SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2228

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Clary

SUBJECT: Growth Management

DATE: March 12, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.			AGG	
3.			AP	
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes to Part II of chapter 163, the Local Government Comprehensive Planning and Land Development Act, and the Development-of-Regional-Impact program contained in Part I of chapter 380, F.S. In addition, the bill authorizes the creation of educational facilities benefit districts for the purposes of financing school construction through the levy of special assessments within an educational facilities benefit district or a community development district.

- The bill revises provisions governing the regulation of intensity of use by local governments in the future land use element of their local government comprehensive plans.

- 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.

- By January 1, 2004, local governments within counties with a population of 100,000 or greater are required to inventory their service delivery agreements and identify deficits or duplication in the provision of services. In addition, by February 1, 2003 representatives of municipalities and counties are to recommend statutory changes regarding annexation to the Legislature.

- This bill revises the process for adoption of local government comprehensive plans or plan amendments decreasing the timeframes required for state review in some circumstances. In addition, the bill allows the Department of Community Affairs to publish notices of intent on the Internet in addition to legal notice advertising as an alternative to publishing larger and more expensive newspaper advertisements.

- The bill makes a number of changes to the development-of-regional-impact program. 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 provides a bright line test for buildout extensions by providing that an extension of less than 6 years is not a substantial deviation. The bill eliminates acreage standards for office development and retail developments and modifies thresholds for multiuse developments. The bill exempts petroleum storage facilities and any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use from DRI review under specified circumstances. Finally, the bill provides definitions that are relevant to whether two or more developments represent a unified plan of development which should be treated as a single development for purposes of development-of-regional-impact review.

- The bill authorizes counties and municipalities to create educational facilities benefit districts (benefit districts) by entering into an interlocal agreement with the school board and any local general purpose government within whose jurisdiction a portion of the benefit district is located, and adoption of an ordinance. Creation of a benefit district is conditioned upon the consent of the school board, all affected local general purpose governments, and all landowners within the benefit district. The governing board of any benefit district must include representation of the school board, each cooperating local general purpose government, and the landowners within the benefit district. In the case of the benefit district's decision to create a charter school, the board of directors of the charter school will constitute the members of the governing board for the benefit district. The bill authorizes community development districts (CDDs) to receive the financial enhancements available to benefit districts.

- Upon confirmation by a school board of commitment of revenues by a benefit district or CDD necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School the benefit district or CDD receives, until the benefit district's financial obligations are completed:

    1) an annual amount equal to one mill of taxation for all taxable property within the benefit district or CDD to be paid to the school district;
    2) all educational facilities impact fee revenue collected for new development within the benefit district or CDD.

The bill is effective upon becoming a law.

This bill substantially amends s.163.3177, 163.3180, 163.3184, 380.04, 380.06, 380.065, and creates s. 235.1851, 235.1852. and 235.1853 of the Florida Statutes.

II. Present Situation:

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

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, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. 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 the department 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 in 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.

Developments-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 s. 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 favorably 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.

Section 380.0651, F.S., sets forth a number of statewide guidelines and standards for determining whether certain types of development, e.g., office development, multiuse development, retail and service development, are required to undergo development-of-regional-impact review. Subsection (4) sets forth criteria for guiding the department in determining when two or more developments, must be aggregated and treated as a single development because they are determined to be part of a unified plan of development and are physically proximate to each other. Two of the following criteria must be met for DCA to determine that there is a unified plan of development:

- The same person has retained or shared control of the developments; the same person has ownership or a significant legal or equitable interest in the developments; or there is common management of the developments controlling the form of physical development or disposition of parcels of the development.

- 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 which indicates a common development effort.
- A master plan exists covering the developments sought to be aggregated.
- The voluntary sharing of infrastructure that is indicative of a common development effort.
- There is a common advertising scheme or promotional plan in effect for the developments sought to be aggregated.

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.

Educational Facility Financing

Chapter 235, F.S., Educational Facilities

Chapter 235, F.S., contains planning and design requirements for educational facilities. Administrative rules adopted under the authority of the chapter are currently undergoing review as part of the reorganization of educational governance for K-20. For example, under current law, s. 235.193, F.S., requires some degree of coordination between school boards and local governments. Section s. 235.193(1), F.S., requires the integration of the educational plant survey with the local comprehensive plan and land development regulations. School boards are required to share information regarding existing and planned facilities, and infrastructure required to support the educational facilities. The location of public educational facilities must be consistent with the comprehensive plan and the land development regulations of the local governing body.

Local governments are prohibited from denying site plan approval for an educational facility based on the adequacy of the site plan as it relates to the needs of the school. Further, existing schools are considered consistent with the applicable local government's comprehensive plan. If a school board submits an application to expand an existing school site, the local government "may impose reasonable development standards and conditions on the expansion only." (s. 235.193(8), F.S.)

Section 235.194, F.S., requires each school board to annually submit a school facilities report to each local government within the school board's jurisdiction. The report must include information detailing existing facilities, projected needs and the board's capital improvement plan, including planned facility funding over the next 3 years, as well as the district's unmet need. The district must also provide the local government with a copy of its educational plan survey.

Ad Valorem Taxes/School Districts

The Florida Constitution expressly authorizes counties, school districts, and municipalities to levy ad valorem taxes. Article VII, Section 9(a), of the Florida Constitution provides:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

The Florida Constitution limits the millage of ad valorem taxes. Article VII, Section 9(b), of the Florida Constitution, provides in part:

> Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills;

The statutory guidelines for the determination of millage are specified in s. 200.001, F.S. Two exceptions are provided to the ten-mill cap. The exceptions include a voted debt service millage and a voted millage not to exceed a period of two years.

School district millages must be composed of five categories:

- Nonvoted required operating millage is that rate set by the school board for current operating purposes and imposed pursuant to s. 236.02(6), F.S.
- Nonvoted discretionary operating millage is that rate set by the school board for those operating purposes other than the required local millage rate authorized in s. 236.02(6), F.S., and the nonvoted capital improvement millage authorized in s. 236.25(2), F.S. The maximum rate allowed is capped by general law.
- Nonvoted capital improvement millage is the rate set by the school board for capital improvements as authorized in s. 236.25(2), F.S. The maximum rate allowed is capped by general law.
- Voted operating millage is the rate set by the school board for current operating purposes as authorized by a vote of the electors pursuant to s. 9(b), Article VII of the State Constitution.
- Voted debt service millage is the rate set by the school board as authorized by vote of the electors pursuant to s. 12, Art. VII of the State Constitution.

Educational Facilities Resources/K-12

Traditionally, the construction of new public school facilities or the expansion of existing facilities has been a local school board responsibility, with the state contributing approximately 20 percent of the funds for school construction. However, beginning with the 1997 Special Session on School Construction, the Florida Legislature increased the state's contribution through the provision of almost $3 billion in additional funds.

School districts derive capital outlay funds from several sources, including the following sources.

Public Education Capital Outlay and Debt Service Trust Fund (PECO): PECO is a state program that provides funds to school districts from revenue derived from the gross receipts tax – a tax collected from the sale of utility services. PECO funds are appropriated for the maintenance, repair, and renovation of existing public school facilities and for the construction of new public school facilities. In the 2001-2002 General Appropriations Act, school districts received $145.9 million as PECO maintenance funds and $203.5 million as PECO new construction funds.

Capital Outlay and Debt Service Fund (CO&DS): The CO&DS is another major state source of capital outlay revenues available to local school districts. This revenue source is derived from the first sale of motor vehicle license tags. CO&DS funds are provided to school districts in two ways: (1) as net bond proceeds, or (2) as direct cash payments. School districts may choose to receive their CO&DS funds by either method; however, they must bond their CO&DS funds if they wish to receive revenue from the Classrooms First Program. In the 2001-2002 fiscal year,

the Legislature appropriated approximately $81.5 million to school districts as net bond proceeds and $12.2 million as direct cash payments.

Special Facility Construction Account: The Special Facility Construction Account is funded with PECO dollars and provides construction funds to school districts that have urgent construction needs but lack sufficient resources and cannot reasonably anticipate sufficient resources within three years in order to fund these construction needs.

Classrooms First Lottery Bond Program: As part of the SMART Schools Act of 1997, the Legislature established a 20-year lottery-bonding program (Classrooms First) designed to provide more than $2 billion in bonded lottery funds to school districts for the construction of classrooms. All 67 school districts receive a portion of these funds based upon a modified PECO distribution formula.

Effort Index Grant Program (EIG): The EIG Program is a $300 million program designed to provide select school districts with funding for new construction only after a certain level of local effort is met. School districts may use these EIG funds for construction, renovation, repair, maintenance, or payment of debt service for such activities. As of March 2001, $184.9 million in EIG has been encumbered for school projects.

School Infrastructure Thrift (SIT) Program: The SIT Program is an incentive fund created to encourage functional, frugal school construction. A school district can receive a SIT award for savings realized through functional, frugal construction. These awards are 50 percent of the savings on the statutorily defined cost-per student station. As of June 2001, SIT awards totaling $109.4 million have been distributed to school districts for functional, frugal school construction.

Two Mill Money (nonvoted): Section 236.25(2), F.S., authorizes each school board to levy not more than 2 mills against the taxable value for school purposes to fund:

- New construction and remodeling projects, as set forth in s. 235.435(3)(b) and (6)(b), F.S., and included in the district's educational plant survey pursuant to s. 235.15, F.S., without regard to prioritization, sites and site improvement or expansion to new sites, existing sites, auxiliary facilities, athletic facilities, or ancillary facilities.
- Maintenance, renovation, and repair of existing school plants or of leased facilities to correct deficiencies pursuant to s. 235.056(2), F.S
- The purchase, lease-purchase, or lease of school buses; drivers' education vehicles; motor vehicles used for the maintenance or operation of plants and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.
- The purchase, lease-purchase, or lease of new and replacement equipment.
- Payments for educational facilities and sites due under a lease-purchase agreement entered into by a school board pursuant to s. 230.23(9)(b)5. or s. 235.056(2), F.S., not exceeding, in the aggregate, an amount equal to three-fourths of the proceeds from the millage levied by a school board pursuant to this subsection.
- Payment of loans approved pursuant to ss. 237.161 and 237.162, F.S.
- Payment of costs directly related to complying with state and federal environmental statutes and regulations governing school facilities.

- Payment of costs of leasing relocatable educational facilities, of renting or leasing educational facilities and sites pursuant to s. 235.056(2), F.S., or of renting or leasing buildings or space within existing buildings pursuant to s. 235.056(3), F.S.

Fifty-six of 67 school districts levied two mills of ad valorem property taxes in order to raise capital outlay revenues during the 2000-2001 fiscal year. The remaining 11 school districts levied anywhere between 0 mills and 1.78 mills of ad valorem property taxes for this purpose. In the 2000-2001 fiscal year, the statewide levy of two mill money provided $1.36 billion in local capital outlay revenues to school districts.

Voted Millage: Section 236.31, F.S., provides for school district millage elections. Voted millage is voter-approved millage levied on taxable property by school boards above and beyond the non-voted two-mill money. The millage must only be levied for a maximum of two years. According to the SMART School Clearinghouse, no school districts are currently levying voted millage.

School Capital Outlay Surtax (voted): District school boards may levy the School Capital Outlay Surtax, authorized under s. 212.055(6), F.S. by referendum, at a rate not to exceed 0.5 percent. A school board levying the surtax must establish a freeze on non-capital local school property taxes, at the millage rate imposed in the year prior to the initiation of the surtax for a period of at least 3 years. The surtax proceeds may be used to fund:

- Fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 years or more, as well as related land acquisition, land improvement, design, and engineering costs;
- Costs of retrofitting and providing for technology improvements, including hardware and software; and
- Servicing of bond indebtedness used to finance authorized projects.

In the 2000-2001 fiscal year, seven districts (Bay, Escambia, Gulf, Hernando, Jackson, Monroe, and Santa Rosa) levied the surtax that generated $71.5 million in revenue.

Local Government Infrastructure Surtax (voted): Section 212.055(2), F.S., provides for the Local Government Infrastructure Surtax. The governing authority in each county may levy this 0.5 percent or 1 percent tax after a favorable vote of the electorate through a local referendum. Section 212.055(2)(c), F.S., provides that school districts, with the consent of the county governing authority may participate in the tax. In 2000-2001 fiscal year, five counties (Hillsborough, Pinellas, Clay, Osceola, and Sarasota) levied a local government infrastructure surtax that provided $36.9 million in revenue to local school districts.

Bond Referendum (voted): A bond referendum is a school district election that allows the voters to decide whether or not the school district should issue bonds for the purpose of generating school capital outlay funds. Since the 1985-1986 fiscal year, 19 school districts have approved local bond referendums in order to fund school district capital outlay needs. Statewide, the bonds issued by school boards for school construction have generated or will generate over the life of the bonds $2.68 billion.

Impact Fees: Under the Home Rule Power given to counties in Article VIII, Section 6 of the Florida Constitution, and s. 125.01, F. S., counties may levy impact fees on new construction. The fees are used to pay for the increased demand on infrastructure created by new construction. The fees are levied in proportion to the demand created by the new construction and used to build the new infrastructure needed. Impact fees are used to construct new infrastructure including water and sewer facilities, roads, fire departments, and schools.

In order to withstand legal challenge, impact fees must possess the following characteristics:

- The fee is levied on new development or new expansion of existing development;
- The fee is a one-time charge, although its collection may be spread out over time;
- The fee is earmarked for capital outlay only;
- The fee represents a proportional share of the cost of the facilities needed to serve the new development.

Currently, fifteen counties levy school impact fees on new construction to finance the construction of new schools. School districts benefiting from impact fee collections include Broward, Citrus, Dade, Hernando, Hillsborough, Lake, Martin, Orange, Osceola, Palm Beach, Seminole, St. Johns, St. Lucie, and Volusia Counties. During the 1999-2000 fiscal year, the collection of impact fees generated an aggregate amount of $81.9 million for the purpose of school construction.

Charter Schools

Charter schools are public schools that operate under a performance contract, or a charter which frees them from most rules and state statutes created for traditional public schools. As part of the contract, charter schools are held accountable for academic and financial results. According to section 228.056, F.S., charter schools are part of the state's program of public education and are fully recognized as public schools. Current law specifies that the purpose of charter schools must be to:

- Improve student learning;
- Increase learning opportunities for all students,
- Encourage the use of different and innovative learning methods;
- Increase learning opportunity choices for students;
- Establish a new form of accountability for schools;
- Require the measurement of learning outcomes and create innovative measurement tools;
- Establish the school as the unit for improvement;
- Create new professional opportunities for teachers;
- Provide rigorous competition within the public school district in order to stimulate improvement in all public schools;
- Provide additional academic choices for parents and students;
- Expand capacity of the public school system.

Statutory provisions specify that creating a new school or converting an existing school to a charter school are methods that may be used to form a charter school. An individual, a group of

parents or teachers, a business, a municipality, or a legal entity may submit an application to the school district in order to form a new charter school. Section 228.056(4), F.S., authorizes a school board to sponsor a charter school in the county over which the school board has jurisdiction. Specifically, a school board must receive and review all applications for a charter school. Within 60 days after receiving a charter school application, a school board must approve or deny a charter school application through a majority vote. If a school board denies a charter school application, it must express in writing the specific reasons for which the charter school application was denied within 10 calendar days after rendering its decision.

According to s. 228.056(4)(b), F.S., a charter school applicant may appeal a school board's denial of a charter school application or its failure to render a decision on a charter school application to the State Board of Education within 30 calendar days after the school board's denial of the application or failure to render a decision on the application. Within 60 calendar days after a charter school applicant files an appeal, the State Board of Education must accept or reject the school board's initial decision through a majority vote. Subsequently, the State Board of Education must remand the charter school application to the school board with its written recommendation specifying whether or not the school board should approve or deny the charter school application.

Section 228.056(4)(c), F.S., requires the school board to act upon the recommendation of the State Board of Education within 30 calendar days after receiving the recommendation. The school board may fail to act in accordance with the recommendation of the State Board of Education if it determines that the recommendation is contrary to law or contrary to the best interest of the students or the community. The school board's action on the State Board of Education's recommendation is a final action subject to judicial review.

According to s. 228.056(6)(b), F.S., a charter school must enroll an eligible student that submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such a situation, applicants are admitted through a random selection process. A charter school is only authorized to limit the enrollment process in order to target specific student populations. Such populations include students within specific age groups or grade levels; students considered to be at risk of dropping out of school or academic failure; students who wish to enroll in a charter school-in-the-workplace; and students residing within a reasonable distance of the charter school.

Charter School Capital Outlay Funding

Section 228.0561, F.S., provides for charter school capital outlay funding and specifies that unless otherwise provided in the General Appropriations Act, the capital outlay allocation for each charter school must be determined by multiplying the charter school's projected student enrollment by one-fifteenth of the cost-per-student station for an elementary, middle, or high school. If the appropriated funds are not sufficient, the Commissioner of Education must prorate the funds among the charter schools.

Public/Private Partnerships

Section 235.2199, F.S., provides that any school district that plans to build three or more new public schools within a 5-year period is encouraged to build at least one of every three new schools through public-private partnerships if such partnerships are projected to result in cost savings compared to the most frugal method of public school construction currently used in the district.

Community Development Districts

Chapter 190, F.S., is the Uniform Community Development District Act of 1980. In adopting the act the Legislature expressed its concern that there was a need for uniform procedures in state law to authorize the establishment of community development districts (CDDs) to provide for the planning, management, and financing of capital infrastructure.

Specifically, the Uniform Community Development District Act allows developers to create independent special districts with a broad range of governmental powers as a means of financing various types of infrastructure and delivering urban community services for planned developments. The districts are intended to benefit the taxpayers of counties and municipalities in which the districts are located by shifting the burden of paying for infrastructure to those buying land in the districts. However, CDDs do not have the power of a local government to adopt a comprehensive plan, building code, or land development code.

Pursuant to ch. 190, F.S., establishment of a CDD can proceed in one of two ways.

- Pursuant to subsection 190.005(1), F.S., CDDs larger than 1,000 acres must be established by rule, adopted pursuant to chapter 120, F.S., of the Florida Land and Water Adjudicatory Commission (FLAWAC).
- Pursuant to subsection 190.005(2), F.S., a county or municipality can establish a CDD by passage of a local ordinance adopted by the county commission, if it encompasses less than 1,000 acres.

Powers of the CDD

CDDs have limited authority and may only exercise those powers that are expressly granted to them by law or those that are necessarily implied because they are essential to carry into effect those powers granted. Thus, CDDs are authorized to accomplish special, limited purposes and do not possess the broader home rule powers that municipalities and counties have in Florida.

Section 190.011. F.S., grants the general corporate powers that CDDs may exercise. The section provides districts shall have and CDD boards may exercise the following powers:

- Sue and be sued in the name of the district;
- Make and execute contracts;
- Apply for coverage of its employees under the state retirement system;
- Borrow money and accept gifts;
- Maintain an office within the county in which the district is located;
- Acquire, purchase, or dispose of easements, dedications, or reservations;
- Assess and impose ad valorem taxes;

- Adopt administrative rules for the district;
- Levy special assessments; and
- Exercise all of the powers necessary, convenient, incidental, or proper in connection with any powers, duties, or purposes authorized by the act.

Section 190.012, F.S., makes provision for special powers of CDDs. The section provides that the district shall have and the board may exercise any or all of the following special powers relating to public improvements and community facilities:

- Finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for the following infrastructures:

    1. water supply, sewer, and wastewater management;
    2. bridges or culverts;
    3. water management;
    4. district roads; and
    5. any project when required by the local government pursuant to s. 380.06, FS., or s. 380.61, F.S.

