CHAPTER 98-146

Committee Substitute for Senate Bill No. 1702

An act relating to the rulemaking authority of the Department of Community Affairs and the Florida Land and Water Adjudicatory Commission (RAB); amending s. 20.255, F.S.; authorizing the Florida Land and Water Adjudicatory Commission to adopt rules; amending s. 163.3177, F.S.; including debt management standards in local capital improvements elements; providing local comprehensive planning periods; amending s. 163.3184, F.S.; specifying agencies for comprehensive plan amendment review; allowing for adoption of separate and distinguished plan amendments; providing for municipal review of plan amendments that affect municipal plans; authorizing a schedule for agency review of comprehensive plans and plan amendments; ensuring conformity with the uniform rules of procedure; amending s. 163.3191, F.S.; providing for copies of submitted evaluation and appraisal reports; providing for local governments to request substantive comments during sufficiency review of evaluation and appraisal reports; providing for requests for delegation of review of evaluation and appraisal reports; amending s. 163.3202, F.S.; clarifying that all municipalities adopt land development regulations to implement municipal plans and plan amendments; providing for notice by the department of the need to adopt required land development regulations; supplementing authority to adopt rules to allow schedules for adoption of required land development regulations; amending s. 190.005, F.S.; authorizing the Florida Land and Water Adjudicatory Commission to adopt rules relating to community development districts; amending s. 373.114, F.S.; authorizing the commission to adopt rules for review of water management district rules or orders; amending s. 380.06, F.S.; allowing the department to issue clearance letters, upon request, as to whether a development may be required to undergo development-of-regional-impact review; preventing reviewing agencies from objecting to the use of assumptions and methodologies agreed upon during preapplication procedures; allowing for another preapplication conference to be held if an application for development approval is not submitted within 1 year; supplementing authority to adopt rules to include criteria for abandonment of developments of regional impact; amending s. 380.061, F.S.; supplementing authority to adopt rules for Florida Quality Development annual reports and criteria for determining a substantial change to an approved Florida Quality Development; amending s. 380.07, F.S.; supplementing authority to adopt rules regarding development orders in designated areas of critical state concern; amending s. 380.22, F.S.; supplementing authority to adopt rules to include procedures and criteria for evaluation of subgrant applications under the federal Coastal Zone Management Act; providing an effective date.

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

Section 1. Subsection (5) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(5) Except for those orders reviewable as provided in s. 373.4275, the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, has the exclusive authority to review any order or rule of the department which, prior to July 1, 1994, the Governor and Cabinet, as head of the Department of Natural Resources, had authority to issue or promulgate, other than a rule or order relating to an internal procedure of the department.

(a) Such review may be initiated by a party to the proceeding by filing a request for review with the Land and Water Adjudicatory Commission and serving a copy on the department and on any person named in the rule or order within 20 days after adoption of the rule or the rendering of the order. Where a proceeding on an order has been initiated pursuant to ss. 120.569 and 120.57, such review shall be initiated within 20 days after the department has taken final agency action in the proceeding. The request for review may be accepted by any member of the commission. For the purposes of this section, the term "party" shall mean any affected person who submitted oral or written testimony, sworn or unsworn, to the department of a substantive nature which stated, with particularity, objections to or support for the rule or order that are cognizable within the scope of the provisions and purposes of the applicable statutory provisions, or any person who participated as a party in a proceeding instituted pursuant to chapter 120.

(b) Review by the Land and Water Adjudicatory Commission is appellate in nature and shall be based on the record below. The matter shall be heard by the commission not more than 60 days after receipt of the request for review.

(c) If the Land and Water Adjudicatory Commission determines that a rule or order is not consistent with the provisions and purposes of this chapter, it may, in the case of a rule, require the department to initiate rulemaking proceedings to amend or repeal the rule or, in the case of an order, rescind or modify the order or remand the proceeding to the department for further action consistent with the order of the Land and Water Adjudicatory Commission.

