



April 10, 2009

Florida Legislature Considers Major Changes to Growth Management Laws

Florida's severe economic downturn has legislators considering any ideas to reduce costs and create jobs. Reconsideration of some provisions passed in a major 2006 Growth Management rewrite is on the policy table in an effort to jumpstart the state's economy.



*By Darrin F. Taylor, Certified Planner
Carlton Fields Government Consultant*

With the combination of an economic downturn, a desire to reduce costs and the need to create jobs, the Legislature is focused on making major changes in growth management laws this Session.

Representatives from the planning, environmental and business communities have testified that they support some level of change



to these laws. The only question is what level of change is acceptable.

The consensus is that growth should be directed toward areas that have been planned for development which are urban in character. The Legislature is considering limitations and even exemptions from review for comprehensive planning, developments of regional impact (DRI) and concurrency in an attempt to spur growth and development in preferred areas.

This Capital Report will summarize the major themes and some of the differences in the current Senate and House bills so readers can be aware of the changes being considered.

Transportation Concurrency

The Senate and House are recommending expanding the use of transportation concurrency exception areas (TCEAs) in certain targeted urban areas and extending concur-

rency exemptions for impacts on the Strategic Inter-modal System (SIS) for qualified job creation projects.

Any municipality designated a “dense urban land area” is automatically a TCEA. Any county designated as a dense urban land area is also automatically a TCEA, but only within an urban service area adopted in its comprehensive plan.

A county with a minimum population of 900,000 (including all municipalities) is also deemed a TCEA even if no urban service area is adopted in the comprehensive plan, if it is designated as a dense urban land area. This provision does not apply to transportation concurrency districts in a county with a population of 1.5 million that already have its mobility programs in place.

To be designated a dense urban land area, a municipality must have an average population of at least 1,000 people per square mile and a minimum population of 5,000 people.

A county must meet the same average density including all municipalities within its jurisdiction.

An exemption to the density standard is given to a county and its municipalities with a combined population of at least 1 million people.

Annexations and contractions must also be considered when determining the density of a city. Each year the dense urban land area designation will be re-evaluated by the state for all local governments based on the most recent population and land area data.

The proposal also includes a revised definition of an urban service area. This is an area where public facilities such as central water, sewer, roads, schools and recreation areas are in place or where the urban service area is already adopted into the com-

prehensive plan for counties that meet the criteria of a dense urban land area.

All cities may also establish a TCEA by amending the comprehensive plan under the new requirements if they contain one of the following:

- An urban service area consistent with the new definition,
- An urban infill area,
- A community redevelopment area, or
- An urban infill and redevelopment area.



*Sen. Mike Bennett
(R-Sarasota) chairs
the Community
Affairs Committee
and is that chamber's lead
negotiator on Growth
Management issues*

All counties may also establish a TCEA by a comprehensive plan amendment if they contain one of the following:

- An urban infill area,
- An urban infill and redevelopment area, or
- An urban service area consistent with the new definition.

A local government that designates a TCEA under the new requirements may adopt its TCEA boundary within its comprehensive plan, but delay the adoption of strategies in the plan to support and fund mobility within

the TCEA, including alternative modes of transportation, for two years.

Finally, for a project certified for job creation under subsections 288.0656 or 403.973, F.S., any city or county, after consultation with the Dept. of Transportation, may allow for a waiver of transportation concurrency for the project for its impacts on the SIS.

Developments of Regional Impact

Both the House and Senate bills would exempt DRI review for all projects within a city designated a dense urban land area and within the urban service area (as defined in the bill) of a county that is designated a dense urban land area.

A county with a total population of 900,000 is also exempt regardless of an urban service area, if it meets the criteria of a dense urban land area.

DRI exemptions also apply for all cities that have within their comprehensive plans an urban infill, community redevelopment, downtown revitalization, urban infill and redevelopment and urban service areas as defined. The same applies for counties that have within their comprehensive plans an urban infill, urban infill and redevelopment and urban service areas as defined by the law change.

The DRI exemption does not apply for areas of critical state concern, within two miles of the Everglades Protection Area, and in the Wekiva Study Area. If the project is 120 percent of the existing DRI thresholds, then the DRI development order must be sent to the Dept. of Community Affairs (DCA) and that agency may appeal the development order if it is inconsistent with the local comprehensive plan.

Comprehensive Plan Amendments

Both the House and Senate expand the use of the Alternative State Review Process and

modify the exemptions to the twice per year limitation on comprehensive plan amendments. The pilot Alternative State Review process – which saves time (approximately 71 days) by eliminating DCA review, but retains its appeal authority – is being expanded to additional communities.

The Senate proposes to expand this option to the same locations where TCEAs are established under the proposed law. The House would expand this option to all local governments. Both the House and Senate include exclusions for certain types of amend-



*Rep. Dorothy Hukill
(R-Port Orange)
chairs the Military
and Local Affairs
Policy Committee and is that
chamber's lead negotiator on
Growth Management issues.*

ments where DCA review is considered crucial such as annexations, Evaluation and Appraisal Report-based amendments, amendments in response to statutory changes or amendments in specifically identified environmentally sensitive areas.

Notably, the proposed law would require that the amendment be adopted within 120 days of receiving agency comments. If this does not occur, the amendment would be considered withdrawn in the Senate version. The House version provides for an extension for just cause from DCA with periodic reporting of status.

Both the House and Senate would add exemptions to the twice per year limitation to amendments implementing these new requirements including identifying areas for TCEA and DRI exemptions.

The Senate also adds an exemption for amendments identifying areas where expedited comprehensive plan review would apply. The Senate version also limits text amendments, unless related to a DRI, to once per year unless the amendment is "directly related to, and applies only to" a future land use map amendment. This provision could create problems for any future land use map amendments that required a supporting text amendment to the comprehensive plan that would apply to more than the subject property.

Other Changes Included

There are other noteworthy changes in both the House and Senate bills. Both versions extend the requirement for the annual update of the capital improvements element to comply with the financial feasibility requirement until December 1, 2011.

For school concurrency, both versions remove the prohibition of adoption of future land use map amendments that would increase residential density if school concurrency is not in place. The House version also includes further flexibility for rural schools to receive a waiver from concurrency. The House includes requirements for a mobility fee study to be completed by DCA and FDOT by the end of the year so the Legislature can take up the issue next year.

Finally, the House also includes a two year extension to all state and local environmental and development permits due to the economic downturn. There is a second Senate bill that includes some of the language in the House version.

Conclusion

With the Legislature still in session, more changes are expected, including other attempts at reforms to growth management.

The House version includes more aggressive growth management changes, but it is uncertain what additional changes the Senate and Governor's Office will support. We suspect that if the same bill passes both houses, to be able to go to the Governor, it will include much of the Senate bill and a few additions from the House.

We will continue to monitor any further changes in growth management this session. We will also follow up with a summary of growth management legislation at the end of the Legislative Session. ■

Darrin F. Taylor is a Certified Planner and Government Consultant in the Carlton Fields Tallahassee Office.



He has a wide range of experience in urban and regional planning from both the state and local perspective. Darrin works closely with attorneys in the firm to resolve comprehensive

plan/plan amendments, DRI and zoning issues.

Darrin has extensive experience in community-based planning and working with citizens to identify solutions to planning issues; and he has been deemed an expert witness in the areas of comprehensive planning and land-use planning.

Contact Darrin at dtaylor@carltonfields.com or 850.425.3398.