- After the board has obtained consent of the local government(s) within the jurisdiction, the district may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for:

    1. parks and facilities for indoor and outdoor recreation, cultural, and educational uses;
    2. fire prevention and control;
    3. school buildings and related structures;
    4. control and elimination of mosquitoes and the like;
    5. security such as guardhouses, fences, electronic intrusion systems, and patrol cars;
    6. waste collection and disposal.

Special Assessments

Special assessments are a home rule revenue source that may be used by a local government to fund local improvements or essential services. In order to be valid, special assessments must meet legal requirements as articulated in Florida case law. The greatest challenge to a valid special assessment is its classification as a tax by the courts.

The courts have defined the differences between a special assessment and a tax. Taxes are levied for the general benefit of residents and property rather than for a specific benefit to property. As established by case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax. See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992).

The special benefit and fair apportionment tests must be incorporated into the assessment rate structure. The development of an assessment rate structure involves determining the cost to be apportioned, allocating program costs into program components, and apportioning these costs to each eligible parcel based upon factors such as the property use and physical characteristics of the parcel.

Another important distinction in relevant descriptions of local government revenues is between special assessments and user or service charges. While special assessments and service charges are similar in many respects, a key difference is that a special assessment is an enforceable levy while a service charge or fee is voluntary.

A special assessment may provide funding for capital expenditures or the operational costs of services provided that the property, which is subject to the assessment, derives a special benefit from the improvement or service. The courts have upheld a number of assessed services and improvements, such as: garbage disposal, sewer improvements, fire protection, fire and rescue services, street improvements, parking facilities, downtown redevelopment, stormwater management services, and water and sewer line extensions.

Eligibility Requirements

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments; for counties, section 125.01, Florida Statutes, and for municipalities, Chapter 170, Florida Statutes. Special districts must derive their authority to levy special assessments through general law or special act.

County governments are authorized, pursuant to s. 125.01(1), F.S., to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county for the purpose of providing a number of municipal-type services. Such services can be funded, in whole or in part, from special assessments. The boundaries of the taxing or benefit unit may include all or part of the boundaries of a municipality subject to the consent by ordinance of the governing body of the affected municipality. Counties may also levy special assessments for county purposes.

Pursuant to s. 125.01(5), F.S., county governments may create special districts to include both the incorporated and unincorporated areas, subject to the approval of the governing bodies of the affected municipalities. Such districts are authorized to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.

Municipalities also have the authority, pursuant to chapter 170, Florida Statutes, to make local municipal improvements and provide for the payment of all or any part of the costs of such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. Such decision by the governing body to make any authorized public improvement and to defray all or part of the associated expenses of such improvement must be so declared by resolution.

Authorized Uses

Section 125.01(1)(q), F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by county governments, via the municipal service taxing or benefit units. These may include fire protection, law enforcement, beach erosion control, recreation service and facilities, water, alternative water supplies, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services and other essential facilities and municipal services.

Section 170.01, F.S., outlines the many facilities and services that can be funded from the proceeds of special assessments imposed by municipal governments. The authorized uses are too numerous to list here. In addition, s. 171.201, F.S., authorizes the governing body of a municipality to levy and collect special assessments to fund capital improvements and municipal services, including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement, and parking facilities.

Legal Issues Related to Educational Facility Financing

Article IX, Section 1, of the Florida Constitution provides:

> Public education.--The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

In School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977), the Florida Supreme Court noted that there is a dearth of authority construing the significance of the phrase "uniform system of free public schools," as appears in Article IX, Section 1 of the Florida Constitution. While this phrase was subsequently amended, there remains a dearth of authority construing the significance of the phrase. [Section 1 was subsequently amended by an amendment proposed by the Constitution Revision Commission, (Revision No. 6, 1998, filed with the Secretary of State May 5, 1998; adopted 1998).] The amendment made education a "fundamental value," made it a "paramount duty of the state to make adequate provision for the education of all children residing within its borders," and defined "adequate provision" by requiring that the public school system be "efficient, safe, secure, and high quality."]

Florida courts have never settled upon a concrete definition of the phrase "uniform system of free public schools." In *School Board of Escambia County v. State,* 353 So.2d 834, 837 (Fla. 1977), the Florida Supreme Court stated that the constitution requires a school system where "the constituent parts . . . operate subject to a common plan or serve a common purpose." In *St. John's County v. Northeast Florida Builders Association, Inc.,* 583 So.2d 635 (Fla. 1991), the Florida Supreme Court noted that the constitution does not require uniformity in school funding. The court concluded, "The Florida Constitution only requires that a system be provided that

gives every student an equal chance to achieve basic educational goals prescribed by the legislature." Id. at 641. In *Florida Department of Education v. Glasser,* 622 So.2d 944 (Fla. 1993), the court suggested that decisions concerning the uniformity of the state's school system should be left to the Legislature. In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles,* 680 So.2d 400 (Fla. 1996), the court declined to assess the adequacy of legislative findings. The court concluded, "We hold that the legislature has been vested with enormous discretion by the Florida Constitution to determine what provision to make for an adequate and uniform system of free public schools." Id. at p. 7. Following this decision, voters adopted the amendment referenced above.

Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

As noted, Florida courts have never settled upon a concrete definition of the phrase "uniform system of free public schools," and there is no case law under the 1968 Florida Constitution, as amended, directly related to the creation of special districts to fund educational facilities. However, several past rulings are relevant. In State v. Board of Public Instruction of Pasco County for and on behalf of *West Pasco County Special Tax School Dist. Of Pasco County, 176 So.2 337* (1965), the Florida Supreme Court considered the validity of school bonds issued by a special taxing district to pay the cost of construction and improvements for educational facilities within the district. The question raised in the case was whether the special act creating the district violated Section 1, Article XII of the Florida Constitution of 1885, which provided for a "uniform system of public free schools." While applying the Florida Constitution of 1885, as amended, the court found that the special act created a tax area to make improvements to the system of schools in a rapidly growing area, and concluded that the act could not be said to affect the uniformity of the system of schools.

In *St. John's County v. Northeast Florida Builders Association, Inc.,* 583 So.2d 635 (Fla. 1991), the Florida Supreme Court considered a challenge to the imposition of school impact fees on the basis that the ordinance establishing the fees violated Article IX, Section 1 of the Florida Constitution. While the facts of the case are quite different from those surrounding this bill, the court's findings are suggestive of several points.

The court found that:

> Insofar as the constitution provides for "free public schools," it is clear that no student may be required to pay tuition as a condition of being admitted into school. Of course, this does not mean that the students' parents are exempt from paying any of the costs of maintaining the school system. Obviously, property owners who have children pay ad valorem taxes, portions of which pay for schools. The mandate of free public schools insures that students' access to public schools is not dependent upon the payment of any fees or charges. Under the schedule of charges in the St. Johns County ordinance, the payment

of the impact fees is unrelated to school attendance. Thus, to the extent that the impact fee is imposed upon each dwelling unit, we see no violation of the constitutional imperative of free schools.

The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the Legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because of higher or lower property values or differences in millage assessments, will always favor or disfavor some districts. We hold that the ordinance does not violate the requirement of a uniform system of public schools.

III. Effect of Proposed Changes:

The bill makes a number of changes to Part II of chapter 163, the Local Government Comprehensive Planning and Land Development Act, and the Development-of-Regional-Impact program contained in Part I of chapter 380, F.S. In addition, the bill authorizes the creation of educational facilities benefit districts for the purposes of financing school construction through the levy of special assessments within an educational facilities benefit district or a community development district.

- The bill revises provisions governing the regulation of intensity of use by local governments in the future land use element of their local government comprehensive plans.
- 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.
- By January 1, 2004, local governments within counties with a population of 100,000 or greater are required to inventory their service delivery agreements and identify deficits or duplication in the provision of services. In addition, by February 1, 2003 representatives of municipalities and counties are to recommend statutory changes regarding annexation to the Legislature.
- This bill revises the process for adoption of local government comprehensive plans or plan amendments decreasing the timeframes required for state review in some circumstances. In addition, the bill allows the Department of Community Affairs to publish notices of intent on the Internet in addition to legal notice advertising as an alternative to publishing larger and more expensive newspaper advertisements.
- The bill makes a number of changes to the development-of-regional-impact program. 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 provides a bright line test for buildout extensions by providing that an extension of less than 6 years is not a substantial deviation. The bill

eliminates acreage standards for office development and retail developments and modifies thresholds for multiuse development. The bill exempts petroleum storage facilities and any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use from DRI review under specified circumstances. Finally, the bill provides definitions that are relevant to whether two or more developments represent a unified plan of development which should be treated as a single development for purposes of development-of-regional-impact review.

- The bill authorizes counties and municipalities to create educational facilities benefit districts (benefit districts) by entering into an interlocal agreement with the school board and any local general purpose government within whose jurisdiction a portion of the benefit district is located, and adoption of an ordinance. Creation of a benefit district is conditioned upon the consent of the school board, all affected local general purpose governments, and all landowners within the benefit district. The governing board of any benefit district must include representation of the school board, each cooperating local general purpose government, and the landowners within the benefit district. In the case of the benefit district's decision to create a charter school, the board of directors of the charter school will constitute the members of the governing board for the benefit district. The bill authorizes community development districts (CDDs) to receive the financial enhancements available to benefit districts.
- Upon confirmation by a school board of commitment of revenues by a benefit district or CDD necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School the benefit district or CDD receives, until the benefit district's financial obligations are completed:
    1) an annual amount equal to one mill of taxation for all taxable property within the benefit district or CDD to be paid the school district;
    2) all educational facilities impact fee revenue collected for new development within the benefit district or CDD.

The bill is effective upon becoming a law.

Section 1 amends section 163.3177(6)(a), F.S., to clarify the circumstances in which a local government must define specific standards for the density or intensity of use within a land use category. Under the amended language, each future land use category must be defined in terms of uses included and must include standards to be followed by the local government in the control and distribution of population densities and building and structure intensities.

