HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 7081 (CS/CS/CS/SB 842)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Economic Affairs Committee; Community & Military Affairs Subcommittee; Workman (Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Commerce and Tourism; Community Affairs; Bennett)	101 **Y's**	13 **N's**
COMPANION BILLS:	CS/CS/CS/SB 842	**GOVERNOR'S ACTION:**	Pending

SUMMARY ANALYSIS

CS/HB 7081 passed the House on February 15, 2012, and subsequently passed the Senate on March 7, 2012. Part of the bill also passed the House and Senate in HB 7075 on March 6, 2012, and part of the bill passed the House and Senate in CS/CS/SB 922 on March 7, 2012, and March 8, 2012, respectively. The bill makes a number of non-substantive modifications and clarifications to ch. 2011-139, L.O.F, "The Community Planning Act" (the Act), which were compiled through various discussions and feedback received from stakeholders including the state land planning agency and local governments.

Modifications include fixing cross-references, updating outdated language, and removing provisions that the Act made obsolete such as references to the twice-a-year limitation on adopting plan amendments that no longer exists and references to the evaluation and appraisal report that no longer is required.

The bill also addresses items that, although stemming from technical glitches, may have limited policy implications. These include:

- grandfathering of local government charter provisions in effect on June 1, 2011, relating to a local initiative or referendum process for the approval of development orders and comprehensive plan or map amendments;
- clarifying provisions relating to the coordination between local governments and military installations regarding local land use decisions;
- providing criteria for municipalities and the unincorporated area within a county to use in determining population projections;
- removing criteria that exempts certain municipalities from being signatories to the school interlocal agreement as a prerequisite to implementing school concurrency, because school concurrency is now optional, and restoring criteria to exempt certain municipalities from being a party to the school interlocal agreement;
- extending the time for the state land planning agency and the Administration Commission to issue recommended and final orders, since the current time requirement is unworkable, and providing a time requirement for the state land planning agency to issue a notice of intent for a plan amendment adopted pursuant to a compliance agreement; and
- deleting a required annual report by the Department of Economic Opportunity related to the optional sector plan pilot program.

The bill has no fiscal impact on state or local governments.

Subject to the Governor's veto powers, the bill is effective upon becoming law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The Community Planning Act (ch. 2011-139, L.O.F.)

Present Situation:

During the 2011 Session, the Legislature passed HB 7207, "The Community Planning Act" (the Act), which became law on June 2, 2011. Chapter 2011-139, L.O.F., substantially reformed Florida's growth management system by streamlining the processes and removing unworkable provisions that delayed economic development and resulted in outcomes that hindered urban development and flexible planning solutions.

Part II of ch. 163, F.S., provides the minimum standards for Florida's comprehensive growth management system. Local governments are primarily responsible for decisions relating to the future growth of their communities, and the state is focused on protecting important state resources and facilities.

Local governments have the option to decide whether or not to continue implementing, pursuant to state guidelines, concurrency for transportation, school, and parks and recreation. A local government may continue applying concurrency in these areas without taking any action. If a local government wishes to remove one of these forms of concurrency, a comprehensive plan amendment must be adopted, but it is not subject to state review. The Act also modified and attempted to clarify many of the provisions related to proportionate-share payments that local governments implementing transportation concurrency are required to implement.

Local governments must evaluate their comprehensive plans once every seven years and notify the state land planning agency, via a letter, whether any update amendments are necessary. Local governments have the flexibility to adopt amendments to their comprehensive plan as needed, since there is no limit on the frequency in which plan amendments may be adopted. Local governments are required to list their funded and unfunded capital improvements in the comprehensive plan.

The Act streamlined the comprehensive plan amendment process while maintaining public participation in the local government planning process. The Act focuses the state oversight role in growth management on protecting important state resources and facilities. State agencies, when reviewing plan amendments, may comment on adverse impacts to important state resources or facilities as they relate to areas within their jurisdiction. Further, the state land planning agency when challenging most plan amendments may only challenge based on an adverse impact to an important state resource or facility.

SB 2156, which was signed into law as ch. 2011-142, L.O.F., created the Department of Economic Opportunity (DEO) that serves as the state land planning agency. The Act requires the state land planning agency to provide direct and indirect technical assistance to help local governments find creative solutions to foster vibrant, healthy communities, while protecting the functions of important state resources and facilities.

If a plan amendment may adversely impact an important state resource or facility, upon request by the local government, the state land planning agency must coordinate multi-agency assistance, if needed, to develop an amendment to minimize any adverse impacts.

The Act also changed the requirements associated with the large-scale planning tools of sector plans and rural land stewardship areas.

Finally, the Act granted a two-year extension to certain permits set to expire between January 1, 2012, and January 1, 2014, and provided a two-year extension for certain permits extended in 2009. However, the cumulative extensions granted to a permit by the Legislature in 2009, 2010, and under ch. 2011-139, L.O.F., may not exceed four years. Eligible permits were required to notify the authorizing agency in writing by December 31, 2011. The Act also granted a four-year extension to all current developments of regional impact (DRIs) and increased the substantial deviation criteria for certain types of DRI developments.

Effect of Changes:

The bill makes a number of non-substantive modifications and clarifications to ch. 2011-139, L.O.F., "The Community Planning Act" (the Act), which were compiled through various discussions and feedback received from stakeholders including the state land planning agency and local governments.

Modifications include fixing cross-references, updating outdated language, and removing provisions throughout the statutes that the Act made obsolete such as references to the twice-a-year limitation on adopting plan amendments that no longer exists and references to the evaluation and appraisal report that no longer is required.

The bill also addresses items that, although stemming from technical glitches, may have limited policy implications. These items are explained in further detail below.

Local Referendums and Initiatives

Present Situation

The Act expressly prohibited any local government initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment. Prior to this, only a local government initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment that affected five or fewer parcels of land was prohibited.[1] At the time the Act became law some local governments already had in place specific charter provisions providing for a referendum process for the approval of development orders or comprehensive plan amendments affecting more than five parcels of land.[2] Consequently, the Act invalidated these specific charter provisions already in effect.

Town of Yankeetown, FL v. Department of Economic Opportunity

In August of 2011, the Town of Yankeetown filed a complaint for declaratory judgment in Leon County Circuit Court naming the former Department of Community Affairs (DCA), then-DCA Secretary Billy Buzzett, and the Administration Commission as defendants.[3] In the complaint, Yankeetown stated its desire to maintain a charter provision it had in place prior to the Act becoming law that states in part:

> **Yankeetown Town Charter**- Section 11. Voter approval is required for approval of comprehensive land use plan or comprehensive land use plan amendments affecting more than five parcels. . . . A Comprehensive Plan or Comprehensive Plan Amendment, (both as defined in Florida Statutes Chapter 163), shall not be adopted by the Town

[1] Section 163.3167(12), F.S. (2010).
[2] In addition to Yankeetown, other local governments with a specific referendum or initiative process that were reportedly affected by the prohibition include Longboat Key, Key West, and Miami Beach.
[3] *See Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, Case No. 37 2011 CA 002036 (Fla. 2d Cir. Ct. 2011). The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in Article III, s. 6 of the Florida Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The city of St. Pete Beach also filed a motion to intervene as a defendant in the case, on the same side as the state.

> Council until such proposed Plan or Plan Amendment is approved by the electors in a referendum. . . .[4]

Yankeetown stated in its complaint that it was in doubt as to whether the absolute prohibition on local government initiative and referendum processes in regard to any development order or in regard to any local comprehensive plan amendment or map amendment was constitutional, and whether it applied to previously adopted charter provisions such as theirs, which were in existence at the time the Act became law and required a referendum to approve plan amendments affecting more than five parcels of land.[5]

In September of 2011, Yankeetown and the Department reached a proposed settlement agreement that was contingent on a legislative amendment to the Community Planning Act becoming law. The legislative change would retain the prohibition on an initiative or referendum process involving any development order or any local comprehensive plan amendment or map amendment for those local governments that did not have a specific charter provision authorizing such initiative or referendum process in place on June 2, 2011, the date the Act became law. In essence, the settlement agreement was contingent on a legislative change that would grandfather-in those charter provisions, such as Yankeetown's, in place on the effective date of the Act that specifically provided for an initiative or referendum process relating to approval of any development order or any comprehensive plan or map amendment.

Effect of Changes:

The bill provides that any local government charter provision, in effect as of June 1, 2011, for an initiative or referendum process in regard to development orders or in regard to local comprehensive plan amendments or map amendments may be retained and implemented. This allows local governments such as Yankeetown, to retain and implement specific charter provisions in effect on June 1, 2011, providing for an initiative or referendum process for the approval of development orders or local comprehensive plan or map amendments. Any other initiative or referendum processes in regard to any development order or in regard to any local comprehensive plan amendment or map amendment continues to be prohibited. Pursuant to the settlement agreement between Yankeetown and the Department, Yankeetown will dismiss its case with prejudice upon this bill becoming law.

Military Base Commander Comments

Present Situation:

The Legislature has found that incompatible development of land close to military installations can adversely affect the ability of the installation to carry out its mission.[6] Such development can also threaten public safety if accidents are to occur near the military installation and may also affect the economic vitality of a community when military operations or missions must be relocated because of urban encroachment.[7] Based on these findings, the Legislature established s. 163.3175, F.S., to encourage compatible land use between local governments and military installations, help prevent incompatible encroachment, and facilitate the continued presence of military installations in this state. Further, the Act[8] recognized the military as an important part of the traditional economic base of Florida.[9]

[4] *See id.,*Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).
[5] *See id*.
[6] Section 163.3175, F.S.
[7] *Id*.
[8] Chapter 2011-139, L.O.F.
[9] *See* s. 163.3161, F.S.

In an effort to encourage cooperation between local governments and the military and facilitate the exchange of information, a representative of the military installation is required to be included as an *ex officio*, nonvoting member of the affected local government's land planning or zoning board.[10] Section 163.3175, F.S., also requires local governments to provide information to the commanding officer of an affected military installation relating to any proposed changes to the local comprehensive plan or proposed changes to the local land development regulations, which if approved, would affect the intensity, density, or use of land adjacent to or in close proximity to the military installation. If the commanding officer requests, the local government must also transmit copies of applications the local government receives for development orders requesting a variance or waiver from height or lighting restrictions or noise attenuation reduction requirements within the military zone of influence defined in the local comprehensive plan.[11] Once these proposed changes are transmitted to the military installation, the local government must provide an opportunity for the commanding officer or his or her designee to review and comment on the proposed changes.[12]

The comments on the proposed changes may include factors identified in s. 163.3175(5), F.S., including whether the proposed changes will be incompatible with certain safety and noise standards,[13] whether the changes are incompatible with the findings of a Joint Land Use Study (JLUS) for the area, and whether the military installation's mission will be adversely affected by the proposed changes being made by the local government. The commanding officer's comments, the underlying studies, and reports are not intended to be binding on the local government[14] but instead advisory, for the local government to take into consideration when evaluating proposed changes.[15] Section 163.3175(6), F.S., was amended in 2011 to emphasize the importance of private property rights and to clarify that the local government when considering comments from a military installation must be sensitive to private property rights and not be unduly restrictive on those rights.

A local government's future land use plan and plan amendments are required to be based upon surveys, studies, and data regarding the area. Among other factors, the future land use plan is to include information relating to the compatibility of uses on lands adjacent to or closely proximate to military installations, if applicable.[16] The future land use plan element must also include criteria to be used to achieve the compatibility of lands adjacent or closely proximate to military installations.[17] The local government in establishing the criteria within the future land use plan element must consider the factors identified in s. 163.3175(5), F.S., described above.

When a proposed comprehensive plan or plan amendment affects a major military installation in Florida,[18] s. 163.3184(1)(c), F.S., defines the commanding officer of an affected military installation as a reviewing agency.[19] This allows the commanding officer of the military installation to submit comments

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[10] Section 163.3175(8), F.S.
[11] Section 163.3175(4), F.S.
[12] *Id*.
[13] Comments provided may include whether the proposed changes are compatible with the Air Installation Compatible Use Zone (AICUZ) adopted by the military installation that has an airfield and whether the proposed changes are compatible with the Installation Environmental Noise Management Program (IENMP) of the U.S. Army.
[14] *See* s. 163.3175(5), F.S.
[15] *See* s. 163.3175(6), F.S.
[16] Section 163.3177(6)(a)2.f., F.S.
[17] Section 163.3175(9), F.S., provides that if the local government does not adopt criteria and address compatibility of lands adjacent to or closely proximate to existing military installations in its future land use plan element by June 30, 2012, the local government, military installation, state land planning agency, and other parties identified by the regional planning council, including but not limited to private landowner representatives must enter into mediation. If by December 31, 2013, the local government comprehensive plan does not contain criteria, the state land planning agency may notify the Administration Commission, which may impose sanctions on the local government. Local governments that adopted criteria in 2004 found to be in compliance to address military installation compatibility requirements are exempt until required to update the comprehensive plan during the evaluation and appraisal review pursuant to s. 163.3191, F.S.
[18] Major military installations that due to their mission and activities have a greater potential for experiencing compatibility and coordination issues than others are specifically listed in s. 163.3175(2), F.S.
[19] (c) "Reviewing agencies" means:

on the proposed plan or plan amendment to the local government at the same time as other reviewing agencies. Comments from the military installation on a proposed comprehensive plan or comprehensive plan amendment are to be provided in accordance with the guidelines set in s. 163.3175, F.S.,[20] as described above. Since the commanding officer of an affected military installation is defined as one of the "reviewing agencies", the comments submitted by the military installation regarding proposed comprehensive plan amendments are to be considered and weighed by the local government similar to comments from other reviewing agencies representing important interests that may be affected by proposed changes such as the environment, public schools, or transportation. Along with reviewing agency comments, the local government also takes into consideration public testimony and other information and data at its disposal.

Effect of Changes:

The bill clarifies that commanding officer comments on proposed changes that may have an impact on the mission of the military installation are advisory to the local government, and provides that the advisory comments must be based on appropriate data and analyses provided with the comments. Further, the local government must consider the commanding officer's comments, underlying studies, and reports in the same manner as comments received by other reviewing agencies pursuant to s. 163.3184, F.S.[21]

The bill also specifies that the local government must take into consideration any comments and accompanying data and analyses provided by the commanding officer or his or her designee as they relate to the strategic mission of the base, public safety, and the economic vitality associated with the base's operations,[22] while also respecting private property rights and not being unduly restrictive on those rights. The bill makes changes to the language in s. 163.3175(5) and (6), F.S., in an attempt to clarify the original intent and meaning of the Community Planning Act.

Population Projections

Present Situation:

Section 163.3177(1)(f)3., F.S., requires the local comprehensive plan to be based upon permanent and seasonal population estimates and projections, either provided by the University of Florida's Bureau of Economic and Business Research (BEBR) or generated by the local government based upon a professionally acceptable methodology. The comprehensive plan must be based on at least the minimum amount of land required to accommodate the medium projections of the University of Florida's Bureau of Economic and Business Research for at least a 10-year planning period unless otherwise limited under s. 380.05, F.S. including related rules of the Administration Commission.

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1. The state land planning agency;
2. The appropriate regional planning council;
3. The appropriate water management district;
4. The Department of Environmental Protection;
5. The Department of State;
6. The Department of Transportation;
7. In the case of plan amendments relating to public schools, the Department of Education;
8. 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;
9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and
10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

[20] *See* s. 163.3184(3)(b)3.d., F.S.

[21] Section 163.3184(1)(c), defines "reviewing agencies", which includes in the case of plans or plan amendments that affect a military installation, the commanding officer of the affected military installation. S. 163.3184(3)(b)2., F.S., provides in part that comments from reviewing agencies, if not resolved, may result in a challenge by the state land planning agency to the plan amendment.

[22] These issues are consistent with the legislative findings in s. 163.3175(1), F.S.

Contracting with BEBR, the Legislature's Office of Economic and Demographic Research (EDR) publishes yearly (as of April 1) population estimates of local governmental units within Florida and population projections for all 67 Florida counties.[23] Population projections for municipalities and the unincorporated area within counties are not published.

Effect of Changes:

Since population projections are not published by EDR for individual municipalities and the unincorporated area within a county, the bill provides criteria for local governments to use in calculating these population projections on which the local comprehensive plan is to be based. The bill clarifies that absent physical limitations on population growth, population projections for each municipality and the unincorporated area within a county must, at a minimum, be reflective of each area's proportional share of the total county population and the total county population growth. The bill also replaces references to BEBR with EDR in order to more accurately reflect the entity publishing the population estimates and projections.

School Interlocal Agreement

Present Situation:

Interlocal agreements between a county, the municipalities within, and a school board exist in order to coordinate plans and processes of the local governments and school boards. Section 163.31777, F.S., provides that "[t]he county and municipalities located within the geographic area of a school district shall enter into an interlocal agreement with the district school board which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated." The Act removed state oversight and review of the interlocal agreements while maintaining certain minimum issues that the interlocal agreement must address. If a local government chooses to maintain optional school concurrency within its jurisdiction, the interlocal agreement must also meet additional requirements. Certain outdated provisions relating to state oversight and review of interlocal agreements inadvertently still remain in ss. 1013.33 and 1013.351, F.S.

The Act also inadvertently removed the provision that exempted certain municipalities from entering into the school interlocal agreement.[24] However, the Act maintained the exemption language in s. 163.3180(6)(i), F.S., which provided that municipalities meeting certain criteria for having no significant impact on school attendance are not required to be a signatory to the interlocal agreement, as a prerequisite for imposition of school concurrency.

Effect of Changes:

The bill removes the outdated language in ss. 1013.33 and 1013.351, F.S., which is no longer required by the Act, relating to state oversight and review of interlocal agreements. Further, it removes the details of the contents within the interlocal agreement in s. 1013.33, F.S., and instead refers to s. 163.31777, F.S., to provide the requirements for both the school board and the local government in developing the interlocal agreement.

[23] *See* Population and Demographic Data, Office of Economic and Demographic Research, *available at*: http://edr.state.fl.us/Content/population-demographics/data/index.cfm (last accessed March 7, 2012).

[24] The Act inadvertently removed 163.31777(6), F.S., (2010), which provided: "Except as provided in subsection (7), municipalities meeting the exemption criteria in s. 163.3177(12) are exempt from the requirements of subsections (1), (2), and (3)." The provisions within 163.3177(12), F.S., (2010) were also removed by the Act. The end result created a conflict with the language in s. 163.3180(6)(i), F.S., (2011), and as a result, requires every municipality to enter into an interlocal agreement.

The bill also restores the four criteria,[25] inadvertently removed in the Act, which a municipality must meet to show that it has no significant impact on school attendance. If a municipality meets all four criteria, it is exempt from the school interlocal agreement.

Concurrency

Present Situation:

Concurrency requires public facilities and services to be available concurrent with the impacts of development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water. Concurrency is tied to provisions requiring local governments to adopt level-of-service standards, address existing service deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan. The Act removed the mandatory requirement for transportation facilities, public education facilities, and parks and recreation to be available concurrent with development impacts, and a local government now has flexibility to decide whether or not to maintain these forms of concurrency. If a local government chooses to remove any optional concurrency provisions from its comprehensive plan, a comprehensive plan amendment is required. An amendment removing any optional concurrency is not subject to state review.

Effect of Changes:

The bill clarifies that an amendment rescinding any optional form of concurrency such as transportation, school, or parks and recreation must be processed using the expedited state review process in s. 163.3184(3), F.S.; however, the amendment is not required to be transmitted to the reviewing agencies for comments, and it is not subject to state review. The bill also adds the requirement for the local government to provide a copy of any adopted amendment rescinding optional concurrency to the state land planning agency and for municipal amendments, the county in which the municipality is located. An additional copy must be provided to the Department of Transportation, if the amendment rescinds transportation concurrency, and to the Department of Education, if the amendment rescinds school concurrency. A local government must further provide a copy of the adopted amendment rescinding concurrency to any other local government or governmental agency that has filed a written request with the governing body.

The bill removes s. 163.3180(6)(i), F.S., which provides criteria a municipality must meet to be exempt from the implementation of school concurrency. These four criteria are no longer needed since school concurrency is now implemented at the option of the local government.

Process

Present Situation:

Section 163.3184, F.S., provides the processes for review of comprehensive plans and most plan amendments.[26] The "expedited state review process" is the process that most plan amendments are reviewed under. The expedited state review process requires two public hearings, one at the proposed phase and one at the adopted phase, and plan amendments must be transmitted to reviewing agencies including the state land planning agency, which may provide comments on the proposed plan amendment to the local government. The expedited state review process may be used for all plan amendments except those that are specifically required to undergo the state coordinated review

[25] The four criteria are as follows: 1) the municipality has issued development orders for fewer than 50 residential dwelling units during the preceding 5 years, or the municipality has generated fewer than 25 additional public school students during the preceding five years; 2) the municipality has not annexed new land during the preceding five years in land use categories that permit residential uses that will affect school attendance rates; 3) the municipality has no public schools located within its boundaries; 4) at least 80 percent of the developable land within the boundaries of the municipality has been built upon.

[26] Section 163.3187, F.S., provides the review process for small-scale amendments and s. 163.3246, F.S., provides the review process for local governments eligible for the Local Government Comprehensive Planning Certification Program.

process or are reviewed under another process. After adopting an amendment, the local government must transmit the 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 with the plan amendment within 5 working days. Unless timely challenged, an amendment adopted under the expedited state review process does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete.

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 also requires two public hearings and for the proposed plan or plan amendment to be transmitted to the reviewing agencies 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.

In addition to challenges brought by the state land planning agency, under both the expedited state review process and 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 DOAH within 30 days after the local government adopts the plan or plan amendment.

Section 163.3184(5), F.S., provides the process for administrative challenges to adopted plans and plan amendments. If the administrative law judge (ALJ), after a hearing, recommends that the plan or plan amendment be found "not in compliance" the recommended order is submitted to the Administration Commission, comprised of the Governor and the Cabinet, which has 45 days to issue a final order on whether or not the plan or plan amendment is in compliance. If the ALJ, after a hearing, recommends that the plan or plan amendment be found "in compliance" the recommended order is submitted to the state land planning agency. The state land planning agency then has 30 days to refer the recommended order to the Administration Commission if the agency finds the plan or plan amendment to be not in compliance or 30 days to enter a final order if the state land planning agency finds the plan or plan amendment in compliance. After consultation with the state land planning agency, House staff learned that the current timing requirements for issuance of a recommended and final order are largely unworkable given the size and complexity of some cases, the other timing requirements that govern administrative hearings within ch. 120, F.S.,[27] and the limited number of meetings of the Administration Commission.
The standard timing requirements for issuing a final order in an administrative hearing are found in s. 120.569(2)(l), F.S., which requires the final order to be entered within 90 days from the time the hearing

[27] For example, s. 120.57(k), F.S. requires an agency to allow each party 15 days to submit written exceptions to the recommended order.

is concluded (if conducted by an agency) or after a recommended order is submitted to the agency and mailed to the parties (if the hearing is conducted by an ALJ). This time period can be waived or extended with the consent of all parties.

Section 163.3184(6), F.S., also provides a procedure after the filing of a challenge, for the state land planning agency and the local government to voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the challenge. An affected person involved in a challenge may also enter into the compliance agreement with the local government.

Effect of Changes:

The bill clarifies that under the expedited state review process, a local government must transmit amendments to the state land planning agency and appropriate reviewing agencies within 10 working days after a public hearing on the amendment. There was reported confusion regarding whether the intent of the Act was for the local government to have 10 working days or calendar days to transmit amendments.

Under the state coordinated review process, the bill extends the timeframe for local governments to transmit a proposed comprehensive plan amendment from "immediately following" the first public hearing to "within 10 working days after" the first public hearing. This extension allows the timeframe to mirror what is required for transmitting an adopted amendment under the state coordinated process and the timeframe required for transmitting amendments under the expedited state review process.

The bill removes the requirement for the Administration Commission to enter its final order within 45 days after receipt of the recommended order from the ALJ and the requirement for the state land planning agency to enter a final order or refer the recommended order to the Administration Commission within 30 days after receiving the recommended order from the ALJ. The bill requires the Administration Commission and the state land planning agency to make every effort to expeditiously enter its final order or to refer the recommended order. At a minimum, the state land planning agency and Administration Commission must follow the timing requirements in s. 120.569, F.S., which allows up to 90 days for the entering of a final order.

The bill also provides a 20-day time requirement for the state land planning agency to issue a cumulative NOI addressing the plan or plan amendment that is subject to a compliance agreement entered into under s. 163.3184(6), F.S. This only applies for compliance agreements related to challenges to amendments processed under the state coordinated review process. Currently, there is no time requirement for the state land planning agency to issue its NOI pursuant to a compliance agreement.

Sector Plan Report

Present Situation:

Section 163.3245(7), F.S., requires DEO to provide a status report annually, on December 1, to the President of the Senate and Speaker of the House regarding existing optional sector plans. The annual report was first required in December of 1999, when the optional sector plan was a pilot program. The Act removed the pilot program status of the sector plan process and streamlined it so that more local governments are able to efficiently use this long-term planning tool. The requirement for this report was removed by the Act, however other legislation passed during the 2011 Session inadvertently amended and retained the requirement.[28]

Effect of Changes:

[28] The optional sector plan report was repealed by s. 28, of ch. 2011-139, L.O.F. (The Act), however, s. 21, ch. 2011-34, L.O.F., amended the requirement and redesignated the subsection causing the requirement for a report to remain in statute.

The bill removes the status report on optional sector plans required to be submitted by DEO to the President of the Senate and the Speaker of the House.

Other Notable Changes

- The provisions related to the Coastal Management Element within s. 163.3178, F.S., are amended to remove an outdated reference to the Coastal Resources Interagency Management Committee that no longer exists. Local governments are still encouraged to adopt countywide marina siting plans to designate sites for existing and future marinas, and countywide marina are still required to be consistent with state and regional environmental planning policies and standards.

- Section 186.505, F.S., provides the powers and duties of the regional planning councils. The bill provides that regional planning councils may not provide consulting services to a private developer or landowner for a project if the council will serve in a review capacity on the project in the future. The bill provides an exception for any statutorily mandated consulting services.

- Section 189.415, F.S., requires each independent special district to submit a public facilities report to each local government in which it is located specifying information regarding the district's facilities. This information is required to be updated every five years at least 12 months prior to the evaluation and appraisal report. The timing for providing the updated information is outdated, and so the bill changes the timing from every five years to every seven years in order to coincide with the local government's evaluation and appraisal review. The bill also updates DEO's method of informing special districts when their facilities report is due to the local governments by instructing DEO to post a schedule on its website based on the evaluation and appraisal notification schedule prepared pursuant to s. 163.3191(5), F.S.

- Section 380.115, F.S., provides procedures, including development order rescission procedures, for developments that have received a development of regional impact (DRI) development order but that are no longer required to undergo review because of a change in the threshold standards in s. 380.0561, F.S., or because the development is located in a dense urban land area (DULA) under s. 380.06(29), F.S., and therefore is exempt from DRI review. Section 380.06(24), F.S., also exempts certain developments from DRI review, and the bill adds a reference to that section so that s. 380.06(24), F.S., exempt developments will also be governed by the procedures in s. 380.115, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.