

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill streamlines aspects of the development of regional impact process thereby reducing responsibilities for governmental and private organization.

Safeguard individual liberty - The bill reduces government oversight of some activities presently reviewed as DRIs and thereby increases the options of individuals regarding the conduct of their own affairs.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 380.06, F.S., governs the Development of Regional Impact (DRI) program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Ch. 28-24, F.A.C. Examples of the land uses for which guidelines are established include: airports; attractions and recreational facilities; industrial plants and industrial parks; office parks; port facilities, including marinas; hotel or motel development; retail and service development; recreational vehicle development; multi-use development; residential development; and schools.

The DRI review process involves the regional review of proposed developments meeting the defined thresholds by the regional planning councils to determine the extent to which:

- The development will have a favorable or unfavorable impact on state or regional resources or facilities.
- The development will significantly impact adjacent jurisdictions.
- The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

Percentage thresholds, as defined in 380.06(2)(d), F.S., are applied to the guidelines and standards. These fixed thresholds provide that if a development is at or below 100% of all numerical thresholds in the guidelines, the project is not required to undergo DRI review. If a development is at or above 120% of the guidelines, it is required to undergo DRI review. A rebuttable presumption is established whereby a development at 100% of a numerical threshold or between 100-120% of a numerical threshold is presumed to require DRI review.

If there is a concern over whether a particular development is subject to DRI review, the developer may request a determination from the Department of Community Affairs (DCA). The DCA or the local government with jurisdiction over the land to be used for the proposed development may require a developer to obtain a binding letter of interpretation if the development is at a presumptive threshold or up to 20 % above the established numerical threshold. Any other local government may petition DCA to require a binding letter of interpretation for a development located in an adjacent jurisdiction if the petition contains sufficient facts to find that the development as proposed constitutes a DRI.

Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a reasonable likelihood of additional regional impact or any type of regional impact, resulting from a change not previously reviewed by the regional planning council, constitutes a "substantial deviation" that subjects the development to further DRI review and entry of a new or amended local development order. Section 380.06(19), F.S., provides that a proposed change to a previously approved DRI which,

either individually or cumulatively with other changes, exceeds specified criteria constitutes a substantial deviation and is subject to further DRI review.

The extension of the date of buildout of a development, or any phase thereof, of 5 years or more but less than 7 years is presumed not to create a substantial deviation. However, the extension of buildout by 7 or more years is presumed to create a substantial deviation and is subject to further DRI review. However, this presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government. When calculating whether a buildout date has been exceeded, time is tolled during the pendency of administrative or judicial proceedings relating to development permits.

Marinas

In 2002, the Legislature created an exemption for marinas from DRI review if the local government has adopted a boating facility siting plan or policy within its comprehensive plan.

The DCA, in cooperation with the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission makes available a best practices guide to assist local governments in developing boating facility siting plans. A boating facility siting plan provides a framework for identifying locations that can accommodate boating interests while protecting manatees, seagrass beds, and other marine resources.

Multiuse Developments

Section 380.06(2)(e), F.S., increases the applicable guidelines and standards by 100 % for multiuse projects in urban central business districts and regional activity centers if the local government's comprehensive plan is in compliance with part II of ch. 163, F.S., and if one land use in the multiuse development is residential and amounts to not less than 35 % of the jurisdiction's applicable residential threshold. An urban central business district is defined as the urban core area of a municipality with a population of 25,000 or greater which is located within an urbanized area as identified in the 1990 census. Such a district must contain high intensity, high density multi-use development which includes "retail, office, cultural, recreational and entertainment facilities, hotels or motels, or other appropriate industrial activities. A regional activity center is defined as a compact, high intensity, high density multi-use area that is designated appropriate for intensive growth by the local government. It includes the same uses as an urban central business district.

Currently, the individual DRI threshold is increased 50 % within an urban central business district or a regional activity center. However, the multiuse DRI threshold within such a district or center enjoys a 100 % increase.

Effect of Proposed Change

HB 683 amends existing law and creates new law related to developments of regional impact (DRI). A DRI by definition is "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. Specifically, the bill addresses law establishing:

- a process for review of DRIs and for the issuance of a development order (DO) which details specifics regarding the scope and timing of the development and serves as the authority to commence and complete the development;
- what constitutes a "substantial deviation" of the DO which would necessitate additional review;
- statutory exemptions that prevent DRI review;
- statewide guidelines and standards for determining what activities require DRI review; and
- vested rights and associated duties of the respective parties.

Details of the changes to existing law are outlined below.

