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HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS

BILL #: HB 1693

RELATING TO: Natural Resource Management

SPONSOR(S): Representative Alexander

TIED BILL(S): None

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

(1) LOCAL GOVERNMENT & VETERANS AFFAIRS (CSG)
(2) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION (RIC)
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

This bill requires an economic element, currently an optional element, in all local government comprehensive plans. This bill states that all governmental decisions relating to land and water management, including growth management and the use of natural resources, must balance economic and environmental considerations. In addition, this bill requires the balancing of economic and environmental considerations by local governments prior to approving a comprehensive plan or plan amendment.

This bill requires the Department of Community Affairs to adopt rules that require all reviews to balance both economic and environmental considerations in the development of regional impact review process.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

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

1. This bill does not support less government as it requires local governments to adopt an economic element in their comprehensive plans, and requires them to balance economic and environmental considerations prior to approving a comprehensive plan or plan amendment. This bill also requires DCA to adopt rules relating to this balancing of considerations in the developments of regional impact review.

B. PRESENT SITUATION:

Florida has a system of laws that govern growth management that include:

- The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ss. 163.3161-163.3244, F.S.;
- Chapter 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs;
- Chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and
- Chapter 187, F.S., the State Comprehensive Plan.

Local Comprehensive Plan

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, Florida Statutes, (F.S.), establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements. The plans must contain data, analyses, policies, goals, and objectives relating to eight mandatory elements on the following issues: Capital improvements; Future land use; Traffic Circulation; General sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; Conservation; Recreation and open space; Housing; and Intergovernmental coordination. The capital improvements element must consider the need for, and the location of, public facilities. Further, general law requires that comprehensive plans of coastal local governments contain a coastal element.

The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. This minimum criteria must require: that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future

decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.). In 1999, the department reviewed 12,000 local comprehensive plan amendments.

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Comprehensive Plan Amendment Process

Under Chapter 163, F.S., the process for the adoption of a comprehensive plan and comprehensive plan amendments is essentially the same. A local government or property owner initiates the process by proposing an amendment to the designated local planning agency (LPA). After holding at least one public hearing, the LPA makes recommendations to the governing body regarding the amendments. The governing body then holds a transmittal public hearing at which the proposed amendment must be voted on affirmatively by a majority of the members of the governing body of the local government. Following the public hearing, the local government must "transmit" the amendment to the department, the appropriate regional planning council and water management district, the Department of Environmental Protection (DEP), the Florida Department of Transportation (FDOT) and any other local government or state agency that has requested a copy of the amendment.

Next, the decision is made whether or not to review the proposed amendment. If the local government does not request a review, the department requests that the appropriate water management district, FDOT and the DEP advise the department as to whether or not the amendment should be reviewed within 21 days after transmittal of the amendment by the local government. Based on this information, the department decides whether to review the amendment. The department must review the proposed amendment within 30 days after transmittal of the amendment if the local government transmitting the amendment, a regional planning council or an "affected person" requests review. Finally, even if a request by one of the above parties is not made, the department may elect to review the amendment by giving the local government notice of its intention to review the amendment within 30 days after receipt of the amendment.

If review is not requested by the local government, the regional planning council, or any affected person, and the department decides not to review it, the local government is notified that it may proceed immediately to adopt the amendment. If, however, review of the amendment is initiated, the department next transmits, pursuant to Rule 9J-1.009, F.A.C., a copy of the amendment to: the Department of State; the Fish & Wildlife Conservation Commission (FWCC); the Department of Agriculture and Consumer Affairs, Division of Forestry for county amendments; and the appropriate land planning agency. In addition, the department may circulate a copy of the amendment to other government agencies, as appropriate. Commenting agencies have 30 days from receipt of the proposed amendment to provide written comments to the department. In addition, written comments submitted by the public within 30 days after notice of transmittal by the local government are considered by the department as if they were submitted by governmental agencies.

Upon receipt of the comments described above, the department has 30 days to send its Objections, Recommendations and Comments report to the local government body (commonly referred to as the "ORC Report"). In its review, the department considers whether the amendment is consistent with the requirements of the Act, Rule 9J-5, F.A.C., the State Comprehensive Plan, and the appropriate regional policy plan. In addition, the ORC makes recommendations to the local government on ways to bring the plan or plan amendment(s) into compliance.

After receiving the ORC report from the department, the local government has 60 days (120 days for amendments based on Evaluation and Appraisal "EAR" Reports or compliance agreements) to adopt the amendment, adopt the amendment with changes, or decide that it will not adopt the amendment. The decision must be made at a public hearing. Within 10 days after adoption, the local government transmits the adopted plan amendment to the department, the commenting agencies, the regional planning council and anyone else who has requested notice of the adoption.

Upon receipt of a local government's adopted comprehensive plan amendment, the department has 45 days (30 days for amendments based on compliance agreements) to determine whether the plan or plan amendment is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act. This compliance determination is also required when the department has not reviewed the amendment under s. 163.3184(6), F.S. During this time period, the department issues a notice of intent to find the plan amendment in compliance or not in compliance with the requirements of the Act. The notice of intent is mailed to the local government and the department is required to publish the notice of intent in a newspaper that has been designated by the local government.

If the department finds the comprehensive plan amendment in compliance with the Act, any affected person may file a petition for administrative hearing pursuant to ss. 120.569 and 120.57, F.S., within 21 days after publication of the notice of intent. An administrative hearing is conducted by the Division of Administrative Hearings where the legal standard of review is that the plan amendment will be determined to be in compliance if the local government's determination of compliance is fairly debatable. The hearing officer submits a recommended order to the department. If the department determines that the plan amendment is in compliance, it issues a final order. If the department determines that the amendment is not in compliance, it submits the recommended order to the Administration Commission (the Governor and Cabinet) for final agency action.

If the department issues a notice of intent to find the comprehensive plan amendment not in compliance, the notice of intent is forwarded directly to the Division of Administrative Hearings in order to hold a ss. 120.569 and 120.57, F.S., administrative proceeding. The parties to the administrative proceeding include: the department; the affected local government; and any affected person who intervenes. In the administrative hearing, the decision of the local government of the comprehensive plan amendment's compliance is presumed to be correct and must be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan amendment is not in compliance.

The administrative law judge submits his decision directly to the Administration Commission for final agency action. If the Administration Commission determines that the plan amendment is not in compliance with the Act, it must specify remedial actions to bring the plan amendment into compliance.

Local governments are limited in the number of times per year they may adopt comprehensive plan amendments. Section 163.3187, F.S., provides that local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions which include, for example: amendments directly related to developments of

regional impact; small scale development amendments; the designation of an urban infill and redevelopment area; and changes to the schedule of the capital improvements element.

Comprehensive Plan Optional Elements

Section 163.3177(7), F.S., allows additional elements in addition to the above-mentioned required elements. These optional elements include: a mass transit element; a plan element for the circulation of recreational traffic; a public buildings and related facilities element; a community design element; a redevelopment element; a safety element; a historical and scenic preservation element; and an economic element. If a local government opts to adopt this element, the element must provide principles and guidelines for the commercial and industrial development, if any, and the employment and personnel utilization within the area. In addition, the element may detail the type of commercial and industrial development sought, correlated to the present and projected employment needs of the area and to other elements of the plans. Finally, the element may provide methods to pursue a balanced and stable economic base.

According to the department, nineteen counties (28 percent) and nine cities (2 percent) currently report that they have adopted economic elements as part of their comprehensive plans. In addition, two other communities have economic development policies within their comprehensive plans.

C. EFFECT OF PROPOSED CHANGES:

This bill requires an economic element, currently an optional element, in all local government comprehensive plans. This bill states that all governmental decisions relating to land and water management, including growth management and the use of natural resources, must balance economic and environmental considerations.

This bill revises the requirement that no public or private development be permitted except for development that is in conformity with comprehensive plans prepared and adopted in conformity with the growth management act.

This bill requires the balancing of economic and environmental considerations by local governments prior to approving a comprehensive plan or plan amendment.

This bill requires the Department of Community Affairs to adopt rules that require all reviews to balance both economic and environmental considerations in the development of regional impact process.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: This section creates s. 163.2501, F.S., to establish a public policy statement that provides that all government decisions related to land and water management, including growth management and the use of natural resources, must take into account the balancing of economic and environmental considerations.

Section 2: This section amends s. 163.3161, F.S., relating to the intent and purpose of the growth management act. This section provides that it is the intent of the growth management act to balance the economic needs to the state's citizens with the protection and preservation of the environment. This section revises the requirement that no public or private development be permitted except for development that is in conformity with comprehensive plans prepared and adopted in conformity with the growth management act.

Section 3: This section amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans. This section requires an economic plan element in all comprehensive plans. This section eliminates the optional economic plan element.

Section 4: This section amends s. 288.063, F.S., to cross reference the required economic plan element.

Section 5: This section amends s. 163.3184, F.S., relating to the comprehensive plan or plan amendment process. This section requires local governments to balance economic and environmental considerations prior to approving their comprehensive plans or plan amendments.

Section 6: This section amends s. 163.3201, F.S., relating to the comprehensive plan and land development regulations. This section requires local governments to balance economic and environmental considerations prior to approving their comprehensive plans.

Section 7: This section amends s. 380.021, F.S., relating to the purpose of the "Florida Environmental Land and Water Management Act." This section establishes legislative intent that decisions relating to land and water management must balance economic and environmental considerations.

Section 8: This section amends s. 380.06, relating to developments of regional impact. This section requires the department to adopt rules that require all development of regional impact reviews to balance economic and environmental considerations.

Section 9: This section provides an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate at this time. DCA will have to use existing staff resources to review the new economic plan elements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate at this time. Local governments will incur costs associated with the preparation and adoption of economic plan elements.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate at this time.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. However, their budgets and existing resources may be able to absorb associated costs. It is indeterminate if the exemption related to an insignificant fiscal impact applies. For purposes of legislative application of Article VII, section 18, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Because the planning requirements associated with the adoption of an economic element and the balancing of economic and environmental considerations is unknown, the total fiscal impact of these changes is difficult to calculate. However, based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities, in the aggregate, in excess of $1,598,238 would be characterized as a mandate. Approximately 395 municipalities and 48 counties will have to comply with adopting an economic element.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

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

This bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill requires the Department of Community Affairs to adopt rules that require all reviews to balance both economic and environmental considerations in the development of regional impact review process.

C. OTHER COMMENTS:

This bill does not provide criteria or guidelines for the balancing test required by this bill. It may be difficult for local governments to implement such a test. In addition, this bill may cause increased litigation from groups regarding local governments' decisions if the balance of the decisions leans too heavily towards economics or too heavily towards the environment.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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