In addition, paragraph (h) of subsection (6) is amended to require local governments and special districts within counties with a population of 100,000 or greater to submit a report to the department, by January 1, 2004, that identifies existing or proposed interlocal service delivery agreements and which identifies deficits or duplication in the provision of services. In addition, by February 1, 2003 representatives of municipalities and counties are to recommend statutory changes regarding annexation to the Legislature.

Section 2 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 3 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 4. 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 within the boundaries of the right-of-way on the federal interstate highway system;
- work by any utility and other persons engaged in the transmission of electricity, "for the purposes of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like."

Section 5. 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).

Subsection (12) is amended to provide that when a proposed development involves land within the boundaries of multiple regional planning councils, DCA must designate a lead regional planning council. The lead regional planning council is required to prepare the regional report.

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 that 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 (b) is amended to remove the substantial deviation acreage criteria for office development (9)(b)6. and (9)(b)10. and commercial development.

Paragraph (c) is amended to provide that an extension of the date of build out of a development, or a phase thereof, of an extension of less than 6 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.

Paragraph (e)2 is amended to add "any renovation of redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use," to the list of changes in development that do not constitute substantial deviations.

Two new statutory exemptions to the DRI program are added to subsection (24). 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. Paragraph (j) exempts

any renovation or redevelopment within the same land parcel which does not change land use or increase density or density of use.

Section 6 amends s. 380.0651, F.S., regarding statewide guidelines and standards for developments-of-regional impact to delete acreage thresholds for office development (3)(d) and (3)(f). In addition, paragraph (i), regarding the DRI thresholds for multiuse development is amended. The threshold for a proposed development with two or more land uses where the sum of the percentages of the appropriate thresholds for individual land uses, is equal to or greater than 175 percent, and increase from the 145 percent in current law. In order to meet this new 175 percent threshold, each land use must be equal to or greater than 20 percent of the applicable threshold. In the case of a proposed development with three or more land uses, one of which is residential, the sum of the percentages for each threshold for each land use in the development is equal to or greater than 200 percent, increased from the 160 percent of current statute. To meet the 200 percent threshold, the two nonresidential land uses must be equal to or greater than 15 and 10 percent of the respective applicable threshold.

Subsection (4), which defines when two or more developments must be aggregated and treated as a single development under chapter 380 is amended to include a number of definitions that are relevant to the determination of whether two or more developments must be aggregated. These definitions include:

- Physically proximate
- Significant legal or equitable interest
- Reasonable closeness in time
- Completion of 80 percent
- Sharing of infrastructure
- Common advertising scheme of promotional plan
- Same person

With the exception of "same person," the definitions codify definitions that are set forth in Rule 9J-2.0275, Florida Administrative Code, to be used in determining whether two or more developments must be aggregated. "Same person" is defined to include:

> An individual; two or more persons having a joint or common economic interest; a corporation or foreign corporation; an unincorporated association; a business trust; an estate; a partnership; a trust; and a subsidiary or other entity that has a joint or common economic interest with a corporation.

"Significant legal or equitable interest" means that the same person has an interest or an option to obtain an interest of more than 25 percent in each development for certain types of interests. The concept of two or more persons or entities having a joint or common economic interest that is described in the definition of "same person" conflicts with the definition of "significant legal or equitable interest" that establishes a threshold for what level of common economic interest must be reached to meet the criteria for aggregation.

Section 7 addresses the applicability of the changes to the DRI program that are in the bill.

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., 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.
- 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, and determined sufficient pursuant to section 380.06(10), F.S., 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. At the conclusion of the pending review, including any appeals pursuant to s. 380.07, F.S., the resulting development order shall be governed by the provisions of subsection (1).

Section 8. Section 235.1851, F.S., is created to provide legislative intent and to authorize the creation of educational facilities benefit districts (benefit districts) pursuant to an interlocal cooperation agreement between a local school board and all local general purpose governments within whose jurisdiction a district is located. Subsection (2) provides that the purpose of a benefit district is to assist in financing the construction and maintenance of educational facilities.

Subsection (3)(a) authorizes the creation of a benefit district pursuant to this act and ch. 163, 125, 166, and 189, F.S. Such district charters may be created by a county or municipality by entering into an interlocal agreement, as authorized by s. 163.01, F.S., with the school board and any local general purpose government within whose jurisdiction a portion of the district is located, and adoption of an ordinance that includes all provisions contained within s. 189.4041, F.S. The section requires the creating entity to be the local general purpose government within whose boundaries a majority of the benefit district's lands is located.

Subsection (3)(b) provides that the creation of any benefit district shall be conditioned upon the consent of the school board, all local general purpose governments within whose jurisdiction any portion of the benefit district is located, and all landowners within the district. The subsection provides that the membership of the governing board of any benefit district must include representation of the school board, each cooperating local general purpose government, and the landowners within the district. In the case of the benefit district's decision to create a charter school, the board of directors of the charter school shall constitute the members of the governing board for the benefit district.

Subsection (4) provides that a benefit district shall have, and its governing board may exercise, the following powers:

- To finance and construct educational facilities within the district's boundaries.
- To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire, by purchase, gift, devise or otherwise and dispose of real and personal property of any estate therein; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To apply for coverage of its employees under the State Retirement System in the same manner as if such employees were state employees; subject to necessary action by the district to pay employer contributions into the State Retirement Fund.
- To contract for the services consultants to perform planning, engineering, legal or other appropriate services of a professional nature.
- To borrow money and accept gifts; to apply for unused grants or loans of money or other property for any district purposes and enter into agreements required in connection therewith; and to hold, use and dispose of such monies or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt resolutions and policies prescribing the powers, duties and functions of the officers of the district, the conduct of the business of the district, the maintenance of records and documents of the district.
- To maintain an office within the district or within the boundaries of the local general purpose government which created the district.
- To hold, control and acquire by donation, purchase, or condemnation pursuant to ch. s 73 or 74, F.S., if authorized by all governmental entities that are party to the interlocal agreement, or dispose of any public easements, dedication to public use, platted reservations for public purposes or any reservations for those purposes authorized by this act and to make use of such easements, dedications or reservations for any of the purposes authorized by this act.
- To borrow money and issue bonds, certificates, warrants, note or other evidence of indebtedness herein provided for periods not longer than 30 years; such debt may only be guaranteed by non ad valorem assessments legally imposed by the district and other available sources of funds provided by this act and may not be guaranteed by the full faith and credit of any local general purpose government or the school board.
- To cooperate with or contract with other governmental agencies and to accept funding from local agencies as provided in the act.
- To levy, impose, collect and enforce non-ad valorem assessments.
- To exercise all powers necessary, convenient, incidental or proper in connection with any of the powers, duties, or purposes authorized by this act.

Subsection (5) provides that as an alternative to the creation of benefit districts, the Legislature recognizes and encourages the consideration of community development district creation pursuant to ch. 190, F.S., as a viable alternative for financing the construction and maintenance of educational facilities as described in this act. The section provides that community development districts are therefore deemed eligible for the financial enhancements available to benefit districts providing for the financing of the construction and maintenance of educational

facilities contained in s. 235.1852, F.S. In order to receive such financial enhancements, the subsection requires community development districts to enter into an interlocal agreement with the school board and affected local general purpose governments that specifies the obligations of all parties to the agreement.

Section 9. Section 235.1852, F.S., is created to provide for school district funding for benefit districts and community development districts meeting specified conditions. Subsection (1) provides that upon confirmation by a school board of the commitment of revenues by a benefit district or community development district necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the following funds must be provided to the district annually beginning with the next fiscal year after confirmation and until the district's financial obligations are completed:

- An annual amount equal to one mill of taxation for all taxable property within the benefit district or the community development district, contributed by the school board.
- All educational facilities impact fee revenue collected for new development within the benefit district or the community development district.

Section 10. Section 235.1853, F.S., is created to address utilization of educational facilities funded pursuant to this act. The section provides that all facilities funded pursuant to this act must reflect the racial balance of the school district pursuant to state and federal law. However, to the extent allowable pursuant to such law, the section provides that the interlocal agreement providing for the establishment of a benefit district or the interlocal agreement between a community development district and the school board and affected local general purpose governments may provide for the school board to establish school attendance zones that allow students residing within a reasonable distance of facilities financed through the interlocal agreement to attend such facilities.

Section 11. The act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill authorizes counties and municipalities to create benefit districts, which are intended to assist in the financing and maintenance of educational facilities. Such districts are granted the authority to levy special assessments. In addition, the bill provides financial incentives for benefit districts, as well as community development districts, to share in the costs of educational facilities. To the extent the bill achieves its stated purpose, additional revenues will be available for the financing and maintenance of educational facilities.

Upon confirmation by a school board of the commitment of revenues by a benefit district or CDD necessary to construct and maintain an educational facility within an individual District Facilities Work Program or proposed by an approved Charter School, the following funds must be provided to the district annually beginning with the next fiscal year after confirmation and until the district's financial obligations are completed:

- an annual amount equal to one mill of taxation for all taxable property within the benefit district or the community development district, contributed by the school board;
- all educational facilities impact fee revenue collected for new development within the benefit district or the CDD.

The bill requires the school district to provide the benefit district with an annual amount equivalent to one mill of taxation for all taxable property within the benefit district. This required payment is not connected to or based on whether or not the amount of such revenue is necessary to finance the construction of a school or schools within the benefit district. Accordingly, over a period of fund, the level of financing schools within a benefit district receive from the school board may greatly exceed the level of funding similar schools that are not located within the benefit district receive from the school board.

B. Private Sector Impact:

This bill authorizes the creation of educational facilities benefit districts to finance the construction and maintenance of educational facilities. Such districts are granted the authority to impose special assessments on property owners. Creation of a benefit district is conditioned upon the approval of all landowners.

The bill provides incentives for developers to participate in the creation of benefit districts, as well as community development districts, to assist in financing the construction and maintenance of educational facilities that will benefit their property.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.