Preapplication Procedures

The bill amends existing law relating to preapplication procedures in the following ways:

- Rulemaking: amends existing law¹ regarding rulemaking related to the DRI application process. The bill authorizes the Department of Community Affairs (DCA), rather than the regional planning council, as the rulemaking authority for regulatory provisions related to the DRI application process. The bill also mandates that DCA initiate, by August 1, 2006, rulemaking to: revise the DRI review process to eliminate duplication and unnecessary requirements; provide for the acceptability of data provided for related federal, state, and local permits and authorizations; and streamline the application process.

Development Order

The bill creates the following additional criteria to determine whether a local government may issue permits for developments subsequent to the buildout date:

- the developer has satisfied all mitigation required in the DO.
- the development is in compliance with all applicable terms and conditions of the DO, except the buildout date; and
- the amount of remaining proposed development is less than 20% of any applicable DRI threshold.

This new feature provides for limited development beyond the DRI buildout date when the existing and remaining development meets the criteria.

The bill allows a project to be considered “essentially built-out” if:

- all of the infrastructure and horizontal development is complete; and
- more than 80% of the parcels have been conveyed to third-party buyers.

The bill amends the following statutory provisions relating to DOs:

- Termination date – existing law provides that the local government’s DO specify a termination date before which certain land use changes would not apply to the approved DRI unless a substantial deviation occurs. Specifically, the bill amends existing law to provide that the DO may not specify that date as being earlier than the buildout date. s. 380.06(15)(c)3., F.S.
- Notice of proposed change – existing law provides that the DO may specify the types of changes which would require a substantial deviation determination. The bill amends existing law by authorizing the DO to specify the types of changes that would require a substantial deviation, if any, and extending that language to include a “notice of proposed change.” s. 380.06(15)(c)5., F.S.
- Competitive bidding or competitive negotiation – existing law provides that a local government may require competitive bidding or competitive negotiation where construction or expansion of a public facility is conducted by a nongovernmental developer as a condition of a DO or to mitigate impacts reasonably attributable to the development. The bill amends existing law by removing that discretion and thus disallows local government from requiring competitive bidding. s. 380.06(15)(d)4., F.S.

¹ Section 380.06(7), F.S.

Biennial Reports

The bill amends existing law regarding the submission of biennial reports as follows:

- Failure to report – is amended to provide that failure to submit a biennial report shall result in the suspension of only the development order applicable to the property remaining to be developed by the party failing to submit the report. Thus, other developers within a DRI who comply with their reporting requirements will not have the development order suspended as it relates to their property.
- Annual Reports – is amended by changing a discretionary provision to a mandatory provision regarding development orders that require annual reports, resulting in a requirement that development orders that require annual reports be amended to require biennial reports the next time they are amended.

Substantial Deviations

The bill amends existing law pertaining to the percentage and unit thresholds and provides for a presumption that the activities trigger DRI review. Existing law strictly requires DRI review when percentage and unit thresholds are met or exceeded. The amended percentage and unit thresholds follow.

- Attraction or recreational facility - is amended to the greater of an increase of 10% or 500 parking spaces (from 5% or 300 spaces), or an increase to the greater of 10% or 1,100 spectators.
- Runway or terminal facility - is not amended.
- Hospitals – the threshold for hospitals is deleted.
- Industrial is amended to the greater of 10% or 64 acres (from 5% or 32 acres).
- Mines - is amended to the greater of an increase in the average annual acreage mined by 10 % or 20 acres (from 5% or 10 acres) or to the greater of an increase in the average daily water consumption by a mining operation by 10 % or 600,000 gallons (from 5% or 300,000 gallons). It is further amended to the greater of an increase of the size of the mine by 10% or 1000 acres (from 5% or 750 acres).
- Office development – is amended to the greater of an increase in land area by 10 % (from 5%) or an increase of gross floor area by 10 % (from 5%) or 100,000 gross square feet (from 60,000).
- Marina development – is created to the greater of 10% of wet storage or 30 watercraft slips; or to the greater of 20% of wet storage or 60 watercraft slips in an area identified by a local government in a boat facility siting plan as an appropriate site for additional marina development.
- Storage capacity for chemical or petroleum storage facilities – the threshold for these facilities is deleted.
- Waterport or wet storage – the threshold for waterport or wet storage is deleted.
- Dwelling units – is amended to the greater of 10% or 100 dwelling units (from 5% or 50 dwelling units).

