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HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS

BILL #: HB 1535

RELATING TO: Comprehensive Plans and Plan Amendments

SPONSOR(S): Representative Carassas

TIED BILL(S): None

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

(1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 8 NAYS 1
(2) COUNCIL FOR SMARTER GOVERNMENT
(3)
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill streamlines the process used by the Department of Community Affairs (DCA) to review comprehensive plan amendments to speed up the intergovernmental review of comprehensive plan amendments and to require that commenting agencies provide comments to the department within 30 days of DCA's receipt of the amendment. If the plan or plan amendment relates to a public school facilities element, DCA is required to send the amendment to the Office of Educational Facilities of the Commissioner of Education for review and comment. In addition, if DCA is required or elects to review a proposed amendment, it must issue its report stating its objections, recommendations and comments within 60 days of its receipt of the amendment. The bill also requires DCA to issue a notice of intent that the plan amendment is in compliance within 20 days rather than 45 days from receipt of the adopted comprehensive plan amendment where: a local government adopts a plan amendment that is unchanged from the proposed plan amendment transmitted to DCA for review; DCA did not review the proposed amendment or raise any objections to the amendment, and, an "affected person" did not object to the amendment.

The bill permanently extends the authorization granted to DCA for fiscal year 2001-2002, for the department to publish copies of its notices of intent on the Internet in addition to legal notice advertising. The bill deletes existing language that requires advertisements of the notice of intent to be no less than 2 columns wide by 10 inches long. The bill also requires local governments to provide a sign-in form at the comprehensive plan transmittal and adoption hearing. In addition to revising the plan amendment review process, the bill includes an abutting property owner in the definition of affected persons.

The bill has a positive fiscal impact on DCA by significantly reducing DCA's advertising expenses.

On February 21, 2002, the Committee on Local Government & Veterans Affairs considered HB 1535 adopted four amendments, and passed the bill. The amendments, which are traveling with the bill, are explained in this bill analysis. (See section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:".)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

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

B. PRESENT SITUATION:

Background – Growth Management System

Florida has a system of growth management that includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; sections 163.3161-163.3244, Florida Statutes; Chapter 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs; ch. 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and ch. 187, F.S., the State Comprehensive Plan.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, DCA was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by DCA on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.).

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

Comprehensive Plan Amendment Process

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

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

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

Upon receipt of the comments described above, the department has 30 days to send its objections, recommendations and comments report to the local government body (commonly referred to as the "ORC Report"). In its review, the department considers whether the amendment is consistent with the requirements of the Act, Rule 9J-5, Florida Administrative Code, the State Comprehensive Plan and the appropriate regional policy plan.

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

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

the department issues a notice of intent to find the plan amendment in compliance or not in compliance with the requirements of the Act. The notice of intent is mailed to the local government and the department is required to publish such notice in a newspaper which has been designated by the local government.

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

If the department issues a notice of intent to find the comprehensive plan amendment not in compliance, the notice of intent is forwarded directly to the Division of Administrative Hearing in order to hold a ss. 120.569 and 120.57, F.S., administrative proceeding. The parties to the administrative proceeding include: the department; the affected local government, and any affected person who intervenes. "Affected persons" are defined, by s. 163.3184(1), F.S., to include:

> …the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review, and the adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

The definition of "affected person" requires that the individual seeking to challenge the comprehensive plan or plan amendment has participated in some capacity during the public hearing process through the submission of oral or written comments. Persons residing outside of the jurisdiction of the local government offering the amendment, accordingly, lack standing under this definition.

In the administrative hearing, the decision of the local government that the comprehensive plan amendment is in compliance is presumed to be correct and must be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan amendment is not in compliance. The administrative law judge submits his decision directly to the Administration Commission for final agency action. If the Administration Commission determines that the plan amendment is not in compliance with the Act, it must specify remedial actions to bring the plan amendment into compliance.

Local governments are limited in the number of times per year they may adopt comprehensive plan amendments. Section 163.3187, F.S., provides that local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions which include, for example: amendments directly related to developments of regional impact; small scale development amendments; the designation of an urban infill and redevelopment area; and changes to the schedule of the capital improvements element.

C. EFFECT OF PROPOSED CHANGES:

This bill streamlines the process used by the Department of Community Affairs (DCA) to review comprehensive plan amendments to speed up the intergovernmental review of comprehensive plan amendments and to require that commenting agencies provide comments to the department within 30 days of DCA's receipt of the amendment. If the plan or plan amendment relates to a public school facilities element, DCA is required to send the amendment to the Office of Educational Facilities of the Commissioner of Education for review and comment. In addition, if DCA is required or elects to review a proposed amendment, it must issue its report stating its objections, recommendations and comments within 60 days of its receipt of the amendment. The bill also requires DCA to issue a notice of intent that the plan amendment is in compliance within 20 days rather than 45 days from receipt of the adopted comprehensive plan amendment where:

- a local government adopts a plan amendment that is unchanged from the proposed plan amendment transmitted to DCA for review;
- DCA did not review the proposed amendment or raise any objections to the amendment, and,
- an "affected person", as defined in s. 163.3184(1)(a), F.S., did not object to the amendment.

The bill also permanently extends the authorization granted to DCA for fiscal year 2001-2002, for the department to publish copies of its notices of intent on the Internet in addition to legal notice advertising. The bill deletes existing language that requires advertisements of the notice of intent to be no less than 2 columns wide by 10 inches long. The bill also requires local governments to provide a sign-in form at the comprehensive plan transmittal and adoption hearing.

In addition to revising the plan amendment review process, the bill includes an abutting property owner in the definition of affected persons.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 163.3184, F.S., is amended to include an abutting property owner in the definition of affected persons.

The section also streamlines the process used by the Department of Community Affairs (DCA) to review comprehensive plan amendments to speed up the intergovernmental review of comprehensive plan amendments and to require that commenting agencies must provide comments to the department within 30 days of DCA's receipt of the amendment. If the plan or plan amendment relates to a public school facilities element, DCA must send the amendment to the Office of Educational Facilities of the Commissioner of Education for review and comment. In addition, if DCA is required or elects to review a proposed amendment, it must issue its report stating its objections, recommendations and comments within 60 days of its receipt of the amendment.

DCA is required to issue a notice of intent that the plan amendment is in compliance within 20 days rather than 45 days from receipt of the adopted comprehensive plan amendment where:

- a local government adopts a plan amendment that is unchanged from the proposed plan amendment transmitted to DCA for review;
- DCA did not review the proposed amendment or raise any objections to the amendment, and,

- an "affected person", as defined in s. 163. 3184(1)(a), F.S., did not object to the amendment.

The section also is amended to permanently extend the authorization granted to DCA for fiscal year 2001-2002, for the department to publish copies of its notices of intent on the Internet in addition to legal notice advertising. The section deletes existing language that required advertisements of the notice of intent to be no less than 2 columns wide by 10 inches long. This change will significantly reduce DCA's advertising expenses. Finally, the section requires local governments to provide a sign-in form at the comprehensive plan transmittal and adoption hearing.

Section 2. An effective date of upon becoming a law is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The extension of DCA's authority to provide Internet notice and use legal advertisements reduces the cost to the department of newspaper advertisement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of countries and municipalities to raise total aggregate revenues.

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

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2002, the Committee on Local Government & Veterans Affairs considered HB 1535, adopted four amendments, and passed the bill. The amendments, which are traveling with the bill, are explained below.

Amendment #1

Together, with amendment #2. the amendments move to a more appropriate place in s. 163.3184, F.S., the requirement that DCA send plan amendments to the Office of Educational Facilities of the Commissioner of Education for review and comment if the plan or plan amendment relates to a public school facilities element. The amendment requires the local government, rather than DCA, to send the plan amendment.

Amendment #2

This amendment is a conforming amendment to Amendment #1.

Amendment #3

The amendment makes a variety of changes to the DRI process. The amendment revises the definition of what is not considered development under the DRI process to include: interstate highways; increases in utility capacity within an existing right-of-way; construction, renovation, or redevelopment within the same parcel which does not change land use or intensity of use; and work by a utility and other persons engaged in the distribution or transmission of electricity. The amendment also is amended to add enlarging the capacity of electricity, gas, or water.

The amendment provides a bright line test for developments that are at or below 100 percent of DRI thresholds by providing that they are not DRIs and are not required to go through the review process.

The amendment provides for biennial reports rather than annual reports, unless otherwise specified.

The amendment eliminates marinas and petroleum storage facilities from DRI review.

The amendment provides a bright line test for buildout extensions by providing that an extension of less than 7 years is not a substantial deviation.

The amendment eliminates acreage standards for office development and retail developments and increases acreage standards for industrial plants.

The amendment provides vesting language for chapter 380, F.S.

Amendment #4

This amendment amends s. 163.3180, F.S., to provide that the concurrency requirement, except for transportation facilities, as implemented in local government comprehensive plans, may be waived by a local government for urban infill and redevelopment areas designated pursuant to s. 163.2517, F.S., if such a waiver does not endanger public health or safety as defined by the local government in its local government comprehensive plan. Such a waiver must be adopted as a plan amendment pursuant to the process set forth in s. 163.3187(3)(a), F.S.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:	Staff Director:
Thomas L. Hamby, Jr.	Joan Highsmith-Smith