The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	SB 1180
INTRODUCER:	Senator Bennett
SUBJECT:	Developments of Regional Impact
DATE:	January 31, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes to the Development of Regional Impact (DRI) program. A DRI is any development that has a substantial effect upon the health, safety, or welfare of citizens of more than one county.

Specifically, this bill requires that plan amendments proposing a development that is exempt from review as a development of regional impact follow the state coordinated review process. The bill requires that reviewing agencies make only recommendations and comments regarding a proposed development which are consistent with statutes, rules, or adopted local ordinances that are applicable to all developments in the jurisdiction where the proposed development is located. Also the bill includes legislative intent language regarding the issues that may be considered during the development-of-regional-impact review process. The bill requires that a local government having jurisdiction rescind a development-of-regional-impact development order, upon request, and upon a showing that all required mitigation related to the amount of development that existed on the date of rescission will be completed under a permit or other authorization issued by a governmental agency.

This bill substantially amends the following sections of the Florida Statutes: 163.3184, 380.06, and 380.115.

II. Present Situation:

Development of Regional Impact Background

A development of regional impact (DRI) is defined in s. 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the

health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils (RPCs) coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity (DEO) for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[1] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

The DRI program was initially created in 1972. Since that time, the state has required all local governments to adopt local comprehensive plans. The Environmental Land Management Study Committee (ELMS III) in 1992 recommended that the DRI program be eliminated in the largest local governments and relegated to an enhanced version of the intergovernmental coordination element (ICE) in their local plans.[2] After much controversy, this recommendation never fully came to fruition and the DRI program continued. The Legislature has made changes to the DRI program in the past for various reasons.

DRI Review

All developments that meet the DRI thresholds and standards provided by statute[3] and rules adopted by the Administration Commission[4] are required to undergo DRI review, unless the Legislature has provided an exemption, the development is located within a dense urban land area (DULA), or is located in a planning area receiving a legislative exemption such as a sector plan or rural land stewardship area.[5] The types of developments required to undergo DRI review upon meeting the specified thresholds and standards include certain airports, attraction and recreation facilities, office development, retail and service development, multiuse development, residential development, schools, and recreational vehicle development.[6] The state land planning agency, a RPC, or the local government may request the Administration Commission to increase or decrease the thresholds for part of the local government's jurisdiction or for the entire jurisdiction.[7] Over the years, the Legislature also has increased the thresholds that determine which projects are subject to DRI review.

Florida's 11 RPCs coordinate the multi-agency review of proposed DRIs. RPCs are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.[8] A DRI review begins by the developer contacting the RPC with jurisdiction over the proposed development to arrange a preapplication conference.[9] A developer or the RPC may also request other affected

[1] S. 380.07(2), F.S.
[2] *See* Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.
[3] S. 380.0651, F.S.
[4] Rule 28-24, F.A.C.
[5] *See* the section "DRI Exemptions."
[6] S. 380.0651, F.S.
[7] S. 380.06(3), F.S.
[8] S. 186.502, F.S.
[9] S. 380.06(7), F.S.

state and regional agencies to participate in the conference and to help identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures. At the preapplication conference, the RPC is to provide the developer with information about the DRI process and use the preapplication conference to identify issues, coordinate appropriate state and local agency requirements, and otherwise efficiently review the proposed development.

An agreement may also be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval, and if an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant. In an effort to reduce paperwork, discourage unnecessary gathering of data, and to coordinate federal, state, and local environmental reviews with the DRI review process, s. 380.06(7)(b), F.S., provides that the developer may enter into a binding written agreement with the RPC to eliminate certain questions from the application for development approval when those questions are found to be unnecessary for DRI review.

The RPC also assists with technical planning aspects of the project, which can be beneficial to rural local governments that often have smaller planning staffs. Upon completion of the preapplication conference with all parties, the developer then files an application for development approval with the local government, RPC, and the state land planning agency. The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[10]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days, and must publish notice at least 60 days in advance of the hearing.[11] Within 50 days after receiving notice of the public hearing, the RPC, is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[12] The RPC is required to identify regional issues[13] specifically examining the extent to which:

1. the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
2. the development will significantly impact adjacent jurisdictions;

[10] S. 380.06(10), F.S.
[11] S. 380.06(11), F.S.
[12] S. 380.06(12), F.S.
[13] Rule 9J-2.024, F.A.C., states in part: "In preparing the regional report, the regional planning agency shall identify and make recommendations on regional issues. Regional issues to be used in reviewing DRI applications are included in the applicable local government comprehensive plans, the Development of Regional Impact Uniform Standards Rule, the State Comprehensive Plan, and Sections 380.06(12)(a)1., 2., and 3., Florida Statutes. In addition, Strategic Regional Policy Plans adopted by regional planning councils pursuant to Sections 186.507 and .508, Florida Statutes, are a long-range policy guide for the development of the region and shall be used as the basis for regional review of DRIs. The regional planning agency may also identify and make recommendations on other local issues. However, local issues shall not be grounds for or be included as issues in a regional planning agency recommendation for appeal of a local government development order."

3. in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[14]

Other appropriate agencies may also review the proposed development and prepare reports and recommendations on issues within their jurisdiction. These reports become part of the RPC's report, but the RPC may attach dissenting views.[15] When water management district and Department of Environmental Protection permits have been issued pursuant to ch. 373, F.S., or ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[16]

The state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[17] Rule 9J-2, F.A.C., provides the rules of procedure and practice pertaining to DRIs. These rules provide detailed guidelines for how the state land planning agency evaluates the development's impact on:

- hurricane preparedness;[18]
- conservation of listed plan and wildlife resources;[19]
- treatment of archaeological and historical resources;[20]
- hazardous material usage, potable water, wastewater, and solid waste facilities;[21]
- transportation;[22]
- air quality;[23] and
- adequate housing.[24]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well. When considering whether the development must be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the extent to which:

1. the development is consistent with its comprehensive plan and land development regulations;
2. the development is consistent with the report and recommendations of the RPC;
3. the development is consistent with the state comprehensive plan.[25]

Local governments are required by s. 163.3177(6)(f), F.S., to adopt a housing element in the local comprehensive plan that expresses principles, guidelines, standards, and strategies related to affordable housing for all current and anticipated future residents.

[14] S. 380.06(12)(a), F.S.
[15] S. 380.06(12)(b), F.S.
[16] *Id*.
[17] *See* Senate Interim Report 2012-114, *The Development of Regional Impact Process*, Sep. 2011.
[18] Rule 9J-2.0256, F.A.C.
[19] Rule 9J-2.041, F.A.C.
[20] Rule 9J-2.043, F.A.C.
[21] Rule 9J-2.044, F.A.C.
[22] Rule 9J-2.045, F.A.C.
[23] Rule 9J-2.046, F.A.C.
[24] Rule 9J-2.048, F.A.C.
[25] S. 380.06(14), F.S. DRIs located in areas of critical state concern (ACSC) must also comply with the land development regulations in s. 380.05, F.S.

Within 30 days of the public hearing on the application for development, the local government must render a decision on the application. Within 45 days after a development order is rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[26] An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[27]

Substantial Deviations

DRIs are designed to be built out over many years, which increases the likelihood of necessary changes to the development due to changing market conditions or other reasons. When a developer proposes a change to a previously approved development that creates a reasonable likelihood of additional regional impact, or creates a reasonable likelihood of a regional impact not previously reviewed by the RPC, a substantial deviation exists and the proposed change is required to be subject to further DRI review. If a change qualifies as a substantial deviation and there is no exemption, a notice of proposed change must be made to the RPC and the state land planning agency.[28] The notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include appropriate amendments to the development order.[29]

Section 380.06(19), F.S., provides the specific criteria that constitutes a substantial deviation and causes a development to be subject to additional review.[30] The numerical standards are also automatically increased if a project is a job-creating one or is located wholly within an urban infill and redevelopment area. During the 2011 Session, the Legislature increased the substantial deviation standards by approximately 50 percent for attraction or recreational facilities, office development, and commercial development.[31] Section 380.06(19), F.S., also specifies changes that individually or cumulatively with any previous changes, are not substantial deviations.

DRI Exemptions

The Legislature has exempted many types of development from DRI review.[32] The Legislature has also exempted projects from DRI review within certain counties and municipalities that qualify as a "dense urban land area" (DULA).[33] There are currently 8 counties and 242 cities that meet, or have met, the population and density criteria necessary to qualify as a dense urban land

[26] S. 380.07(2), F.S.
[27] S. 163.3215, F.S.
[28] S. 380.06(19)(e)1., F.S.
[29] *Id*.
[30] Among the changes that constitute a substantial deviation include a decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less (s. 380.06(19)(b)8., F.S.); a 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original DRI review (s. 380.06(19)(b)10., F.S.); and any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State (s. 380.06(19)(b)11., F.S.).
[31] Ch. 2011-139, L.O.F.; HB 7207 (2011).
[32] *See* 380.06(24), F.S.; ch. 2011-139, L.O.F., exempted from DRI review- movie theaters; industrial plants, industrial parks, and distribution, warehousing or wholesaling facilities; and hotel or motel development.
[33] S. 380.06(29), F.S.

area.[34] The exemption for projects within a DULA reflects state policy to encourage development within urban areas and the increased sophistication of local staffs and the progress, since the DRI program was instituted in 1972, which larger, urban counties and municipalities have made in the area of large-scale land use planning. Additionally, the Legislature has also provided two alternative large-scale planning tools known as the sector plan[35] and rural land stewardship program.[36] Large scale projects within a sector plan or rural land stewardship area are exempt from DRI review.

State Coordinated Review Process for Comprehensive Plan Amendments

The "state coordinated review process" is designed for new comprehensive plans and for amendments that require a more comprehensive review. Amendments that: are in an area of critical state concern designated pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on an evaluation and appraisal review pursuant to s. 163.3191, F.S., and new plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S., are required to follow the state coordinated review process.

The state coordinated review process requires two public hearings and a proposed plan or plan amendment to be transmitted to the reviewing agencies[37] within 10 days after the initial public hearing. Under the state coordinated review process, reviewing agency comments are sent to the state land planning agency that may elect to issue an objections, recommendations, and comments (ORC) report to the local government within 60 days after receiving the proposed plan or plan amendment. The state land planning agency's ORC report details whether the proposed plan or plan amendment is in compliance and whether the proposed plan or plan amendment will adversely impact important state resources and facilities. Once a local government receives the ORC report, it has 180 days to hold a second public hearing on whether to adopt the plan or plan amendment. After a plan or amendment is adopted, the local government must transmit the plan or plan amendment to the state land planning agency within 10 days of the second public hearing, and the state land planning agency must notify the local government of any deficiencies within 5 working days. The state land planning agency then has 45 days to determine if the adopted plan or plan amendment is in compliance or not in compliance. The state land planning agency must issue a notice of intent (NOI) to find that the plan or plan amendment is in compliance or not in compliance and must post a copy of the NOI on its website. If a NOI is issued to find the plan or plan amendment not in compliance, the NOI is forwarded to the Division of Administrative Hearings (DOAH) for a compliance hearing.

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[34] For a complete list of counties and municipalities qualifying as a DULA see http://www.floridajobs.org/community-planning-and-development/programs/developments-of-regional-impact-and-florida-quality-developments/list-of-local-governments-qualifying-as-dense-urban-land-areas (last accessed January 31, 2012).

[35] S. 163.3245, F.S.

[36] S. 163.3248, F.S.

[37] S. 163.3184(c), F.S., defines "reviewing agencies" as: the state land planning agency; the appropriate regional planning council; the appropriate water management district; the Department of Environmental Protection; the Department of State; the Department of Transportation; in the case of plan amendments relating to public schools, the Department of Education; in the case of plans or plan amendments that affect a military installation listed in s. 163.3175, the commanding officer of the affected military installation; in the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and in the case of municipal plans and plan amendments, the county in which the municipality is located.

In addition to challenges brought by the state land planning agency, under the state coordinated review process any "affected person," as defined by s. 163.3184(1)(a), F.S., may challenge an adopted plan or plan amendment by filing a petition with the Division of Administrative Hearings (DOAH) within 30 days after the local government adopts the plan or plan amendment.

Vested Rights & Rescission

One of the greatest benefits of a DRI is the vested rights that attach to the development. Since DRIs are large-scale, high-cost, and long-term projects that occur in multiple phases, it is important that the rights and duties or obligations specified in the development order are vested and not changed due to a change in DRI guidelines or standards. This predictability is important so that a developer has the assurance that a future change in standards will not prohibit or delay the full build-out of the project as planned. Section 380.115, F.S., provides the procedures for developments that received a DRI development order but now are no longer required to undergo DRI review because of a change in the guidelines and standards, or a reduction in the project's size, or a development that is located in a DULA.

A development that was once subject to DRI review but now is exempt may continue to be governed by the DRI development order. [38] Alternatively, the developer or landowner may request the development order to be rescinded upon a showing that all required mitigation has been completed related to the amount of development that existed on the date of rescission.[39]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3184, F.S., requiring that plan amendments proposing a development that is exempt from review because a local government elects not to apply the development-of-regional-impact review process, follow the state coordinated review process. This applies as found in s. 380.06(24)(x), F.S. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, F.S., within the boundary of the Wekiva Study Area as described in s. 369.316, F.S, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2), F.S.

Section 2 amends section 380.06(7)(a), F.S., to state that reviewing agencies may only make recommendations or comments during the pre-application process regarding a proposed development that are consistent with statutes, rules or adopted local standards that are generally applicable to all developments in the jurisdiction.

Section 380.06(7)(b), F.S., is amended to state that the legislative intent is to limit DRI review to issues directly related to land use, environmental protection and public facilities, including transportation.

Section 380.06(12), F.S., is amended for minor changes and to limit regional reports to comments on affordable housing and hurricane preparedness only if the local government has

[38] S. 380.115(a), F.S.
[39] S. 380.115(b), F.S.

adopted an affordable housing or hurricane preparedness ordinance that generally applies to all other developments in the jurisdiction.

Section 380.06(19)(e), F.S., is amended to add to the list of non-substantial deviations changes to a development order that do not result in an increase of external peak hour trips and do not reduce open space and conserved areas within the project.

Section 380.06(24)(x), F.S., is created to allow local governments to determine whether or not a development otherwise subject to DRI review will go through the DRI process. Related comprehensive plan amendments would go through the state coordinated review process found in s. 163.3184(4), F.S. This exemption does not apply to areas within the boundary of any area of critical state concern designated pursuant to s. 380.05, F.S., within the boundary of the Wekiva Study Area as described in s. 369.316, F.S, or within 2 miles of the boundary of the Everglades Protection Area as defined in s. 373.4592(2), F.S.

Section 3 amends s. 380.115(1), F.S., to make minor text changes and to allow the rescission of a DRI development order if required mitigation will be completed under a permit or other authorization issued by a governmental agency.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing developers, local governments, and DEO to elect to use the state coordinated review process for certain developments instead of the DRI review process may provide significant cost and time savings for private developers.

C. Government Sector Impact:

Indeterminate, but expected to be minimal. Staff of the Division of Community Planning do not anticipate that the bill will have any net impact on workload.[40]

VI. Technical Deficiencies:

The Department of Economic Opportunity has made the following suggestions regarding the language in this bill:

The state coordinated review process is not currently designed to accommodate review of specific projects. Substituting compliance with general comprehensive plan provisions for detailed project-level standards does not ensure impacts to extra-jurisdictional state and regional resources and facilities are identified and mitigated. This bill would be improved by adding language to s. 163, F.S., that ensures extra-jurisdictional impacts are identified, and appropriate mitigation is scheduled for developments that would have gone through the DRI process.

The language, "an ordinance that generally applies to all other developments in the jurisdiction" is found in several places throughout the bill. This language raises concerns because many ordinances that apply to multi-family developments don't apply to single family style developments, and vice versa. Different standards may apply if a developer is building one house, or 2,000 houses. Some ordinances only apply to certain designated areas of the jurisdiction. Additionally, ch. 380, F.S., which contains the DRI requirements, and Rule 9J-2, F.A.C., would not apply to generally all other developments in the jurisdiction. The suggested wording would clarify that this statute and rule would apply.

The bill states that the legislative intent is to limit DRI review to issues directly related to land use, environmental protection and public facilities, including transportation. It goes on to state, "Any other issue may not be considered during the development of regional impact review." This language would preclude the application of development standards which the local government may have adopted for all other developments within its jurisdiction. It also precludes the use of the adopted strategic regional policy plans by the regional planning councils to review the development.

The bill proposes to add changes that do not increase the number of external peak hour trips and do not reduce open space and conservation areas to the list of criteria that does not constitute a substantial deviation. However, changes meeting these criteria could increase the amount of potable water required to serve the project. In order to protect regional resources and facilities other than open space and transportation systems, this language could be improved by adding the following, "Changes that do not increase the number of external peak hour trips, do not increase water supply demand and do not reduce open space and conserved areas within the project except as otherwise permitted by subparagraph j."

Additionally, the proposed change to allow the rescission of the development order if mitigation will be completed at a future time pursuant to a permit or other authorization issued by a

[40] Staff Analysis of SB 1180, Department of Economic Opportunity (Dec. 22, 2011) (on file with the Senate Community Affairs Committee).

government agency does not ensure compliance with the development order. The future issuance of a permit does not guarantee that an action will be performed, as permits are challenged and variances for required permits are granted. This language removes the certainty that mitigation will be accomplished guaranteed by the development order. This language could be improved by requiring the permit to have been issued at the time of rescission.

Additionally, these changes do not address a growing issue. Because of the severity of the economic recession, many development orders allow development that may no longer be feasible due to market changes and contain conditions which are difficult to comply with or address. A streamlined process to allow changes to development orders adversely impacted by the recession should be considered, beyond the existing build out extensions. These changes should make it easier for landowners to revise their existing development orders to readdress conditions and market needs due to the economic recession.[41]

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[41] *Id.*