- Commercial development – is amended to the greater of 100,000 square feet (from 50,000 square feet) of gross floor area; or of parking spaces for customers for 600 cars (from 300 cars); or a 10% increase (from 5% increase) of either of these.
- Hotel or motel rooms – is amended to the greater of an increase in hotel or motel rooms by 10% or 100 rooms (from 5% or 75 units).
- Recreational vehicle park area – is amended to the lesser of an increase in a recreational vehicle park area by 10% (from 5%) or 100 vehicle spaces.
- Approved multiuse DRI – is amended to 120% of the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria.

The bill amends existing law in the following ways relating to presumptions concerning substantial deviations:

- Presumption of a substantial deviation - a presumption of a substantial deviation for an extension of the date of buildout of a development is created by an extension of more than 10 years (from 7 or more years).
- Presumption of no substantial deviation – a presumption of no substantial deviation is created by an extension of the buildout date of more than 5 years (from 5 or more years), but less than 7 years.
- No substantial deviation - An extension of 7 years or less (from less than 5 years) is not a substantial deviation.

The bill establishes that the following changes do not constitute substantial deviations:

- Protected lands -
 - changes that modify boundaries to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment.
 - this only applies to areas previously set aside for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State.
- Internal utility locations – changes to internal utility locations are added to the changes that do not constitute substantial deviations.
- Internal location of public facilities – changes to the internal location of public facilities is added to the changes that do not constitute substantial deviations.

The bill amends existing law to provide for notice prior to implementation of the types of non substantial deviation changes addressed above. The specific requirements are as follows:

- Notice - The developer must give notice to DCA, the regional planning agency, and the local government.
- Circuit Court Filing – A memorandum of the notice must be filed with the clerk of the circuit court along with a legal description of the affected DRI.

- Subsequent Changes - If a subsequent change requiring a substantial deviation determination is made to the DRI, then modifications to the DRI made in all prior notices must be reflected as amendments to the DO.

The bill amends existing law as it pertains to proposed changes that require further DRI review as follows:

- Scope of mitigation – changes existing law to limit the scope of mitigation required as a result of a proposed change to a DO. The amended language limits such new mitigation to the individual and cumulative impacts caused only by the proposed change.
- Continuance of development – amends existing law by providing that development within the DRI may continue during the DRI review in those portions of the development which are not directly affected by the proposed change.

Statutory Exemptions

The bill amends current DRI exemptions providing that if a use is exempt from review as a DRI under the following circumstances or any other paragraphs under this subsection, but is a part of a larger project that is subject to review as a DRI, the impact of the exempt use must be included in the review of the larger project.

- Hospitals - removes the 100 bed capacity limitation; thus providing that all hospitals are exempt.
- Steam or solar electrical generating facility - removes the exception of a steam or solar electrical generating facility of less than 50 megawatts in capacity attached to a DRI from the exemption for proposed electrical transmission lines or electrical power plants
- Waterport or marina development - removes the term “waterport;” a reference to a boat facility siting guide dated August 2000; and a limitation for facilities with siting plans and policies adopted prior to April 1, 2002.
- Adjacent jurisdictions – amends existing law which allows a DRI exemption for certain proposed development within an urban service area. The amendment changes one of the criterion for the exemption that requires a binding agreement with an adjacent jurisdiction. The amendment changes the requirement to a “contiguous” jurisdiction.
- Urban service boundaries – amends existing law providing that if the binding agreement is not entered into within 12 months after establishment of the urban service boundaries, then DOT shall adopt within 90 days a reasonable impact-mitigation plan that is applicable in lieu of the binding agreement.
- Urban infill and redevelopment area – amends existing law by deleting the requirement for the local government to enter into a binding agreement with jurisdictions: that would be impacted by the development and DOT, regarding the mitigation of impacts on state and regional transportation facilities in addition to the adoption of proportionate share methodology.

The bill creates six new exemptions to existing law as follows:

- Self storage warehousing - any self-storage warehousing that does not allow retail or other services.
- Nursing home or assisted living facility - any proposed nursing home or assisted living facility.

- Airport master plan - any development identified in an airport master plan and adopted into the comprehensive plan
- Campus master plan - any development identified in a campus master plan and adopted pursuant to s. 1013.30, F.S. (related to campus master plans and campus DOs).
- Specific area plan - any development in a specific area plan which is prepared pursuant to s. 163.3245 (related to optional sector plans) and adopted into the comprehensive plan.
- Exceptions from transportation concurrency – any development granted an exception from concurrency requirements for transportation facilities that has fulfilled all requirements to be granted such an exception, including the creation of a proportionate share mitigation methodology for transportation facilities, which methodology has been adopted into the comprehensive plan.

Additional new language provides that if a use is exempt from DRI review but is part of a larger project that is subject to DRI review, then the exempt use must be included in review of the larger project.

