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New Legislation Gives Florida Local Governments Sole Authority to Review DRIs

ENVIRONMENTAL, LAND USE AND DEVELOPMENT APPROVALS AND LITIGATION | GOVERNMENT LAW & CONSULTING | REAL ESTATE | APRIL 9, 2018


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For over 40 years, Developments of Regional Impact (DRIs) have been a staple of large-scale real estate development in Florida, necessitating state and regional review to approve even the smallest changes to the 700-plus still-active DRIs throughout the state. On April 6, Governor Rick Scott signed House Bill 1151 into law as Chapter 2018-158, Laws of Florida, returning local control of large-scale development review to municipalities and counties.

These changes to the DRI process continue the evolution of large-scale development review and growth management in Florida from a time-intensive, multi-layered state and regional process to a more streamlined local government one. This shift began in 2011 with the creation of the Growth Management Act, and continued in 2015 when the approval process for new DRIs was given exclusively to local governments through the state-coordinated comprehensive plan amendment process.

Now, DRIs will be treated like any other local development order, giving local governments the ability to change, amend, and even rescind DRIs through the same process they use for any other development within their borders. Removing the state and regional review and reporting components enables local governments to now process DRI amendments and rescissions more expeditiously. This lets developers quickly, efficiently, and more cost-effectively adapt their projects to meet local development demand by working exclusively with local governments on any necessary DRI amendments.

These statutory changes could necessitate amendments to local comprehensive plans or land development regulations. They will likely require a collaborative approach, working with local government staff to educate elected officials and the public on the new process in order to maximize the potential of the new DRI amendment legislation.

While a brief outline of the new DRI legislation is set forth below, Carlton Fields' Government and Consulting Practice Group is ready to answer any questions real estate developers or property owners may have on how this legislation affects their development and how local governments may address their new responsibility.

Summary
2018 DRI Bill CS/HB 1151
Chapter 2018-158, Laws of Florida

1. WHAT'S GONE

- State and regional review of existing DRIs.
- No new Florida Quality Developments (FQDs) and DEO will not be involved in DO amendments to existing FQD if the developer notifies both RPC and DEO that it will seek local government approval of new local DO to supersede FQD DO.
- Criteria for aggregation.
- Criteria for substantial deviations in statutes and DEO rules and other changes under former §380.06(19) F.S., such as changes pursuant to e2 amendments.
- DRI challenges to Florida Land and Water Adjudicatory Commission (FLWAC). FLWAC will continue to hear challenges to DRI abandonments and challenges to DOs under Areas of Critical State Concern (ACSC).
- DRI and FQD rules in Chapter 73C, FAC and Administration Commission rules related to DRI aggregation.
- DEO rules for proposed changes to a DRI.
- Requirement for a developer to submit DRI report to locals, RPC or DEO, and all affected agencies unless required to do

so by the local government. In most cases, you will see local governments requiring a report only to themselves.

- **As result of the above, HB1151 transfers responsibility for implementation and amendments to DRI DOs to local governments, which will then follow a local procedural process (similar to how e2 amendments were previously handled) and, with exceptions set out in the statute, be judged on consistency with the local government's land development code and comprehensive plan.**

2. WHAT'S STILL IN PLACE

- Standards and guidelines in §380.0651, F.S.
- New DRI-sized projects, unless the proposed project is located in exempt area or subject to a partial exemption, must apply for state-coordinated review of a comprehensive plan, pursuant to §163.3184, F.S. If the proposed development already has all appropriate land uses in the comprehensive plan, state-coordinated review is not applicable. If portions of development were already approved, whether the proposed development meets a DRI threshold is analyzed against the additional change of development in the comprehensive plan amendment and whether this additional increment triggers DRI review, not the total project.
- DRI exemptions still include:
  - Dense Urban Land Areas
  - Urban Service Areas
  - Sector Plans
  - development within a Rural Land Stewardship Area created under §163.3248, F.S establishment and relocation and expansion of military bases
  - proposed hospitals
  - electrical transmission lines or electrical power plants
  - proposed additions to existing sports facility complex meeting certain characteristics (look up) or conditions
  - certain expansion to port harbors, port transportation facilities and intermodal transportation facilities
  - the storage of any petroleum product or any expansion of an existing facility
  - renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use
  - Rural Land Stewardship Areas
  - Military installation as defined in §163.3175, F.S.
- Preserves existing DRI letters, development orders, agreements and vested rights such as:
  - existing binding letters
  - clearance letter on whether a proposed development is subject to DRI review
  - capital contribution front-ending agreements between local governments and developer as part of DRI DO to give credits for voluntary contributions in excess of its fair share
  - any previously granted extensions of time for DRI DOs (includes emergency declaration extensions if notified to local governments)
  - agreements previously entered into by a developer, RPC and a local government concerning a project that includes 2 or more DRIs
  - Approvals of an authorized developer for an area-wide DRI

3. LOCAL DOs

- Except for a few requirements set out in 4, below, local governments will handle amendments under local process and follow their land development code and comprehensive plan. Additionally, local governments now have specific authority to amend a binding letter of vested rights based on standards and procedures in the local land development code and comprehensive plan.
- If the local government rescinds a DRI DO under the existing rescission statute, the bill authorizes developer to record notice of rescission.

4. EXCEPTIONS NOT WITHSTANDING ANY COMPREHENSIVE PLAN OR LAND DEVELOPMENT REGULATIONS

- An amendment to a DRI DO by a local development order may NOT amend to an earlier date than the date currently agreed to by the local government to impose rezoning, unit density reduction or intensity reduction of the development. The dates do not change from what is in the existing DRI DO unless the developer seeks such an amendment.
- An amendment to a DRI DO by a local development order may NOT otherwise alter any credits for a development order exaction against impact fees, mobility fees, or exactions based upon the developer's contribution of land for a public facility.
- If a change to a DRI has the effect of reducing originally approved height, density, or intensity of development, and if the revised development would have been consistent with the comprehensive plan in effect when originally approved, the local government MAY approve the change.

5. SPECIAL PROVISIONS

- Abandonment of a DRI. Abandonment will be effective when the local government files the abandonment notice with the county clerk. If requested by the owner, developer or local government, the DRI DO must be abandoned by the local government if all mitigation related to the amount of development which existed on the date of abandonment will be completed under an existing permit or authorization enforceable through an administrative or judicial remedy.
- The bill transfers the full and partial DRI exemptions found in §380.06, F.S. to §380.0651, F.S., which will contain statewide standards for determining when a proposed development is a DRI-sized development subject to the state-coordinated review process.
- Because of new provisions in the federal tax code (26 USC 118), HB 1151 defines “master development plan” or “master plan” to mean a planning document that integrates plans, orders, and other documents used to guide development, including authorized land uses, the amount of horizontal and vertical development, and public facilities such as local and regional water storage for water quality and water supply. This definition will alleviate tax implications because the federal tax code treats funds received by a corporation from a government entity as taxable income unless payments are part of a “master development plan” approved by the governmental entity before December 22, 2017.