# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 933 An Act Relating to Growth Management
**SPONSOR(S):** Economic Development & Tourism Subcommittee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Economic Development & Tourism Subcommittee | | Lukis | Duncan |

## SUMMARY ANALYSIS


The bill amends numerous areas of the state's growth management laws. The topics covered in the bill include as follows.

Developments of Regional Impact ("DRI")
The bill requires a comprehensive plan amendment related to a development that qualifies as a DRI, to be reviewed under the State Coordinated Review Process. The bill provides that new developments will not be subject to the DRI review requirements provided by s. 380.06, F.S. However, already existing DRIs will continue to be governed by s. 380.06, F.S.

Regional Planning Councils ("RPCs")
The bill designates 10 RPCs and their borders. The bill replaces the Governor's power to set RPC boundaries with the ability to recommend boundary changes to the Legislature. The bill deletes several of the RPCs' statutory responsibilities.

Sector Plans
The bill allows a conservation easement to be based on aerial photographs without need for a survey. The bill provides that an applicant may utilize recorded conservation easements as compensatory mitigation for permitting purposes.

The bill requires an applicant for a detailed specific area plan to transmit copies of the application to the reviewing agencies for comment. Any comments from such agencies must be submitted in writing to the local government with jurisdiction and to the state land planning agency within 30 days after the applicant's transmittal of the application. The bill provides that a water management district may issue to an applicant, upon request, a consumptive use permit in certain circumstances.

Concurrency and Impact Fees
The bill provides that if a local government applies concurrency to transportation or public education facilities and also imposes mobility fees or impact fees for such facilities then any required proportionate share payment, must not exceed 125 percent of the applicable mobility fee or impact fee.

Vegetation Removal from Right-of-Way
The bill removes the authority of municipalities and counties to impose fees on developers for the removal of vegetation within the right-of-way limits of road improvements for which the developer completed or contributed proportionate share pursuant to transportation concurrency. Local governments can opt out of this provision by majority vote.

Private Property Rights
The bill requires local governments to include "a property rights element that protects private property rights" as part of the local government's comprehensive plan.

Connected-City Corridors
The bill amends s. 163.3246, F.S., to describe and create a 10-year pilot project for connected-city corridor plan amendments. The bill names Pasco County as a pilot community that may adopt connected-city corridor plan amendments. Such amendments may be based on a longer than normal planning period.

Constrained Agricultural Parcels
The bill allows an owner of a "constrained agricultural parcel" to apply for an amendment to the local government comprehensive plan.

The Property Assessed Clean Energy ("PACE") Program
The bill expands the definition of "qualifying improvement" within the PACE program to include stabilization and other repairs to property damaged by subsidence. The bill adds subsidence to the list of factors that define a "blighted area" for purposes of the Community Redevelopment Act.

The bill has not been scored by the Revenue Estimating Conference; however, the bill appropriates $2.5 million in non-recurring funding from the General Revenue Fund to the RPCs.

The bill has an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Developments of Regional Impact**

**Present Situation**

Development of Regional Impact Background

Section 380.06, F.S., defines a Development of Regional Impact ("DRI") 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." Given their size, DRIs must go through a special approval process.

The Legislature initially created the DRI program in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.[1] However, despite that intension and the significant expansion of growth management laws since that time, the DRI program has remained intact.

DRI Review

Florida law requires all developments that meet the DRI thresholds and standards provided by statute and rules adopted by the Administration Commission to undergo DRI review, unless an exemption applies.[2] The developments that meet such thresholds and standard that are exempt from DRI review include the following:

- particular types of developments for which the Legislature has provided an exemption (e.g., hospitals are exempt from DRI review);
- developments that are located within a "dense urban land area"; and
- developments that are located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area.[3]

The types of developments required to undergo DRI review may include attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, or recreational vehicle developments. Over the years, the Legislature has enacted new exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.[4]

The review process is a joint effort between Florida's 11 Regional Planning Councils ("RPCs"), the Department of Economic Opportunity ("DEO" or "department"), other state agencies, and local governments.[5]

A DRI review begins by a developer contacting the RPC with jurisdiction over the developer's proposed development to arrange a pre-application conference.[6] The developer or the RPC may request other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that the agency will require in the application to assess

[1] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in Growth Management in Florida: Planning for Paradise, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T.Higgins eds. 2005).
[2] Section 380.06(24),(28), (29), F.S.
[3] *Id.*
[4] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, at 2. September 2011.
[5] *See* s. 380.06, F.S.
[6] Section 380.06(6)-(9), F.S.

those issues.[7] At the pre-application conference, the RPC provides the developer with information about the DRI process and uses the pre-application conference to identify issues and to coordinate the appropriate state and local agency requirements.[8]

An agreement may be reached between the RPC and the developer regarding assumptions and methodology to be used in the application for development approval.[9] If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant.[10]

Upon completion of the pre-application conference with all parties, the developer files an application for development approval with the local government, the RPC, and the state land planning agency.[11] The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[12]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days.[13] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[14] The RPC is required to identify regional issues specifically examining the following:

- whether the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;
- whether the development will significantly impact adjacent jurisdictions; and
- in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[15]

If the proposed project will have impacts within the purview of other state agencies, those agencies will also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdiction.[16] These reports become part of the RPC's report, but the RPC may attach dissenting views.[17] When water management district and Department of Environmental Protection permits have been issued pursuant to Ch. 373, F.S., or Ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[18] Finally, the state land planning agency also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[19]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well.[20] When considering whether the development

[7] Section 380.06(7)-(8), F.S.
[8] Section 380.06(7), F.S.
[9] Section 380.06(8), F.S.
[10] *Id.*
[11] Section 380.06(7)-(10), F.S.
[12] Section 380.06(10), F.S.
[13] Section 380.06(11), F.S.
[14] Section 380.06(12), F.S.
[15] *Id.*
[16] Section 380.06(9),(12), F.S.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Section 380.06(10)-(11), F.S.

is approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the following:

- whether the development is consistent with its comprehensive plan and land development regulations;
- whether the development is consistent with the report and recommendations of the RPC; and
- whether the development is consistent with the state comprehensive plan.[21]

Within 30 days of the public hearing on the application for development approval, the local government must decide whether to issue a development order or not.[22] Within 45 days after a development order is or is not rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission. An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[23]

Completion of this entire process can take one to two years and require the expenditure of significant resources, both on the part of private developers and state agencies, resulting in costs totaling in the millions of dollars.

Comprehensive Plans and the Comprehensive Plan Amendment Process

Completion of the DRI process does not give a developer final authority to build. Rather, the permitting local government almost always must also approve an amendment to its local comprehensive plan prior to construction, and the developer must still obtain all requisite permits.[24]

In 1985, the Florida Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.[25] 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. A 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.[26]

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[27] 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.[28] These are the same agencies that are required to review proposed DRIs, including the DEO, the relevant RPC, and adjacent local governments that request to participate.

