

1 A bill to be entitled
2 An act relating to developments of regional impact;
3 amending s. 163.3184, F.S.; requiring that
4 comprehensive plan amendments proposing certain
5 developments follow the state coordinated review
6 process; amending s. 380.06, F.S.; limiting the scope
7 of certain recommendations and comments by reviewing
8 agencies regarding proposed developments; revising
9 certain review criteria for reports and
10 recommendations on the regional impact of proposed
11 developments; requiring regional planning agency
12 reports to contain recommendations consistent with the
13 standards of state permitting agencies and water
14 management districts; providing that specified changes
15 to a development order are not substantial deviations;
16 providing an exemption from development-of-regional-
17 impact review for proposed developments that meet
18 specified criteria and are located in certain
19 jurisdictions; requiring an agreement for such
20 exemption; providing notice requirements; providing
21 for effect and applicability; amending s. 380.115,
22 F.S.; revising conditions under which a local
23 government is required to rescind a development-of-
24 regional-impact development order; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Paragraph (c) of subsection (2) of section
 30 163.3184, Florida Statutes, is amended to read:

31 163.3184 Process for adoption of comprehensive plan or
 32 plan amendment.—

33 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

34 (c) Plan amendments that are in an area of critical state
 35 concern designated pursuant to s. 380.05; propose a rural land
 36 stewardship area pursuant to s. 163.3248; propose a sector plan
 37 pursuant to s. 163.3245; update a comprehensive plan based on an
 38 evaluation and appraisal pursuant to s. 163.3191; propose a
 39 development pursuant to s. 380.06(24) (x); or are new plans for
 40 newly incorporated municipalities adopted pursuant to s.
 41 163.3167 shall follow the state coordinated review process in
 42 subsection (4).

43 Section 2. Paragraph (a) of subsection (7), subsection
 44 (12), and paragraph (e) of subsection (19) of section 380.06,
 45 Florida Statutes, are amended, and paragraph (x) is added to
 46 subsection (24) of that section, to read:

47 380.06 Developments of regional impact.—

48 (7) PREAPPLICATION PROCEDURES.—

49 (a) Before filing an application for development approval,
 50 the developer shall contact the regional planning agency having
 51 ~~with~~ jurisdiction over the proposed development to arrange a
 52 preapplication conference. Upon the request of the developer or
 53 the regional planning agency, other affected state and regional
 54 agencies shall participate in this conference and shall identify
 55 the types of permits issued by the agencies, the level of
 56 information required, and the permit issuance procedures as

57 applied to the proposed development. The levels of service
58 required in the transportation methodology shall be the same
59 levels of service used to evaluate concurrency in accordance
60 with s. 163.3180. The regional planning agency shall provide the
61 developer information about the development-of-regional-impact
62 process and the use of preapplication conferences to identify
63 issues, coordinate appropriate state and local agency
64 requirements, and otherwise promote a proper and efficient
65 review of the proposed development. If an agreement is reached
66 regarding assumptions and methodology to be used in the
67 application for development approval, the reviewing agencies may
68 not subsequently object to those assumptions and methodologies
69 unless subsequent changes to the project or information obtained
70 during the review make those assumptions and methodologies
71 inappropriate. The reviewing agencies may make only
72 recommendations or comments regarding a proposed development
73 which are consistent with the statutes, rules, or adopted local
74 government ordinances that are applicable to developments in the
75 jurisdiction where the proposed development is located.

76 (12) REGIONAL REPORTS.—

77 (a) Within 50 days after receipt of the notice of public
78 hearing required in paragraph (11)(c), the regional planning
79 agency, if one has been designated for the area including the
80 local government, shall prepare and submit to the local
81 government a report and recommendations on the regional impact
82 of the proposed development. In preparing its report and
83 recommendations, the regional planning agency shall identify
84 regional issues based upon the following review criteria and

85 make recommendations to the local government on these regional
86 issues, specifically considering whether, and the extent to
87 which:

88 1. The development will have a favorable or unfavorable
89 impact on state or regional resources or facilities identified
90 in the applicable state or regional plans. As used in ~~For the~~
91 ~~purposes of~~ this subsection, the term "applicable state plan"
92 means the state comprehensive plan. As used in ~~For the purposes~~
93 ~~of~~ this subsection, the term "applicable regional plan" means an
94 ~~adopted comprehensive regional policy plan until the adoption of~~
95 ~~a strategic regional policy plan pursuant to s. 186.508, and~~
96 ~~thereafter means an~~ adopted strategic regional policy plan.

97 2. The development will significantly impact adjacent
98 jurisdictions. At the request of the appropriate local
99 government, regional planning agencies may also review and
100 comment upon issues that affect only the requesting local
101 government.

102 3. As one of the issues considered in the review in
103 subparagraphs 1. and 2., the development will favorably or
104 adversely affect the ability of people to find adequate housing
105 reasonably accessible to their places of employment if the
106 regional planning agency has adopted an affordable housing
107 policy as part of its strategic regional policy plan. The
108 determination should take into account information on factors
109 that are relevant to the availability of reasonably accessible
110 adequate housing. Adequate housing means housing that is
111 available for occupancy and that is not substandard.

112 (b) The regional planning agency report must contain

113 recommendations that are consistent with the standards required
114 by the applicable state permitting agencies or the water
115 management district.

116 (c)~~(b)~~ At the request of the regional planning agency,
117 other appropriate agencies shall review the proposed development
118 and shall prepare reports and recommendations on issues that are
119 clearly within the jurisdiction of those agencies. Such agency
120 reports shall become part of the regional planning agency
121 report; however, the regional planning agency may attach
122 dissenting views. When water management district and Department
123 of Environmental Protection permits have been issued pursuant to
124 chapter 373 or chapter 403, the regional planning council may
125 comment on the regional implications of the permits but may not
126 offer conflicting recommendations.

127 (d)~~(e)~~ The regional planning agency shall afford the
128 developer or any substantially affected party reasonable
129 opportunity to present evidence to the regional planning agency
130 head relating to the proposed regional agency report and
131 recommendations.

132 (e)~~(d)~~ If ~~When~~ the location of a proposed development
133 involves land within the boundaries of multiple regional
134 planning councils, the state land planning agency shall
135 designate a lead regional planning council. The lead regional
136 planning council shall prepare the regional report.

137 (19) SUBSTANTIAL DEVIATIONS.—

138 (e)1. Except for a development order rendered pursuant to
139 subsection (22) or subsection (25), a proposed change to a
140 development order which ~~that~~ individually or cumulatively with

141 any previous change is less than any numerical criterion
142 contained in subparagraphs (b)1.-10. and does not exceed any
143 other criterion, or which ~~that~~ involves an extension of the
144 buildout date of a development, or any phase thereof, of less
145 than 5 years is not subject to the public hearing requirements
146 of subparagraph (f)3., and is not subject to a determination
147 pursuant to subparagraph (f)5. Notice of the proposed change
148 shall be made to the regional planning council and the state
149 land planning agency. Such notice must ~~shall~~ include a
150 description of previous individual changes made to the
151 development, including changes previously approved by the local
152 government, and must ~~shall~~ include appropriate amendments to the
153 development order.

154 2. The following changes, individually or cumulatively
155 with any previous changes, are not substantial deviations:

156 a. Changes in the name of the project, developer, owner,
157 or monitoring official.

158 b. Changes to a setback which ~~that~~ do not affect noise
159 buffers, environmental protection or mitigation areas, or
160 archaeological or historical resources.

161 c. Changes to minimum lot sizes.

162 d. Changes in the configuration of internal roads which
163 ~~that~~ do not affect external access points.

164 e. Changes to the building design or orientation which
165 ~~that~~ stay approximately within the approved area designated for
166 such building and parking lot, and which do not affect
167 historical buildings designated as significant by the Division
168 of Historical Resources of the Department of State.

169 f. Changes to increase the acreage in the development, if
 170 ~~provided that~~ no development is proposed on the acreage to be
 171 added.

172 g. Changes to eliminate an approved land use, if ~~provided~~
 173 ~~that~~ there are no additional regional impacts.

174 h. Changes required to conform to permits approved by any
 175 federal, state, or regional permitting agency, if ~~provided that~~
 176 these changes do not create additional regional impacts.

177 i. Any renovation or redevelopment of development within a
 178 previously approved development of regional impact which does
 179 not change land use or increase density or intensity of use.

180 j. Changes that modify boundaries and configuration of
 181 areas described in subparagraph (b)11. due to science-based
 182 refinement of such areas by survey, by habitat evaluation, by
 183 other recognized assessment methodology, or by an environmental
 184 assessment. In order for changes to qualify under this sub-
 185 subparagraph, the survey, habitat evaluation, or assessment must
 186 occur before ~~prior to~~ the time that a conservation easement
 187 protecting such lands is recorded and must not result in any net
 188 decrease in the total acreage of the lands specifically set
 189 aside for permanent preservation in the final development order.

190 k. Changes that do not increase the number of external
 191 peak hour trips and do not reduce open space and conserved areas
 192 within the project except as otherwise permitted by sub-
 193 subparagraph j.

194 ~~l.k.~~ Any other change that ~~which~~ the state land planning
 195 agency, in consultation with the regional planning council,
 196 agrees in writing is similar in nature, impact, or character to

197 the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that
 198 ~~which~~ does not create the likelihood of any additional regional
 199 impact.

200
 201 This subsection does not require the filing of a notice of
 202 proposed change but requires ~~shall require~~ an application to the
 203 local government to amend the development order in accordance
 204 with the local government's procedures for amendment of a
 205 development order. In accordance with the local government's
 206 procedures, including requirements for notice to the applicant
 207 and the public, the local government shall either deny the
 208 application for amendment or adopt an amendment to the
 209 development order which approves the application with or without
 210 conditions. Following adoption, the local government shall
 211 render to the state land planning agency the amendment to the
 212 development order. The state land planning agency may appeal,
 213 pursuant to s. 380.07(3), the amendment to the development order
 214 if the amendment involves sub-subparagraph g., sub-subparagraph
 215 h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-
 216 subparagraph l. and if the agency ~~it~~ believes that the change
 217 creates a reasonable likelihood of new or additional regional
 218 impacts.

219 3. Except for the change authorized by sub-subparagraph
 220 2.f., any addition of land not previously reviewed or any change
 221 not specified in paragraph (b) or paragraph (c) shall be
 222 presumed to create a substantial deviation. This presumption may
 223 be rebutted by clear and convincing evidence.

224 4. Any submittal of a proposed change to a previously

225 approved development must ~~shall~~ include a description of
226 individual changes previously made to the development, including
227 changes previously approved by the local government. The local
228 government shall consider the previous and current proposed
229 changes in deciding whether such changes cumulatively constitute
230 a substantial deviation requiring further development-of-
231 regional-impact review.

232 5. The following changes to an approved development of
233 regional impact shall be presumed to create a substantial
234 deviation. Such presumption may be rebutted by clear and
235 convincing evidence.

236 a. A change proposed for 15 percent or more of the acreage
237 to a land use not previously approved in the development order.
238 Changes of less than 15 percent shall be presumed not to create
239 a substantial deviation.

240 b. Notwithstanding any provision of paragraph (b) to the
241 contrary, a proposed change consisting of simultaneous increases
242 and decreases of at least two of the uses within an authorized
243 multiuse development of regional impact which was originally
244 approved with three or more uses specified in s. 380.0651(3)(c),
245 (d), and (e) and residential use.

246 6. If a local government agrees to a proposed change, a
247 change in the transportation proportionate share calculation and
248 mitigation plan in an adopted development order as a result of
249 recalculation of the proportionate share contribution meeting
250 the requirements of s. 163.3180(5)(h) in effect as of the date
251 of such change shall be presumed not to create a substantial
252 deviation. For purposes of this subsection, the proposed change

253 in the proportionate share calculation or mitigation plan may
 254 ~~shall~~ not be considered an additional regional transportation
 255 impact.

256 (24) STATUTORY EXEMPTIONS.—

257 (x) Any proposed development that is located in a local
 258 government jurisdiction that does not qualify for an exemption
 259 based on the population and density criteria in s.
 260 380.06(29) (a), that is approved as a comprehensive plan
 261 amendment adopted pursuant to s. 163.3184(4), and that is the
 262 subject of an agreement pursuant to s. 288.106(5) is exempt from
 263 this section. This exemption shall only be effective upon a
 264 written agreement executed by the applicant, the local
 265 government, and the state land planning agency. The state land
 266 planning agency shall only be a party to the agreement upon a
 267 determination that the development is the subject of an
 268 agreement pursuant to s. 288.106(5) and that the local
 269 government has the capacity to adequately assess the impacts of
 270 the proposed development. The local government shall only be a
 271 party to the agreement upon approval by the governing body of
 272 the local government and upon providing at least 21 days' notice
 273 to adjacent local governments that includes, at a minimum,
 274 information regarding the location, density and intensity of
 275 use, and timing of the proposed development. This exemption does
 276 not apply to areas within the boundary of any area of critical
 277 state concern designated pursuant to s. 380.05, within the
 278 boundary of the Wekiva Study Area as described in s. 369.316, or
 279 within 2 miles of the boundary of the Everglades Protection Area
 280 as defined in s. 373.4592(2).

281
282 If a use is exempt from review as a development of regional
283 impact under paragraphs (a)-(u), but will be part of a larger
284 project that is subject to review as a development of regional
285 impact, the impact of the exempt use must be included in the
286 review of the larger project, unless such exempt use involves a
287 development of regional impact that includes a landowner,
288 tenant, or user that has entered into a funding agreement with
289 the Department of Economic Opportunity under the Innovation
290 Incentive Program and the agreement contemplates a state award
291 of at least \$50 million.

292 Section 3. Subsection (1) of section 380.115, Florida
293 Statutes, is amended to read:

294 380.115 Vested rights and duties; effect of size
295 reduction, changes in guidelines and standards.-

296 (1) A change in a development-of-regional-impact guideline
297 and standard does not abridge or modify any vested or other
298 right or any duty or obligation pursuant to any development
299 order or agreement that is applicable to a development of
300 regional impact. A development that has received a development-
301 of-regional-impact development order pursuant to s. 380.06, but
302 is no longer required to undergo development-of-regional-impact
303 review by operation of a change in the guidelines and standards
304 or has reduced its size below the thresholds in s. 380.0651, or
305 a development that is exempt pursuant to s. 380.06(24) or (29)
306 ~~380.06(29)~~ shall be governed by the following procedures:

307 (a) The development shall continue to be governed by the
308 development-of-regional-impact development order and may be

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309 completed in reliance upon and pursuant to the development order
310 unless the developer or landowner has followed the procedures
311 for rescission in paragraph (b). Any proposed changes to those
312 developments which continue to be governed by a development
313 order shall be approved pursuant to s. 380.06(19) as it existed
314 before ~~prior to~~ a change in the development-of-regional-impact
315 guidelines and standards, except that all percentage criteria
316 shall be doubled and all other criteria shall be increased by 10
317 percent. The development-of-regional-impact development order
318 may be enforced by the local government as provided by ss.
319 380.06(17) and 380.11.

320 (b) If requested by the developer or landowner, the
321 development-of-regional-impact development order shall be
322 rescinded by the local government having jurisdiction upon a
323 showing that all required mitigation related to the amount of
324 development that existed on the date of rescission has been
325 completed or will be completed under an existing permit or
326 equivalent authorization issued by a governmental agency as
327 defined in s. 380.031(6), provided such permit or authorization
328 is subject to enforcement through administrative or judicial
329 remedies.

330 Section 4. This act shall take effect July 1, 2012.