HOUSE AMENDMENT

Bill No. HB 1535

Amendment No. 3 (for drafter's use only)

CHAMBER ACTION

Senate | House

ORIGINAL STAMP BELOW

The Committee on Local Government & Veterans Affairs offered the following:

Amendment (with title amendment)

On page 13, between lines 4 and 5,

insert:

Section 2. Subsection (3) of section 380.04, Florida Statutes, is amended to read:

380.04 Definition of development.--

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way or any work or construction on the interstate highway system.

(b) Work by any utility and other persons engaged in the distribution or transmission of electricity, gas or water, for the purpose of inspecting, repairing, renewing, ~~or~~

constructing, or enlarging capacity on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) Construction, renovation or redevelopment within the same land parcel which does not change land uses or intensity of use.

(e)~~(d)~~ The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(f)~~(e)~~ The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(g)~~(f)~~ A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(h)~~(g)~~ A change in the ownership or form of ownership of any parcel or structure.

(i)~~(h)~~ The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

Section 3. Subsections (2), (4), (8), (15), (18), (19), and (24) of section 380.06, Florida Statutes, are amended to read:

(2) STATEWIDE GUIDELINES AND STANDARDS.--

(a) The state land planning agency shall recommend to the Administration Commission specific statewide guidelines

and standards for adoption pursuant to this subsection. The Administration Commission shall by rule adopt statewide guidelines and standards to be used in determining whether particular developments shall undergo development-of-regional-impact review. The statewide guidelines and standards previously adopted by the Administration Commission and approved by the Legislature shall remain in effect unless revised pursuant to this section or superseded by other provisions of law. Revisions to the present statewide guidelines and standards, after adoption by the Administration Commission, shall be transmitted on or before March 1 to the President of the Senate and the Speaker of the House of Representatives for presentation at the next regular session of the Legislature. Unless approved by law by the Legislature, the revisions to the present guidelines and standards shall not become effective.

(b) In adopting its guidelines and standards, the Administration Commission shall consider and shall be guided by:

1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.

2. The amount of pedestrian or vehicular traffic likely to be generated.

3. The number of persons likely to be residents, employees, or otherwise present.

4. The size of the site to be occupied.

5. The likelihood that additional or subsidiary development will be generated.

6. The extent to which the development would create an additional demand for, or additional use of, energy, including

the energy requirements of subsidiary developments.

7. The unique qualities of particular areas of the state.

(c) With regard to the changes in the guidelines and standards authorized pursuant to this act, in determining whether a proposed development must comply with the review requirements of this section, the state land planning agency shall apply the guidelines and standards which were in effect when the developer received authorization to commence development from the local government. If a developer has not received authorization to commence development from the local government prior to the effective date of new or amended guidelines and standards, the new or amended guidelines and standards shall apply.

(d) The guidelines and standards shall be applied as follows:

1. Fixed thresholds.--

a. A development that is at or below 80 percent of all numerical thresholds in the guidelines and standards shall not be required to undergo development-of-regional-impact review.

b. A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

c. Projects certified under s. 403.973 which create at least 100 jobs and meet the criteria of the Office of Tourism, Trade, and Economic Development as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential, as

described in s. 380.0651(3)(c), (d), and (i), are not required to undergo development-of-regional-impact review.

2. Rebuttable presumption~~s~~.--

~~a. It shall be presumed that a development that is between 80 and 100 percent of a numerical threshold shall not be required to undergo development-of-regional-impact review.~~

~~b.~~ It shall be presumed that a development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be required to undergo development-of-regional-impact review.

(e) With respect to residential, hotel, motel, office, and retail developments, the applicable guidelines and standards shall be increased by 50 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163. With respect to multiuse developments, the applicable guidelines and standards shall be increased by 100 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163, if one land use of the multiuse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. With respect to resort or convention hotel developments, the applicable guidelines and standards shall be increased by 150 percent in urban central business districts and regional activity centers of jurisdictions whose local comprehensive plans are in compliance with part II of chapter 163 and where the increase is specifically for a proposed resort or convention hotel located in a county with a population greater than 500,000 and the local government specifically designates that the proposed

resort or convention hotel development will serve an existing convention center of more than 250,000 gross square feet built prior to July 1, 1992. The applicable guidelines and standards shall be increased by 150 percent for development in any area designated by the Governor as a rural area of critical economic concern pursuant to s. 288.0656 during the effectiveness of the designation.

(4) BINDING LETTER.--

(a) If any developer is in doubt whether his or her proposed development must undergo development-of-regional-impact review under the guidelines and standards, whether his or her rights have vested pursuant to subsection (20), or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would divest such rights, the developer may request a determination from the state land planning agency.