Similar to the DRI process, the state agencies review the proposed amendment for impacts related to their statutory purview.[29] 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. 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.[30] If the amendment receives a favorable vote it is transmitted to the DEO for final review.[31] The DEO then has either 31 days or 45 days (depending on the review

[21] *Id.*
[22] Section 380.06(15), F.S.
[23] *Id.*
[24] *See* s. 163.3167, F.S.
[25] Chapter 85-55, L.O.F.
[26] *See* s. 163.3163, F.S.
[27] Sections 163.3184 and 163. 3181, F.S.
[28] Section 163.3184, F.S.
[29] Section 163.3184(3), (4), F.S.
[30] *Id.*
[31] *Id.*

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.[32]

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

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[33] Most plan amendments were placed into the Expedited State Review Process, while plan amendments relating to large-scale developments were placed into the State Coordinated Review Process.[34] 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.[35]

The Intergovernmental Coordination Element of a Comprehensive Plan

Every local government is required to have adopted an Intergovernmental Coordination Element ("ICE") into its comprehensive plan.[36] This element is required to demonstrate consideration of the effects of the local plan upon the development of adjacent jurisdictions.[37] It must describe joint processes for collaborative planning and decision-making with regard to the location and extension of public facilities subject to concurrency and the siting of facilities with countywide significance, among other things.[38]

The statutory ICE provisions contain another requirement that is key to effective implementation of interlocal coordination in comprehensive planning and growth management: that all local governments establish interlocal agreements covering certain topics. The interlocal agreement must do the following:

- establish joint processes to facilitate coordination;
- ensure that the local government addresses through coordination mechanisms the impacts of development proposed in the comprehensive plan upon development in adjacent jurisdictions; and
- ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.[39]

**Effect of Proposed Changes**

The bill amends s. 163.3184, F.S., to require a comprehensive plan amendment related to a development that qualifies as a development of regional impact pursuant to s. 380.06, F.S., to be reviewed under the State Coordinated Review Process.

The bill amends s. 380.06, F.S., to provide that new developments will not be subject to the DRI review requirements provided by s. 380.06, F.S. However, already existing developments of regional impact will continue to be governed by s. 380.06, F.S.

This portion of the bill has an effective date of July 1, 2015.

**Sector Plans**

**Present Situation**

Sector planning is a process by which one or more local governments engage in long-term planning for large areas of at least 15,000 acres.[40] The purpose of sector planning is to promote and encourage

[32] *Id.*
[33] Section 17, Ch. 2011-139, L.O.F.
[34] *Id.*
[35] Section 163.3184(3), (4), F.S.
[36] Section 163.3177(5)(h), F.S.
[37] *Id.*
[38] *Id.*
[39] *Id.*

long-term planning for conservation, development, and agriculture, to facilitate protection of regionally significant resources, and to avoid duplication of effort in terms of the level of data and analysis required for a development of regional impact.[41]

Sector planning is an available alternative to the DRI process[42] and state law expressly permits sector plans to have a planning period longer than the generally applicable planning period of a local government comprehensive plan.[43]

The sector planning process encompasses two levels: adoption in the local government's comprehensive plan of a long-term master plan and subsequent adoption by local development order of two or more detailed specific area plans ("DSAP") that implement the master plan.[44] Both levels require review and approval by affected local governments, and appropriate regional and state authorities.[45]

A long-term master plan must include maps, illustrations, data, and analysis to address the following:

- a framework map that, at a minimum, generally depicts conservation land use, identifies allowed uses in the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern;
- a general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures needed to meet the projected demand of the future land uses in the long-term master plan;
- a general identification of the transportation facilities to serve the future land uses in the long-term master plan;
- a general identification of other regionally significant public facilities necessary to support the future land uses;
- a general identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area;
- general principles and guidelines addressing, among other things, future land uses, the use of lands identified for permanent preservation through recordation of conservation easements, achieving a healthy environment, limiting urban sprawl, and providing housing types; and
- identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from the future land uses.[46]

Upon approval of the long-term master plan, the Metropolitan Planning Organization long-range transportation plan must be consistent with the long-term master plan and the water supply projects must be incorporated into the regional water supply plan.[47] In addition, the applicant may request a consumptive use permit for the long-term planning period.[48]

The DSAPs must be consistent with the long-term master plan and generally must include conditions and commitments that provide for the following:

- development or conservation of an area of at least 1,000 acres;

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[40] Section 163.3245(1), F.S.
[41] *Id.*
[42] Section 380.06(24), F.S.
[43] Section 163.3245(3)(a), F.S.
[44] Section 163.3245(3), F.S.
[45] Section 163.3245, F.S.
[46] Section 163.3245(3)(a), F.S.
[47] Section 163.3245(4), F.S.
[48] *Id.*

- detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses;
- detailed identification of plans to address water needs of development in the DSAP;
- detailed identification of the transportation facilities to serve the future land uses in the DSAP;
- detailed identification of other regionally significant public facilities;
- detailed identification of public facilities necessary to serve development in the DSAP;
- detailed analysis and identification of specific measures to ensure the protection, restoration and management of lands within the boundary of the DSAP identified for permanent preservation through recordation of conservation easements;
- detailed principles and guidelines addressing, among other things, the future land uses, achieving a healthy environment, limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, and advancing the efficient use of resources; and
- identification of specific procedures to facilitate intergovernmental coordination to address extrajurisdictional impacts from the DSAP.[49]

A DSAP establishes a buildout date until which the approved development is not subject to downzoning, unit density reduction, or intensity reduction.[50] However, a local government can override such requirement if the local government demonstrates that implementation of the plan is not continuing in good faith, that substantial changes in the conditions underlying the approval of the DSAP have occurred, that the DSAP was based on inaccurate information provided by the applicant, or if certain action is essential to the public health, safety, or welfare.[51] The applicant may also apply to create such a build-out date at the master plan stage by using the DRI master plan development order process.[52]

A landowner, developer, or the state land planning agency may appeal a local government development order implementing a DSAP to the Florida Land and Water Adjudicatory Commission.[53]

**Effect of Proposed Changes**

The bill provides that specific provisions of the sector planning statute, s. 163.3245, F.S., supersede generally applicable portions of Ch. 163, F.S., on the same subjects.

The bill allows a conservation easement created pursuant to s. 163.3245(3)(b)7., F.S., to be based on "rectified aerial photographs without need for a survey." The bill also provides that such easements may include in certain circumstances a right of adjustment authorizing the grantor to modify portions of the area affected by a conservation easement and substitute other lands in their place.

The bill requires an applicant for a DSAP to transmit copies of the application to the reviewing agencies specified in s. 163.3184(1)(c), F.S., or their successor agencies, for review and comment as to whether the DSAP is consistent with the comprehensive plan and long-term master plan. Any comments from such agencies must be submitted in writing to the local government with jurisdiction and to the state land planning agency within 30 days after the applicant's transmittal of the application.

The bill provides that an applicant may utilize recorded conservation easements as compensatory mitigation for permitting purposes pursuant to Chs. 373 or 379, F.S.

The bill specifies that a landowner in an area governed by a sector plan may establish new "agricultural or silvicultural" uses to the landowner's land that are consistent with the sector plan.

[49] Section 163.3245(3)(b), F.S.
[50] Section 163.3245(5)(d), F.S.
[51] *Id.*
[52] Section 163.3245(6), F.S.
[53] Section 163.3245(3)(e), F.S.

The bill provides that a water management district may issue to an applicant, upon request, a consumptive use permit for a period of time commensurate with an approved master development order if the following applies:

- the master development order was issued by a county prior to January 1, 2015, under s. 380.06(21), F.S.;
- at the time of issuance, the country was designated as a rural area of opportunity under s. 288.0656, F.S.;
- at the time of issuance the county was not located in an area encompassed by a regional water supply plan as set forth in s. 373.709(1), F.S.; and
- at the time of issuance the county was not located within the basin area management plan of a first order magnitude spring.

In reviewing such a consumptive use permit application, the water management district must apply the permitting criteria specified in s. 373.223, F.S., based on the projected population and approved densities and intensities of use and their distribution in the master development order. However, the water management district may phase in the water allocation over the duration of the permit to correspond to actual projected needs.

The bill specifies that a local government in its exclusive discretion may require information from an applicant beyond the minimum criteria established in the state statute.

This portion of the bill has an effective date of July 1, 2015.

## Regional Planning Councils

### Present Situation

Overview of Regional Planning Councils

The Florida Legislature passed the Florida Regional Planning Council Act in 1980.[54] In doing so, the Legislature found that "the problems of growth and development often transcend the boundaries of individual units of local general-purpose government"[55] and that "there is a need for regional planning agencies to assist local governments to resolve their common problems, engage in areawide comprehensive and functional planning, administer certain federal and state grants-in-aid, and provide a regional focus in regard to multiple programs undertaken on an areawide basis."[56]

Today, the state is divided into 11 Regional Planning Councils ("RPCs"), each functioning as an association of that district's constituent local governments. Two-thirds of the Board of Governors of each RPC is composed of local elected officials, and the remaining third are gubernatorial appointees. Generally, the primary functions of RPCs fall into the following three major categories:

- economic development/job creation;
- emergency preparedness planning, training and exercise; and
- land development and growth related activities.[57]

Economic Development and Job Creation

Section 186.502(5), F.S., provides that RPCs have "a duty to assist local governments with activities designed to promote and facilitate economic development in the geographic area covered by the

[54] Sections 186.501-186.513, F.S.
[55] Section 186.502(a), F.S.
[56] Section 186.502(b), F.S.
[57] Memo from Ronald Book, the Executive Director of the Florida Regional Councils Association, at 1-2. Memo on file with the Economic Development and Tourism Subcommittee.

council." RPCs carry out this duty in a number of ways. For example, each RPC is a designated Economic Development District by the United States Economic Development Administration. As part of this function, the RPCs engage in grant writing and administration, which result in economic development and infrastructure funds being awarded to the state that would not otherwise have been received. RPCs also administer federal revolving loan funds, including those for Brownfields.[58] In addition, RPCs conduct regional economic impact analysis modeling to help local governments and economic development organizations make decisions regarding incentives for new or expanding economic development projects.

RPCs also played a vital role in the implementation of the Florida Strategic Plan for Economic Development. In addition to providing the Comprehensive Economic Development Strategies used by the plan, RPCs held public forums at which extensive public input was received.[59] Several of the councils partnered with other organizations in their respective areas to create "regional prosperity plans," including the Seven50 plan, created in part by the South Florida Regional Planning Council and the Treasure Coast Regional Planning Council; the Regional Business Plan for Tampa Bay, created under the leadership of the Tampa Bay Regional Planning Council; and the Innovate Northeast Florida initiative, created in partnership with the Northeast Florida Regional Planning Council.[60]

Emergency Preparedness Planning, Training and Exercise

Section 186.505(11), F.S., states that RPCs have the duty "[t]o cooperate, in the exercise of [their] planning functions, with federal and state agencies in planning for emergency management as defined in s. 252.34." RPCs fulfill this duty by serving as the state's Local Emergency Planning Committees.[61] As part of their duties in this role, the RPCs perform the following tasks:

- engage in public outreach;
- provide technical assistance to local governments;
- engage in hazards analysis/planning; and
- conduct training exercises.

Florida is recognized as having the leading hazardous materials planning process in the nation.[62]

Land Development and Growth Management

Section 186.502(4), F.S., recognizes Florida's RPCs as the state's "only multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region." As part of their duties, RPCs are directed to do the following:

- act in an advisory capacity to the constituent local governments in regional, metropolitan, county, and municipal planning matters;[63]
- conduct studies of the resources of the region;[64]
- provide technical assistance to local governments on growth management matters;[65]
- perform a coordinating function among other regional entities relating to preparation and assurance of regular review of the strategic regional policy plan, with the entities to be coordinated determined by the topics addressed in the strategic regional policy plan;[66]

[58] *Id.*
[59] *Florida Strategic Plan for Economic Development*, Florida Department of Economic Opportunity, *available at* www.floridajobs.org/Business/FL5yrPlan/FL_5yrEcoPlan.pdf.
[60] *Id.*
[61] Memo from Ronald Book at 1-2.
[62] *Id.*
[63] Section 186.505(10), F.S.
[64] Section 186.505(16), F.S.
[65] Section 186.505(20), F.S.

- coordinate land development and transportation policies in a manner that fosters region-wide transportation systems;[67]
- review plans of independent transportation authorities and metropolitan planning organizations to identify inconsistencies between those agencies' plans and applicable local government plans;[68] and
- provide consulting services to a private developer or landowner for a project.[69]

In addition, s. 186.507, F.S., directs RPCs to develop a strategic regional policy plan. The plan is required to "contain regional goals and policies that shall address affordable housing, economic development, emergency preparedness, natural resources of regional significance, and regional transportation" and are required to "identify and address significant regional resources and facilities."[70]

RPCs also play a role in the review and analysis of local government comprehensive plans and amendments to such plans,[71] as well as proposed developments of regional impact.[72]

**Effect of Proposed Changes**

The bill deletes s. 163.3175(9), F.S., which requires a local government and certain other parties to enter into mediation if the local government does not address the compatibility of lands adjacent to military installations in its future land use plans. All local governments adjacent to military installations have already completed this task.

The bill amends s. 163.3246(11), F.S., to delete requirements related to an application for development approval filed by a developer proposing a project that would have been subject to review pursuant to s. 380.06, F.S., if the local government with jurisdiction over the project had not been certified to review such projects pursuant to s. 163.3246, F.S. Current law requires the developer to notify the RPC of submitting such an application to the local government. The RPC is required to coordinate with the developer and the local government to ensure that all concurrency and environmental permit requirements are met. The bill deletes these requirements because certification program participants are few and these provisions have had little effect, according to the Florida Regional Council Association ("FRCA").

The bill amends s. 163.3248(4), F.S., to remove a statutory reference to regional planning councils related to rural land stewardship areas. The reference is unnecessary because the action it purports to authorize can be performed with or without the reference.

The bill amends s. 186.505(22), F.S., to delete the duty of RPCs to establish and conduct a cross-acceptance negotiation process with local governments. According to FRCA, no council has ever been requested to perform this duty.

The bill amends s. 186.506, F.S., to remove the Governor's power to make and amend the boundaries of the RPCs. Authorizes the Governor's power to recommend changes to RPC boundaries to the Legislature.

The bill creates s. 186.512, F.S., to designate 10 RPCs and their constituent counties. However, counties may opt out from RPC jurisdiction by a majority vote of the county's governing body.

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[66] Section 185.505(21), F.S.
[67] Section 186.505(23), F.S.
[68] Section 186.505(24), F.S.
[69] Section 186.505(26), F.S.
[70] Section 186.507(1), F.S.
[71] Section 163.3184, F.S.
[72] Section 380.06, F.S.

The bill amends s. 186.513, F.S., to delete the requirement that RPCs make a joint report and recommendations to the appropriate legislative committees. However, the RPCs must still make individual reports to the state land planning agency.

The bill amends s. 253.7828, F.S., to delete the specific mandate that RPCs, among other state agencies, recognize the special character of the Cross Florida Greenways State Recreation and Conservation Area. This mandate is unnecessary, according to the FRCA.

The bill amends s. 339.135(4), F.S., to delete language related to the 2014-2015 transportation work program that was set to expire on July 1, 2015.

The bill amends s. 339.155(4), F.S., to delete the requirement that RPCs review urbanized area transportation plans and any other planning products stipulated in s. 339.175, F.S., and provide written recommendations. It also deletes the requirement that RPCs directly assist local governments that are not part of a metropolitan area transportation planning process in the development of the transportation element of their comprehensive plans. These duties can be performed without the statutory reference, making it unnecessary.

The bill amends s. 380.06(18), F.S., to delete the requirement that an RPC notify a local government if it does not receive a biennial report from a developer related to a development of regional impact.

The bill amends s. 403.50663(2) and (3), F.S., to delete the statutory option that an RPC hold an informational public meeting if a local government elects not to do so. The bill also provides that it is the legislative intent that local governments hold such a meeting, rather than local governments or RPCs hold the meeting.

The bill deletes s. 403.507(2)(a)5., F.S., which requires that an RPC prepare a report regarding the impacts of a proposed electrical power plant and its consistency with the strategic regional policy plan. According to the FRCA, the statutory mandate is duplicative and unnecessary.

The bill amends s. 403.508(3)(a) and (4)(a), F.S., to delete the requirement that RPCs participate in land use and certification hearings regarding a proposed power plant facility. Several other state agencies remain required to participate.

The bill amends s. 403.5115(5), F.S., to delete the requirement that an RPC publish a notice of an informational public hearing. Local governments holding a hearing are still required to publish a notice of the hearing.

The bill deletes s. 403.526(2)(a)6., F.S., which requires that RPCs prepare a report on the impacts of a proposed electrical transmission line or corridor and its consistency with the strategic regional policy plan, because the requirement is duplicative and unnecessary.

The bill amends s. 403.527(2)(a) and (3)(a), F.S., to delete the requirement that RPCs participate in land use and certification hearings regarding a proposed electrical transmission line or corridor. A number of state agencies remain required to participate.

The bill amends s. 403.5272(2) and (3), F.S., to delete the option that an RPC hold an informational public meeting if a local government elects not to do so. The bill also alters the statute to state that it is the legislative intent that local government holds such a meeting, rather than local governments or RPCs hold the meeting.

The bill deletes s. 403.7264(4), F.S., which requires RPCs to assist the Department of Environmental Protection (DEP) in site selection, public awareness and program coordination related to amnesty days for purging small quantities of hazardous wastes. According to FRCA, the DEP has never asked for this assistance and the statutory direction is unnecessary.

The bill deletes s. 403.941(2)(a)6., F.S., which requires RPCs to present a report on the impacts of a proposed natural gas transmission pipeline or corridor and the pipeline or corridor's consistency with the strategic regional policy plan.

The bill amends s. 403.9411(4)(a) and (6), F.S., to delete the requirement that RPCs participate in a certification hearing regarding siting of natural gas transmission pipeline corridors.

The bill amends s. 419.001(6), F.S., to delete statutory authorization for a community residential home and a local government to utilize dispute resolution procedures provided by an RPC. According to FRCA, this provision has never been utilized and a community residential home and a local government could utilize the RPC for dispute resolution regardless of whether this statutory provision exists.

The bill amends s. 985.682(4), F.S., to delete statutory authorization for the Department of Juvenile Justice and local governments to utilize dispute resolution procedures provided by an RPC. According to FRCA, this provision has never been utilized and is unnecessary to allow the department to utilize the RPC for dispute resolution services.

The bill repeals s. 186.0201, F.S., which requires electric utilities to provide RPCs with advisory reports on their plans for electric utility substation development over the next five years.

The bill repeals s. 260.018, F.S., which requires all local governments, state agencies and RPCs to recognize the special character of the state's greenways and trails, because this statute does not appear to be necessary.

The bill provides an appropriation of $2.5 million in nonrecurring funds from the General Revenue Fund for the 2015-2016 fiscal year to the RPCs to carry out various duties. Seventy-five percent of the appropriation is to be divided equally among the RPCs and 25 percent is to be allocated according to population.

This portion of the bill provides for an effective date of July 1, 2015.

## Concurrency and Impact Fees

### Present Situation

#### Concurrency

Concurrency requires public facilities and services to be available "concurrent" with the impacts of new development. Under Florida law, concurrency for sanitary sewer, solid waste, drainage, and potable water is required,[73] and concurrency for transportation, schools, and parks and recreation is optional.[74] However, if a municipality or county decides to implement concurrency for one of the optional facilities, it must do so according to state law.[75]

#### Transportation Concurrency

A municipality or county that implements transportation concurrency must define what constitutes an adequate level of service ("LOS") for its transportation system, adopt a plan and improvement program to achieve and maintain adequate LOS, and measure whether the service needs of a new development exceed existing capacity of the transportation system.[76] Unless and until LOS standards are met, a municipality or county may not issue a development permit without an applicable exception.[77]

[73] S. 163.3180(1), F.S.
[74] S. 163.3180, F.S.
[75] S. 163.3180(1), F.S.
[76] S. 163.3180(5), F.S.
[77] Section 163.3180(5)(h)1.b., F.S. exempts public transit facilities from concurrency.

If adequate capacity is not available (i.e., if LOS is not met), the municipality or county may require the developer to contribute his or her "proportionate share" to the development. Proportionate share is a tool municipalities and counties may use to require developers to contribute to or build facilities necessary to offset a new development's impacts to ensure LOS is met.[78] The state provides specific formulas municipalities and counties must use when calculating proportionate share and specify criteria for when developers have satisfied proportionate share.[79] A municipality or county may not require a developer to pay or construct transportation facilities where the developer's costs exceed the developer's proportionate share of the improvements necessary to mitigate the development's impact.[80]

Further, a developer that contributes proportionate share must receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for a project.[81] The credit is reduced by up to 20 percent depending on the project's percentage share of traffic or as specified by local ordinance.[82]

Public Education Facilities Concurrency

Local governments that apply concurrency to public education facilities must include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements.[83] Further, all local government provisions included in comprehensive plans regarding school concurrency within a county must be consistent with each other.[84]

Public school level-of-service standards must be included and adopted into the capital improvements element of the local comprehensive plan and must apply districtwide to all schools of the same type.[85] Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.[86]

Local governments are encouraged, if they elect to adopt school concurrency, to apply school concurrency to development on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide.[87] However, if a local government elects to apply school concurrency on a less than districtwide basis, it has the burden to demonstrate that the utilization of school capacity is maximized to the greatest extent possible in the comprehensive plan and amendment.[88]

When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that meets the following requirements:

- establishes the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan with each other;
- specifies uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards;
- defines the geographic application of school concurrency;
- establishes a uniform districtwide procedure for implementing school concurrency which provides for the evaluation of development applications for compliance with school concurrency requirements, an opportunity for the school board to review and comment on the effect of

[78] Section 163.3180(5)(h), F.S.
[79] *Id.*
[80] *Id.*
[81] Section 163.3180(5)(h), F.S.
[82] *Id.*
[83] Section 163.3180(6)(a), F.S.
[84] *Id.*
[85] Section 163.3180(6)(c), F.S.
[86] *Id.*
[87] Section 163.3180(6)(f), F.S.
[88] *Id.*

comprehensive plan amendments and rezonings on the public school facilities plan, and the monitoring and evaluation of the school concurrency system; and

- establishes a process and uniform methodology for determining proportionate-share mitigation.[89]

Appropriate mitigation options include the following:

- contribution of land;
- the construction, expansion, or payment for land acquisition or construction of a public school facility;
- the construction of a charter school; or
- the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits.[90]

Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property.[91] Further, if the interlocal agreement and the local government comprehensive plan authorize a proportionate-share mitigation, the local government shall credit such a contribution toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.[92]

Impact Fees

Local governments and certain special districts may use their constitutional or statutory home rule powers to enact "impact fees."[93] Impact fees are total or partial payments charged to cover the cost of additional infrastructure necessary as a result of new development. As local governments tailor impact fees to meet the infrastructure needs of new growth, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and a local government's determination to charge the full cost of a fee's earmarked purposes.

The Legislature has found that impact fees are an important source of revenue for local governments to use in funding the infrastructure necessitated by growth.[94] However, due to the growth of impact fee collections and local governments' reliance on impact fees, the Legislature imposes minimum standards local governments must comply with when adopting impact fees.[95]

At minimum, a county, municipality, or special district that adopts an impact fee must abide by the following statutory requirements:

- require that the calculation of the impact fee be based on the most recent and localized data;
- provide for accounting and reporting of impact fee collections and expenditures;
- limit administrative charges for the collection of impact fees to actual costs; and
- require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.[96]

[89] Section 163.3180(6)(i), F.S.
[90] Section 163.3180(6)(h), F.S.
[91] *Id.*
[92] *Id.*
[93] *See* s. 163.31801, F.S.
[94] Section 163.31801, F.S.
[95] *Id.*
[96] Section 163.31801(3), F.S.

In addition to the Legislature's requirements, Florida courts have held that impact fees must meet the "dual rational nexus test."[97] That is, there must be (1) a reasonable connection between the need for infrastructure improvements and the population growth generated by new development; and (2) a reasonable connection between the expenditure of fees collected and the benefit to the development from those expenditures.[98]

Fifty-eight Florida jurisdictions had impact fees in place as of the 2012 National Impact Fee Survey.[99]

**Effect of Proposed Changes**

The bill provides that if a local government applies concurrency to transportation facilities or public education facilities and also imposes mobility fees or impact fees for transportation or public education then any proportionate share payment or mitigation payment required under s. 163.3180(5)(h), F.S., or s. 163.3180(6)(h), F.S., shall not exceed one hundred twenty-five percent of the applicable mobility fee or impact fee.

This portion of the bill has an effective date of July 1, 2015.

**Vegetation in the Right-of-Way**

**Present Situation**

Transportation Concurrency

A municipality or county that implements transportation concurrency must define what constitutes an adequate level of service (LOS) for its transportation system, adopt a plan and improvement program to achieve and maintain adequate LOS, and measure whether the service needs of a new development exceed existing capacity of the transportation system.[100] Unless and until LOS standards are met, a municipality or county may not issue a development permit without an applicable exception.[101]

If adequate capacity is not available (i.e., if LOS is not met), the municipality or county may require the developer to contribute his or her "proportionate share" to the development. Proportionate share is a tool municipalities and counties may use to require developers to contribute to or build facilities necessary to offset a new development's impacts to ensure LOS is met.[102] The state provides specific formulas municipalities and counties must use when calculating proportionate share and specify criteria for when developers have satisfied proportionate share.[103] A municipality or county may not require a developer to pay or construct transportation facilities where the developer's costs exceed the developer's proportionate share of the improvements necessary to mitigate the development's impact.[104]

Vegetation Removal Fees

Various municipalities and counties have enacted ordinances that require, under certain circumstances, for developers and landowners to pay fees to the local government for removing vegetation from the developer or landowner's land. Often times such charges stem from "tree ordinances."[105] The ordinances vary throughout the state, however, many require a landowner or developer seeking to

[97] *See Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-12 (Fla. 4th DCA 1983); *St. Johns County v. N.E. Fla. Builders Assoc.*, 583 So. 2d 635 (Fla. 1991).
[98] *Id.*
[99] The 2012 National Impact Fee Survey is available at www.impactfees.com/publications%20pdf/2012_survey.pdf (last visited Feb. 15, 2015).
[100] S. 163.3180(5), F.S.
[101] Section 163.3180(5)(h)1.b., F.S. exempts public transit facilities from concurrency.
[102] Section 163.3180(5)(h), F.S.
[103] *Id.*
[104] *Id.*
[105] *See* OPPAGA Research Memorandum, "Availability of Local Tax, License, and Fee Information," December 16, 2013, at Exhibit B – On file with House Economic Development and Tourism Subcommittee staff.

remove “protected trees” to acquire a permit and pay a fee per “tree-inch” removed.[106] Protected trees often gain such distinction based on their age, size, or specimen.[107]

In Florida, at least 21 counties require a developer or landowner to acquire a permit and pay tree fees for removing protected trees.[108]

**Effect of Proposed Changes**

The bill removes the authority of municipalities and counties to impose fees on developers “for the removal of vegetation within the right-of-way limits of road improvements for which the developer completed or contributed funding for as required for transportation concurrency for a development project.”

The bill does not affect a municipality or county’s ability to require any tree removal permits or tree removal plans. In addition, the word “fee” does not include any costs associated with applying for a tree removal permit or preparing a tree removal plan. The bill is also “not intended to affect a local government’s ability to establish and enforce landscaping requirements.” Lastly, each municipality or county may, by majority vote of its governing body, exempt itself from this provision of the bill.

This portion of the bill has an effective date of July 1, 2015.

**Private Property Rights Element of Comprehensive Plan**

**Present Situation**

Florida law requires every incorporated municipality and county to maintain a comprehensive plan.[109] Every comprehensive plan must provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.[110] To accomplish such directive, Florida law provides that every incorporated municipality and county has the following powers and responsibilities:

- to plan for future development and growth;
- to adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth;
- to implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof; and
- to establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.[111]

Every comprehensive plan includes required and optional elements. The required elements of a comprehensive plan include the following:

- a future land use element;
- a housing element;
- a sanitary sewer, solid waste, stormwater management, potable water and natural groundwater aquifer recharge element;

[106] *See e.g.*, St. Johns County Code of Ordinances, Sec 4.01.05.
[107] Trees may be protected based on age, size, or specimen. Zoning and Planning Deskbook, Second Edition by Douglas W. Kmiec and Katherine Kmiec Turner, Part A, Chapter 5 (2014).
[108] *See* chart on file with House staff that illustrates which Florida counties charge tree removal fees and require tree removal permits. Staff last updated the chart on February 10, 2015.
[109] Section 163.3167(2), F.S.
[110] Section 163.3177(1), F.S.
[111] Section 163.3167(1), F.S.

- a coastal management (for governments identified in s. 380.21, F.S.);
- a capital improvements element; and
- a transportation element.[112]

Optional elements of a comprehensive plan may include economic development elements, a public school facilities element, historical elements, and public safety elements. However, once adopted, optional elements have the same legal status as required elements.[113] Accordingly, all development actions must be consistent with any adopted optional element.[114]

**Effect of Proposed Changes**

The bill requires local governments to include "a property rights element that protects private property rights" as part of the local government's comprehensive plan.

The property rights element must set forth the principles, guidelines, standards, and strategies to guide the local government's decisions and program implementation with respect to the following objectives:

- consideration of the impact to private property rights of all proposed development orders, plan amendments, ordinances, and other government decisions;
- encouragement of economic development;
- use of alternative, innovative solutions to provide equal or better protection than the comprehensive plan; and
- consideration of the degree of harm created by noncompliance with the provisions of the comprehensive plan.

The bill also provides that each county and each municipality within the county must, within one year after adopting its property rights element, adopt land development regulations consistent with such element.

This portion of the bill has an effective date of July 1, 2015.

**Connected-City Corridors**

**Present Situation**

Comprehensive Plan Amendment Process

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first of which is held by the local planning board.[115] The local commission (city or county) must then hold its "initial" public hearing (the second overall hearing) regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies.[116]

The state agencies review the proposed amendment for impacts related to their statutory purview. The regional planning council with jurisdiction 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.[117] 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

[112] Section 163.3177(1)-(5), F.S.
[113] Section 163.3177(1), F.S.
[114] *Id.*
[115] Section 163.3174(4)(a), F.S.
[116] Section 163.3184, F.S.
[117] Section 163.3184(3)(b)3.a., F.S.

transmitted to the Department of Economic Opportunity (DEO) for final review.[118] 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.[119]

Special Districts

Special districts are local units of special purpose government, within limited geographical areas, which are used to manage, own, operate, maintain, and finance basic capital infrastructure, facilities, and services. Special districts have existed in Florida since 1845 when the Legislature authorized five commissioners to drain the "Alachua Savannah" also known as Paynes Prairie. The project was financed by special assessments made on landowners based on the number of acres owned and the benefit derived. Since that time, special districts have been used by local governments to provide a broad range of government services. All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989, which the Legislature enacted to reform and consolidate laws relating to special districts. Chapter 189, F.S., applies to the formation, governance, administration, supervision, merger and dissolution of special districts unless otherwise expressly provided in law.[120] The Act includes an extensive statement of legislative intent emphasizing improved accountability to state and local governments, better communication and coordination in monitoring required reporting of special districts, and improved uniformity in special district elections and non-ad valorem assessments. The statement also specifies the elements required in the charter of each new district.[121]

Special districts serve a limited purpose, function as an administrative unit separate and apart from the county or city in which they may be located, and are often referred to as a local unit of special purpose. Special districts may be created by general law (an act of the Legislature), by special act (a law enacted by the Legislature at the request of a local government and affecting only that local government), by local ordinance, or by rule of the Governor and Cabinet.

The Special District Information Program within the DEO serves as the clearinghouse for special district information, and maintains a list of special districts categorized by function which can include community development districts (575), community redevelopment districts (213), downtown development districts (14), drainage and water control districts (86), economic development districts (11), fire control and rescue districts (65), mosquito control districts (18), and soil and water conservation districts (62).[122] There are a total of 1,634 special districts in Florida.

Community Development Districts

Community Development Districts (CDDs) are a type of special district controlled by ch. 190, F.S. The purpose of a CDD is to provide an "alternative method to manage and finance basic services for community development."[123] Counties and cities may create community development districts of less than 1,000 acres.[124] CDDs larger than 1,000 acres can only be created by the Governor and the Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[125] Chapter 190 provides that CDDs must comply with many of the same requirements that apply to other special districts.

Development of Regional Impact Background

As noted above, 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

[118] Section 163.3184, F.S.
[119] *Id.*
[120] For example, the creation of community development districts and their charters is exclusively controlled by ch. 190, F.S. Section 190.004, F.S.
[121] Section 189.402(2), F.S.
[122] Information relating to special districts and their functions can be found in the SDIP online publication "Florida Special District Handbook Online" which can be found at http://www.floridaspecialdistricts.org/handbook/ (last visited March 12, 2015).
[123] Section 190.002(3), F.S.
[124] Section 190.005(2), F.S.
[125] Section 190.005(1), F.S.

upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional planning councils coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity for compliance with state law and to identify the regional and state impacts of large-scale developments. Local DRI development orders may be appealed by the owner, the developer, or the state land planning agency to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission.[126] Section 380.06(24), F.S., exempts numerous types of projects from review as a DRI.

**Effect of Proposed Changes**

The bill amends s. 163.3246, F.S., to describe and create a 10-year pilot project for connected-city corridor plan amendments. The bill names Pasco County as a pilot community that may adopt connected-city corridor plan amendments. Such amendments may be based on a longer than normal planning period and need not demonstrate need on any basis.

Pasco County is required to submit an annual or biennial monitoring report to the Department of Economic Opportunity. If Pasco County adopts a long-term transportation network plan and financial feasibility plan, then projects within the connected-city corridor are deemed to have satisfied all concurrency and transportation mitigation requirements. Projects located within the connected-city corridor are exempt from DRI review requirements.

The bill directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor and Legislature by December 1, 2024, regarding the pilot project.

The bill amends s. 190.005, F.S., to provide that the exclusive method of establishing a community development district of 2,000 acres or less within a connected-city corridor is by adoption of an ordinance by the county commission. The bill also exempts community development districts within both a connected-city corridor and the jurisdiction of more than one city from a requirement that the petition establishing the district be filed with the Florida Land and Water Adjudicatory Commission.

This portion of the bill is effective upon becoming law.

**Constrained Agricultural Parcels**

**Present Situation**

In 2003, the Legislature passed the Agricultural Lands and Practices Act ("Act"),[127] which is codified in s. 163.3162, F.S. The Act prohibits counties from adopting or enforcing any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation[128] on agricultural land if such activity is already regulated through or by any of the following:

- best management practices ("BMPs");
- interim measures, or regulations adopted as rules under Ch. 120, F.S., by the Department of Environmental Protection ("DEP"), the Department of Agriculture and Consumer Services ("DACS"), or a water management district ("WMD") as part of a statewide or regional program; or

[126] Section 380.07(2), F.S.
[127] CS/CS/SB 1660, Ch. 2003-162, L.O.F.
[128] Bona fide farm or farm operation is defined in s. 193.461.F.S., as good faith commercial agricultural use of the land based on the length of time the land has been so used, whether the use has been continuous, indication that an effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, and size as it relates to the specific agricultural use, among other things.

- the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.[129]

In addition, the Act allows an owner of a parcel of land defined as an "agricultural enclave" under s. 163.3164, F.S., to apply for an amendment to the local government comprehensive plan pursuant to s. 163.3184, F.S.[130]

Section 163.3164, F.S., defines "agricultural enclave" as an unincorporated, undeveloped parcel that complies with the following requirements:

- is owned by a single person or entity;
- has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, F.S., for a period of 5 years prior to the date of any comprehensive plan amendment application;
- is surrounded on at least 75 percent of its perimeter by property that has existing or planned development for industrial, commercial, or residential purposes;
- has public services, including water, wastewater, transportation, schools, and recreation facilities, available or planned for; and
- does not exceed 1,280 acres (with certain exceptions).[131]

Further, such amendment is presumed not to be urban sprawl as defined in s. 163.3164, F.S., if it includes land uses and intensities of use that are consistent with the uses and intensities of use of surrounding areas.[132] This presumption may be rebutted by clear and convincing evidence.[133]

**Effect of Proposed Changes**

The bill adds a new subsection (5) to s. 163.3162, F.S. to allow an owner of a "constrained agricultural parcel" to apply for an amendment to the local government comprehensive plan.

The bill defines "constrained agricultural parcel" as an undeveloped parcel of a county, which meets the following requirements:

- owned by a single person or entity or by affiliated or related entities;
- at least 75 percent of the parcel has been in continuous use for a bona fide agricultural purpose as defined in s. 193.461, F.S., for a period of three years before the date of any comprehensive plan amendment application;
- has at least 1 mile of its boundary adjacent to existing or approved but unbuilt industrial, commercial, or residential development;
- has at least 1 mile of its boundary adjacent to lands that have been designated in the local government's comprehensive plan, zoning map, or future land use map as land that cannot be developed for industrial, commercial, or residential development except at an agricultural density; and
- does not exceed 6,400 acres.

The local government and the owner of the constrained agricultural parcel that is the subject of an application for an amendment have 30 days after the local government's receipt of a complete application to agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment.

[129] Section 163.3162(3), F.S.
[130] Section 163.3162(4), F.S.
[131] Section 163.3164(4), F.S.
[132] Section 163.3162(4), F.S.
[133] *Id.*

The local government and the owner of the constrained agricultural parcel have 180 days after the date the local government receives a complete application to negotiate in good faith to reach consensus as to whether the uses, densities, and intensities included in the amendment are consistent with the most prevalent surrounding uses, densities, and intensities within a 3-mile radius of the constrained agricultural parcel (excluding certain adjacent lands). If an amendment includes uses, densities, and intensities that are so consistent, the amendment is presumed not to be urban sprawl as defined in s. 163.3164, F.S. This presumption may be rebutted by clear and convincing evidence.

Regardless of whether the local government and the owner reach a consensus, the bill provides that the local government must transmit the amendment to the state land planning agency for review. If the local government fails to transmit the amendment within 180 days after receipt of a complete application, the amendment must immediately transfer to the state land planning agency for such review. An amendment transmitted to the state land planning agency is presumed not to be urban sprawl as defined in s. 163.3164, F.S. Again, such presumption may be rebutted by clear and convincing evidence.

Notwithstanding a comprehensive plan, a local government may not impose a development condition that prohibits uses, densities, and intensities that are consistent with the most prevalent surrounding uses, densities, and intensities of lands within a 3-mile radius of the constrained agricultural parcel, (excluding certain lands). If a local government imposes such development conditions, the owner may apply to the circuit court for appropriate relief pursuant to s. 70.001, F.S. The imposition of such conditions is presumed to impose an inordinate burden that may be rebutted by clear and convincing evidence. However, the bill provides that this section does not apply to comprehensive plan provisions, development conditions, or land development regulations enacted to address compatibility of uses with military operations or installations.

The bill does not preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area as defined in s. 369.316, F.S., or the Everglades Protection Area as defined in s. 373.4592(2), F.S.

This portion of the bill has an effective date of upon becoming law.

## Property Assessed Clean Energy Program

### Present Situation

The Property Assessed Clean Energy Model

The Property Assessed Clean Energy ("PACE") program encourages property owners to reduce energy usage and increase the energy efficiency of their property.[134] Specifically, the PACE model allows property owners to voluntarily make certain energy-efficiency related "qualified improvements" to their property with financial assistance from the local government in which the property lies.[135] To be repaid for such financial assistance, the local government may charge the property owner through a non-ad valorem special assessment, which is attached to the property and recorded.[136] Therefore, if the property is sold prior to the end of the repayment period, the new owner takes over the remaining special assessment payments as part of the property's annual tax bill.[137]

A "qualifying improvement," which must be affixed to a building or facility that is part of the property,[138] includes the following:

[134] Section 163.08(1)(a), F.S.
[135] Section 163.08, F.S.
[136] Section 163.08(4), (8), (14), F.S.
[137] *Id.*
[138] Section 163.08(10), F.S.

- any energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property;
- a renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses certain fuels or energy sources; and
- certain wind resistance improvements.[139]

The Florida PACE Funding Agency, created in 2011[140] through an interlocal agreement between Flagler County and the City of Kissimmee, encourages local governments to join its statewide, uniform PACE program rather than pursue varying local efforts that would lack the economies of scale a statewide program can provide. The agency provides a means to validate and provide certainty as to the nature of the non-ad valorem assessments and the impact or reaction from mortgage lenders doing business in Florida, as well as the ability to issue bonds on an as-needed basis to underwrite energy efficiency, renewable energy and wind resistance improvements.[141]

Community Redevelopment Act

Part III of ch. 163, F.S., the Community Redevelopment Act of 1969 ("Act"), authorizes a county or municipality to create community redevelopment areas ("CRAs") as a means of redeveloping slums or blighted areas. CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing.[142]

Counties and municipalities are prohibited from exercising the powers conferred by the Act until after the governing body has adopted a resolution finding the following:

- one or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality;[143] and
- the rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality. [144]

Section 163.340(8), F.S., defines "blighted area" as an area in which there are a substantial number of deteriorated, or deteriorating structures and in which two or more of the following factors are present:

- predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- unsanitary or unsafe conditions;
- deterioration of site or other improvements;

[139] Section 163.08(2)(b), F.S.
[140] Section 163.08(5), F.S., allows a local government to "enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements." Such improvements include various energy conservation and renewable energy projects including, but not limited to, storm shutter installation, solar energy conversion, efficient lighting installation, and installation of energy-efficient heating, cooling, or ventilation systems.
[141] Florida PACE Funding Agency, *How It Works*, can be found at: http://floridapace.gov/how-it-works/ (last accessed Mar. 18, 2015)
[142] Section 163.387, F.S.
[143] Section 163.355(1), F.S.
[144] Section 163.355(2), F.S.

- inadequate and outdated building density patterns;
- falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
- tax or special assessment delinquency exceeding the fair value of the land;
- residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- incidence of crime in the area higher than in the remainder of the county or municipality;
- fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- a greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
- diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
- governmentally owned property with adverse environmental conditions caused by a public or private entity.

Subsidence and Sinkholes

Florida law defines a sinkhole as "a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater."[145] Sinkholes are a common feature in Florida's landscape, due to erosional processes associated with the chemical weathering and dissolution of carbonate rocks below Florida's surface such as limestone, dolomite, and gypsum.[146] Over geologic periods of time, persistent erosion created extensive underground voids and drainage systems throughout Florida.[147] A sinkhole forms when sediments overlying such a void collapse. Because "groundwater that feeds springs is recharged . . . through direct conduits such as sinkholes," the Florida Legislature has expressed a desire to promote good stewardship, effective planning strategies, and best management practices with respect to sinkholes and the springs they recharge, which may be "threatened by actual and potential flow reductions and declining water quality."[148]

The two primary repair methods for sinkhole remediation are grouting and underpinning.[149] Under the grouting procedure, a grout mixture (either cement-based or a chemical resin that expands into foam) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling.[150] Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building's foundation. One end of the steel pipe connects to the foundation of the structure with the other end resting on solid limestone.[151] Underpinning repairs, when performed, are usually combined with grouting. Professional engineers do not typically recommend underpinning unless there is damage involving significant differential settlement or significant structural damage.[152]

**Effect of Proposed Changes**

The bill amends s. 163.08, F.S., to allow supplemental authority for financing stabilization or other repairs to real property damaged by ground subsidence, including sinkhole activity. The bill establishes

[145] Section 627.706(2)(h), F.S.
[146] Florida Department of Environmental Protection, *Sinkholes*, can be found at: http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm (last accessed Mar. 18, 2015)
[147] *Id.*
[148] *Id.*
[149] Citizens Property Insurance Corporation, *Sinkhole Repairs: Underpinning and Grouting*, can be found at: https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf (last accessed Mar. 18, 2015)
[150] *Id.*
[151] *Id.*
[152] *Id.*

a finding of a compelling state interest in providing local government assistance to enable property owners to voluntarily finance qualifying improvements to real property damaged by subsidence.

The bill expands the definition of ”qualifying improvement” within the PACE program to include stabilization and other repairs to property damaged by subsidence. The bill also provides that a subsidence-related qualifying improvement is deemed affixed to a building or facility and requires that a disclosure statement must be provided to a prospective purchaser of a property which details such qualifying improvements.

The bill amends s. 163.335, F.S., declaring the following:

- properties damaged by sinkhole activity which are not adequately repaired or stabilized may negatively affect the market valuation of surrounding properties, resulting in the loss of property tax revenues to local communities; and

- where a substantial number or percentage of properties damaged by sinkhole activity which have not been adequately repaired or stabilized could be revitalized and redeveloped in a manner that will vastly improve the economic and social conditions of the community.

The bill amends s. 163.340, F.S., adding subsidence to the list of factors that define a “blighted area” for purposes of the Community Redevelopment Act. The definition is expanded to include land that has a “substantial number or percentage of properties” that have been damaged by subsidence and have not been sufficiently repaired or stabilized.

The bill amends s. 163.359, F.S., providing that a CRA established based upon the presence of a substantial number or percentage of properties damaged by subsidence and not adequately repaired or stabilized may not pay attorney fees or a public adjuster fee in connection with subsidence loss. The CRA may also not pay such fees to a homeowner, claimant, or insurer.

The bill amends s. 163.370, F.S., providing that communities and municipalities and community redevelopment agencies in blighted areas where the community development plan contains provisions relating to the stabilization or repair of property damaged by subsidence may be self-insured, enter risk management programs, or purchase liability insurance.

This portion of the bill has an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3164, F.S., relating to the Community Planning Act.

Section 2: Creates s. 163.3162(5), F.S., relating to agricultural lands and practices.

Section 3: Creates s. 163.3180(1)(c), F.S., relating to concurrency.

Section 4: Amends s. 163.3184(2)(c), F.S., relating to the process for adoption of comprehensive plans or plan amendments.

Section 5: Creates s. 380.06(30), F.S., relating to developments of regional impact.

Section 6: Amends s. 163.3175(9), F.S., relating to legislative findings on compatibility of development with military installations; exchange of information between local governments and military installations.

Section 7: Amends subsections (3) and (9), renumbers subsection (13) as subsection (14), and adds new subsections (13) and (15) of s. 163.3245, F.S., relating to sector plans.

Section 8: Creates s. 373.236(8), F.S., relating to duration of permits; and compliance reports.

Section 9: Amends s. 163.3246(11), of s. 163.3246, F.S., relating to local government comprehensive planning certification programs.

Section 10: Amends s. 163.3248(4), F.S., relating to rural land stewardship areas.

Section 11: Amends s. 186.504, F.S., relating to regional planning councils.

Section 12: Amends s. 186.505(22), F.S., relating to regional planning councils; powers and duties.

Section 13: Amends s. 186.506(4), F.S., relating to the Executive Office of the Governor; power and duties.

Section 14: Creates s. 186.512, F.S., relating to regional planning council identification; and opt-out provisions.

Section 15: Amends s. 186.513, F.S., relating to regional planning council reports.

Section 16: Amends s. 120.52(1)(a), F.S., relating to definitions under the Administrative Procedure Act.

Section 17: Amends s. 218.32(1)(c), F.S., relating to annual financial reports; local governmental entities.

Section 18: Amends s. 253.7828, F.S., relating to impairment of use or conservation by agencies prohibited.

Section 19: Amends s. 339.135(4)(j), F.S., relating to work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.

Section 20: Amends s. 339.155(4)(b), F.S., relating to transportation planning.

Section 21: Amends s. 380.06(18), F.S., relating to developments of regional impact.

Section 22: Amends s. 403.50663(2) and (3), F.S., relating to informational public meetings.

Section 23: Amends s. 403.507(2)(a), F.S., relating to preliminary statements of issues, reports, project analyses, and studies.

Section 24: Amends s. 403.508(3)(a) and (4)(a), F.S., relating to land use and certification hearings, parties, and participants.

Section 25: Amends s. 403.5115(5), F.S., relating to public notice.

Section 26: Amends s. 403.526(2)(a), F.S., relating to preliminary statements of issues, reports, and project analyses; and studies.

Section 27: Amends s. 403.527(2)(a) and (3)(a), F.S., relating to certification hearing, parties, and participants.

Section 28: Amends s. 403.5272(2) and (3), F.S., relating to informational public hearings.

Section 29: Amends s. 403.7264(4), F.S., relating to amnesty days for purging small quantities of hazardous wastes.

Section 30: Amends s. 403.941(2)(a), F.S., relating to preliminary statements of issues, reports, and studies.

Section 31: Amends s. 403.9411(4)(a), F.S., relating to notice; proceedings; parties, and participants.

Section 32: Amends s. 419.001(6), F.S., relating to site selection of community residential homes.

Section 33: Amends s. 985.682(4), F.S., relating to siting of facilities; criteria.

Section 34: Repeals s. 186.0201, F.S., relating to electric substation planning under the State and Regional Planning Act.

Section 35: Repeals s. 260.018, F.S., relating to agency recognition under the Florida Greenways and Trails Act.

Section 36: Appropriates $2.5 million in nonrecurring funds from the General Revenue Fund to regional planning councils.

Section 37: Amends s. 163.08(1), (2), (10), and (14), F.S., relating to supplemental authority for improvements to real property.

Section 38: Amends s.163.335, F.S., relating to insurance for subsidence.

Section 39: Amends s. 163.340(8), F.S., relating definitions under the Community Redevelopment Act.

Section 40: Amends s. 163.350, F.S., relating to workable programs.

Section 41: Creates s. 163.359, F.S., relating to attorney fees.

Section 42: Amends s. 163.360(8), F.S., relating to community redevelopment plans.

Section 43: Amends s. 163.370, F.S., relating to community redevelopment agencies.

Section 44: Creates s. 163.3246(14), F.S., relating to local government comprehensive planning programs.

Section 45: Amends s. 190.005(2), F.S., relating to the establishment of community development districts.

Section 46: Amends s. 163.3167(9), F.S., relating to scope of the Community Planning Act.

Section 47: Creates s. 163.3177(6)(i), F.S., relating to required and optional elements of comprehensive plans; studies and surveys.

Section 48: Creates an unnumbered section of law relating to the removal of vegetation within right-of-way limits of road improvements.

Section 49: Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

The bill provides an appropriation of $2.5 million in nonrecurring funding from the General Revenue Fund to RPCs for the 2015-2016 fiscal year.

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:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES