

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 409 w/CS Coastal Redevelopment Hazard Mitigation Demonstration Project Act  
**SPONSOR(S):** Sullivan  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 686

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	<u>17 Y, 0 N w/CS</u>	<u>Mitchell</u>	<u>Cutchins</u>
3) <u>Insurance</u>	<u></u>	<u>Cheek</u>	<u>Cooper</u>
4) <u>Transportation &amp; Economic Development Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The Federal Disaster Mitigation Act of 2000 emphasized mitigation planning. In general, mitigation planning deals with various planning and procedures for preventing losses from natural disasters or perils through research, education, construction design, or contractual agreements.

This bill creates the "Coastal Redevelopment Hazard Mitigation Demonstration Project Act." The bill incorporates mitigation planning into the Local Government Comprehensive Planning and Land Development Regulation Act, which requires counties and local governments to prepare and submit a comprehensive plan.

The bill adds a definition for "local mitigation strategy." The bill provides that the future land use plan element required in a comprehensive plan must be based, in part, on "the vulnerability to natural hazards and potential need for hazard mitigation." The bill amends the coastal management element to add "implementation of hazard mitigation strategies" to the objective related to the protection of human life. The bill requires "property to be considered with "human life" and "local mitigation strategies" to be considered with "population evacuation" as one of the required components of the coastal management element.

The bill significantly expands the "redevelopment component" of the coastal management element to permit, as a demonstration project, up to five local governments, or a combination of local governments, to amend their comprehensive plans to allow for the redevelopment of coastal areas within the designated coastal high hazard area.

The bill sets forth the eligibility criteria to be a coastal redevelopment demonstration project, as well as the application and execution agreement requirements.

The bill permits the Department of Community Affairs to adopt procedural rules governing the submission and review of coastal redevelopment demonstration project applications and provides that the department may establish a phased schedule for the review of applications. The bill corrects statutory cross-references and takes effect upon becoming law.

The bill may have an indeterminate fiscal impact on state or local government revenues or expenditures. The bill appears to be exempt from the municipality/county mandates provision because it has an insignificant fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0409d.in.doc  
**DATE:** March 9, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Disaster Mitigation Act of 2000, Pub. L. No. 106-390, is a federal law that amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Among its changes, the Disaster Mitigation Act of 2000:

- Provides new and revitalized approaches to mitigation planning;
- Emphasizes the need for state and local entities to closely coordinate mitigation planning and implementation efforts;
- Continues the requirement for a state mitigation plan as a condition of disaster assistance, and creates incentives for increased coordination and integration of mitigation activities;
- Provides that states that demonstrate an increased commitment to comprehensive mitigation planning and implementation through a state-enhanced plan can increase the amount of funding available through the Hazard Grant Mitigation Program; and
- Establishes a new requirement for local mitigation plans, and authorizes up to 7 percent of Hazard Grant Mitigation Program funds available to a state to be used for development of state and local mitigation plans.<sup>1</sup>

The Division of Community Planning is using the Evaluation and Appraisal Report (EAR) process, which requires an update of local comprehensive plans every 7 years, to coordinate revisions to the local mitigation plans as required by federal regulations and the Disaster Mitigation Act of 2000.<sup>2</sup> There is, however, no specific requirement that local government comprehensive plans be revised to include local mitigation plans.

##### Major Changes to Current Law

The bill creates the “Coastal Redevelopment Hazard Mitigation Demonstration Project Act”. In general, mitigation planning deals with various planning and procedures for preventing losses from natural disasters or perils through research, education, construction design, or contractual agreements.

<sup>1</sup> See Florida Department of Community Affairs, Division of Community Planning, *Coastal Redevelopment and Hazard Mitigation* (visited Jan. 27, 2003) < <http://www.dca.state.fl.us/fdcp/DCP/coastredevhazmat/index.htm>>.

<sup>2</sup> *Id.*

The bill incorporates mitigation planning into part II of chapter 163, Florida Statutes, which contains the Local Government Comprehensive Planning and Land Development Regulation Act and requires counties and local governments to prepare and submit a comprehensive plan.

