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 Fiscal Policy

BILL: CS/SB 7000

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Community Affairs Committee

SUBJECT: Developments of Regional Impact

DATE: January 22, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stearns	Yeatman		**CA Submitted as Committee Bill**
1.	Gusky	Miller	ATD	**Recommend: Fav/CS**
2.	Jones	Hrdlicka	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7000 allows a governing body of a county to employ tax increment financing to fund economic development activities within the tax increment area. This has an indeterminate fiscal impact to local governments.

The bill increases the acreage for the annexation of enclaves from 10 acres to 150 acres.

The bill also 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. To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for both the private sector and for local and state governments. The fiscal impact to the private sector is indeterminate, but expected to be positive; for local and state governments, this portion of the bill has an indeterminate, but expected to be insignificant, positive fiscal impact.

The bill is effective July 1, 2016.

II. Present Situation:

Community Redevelopment Act – Chapter 163, F.S.

The Community Redevelopment Act of 1969[1] authorizes a county or municipality to create community redevelopment agencies (CRAs) as a means of redeveloping slums and blighted areas.[2] CRAs must operate in accordance with a community redevelopment plan. [3]

Counties and municipalities are prohibited from exercising the authority provided by the Community Redevelopment Act until they adopt an ordinance that declares an area to be a slum or a blighted area.[4]

The Tax Increment Financing Mechanism for Funding CRAs

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).[5] Tax increment financing is a unique tool available to cities and counties for redevelopment activities and is used to leverage public funds to promote private sector activity in the targeted area.

The TIF mechanism 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.[6] The incremental revenue amount is calculated annually as 95 percent of the difference between:
- A frozen base year assessed value, which is the value of real property in the CRA determined as of a fixed starting date; and
- The amount of ad valorem taxes levied by each taxing authority on taxable real property within the CRA.[7]

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.

Annexation

Florida's annexation law, ch. 171, F.S., is intended to provide for efficient service delivery and to limit annexation to urban service areas. Florida's annexation policy attempts to accomplish these goals through restrictions aimed at preventing irregular municipal boundaries.

[1] Chapter 163, part III, F.S.
[2] Section 163.340(8), F.S., defines a "blighted area."
[3] Sections 163.360 and 163.370, F.S.
[4] Sections 163.355(1) and 163.360(1), F.S.
[5] 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.
[6] Section 163.387(1)(a), F.S.
[7] *Id.*

There are three types of annexation: voluntary, involuntary, and enclaves. Voluntary annexation occurs when 100 percent of the landowners in an area proposed to be annexed petition a municipality.[8] Involuntary annexation allows for separate approval of a proposed annexation in the existing city, at the city's option, and in the area to be annexed. A majority of the property owners must consent when more than 70 percent of the property in a proposed annex area is owned by persons that are not registered electors.[9]

An enclave is any unincorporated improved or developed area lying within a single municipality, or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality.[10]

Enclaves can create significant problems in planning, growth management, and service delivery, and s. 171.046, F.S., provides that it is the policy of the state to eliminate enclaves. In order to expedite the annexation of enclaves of 10 acres or less into the most appropriate incorporated jurisdiction, based upon existing or proposed service provision arrangements, a municipality may annex an enclave:

- By interlocal agreement with the county; or
- 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.[11]

Development of Regional Impact

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." 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 law 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.[12] After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

[8] Section 171.044(1) and (2), F.S.
[9] Sections 171.0413 and 171.042, F.S.
[10] Section 171.031(13), F.S.
[11] Section 171.046, F.S.
[12] *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.

However, over the years, the program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of the exemptions from the DRI program that have been enacted:

- 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] In 2015, eight 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]

Comprehensive Plans and the Comprehensive Plan Amendment Process

The Growth Management Act of 1985 required every city and county to create and implement a comprehensive plan to guide future development.[15] A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. 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.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[16] 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, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.[17]

---

[13] Chapter 2009-96, L.O.F.

[14] Department of Economic Opportunity, Community Planning, Development, and Services, Community Planning, *Community Planning Table of Content: List of Local Governments Qualifying as Dense Urban Land Areas*, (June 11, 2015), available at 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 15, 2016).

[15] Chapter 1985-55, L.O.F.

[16] Section 163.3174(4)(a), F.S.

[17] Section 163.3184, F.S.

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.[18] 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.[19] 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.[20]

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[21] Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.

2015 Changes to the DRI Law

In 2015, the Florida Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process.[22]

However, there has been some confusion regarding whether the new statutory language requires new DRI-sized projects that comply with the existing comprehensive plan to nevertheless be reviewed pursuant to the State Coordinated Review Process and to obtain a plan amendment.

III. Effect of Proposed Changes:

Section 1 amends s. 125.045, F.S., to allow a governing body of a county to employ tax increment financing for economic development activities. The tax increment must be determined annually and may not exceed 95 percent of the difference in ad valorem taxes as provided in s. 163.387(1)(a), F.S. Generally, s. 163.387(1)(a), F.S., provides that the incremental revenue amount is calculated annually as 95 percent of the difference between a frozen base year assessed value and the amount of ad valorem taxes levied by each taxing authority on taxable real property within the area.

[18] Section 163.3184(3)(b)3.a., F.S.
[19] Section 163.3184(3)(c) and (4)(e), F.S.
[20] *Id.*
[21] Chapter 2011-14, L.O.F. *See* s. 163.3184(3) and (4), F.S.
[22] Section 380.06(30), F.S. Chapter 2015-30, L.O.F.

The county must administer a separate reserve account for the deposit of tax increment revenues. The bill specifies that the tax increment revenues, including the proceeds of any revenue bonds secured by, and repaid with, such tax increment revenues, must be used to fund economic development activities within the tax increment area.

Section 2 amends s. 171.046(2), F.S. to increase the acreage for the annexation of enclaves from 10 acres to 150 acres.

Section 3 amends s. 163.3184, F.S., to remove an obsolete reference to "a development that qualifies as a development of regional impact." In 2015, the Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process.

Section 4 amends s. 380.06(30), F.S., to clarify 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. The bill specifies that this subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 5 provides that the bill is effective on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article VII, s. 12 of the Florida Constitution permits local governments with taxing powers to issue bonds payable from ad valorem taxes and maturing more than 12 months after issuance only to finance or refinance capital projects authorized by the law and when approved by the electorate.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for private sector developers. The bill has an indeterminate, but expected to be positive, fiscal impact to the private sector.

C. Government Sector Impact:

The portion of the bill that allows a governing body of a county to employ tax increment financing has an indeterminate fiscal impact to local governments.

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for review of those developments would be reduced for local and state governments. This portion of the bill has an indeterminate, but expected to be insignificant, positive fiscal impact to local and state governments

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.045, 163.3184, 171.046, and 380.06.

IX. Additional Information:

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

CS by Fiscal Policy on January 20, 2016:
As recommended by the Appropriation Subcommittee on General Government, the CS adds language to s. 380.06(30), F.S., to specify that the provisions of that subsection do not apply to amendments to a development order governing an existing development of regional impact.

The CS also:
- Allows a governing body of a county to employ tax increment financing to fund economic development activities within the tax increment area; and
- Increases the acreage for the annexation of enclaves from 10 acres to 150 acres.

B. Amendments:

None.

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