(d) A request for review under this section shall not be a precondition to the seeking of judicial review pursuant to s. 120.68, or the seeking of an administrative determination of rule validity pursuant to s. 120.56.

The Land and Water Adjudicatory Commission may adopt rules setting forth its procedures for reviewing orders or rules of the department consistent with the provisions of this section.

Section 2. Paragraph (a) of subsection (3) and subsection (5) of section 163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(3)(a) The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities and set forth:

1. A component which outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component which outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5-year period.

2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.

3. Standards to ensure the availability of public facilities and the adequacy of those facilities including acceptable levels of service.

4. Standards for the management of debt.

(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.

(b) The comprehensive plan and its elements shall contain policy recommendations for the implementation of the plan and its elements.

Section 3. Subsections (3), (4), and (5), paragraph (c) of subsection (6), and paragraph (b) of subsection (9) of section 163.3184, Florida Statutes, are amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(3) LOCAL GOVERNMENT TRANSMITTAL OF PROPOSED PLAN OR AMENDMENT.—

(a) Each local governing body shall transmit the complete proposed comprehensive plan or plan amendment to the state land planning agency, the appropriate regional planning council and water management district, the Department of Environmental Protection, and the Department of Transportation immediately following a public hearing pursuant to subsection (15) as specified in the state land planning agency's procedural rules. The local governing body shall also transmit a copy of the complete proposed comprehensive plan or plan amendment to any other unit of local government or government agency in the state that has filed a written request with the governing body for the plan or plan amendment.

(b) A local governing body shall not transmit portions of a plan or plan amendment unless it has previously provided to all state agencies designated by the state land planning agency a complete copy of its adopted

comprehensive plan pursuant to subsection (7) and as specified in the agency's procedural rules. In the case of comprehensive plan amendments, the local governing body shall transmit to the state land planning agency, the appropriate regional planning council and water management district, the Department of Environmental Protection, and the Department of Transportation the materials specified in the state land planning agency's procedural rules and, in cases in which the plan amendment is a result of an evaluation and appraisal report adopted pursuant to s. 163.3191, a copy of the evaluation and appraisal report. Local governing bodies shall consolidate all proposed plan amendments into a single submission for each of the two plan amendment adoption dates during the calendar year pursuant to s. 163.3187.

(c) A local government may adopt a proposed plan amendment previously transmitted pursuant to this subsection, unless review is requested or otherwise initiated pursuant to subsection (6).

(d) In cases in which a local government transmits multiple individual amendments that can be clearly and legally separated and distinguished for the purpose of determining whether to review the proposed amendment, and the state land planning agency elects to review several or a portion of the amendments and the local government chooses to immediately adopt the remaining amendments not reviewed, the amendments immediately adopted and any reviewed amendments that the local government subsequently adopts together constitute one amendment cycle in accordance with s. 163.3187(1).

(4) INTERGOVERNMENTAL REVIEW.—If review of a proposed comprehensive plan amendment is requested or otherwise initiated pursuant to subsection (6), the state land planning agency within 5 working days of determining that such a review will be conducted shall transmit a copy of the proposed plan amendment to various government agencies, as appropriate, for response or comment, including, but not limited to, the Department of Environmental Protection, the Department of Transportation, the water management district, and the regional planning council, and, in the case of municipal plans, to the county land planning agency. These governmental agencies shall provide comments to the state land planning agency within 30 days after receipt of the proposed plan amendment. The appropriate regional planning council shall also provide its written comments to the state land planning agency within 30 days after receipt of the proposed plan amendment and shall specify any objections, recommendations for modifications, and comments of any other regional agencies to which the regional planning council may have referred the proposed plan amendment.

(5) REGIONAL, ~~AND~~ COUNTY, AND MUNICIPAL REVIEW.—The review of the regional planning council pursuant to subsection (4) shall be limited to effects on regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts which would be inconsistent with the comprehensive plan of the affected local government. However, any inconsistency between a local plan or plan amendment and a strategic regional policy plan must not be the sole basis for a notice of intent to find a local plan or plan amendment not in compliance with this act. A

regional planning council shall not review and comment on a proposed comprehensive plan it prepared itself unless the plan has been changed by the local government subsequent to the preparation of the plan by the regional planning agency. The review of the county land planning agency pursuant to subsection (4) shall be primarily in the context of the relationship and effect of the proposed plan amendment on any county comprehensive plan element. Any review by municipalities will be primarily in the context of the relationship and effect on the municipal plan.

(6) STATE LAND PLANNING AGENCY REVIEW.—

(c) The state land planning agency shall establish by rule a schedule for~~,~~ ~~upon~~ receipt of comments from the various government agencies pursuant to subsection (4). The state land planning agency~~,~~ shall have 30 days to review comments from the various government agencies along with a local government's comprehensive plan or plan amendment. During that period, the state land planning agency shall transmit in writing its comments to the local government along with any objections and any recommendations for modifications. When a federal, state, or regional agency has implemented a permitting program, the state land planning agency shall not require a local government to duplicate or exceed that permitting program in its comprehensive plan or to implement such a permitting program in its land development regulations. Nothing contained herein shall prohibit the state land planning agency in conducting its review of local plans or plan amendments from making objections, recommendations, and comments or making compliance determinations regarding densities and intensities consistent with the provisions of this part.

(9) PROCESS IF LOCAL PLAN OR AMENDMENT IS IN COMPLIANCE.—

(b) The hearing shall be conducted by an administrative law judge of the Division of Administrative Hearings of the Department of Management Services, who shall hold the hearing in the county of and convenient to the affected local jurisdiction and submit a recommended order to the state land planning agency. The state land planning agency shall allow ~~10 days~~ for the filing of exceptions to the recommended order and shall issue a final order ~~within 30 days~~ after receipt of the recommended order if the state land planning agency determines that the plan or plan amendment is in compliance. If the state land planning agency determines that the plan or plan amendment is not in compliance, the agency shall submit~~, within 30 days after receipt,~~ the recommended order to the Administration Commission for final agency action.

Section 4. Subsections (4), (9), and (10) of section 163.3191, Florida Statutes, are amended to read:

163.3191 Evaluation and appraisal of comprehensive plan.—

(4) The governing body shall adopt, or adopt with changes, the report or portions thereof within 90 days after receiving it from the local planning agency. The governing body shall amend its comprehensive plan based on the recommendations contained in the adopted evaluation and appraisal

report, pursuant to the procedures in ss. 163.3184, 163.3187, and 163.3189. Amendments to the plan and the adoption of the report may be simultaneous. When amendments to the plan do not occur simultaneously with the adoption of the evaluation and appraisal report, the report shall contain a schedule for adoption of proposed amendments within 1 year after the report is adopted, except that the state land planning agency may grant a 6-month extension for adoption of such plan amendments if the request is justified by good and sufficient cause as determined by the agency. Three copies of the report shall be transmitted to the state land planning agency, with the related amendments when the amendments are transmitted pursuant to s. 163.3184.

(9) The state land planning agency shall conduct a sufficiency review of each report to determine whether it has been submitted in a timely fashion and contains the prescribed components. The agency shall complete the sufficiency determination within 60 days of receipt of the report. The agency shall not conduct a compliance review. However, a local government may request that the department provide substantive comments regarding the report or addendum during the department's sufficiency review to assist the local government in the adoption of its plan amendments based on the evaluation and appraisal report. Comments provided during the sufficiency review are not binding on the local government or the department and will not supplant or limit the department's consistency review of the amendments based on the adopted evaluation and appraisal report. A request for comments must be made in writing by the local government and must be submitted at the same time the adopted report is submitted for sufficiency review.

(10) The state land planning agency may delegate the review of reports to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region, except for areas of critical state concern, may elect to have its report reviewed by the council rather than the agency. The agency shall adopt rules for accepting requests for delegation and for uniform and adequate review of reports. The agency ~~and~~ shall retain oversight for any delegation of review to a regional planning council. Any plan amendment recommended by the report shall be reviewed by the agency pursuant to s. 163.3184 and be adopted by the local government pursuant to s. 163.3189.

Section 5. Subsections (1), (4), and (5) of section 163.3202, Florida Statutes, are amended to read:

163.3202 Land development regulations.—

(1) Within 1 year after submission of its revised comprehensive plan for review pursuant to s. 163.3167(2), each county and~~,~~ each municipality ~~required to include a coastal management element in its comprehensive plan pursuant to s. 163.3177(6)(g), and each other municipality in this state~~ shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

(4) The state land planning agency may require a local government to submit one or more land development regulations~~,~~ if it has reasonable

grounds to believe that a local government has totally failed to adopt any one or more of the land development regulations required by this section. Once ~~If~~ the state land planning agency determines after review and consultation with local government whether ~~that~~ the local government has adopted ~~failed to adopt~~ regulations required by this section, the state land planning agency shall notify the local government in writing within 30 calendar days after receipt of the regulations from the local government. If the state land planning agency determines that the local government has failed to adopt regulations required by this section, it may institute an action in circuit court to require adoption of these regulations. This action shall not review compliance of adopted regulations with this section or consistency with locally adopted plans.

(5) The state land planning agency shall adopt rules for review and schedules for adoption of land development regulations.

Section 6. Paragraph (g) is added to subsection (1) of section 190.005, Florida Statutes, to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(g) The Florida Land and Water Adjudicatory Commission may adopt rules setting forth its procedures for considering petitions to establish, expand, modify, or delete uniform community development districts or portions thereof consistent with the provisions of this section.

Section 7. Paragraph (f) of subsection (1) of section 373.114, Florida Statutes, is amended to read:

373.114 Land and Water Adjudicatory Commission; review of district rules and orders; department review of district rules.—

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule relating to an internal procedure of the district, to ensure consistency with the provisions and purposes of this chapter. Subsequent to the legislative ratification of the delineation methodology pursuant to s. 373.421(1), this subsection also shall apply to an order of the department, or a local government exercising delegated authority, pursuant to ss. 373.403-373.443, except an order pertaining to activities or operations subject to conceptual plan approval pursuant to chapter 378.

(f) ~~By July 1, 1994, the~~ The Florida Land and Water Adjudicatory Commission may ~~shall~~ adopt ~~amendments to its procedural~~ rules to set forth its procedures for reviewing an order or rule of a water management district consistent with the provisions of this section ~~include provisions for the~~

~~scheduling of meetings to hear requests for review to assure maximum participation by members of the commission~~.

Section 8. Paragraph (i) is added to subsection (4) of section 380.06, Florida Statutes, and subsections (7) and (26) of that section are amended to read:

380.06 Developments of regional impact.—

(4) BINDING LETTER.—

(i) In response to an inquiry from a developer, the state land planning agency may issue an informal determination in the form of a clearance letter as to whether a development is required to undergo development-of-regional-impact review. A clearance letter may be based solely on the information provided by the developer, and the state land planning agency is not required to conduct an investigation of that information. If any material information provided by the developer is incomplete or inaccurate, the clearance letter is not binding upon the state land planning agency. A clearance letter does not constitute final agency action.

(7) PREAPPLICATION PROCEDURES.—

(a) Before filing an application for development approval, the developer shall contact the regional planning agency with jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If agreement is reached regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate.

(b) The regional planning agency shall establish by rule a procedure by which a developer may enter into binding written agreements with the regional planning agency to eliminate questions from the application for development approval when those questions are found to be unnecessary for development-of-regional-impact review. It is the legislative intent of this subsection to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the development-of-regional-impact review process with federal, state, and local environmental reviews when such reviews are required by law.

(c) If the application for development approval is not submitted within 1 year after the date of the preapplication conference, the regional planning

agency, the local government having jurisdiction, or the applicant may request that another preapplication conference be held.

(26) ABANDONMENT OF DEVELOPMENTS OF REGIONAL IMPACT.—There is hereby established a process to abandon a development of regional impact and its associated development orders. A development of regional impact and its associated development orders may be proposed to be abandoned by the owner or developer. The local government in which the development of regional impact is located also may propose to abandon the development of regional impact, provided that the local government gives individual written notice to each development-of-regional-impact owner and developer of record, and provided that no such owner or developer objects in writing to the local government prior to or at the public hearing pertaining to abandonment of the development of regional impact. The state land planning agency is authorized to promulgate rules that ~~which~~ shall include, but not be limited to, criteria for determining whether to grant, grant with conditions, or deny a proposal to abandon, and provisions to ensure that the developer satisfies all applicable conditions of the development order and adequately mitigates for the impacts of the development. If there is no existing development within the development of regional impact at the time of abandonment and no development within the development of regional impact is proposed by the owner or developer after such abandonment, an abandonment order shall not require the owner or developer to contribute any land, funds, or public facilities as a condition of such abandonment order. The rules shall also provide a procedure for filing notice of the abandonment pursuant to s. 28.222 with the clerk of the circuit court for each county in which the development of regional impact is located. Any decision by a local government concerning the abandonment of a development of regional impact shall be subject to an appeal pursuant to s. 380.07. The issues in any such appeal shall be confined to whether the provisions of this subsection or any rules promulgated thereunder have been satisfied.

Section 9. Paragraph (b) of subsection (8) of section 380.061, Florida Statutes, is amended to read:

380.061 The Florida Quality Developments program.—

(8)

(b) The department shall adopt, by rule, standards and procedures necessary to implement the Florida Quality Developments program. The rules must include, but need not be limited to, provisions governing annual reports and criteria for determining whether a proposed change to an approved Florida Quality Development is a substantial change requiring further review.

Section 10. Subsections (1) and (2) of Section 380.07, Florida Statutes, are amended to read:

380.07 Florida Land and Water Adjudicatory Commission.—

(1) There is hereby created the Florida Land and Water Adjudicatory Commission, which shall consist of the Administration Commission. The

Commission may adopt rules necessary to ensure compliance with the area of critical state concern program and the requirements for developments of regional impact as set forth in this chapter.

(2) Whenever any local government issues any development order in any area of critical state concern, or in regard to any development of regional impact, copies of such orders as prescribed by rule by the state land planning agency shall be transmitted to the state land planning agency, the regional planning agency, and the owner or developer of the property affected by such order. The state land planning agency shall adopt rules describing development order rendition and effectiveness in designated areas of critical state concern. Within 45 days after the order is rendered, the owner, the developer, or the state land planning agency may appeal the order to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the commission. The appropriate regional planning agency by vote at a regularly scheduled meeting may recommend that the state land planning agency undertake an appeal of a development-of-regional-impact development order. Upon the request of an appropriate regional planning council, affected local government, or any citizen, the state land planning agency shall consider whether to appeal the order and shall respond to the request within the 45-day appeal period. Any appeal taken by a regional planning agency between March 1, 1993, and the effective date of this section may only be continued if the state land planning agency has also filed an appeal. Any appeal initiated by a regional planning agency on or before March 1, 1993, shall continue until completion of the appeal process and any subsequent appellate review, as if the regional planning agency were authorized to initiate the appeal.

Section 11. Subsection (3) of section 380.22, Florida Statutes, is amended to read:

380.22 Lead agency authority and duties.—

(3) The department ~~Secretary of Community Affairs~~ shall adopt by rule procedures and criteria for the evaluation of subgrant applications that seek to receive a portion of those funds allotted to the state under the federal Coastal Zone Management Act ~~a specific formula for allocation of federal funds for the administration of the program~~.

Section 12. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.