

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CMAS 12-02 Growth Management
SPONSOR(S): Community & Military Affairs Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee		Gibson	Hoagland

SUMMARY ANALYSIS

This bill makes a number of non-substantive modifications and clarifications to ch. 2011-139, L.O.F, "The Community Planning Act" (the Act) that 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Modifications include fixing cross-references, updating outdated language, and removing provisions throughout the statutes that the Act made obsolete such as references to the twice-a-year limitation on adopting plan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.

This 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;
- 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;
- deleting a required annual report by the Department of Economic Opportunity related to the optional sector plan pilot program.

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

This bill becomes effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

Current Situation:

During the 2011 Session, the Legislature passed HB 7207, "The Community Planning Act" (the Act), which became law on June 2, 2011. Ch. 2011-139, L.O.F., substantially reformed Florida's growth management system by streamlining the processes and removing unworkable provisions that delay economic development and result in outcomes that hinder 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 now primarily responsible for decisions relating to the future growth of their communities, and the state is now 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 local governments wish 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 or not 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 now 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 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 4 years. The Act also granted a 4-year extension to all current developments of regional impact (DRIs) and increases the substantial deviation criteria for certain types of DRI developments.

Effect of this Bill:

This bill makes a number of non-substantive modifications and clarifications to ch. 2011-139, L.O.F., "The Community Planning Act" (the Act) that 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.

This 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

Current Situation

The Act modified current law to prohibit a local government from adopting any 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, a local government was prohibited only from adopting an initiative or referendum process for approval of development orders or comprehensive plan amendments or future land use map amendments that affected five or fewer parcels of land. Therefore, there were a number of already existing referendum processes that the Act made invalid.¹

Town of Yankeetown, FL v. Department of Economic Opportunity

In August of 2011, the town of Yankeetown, FL, 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.²

In September of 2011, Yankeetown and the Department reached a proposed settlement that was contingent on a legislative amendment to the Community Planning Act becoming law that would grandfather in local referendum or initiative requirements in regard to development orders or in regard to local comprehensive plan amendments or map amendments that were in existence on June 2, 2011, when the Act became law.

Effect of this Bill:

The bill provides that any local government charter provision for an initiative or referendum process in regard to development orders or in regard to local comprehensive plan amendments or map amendments, that were in effect as of June 1, 2011, may be retained and implemented. This will grandfather in local government referendums and initiative processes that existed when the Act took effect while still prohibiting local governments from adopting new initiative or referendum processes

¹ In addition to Yankeetown, other local governments with a referendum or initiative process that were reportedly affected by the prohibition include Longboat Key, Key West, and Miami Beach.

² 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 has also filed a motion to intervene as a defendant in the case, on the same side as the state.

regarding approval of development orders or local comprehensive plan amendments or map amendments.

School Interlocal Agreement

Current 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 s. 1013.33 and 1013.51, F.S.

The Act inadvertently removed the provision that exempted certain municipalities from entering into the school interlocal agreement.³ However the Act maintained the 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 this Bill:

This bill removes the outdated language in s. 1013.33 and 1013.351, F.S., relating to state oversight and review of interlocal agreements that is no longer required by the Act. 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.

This bill also restores the four criteria, 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,⁴ it is exempt from the school interlocal agreement.

Concurrency

Current 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, 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 the flexibility to decide whether or not to

³ 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 language in s. 163.3180(6)(i), F.S., (2011), and required every municipality to enter into an interlocal agreement.

⁴ 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 5 years. 2.) The municipality has not annexed new land during the preceding 5 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.

maintain these forms of concurrency. If a local government chooses to remove any optional concurrency provisions from its comprehensive plan, an amendment is required. An amendment removing any optional concurrency is not subject to state review.

Effect of this Bill:

This 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. This 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 also 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.

This 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

Current Situation:

Section 163.3184, F.S., provides the processes for review of comprehensive plans and most plan amendments.⁵ 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 are transmitted to reviewing agencies including the state land planning agency that may provide comments on the proposed plan amendment to the local government. The process may be used for all plan amendments except those that are specifically required to undergo the state coordinated review 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 a proposed plan or plan amendment is 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

⁵ S. 163.3187, F.S., provides the review process for small-scale amendments, and s. 163.3246 provides the review process for local governments eligible for the Local Government Comprehensive Planning Certification Program.

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.,⁶ 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 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 this Bill:

Under the expedited state review process, this bill clarifies that a local government must transmit amendments to the state land planning agency and appropriate reviewing agencies within 10 calendar days after a public hearing on the amendment. There was some 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, this bill extends the timeframe for local governments to transmit a proposed comprehensive plan amendment from “immediately following” the first public hearing to “within 10 calendar 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.

⁶ 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.

This 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. This 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.

This 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

Current Situation:

Section 163.3245(7), F.S., requires DEO to provide a status report annually on December 1st to the Senate President and House Speaker 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, and therefore the requirement remains.⁷

Effect of this Bill:

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

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 189.415 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 5 years at least 12 months prior to the evaluation and appraisal report. This timing for the update is outdated, and this bill changes the timing from every 5 years to every 7 years in order to coincide with the local government's evaluation and appraisal review. This bill also updates DEO's method of informing special districts when their facilities report is due 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., for special districts to use to determine when the public facilities report is due to the local governments.
- Section 380.115, F.S., provides procedures for developments that have received a development of regional impact (DRI) development order but that are no longer required to undergo DRI

⁷ The optional sector plan report was repealed by s. 28, of ch. 2011-139 (The Act), however, s. 21, ch. 2011-34, amended the requirement and redesignated the subsection causing the report requirement to remain in statute.

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 this 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.

B. SECTION DIRECTORY:

Section 1: amends subsection (8) of s. 163.3167, F.S., to authorize a local government to retain certain charter provisions that were in effect as of June 1, 2011, and that relate to an initiative or referendum process.

Section 2: amends paragraph (b) of subsection (4) of s. 163.3174, F.S., to require a local land planning agency to periodically evaluate and appraise a comprehensive plan.

Section 3: amends paragraphs (f) and (h) of subsection (6) of s. 163.3177, F.S., to revise the housing and intergovernmental coordination elements of comprehensive plans.

Section 4: adds subsections (3) and (4) to s. 163.31777, F.S., to exempt certain municipalities from the interlocal school agreement.

Section 5: amends subsection (3) and (6) of s. 163.3178, F.S., to conform to changes made by the Act and to delete provisions relating to the Coastal Resources Interagency Management Committee.

Section 6: amends paragraph (a) of subsection (1) and paragraphs (a), (i), (j), and (k) of subsection (6) of s. 163.3180, F.S., relating to concurrency to revise and provide requirements relating to public facilities and services, public education facilities, and local school concurrency system requirements; and to delete provisions excluding a municipality that is not a signatory to a certain interlocal agreement from participating in school concurrency.

Section 7: amends paragraphs (b) and (c) of subsection (3), paragraphs (b) and (e) of subsection (4), paragraphs (b), (d), and (e) of subsection (5), and paragraph (f) of subsection (6), and subsection (12) of s. 163.3184, F.S., to revise provisions relating to the expedited state review process for adoption of comprehensive plan amendments; clarify the time in which a local government must transmit an amendment to a comprehensive plan and supporting data and analyses to the reviewing agencies; delete the deadlines in administrative challenges to comprehensive plans and plan amendments for the entry of final orders and referrals of recommended orders; and to specify a deadline for the state land planning agency to issue a notice of intent after receiving a complete comprehensive plan or plan amendment adopted pursuant to a compliance agreement.

Section 8: amends subsection (3) of s. 163.3191, F.S., to conform a cross-reference to changes made by the Act.

Section 9: redesignates subsections (8) through (14) of s. 163.3245, F.S., and amends subsections (1) and (7) of s. 163.3245, F.S., to delete an obsolete cross-reference; and to delete a required report relating to optional sector plans.

Section 10: amends paragraph (d) of subsection (2) of s. 186.002, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 11: amends subsection (8) of s. 186.007, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 12: amends subsection (1) of s. 186.508, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 13: amends subsections (2) and (3) of s. 189.415, F.S., to conform to changes made by the Act regarding the evaluation and appraisal process.

Section 14: amends subsection (5) of s. 288.975, F.S., to conform to changes made by the Act regarding the limitation on the frequency of plan amendments.

Section 15: amends paragraph (b) of subsection (6), paragraph (e) of subsection (19), paragraphs (l) and (q) of subsection (24), and paragraph (b) of subsection (29) of s. 380.06, F.S., to correct cross-references.

Section 16: amends subsection (1) of s. 380.115, F.S., to add a cross-reference for exempt developments.

Section 17: amends s. 1013.33, F.S. to delete obsolete requirements for school interlocal agreements.

Section 18: amends paragraph (b) of subsection (2) of s. 1013.35, F.S., to delete a cross-reference to conform to changes made by the Act.

Section 19: amends subsections (3), (5), (6), (7), (8), (9), (10), and (11) of s. 1013.351, F.S., to delete redundant requirements for the submission of certain interlocal agreements with the Office of Educational Facilities and the state land planning agency and for review of the interlocal agreement by the office and the agency.

Section 20: amends subsection (6) of s. 1013.36, F.S., to delete an obsolete cross-reference.

Section 21: provides an effective date upon becoming a law.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES