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 Committee on Community Affairs

BILL:	CS/SB 1190
INTRODUCER:	Community Affairs Committee and Senator Diaz de la Portilla
SUBJECT:	Growth Management
DATE:	January 27, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.			ATD	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1190 makes a number of changes to the state's growth management programs. Specifically, the bill:

- Allows the governing body of a county to employ tax increment financing to fund economic development activities and projects which directly benefit the tax increment area.
- Revises the comprehensive plan amendments that must follow the state coordinated review process, and also establishes a procedure for issuing a final order if the state land planning agency fails to take action.
- Amends the minimum acreage for application as a sector plan from 15,000 acres to 5,000 acres.
- Changes the acreage for annexation of enclaves from 10 acres to 110 acres.
- Specifies that persons do not lose the right to complete DRIs upon certain changes to those developments.
- Authorizes specified parties to amend certain agreements without the submission, review, or approval of a notification of proposed change when a project has been essentially built out. The exchange of one approved land use for another so long as there is no increase in impacts to public facilities is authorized. Specifies that persons do not lose the right to complete DRIs upon certain changes to those developments.
- Provides that substantial deviations are subject to further DRI review through the notice of proposed change process.

- Clarifies that certain proposed developments which are currently consistent with the local government comprehensive plan are not required to be reviewed pursuant to the State Coordinated Review Process for comprehensive plan amendments.
- Revises conditions under which the DRI aggregation requirements do not apply.
- Establishes procedures relating to rights, duties, and obligations related to certain development orders or agreements if a development elects to rescind a development order.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was adopted in 1985. The act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development.[2] Comprehensive plans contain chapters or "elements" that address topics including future land use, housing, transportation, conservation, and capital improvements, among others.[3] Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. The state land planning agency that administers these provisions is the Department of Economic Opportunity (DEO).[4]

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[5] The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies,[6] including DEO, the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.[7]

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for "extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region" as well as adverse effects on regional resources or facilities.[8] Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.[9] The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.[10]

---

[1] *See* ch. 163, part II, F.S.
[2] Section 163.3167, F.S.
[3] Section 163.3177, F.S.
[4] Section 163.3221(14), F.S.
[5] Section 163.3174(4)(a), F.S.
[6] Section 163.3184, F.S.
[7] *Id.*
[8] Section 163.3184(3)(b)(3)(a), F.S.
[9] Section 163.3184, F.S.
[10] *Id.*

Development of Regional Impact Background

A development of regional impact 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." The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed moment that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.[11] After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

However, over the ensuing years, the program was chipped away via the serial enactment of a number of exemptions. The following list of exemptions is not exhaustive, but it is illustrative of the number and variety of carve outs from the DRI program that have been enacted:[12]

- Certain projects that created at least 100 jobs that met certain qualifications – 1997.
- Certain expansions to port harbors, certain port transportation facilities and certain intermodal transportation facilities – 1999.
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as Rural Areas of Opportunity) – 2001.
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002.
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002.
- Certain waterport or marina developments – 2002.
- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).[13] By 2015, when the Legislature eliminated the requirement that new DRIs undergo the DRI review process, 8 counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.[14]

[11] *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.
[12] Section 360.06(24), F.S.
[13] Section 380.06(29), F.S.
[14] Florida Department of Economic Opportunity, List of Local Governments Qualifying as DULAs, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas (last visited January 21, 2016).

Consistency with Comprehensive Plans

DRI development orders are required to be consistent with a local government's comprehensive plan.[15] In *Bay Point Club, Inc. v. Bay County* the court held that any change to a DRI development order must be consistent with the local government's comprehensive plan.[16] That can create concerns for a developer where the DRI development order itself is no longer consistent with the local comprehensive plan because of plan amendments adopted after the DRI development order was approved (e.g., the DRI development order may authorize more density or greater building height than the current comprehensive plan allows, or the plan may require more stringent environmental protections potentially reducing the development footprint from what was allowed when the DRI development order was issued).[17]

Approval of New DRIs

In 2015, s. 380.06, F.S., governing DRIs was amended to add a new subsection (30) providing that new proposed DRI-sized developments shall be approved by comprehensive plan amendment in lieu of the review process in s. 380.06, F.S. Section 163.3184(2)(c), F.S., was amended to provide that such plan amendments will be reviewed under the state coordinated review process.

Administrative Proceedings Related to Comprehensive Plan Amendments – Final Order Timeframes

In plan amendment cases, DEO enters final orders finding a plan amendment "in compliance" and the Administration Commission enters final orders finding a plan amendment "not in compliance."[18] When an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) issues a recommended order to find a plan amendment "in compliance," DOAH sends the recommended order to DEO.[19] DEO can then enter a final order finding the plan amendment in compliance or, if it disagrees with the ALJ's recommendation, must refer the matter to the Administration Commission with its recommendation to find the plan amendment "not in compliance."[20] Section 163.3184(5)(3), F.S., requires that DEO make every effort to enter the final order or refer the matter to the Administration Commission expeditiously but at a minimum within the time period provided by s. 120.569, F.S., which is 90 days after the recommended order is submitted to the agency.

Essentially Built Out DRIs

Section 380.06(15)(g), F.S., prohibits a local government from issuing permits for development in a DRI after the buildout date in the development order except under certain circumstances. For an essentially built out DRI, the developer, the local government, and DEO may enter into an agreement establishing the terms and conditions for continued development, after which the

---

[15] Section 163.3194(1)(a), F.S.
[16] 890 So.2d 256 (Fla. 1st DCA 2004).
[17] Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).
[18] Section 163.3184, F.S.
[19] Section 163.3184(5)(e), F.S.
[20] Section 163.3184(5)(e)(1), F.S.

development proceeds pursuant to the local comprehensive plan and land development regulations without further DRI review.[21] In practice, from DEO's perspective, an agreement can be modified on request, with the consent of all the parties to the agreement and without a formal application process.[22]

Substantial Deviations and Notice of Proposed Changes

Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the proposed change to be subject to further DRI review.[23] Section 380.06(19), F.S., identifies changes to a DRI that, based on numerical standards, are substantial deviations, which means that further DRI review is required. Section 380.06(19)(e)(2), F.S., then identifies specific changes that do not require further DRI review (e.g., changes in the name of the project, changes to certain setbacks, changes to minimum lot sizes, changes that do not increase external peak hour trips and do not reduce open space or conserved areas, and any other changes that DEO agrees in writing are similar to the enumerated changes and do not increase regional impacts).

Aggregation

Section 380.0651(4), F.S., provides that two or more developments shall be aggregated and treated as a single DRI when they are determined to be part of a unified plan of development and are physically proximate to one another. Section 380.0651(4)(c), F.S., identifies exceptions to aggregation: DRIs that have already received development approval; developments that were authorized before September 1, 1988, and could not have been aggregated under the law existing at that time; and developments exempt from DRI review.

Vested Rights; Rescinding a DRI Development Order

Changes in statutes or in a developer's development program may result in a development that was a DRI when approved no longer being a DRI. Section 380.115, F.S., preserves the vested rights of those developments and establishes a procedure under which the developers of such projects may seek to rescind the DRI development orders. Developments subject to this provision are those that are no longer defined as DRIs under the applicable guidelines and standards, developments that have reduced their size below the DRI guidelines and standards, and developments that are exempt from DRI review.

Sector Plans – Minimum Acreage

Section 163.3245, Florida Statutes, authorizes local governments to adopt sector plans into their comprehensive plans.[24] Section 163.3164(42), F.S., defines a sector plan as follows:

---

[21] Section 380.06(15)(g)(4), F.S.

[22] Department of Economic Opportunity, *Senate Bill 1190 Agency Legislative Bill Analysis* (Jan. 12, 2016) (on file with the Senate Committee on Community Affairs).

[23] Section 380.06(19)(a), F.S.

[24] Florida Department of Economic Opportunity, Sector Planning Program, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/sector-planning-program (last visited January 19, 2016).

> "Sector plan" means the process authorized by s. 163.3245 in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development strategies, furthering the purposes of this part and part I of chapter 380, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts. The term includes an optional sector plan that was adopted before June 2, 2011.

Sector plans are intended for substantial geographic areas of at least 15,000 acres and must emphasize urban form and protection of regionally significant resources and public facilities.[25] A sector plan may not be adopted in an area of critical state concern.[26]

Annexation of Enclaves

Florida law defines annexation as the adding of real property to the boundaries of an incorporated municipality.[27] The purpose of annexation varies. Historically, annexation was typically used to provide rural communities with access to municipal services—a proposition grounded in the notion that only cities could effectively deliver essential services such as police, fire, and water and sewer.[28] Presently, in addition to seeking out appropriate levels of service, annexation is often used either by developers to find the most favorable laws and regulations for a development, or by a municipality to increase its tax base.[29]

There are three threshold requirements to annex land: the annexed land must be unincorporated, "contiguous," and "compact."[30] Under Florida law, "contiguous" means that "a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality."[31] "Compactness" means "concentration of a piece of property in a single area and precludes any action which would create enclaves (discussed below), pockets, or finger areas in serpentine patterns."[32]

Assuming the land to be annexed is contiguous and compact, there are two primary methods of annexation procedures—involuntary and voluntary—and one exceptional method—expedited annexation of certain enclaves.[33] Florida law defines "enclave" as follows:
- Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.[34]

---

[25] *Id.*
[26] *Id.*
[27] Section 171.031(1), F.S.
[28] Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 Stetson L. Rev. 669 (1996).
[29] *Id.*
[30] Section 171.043, F.S. Florida law also lays out many "prerequisites to annexation" in s. 171.042, F.S.
[31] Section 171.031(11), F.S.
[32] Section 171.031(12), F.S.
[33] Section 171.046, F.S.
[34] Section 171.031(13), F.S.

The Legislature expressly recognizes in s. 171.046, F.S., that, "enclaves can create significant problems in planning, growth management, and service delivery, and therefore declare that it is the policy of the state to eliminate enclaves."[35] Accordingly, the Legislature authorizes two expedited methods of annexing enclaves of less than 10 acres into the municipality in which they exist:

- A municipality may annex such an enclave by interlocal agreement with the county having jurisdiction over the enclave; or
- A municipality may annex such an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.[36]

Tax Increment Financing

Community redevelopment agencies (CRAs) are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF).[37] The TIF mechanism, as described in s. 163.387, F.S., requires taxing authorities to annually appropriate an amount to the redevelopment trust fund by January 1 each year. This revenue is used to back bonds issued to finance redevelopment projects in accordance with a redevelopment plan.[38] The incremental revenue amount is calculated annually as 95 percent of the difference between:

- The amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of a community redevelopment area; and
- The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the community redevelopment area as shown upon the most recent assessment roll used in connection with the taxation of such property by each taxing authority prior to the effective date of the ordinance providing for the funding of the trust fund.

Thus, as the time period of the CRA increases, its property values increase, and the tax increment revenue increases, which is then available to repay public infrastructure and redevelopment costs of the CRA. Tax increment revenues can be used when they are related to development in the designated redevelopment areas.[39]

TIF Limitations and Exemptions

CRAs created before July 1, 2002, typically appropriate to the trust fund for a period not exceeding 30 years, unless the community redevelopment plan is amended.[40] For CRAs created

[35] Section 171.046(1), F.S.
[36] *See id.*
[37] Through tax increment financing, a baseline tax amount is chosen, and then in future years, any taxes generated above that baseline amount are transferred into the trust fund. Section 163.387, F.S.
[38] Section 163.387(1)(a), F.S.
[39] Harry M. Hipler, *Tax Increment Financing in Florida: A Tool for Local Government Revitalization, Renewal, and Redevelopment*, Fla. Bar J., Volume 81, No. 7 (July/August 2007).
[40] Section 163.387(2)(a), F.S.

after July 1, 2002, taxing authorities make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the plan is approved or adopted. The following taxing authorities are exempt from paying the incremental revenues:[41]

- A special district that levies ad valorem taxes on taxable real property in more than one county.
- A special district for which the sole available source of revenue the district has the authority to levy is ad valorem taxes at the time the ordinance is adopted.
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984.
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority.
- A water management district created under s. 373.069, F.S.
- A special district specifically made exempt by the local governing body that created the CRA, if the exemption is made in accordance with the requirements of s. 163.387(2)(d), F.S., which include a public hearing, public notice, and an interlocal agreement.

In addition to CRAs, TIF is also allowed for conservation lands and transportation projects.[42]

III. Effect of Proposed Changes:

Section 1 creates s. 125.045(6), F.S., allowing the governing body of a county to employ tax increment financing for the purpose of funding economic development activities and projects which directly benefit the tax increment area. The governing body must administer a separate reserve account for the deposit of tax increment revenues. The tax increment authorized shall be determined annually and shall be the amount equal to a maximum of 95 percent of the difference between:

- The amount of ad valorem taxes levied each year by the county, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of the tax increment area; and
- The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for the county, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the tax increment area, as shown upon the most recent assessment roll used in connection with the taxation of such property by the county, before establishment of the tax increment area.

Section 2 amends s. 163.3184, F.S., to clarify that a development that is subject to the review process under s. 380.06(30), F.S., must follow the state coordinated review process in s. 163.3184(4), F.S. Additionally, recommended orders submitted under s. 163.3184(5)(e), F.S., become final orders 90 days after issuance unless all parties agree to a time extension in writing, or the state land planning agency acts as pursuant to subparagraph s. 163.3184(5)(e)(1) or (2), F.S. This section also adds that absent written consent of the parties, if the administrative law judge recommends that the amendment be found not in compliance, the Administration Commission shall issue a final order within 45 days after the issuance of the recommended order. If the administrative law judge recommends that the amendment be found in compliance, the

[41] Section 163.387(2)(c), F.S.
[42] Sections 259.042, F.S. and 163.3182, F.S.

state land planning agency shall issue a final order within 45 days after the issuance of the recommended order. If the agency fails to do so, the recommended order will become final.

Section 3 amends s. 163.3245, F.S., to decrease the acreage minimum to apply as a sector plan from 15,000 to 5,000 acres.

Section 4 amends s. 171.046, F.S., changing the acreage for annexation of enclaves from 10 acres to 110 acres.

Section 5 amends s. 380.06, F.S., providing that a person does not lose his or her right to proceed with a development authorized as a DRI if a change is made to the development that only has the effect of reducing height, density, or intensity of the development from that originally approved. This section allows parties to amend an essentially built out agreement between the developer, state land planning agency, and the local government without the submission, review, or approval of a notification of proposed change pursuant to s. 380.06(19), F.S. Additionally, one approved land use may be exchanged for another approved land use in developing the unbuilt land uses specified in the agreement. Before the issuance of a building permit pursuant to this exchange, the developer must demonstrate to the local government that the exchange ratio will not result in an increased impact to public facilities and will meet all applicable requirements of the comprehensive plan and land development code. This section states that when any proposed change to a previously approved DRI or development order condition exceeds criteria in s. 380.06(19)(b), F.S., it will constitute a substantial deviation and will be subject to further DRI review through the notice of proposed change process. A phase date extension, if the state land planning agency, in consultation with the regional planning council and with the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules, is not a substantial deviation. Finally, this section clarifies that a proposed development that is consistent with the existing comprehensive plan is not required to undergo review pursuant to the state coordinated review process for comprehensive plan amendments. This subsection does not apply to amendments to a development order governing an existing DRI.

Section 6 amends s. 380.0651, F.S., stating that aggregation review is not triggered when newly acquired lands comprise an area that is less than or equal to 10 percent of the total acreage that is subject to the existing DRI development order, if these lands were acquired subsequent to the development of an existing DRI.

Section 7 amends s. 380.115, F.S., to clarify the right of rescission of existing DRI orders. A development that elects to rescind a development order shall be governed by the provisions of s. 380.115, F.S.

Section 8 provides that the bill shall take effect July 1, 2016.

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:

None.

C. Government Sector Impact:

The bill is likely to have minimal impact to expenditures due to reduction in the number and types of situations that result in DRI amendments or extensive review of amendments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3184, 163.3245, 380.06, 380.0651, and 380.115.

IX. Additional Information:

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

CS by Community Affairs on January 26, 2016:

- Removes the 30 day requirement on the state land planning agency for final action on recommended orders;
- States that a recommended order becomes a final order 90 days after issuance unless the state has acted under subparagraph 1 or 2, or all parties consent to an extension;
- Adds that after an ALJ recommends an amendment be found not in compliance, the Administration Commission shall issue a final order within 45 days;

- Adds that after an ALJ recommends an amendment be found in compliance, the state land planning agency shall issue a final order within 45 days, and if it fails to do so, the recommended order shall become final;
- Changes the acreage for annexation of enclaves from 10 acres to 110 acres;
- Provides that developers can exchange one approved land use for another for an essentially built out project if a resolution is adopted and the developer demonstrates the exchange will not result in an increase in any impacts to public facilities;
- Removes the rebuttable presumption for substantial deviations; and
- Adds a provision allowing a governing body of a county to employ tax increment financing to be used to fund economic development activities within the tax increment area. The increment may not exceed 95 percent of the difference in ad valorem taxes as provided in s. 163.387(1)(a), F.S.

B. Amendments:

None.