(b) Unless a developer waives the requirements of this paragraph by agreeing to undergo development-of-regional-impact review pursuant to this section, the state land planning agency or local government with jurisdiction over the land on which a development is proposed may require a developer to obtain a binding letter if~~:~~

~~1.~~ the development is at a presumptive numerical threshold or up to 20 percent above a numerical threshold in the guidelines and standards.~~; or~~

~~2. The development is between a presumptive numerical threshold and 20 percent below the numerical threshold and the local government or the state land planning agency is in doubt as to whether the character or magnitude of the development at~~

~~the proposed location creates a likelihood that the development will have a substantial effect on the health, safety, or welfare of citizens of more than one county.~~

(c) Any local government may petition the state land planning agency to require a developer of a development located in an adjacent jurisdiction to obtain a binding letter of interpretation. The petition shall contain facts to support a finding that the development as proposed is a development of regional impact. This paragraph shall not be construed to grant standing to the petitioning local government to initiate an administrative or judicial proceeding pursuant to this chapter.

(d) A request for a binding letter of interpretation shall be in writing and in such form and content as prescribed by the state land planning agency. Within 15 days of receiving an application for a binding letter of interpretation or a supplement to a pending application, the state land planning agency shall determine and notify the applicant whether the information in the application is sufficient to enable the agency to issue a binding letter or shall request any additional information needed. The applicant shall either provide the additional information requested or shall notify the state land planning agency in writing that the information will not be supplied and the reasons therefor. If the applicant does not respond to the request for additional information within 120 days, the application for a binding letter of interpretation shall be deemed to be withdrawn. Within 35 days after acknowledging receipt of a sufficient application, or of receiving notification that the information will not be supplied, the state land planning agency shall issue a binding letter of

interpretation with respect to the proposed development. A binding letter of interpretation issued by the state land planning agency shall bind all state, regional, and local agencies, as well as the developer.

(e) In determining whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would divest such rights, the state land planning agency shall review the proposed change within the context of:

1. Criteria specified in paragraph (19)(b);

2. Its conformance with any adopted state comprehensive plan and any rules of the state land planning agency;

3. All rights and obligations arising out of the vested status of such development;

4. Permit conditions or requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency; and

5. Any regional impacts arising from the proposed change.

(f) If a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (20) would result in reduced regional impacts, the change shall not divest rights to complete the development pursuant to subsection (20). Furthermore, where all or a portion of the development of regional impact for which rights had previously vested pursuant to subsection (20) is demolished and reconstructed within the same approximate footprint of buildings and parking lots, so that any change in the size of the development does

not exceed the criteria of paragraph (19)(b), such demolition and reconstruction shall not divest the rights which had vested.

(g) Every binding letter determining that a proposed development is not a development of regional impact, but not including binding letters of vested rights or of modification of vested rights, shall expire and become void unless the plan of development has been substantially commenced within:

1. Three years from October 1, 1985, for binding letters issued prior to the effective date of this act; or

2. Three years from the date of issuance of binding letters issued on or after October 1, 1985.

(h) The expiration date of a binding letter, established pursuant to paragraph (g), shall begin to run after final disposition of all administrative and judicial appeals of the binding letter and may be extended by mutual agreement of the state land planning agency, the local government of jurisdiction, and the developer.

(i) In response to an inquiry from a developer, the state land planning agency may issue an informal determination in the form of a clearance letter as to whether a development is required to undergo development-of-regional-impact review. A clearance letter may be based solely on the information provided by the developer, and the state land planning agency is not required to conduct an investigation of that information. If any material information provided by the developer is incomplete or inaccurate, the clearance letter is not binding upon the state land planning agency. A clearance letter does not constitute final agency action.

(8) PRELIMINARY DEVELOPMENT AGREEMENTS.--

(a) A developer may enter into a written preliminary

development agreement with the state land planning agency to allow a developer to proceed with a limited amount of the total proposed development, subject to all other governmental approvals and solely at the developer's own risk, prior to issuance of a final development order. All owners of the land in the total proposed development shall join the developer as parties to the agreement. Each agreement shall include and be subject to the following conditions:

1. The developer shall comply with the preapplication conference requirements pursuant to subsection (7) within 45 days after the execution of the agreement.

2. The developer shall file an application for development approval for the total proposed development within 3 months after execution of the agreement, unless the state land planning agency agrees to a different time for good cause shown. Failure to timely file an application and to otherwise diligently proceed in good faith to obtain a final development order shall constitute a breach of the preliminary development agreement.

3. The agreement shall include maps and legal descriptions of both the preliminary development area and the total proposed development area and shall specifically describe the preliminary development in terms of magnitude and location. The area approved for preliminary development must be included in the application for development approval and shall be subject to the terms and conditions of the final development order.

