

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 432

SPONSOR: Committee on Comprehensive Planning, Local & Military Affairs

SUBJECT: Growth Management

DATE: April 9, 2001 REVISED: 04/23/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/5 amendments</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill converts the Sustainable Communities Demonstration Project to a certification program where local governments, who adopt an urban development boundary and possess a requisite level of technical expertise, can enter a designation agreement or contract with DCA in exchange for reduced state oversight over comprehensive plan amendment review and DRI review. Without reauthorization, the project stands repealed on June 30, 2001.

This bill substantially amends section 163.3244 of the Florida Statutes.

II. Present Situation:

The 1996 Florida Legislature enacted the Sustainable Communities Demonstration Project, Chapter 96-416, Laws of Florida, to test a more flexible approach to local government comprehensive planning. The stated intent of the legislation in creating the program is to further six broad principles of sustainability: 1) restoring key ecosystems; 2) achieving a more clean, healthier environment; 3) limiting urban sprawl; 4) protecting wildlife and natural areas; 5) advancing the efficient use of land and other resources; and 6) creating quality communities and jobs. Section 163.3244, F.S., authorized the Department of Community Affairs (DCA) to designate up to five local governments to participate in the program. Three of the five local governments were to be located within the boundaries, at least partially, of the South Florida Water Management District.

In selecting the five local governments to participate in the program, DCA is directed to: assure that the local government in question has set an urban development boundary, consider the extent to which the local government has the support of its regional planning council governing board in favor of the designation and consider the extent to which the local government has adopted good

planning practices in its local government comprehensive plan or land development regulations. These positive planning programs or practices are identified as those which:

1. Promote infill development and redevelopment, including prioritized and timely permitting processes to promote such development;
2. Promote the development of low and very-low income housing or specialized housing to assist elders and the disabled;
3. Achieve effective intergovernmental coordination;
4. Promote economic diversity and growth while encouraging the retention of rural character and the protection and restoration of the environment;
5. Provide and maintain public urban and rural open space and recreational opportunities;
6. Manage transportation and land uses to support public transit and promote opportunities for pedestrian and nonmotorized transportation;
7. Use urban design principles to foster individual community identity, create a sense of place, and promote pedestrian-oriented safe neighborhoods and town centers;
8. Redevelop blighted areas;
9. Improve disaster preparedness programs and the ability to protect lives and property, especially in coastal high-hazard areas;
10. Encourage mixed-use development;
11. Demonstrate financial and administrative capabilities to implement the designation; and
12. Demonstrate a record of effectively adopting, implementing, and enforcing its comprehensive plan.

Communities receiving the sustainable communities designation are granted several types of regulatory relief. First, proposed comprehensive plan amendments within the urban growth boundary are exempt from state and regional review, including DCA's review of such amendments and issuance of objections, recommendations, and comments report or a notice of intent on proposed comprehensive plan amendments. Instead, a local government is able to adopt a proposed comprehensive plan amendment at a single adoption hearing. Affected persons may, however, file a petition for administrative hearing to challenge the compliance of an adopted comprehensive plan amendment using the same procedure employed for challenging small-scale amendments. Any affected person may file a petition for administrative hearing to challenge the compliance of the amendment with the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, s. 163.3161, et. seq., within 30 days of the local government's adoption of the amendment. The local government's determination that the

amendment is in compliance is presumed to be correct and will be sustained unless the petitioner shows by a preponderance of the evidence that the amendment is not in compliance with the act.

Second, developments within the urban growth boundary and outside the coastal high-hazard area could be exempt from Development of Regional Impact (DRI) review to the extent established in a designation agreement. DRI projects and amendments outside of the urban growth boundary and comprehensive plan amendments that would change the adopted urban development boundary, impact lands outside the urban development boundary, or impact lands within the coastal high-hazard area continue to be subject to state and regional review.

The vehicle for designating a sustainable agreement by DCA is a written designation agreement between DCA and the local government. The agreement must include: the basis of the designation, any conditions necessary to comply with s. 163.3244, F.S., procedures for the mitigation of extra jurisdictional impacts from DRIs where DRIs would be abolished or modified, and criteria for evaluating the success of the designation. Affected persons are authorized to petition for administrative review of a local government's compliance with the terms of the designation agreement.

After a competitive application process, DCA chose Boca Raton, Martin County, Ocala, Orlando, and Tampa/Hillsborough County for participation in the program. Designation agreements were negotiated with each of the communities which identified: planning projects that the local government agreed to undertake; whether the local government is delegated DRI review responsibilities; a list of evaluation indicators; and the responsibilities of DCA. Each of the local governments selected initially received \$100,000 to assist in the implementation of the designation agreement. Since then, an additional \$150,000 has been distributed between the communities.

Boca Raton

The Boca Raton designation agreement focuses on planning projects related to economic development, urban infill and redevelopment, emergency preparedness, and neighborhood preservation. The city committed to the preparation of a mixed-use zoning ordinance to promote the preservation, development or redevelopment of specific residential, commercial and industrial areas. In addition, the city agreed to prepare and implement redevelopment and emergency management plans to define post disaster redevelopment. Finally, the city agreed to support the Eastward Ho! Initiative and to focus on the redevelopment of the North Federal Highway.

Martin County

Martin County agreed to undertake a public participation process that was to result in a "Visioning Plan." The purpose of the citizen participation process was to review alternative future scenarios and to reach consensus on the desired goals and strategies that result in a Sustainable Martin County by the year 2020. In addition, Martin County agreed to develop a "Martin House" to illustrate sustainable housing design and complete and adopt a hazard mitigation plan.

The Vision Plan map depicts desired locations and types of development through the year 2020 and identifies twenty key principles to serve as indicators of progress for the plan. For each of these principles, the plan includes indicators for measuring whether the principle is achieved. For example, Principle 5 of the plan is to “Encourage compact, mixed-use residential, commercial, institutional pedestrian-oriented development.” The indicators identified to measure achievement of the principle include: a) Percentage of mixed-use land use in CRA’s (single family, multifamily, commercial); b) Increase in areas developed in mixed-use; and c) Distance to neighborhood stores.

Martin County elected to retain the state oversight role over DRIs and asked DCA to informally review its proposed comprehensive plan amendments.

Ocala

The boundary for the City of Ocala’s Sustainable Community is that portion of the area described as the City’s Potable Water and Sanitary Sewer Urban Service Area in the City’s Comprehensive Plan. The city agreed to undertake specific projects such as: developing green space within the urban area; using urban design principles to foster individual identity and promote pedestrian oriented safe neighborhoods; promote low income housing; and provide infrastructure for, and otherwise encourage, urban infill and redevelopment.

Unlike the agreements with Boca Raton and Martin County, the City of Ocala accepted the DRI review exemption afforded by the Sustainable Communities Program. Amendments to existing DRIs and Florida Community Developments (FQDs) within the Urban Development Boundary were to be subject to a revised review process to be developed and implemented by the city. In contrast, new DRIs and FQDs were to remain subject to state review pursuant to ss. 380.06 and 380.061, F.S

The designation agreement lists evaluation criteria for the Ocala project as the extent to which the project increases the: 1) Amount of development occurring within the Community Redevelopment Area; 2) Amount of transit ridership; 3) Acres of city park space acquired or enhanced; 4) Number of infrastructure improvements made; 5) Number of affordable housing units provided; 6) Interlocal agreements in Urban Service Area; 7) Total recycled water used, 8) Recycling rate; 9) Net job rate; and, 10) Number of flood problem areas corrected.

Two amendments to the city’s future land use map within the designation area have been challenged since the designation. One of these amendments was challenged by a third party in the case of *Shady Historic and Scenic Trails Association, Inc. v. City of Ocala*, DOAH Case No. 98-5019GM (Recommended Order July 28, 2000). In this case, a citizen’s group challenged the change in land use designation of a 40-acre piece of property from low-density residential to public buildings and facilities. While the hearing officer upheld the amendment on the grounds that the petitioner lacked standing to challenge the amendment, the hearing officer rejected the petitioner’s argument that the amendment should be evaluated against sustainability principles, finding that: “The six broad principles pertain to demonstration project goals, and it does not appear that they were intended to be additional criteria for compliance determinations.”

In the second case, DCA formally intervened, because of concerns about sprawl, in a challenge by the same citizen's group over a comprehensive plan amendment that would allow the conversion of the Red Oak Farm from low density residential to DRI or near DRI scale development. That case is currently held in abeyance at the Division of Administrative Hearings.

In addition, DCA, at the request of the city, has been involved with the Heath Brook DRI. This request was seen by DCA and the city as a product of the partnership relationship created by the project. Although the location of the development is outside the urban development boundary, the city specifically asked DCA to review the proposed development plan against characteristics of sustainable development outlined in DCA's publication, Best Development Practices. The proposed development is located in a high recharge area of the Floridan Aquifer and will create significant traffic effects on State Road 200.

Orlando

The Orlando Sustainable Community is based on six areas of commitment: citizen participation, a sustainable housing demonstration project, environmental issues, light rail transit station area planning, economic development and major sustainability projects. The hallmark of the Orlando designation is sustainability projects including: the Southeast Orlando Development Plan, the Orlando Naval Training Center Urban Design and Transportation Plan, the Parramore Heritage Renovation Project, the Sustainable Neighborhood Project, and the City of Orlando Evaluation and Appraisal Report. Each of these projects was intended to incorporate sustainability ideals and new urbanism concepts into development and redevelopment proposals.

For example, the Southeast Orlando Sector Plan focuses on incorporating sustainability practices into a plan for the development of a 19,000-acre greenfield area adjacent to the Orlando International Airport. The city is creating incentives based on DCA's "Best Development Practices, Doing the Right Thing and Making Money at the Same Time," for environmental protection, mixed use, increased density, an interconnected road network, and the provision of schools, parks and civic uses in the planning area. In addition, the Sector Plan provides for the development of a Primary Conservation Network that preserves an interconnected system of wetlands, uplands, and wildlife corridors. This effort required implementing an ecosystem planning approach requiring coordination with the South Florida Water Management District, the Departments of Community Affairs and Environmental Protection and the Army Corps of Engineers.

In contrast, the Parramore Heritage Area sustainability project involves a major redevelopment initiative in a distressed urban neighborhood. In June 1999, the city approved a five-year action plan for the Parramore Heritage Area to increase public safety, create a community school, increase economic development, and improve housing and housing opportunities.

The success of the Orlando designation agreement is to be measured by progress in achieving a set of citywide indicators that include: land use, transportation, economic, public safety, population and resource based indicators. In addition, project specific indicators are provided for the Southeast Orlando Development ("Sector") Plan, Orlando Naval Training Center Area and Parramore Heritage Renovation Area projects.

While Orlando committed to developing a revised DRI review process to be submitted to DCA for review by July 1, 1998, Orlando never assumed a full delegation of DRI review from DCA. Rather, Orlando only assumed the limited responsibility for processing Notices of Changes related to existing DRIs.

Tampa/Hillsborough

The City of Tampa and Hillsborough County represent the only joint city/county designation as a sustainable community. The Urban Development Boundary for purpose of this designation was defined as the adopted Urban Service Area of the City of Tampa along with that portion of the adopted Urban Service Area of Hillsborough County that extends along I-75 a west county area and north of the Alafia River. In the designation agreement, Tampa and Hillsborough County committed to: 1) implement strategies to encourage infill development within the Urban Development Boundary; 2) provide 1,500 affordable housing units; 3) create a Sustainable Communities Advisory Committee; 4) develop an integrated environmental regulatory and permitting team with state, regional and local agencies for streamlining environmental permitting and implement principles of ecosystem management; 5) implement a greenway corridor plan; 6) implement trolley service between downtown Tampa and Ybor City; 7) encourage development in the Brandon core by implementing road improvements and developing a town center concept; 8) revitalize areas in need or redevelopment such as the Tampa Enterprise Community and areas adjacent to the University of South Florida; 9) incorporate DCA's Best Development Practices; 10) develop economic revitalization projects within the Central Business District; and, 11) adopt a Post Disaster Redevelopment Plan for the City of Tampa.

The Tampa/Hillsborough County Sustainable Community is the only community to assume full responsibility for DRI review within its adopted Urban Service Boundary.

Evaluation criteria by which the Tampa/Hillsborough County Sustainable Communities Project is to be measured include: amount of development occurring within and outside the Urban Development Boundary; number of affordable housing units provided within and outside the Urban Development Boundary; areas of natural areas preserved; transit ridership; amount of infill within distressed areas; total recycled water used; number of disaster mitigation projects completed; and net business start ups, among others.

The Sustainable Communities Demonstration Project afforded local governments two opportunities to receive reduced state oversight from DCA. First, comprehensive plan amendments within the designated urban boundary and outside the coastal high hazard area are no longer reviewed by DCA. Second, designated communities could seek delegation of DRI review. The elimination of DCA review of proposed comprehensive plan amendments appears to have been very successful. The department only identified two amendments that they would have objected to if such amendments had been subject to state review. The City of Ocala was the designated community that adopted these amendments, and the background of the challenges is described under the discussion of the Ocala sustainable project.

Because of the reduced state oversight of comprehensive plan amendments, citizen enforcement of compliance with the Act takes on increased significance. In the case of the Ocala amendments, a citizen group came forward to challenge amendments viewed by some as inappropriate.

However, the citizen group was deemed to not have adequate standing to challenge the comprehensive amendment in at least one of the cases. Accordingly, if the sustainable communities model is applied to more communities, it may be appropriate to adjust citizen standing requirements.

The second opportunity for designated communities to receive reduced oversight from DCA is in the review of DRIs. Under s. 163.3244(5)(b), F.S., designated communities within the urban growth boundary and outside the coastal high-hazard are exempt from DRI review to the extent established in the designation agreement. While Ocala and Orlando received delegation to review amendments to existing DRIs, Tampa/Hillsborough County were the only communities to receive delegation to review both new DRIs and amendments to existing DRIs. One of the reasons for the success of the DRI delegation in Tampa/Hillsborough is that the communities have experienced staff with the technical expertise necessary to perform the delegated DRI review function.

According to department staff, the DRI delegations have worked well and have not generated concerns over local governments reviewing DRIs inappropriately. In fact, staff of DCA are disappointed that more of the designated communities chose not to seek the DRI review delegation.

As a potential model for growth management reform, the major strength of the Sustainable Communities Demonstration Project is the collaborative and constructive relationship created between DCA and participating local governments.

- *State/Local Partnership:* Perhaps the major success story of the demonstration project has been improvement in the relationship between DCA and the designated communities. The project allows for the formation of partnerships that create the opportunity for state and local government staff to work together to solve problems and promote positive changes.
- *Reduction of State Oversight:* One of the major successes of the demonstration project is that the reduction in state oversight of comprehensive plan amendments, DRI projects, and amendments to existing DRIs did not result in decisions by the local governments that DCA would have objected to but for the project. In fact, DCA found that local governments continued to act in a responsible manner in their approach to community planning even though state oversight was removed.
- *Negotiated Agreements as a Tool:* The designation agreements proved to have a benefit beyond a contractual statement of each party's responsibilities. The agreements enabled the local governments to shift their planning resources from regulatory compliance to results oriented projects. The agreements appeared to lead to a greater commitment from local city and county commissions to follow through on longer-term projects and to give local officials guidance on development proposals that were inconsistent with the designation agreements. Finally, the agreements enabled the creation of a partnership between DCA and the sustainable community that the participants viewed as more constructive than the traditional regulatory oversight role required by chapter 163, F.S.

- *Design-Oriented Community Planning:* The project encouraged a number of design oriented community planning initiatives such as the Orlando Naval Training Center Urban Design Plan that are being integrated into many local government's approaches to comprehensive planning. For example, while not required by its designation agreement, Hillsborough County is implementing a neighborhood level community planning process. In addition, the Florida Sustainable Communities Network has provided a forum for information sharing and dialogue on better community planning.
- *Citizen Participation:* Some of designated communities have created citizen participation processes that have resulted in outreach and participation by groups who have not previously participated in the comprehensive planning process and lead to better communication between stakeholder groups.
- *Leveraging of Technical Assistance Dollars:* The Florida Sustainable Communities Network has provided a very effective means of providing low cost technical assistance and outreach to communities on best planning practices. The major benefit of the Network is that it has allowed all communities and not just designated communities to benefit from the demonstration project. The acquisition of the INDEX community indicator software provides members of the NETWORK with a tool to measure the outcomes of their planning efforts.
- *Sustainability as an Organizing Principle:* In implementing the demonstration project, DCA declined to define sustainability, but rather, to let each community define sustainability on their own terms. This approach had both advantages and disadvantages. Most communities felt that the lack of a top down definition allowed for experimentation at the local level and, for several communities, provided a framework for stakeholder participation in collaborative planning. The disadvantage of this approach is that it makes it more difficult to assess the effectiveness of the program across communities.

Finally, the Department reports that they have not received any complaints regarding the sustainable communities program in the last three years.

III. Effect of Proposed Changes:

The bill removes the automatic repeal of the sustainable communities program and converts the sustainable communities program from a pilot project limiting the participation to five communities, to a livable communities program open to all local governments that meet the eligibility criteria. The eligibility criteria of the sustainable communities program are retained. In order to be eligible to participate in the program, a local government must demonstrate:

- That it has set an urban development boundary;
- That the local government has adopted programs in its local comprehensive plan or land development regulations which promote certain best planning practices; for example, the promotion of infill and redevelopment within the urban development boundary and mixed use development;
- That the local government has the support of its regional planning council governing board in favor of the designation.

Once the local government is determined to have met the eligibility criteria, the department and the local government are required to enter a certification agreement that lists the planning projects the local government agrees to undertake as well as whether the local government seeks delegation of the development of regional impact (DRI) process. If the local government seeks DRI delegation, the agreement must include procedures for the mitigation of extrajurisdictional impacts.

Upon execution of the livable communities certification agreement, the local government may adopt comprehensive plan amendments within the urban growth boundary without review of the proposed amendment by the department, other state agencies and the appropriate regional planning council. Affected persons may challenge the compliance of an adopted plan amendment using the same procedure employed to challenge small-scale amendments. However, plan amendments that change the urban development boundary, affect lands outside of the urban development boundary or affect lands within the coastal high hazard area continue to receive state and regional review pursuant to ss. 163.3184 and 163.3187, F.S.

The Executive Office of the Governor is directed to work with the Department of Community Affairs and other departments to set priorities for funding within areas certified under the livable communities program, including the following programs: education; environmental protection and restoration programs; transportation improvements; sewage treatment system improvements; and other programs that will direct development within the urban development boundary.

Communities certified under the livable communities program are required to provide a yearly status report to the department, which identifies plan amendments adopted during the year, updates the future land use map, and verifies compliance with the certification agreement.

A livable communities certification shall continue for a period of five years and may be renewed for an additional five years by the department if the local government is complying with the terms of its agreement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Within communities certified as livable communities, property owners seeking comprehensive plan amendments should receive a faster review process as the proposed comprehensive plan amendment will no longer require state and regional review.

C. Government Sector Impact:

To the extent more than five communities participate in the livable communities program, the department may need to devote more resources than are currently devoted to the sustainable communities program to administer the livable communities program. However, because, the program may result in a reduced workload associated with the review of proposed comprehensive plan amendments, the department may be able to administer the program with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local & Military Affairs:

Defines “key natural areas” for the purposes of the livable communities program.

#2 by Comprehensive Planning, Local & Military Affairs:

Grants the Department of Community Affairs rule-making authority to adopt eligibility criteria for the livable communities program as well as outcome measures to evaluate the progress of designated communities in meeting the objectives of the program.

#3 by Comprehensive Planning, Local & Military Affairs:

Provides that the executive directors of the regional planning councils, as well as the Secretaries of the Department of Environmental Protection, Community Affairs, Transportation, the Commissioner of Agriculture, and the executive directors of the Fish and Wildlife Conservation Commission and water management districts, shall have the authority to enter into agreements with landowners, developers, businesses, industries, and governmental agencies to effectuate the program.

#4 by Comprehensive Planning, Local & Military Affairs:

Provides that the five communities designated as sustainable communities by chapter 96-416, Laws of Florida, shall be certified as livable communities for an initial 5-year period.

#5 by Comprehensive Planning, Local & Military Affairs:

This amendment is a “strike everything” amendment that would render the previous four amendments moot. The amendments extends the date for the repeal of the sustainable communities demonstration project to June 30, 2002 and requires the Department of Community Affairs to prepare a final report on the results of the demonstration project, which report shall be reviewed by the Legislative Committee on Intergovernmental Relations.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
