individual capacity of at least 30,000 gallons of fuel. Most are owned by private-sector petroleum distribution companies.

Local governments within Florida's coastal zone must include in their comprehensive plans a coastal management element that calls for a comprehensive master plan to be prepared by each deep-water port. Inland counties and cities obviously will not have a port master plan, but their comprehensive plans still must address all of the elements outlined in s. 163.3177, F.S. These plans also must contain a traffic circulation element, which for municipalities having populations greater than 50,000 and counties having populations greater than 75,000 must include as part of the circulation element, or as a separate element, plans for aviation, rail, and intermodal terminals which are coordinated with the general circulation and transportation elements. Inland bulk storage facilities are a critical link in the intermodal transportation of petroleum products. They facilitate product movement between ports, pipelines and the truck transportation that supplies fuels to retail consumer outlets. They also link the supply of aviation fuel from ports to major metropolitan airports.

Local governments, in adopting land development regulations to implement their comprehensive plans, are required to include specific and detailed provisions necessary or desirable to implement the plan which shall, at a minimum, ensure the compatibility of adjacent uses. Local comprehensive plans give local governments the necessary authority to regulate the placement and compatibility of bulk petroleum storage facilities and to address any traffic impacts of such facilities. Other state and federal regulatory schemes create a pervasive network regulating all other aspects of these facilities. (In many cases, local governments have authority to carry out tank regulations by delegation of authority from the Department of Environmental Protection under Chapter 376, F.S., discussed below.)

In Chapter 376, F.S., Pollutant Discharge Prevention and Removal, the storage, transportation and disposal of petroleum products is extensively regulated. The Department of Environmental Protection is given the power and duty to establish rules governing the construction, registration, operation and maintenance of petroleum bulk storage facilities, and the aboveground tanks that comprise these facilities.

Chapter 62-761, F.A.C., which implements Chapter 376, F.S., provides standards for underground tanks and for all aboveground storage tank systems over 550 gallons. These regulations require

the registration of each such tank and require that the facility provide financial responsibility sufficient to meet any problems that might arise from a discharge. All storage tanks must be engineered, constructed, operated and maintained according to specific performance standards set out in the rule. Inspection and repair schedules are mandated, as is extensive record keeping and reporting. All such tanks must be appropriately lined and have secondary containment.

The applicable requirements of various standards setting bodies are incorporated by reference in Chapter 62-761, F.A.C., and made part of the requirements for construction, maintenance and inspection of such tanks. These include standards developed by the American Concrete Institute, the American Petroleum Institute, the American Society of Mechanical Engineers, the American Society for Testing & Materials, the National Association of Corrosion Engineers, the National Leak Prevention Association, the Petroleum Equipment Institute, the Society for Protective Coatings, the Steel Tank Institute, and Underwriters Laboratories. These facilities are also subject to the requirements of the National Fire Protection Association, which prescribes methods of minimizing the risks of fire by placement and diking of the tanks. Chapters 376 and 403, F.S., also provide for civil and criminal liability for any discharges from these facilities and for violations of the rules applicable to them.

Inland bulk storage facilities also must comply with the following:

- Florida and federal regulations governing the discharge of wastewater and/or storm water under both the state's own regulations and its implementation of the National Pollutant Discharge Elimination System as part of the federal Clean Water Act (33 U.S.C. 1344).

- The Federal Clean Air Act (42 U.S.C. 7401), including Title V, is administered partially by the state and partially by the federal government and controls air emissions from these facilities.

- Any facility constructed in jurisdictional wetlands requires issuance of an environmental resource permit (ERP) from either DEP or the appropriate water management district. This permit, issued pursuant to Part IV, Chapter 373, F.S., requires the applicant to provide assurance that the permitted facility complies with state water quality standards, preserves habitats and protects endangered and threatened species.

- Chapter 62-521.400, F.A.C., Wellhead Protection, restricts the location of aboveground petroleum storage tanks with regard to their proximity to potable water wells.

- Chapter 62-740, F.A.C., Petroleum Contact Water, controls the handling of water, which may come into contact with petroleum products at storage facilities.

- Chapter 62-770, F.A.C., Petroleum Contamination Site Cleanup Criteria, provides standards and procedures to be used in the event of a discharge.

Pursuant to chapter 28-24.008, Florida Administrative Code, proposed petroleum storage facilities are presumed to be DRIs if they meet one of two criteria: if located within 1,000 feet of any navigable waterbody and with storage capacity of more than 50,000 barrels, or any other petroleum storage facility with a capacity of more than 200,000 barrels. In addition, existing storage facilities are subject to a DRI review if they propose to increase their storage facilities by either 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.

DCA and DEP staff have searched their agency records, and have found no documentation that a petroleum storage facility has ever gone through a DRI review. The existing facilities, for example, have expanded over the years, but did not add enough capacity to trigger a DRI review.

Marina Planning and Development

Multiple governmental agencies have a role in authorizing marina development. At the local level, the comprehensive plan contains a conservation element and, for those units of government within the coastal zone, a coastal management element. The law requires, at minimum, that the conservation and coastal management elements of any comprehensive plan provide for the continued existence of viable populations of all species of wildlife and marine life. The plan must also provide for the avoidance of irreversible and irretrievable losses of coastal zone resources. Under the plan, each local government develops its own land development regulations.

Every local government with jurisdiction over navigable waters provides extensive scrutiny of any new waterside development including marinas. In addition to outright prohibition of marina construction in many sensitive environmental areas, comprehensive plans, zoning ordinances and other land development regulations usually address all of the water quality and habitat protection standards that have been referenced previously at the federal and state level.

The Florida Department of Environmental Protection, or a delegated water management district, requires an Environmental Resource Permit (ERP) for any marina facility constructed within state waters. Pursuant to Part IV, Chapter 373, F.S., the permit process requires a demonstration of reasonable assurance that the project complies with state adopted water quality standards, preserves habitat and protects endangered and threatened species and avoids cumulative and secondary impacts that may result from the project under review and similar projects being permitted. The process also requires a demonstration that the project is not contrary to the public interest. If a facility is located within or adjacent to specifically designated waters, such as an Aquatic Preserve, the application must demonstrate that the project is clearly in the public interest. Other state laws that impact marina development are:

- Chapter 376, F.S., Coastal Protection. Under this law, a marina facility may be required to develop oil spill prevention plans and programs to ensure compliance with water quality standards. This program is generally administered by the DEP.

- Chapter 403, F.S. This law is also administered by DEP and requires compliance with adopted water quality standards for the applicable water body.

- Section 370.12 (2), F.S., the Florida Manatee Sanctuary Act. The Fish and Wildlife Conservation Commission is authorized to adopt rules under Chapter 120, F.S., regarding the expansion of existing, or construction of new, marina facilities and mooring or docking slips involving the addition or construction of five or more powerboat slips. The Commission is also authorized to adopt rules relating to regulation of the operation and speed of motorboat traffic where manatee sightings are frequent and it can generally be assumed that they inhabit the areas in question on a regular and continuous basis. The Commission also is authorized, pursuant to the Administrative Procedures Act, to protect manatee habitats such as seagrass beds pursuant to s. 370.12 (2)(m), F.S. Any permit application within an area inhabited by manatees or other threatened species receives extensive comment from Commission staff and in fact may be denied if the project poses a significant threat and is determined to be contrary to the public interest.

Finally, there are federal laws the impact the development of marinas. Pursuant to Section 10 of the Rivers and Harbors Act (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344), any construction or the discharge of materials into waters of the United States requires authorization from the U.S. Army Corp of Engineers. In summary, issuance of a permit requires assurance that applicable water quality standards are maintained, habitat is preserved, and endangered and threatened species are protected. The issuance of the permit also requires scrutiny of any cumulative and secondary impacts that may result from the authorization.

In the course of permit review under the Clean Water Act, and the Rivers and Harbors Act, compliance with the following acts must be shown:

- Section 401 of the Clean Water Act (33 U.S.C. 1341) requires any permittee to obtain certification from the state that the project complies with applicable water quality standards and effluent limitations.

- Section 307(c) of the Federal Coastal Management Act of 1972 (16 U.S.C. 1456(c)) requires an applicant for a permit to provide certification that the marina complies with the state's Coastal Zone Management Program. No permit can be issued until the state concurs in this finding.