Statewide Guidelines and Standards

The bill amends existing law addressing how certain statewide guidelines and standards are applied to determine whether a development must undergo DRI review.

- Airports -- is amended by providing that airport construction projects required to undergo DRI review pursuant to criteria set forth in 380.0651, F.S., may be exempt under 380.06 (24).
- Attractions and recreation facilities – deletes criteria for requiring DRI review of attractions and recreation facilities.
- Port facilities – substitutes “marina” for “port facility”; removes a reference to “waterport”; and provides criteria requiring DRI review rather than excepting certain activities as provided in existing law. Deletes all dry storage as a use requiring DRI review.
- Wet Storage -- criteria requiring DRI review are provided as follows:
 - Wet storage or mooring of more than 150 watercraft used for sport, pleasure, or commercial fishing. Under existing law, wet storage or mooring must be used “exclusively” for wet storage or mooring.
 - Wet storage or mooring of more than 150 watercraft on or adjacent to an inland freshwater lake (except Lake Okeechobee or any lake that has been designated as an Outstanding Florida Water).
- Schools – deletes the criteria for consideration of DRI review for schools.
- Aggregation - Amends existing law to lessen the prohibition preventing DCA from aggregating developments for which a final DO has been issued. Specifically, the amendment changes the phrase “shall not” to “may not.” Additionally, as amended, DCA is not precluded from evaluating an alleged separate development as a substantial deviation of an existing DRI, or as an independent DRI. And, in such cases, the impacts of the independent DRIs may not be considered cumulatively.

The bill excludes subthreshold exceptions from applying to marina facilities located within or which serve physical development located within a coastal barrier resource unit on an unbridged barrier island.

Additionally, the bill increases the exemption threshold for certain projects for which no environmental resource permit or sovereign submerged land lease is required. The threshold is increased to 75 slips or storage spaces or a combination of the two. Existing law contains a 10 slip or storage space or combination threshold.

Florida Land and Water Adjudicatory Commission

The bill amends existing law related to challenges to provide the following:

- Consistency challenges – amends existing law to provide that 163.3215, F.S., is the sole mechanism for challenging the consistency of a DRI development order with the local government’s comprehensive plan.
- Limited Standing – amends existing law to provide that DCA has limited standing to initiate an action under s. 163.3215, F.S., to determine the consistency of a DRI development order with the local government’s comprehensive plan.

Vested Rights and Duties

The bill amends existing law related to the vested rights of DRIs. The amendment makes changes as follows:

- Vested rights are not abridged or modified by a change in the DRI guidelines and standards. s. 380.115, F.S.
- Revises the procedures affecting a DRI which is no longer required to undergo DRI review because of a change in the guidelines or standards, or because of a reduction that lowers the development below the thresholds.
- Specifically, the local government having jurisdiction shall rescind the DO upon a showing by the developer or the landowner that all required mitigation related to the amount that existed on the date of rescission has been completed. s. 380.115 (1) (b), F.S.
- Unless the developer follows this procedure, the DRI continues to be governed by, and may be completed in reliance upon, the DO.
- If an application for development approval, or a notification of proposed change, is pending on the effective date of a change to the guidelines and standards, then the development may elect to continue the DRI review which is governed by the vested rights provision.

Concurrency

The bill amends existing law relating to concurrency to conform a cross-reference.

Spaceport Launch Facilities

The bill amends existing law relating to spaceport launch facilities to conform a cross-reference.

C. SECTION DIRECTORY:

Section 1: Amends ss. 380.06(2)(d), (7)(b), (15), (19), and (24), F.S., relating to developments of regional impact (DRI).

Section 2: Amends s. 380.0651, F.S., relating to statewide guidelines and standards for determining what development activities must undergo DRI review.

Section 3: Creates s. 380.07, F.S., relating to the Florida Land and Water Adjudicatory Commission.

Section 4: Amends s. 380.115, F.S., relating to vested rights and duties of DRI projects as it relates to the provisions of this bill taking effect.

Section 5: Amends s. 163.3180, F.S., relating to concurrency, to conform to amendments within this bill.

Section 6: Amends s. 331.303, F.S., relating to the definition of spaceport launch facilities to conform to amendments within this bill.

Section 7: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill requires DCA to initiate rulemaking to streamline the DRI review process by July 1, 2006. The amount of this fiscal impact has not yet been determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The development community would benefit from increased thresholds and expanded exemptions from the DRI review process.

D. FISCAL COMMENTS:

No additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

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

B. RULE-MAKING AUTHORITY:

The bill requires DCA to initiate rulemaking by July 1, 2006, to revise the DRI review process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There do not appear to be any drafting issues.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES