CHAPTER 97-28

Committee Substitute for
Committee Substitute for Senate Bill No. 1154

An act relating to growth management; amending s. 380.06, F.S.; revising statewide guidelines and standards and substantial deviations for developments of regional impact; amending s. 403.973, F.S.; providing for an expedited permitting process for economic development projects and comprehensive plan amendments; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2) and paragraph (b) of subsection (19) of section 380.06, Florida Statutes, 1996 Supplement, are amended to read:

380.06 Developments of regional impact.—

(2) STATEWIDE GUIDELINES AND STANDARDS.—

(d) The guidelines and standards shall be applied as follows:

1. Fixed thresholds.—

a. A development that is at or below 80 percent of all numerical thresholds in the guidelines and standards shall not be required to undergo development-of-regional-impact review.

b. A development that is at or above 120 percent of any numerical threshold shall be required to undergo development-of-regional-impact review.

c. Projects certified under s. 403.973 which create at least 100 jobs and meet the criteria of the Office of Tourism, Trade, and Economic Development as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential, as described in s. 380.0651(3)(c), (d), and (i), are not required to undergo development-of-regional-impact review.

2. Rebuttable presumptions.—

a. It shall be presumed that a development that is between 80 and 100 percent of a numerical threshold shall not be required to undergo development-of-regional-impact review.

b. It shall be presumed that a development that is at 100 percent or between 100 and 120 percent of a numerical threshold shall be required to undergo development-of-regional-impact review.

(19) SUBSTANTIAL DEVIATIONS.—

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 5 percent or 300 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 5 percent or 1,000 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates. However, if an airport is located in two counties, a 10-percent lengthening of an existing runway or a 20-percent increase in the number of gates of an existing terminal is the applicable criteria.

3. An increase in the number of hospital beds by 5 percent or 60 beds, whichever is greater.

4. An increase in industrial development area by 5 percent or 32 acres, whichever is greater.

5. An increase in the average annual acreage mined by 5 percent or 10 acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 5 percent or 300,000 gallons, whichever is greater. An increase in the size of the mine by 5 percent or 750 acres, whichever is less.

6. An increase in land area for office development by 5 percent or 6 acres, whichever is greater, or an increase of gross floor area of office development by 5 percent or 60,000 gross square feet, whichever is greater.

7. An increase in the storage capacity for chemical or petroleum storage facilities by 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.

8. An increase of development at a waterport of wet storage for 20 watercraft, dry storage for 30 watercraft, or wet/dry storage for 60 watercraft in an area identified in the state marina siting plan as an appropriate site for additional waterport development or a 5-percent increase in watercraft storage capacity, whichever is greater.

9. An increase in the number of dwelling units by 5 percent or 50 dwelling units, whichever is greater.

10. An increase in commercial development by 6 acres of land area or by 50,000 square feet of gross floor area, or of parking spaces provided for customers for 300 cars or a 5-percent increase of any of these, whichever is greater.

11. An increase in hotel or motel facility units by 5 percent or 75 units, whichever is greater.

12. An increase in a recreational vehicle park area by 5 percent or 100 vehicle spaces, whichever is less.

13. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

14. 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 100 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 100 percent has been reached or exceeded.

15. A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

16. Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order 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. The further refinement of such areas by survey shall be considered under sub-subparagraph (e)5.b.

The substantial deviation numerical standards in subparagraphs 4., 6., 10., 14., excluding residential uses, and 15., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to its impact on an area's economy, employment, and prevailing wage and skill levels.

Section 2. Section 403.973, Florida Statutes, 1996 Supplement, is amended to read:

403.973 Expedited permitting; comprehensive plan amendments.—

(1) It is the intent of the Legislature to encourage and facilitate the location and expansion of those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment. It is also the intent of the Legislature to provide for an expedited permitting and comprehensive plan amendment process for such projects.

(2) As used in this section, the term:

(a) "Duly noticed" means publication in a newspaper of general circulation in the municipality or county with jurisdiction. The notice shall appear

on at least 2 separate days, one of which shall be at least 7 days before the meeting. The notice shall state the date, time, and place of the meeting scheduled to discuss or enact the memorandum of agreement, and the places within the municipality or county where such proposed memorandum of agreement may be inspected by the public. The notice must be one-eighth of a page in size and must be published in a portion of the paper other than the legal notices section. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the memorandum of agreement.

(b) "Jobs" means permanent, full-time-equivalent positions not including construction jobs.

(c) "Office" means the Office of Tourism, Trade, and Economic Development.

(d) "Permit applications" means state permits and licenses, and at the option of a participating local government, local development permits or orders.

(3)~~(2)~~ The Governor, through the office ~~of Tourism, Trade, and Economic Development~~, shall direct the creation of regional permit action teams, for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

(a) Businesses creating at least 100 jobs, or

(b) Businesses creating ~~the creation of~~ at least 50 jobs if the project is located in an enterprise zone, or in a county having a population of less than 75,000 ~~50,000~~ or in a county having a population of less than 100,000 which is contiguous to a county having a population of less than 75,000 ~~50,000~~, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county, or~~.~~

(c) On a case-by-case basis and at the request of a county or municipal government, the office may certify as eligible for expedited review a project not meeting the minimum job creation thresholds but creating a minimum of 10 jobs. The recommendation from the governing body of the county or municipality in which the project may be located is required in order for the office to certify that any project is eligible for expedited review under this paragraph. When considering projects that do not meet the minimum job creation thresholds but that are recommended by the governing body in which the project may be located, the office shall consider economic impact factors that include, but are not limited to:

1. The proposed wage and skill levels relative to those existing in the area in which the project may be located;

2. The project's potential to diversify and strengthen the area's economy;

3. The amount of capital investment; and

4. The number of jobs that will be made available for persons served by the WAGES program. ~~Jobs are defined as full-time equivalent positions not including construction jobs.~~

(4) The regional teams shall be established through the execution of memoranda of agreement between the office and the respective heads of the Departments of Environmental Protection, Community Affairs, Transportation, ~~and~~ Agriculture and Consumer Services, the Game and Fresh Water Fish Commission, appropriate regional planning councils, ~~and any~~ appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the office shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(6) The local government shall hold a duly noticed public hearing to execute a memorandum of agreement for each qualified project. The memorandum of agreement that a local government signs shall include a provision identifying necessary local government procedures and time limits that will be modified to allow for the local government decision on the project within 90 days. The memorandum of agreement applies to projects, on a case-by-case basis, that qualify for special review and approval as specified in this section. The memorandum of agreement must make it clear that this expedited permitting and review process does not modify, qualify, or otherwise alter existing local government nonprocedural standards for permit applications, unless expressly authorized by law.

(7) At the option of the participating local government, appeals of its final approval for a project may be pursuant to the summary hearing provisions of s. 120.574, pursuant to s. 403.973(13), or pursuant to other appellate processes available to the local government. The local government's decision to enter into a summary hearing must be made as provided in s. 120.574 or in the memorandum of agreement.

(8)~~(3)~~ Each memorandum of agreement shall include a process for final agency action on permit applications and local comprehensive plan amendment approvals within 90 days after receipt of a completed application, unless the applicant agrees to a longer time period or the office determines that unforeseen or uncontrollable circumstances preclude final agency action within the 90-day timeframe. Permit applications governed by federally delegated or approved permitting programs whose requirements would prohibit or be inconsistent with the 90-day timeframe are exempt from this provision, but must be processed by the agency with federally delegated or approved program responsibility as expeditiously as possible.

(9)~~(4)~~ ~~Each agreement shall be executed by the office no later than January 1, 1997.~~ The office shall inform the Legislature by October ~~February~~ 1, 1997, and every October thereafter, ~~of~~ which agencies have not entered into or implemented an agreement, and identify any ~~the~~ barriers to achieving

success of the program. The Office of Program Policy Analysis and Government Accountability shall study the implementation of this program and make recommendations to the Governor and the Legislature by October 1, 1998, on how this program may be made more efficient and effective. ~~an agreement for legislative consideration and action, as necessary.~~

(10)~~(5)~~ The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are party to the memoranda of agreement. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible ~~may~~ provide for proceedings and hearings otherwise held separately by the parties to the memorandum of agreement to be combined into one proceeding or held jointly and at one location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11)~~(6)~~ The memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency;

~~(c) An agreement that any challenges be brought pursuant to the summary hearing provisions of s. 120.54;~~

(c)~~(d)~~ A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the office's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the office's determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f)~~(e)~~ Additional incentives for an applicant who proposes ~~to propose~~ a project that provides a net ecosystem benefit.

(12) Notwithstanding any other provisions of law:

(a) Local comprehensive plan amendments for projects qualified under this section are exempt from the twice-a-year limits provision in s. 163.3187; and

(b) Projects qualified under this section are not subject to interstate highway level of service standards adopted by the Department of Transportation for concurrency purposes. The memorandum of agreement specified in subsection (5) must include a process by which the applicant will be assessed a fair share of the cost of mitigating the project's significant traffic impacts, as defined in chapter 380 and related rules. The agreement must also specify whether the significant traffic impacts on the interstate system will be mitigated through the implementation of a project or payment of funds to the Department of Transportation. Where funds are paid, the Department of Transportation must include in the 5-year work program transportation projects or project phases, in an amount equal to the funds received, to mitigate the traffic impacts associated with the proposed project.

(13) Challenges to state agency action in the expedited permitting process for projects processed under this section are subject to the summary hearing provisions of s. 120.574, except that the administrative law judge's decision, as provided in s. 120.574(2)(f), shall be in the form of a recommended order and shall not constitute the final action of the state agency. In those proceedings where the action of only one agency of the state is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. In those proceedings where the actions of more than one agency of the state are challenged, the Governor shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. The participating agencies of the state may opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. If a participating local government agrees to participate in the summary hearing provisions of s. 120.574 for purposes of review of local government comprehensive plan amendments, s. 163.3184(9) and (10) apply.

(14)~~(7)~~ This expedited permitting process shall not modify, qualify, or otherwise alter existing agency nonprocedural standards for permit applications or local comprehensive plan amendments ~~approval~~, unless expressly authorized by law. If it is determined that the applicant ~~company~~ is not

eligible to use this process, the applicant may apply for permitting of ~~company must permit~~ the project through the normal permitting processes.

(15)~~(8)~~ The office ~~of Tourism, Trade, and Economic Development~~ shall be responsible for certifying a business as eligible for undergoing expedited review under this section ~~agreement~~. Enterprise Florida, Inc., a county or municipal government, or the Rural Economic Development Initiative may recommend to the Office of Tourism, Trade, and Economic Development that a project meeting the minimum job creation threshold undergo expedited review. ~~On a case-by-case basis and at the request of a county or municipal government, the office may allow a business not meeting the minimum job creation threshold, but creating a minimum of 25 jobs, to use the expedited permit review process. The recommendation from the governing body of the county or municipality in which the project may be located is required in order for the Office of Tourism, Trade, and Economic Development to certify that any project is eligible for expedited review under this part.~~

(16)~~(9)~~ The office ~~of Tourism, Trade, and Economic Development~~, working with the Rural Economic Development Initiative and the agencies participating in ~~teams established through~~ the memoranda of agreement, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments ~~permits~~ for counties having a population of less than 75,000 ~~50,000~~ residents, or counties having fewer ~~less~~ than 100,000 residents which are contiguous to counties having fewer ~~less~~ than 75,000 ~~50,000~~ residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

(17)~~(10)~~ The following projects are ineligible for review under this part:

(a) A project funded and operated by a local government, as defined in s. 377.709, and located within that government's jurisdiction.

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project.

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, natural gas, or sewage pipeline.

Section 3. This act shall take effect upon becoming a law, except that subsections (5), (6), and (7) of section 403.973, Florida Statutes, shall take effect October 1, 1997.

Approved by the Governor April 29, 1997.

Filed in Office Secretary of State April 29, 1997.