- The Fish and Wildlife Coordination Act (16 U.S.C. 661-666C) requires the Corps of Engineers to consult with either the U.S. Fish and Wildlife Service or the National Marine Fishery Service, as appropriate, relative to the protection of habitat and species. Pursuant to any disagreement among the agencies over habitat protection, the permit may be denied.

- The Endangered Species Act (16 U.S.C. 1531 et seq.) requires the protection of endangered species and critical habitat. Under the Act, the U.S. Fish and Wildlife Service and National Marine Fishery Service must consult with the Corps of Engineers. If either of these agencies determines that a marina project is likely to jeopardize the continued existence of a species or the destruction of habitat the permit cannot be issued.

- The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) imposes a perpetual moratorium on the harassment, hunting, capturing or killing of marine mammals. This act also requires consultation with either the U.S. Fish and Wildlife Service or National Marine Fishery Service and assurance that any implicated marine mammal is protected.

C. EFFECT OF PROPOSED CHANGES:

HB 1433:

- Exempts airports from the DRI process if it is consistent with the airport master plan in the local comprehensive plan.

- Integrates an airport master plan with the local comprehensive plan process and requires the adoption of an airport master plan by each publicly owned and operated airport by July 1, 2001. The airport master plan must be incorporated by the local government into its comprehensive plan by July 1, 2002. The master plan must be compatible with applicable requirements for FAA airport master plans and with Florida DOT requirements. It also must address the airport project's compatibility with land uses around the project site.

- Exempts from the DRI process petroleum storage facilities that are consistent with an applicable local comprehensive plan in compliance with s. 163.3177, F.S., or with an applicable comprehensive port master plan in compliance with s. 163.3178, F.S.

- Exempts marinas from the DRI process in most counties. If the proposed marina or expansion is located within one of 13 counties defined in section 370.12(2)(f), then any new development or expansion within that county is not exempt from DRI review unless a manatee protection plan has been adopted by the county and submitted for approval to the FWCC. However, if those aforementioned counties required to adopt a manatee protection plan have not done so by October 1, 2003, any new marina development or expansion after that date is exempt from DRI review.

  The 13 counties are: Brevard, Broward, Dade, Citrus, Collier, Hillsborough, Indian River, Lee, Manatee, Palm Beach, Sarasota, St. Lucie, and Volusia.

- Deletes language in s. 380.06, F.S., that creates a "rebuttable presumption" when all other types of development projects are or are not subject to a DRI review. The drafters of HB 1433 say this is intended to draw a "bright line" in the DRI determination. If a project, or a change in the original approved project, is less than 100 percent of the numerical threshold, then it *is not* subject to a DRI. If the change exceeds the 100 percent numerical threshold, then the project or project amendment *is* subject to DRI review.

  However, the actual language in HB 1433 does not accomplish the drafters' intent. See discussion in the "Other Comments" section below.

- Maintains any vested or other rights, or any duty or obligation, pursuant to any development order or agreement applicable to a DRI in effect as of the day HB 1433 becomes law. Airports, petroleum storage facilities, and marinas that have received DRI development orders, but would no longer be required to under DRI review if HB 1433 becomes law will continue to be governed by the development order. However, at the request of the airport, petroleum storage facility, or marina owner or developer, the order may be amended or rescinded by the appropriate local government, consistent with its regulations.

- Airports, petroleum storage facilities, and marinas with pending DRI applications or pending notifications of approval, as of the effective date of this act, may elect to continue with the process. However, at the conclusion of the review, these developments will be governed by the requirements in HB 1433.

- If any provision of HB 1433 is held invalid by the courts, that provision is severed, and the remaining provisions are valid and in effect.

HB 1433 would take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 163.3177(6), F.S., to add an airport master plan element to local comprehensive plans. Specifies content of plans, to be prepared by each publicly owned and operated airport licensed by DOT. Specifies that each airport master plan must be submitted by July 1, 2001, to the appropriate local government, which has until July 1, 2002, to incorporate the airport master plan into its comprehensive plan. Directs local government to consider land-use compatibility with the airport zoning and a number of other conditions.

Section 2: Amends s. 380.06, F.S., to streamline the development of regional impact (DRI) process. Deletes the rebuttable presumptions of the numeric thresholds that trigger a DRI review. Deletes obsolete references to when airport improvements constitute a substantial deviation to an existing DRI-approved airport project. Exempts proposed petroleum storage facilities from DRI if either consistent with a local comprehensive plan or a comprehensive port master plan. Exempts proposed development at a waterport (marina) from DRI provisions, unless the proposed development is located within one of the 13 counties identified in s. 370.12(2)(f), F.S. Specifies conditions under which those 13 counties fall under the DRI exemption. Corrects cross-references.

Section 3: Repeals paragraphs (a) and (e) of s. 380.0651, F.S., which relates to DRI requirements for airports and marinas.

Section 4: Amends s. 163.3180, F.S., to correct cross-reference.

Section 5: Amends s. 331.303(20), F.S., to correct cross-reference.

Section 6: Specifies that nothing in this act shall abridge or modify a vested or other right, or any duty or obligation pursuant to any development order or agreement that is applicable to a DRI on the effective date of this act. Specifies new procedures for airports, marinas, or petroleum storage facilities that have received a DRI order, but are no longer required to undergo DRI review because of this act.

Section 7: Adds severability clause.

Section 8: Specifies this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Community Affairs may experience some savings because there would be fewer DRIs to review.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments may experience some savings because there would be fewer DRIs to review.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners or prospective developers of airports, petroleum storage facilities, and marinas in certain counties will save the expense of seeking DRI review and approval, with passage of HB 1433.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of HB 1433 because the proposed bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1433 does not reduce the revenue-raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 1433 does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 1433 does not raise any apparent constitutional issues.

B. RULE-MAKING AUTHORITY:

HB 1433 does not give DCA or any other agency new rule-making authority, nor is additional authority needed to comply with the provisions of this act.

C. OTHER COMMENTS:

Supporters of HB 1433:
The bill's supporters say a DRI review is redundant because of other local, state and federal requirements.

The Florida Airport Managers Association, which represents over 80 publicly owned and operated airports, adopted a resolution last year advocating modifications to Chapters 163 and 380, F.S., to replace DRI review of airports with a process that integrates current FAA planning with local government comprehensive plans.

As it did during the 2000 legislative session, the DCA supports the DRI changes in HB 1433.

Glitch in HB 1433:
HB 1433 deletes language in s. 380.06, F.S., that creates a "rebuttable presumption" when all other types of development projects are or are not subject to a DRI review. No longer would there be in a law a gray area – of more than 80 percent of a numeric threshold to less than 120 percent of the threshold – of discretion.

However, by striking s. 380.06(2)(d)2., F.S., and not amending the fixed thresholds in subparagraph 1., there is created a 40 percentage-point gap in what triggers a DRI review. Supporters of the bill plan to file an amendment to correct this oversight. In addition, HB 1433's sponsor plans to file amendments to conform the bill with related growth-management legislation and to correct any glitches.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2001, the Transportation Committee adopted four amendments. A brief discussion follows:

- #1 deleted the requirement that local comprehensive plans incorporate airport master plans. Instead, publicly owned and operated airports are directed to send copies of master plans, environmental assessments, site-selection studies and other listed documents to affected local governments. An amendment to amendment #1 added that these airports also must notify affected local governments even when they request copies of master plans, etc. from state or federal governments.
- #2 changed the numeric thresholds that trigger a DRI review of a development project.
- A substitute amendment to #3 added that the development or expansion of an airport or airport- or aviation-related development is exempt from a DRI review, reiterating the exemption that appears elsewhere in HB 1433.
- #4 deletes an existing statutory provision that allows proposed residential developments, where more than 25 percent of its area is within 2 miles of the boundary of a less-populous county, to be governed by the growth requirements of the less-populous county.

The committee then voted 9-2 in favor of HB 1433. The amendments are trailing the bill.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:	Staff Director:
Joyce Pugh	Phillip B. Miller

AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Kurt W. Hamon	Eliza Hawkins