4. The preliminary development shall be limited to lands that the state land planning agency agrees are suitable for development and shall only be allowed in areas where adequate public infrastructure exists to accommodate the

preliminary development, when such development will utilize public infrastructure. The developer must also demonstrate that the preliminary development will not result in material adverse impacts to existing resources or existing or planned facilities.

5. The preliminary development agreement may allow development which is:

a. Less than or equal to 100 ~~80~~ percent of any applicable threshold if the developer demonstrates that such development is consistent with subparagraph 4.; or

b. Less than 120 percent of any applicable threshold if the developer demonstrates that such development is part of a proposed downtown development of regional impact specified in subsection (22) or part of any areawide development of regional impact specified in subsection (25) and that the development is consistent with subparagraph 4.

6. The developer and owners of the land may not claim vested rights, or assert equitable estoppel, arising from the agreement or any expenditures or actions taken in reliance on the agreement to continue with the total proposed development beyond the preliminary development. The agreement shall not entitle the developer to a final development order approving the total proposed development or to particular conditions in a final development order.

7. The agreement shall not prohibit the regional planning agency from reviewing or commenting on any regional issue that the regional agency determines should be included in the regional agency's report on the application for development approval.

8. The agreement shall include a disclosure by the developer and all the owners of the land in the total proposed

development of all land or development within 5 miles of the total proposed development in which they have an interest and shall describe such interest.

9. In the event of a breach of the agreement or failure to comply with any condition of the agreement, or if the agreement was based on materially inaccurate information, the state land planning agency may terminate the agreement or file suit to enforce the agreement as provided in this section and s. 380.11, including a suit to enjoin all development.

10. A notice of the preliminary development agreement shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located. The notice shall include a legal description of the land covered by the agreement and shall state the parties to the agreement, the date of adoption of the agreement and any subsequent amendments, the location where the agreement may be examined, and that the agreement constitutes a land development regulation applicable to portions of the land covered by the agreement. The provisions of the agreement shall inure to the benefit of and be binding upon successors and assigns of the parties in the agreement.

11. Except for those agreements which authorize preliminary development for substantial deviations pursuant to subsection (19), a developer who no longer wishes to pursue a development of regional impact may propose to abandon any preliminary development agreement executed after January 1, 1985, including those pursuant to s. 380.032(3), provided at the time of abandonment:

a. A final development order under this section has been rendered that approves all of the development actually

constructed; or

b. The amount of development is less than 80 percent of all numerical thresholds of the guidelines and standards, and the state land planning agency determines in writing that the development to date is in compliance with all applicable local regulations and the terms and conditions of the preliminary development agreement and otherwise adequately mitigates for the impacts of the development to date.

In either event, when a developer proposes to abandon said agreement, the developer shall give written notice and state that he or she is no longer proposing a development of regional impact and provide adequate documentation that he or she has met the criteria for abandonment of the agreement to the state land planning agency. Within 30 days of receipt of adequate documentation of such notice, the state land planning agency shall make its determination as to whether or not the developer meets the criteria for abandonment. Once the state land planning agency determines that the developer meets the criteria for abandonment, the state land planning agency shall issue a notice of abandonment which shall be recorded by the developer in accordance with s. 28.222 with the clerk of the circuit court for each county in which land covered by the terms of the agreement is located.

(b) The state land planning agency may enter into other types of agreements to effectuate the provisions of this act as provided in s. 380.032.

(c) The provisions of this subsection shall also be available to a developer who chooses to seek development approval of a Florida Quality Development pursuant to s. 380.061.

(15) LOCAL GOVERNMENT DEVELOPMENT ORDER.--

(c) The development order shall include findings of fact and conclusions of law consistent with subsections (13) and (14). The development order:

1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.

2. Shall establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and shall include a termination date that reasonably reflects the time required to complete the development.

3. Shall establish a date until which the local government agrees that the approved development of regional impact shall not be subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare.

4. Shall specify the requirements for the biennial ~~annual~~ report designated under subsection (18), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.

5. May specify the types of changes to the development

which shall require submission for a substantial deviation determination under subsection (19).

6. Shall include a legal description of the property.

(g) A local government shall not issue permits for development subsequent to the termination date or expiration date contained in the development order unless:

1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) subsequent to the termination or expiration date;

2. The proposed development is consistent with an abandonment of development order that has been issued in accordance with the provisions of subsection (26); or

3. The project has been determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially built-out, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations or subject to a modified development-of-regional-impact analysis. As used in this paragraph, an "essentially built-out" development of regional impact means:

a. The development is in compliance with all applicable terms and conditions of the development order except the built-out date; and

b.(I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or

(II) The state land planning agency and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.

(h) If the property is annexed by another local jurisdiction, the annexing jurisdiction shall adopt a new development order that incorporates all previous rights and obligations specified in the prior development order.

(18) BIENNIAL ~~ANNUAL~~ REPORTS.--The developer shall submit a biennial ~~an annual~~ report on the development of regional impact to the local government, the regional planning agency, the state land planning agency, and all affected permit agencies in alternate years on the date specified in the development order, unless the development order by its terms requires more frequent monitoring. If the ~~annual~~ report is not received, the regional planning agency or the state land planning agency shall notify the local government. If the local government does not receive the ~~annual~~ report or receives notification that the regional planning agency or the state land planning agency has not received the report, the local government shall request in writing that the developer submit the report within 30 days. The failure to submit the report after 30 days shall result in the temporary suspension of the development order by the local government. If no

additional development pursuant to the development order has occurred since the submission of the previous report, then a letter from the developer stating that no development has occurred shall satisfy the requirement for a report. Development orders which require annual reports may be amended to require biennial reports at the option of the local government.

(19) SUBSTANTIAL DEVIATIONS.--

(a) Any proposed change to a previously approved development which 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, shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review. There are a variety of reasons why a developer may wish to propose changes to an approved development of regional impact, including changed market conditions. The procedures set forth in this subsection are for that purpose.

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 5 percent or 300 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 5

percent or 1,000 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates. However, if an airport is located in two counties, a 10-percent lengthening of an existing runway or a 20-percent increase in the number of gates of an existing terminal is the applicable criteria.

3. An increase in the number of hospital beds by 5 percent or 60 beds, whichever is greater.

4. An increase in industrial development area by 5 percent or 32 acres, whichever is greater.

5. An increase in the average annual acreage mined by 5 percent or 10 acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 5 percent or 300,000 gallons, whichever is greater. An increase in the size of the mine by 5 percent or 750 acres, whichever is less.

6. An increase in land area for office development by 5 percent or 6 acres, whichever is greater, or an increase of gross floor area of office development by 5 percent or 60,000 gross square feet, whichever is greater.

~~7. An increase in the storage capacity for chemical or petroleum storage facilities by 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.~~

~~8. An increase of development at a waterport of wet storage for 20 watercraft, dry storage for 30 watercraft, or wet/dry storage for 60 watercraft in an area identified in the state marina siting plan as an appropriate site for additional waterport development or a 5-percent increase in watercraft storage capacity, whichever is greater.~~

7~~9~~. An increase in the number of dwelling units by 5 percent or 50 dwelling units, whichever is greater.

8~~10~~. An increase in commercial development by 6 acres of land area or by 50,000 square feet of gross floor area, or of parking spaces provided for customers for 300 cars or a 5-percent increase of any of these, whichever is greater.

9~~11~~. An increase in hotel or motel facility units by 5 percent or 75 units, whichever is greater.

10~~12~~. An increase in a recreational vehicle park area by 5 percent or 100 vehicle spaces, whichever is less.

11~~13~~. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

12~~14~~. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 100 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 100 percent has been reached or exceeded.

13~~15~~. A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

14~~16~~. Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the

Department of State. The further refinement of such areas by survey shall be considered under sub-subparagraph (e)5.b.

The substantial deviation numerical standards in subparagraphs 4., 6., 8.~~10.~~, 12.~~14.~~, excluding residential uses, and 13.~~15.~~, are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 4., 6., 7.~~9.~~, 8.~~10.~~, 9.~~11.~~, and 12.~~14.~~are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(c) An extension of the date of buildout of a development, or any phase thereof, by 7 or more years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. An extension of the date of buildout, or any phase thereof, of an ~~5 years or more but less than 7 years shall be presumed not to create a substantial deviation. These presumptions may be rebutted by clear and convincing evidence at the public hearing held by the local government. An~~ extension of less than 7 ~~5~~ years is not a substantial deviation. For the purpose of calculating when a buildout, phase, or termination date has been exceeded, the time shall be tolled during the pendency of administrative or judicial proceedings relating to development permits. Any extension of the buildout date of a project or a phase thereof shall automatically extend the commencement date of the

project, the termination date of the development order, the expiration date of the development of regional impact, and the phases thereof by a like period of time.

(d) A change in the plan of development of an approved development of regional impact resulting from requirements imposed by the Department of Environmental Protection or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency shall be submitted to the local government pursuant to this subsection. The change shall be presumed not to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.

(e)1. A proposed change which, either individually or, if there were previous changes, cumulatively with those changes, is equal to or exceeds 40 percent of any numerical criterion in subparagraphs (b)1.-15., but which does not exceed such criterion, shall be presumed not to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government pursuant to subparagraph (f)5.

2. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order that individually or cumulatively with any previous change is less than 40 percent of any numerical criterion contained in subparagraphs (b)1.-15. and does not exceed any other criterion is not a substantial deviation.~~, or that involves an extension of the buildout date of a~~

~~development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5.~~ Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice shall include a description of previous individual changes made to the development, including changes previously approved by the local government, and shall include appropriate amendments to the development order. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback that do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads that do not affect external access points.

e. Changes to the building design or orientation that stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, provided that no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, provided that there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, provided

that these changes do not create additional regional impacts.

i. Any other change which the state land planning agency agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-h. and which does not create the likelihood of any additional regional impact.

This subsection does not require a development order amendment for any change listed in sub-subparagraphs a.-i. unless such issue is addressed either in the existing development order or in the application for development approval, but, in the case of the application, only if, and in the manner in which, the application is incorporated in the development order.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development shall include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Except for the types of uses listed in subparagraph (b)16., any change which would result in the development of any area which was specifically set aside in the application for development approval or in the development order for preservation, buffers, or special protection, including habitat for plant and animal species, archaeological and historical sites, dunes, and other special areas.

c. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c), (d), (f), and (g) and residential use.

(f)1. The state land planning agency shall establish by rule standard forms for submittal of proposed changes to a previously approved development of regional impact which may require further development-of-regional-impact review. At a minimum, the standard form shall require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.

2. The developer shall submit, simultaneously, to the local government, the regional planning agency, and the state land planning agency the request for approval of a proposed change.

3. No sooner than 30 days but no later than 45 days after submittal by the developer to the local government, the state land planning agency, and the appropriate regional

planning agency, the local government shall give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation. This public hearing shall be held within 90 days after submittal of the proposed changes, unless that time is extended by the developer.

4. The appropriate regional planning agency or the state land planning agency shall review the proposed change and, no later than 45 days after submittal by the developer of the proposed change, unless that time is extended by the developer, and prior to the public hearing at which the proposed change is to be considered, shall advise the local government in writing whether it objects to the proposed change, shall specify the reasons for its objection, if any, and shall provide a copy to the developer. A change which is subject to the substantial deviation criteria specified in sub-subparagraph (e)5.c. shall not be subject to this requirement.

5. At the public hearing, the local government shall determine whether the proposed change requires further development-of-regional-impact review. The provisions of paragraphs (a) and (e), the thresholds set forth in paragraph (b), and the presumptions set forth in paragraphs (c) and (d) and subparagraphs (e)1. and 3. shall be applicable in determining whether further development-of-regional-impact review is required.

6. If the local government determines that the proposed change does not require further development-of-regional-impact review and is otherwise approved, or if the proposed change is not subject to a hearing and determination pursuant to subparagraphs 3. and 5.

and is otherwise approved, the local government shall issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change. The decision of the local government to approve, with or without conditions, or to deny the proposed change that the developer asserts does not require further review shall be subject to the appeal provisions of s. 380.07. However, the state land planning agency may not appeal the local government decision if it did not comply with subparagraph 4. The state land planning agency may not appeal a change to a development order made pursuant to subparagraph (e)2. for developments of regional impact approved after January 1, 1980, unless the change would result in a significant impact to a regionally significant archaeological, historical, or natural resource not previously identified in the original development-of-regional-impact review.

(g) If a proposed change requires further development-of-regional-impact review pursuant to this section, the review shall be conducted subject to the following additional conditions:

1. The development-of-regional-impact review conducted by the appropriate regional planning agency shall address only those issues raised by the proposed change except as provided in subparagraph 2.

2. The regional planning agency shall consider, and the local government shall determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development. If the local government determines that the proposed change, as it relates to the entire development, is unacceptable, the local government shall deny the change.

3. If the local government determines that the proposed change, as it relates to the entire development, should be approved, any new conditions in the amendment to the development order issued by the local government shall address only those issues raised by the proposed change.

4. Development within the previously approved development of regional impact may continue, as approved, during the development-of-regional-impact review in those portions of the development which are not affected by the proposed change.

(h) When further development-of-regional-impact review is required because a substantial deviation has been determined or admitted by the developer, the amendment to the development order issued by the local government shall be consistent with the requirements of subsection (15) and shall be subject to the hearing and appeal provisions of s. 380.07. The state land planning agency or the appropriate regional planning agency need not participate at the local hearing in order to appeal a local government development order issued pursuant to this paragraph.

Section 4. Section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines and standards.--

(1) The statewide guidelines and standards for developments required to undergo development-of-regional-impact review provided in this section supersede the statewide guidelines and standards previously adopted by the Administration Commission that address the same development. Other standards and guidelines previously adopted by the Administration Commission, including the residential standards and guidelines, shall not be superseded.

The guidelines and standards shall be applied in the manner described in s. 380.06(2)(a).

(2) The Administration Commission shall publish the statewide guidelines and standards established in this section in its administrative rule in place of the guidelines and standards that are superseded by this act, without the proceedings required by s. 120.54 and notwithstanding the provisions of s. 120.545(1)(c). The Administration Commission shall initiate rulemaking proceedings pursuant to s. 120.54 to make all other technical revisions necessary to conform the rules to this act. Rule amendments made pursuant to this subsection shall not be subject to the requirement for legislative approval pursuant to s. 380.06(2).

(3) The following statewide guidelines and standards shall be applied in the manner described in s. 380.06(2) to determine whether the following developments shall be required to undergo development-of-regional-impact review:

(a) Airports.--

1. Any of the following airport construction projects shall be a development of regional impact:

a. A new commercial service or general aviation airport with paved runways.

b. A new commercial service or general aviation paved runway.

c. A new passenger terminal facility.

2. Lengthening of an existing runway by 25 percent or an increase in the number of gates by 25 percent or three gates, whichever is greater, on a commercial service airport or a general aviation airport with regularly scheduled flights is a development of regional impact. However, expansion of existing terminal facilities at a nonhub or small hub

commercial service airport shall not be a development of regional impact.

3. Any airport development project which is proposed for safety, repair, or maintenance reasons alone and would not have the potential to increase or change existing types of aircraft activity is not a development of regional impact. Notwithstanding subparagraphs 1. and 2., renovation, modernization, or replacement of airport airside or terminal facilities that may include increases in square footage of such facilities but does not increase the number of gates or change the existing types of aircraft activity is not a development of regional impact.

(b) Attractions and recreation facilities.--Any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility, the construction or expansion of which:

1. For single performance facilities:

a. Provides parking spaces for more than 2,500 cars; or

b. Provides more than 10,000 permanent seats for spectators.

2. For serial performance facilities:

a. Provides parking spaces for more than 1,000 cars; or

b. Provides more than 4,000 permanent seats for spectators.

For purposes of this subsection, "serial performance facilities" means those using their parking areas or permanent seating more than one time per day on a regular or continuous

basis.

3. For multiscreen movie theaters of at least 8 screens and 2,500 seats:

a. Provides parking spaces for more than 1,500 cars; or

b. Provides more than 6,000 permanent seats for spectators.

(c) Industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities.--Any proposed industrial, manufacturing, or processing plant, or distribution, warehousing, or wholesaling facility, excluding wholesaling developments which deal primarily with the general public onsite, under common ownership, or any proposed industrial, manufacturing, or processing activity or distribution, warehousing, or wholesaling activity, excluding wholesaling activities which deal primarily with the general public onsite, which:

1. Provides parking for more than 2,500 motor vehicles; or

2. Occupies a site greater than 640 ~~320~~ acres.

(d) Office development.--Any proposed office building or park operated under common ownership, development plan, or management that:

1. Encompasses 300,000 or more square feet of gross floor area; or

~~2. Has a total site size of 30 or more acres; or~~

2~~3~~. Encompasses more than 600,000 square feet of gross floor area in a county with a population greater than 500,000 and only in a geographic area specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and in the strategic

regional policy plan.

~~(e) Port facilities.--The proposed construction of any waterport or marina is required to undergo development-of-regional-impact review, except one designed for:~~

~~1.a. The wet storage or mooring of fewer than 150 watercraft used exclusively for sport, pleasure, or commercial fishing, or~~

~~b. The dry storage of fewer than 200 watercraft used exclusively for sport, pleasure, or commercial fishing, or~~

~~c. The wet or dry storage or mooring of fewer than 150 watercraft on or adjacent to an inland freshwater lake except Lake Okeechobee or any lake which has been designated an Outstanding Florida Water, or~~

~~d. The wet or dry storage or mooring of fewer than 50 watercraft of 40 feet in length or less of any type or purpose. The exceptions to this paragraph's requirements for development-of-regional-impact review shall not apply to any waterport or marina facility located within or which serves physical development located within a coastal barrier resource unit on an unbridged barrier island designated pursuant to 16 U.S.C. s. 3501.~~

~~In addition to the foregoing, for projects for which no environmental resource permit or sovereign submerged land lease is required, the Department of Environmental Protection must determine in writing that a proposed marina in excess of 10 slips or storage spaces or a combination of the two is located so that it will not adversely impact Outstanding Florida Waters or Class II waters and will not contribute boat traffic in a manner that will have an adverse impact on an~~

~~area known to be, or likely to be, frequented by manatees. If the Department of Environmental Protection fails to issue its determination within 45 days of receipt of a formal written request, it has waived its authority to make such determination. The Department of Environmental Protection determination shall constitute final agency action pursuant to chapter 120.~~

~~2. The dry storage of fewer than 300 watercraft used exclusively for sport, pleasure, or commercial fishing at a marina constructed and in operation prior to July 1, 1985.~~

~~3. Any proposed marina development with both wet and dry mooring or storage used exclusively for sport, pleasure, or commercial fishing, where the sum of percentages of the applicable wet and dry mooring or storage thresholds equals 100 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under sub-subparagraphs 1.a. and b. and subparagraph 2.~~

(e)~~(f)~~ Retail and service development.--Any proposed retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite, operated under one common property ownership, development plan, or management that:

1. Encompasses more than 400,000 square feet of gross area;

~~2. Occupies more than 40 acres of land; or~~

2~~3~~. Provides parking spaces for more than 2,500 cars.

(f)~~(g)~~ Hotel or motel development.--

1. Any proposed hotel or motel development that is planned to create or accommodate 350 or more units; or

2. Any proposed hotel or motel development that is

planned to create or accommodate 750 or more units, in a county with a population greater than 500,000, and only in a geographic area specifically designated as highly suitable for increased threshold intensity in the approved local comprehensive plan and in the strategic regional policy plan.

(g)~~(h)~~ Recreational vehicle development.--Any proposed recreational vehicle development planned to create or accommodate 500 or more spaces.

h~~(i)~~ Multiuse development.--Any proposed development with two or more land uses where the sum of the percentages of the appropriate thresholds identified in chapter 28-24, Florida Administrative Code, or this section for each land use in the development is equal to or greater than 145 percent. Any proposed development with three or more land uses, one of which is residential and contains at least 100 dwelling units or 15 percent of the applicable residential threshold, whichever is greater, where the sum of the percentages of the appropriate thresholds identified in chapter 28-24, Florida Administrative Code, or this section for each land use in the development is equal to or greater than 160 percent. This threshold is in addition to, and does not preclude, a development from being required to undergo development-of-regional-impact review under any other threshold.

(i)~~(j)~~ Residential development.--No rule may be adopted concerning residential developments which treats a residential development in one county as being located in a less populated adjacent county unless more than 25 percent of the development is located within 2 or less miles of the less populated adjacent county.

(j)~~(k)~~ Schools.--

1. The proposed construction of any public, private, or proprietary postsecondary educational campus which provides for a design population of more than 5,000 full-time equivalent students, or the proposed physical expansion of any public, private, or proprietary postsecondary educational campus having such a design population that would increase the population by at least 20 percent of the design population.

2. As used in this paragraph, "full-time equivalent student" means enrollment for 15 or more quarter hours during a single academic semester. In area vocational schools or other institutions which do not employ semester hours or quarter hours in accounting for student participation, enrollment for 18 contact hours shall be considered equivalent to one quarter hour, and enrollment for 27 contact hours shall be considered equivalent to one semester hour.

3. This paragraph does not apply to institutions which are the subject of a campus master plan adopted by the Board of Regents pursuant to s. 240.155.

(4) Two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development under this chapter when they are determined to be part of a unified plan of development and are physically proximate to one other.

(a) The criteria of two of the following subparagraphs must be met in order for the state land planning agency to determine that there is a unified plan of development:

1.a. The same person has retained or shared control of the developments;

b. The same person has ownership or a significant legal or equitable interest in the developments; or

c. There is common management of the developments

controlling the form of physical development or disposition of parcels of the development.

2. There is a reasonable closeness in time between the completion of 80 percent or less of one development and the submission to a governmental agency of a master plan or series of plans or drawings for the other development which is indicative of a common development effort.

3. A master plan or series of plans or drawings exists covering the developments sought to be aggregated which have been submitted to a local general-purpose government, water management district, the Florida Department of Environmental Protection, or the Division of Florida Land Sales, Condominiums, and Mobile Homes for authorization to commence development. The existence or implementation of a utility's master utility plan required by the Public Service Commission or general-purpose local government or a master drainage plan shall not be the sole determinant of the existence of a master plan.

4. The voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments sought to be aggregated, except that which was implemented because it was required by a local general-purpose government; water management district; the Department of Environmental Protection; the Division of Florida Land Sales, Condominiums, and Mobile Homes; or the Public Service Commission.

5. There is a common advertising scheme or promotional plan in effect for the developments sought to be aggregated.

(b) The following activities or circumstances shall not be considered in determining whether to aggregate two or more developments:

1. Activities undertaken leading to the adoption or amendment of any comprehensive plan element described in part II of chapter 163.

2. The sale of unimproved parcels of land, where the seller does not retain significant control of the future development of the parcels.

3. The fact that the same lender has a financial interest, including one acquired through foreclosure, in two or more parcels, so long as the lender is not an active participant in the planning, management, or development of the parcels in which it has an interest.

4. Drainage improvements that are not designed to accommodate the types of development listed in the guidelines and standards contained in or adopted pursuant to this chapter or which are not designed specifically to accommodate the developments sought to be aggregated.

(c) Aggregation is not applicable when the following circumstances and provisions of this chapter are applicable:

1. Developments which are otherwise subject to aggregation with a development of regional impact which has received approval through the issuance of a final development order shall not be aggregated with the approved development of regional impact. However, nothing contained in this subparagraph shall preclude the state land planning agency from evaluating an allegedly separate development as a substantial deviation pursuant to s. 380.06(19) or as an independent development of regional impact.

2. Two or more developments, each of which is independently a development of regional impact that has or will obtain a development order pursuant to s. 380.06.

3. Completion of any development that has been vested

pursuant to s. 380.05 or s. 380.06, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. Development-of-regional-impact review of additions to vested developments of regional impact shall not include review of the impacts resulting from the vested portions of the development.

4. The developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date.

(d) The provisions of this subsection shall be applied prospectively from September 1, 1988. Written decisions, agreements, and binding letters of interpretation made or issued by the state land planning agency prior to July 1, 1988, shall not be affected by this subsection.

(e) In order to encourage developers to design, finance, donate, or build infrastructure, public facilities, or services, the state land planning agency may enter into binding agreements with two or more developers providing that the joint planning, sharing, or use of specified public infrastructure, facilities, or services by the developers shall not be considered in any subsequent determination of whether a unified plan of development exists for their developments. Such binding agreements may authorize the developers to pool impact fees or impact-fee credits, or to enter into front-end agreements, or other financing arrangements by which they collectively agree to design, finance, donate, or build such public infrastructure, facilities, or services. Such agreements shall be conditioned upon a subsequent determination by the appropriate local

government of consistency with the approved local government comprehensive plan and land development regulations. Additionally, the developers must demonstrate that the provision and sharing of public infrastructure, facilities, or services is in the public interest and not merely for the benefit of the developments which are the subject of the agreement. Developments that are the subject of an agreement pursuant to this paragraph shall be aggregated if the state land planning agency determines that sufficient aggregation factors are present to require aggregation without considering the design features, financial arrangements, donations, or construction that are specified in and required by the agreement.

(f) The state land planning agency has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this subsection.

Section 5. (1) Nothing contained in this act abridges or modifies any vested or other right or any duty or obligation pursuant to any development order or agreement which is applicable to a development of regional impact on the effective date of this act. A development which has received a development-of-regional-impact development order pursuant to s. 380.06, but is no longer required to undergo development-of-regional-impact review by operation of this act, shall be governed by the following procedures:

(a) The development shall continue to be governed by the development-of-regional impact development order, and may be completed in reliance upon and pursuant to the development order. The development-of-regional-impact development order may be enforced by the local government as provided by ss. 380.06(17) and 380.11, Florida Statutes (2001).

(b) If requested by the developer or landowner, the development-of-regional-impact development order may be amended or rescinded by the local government consistent with the local comprehensive plan and land development regulations, and pursuant to the local government procedures governing local development orders.

(2) A development with an application for development approval pending on the effective date of this act, or a notification of proposed change pending on the effective date of this act, may elect to continue such review pursuant to s. 380.06, Florida Statutes (2001). At the conclusion of the pending review, including any appeals pursuant to s. 380.07, Florida Statutes (2001), the resulting development order shall be governed by the provisions of subsection (1).

(RENUMBER SUBSEQUENT SECTIONS)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 2,

remove: the entire title

and insert:

An act relating to Growth Management; amending s. 163.3184, F.S.; revising definitions; revising provisions governing the process for adopting comprehensive plans and plan amendments; amending s. 380.04, F.S.; revising the definition of what is not development to include: interstate highways, increases in

utility capacity within an existing right-of-way and redevelopment of the same uses and intensity of use within the same parcel footprint; inserting "electricity" into work by a utility that is not defined as development; amending s. 380.06, F.S., relating to developments of regional impact; removing a rebuttable presumption with respect to application of the statewide guidelines and standards and revising the fixed thresholds; providing for submission of biennial, rather than annual, reports by the developer; authorizing submission of a letter, rather than a report, under certain circumstances; providing for amendment of development orders with respect to report frequency; removing provisions which specify that increases in the storage capacity for chemical or petroleum storage facilities, or development at a waterport constitute a substantial deviation and require further development-of-regional-impact review; providing that an extension of the date of buildout of less than 7 years is not a substantial deviation; amending s. 380.0651, F.S., deleting development-of-regional-impact statewide guidelines and standards for port facilities; revising the guidelines and standards for office development, retail and service development, and industrial development; providing application with respect

to developments which have received a development-of-regional-impact development order, or which have an application for development approval or notification of proposed change pending; providing an effective date.