

# 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.)

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Prepared By: Community Affairs Committee

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BILL: CS/SB 1020

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Developments of Regional Impact

DATE: March 6, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/CS
2.	_____	_____	EP	_____
3.	_____	_____	TR	_____
4.	_____	_____	TA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute (CS) provides additional exemptions from DRI review and increases the thresholds that trigger DRI review for proposed development. For example, dry storage boat facilities are exempted from the DRI review process. It also increases the thresholds for determining whether a proposed change is a substantial deviation that requires further review.

In addition, the CS deletes the term “termination date” and inserts “buildout date.” This CS provides a process for filing a memorandum with the clerk of court to record changes that otherwise would go through a notice of proposed change. It requires 45-days’ notice to certain governmental entities and publication of a notice for certain changes. The time period for a local government to hold a hearing after the submittal of a proposed change is reduced to 60 days.

The CS provides for a 12-month window during which a local government may negotiate a binding agreement with impacted jurisdictions to address transportation impacts in order to enjoy an exemption from DRI review for projects located within an urban service boundary or a designated urban infill and redevelopment area. In the absence of an agreement or at the option of the local government, the DRI review may proceed but will address transportation impacts only. It provides for an increase in the applicable guidelines for residential development if a specified percentage of those units are dedicated to workforce housing.

Under this CS, the state land planning agency may raise consistency with the local comprehensive plan as part of its appeal to the Florida Land and Water Adjudicatory Commission (FLAWAC). However, if a challenge is filed under s. 163.3215, F.S., then the state land planning agency must intervene in that pending proceeding and raise its consistency issues

within 30 days after being served with notice of the challenge. Also, the state land planning agency must dismiss the consistency issues from its development-order appeal to FLAWAC.

The process for abandoning a DRI development order is amended to require a local government to rescind a DRI at the request of the developer or landowner if all the required mitigation in relation to the amount of development existing on the proposed date of rescission is completed.

The definition of “recreational and commercial working waterfront” under s. 342.07, F.S., is revised to include public lodging establishments for the purpose of eligibility for ad valorem tax deferral. This CS prohibits a local government from requiring that transportation facilities be in place or under actual construction within a shorter time-frame than the 3-year period provided for in statute. It also prohibits a local government from approving an application to rezone real property except by a majority vote of the governing body of the local government.

In addition, the CS authorizes an amendment to a local comprehensive plan which would allow the creation of a new town in a rural county if the county is designated as a rural area of critical economic concern or has fewer than 500,000 persons and the future land use map provides for 1 unit per 5 acres or fewer in at least 50 percent of the jurisdiction’s land area, excluding conservation lands. If the proposed development meets certain siting and design criteria, the state land planning agency may not find the plan amendment not in compliance based on need or urban sprawl.

This CS prohibits the sale or exclusive control of real property or the operations of any port in this state to an entity controlled by a foreign government or a foreign business entity without the express consent of the Legislature. It also provides for severability.

This CS substantially amends the following sections of the Florida Statutes: 163.3180, 380.06, 380.0651, 380.07, and 380.115. It also creates section 380.0652 and two unnumbered sections of the Florida Statutes.

## **II. Present Situation:**

Section 380.06, F.S., governs the Development of Regional Impact (DRI) program and establishes the basic process for DRI review. 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.<sup>1</sup> For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Chapter 28-24, Florida Administrative Code. Examples of the land uses for which guidelines are established include: airports; attractions and recreational facilities; industrial plants and industrial parks; office parks; port facilities, including marinas and dry storage; hotel or motel development; retail and service development; recreational vehicle development; multi-use development; residential development; and schools.

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<sup>1</sup> S. 380.06(1), F.S.

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.<sup>2</sup>

Percentage thresholds, as defined in 380.06(2)(d), F.S., are applied to the guidelines and standards. These fixed thresholds provide that if a development is at or below 100% of all numerical thresholds in the guidelines, the project is not required to undergo DRI review.<sup>3</sup> If a development is at or above 120% of the guidelines, it is required to undergo DRI review.<sup>4</sup> A rebuttable presumption is established whereby a development at 100% of a numerical threshold or between 100-120% of a numerical threshold is presumed to require DRI review.

If there is a concern over whether a particular development is subject to DRI review, the developer may request a determination from the state land planning agency.<sup>5</sup> The state land planning agency or the local government with jurisdiction over the land to be used for the proposed development may require a developer to obtain a binding letter of interpretation if the development is at a presumptive threshold or up to 20 percent above the established numerical threshold.<sup>6</sup> Any other local government may petition the state land planning agency to require a binding letter of interpretation for a development located in an adjacent jurisdiction if the petition contains sufficient facts to find that the development as proposed constitutes a DRI.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a reasonable likelihood of additional regional impact or any type of regional impact, resulting from a change not previously reviewed by the regional planning council, constitutes a "substantial deviation" that subjects the development to further DRI review and entry of a new or amended local development order. Section 380.06(19), F.S., provides that a proposed change to a previously approved DRI which, either individually or cumulatively with other changes, exceeds specified criteria constitutes a substantial deviation and is subject to further DRI review.

The extension of the date of buildout of a development, or any phase thereof, of 5 years or more but less than 7 years is presumed not to create a substantial deviation. However, the extension of buildout by 7 or more years is presumed to create a substantial deviation and is subject to further DRI review. However, this presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.<sup>7</sup> When calculating whether a buildout date has been

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<sup>2</sup> S. 380.06(12)(a), F.S.

<sup>3</sup> S. 380.06(2)(d)1.a., F.S.

<sup>4</sup> S. 380.06(2)(d)1.b., F.S.

<sup>5</sup> S. 380.06(4)(a), F.S. The developer may also request a determination with regard to vested rights under s. 380.06(20), F.S. If requested by the developer, the state land planning agency may also issue an informal determination as to whether the project is subject to DRI review.

<sup>6</sup> S. 380.06(4)(b), F.S.

<sup>7</sup> S. 380.06(19), F.S.

exceeded, time is tolled during the pendency of administrative or judicial proceedings relating to development permits.<sup>8</sup>

### **Marinas**

In 2002, the Legislature created an exemption for marinas from DRI review if the local government has adopted a boating facility siting plan or policy within its comprehensive plan. This adopted boating facility siting plan must include applicable criteria, such as natural resources, manatee protection needs, and recreation and economic demands as generally outlined in the Bureau of Protected Species Management Boat Facility Siting Guide dated August 2000.<sup>9</sup> The Department of Community Affairs, in cooperation with the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission makes available a best practices guide to assist local governments in developing boating facility siting plans.<sup>10</sup> A boating facility siting plan provides a framework for identifying locations that can accommodate boating interests while protecting manatees, seagrass beds, and other marine resources.

### **Multiuse Developments**

Section 380.06(2)(e), F.S., increases the applicable guidelines and standards by 100 percent for multiuse projects in urban central business districts and regional activity centers if the local government's comprehensive plan is in compliance with part II of ch. 163, F.S., and if one land use in the multiuse development is residential and amounts to not less than 35 percent of the jurisdiction's applicable residential threshold. An urban central business district is defined as the urban core area of a municipality with a population of 25,000 or greater which is located within an urbanized area as identified in the 1990 census.<sup>11</sup> Such a district must contain high intensity, high density multi-use development which includes "retail, office, cultural, recreational and entertainment facilities, hotels or motels, or other appropriate industrial activities. A regional activity center is defined as a compact, high intensity, high density multi-use area that is designated appropriate for intensive growth by the local government. It includes the same uses as an urban central business district.<sup>12</sup> Currently, the individual DRI threshold is increased 50 percent within an urban central business district or a regional activity center. However, the multi-use DRI threshold within such a district or center enjoys a 100 percent increase.

### **Comprehensive Planning and Urban Sprawl**

Part II of chapter 163, F.S., requires local governments to plan for their future development and growth through the adoption of a local comprehensive plan, and amendments thereto. The local government's future land use map provides for the distribution, location, and extent of various land uses, including, but not limited to, residential, commercial, industrial, agricultural, recreational, and conservation uses. Plan amendments are reviewed by the state land planning agency for compliance with the provisions of part II of chapter 163. Part of the state land planning agency's review under 9J-5.006 of the Florida Administrative Code, relating to the future land use element, is whether a plan amendment discourages the proliferation of urban sprawl.

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<sup>8</sup> S. 380.06(19)(c), F.S.

<sup>9</sup> Section 380.06(24)(k)1., F.S.

<sup>10</sup> *Preparing a Boating Facility Siting Plan: Best Management Practices for Marina Siting Guide*, March 2003.

<sup>11</sup> Rule 28-24.014(10)(c)1., Fla. Admin. Code

<sup>12</sup> Rule 28-24.014(10)(c)2., Fla. Admin. Code

One planning strategy for large land areas outside an urban service boundary is the rural land stewardship area concept. Counties are encouraged to designate rural land stewardship areas as overlays on a future land use map.<sup>13</sup> A rural land stewardship area must be at least 10,000 acres in size and located outside of municipalities and established urban growth boundaries. Such areas must also enhance rural land values, control urban sprawl, provide necessary open space for agriculture and environmental protection, promote rural economic activity, and maintain rural character. The planning for a rural land stewardship area results in “clustering” and preservation of open space through the sale of transferable development rights. A rural land stewardship area must be designated by a plan amendment.

### **County and Municipal Governments**

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>14</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>15</sup> Section 125.01, F.S., enumerates the powers and duties of county government, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.<sup>16</sup>

Sections 125.60-125.64, F.S., provides procedures for the adoption of a county charter. These provisions allow for a charter commission to conduct a comprehensive study of the operation of county government and of the ways it could be improved or reorganized. Following the commission’s submission of a charter to the board of county commissioners, the board shall call a special election within a specified time frame to determine whether the proposed charter is adopted. Alternatively, the board of county commissioners may propose by ordinance a charter that is consistent with Part IV of ch. 125, F.S., the “Optional Charter County Law.” Under this law, s. 125.86, F.S., specifies the powers and duties of the charter county, which include all powers of local self-government “not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the charter.”

## **II. Effect of Proposed Changes:**

**Section 1** amends s. 380.06, F.S., to allow a local government or the developer to request that the state land planning agency make an informal determination as to whether a DRI development meets the criteria to be “essentially built out.”

Subsection (15) is amended to delete language requiring a DRI development order to include a termination date that reflects the time required to complete the development. Instead, the CS requires the development order to require a buildout date that reflects the time anticipated to

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<sup>13</sup> Section 163.3177(6)(a), F.S.

<sup>14</sup> Art. VIII, § 1(f), Fla. Const.

<sup>15</sup> Art. VIII, § 1(g), Fla. Const.

<sup>16</sup> Art. VIII, § 2(b), Fla. Const.

complete the development. It protects the DRI developer against downzoning or intensity or density reduction by the local government until the buildout date in the development order has passed.

The CS allows a DRI development order to specify which changes, if any, will require a notice of proposed change. Local governments may no longer require competitive bidding for the construction or expansion of a public facility by a nongovernmental developer as a condition of a development order.

The CS authorizes local governments to issue permits for a development subsequent to the buildout date in the development order if the mitigation requirements of the development order have been satisfied, all developers are in compliance with the terms and conditions of the development order, and the amount that remains to be built is less than 20 percent of any applicable DRI threshold. In addition, the single-family-residential portions of a development that meet this criteria or are consistent with an abandonment of development order may be considered essentially built out if all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination.

Subsection (19) is amended to increase most of the thresholds used to determine whether a proposed change is subject to further DRI review as a substantial deviation. The thresholds for wet storage marinas are amended and increases to the storage capacity for chemical or petroleum facilities are no longer considered a substantial deviation. Residential units may be increased by 15 percent or 100 units, whichever is greater, if 20 percent of those units are dedicated to the construction of workforce housing. The term “workforce housing” is defined to mean affordable to a person who earns less than 120 percent of area median income. The substantial deviation threshold for an increase in hotel or motel rooms may be increased by 100 percent for a project that creates jobs and meets certain criteria. Also, the thresholds for workforce housing and external vehicle trips are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the future land use map. It also makes technical changes to the timeframes for the extension of a buildout date.

Under this CS, changes that modify the boundaries of areas set aside in a DRI for preservation, habitat protection, primary dunes, or archaeological and historical sites are added to the list of changes under s. 380.06(19)(e)2., F.S., that are subject to a new process for changes that are not substantial deviations. This new process that is created in this CS requires 45 days’ notice with appropriate documentation to the state land planning agency, the regional planning agency, and the local government, and publication of a public notice that meets the local government’s criteria for a notice of proposed change. These 3 entities have 45 days after the public notice to object and the proposed change would then require a notice of proposed change, but is still presumed not to be a substantial deviation. If these entities do not object, a memorandum of the notification of the changed notice shall be filed with the clerk of the circuit court along with a legal description of the affected DRI. If a subsequent change requires a notice of proposed change, then all modifications of the DRI made in prior notices must be reflected as amendments to the development order memorandum.

This CS also eliminates duplicative language in s. 380.06(19)(e)5., F.S., relating to set aside areas. It reduces the time period in which a local government must hold a public hearing to consider a proposed change from 90 to 60 days. Also, it specifies that a local government may only require mitigation for the individual and cumulative impacts of a proposed change when amending the development order in response to the change.

The exemptions from the DRI process contained s. 380.06(24), F.S., are amended in this CS. Specifically, it eliminates DRI review for the following:

- Hospitals;
- Steam or solar electrical facilities of less than 50 megawatts in capacity;
- Self-storage warehousing that does not allow retail or other services;
- Nursing homes or assisted living facilities;
- Development identified in an airport master plan;
- Development identified in a campus master plan; and
- Development in a specific area plan of an optional sector plan.

If a use is exempt from review under subsection (24) but is part of a larger project that is subject to DRI review, the impact of the exempt use must be included in the larger review. It eliminates the requirement that a local government's boating facility siting plan or policy should follow the criteria outlined in the Bureau of Protected Species Management Boat Facility Siting Guide. The CS clarifies that paragraph (24)(1) requires a binding agreement between jurisdictions impacted by the proposed development.

This CS creates subsection (28) to provide a 12-month window for a local government to negotiate a binding agreement with impacted jurisdictions and the Florida Department of Transportation which will address transportation impacts in order to enjoy an exemption from DRI review for projects located within an urban service boundary established under s. 163.3177(14), F.S., or a designated urban infill and redevelopment area established under s. 163.2517, F.S. If the 12-month timeframe expires without an agreement, the DRI review will proceed but will address transportation impacts only. The local government also has the option of providing written notice to the state land planning agency that an agreement will not be reached and the local government wishes to proceed to DRI review for transportation impacts only without waiting for the 12-month window to expire.

**Section 2** amends s. 380.0651, F.S., which provides the statewide standards or thresholds that determine whether a project must undergo DRI review. It eliminates review for dry storage facilities. It provides for an increase in the applicable guidelines for residential development by 20 percent if at least 15 percent of the units will be dedicated to workforce housing. The term "workforce housing" is defined to mean affordable to a person who earns less than 120 percent of area median income.

**Section 3** amends s. 380.07, F.S., to allow the appeal of a development order by the state land planning agency to include consistency with the local comprehensive plan. If a challenge to the development order relating to the DRI has been filed under s. 163.3215, F.S., and notice is served on the state land planning agency, then the agency must intervene in that pending proceeding and raise its consistency issues within 30 days after service. Also, the state land

planning agency must dismiss the consistency issues from its development order appeal to the FLAWAC. The filing of the petition stays the effectiveness of the development order until after completion of the appeal process. The CS makes clarifying changes and deletes obsolete language.

**Section 4** amends s. 380.115, F.S., relating to vested rights and duties for DRIs. The process for abandoning a DRI development order is amended to require a local government to rescind a DRI at the request of the developer or landowner if all the required mitigation in relation to the amount of development existing on the proposed date of rescission is completed.

**Section 5** amends s. 342.07, F.S., to include public lodging establishments in the definition of “recreational and commercial working waterfront” for purposes of eligibility for ad valorem tax deferral.

**Section 6** amends s. 163.3180(2), F.S., to prohibit a local government from requiring that transportation facilities be in place or under actual construction within a shorter time-frame than the 3-year period provided for in statute.

**Section 7** creates an unnumbered section of law to prohibit a local government from approving an application to rezone a property except by a majority vote of the governing body of the local government.

**Section 8** creates s. 380.0652, F.S., to authorize an amendment to a local comprehensive plan which would allow the creation of a new town in a rural county if the county is designated as a rural area of critical economic concern or has fewer than 500,000 persons and the future land use map provides for 1 unit per 5 acres or fewer in at least 50 percent of the jurisdiction’s land area, excluding conservation lands. If the proposed development meets certain siting and design criteria, the state land planning agency may not find the plan amendment not in compliance based on need or urban sprawl.

**Section 9** prohibits the sale or exclusive control of real property or the operations of any port in this state to an entity controlled by a foreign government or a foreign business entity without the express consent of the Legislature.

**Section 10** provides for severability.

**Section 11** provides the act shall take effect July 1, 2006.

### III. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.



**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The provision relating to ports in section 9 of this bill may raise constitutional and federal preemption issues. Historically, the federal government has asserted its authority over state-owned and privately-owned transportation assets through the commerce clause of the U.S. Constitution that designates interstate and foreign commerce as the province of the federal government. Article I, section 8 of the United States Constitution provides in part:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

**IV. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The development community would derive a fiscal benefit from increased thresholds and expanded exemptions from the DRI-review process.

**C. Government Sector Impact:**

Some local governments require the approval of rezoning by supermajority vote or may require a referendum. Because this CS restricts the approval of rezoning to a majority vote of the local government's governing body, some local ordinances and charters would have to be amended to comply with this provision.

This CS also prohibits the sale of real property in or the operations of Florida's ports to a foreign government or foreign business entity. This will have a fiscal impact.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.



## **VII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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