The bill adds a definition for “local mitigation strategy” to section 163.64, Florida Statutes, which sets forth the definitions for the Local Government Comprehensive Planning and Land Development Regulation Act:

“Local mitigation strategy” means a local plan required under Section 322, Mitigation Planning, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, enacted by Section 104 of the Disaster Mitigation Act of 2000 (Pub. L. No. 106-390) to promote hazard mitigation and to manage disaster redevelopment.

Section 163.3177, Florida Statutes, describes certain “required elements” that must be part of the comprehensive plan of a local government. These required elements include a future land use plan; traffic circulation; general sanitary sewer, solid waste, drainage, potable water, natural groundwater aquifer recharge; conservation; recreation and open space; and intergovernmental coordination. A coastal management element is also required for certain counties.

This bill amends the requirements for the future land use plan element by requiring the future land use plan to also be based on “the vulnerability to natural hazards and potential need for hazard mitigation.”

The bill amends the objectives of the coastal management element to require it to address “the implementation of hazard mitigation strategies” in addition to the existing language requiring it to address the “protection of human life against the effects of natural disasters.”

Section 163.3178(2), Florida Statutes, sets forth additional requirements for the coastal management element of a comprehensive plan.

Paragraph (d) of subsection (2) currently requires “a component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster, including population evacuation, which take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster.” This bill expands this component to require “property” to be considered with “human life” and “local mitigation strategies” to be considered with “population evacuation.”

Paragraph (f) of subsection (2) currently requires a “redevelopment component which outlines the principles which shall be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise.” This bill significantly expands this “redevelopment component” to permit, as a demonstration project, up to five local governments or a combination of local governments, to amend their comprehensive plans to allow for the redevelopment of coastal areas within the designated coastal high hazard area.

To be eligible to be a coastal redevelopment demonstration project, the bill sets forth the following criteria:

- (1) The comprehensive plan delineates the Flood Insurance Rate Map zones, the Coastal Construction Control Line, and the Coastal Barrier Resources System Area (COBRA) units for the area subject to the coastal redevelopment strategy;
- (2) The area is part of a comprehensive redevelopment strategy that will be incorporated into the comprehensive plan;

- (3) The area has been designated in the comprehensive plan as an “urban infill and redevelopment area” pursuant to section 163.2517, Florida Statutes;
- (4) The area is not within a designated area of critical state concern;
- (5) The comprehensive plan delineates the coastal high hazard area; and
- (6) The county emergency management agency affirms in writing its intent to participate in the demonstration project.

The bill permits redevelopment within the coastal high hazard area, beyond that provided in the existing comprehensive plan, if the local government or local governments are authorized by a coastal redevelopment demonstration project agreement and adopt a redevelopment strategy and local mitigation strategies into the comprehensive plan or comprehensive plans. The bill sets forth the minimum components that must be part of the redevelopment strategy and local hazard mitigation strategies:

- Measures to reduce, replace, or eliminate unsafe structures and properties subject to repetitive damage from coastal storms and floods;
- Measures to reduce exposure of infrastructure to hazards, including relocation and structural modification of threatened coastal infrastructure;
- Operational and capacity improvements to ensure that the redevelopment strategy maintains or reduces throughout the planning timeframe the county hurricane evacuation clearance times as established in the most recent hurricane evacuation study or transportation analysis;
- Measures to ensure the redevelopment strategy reduces the county shelter deficit and hurricane clearance times to adequate levels below 16 hours within the planning timeframe if the county hurricane evacuation clearance times exceed 16 hours for a Category 3 storm event
- Measures that provide for county evacuation shelter space to ensure development authorized within the redevelopment area provides mitigation proportional to its impact to offset the increased demand on evacuation clearance times and public shelter space;
- Measures to ensure that public expenditures that subsidize development in the most vulnerable areas of the coastal high hazard area are limited to those expenditures needed to provide for public access to the beach and shoreline, restore beaches and dunes and other natural systems, correct existing hurricane evacuation deficiencies, or make facilities more disaster resistant;
- Measures that commit to planning and regulatory standards that exceed minimum National Flood Insurance Standards, including participation in the Community Rating System of the National Flood Insurance Program;
- Measures to ensure that the redevelopment strategy does not allow increases in development, including residential and transient residential development, such as hotels, motels, timeshares, and vacation rentals, within the most vulnerable areas of the coastal high hazard area, including the Flood Insurance Rate Map velocity zones, Coastal Barrier Resources System Area (COBRA) units, and areas subject to coastal erosion, including lands seaward of the coastal construction control line;
- Measures to ensure protection of coastal resources, including beach and dune systems, and provision for public access to the beach and shoreline consistent with estimated public needs;

- Data and analysis, including existing damage potential and the potential costs of damage to structures, property, and infrastructure under the redevelopment strategy, which would need to be less than that expected without the redevelopment strategy;
- Data and analysis forecasting the impacts on shelter capacity and hurricane evacuation clearance times, based on the population anticipated by the redevelopment strategy; and
- Execution of an interlocal agreement, as supporting data and analysis, between the local government or a combination of local governments participating in the demonstration project, together with their respective county emergency management agency and any affected municipalities as needed, to implement mitigation strategies to reduce hurricane evacuation clearance times and public shelter deficit.

The bill provides that a local government seeking recognition as a coastal redevelopment demonstration project must submit an application to the Department of Community Affairs (DCA) along with copies of the comprehensive plan or plans and other relevant information supporting the proposed demonstration project. The bill also requires that the Federal Emergency Management Agency and the Florida Division of Emergency Management be provided an opportunity to comment on the application.

If a local government complies with the statutory requirements to have a coastal redevelopment demonstration project, the bill requires DCA and the local government to execute a written agreement that: (1) identifies the area subject to the increase in development potential and states the amount of such increase; (2) identifies the most vulnerable areas not subject to increases in development; (3) describes how to accomplish the redevelopment strategy and hazard mitigation strategies, which DCA will coordinate the review of with the Federal Emergency Management Agency and the Division of Emergency Management; and (4) specifies procedures for public participation and intergovernmental coordination with the county emergency management agency and any affected municipalities regarding hurricane evacuation and shelter requirements. The bill requires local governments to provide an opportunity for public comment at a public hearing before the execution of the agreement. Execution of the written agreement constitutes “final agency action” and is subject to challenge under the Administrative Procedure Act. Execution of the written agreement also permits a local government to propose plan amendments that are authorized by the agreement, provided challenges to the agreement under the Administrative Procedure Act have been resolved.

The bill requires DCA to provide a progress report on the demonstration project to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2006. In the report the state land planning agency will assess whether the program has successfully implemented mitigation strategies and whether the program should continue or be expanded to include additional communities.

#### C. SECTION DIRECTORY:

**Section 1:** Creates the popular name “*Coastal Redevelopment Hazard Mitigation Demonstration Project Act.*”

**Section 2:** Amends s. 163.3134, F. S., relating to *Local Government Comprehensive Planning and Land Development Regulation Act; definitions.*

**Section 3:** Amends s. 163.3177, F. S., relating to *Required and optional elements of comprehensive plan; studies and surveys.*

**Section 4:** Amends s. 163.3178, F.S., relating to *Coastal management.*

**Section 5:** Amends s. 163.3164, F.S., relating to *Creation of regional planning councils under chapter 163.*

**Section 6:** Amends s. 288.975, F.S.; relating to *Military base reuse plans*.

**Section 7:** Amends s. 163.3164, F.S.; relating to *Definitions*.

**Section 8:** Provides an effective date of becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

No known impact on state government revenues.

#### 2. Expenditures:

This bill has an indeterminate fiscal impact on the expenditures of the Department of Community Affairs, the state land planning agency. DCA will be required to review the future land use plans and, where required, the coastal management elements of local government comprehensive plans to ensure compliance with the changes implemented by this bill. DCA will also have to administer the coastal redevelopment demonstration project.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

There is no known direct impact on local government revenues, although the redevelopment of properties as part of the coastal redevelopment demonstration projects could have a positive impact on local government property tax revenue as a result of increased property values.

#### 2. Expenditures:

This bill has an indeterminate fiscal impact on the expenditures of local governments. Local governments will be required to amend the future land use plans and, where required, the coastal management elements of their comprehensive plans to ensure compliance with the changes implemented by this bill.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive direct economic impact on the private sector through the redevelopment of properties as part of the coastal redevelopment demonstration projects.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The municipality/county mandates provision does not appear to apply to this bill. Although municipalities and counties will have to amend the future land use plans and, where required, the coastal management elements of their comprehensive plans to ensure compliance with the changes made by this bill, the *aggregate* fiscal impact for all affected cities and counties appears insignificant (less than \$1.74 million). Moreover, there is no requirement that the required changes to the

comprehensive plans be done other than as part of the normal process DCA has established for reviewing comprehensive plans. Thus, the bill appears exempt the bill from the provisions of section 18, article VII of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Community Affairs is permitted to adopt procedural rules governing the submission and review of coastal redevelopment demonstration project applications and may establish a phased schedule for the review of applications.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Resolutions of Opposition from Local Governments

The City of Treasure Island has opposed this bill by resolution.<sup>3</sup> The letter transmitting the resolution provides:

It was deemed in the best interest of the City of Treasure Island to oppose these bills to protect the environment, reduce infrastructure expansion costs and maintain the character and ambiance of the beach communities.<sup>4</sup>

The City of Indian Rocks Beach has also opposed this bill by resolution.<sup>5</sup> The letter transmitting the bill provides:

I view the bill as a “developer’s relief act.” The bill promotes only increasing “development potential” as the means for communities to support redevelopment in the coastal high hazard area. Communities that do not want higher density or taller buildings will be able to learn nothing from the demonstrations because no other solutions will be studied or tried.

The bill also sets a dangerous precedent by allowing communities to increase development potential beyond the limits in their approved comprehensive plans without engaging in the notice provisions (actual notice and general notice) prior to entering into the required agreement with the state land planning agency. I am concerned that a neighboring or nearby community or property owner could be the beneficiary of substantially increased development potential through the agreement with the land planning agency, unbeknownst to communities, property owners and other jurisdictions that will be adversely impacted.<sup>6</sup>

The letter transmitting the bill also contains a letter to the sponsors outlining other points of opposition.<sup>7</sup>

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Subcommittee on Local Affairs recommended the adoption of a “strike-everything” amendment to HB 409 to implement changes recommended by DCA. The strike-everything amendment does the following:

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<sup>3</sup> See City of Treasure Island Resolution 04-11 (Jan. 20, 2004) (enacted).

<sup>4</sup> See Letter from Richard Kraus, District 3 Commissioner, City of Treasure Island (No date; postmark of Feb. 19, 2004) (on file with the Committee on Local Government & Veterans’ Affairs).

<sup>5</sup> See City of Indian Rocks Beach Resolution 2003-136 (Oct. 28, 2003) (enacted).

<sup>6</sup> See Letter from William Ockunzzi, City Commissioner, City of Indian Rocks Beach (Feb. 20, 2004) (on file with the Committee on Local Government & Veterans’ Affairs).

<sup>7</sup> See *id.*

- Changes the term “local hazard mitigation strategy” to “local mitigation strategy.”
- Changes the eligibility to be a coastal redevelopment demonstration project by adding a requirement that the comprehensive plan delineate the Flood Insurance Rate Map zones, the Coastal Construction Control Line, and the Coastal Barrier Resources System Area (COBRA) units, for the area subject to the coastal redevelopment strategy.
- Changes the eligibility to be a coastal redevelopment demonstration project to require that the area be designated as an “urban infill and redevelopment area” in the comprehensive plan rather than just being consistent with the definition of “urban infill” or “urban redevelopment.”
- Changes the components that a local government must include in its comprehensive plan in order to pursue the demonstration project designation, by making stylistic changes related to the expenditure of public funds. Rather than providing that public expenditures “are limited, except for,” this language is changed to reflect that public expenditures “are limited to.”
- Changes the components that a local government must include in its comprehensive plan in order to pursue the demonstration project designation, by including COBRA units in the measures that ensure the redevelopment strategy does not allow increases in development.
- Changes the components that a local government must include in its comprehensive plan in order to pursue the demonstration project designation, by making the data and analysis include the existing potential damage and the potential costs under the redevelopment strategy.
- Provides that the report submitted by the state land planning agency shall assess whether the program has successfully implemented mitigation strategies and whether the program should continue or be expanded to include additional communities.

On March 3, 2004, the Committee on Local Government & Veterans’ Affairs adopted this strike-everything amendment and reported the bill favorably as a committee substitute.