

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Definitional Changes

Any development that, because of its character, magnitude, or location, will have a substantial effect upon the health, safety, or welfare of citizens of more than one county is a development of regional impact or DRI.¹ DRIs are governed by section 380.06, Florida Statutes.

This bill changes the definition of DRI to consider the impact on “residents” rather than “citizens.” The bill also includes the information and analysis that must be included for each new application for development approval filed after January 1, 2005:

- These new applications are only required to provide information and analysis for “regionally significant multijurisdictional issues that are not reviewed by resource agencies.” The water management districts, the Fish and Wildlife Conservation Commission, and the Department of Environmental Protection are provided as examples of these resource agencies.
- Any information and data analysis that is submitted to these resource agencies must be supplied to local governments for *informational purposes* with comments directed to the applicable resource agency.
- Issues other than such regionally significant multijurisdictional issues are not to be included in the regional analysis report or in the development order.

General Requirements of Local Government Development Orders

The local government is required to render a decision on the application within 30 days after holding a hearing on the application, unless an extension is requested by the developer.²

Currently, there are six requirements for any development order issued by the local government. This bill modifies these requirements:

- The development order is still required to specify the monitoring procedures and the local official responsible for assuring compliance by the developer with the development order.
- The development order must establish compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval

¹ See Fla. Stat. § 380.06(1) (2003).

² See Fla. Stat. § 380.06(15)(a) (2003).

or phasing requirements. The requirement that the development order include “a termination date that reasonably reflects the time required to complete the development” has been removed.

- The development order has to establish that the approved DRI shall not be subject to *comprehensive plan amendment*, downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial *adverse* changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential *to prevent harm* to the public health, safety, or welfare.
- This is a change from the current requirements which require “a date until which” the DRI is not subject only to “downzoning, unit density reduction, or intensity reduction.” Adding “to prevent harm” is also a change to the standard the local government must use related to changes that are essential to the public health, safety, or welfare.
- The development order continues to have the requirements for the required biennial report.
- The development order may no longer specify the types of changes to the development which shall require submission for a substantial deviation determination³.
- The development order must still include a legal description of the property.

Public Facility Requirements of Local Government Development Orders

The bill also changes the criteria a development order must meet when requiring the developer to contribute land for a public facility or requiring the developer to construct, expand, or pay for land acquisition or construction or expansion of a public facility:

- Currently any funds or lands contributed must be expressly designated and used to mitigate impacts which are reasonably attributable to the proposed development. This bill would require the impacts to be “reasonably attributable *and beneficial* to the proposed development *in approximate proportion to its contribution*.”
- Local governments are not permitted to require such developer contributions unless the local government has enacted a local ordinance that requires non-DRI development to contribute its proportionate share. This bill requires the local government to also have consistently enforced the local ordinance and provides that the local ordinance must apply to “*all other development*” and not just “other development.”
- This bill also requires the need for developer contributions to be provided over a reasonable time related to the impacts of the proposed development.
- The bill adds to the cooperative role of the Department of Community Affairs and other state and regional agencies involved in the administration and implementation of DRIs to prohibit these agencies from imposing or recommending the imposition of any requirement or condition⁴ not specifically authorized by law.

³ See *infra*, discussion regarding “substantial deviations.”

⁴ The bill provides that “requirement or condition” includes “but is not limited to, impact fees, land dedication, contribution.” See Fla. HB 1205 (2004).

- The bill also sets forth the roles of the department and constituent regional planning agencies involved in the administration of DRIs as “limited to providing technical and planning assistance. This chapter grants those agencies no substantive regulatory authority.”

Removal of Termination or Expiration Date Provisions

To comport with the removal of the requirement that the development order include “a termination date that reasonably reflects the time required to complete the development,” provisions prohibiting local governments from issuing permits subsequent to the termination date or expiration date, unless certain conditions were met, are removed.

Changes to the “Change” Criteria for DRIs

When there is a proposed change to a previously approved DRI, the nature and degree of the change must be assessed. If the proposed change “creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the planning agency,” then the change is a “substantial deviation” and causes the development to be subject to further DRI review.⁵

Proposed changes which exceed, either individually or cumulatively, certain statutory criteria are considered “substantial deviations” and trigger additional DRI review without requiring the local government to make such a finding. This bill amends the substantial deviation criteria, effective January 1, 2005:

- An increase in the number of parking spaces at an attraction or recreation facility by 10-percent rather than 5-percent;
- An increase in the number of spectators that may be accommodated at an attraction or recreation facility by 10-percent or 1,500 spectators, whichever is greater, rather than 5-percent or 1,000 spectators;
- An increase of in watercraft storage capacity of 15-percent rather than a 5-percent increase;
- An increase in the number of dwelling units by 10-percent or 100 dwelling units, whichever is greater, rather than 5-percent or 50 dwelling units;
- An increase in commercial development by 75,000 square feet of gross floor area or of parking spaces provided for customers for 450 cars or a 10-percent increase of either of these, whichever is greater, rather than 50,000, 300 or 5-percent, respectively;
- A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 150-percent, rather than 100-percent. The percentage of any decrease in the amount of open space is also treated as an increase for purposes of determining when 150-percent has been reached or exceeded, rather than 100-percent; and
- An increase of 25-percent, rather than 15-percent, in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

⁵ See Fla. Stat. § 380.06(19) (2003).

Changes to Substantial Deviation Presumptions

Some proposed changes to a DRI are presumed to create a substantial deviation and some proposed changes to a DRI are presumed *not* to create a substantial deviation. Changes that are *presumed* to create a DRI may generally be rebutted by clearing and convincing evidence at the public hearing held by the local government. This bill makes changes to the current presumptions:

- Eliminates language which provides that an extension of the date of buildout, or any phase thereof, of 5 years or more but less than 7 years is presumed not to create a substantial deviation. The bill provides instead that an extension of less than 7 years is not a substantial deviation and not subject to the required public hearings;
- Provides that any change in the DRI imposed by the Department of Environmental Protection, any water management district, or any appropriate federal agency does not create a substantial deviation, rather than having such a change *presumed* not to create a substantial deviation and allowing the presumption to be rebutted by clear and convincing evidence;
- Changes the requirement that any addition of land not previously reviewed or certain unspecified changes be presumed to be a substantial deviation to provide that any addition of *contiguous* land not previously reviewed and the unspecified changes *may not be presumed* to create a substantial deviation *unless additional development approval is requested*;
- Increases to 25-percent when a change is proposed to a land use not previously approved in the development order, rather than 15-percent, and provides that changes of less than 25-percent do not create a substantial deviation;

Changes to DRI Review Process

The bill also makes changes to the DRI review process:

- Revises the timeframes that the local government, the state land planning agency, and the appropriate regional planning agency have to review a developer's request for approval of a proposed change.
- Provides that the local government must give 15 days' notice and schedule a public hearing to consider the change that the developer asserts does not create a substantial deviation no later than 30 days after submittal by the developer to the local government rather than "no sooner than 30 days but no later than 45 days" as currently provided;
- Provides for the public hearing to be held within 75 days, rather than 90 days after submittal of the proposed changes, unless that time is extended by the developer;
- Changes to 30 days, from 45 days, the amount of time the regional planning agency or the state land planning agency to advise the local government in writing whether it objects to the proposed change, and to specify the reasons for its objection;
- Creates responsibility for local government staff to notify the developer of the recommendation related to the need for additional DRI review within 15 days after submittal by the developer of the proposed change
- Entitles approval of a proposed change as not requiring additional DRI review to complete vesting and provides that this approval does not divest any of the approvals provided for the original DRI

Statutory Exemptions

There are currently eleven statutory DRI exemptions. This bill replaces the current exemption for waterport or marina development to provide:

A marina or waterport which is not subject to a local government development order that is expanded or constructed after January 1, 2005, and that has fewer than 300 new vehicular parking spaces is exempt *unless* the marina or waterport is located in one of the thirteen counties enumerated in section 370.12, Florida Statutes, and a manatee protection plan or boating facility siting plan has not been adopted by the board of county commissioners.

Statewide Guidelines and Standards for Residential Development

Section 380.0651, Florida Statutes, provides the statewide guidelines and standards for developments required to undergo development-of-regional-impact review. This bill changes the minimum threshold for DRI review for residential development to 1,000 residential dwelling units, effective January 1, 2005. This bill provides that this minimum threshold is not subject to the 150 percent multiplier provided to rural areas of economic concern pursuant to section 380.06(2)(e), Florida Statutes.

C. SECTION DIRECTORY:

Section 1: Amends subsections (1), (15), (19), and (23) and paragraphs (g) and (k) of subsection (24) of section 380.06, Florida Statutes.

Section 2: Amends paragraph (j) of subsection (3) of section 380.0651, Florida Statutes.

Section 3: Provides that the bill will take effect January 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill appears to have an indeterminate fiscal impact on state government revenues as the bill requires action, such as rulemaking, by state land planning agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Proponents of the bill indicate that there will be a positive, direct impact on the private sector.⁶

⁶ See Talk Sheet on SB 1174/HB 1205 – DRI Legislation – Strike Everything Amendment from Frank Matthews, lobbyist for the Florida Association of Community Developers (Mar. 10, 2004) (on file with the Committee on Local Government & Veterans' Affairs).

Overall this legislation attempts to improve the DRI review process by eliminating duplication, focusing the review on multi-jurisdictional and regionally significant issues, leveling the playing field for DRI and non-DRI developments, and relaxing some of the substantial deviation thresholds for the expansion of existing residential DRIs.

D. FISCAL COMMENTS:

No additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is unknown whether this bill will require counties or municipalities to take action requiring the expenditure of funds, but the bill does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

There do not appear to be other constitutional issues with the bill.

B. RULE-MAKING AUTHORITY:

The bill requires the rules that the state land planning agency has adopted to ensure uniform review of DRIs to reflect that DRI review is limited to the regionally significant multijurisdictional issues that are not reviewed by resource agencies such as water management districts, the Fish and Wildlife Conservation Commission, and the Department of Environmental Protection.

The bill also provides that, by January 1, 2005, the state land planning agency must modify its rules and limit the questions in the application for development approval pursuant to subsection (1) and paragraph (a).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue – DRI Definition

Subsection (1) of section 380.06, Florida Statutes, which relates the *definition* of DRIs, is being amended to include the information and analysis that must be included for each new application for development approval filed after January 1, 2005. These new requirements would be better placed in a separate subsection and should specifically reference “application for development of regional impact approval” rather than “application for development.”

Other Comments – Department of Community Affairs⁷

Overall, the effect of these changes is to dramatically reduce the scope of the DRI process, increase the flexibility of developers to subsequently make changes to the approved project without triggering additional review, and shift the burden of proof that changes will have additional regional impacts from the developer to the reviewing agencies and local government.

Other Comments – Florida Chapter of the American Planning Association⁸

⁷ See Fla. Dep’t of Community Affairs, SB 1174 (2004) Policy Analysis, p. 2 (initial, provided Mar. 17, 2004) (on file with the Fla. H.R. Comm. on Local Gov’t & Veterans’ Affairs).

⁸ See Letter from Sheri Coven, Executive Director of the Florida Chapter of the American Planning Association, to Representative Mike Davis (Mar. 11, 2004) (on file with Fla. H.R. Comm. on Local Gov’t & Veterans’ Affairs).

...House Bill 1205 effectively removes planning from the DRI process...

...Permit agencies do not look at the extra-jurisdictional impacts of development when reviewing for and issuing a regulatory permit – their review is restricted only to a particular piece of land – regional impacts are not considered.

Therefore, while we agree that there is room to modify the DRI process, FAPA has serious concerns about creating exemptions to the current process that eliminate, compromise, or weaken the role of regional planning and intergovernmental coordination for large-scale development projects that impact regionally significant resources and surrounding communities.

Other Comments – 1000 Friends of Florida⁹

Summary Analysis: The changes relating to vesting and the limitation on the issues that can be reviewed by state and regional agencies as part of the DRI process are so problematic that, from a growth management and environmental standpoint, the DRI process contemplated by the bill would do more harm than provide a regulatory benefit.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁹ See Comments of 1000 Friends of Florida on Senate Bill 1174 from 1000 Friends of Florida (Feb. 16, 2004) (available at <http://www.1000friendsofflorida.org/2004Session/SB1174Analysis.asp>) (on file with Fla. H.R. Comm. on Local Gov't & Veterans' Affairs)