STORAGE NAME: h1535.s1.doc
DATE: March 6, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 1535

RELATING TO: Comprehensive Planning

SPONSOR(S): Council for Smarter Government and 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 YEAS 9 NAYS 5
(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 makes several changes to the Development of Regional Impact (DRI) process. The bill revises the definition of what is not considered development under the DRI process and 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 bill provides for biennial reports on DRIs rather than annual reports, unless otherwise specified. The bill eliminates marinas and petroleum storage facilities from DRI review under specified circumstances. The bill provides a bright line test for buildout extensions by providing that an extension of less than 7 years is not a substantial deviation. The bill eliminates acreage standards for office development and retail developments and increases acreage standards for industrial plants.

The bill provides 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, if such a waiver does not endanger public health or safety as defined by the local government in its local government comprehensive plan.

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. In addition, the bill shortens the approval process for unobjectionable plan amendments from 45 days to 20 days. The bill authorizes DCA to publish copies of its notices of intent on the Internet in addition to legal notice advertising. The bill deletes the requirement that advertisements of the notice of intent 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.

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.

Concurrency

The concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act (part II, Chapter 163, F.S.) is a growth management tool designed to accommodate development by ensuring that adequate facilities are available as growth occurs. The "cornerstone" of the concurrency requirement is the concept that development should be coordinated with capital improvements planning to ensure that the necessary public facilities are available for, or within a reasonable time of, the impacts of new development. Under the requirements for local comprehensive plans, each local government must adopt levels of service (LOS) standards for certain types of public services and facilities. See section 163.3180, F.S. Generally, these LOS standards apply to sanitary sewer, solid waste, drainage, potable water, parks and recreation, roads and mass transit. Pursuant to section 163.3180(2)(c), F.S., the local government must ensure that transportation facilities needed to serve new development are in place or under actual construction within three years after issuance of the certificate of occupancy. The intent is to keep new development from significantly reducing the adopted LOS by increasing the capacity of the infrastructure to meet the demands of new development.

Development of Regional Impact

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

Percentage thresholds are defined in 380.06(2)(d), F.S., that are applied to the guidelines and standards. First, fixed thresholds are defined where if a development is at or below 80% of all numerical thresholds in the guidelines, the project is not required to undergo DRI review. If a development is at or above 120% of the guidelines, it is required to undergo review. Rebuttable presumptions are defined whereby a development between 80 and 100% of a numerical threshold is presumed not to require DRI review. A development that is at 100% or between 100-120% of a numerical threshold is presumed to require DRI review.

Section 380.06, F.S., establishes the basic process for DRI review. The DRI review process involves the regional review of proposed developments meeting the defined thresholds by the regional planning councils to determine the extent to which:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities.

- The development will significantly impact adjacent jurisdictions.

- The development will favorable or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

The local government where the project is located must hold a public hearing and issue a development order. The development order may require the developer to contribute land or funds for the construction of public facilities or infrastructure. The issuance of a final development order vests the developer with the right to construct the development as configured.

In addition, under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a substantial likelihood of additional regional impact, or any type of regional impact constitutes a "substantial deviation" which requires further DRI review and entry of a new or amended local development order. The statute sets out criteria for determining when certain changes are to be considered substantial deviations without need for a hearing, and provides that all such changes are considered cumulatively.

Revising the Development of Regional Impact Review Process

Integrating the DRI Review Process with the comprehensive planning process is one of the most popular and longstanding recommendations for revising the DRI program. As early as 1980, task forces and study committees began recommending integration of the two programs, and that recommendation has been repeated consistently through the history of the DRI program. For example, in 1992, ELMS III recommended that the DRI review process be better integrated into the local government comprehensive planning process and recommended termination of the program in certain jurisdictions upon implementation of new intergovernmental coordination element requirements. More recently, the Growth Management Study Commission recommended the "elimination and replacement of the Development of Regional Impact Program with a system of Regional Cooperation Agreements or Developments with Extra Jurisdictional Impact to be negotiated by the eleven regional planning councils."

On October 1, 1997, staff of the Senate Committees on Community Affairs, Governmental Reform and Oversight, and Natural Resources issued a report entitled "Streamlining the Developments of Regional Impact Review Process." This report includes a recommendation to "Consider replacing the DRI review process with specific plans as the method for addressing the extra jurisdictional impacts of large development." In addition, the report recommended that the Legislature should consider a pilot project to test the use of specific plans in Florida.

In 1997, the Legislature enacted s. 163.3245, F.S., authorizing an optional sector planning process whereby up to five local governments can develop special area plans, or sector plans. These pilot projects are intended for substantial geographic areas including at least 5,000 acres and one or more local governmental jurisdictions. An optional sector plan addresses the same issues as the development of regional impact process, including intergovernmental coordination to address extra jurisdictional impacts; however, the sector plan is adopted as an amendment to the local government comprehensive plan. When the plan amendment adopting the special area plan becomes effective, the provisions of s. 380.06, F.S., do not apply to development within the geographic area of the special area plan. To date, four sector plans are being undertaken: Clay County—Brannon Field Corridor; Orange County—Horizon West; Palm Beach County—Central Western Communities; and Bay County—Airport Relocation.

Manatee Protection Plans

The "Florida Manatee Sanctuary Act" was adopted in 1978 and is designed to protect the West Indian manatee ("sea cow") from injury or harm due to the operation and speed of motorboats in the

areas specified within the Act. The Act declared that the entire State was a refuge and sanctuary for manatees, and provided that in order to protect manatees from harmful collisions with boats, the Department of Natural Resources (DNR) was to initiate rules under chapter 120, F.S., to establish seasonal speed zones within Lee, Brevard, Indian River, St. Lucie, Palm Beach, Broward, Citrus, Volusia, and Hillsborough counties. Areas affected by the rules included springs, rivers, and power plant discharge areas. The DNR was directed to adopt rules regulating the operation and speed of motorboat traffic for any new power plant, or other new source of warm water discharge, whenever a concentration of manatees were attracted to the area. Responsibility for law enforcement was shared with the Game and Fresh Water Fish Commission.

In 1982, the Legislature amended the Florida Manatee Sanctuary Act to provide for seasonal speed zones in Sarasota, Collier, and Martin counties, and added language stating that the Legislature did not intend DNR to generally regulate boat speeds within the areas, thereby interfering with recreational or commercial waterway users. In 1983, the Legislature enacted Chapter 83-81, Laws of Florida, which removed requirements for seasonal speed zones, and provided the DNR with authority to regulate the operation and speed of motorboats in areas on a year-round basis. Additional areas in Manatee and Dade counties were identified, further provisions for Brevard county were added, and the DNR was authorized to adopted manatee protection rules in all areas of the state where manatees were frequently sighted.

Amendments to the Florida Manatee Sanctuary Act in 1984 included an appropriation of $250,000 from the Motorboat Revolving Trust Fund to fund the DNR's manatee protection efforts. Chapter 84-338, Laws of Florida, also provided that the appropriation could be reduced when the federal and state governments delisted manatees.

The last major amendment to the Florida Manatee Sanctuary Act occurred in 1990, when the Legislature enacted chapter 90-219, Laws of Florida. This change was made in response to a DNR recommendation for manatee protection plans for thirteen specific counties, and also recommended the counties develop an Interim Boating Facility Expansion Policy to address marinas with wet slips and dry storage, and boat ramps. The Legislature enacted the CS/SB 760, which among other things, directed DNR to follow chapter 120 procedures when adopting rules for the expansion of existing, or construction of new marine facilities and mooring or docking slips, by the addition or construction of five or more powerboat slips.

Manatee Protection Plans

In June of 1989, the Governor and the Cabinet directed the Department of Natural Resources to develop recommendations for specific actions to protect manatees, and to make the state's waters safe for boaters. These recommendations were presented to the Governor and the Cabinet in October of 1989, and were contained in a report entitled Recommendations to Improve Boating Safety and Manatee Protection for Florida Waterways. The DNR report recommended the following actions with relation to manatee protections:

- Establishing shoreline slow speed zones.
- Creating new manatee protection zones.
- Designating manatee preserves.
- Improving speed zone sign posting.
- Instituting an Interim Boating Facility Expansion Policy.
- Legislative amendments to the Florida Manatee Sanctuary Act.
- Education and Information Campaign

The report recommended that in thirteen key manatee protection counties (Brevard, Broward, Citrus, Collier, Dade, Duval, Indian River, Lee, Martin, Palm Beach, St. Lucie, Sarasota and Volusia) shoreline slow speed zones should be established for all inland waters accessible to manatees. The counties would be responsible for posting manatee information signs and speed zone signs at key access points such as marinas, boat ramps, and waterfront parks. Further, the report suggested that county governments develop site-specific manatee protection regulations and recommended a schedule for development of those regulations. To provide an incentive, the report suggested that boundaries for shoreline slow speed zones should be increased if manatee regulations were not in place by the recommended deadline.

The report suggested that the construction of new or expanded boating facilities within the thirteen counties would be limited to a maximum of one powerboat slip per hundred linear feet of shoreline owned or controlled by the permit applicant unless a county had developed and implemented a manatee protection plan approved by DNR and a boating facility siting policy applicable to facilities with more than five boat slips or expanding to more than five boat slips. DNR's approval of a local ordinance was to be based on a determination that the ordinance did not permit dock densities harmful to manatees, did not allow destruction of essential habitat, and did not allow dock construction in areas used by manatees. Manatee protection plans were to be based on comprehensive manatee mortality, abundance, and distribution data, and interim plans could be developed using the best available information as approved by DNR.

The Governor and the Cabinet adopted the recommendations contained in the report, and the requirement for counties to adopt and implement a manatee protection plan was put in place through the permitting process. There are no statutory provisions or agency rules requiring the development or implementation of manatee protection plans.

To date, the FWCC has approved manatee protection plans for Citrus, Collier, Dade, Duval, and Indian River counties.

C. EFFECT OF PROPOSED CHANGES:

This bill makes several changes to the DRI process. The bill 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 bill 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 bill provides for biennial reports on DRIs rather than annual reports, unless otherwise specified. The bill eliminates marinas and petroleum storage facilities from DRI review under specified circumstances. The bill provides a bright line test for buildout extensions by providing that an extension of less than 7 years is not a substantial deviation. The bill eliminates acreage standards for office development and retail developments and increases acreage standards for industrial plants. The bill also provides vesting language for chapter 380, F.S.

The bill provides 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. The subsection is further amended to provide that a local government may grant a concurrency exception pursuant to subsection (5) for transportation facilities located within these urban infill and redevelopment areas.

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. Paragraph (c) of subsection (4) of s. 163.3180, F.S., is amended 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. The subsection is further amended to provide that a local government may grant a concurrency exception pursuant to subsection (5) for transportation facilities located within these urban infill and redevelopment areas.

Section 2. Section 163.3184, F.S., is amended to include an abutting property owner in the definition of affected persons.

The section also is amended to streamline 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, the local government 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 3. Subsection (3) of s. 380.04, F.S., is amended to revise the definition of what is not considered development under the DRI process to include: any work or construction on the interstate highway system; work by any utility and other persons engaged in the distribution or transmission of electricity; 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.

Section 4. Paragraph (d) of subsection (2) of s. 380.06, F.S., is amended to provide that a development that is at or below 100 percent of all numerical thresholds in the guidelines and standards shall not be required to undergo DRI review and 2.a. is deleted to remove the rebuttable presumption that a development that is between 80 and 100 percent of a numerical threshold shall not be required to undergo DRI review. Subsection (4)(b)2. is deleted to reflect the revision to (2)(d). Subsection (8)(a)5.a. and 11.b. are also amended to reflect the revision to (2)(d). **(See "Comments" section of the analysis.)**

Subsection (15) is amended to reflect the change from an annual to a biennial report provided for in the changes to subsection (18). Subsection (18) is amended to require a biennial rather than annual report on the DRI to the local government, the regional planning agency, DCA, and all affected permit agencies, unless the development order by its terms requires more frequent monitoring. The subsection is further amended to provide 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. The subsection also is amended to allow development orders which require annual reports to be amended to require biennial reports at the option of the local government.

Subsection (19) is amended to revise provisions governing substantial deviations. Paragraph (c) is amended to provide that an extension of the date of buildout of a development, or a phase thereof, of an extension of less than 7 rather than 5 years is not a substantial deviation. Paragraph (e)2. also is amended to provide that 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.

New paragraph (i) is added to subsection (24) to provide that any proposed facility for the storage of any petroleum product is exempt from the provisions of this section, if such facility is consistent with a local comprehensive plan that is in compliance with s. 163.3177, F.S., or is consistent with a comprehensive port master plan that is in compliance with s. 63.3178, F.S.

New paragraph (j) is added to subsection (24) to provide that any proposal to increase development at a waterport or marina existing on the effective date of this act or any new waterport or marina development is exempt from the provisions of this section unless located within a county identified in s. 370.12(2)(f), F.S. The new paragraph further provides that any waterport or marina development located within a county identified in s. 370.12(2)(f), F.S., shall be exempt from the provisions of this section when such county has had its manatee protection plan approved by the Florida Fish and Wildlife Conservation Commission. The Commission is directed to approve such protection plans by December 31, 2003, then any increase or new development in such county shall be exempt from the provisions of this section. Paragraph (j) further provides that in the counties identified in 370.12(2)(f), F.S., prior to the approval of a manatee plan on December 31, 2004, the current standards and thresholds provided in ss. 380.06(19)(b)8. and 380.0651(3)(e), F.S., are applicable. **(See "Comments" section of the analysis.)**

Section 5. Paragraphs (c), (d), and (f) of subsection (3) of s. 380.0651, F.S., is amended to revise DRI statewide guidelines and standards for DRI review to:

- Increase from 320 to 480 acres the threshold for DRI review of proposed industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities.

- Eliminate the threshold of 30 or more acres for office developments.

- Eliminate the threshold of 40 or more acres for retail and service development.

Section 6. Subsection (1) of the section declares that 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, F.S. (2001) but is no longer required to undergo development-of-regional-impact review by operation of this act, shall be governed by the following procedures:

- 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, F.S. (2001).

- 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.

Subsection (2) of the section further declares that 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, F.S. (2001). At the conclusion of the pending review, including any appeals pursuant to s. 380.07, F.S. (2001), the resulting development order shall be governed by the provisions of subsection (1).

Section 7. 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:

Technical Deficiencies

As discussed below, on February 26, 2002, the Council for Smarter Government considered HB 1535, adopted a substitute amendment for amendment 3 by the Committee on Local Government & Veterans Affairs, and passed the bill as a council substitute. The substitute amendment contained several drafting errors.

The substitute amendment amended s. 380.06, F.S., to delete (2)(d)2.a., F.S., which provides for a rebuttable presumption that development between 80 and 100 percent is not required to undergo DRI review. Similarly, the amendment revised (4)(b)2. of the same section and amended (8)(a)5.a. of the same section to strikethrough 80 and insert 100. The reason for these changes was to delete provisions providing for rebuttable presumption for developments at or below 100 percent of all numerical thresholds. However, due to a drafting error, subsection (2)(d)1.a. of s. 380.06, F.S., was not amended to reflect the elimination of rebuttable presumption for such development, nor was subsection (8)(a)11.b of s. 380.06, F.S. To reflect the elimination of rebuttable presumption for developments at or below 100 percent of all numerical thresholds, the CS/HB 1535 includes revisions to subsection (2)(d)1.a. and subsection (8)(a)11.b of s. 380.06, F.S., to strikethrough 80 and insert 100.

The substitute amendment also created new paragraphs (i) and (j) of subsection (19) of s. 380.06, F.S., to provide qualified exemptions for petroleum storage facilities and marinas. However, subsection (19) addresses substantial deviations, not exemptions from DRI review, which is addressed in subsection (24) of s. 380.06, F.S. To correct this error, CS/HB 1535 places new paragraphs (i) and (j) in subsection (24) of s. 380.06, F.S.

Finally, new paragraph (j), which is added to subsection (24) of s. 380.06, F.S., in CS/HB 1535, failed to include language requested by the sponsor. The excluded language provided that if the Florida Fish and Wildlife Commission approves no manatee protection plan by December 31, 2003, then any increase or new waterport or marina development in specified counties shall be exempt from the provisions of this section. Since neither the text of the substitute amendment nor the title amendment reflected this provision, it has not been included in CS/HB 1535.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 26, 2002, the Council for Smarter Government considered HB 1535, adopted a substitute amendment for amendment 3 by the Committee on Local Government & Veterans Affairs, and passed the bill as a council substitute, which incorporates the contents of amendments 1, 2, and 4 by the Committee on Local Government & Veterans Affairs and the content of the substitute amendment for the committee's amendment 3. CS/HB 1535 differs from the original filed bill in the following ways:

- CS/HB 1535 requires the local governing body, rather than DCA, to 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.

- CS/HB 1535 makes several changes to the DRI process. The bill 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 bill 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 bill provides for biennial reports on DRI rather than annual reports, unless otherwise specified. The bill eliminates marinas and petroleum storage facilities from DRI review under specified circumstances. The bill provides a bright line test for buildout extensions by providing that an extension of less than 7 years is not a substantial deviation. The bill eliminates acreage standards for office development and retail developments and increases acreage standards for industrial plants. The bill also provides vesting language for chapter 380, F.S.

- CS/HB 1535 provides 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. The subsection is further amended to provide that a local government may grant a concurrency exception pursuant to subsection (5) for transportation facilities located within these urban infill and redevelopment areas.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

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

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:	Council Director:
Thomas L. Hamby, Jr.	Don Rubottom