CHAPTER 97-253

House Bill No. 1641

An act relating to the Department of Community Affairs; amending s. 163.3180, F.S.; revising an exemption to the concurrency requirements of local government comprehensive plans for development that constitutes a de minimis impact; amending s. 163.3184, F.S.; revising the definition of the term "in compliance"; revising the effective date of local government comprehensive plans or amendments in an area of critical state concern; amending s. 163.3187, F.S.; providing that certain counties may adopt certain small-scale amendments to the local government comprehensive plan; creating an exception to the requirement that local governments adopt plan amendments twice a year; amending s. 163.3189, F.S.; providing an exception, applicable to local governments in an area of critical state concern, to procedures for effectuating a comprehensive plan amendment after the commission's determination of noncompliance; amending s. 380.05, F.S.; providing for state land planning agency approval or rejection of certain local government land development regulations by agency order; providing for state land planning agency approval or rejection of certain local government comprehensive plans and amendments; amending s. 380.051, F.S.; deleting certain rulemaking duties of the department with respect to the Florida Keys area of critical state concern; amending s. 380.06, F.S.; deleting certain rulemaking duties of the department with respect to areawide developments of regional impact; requiring an evaluation of statutory provisions relating to evaluation and appraisal of comprehensive plans; providing an effective date.

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

Section 1. Subsection (6) of section 163.3180, Florida Statutes, 1996 Supplement, is amended to read:

163.3180 Concurrency.—

(6) The Legislature finds that a de minimis impact ~~that, alone or in combination with other similar or lesser impacts, will not cause significant degradation of the existing level of service on a transportation facility~~ is consistent with this part. A de minimis impact is an impact that would not affect more than 1 percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the local government. No impact will be de minimis if it would exceed 110 percent of the sum of existing volumes and the projected volumes from approved projects on a transportation facility; provided however, that an impact of a single family home on an existing lot will constitute a de minimis impact on all roadways regardless of the level of the deficiency of the roadway. Local governments are encouraged to adopt methodologies to encourage de minimis impacts on transportation facilities within an existing urban service area. Further, no impact will be de minimis if it would exceed the

adopted level of service standard of any affected designated hurricane evacuation routes. ~~one that would not affect more than 0.1 percent of the maximum volume at the adopted level-of-service standard of the affected transportation facility as determined by the local government, and that is caused by an increase in density or intensity that is less than or equal to twice the density or intensity of the existing land use or, in the case of vacant land, is a density of less than 1 dwelling unit per quarter acre or a floor area ratio of 0.1 for nonresidential uses. Local governments are encouraged to adopt methodologies to encourage de minimis impacts on transportation facilities within an existing urban service area, when those impacts will not in combination exceed a significant degradation threshold of 3 percent of the maximum volume at the adopted level-of-service standard of the affected transportation facility based on the adopted level-of-service standard.~~

Section 2. Paragraph (b) of subsection (1) and subsection (14) of section 163.3184, Florida Statutes, 1996 Supplement, are amended to read:

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

(1) DEFINITIONS.—As used in this section:

(b) "In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, and 163.3191, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with chapter 163, part II and with the principles for guiding development in designated areas of critical state concern.

(14) AREAS OF CRITICAL STATE CONCERN.—No proposed local government comprehensive plan or plan amendment which is applicable to a designated area of critical state concern shall be effective until a final order is issued finding the plan or amendment to be in compliance as defined in this section. ~~it has been reviewed and approved as provided in s. 380.05.~~

Section 3. Subsection (1) of section 163.3187, Florida Statutes, 1996 Supplement, is amended to read:

163.3187 Amendment of adopted comprehensive plan.—

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(a) In the case of an emergency, comprehensive plan amendments may be made more often than twice during the calendar year if the additional plan amendment receives the approval of all of the members of the governing body. "Emergency" means any occurrence or threat thereof whether accidental or natural, caused by humankind, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or public funds.

(b) Any local government comprehensive plan amendments directly related to a proposed development of regional impact, including changes which

have been determined to be substantial deviations and including Florida Quality Developments pursuant to s. 380.061, may be initiated by a local planning agency and considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in this section and applicable local ordinances, without regard to statutory or local ordinance limits on the frequency of consideration of amendments to the local comprehensive plan. Nothing in this subsection shall be deemed to require favorable consideration of a plan amendment solely because it is related to a development of regional impact.

(c) Any local government comprehensive plan amendments directly related to proposed small scale development activities may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. A small scale development amendment may be adopted only under the following conditions:

1. The proposed amendment involves a use of 10 acres or fewer and:

a. The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government shall not exceed:

(I) A maximum of 120 acres in a local government that contains areas specifically designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e); however, amendments under this paragraph may be applied to no more than 60 acres annually of property outside the designated areas listed in this sub-sub-subparagraph.

(II) A maximum of 80 acres in a local government that does not contain any of the designated areas set forth in sub-sub-subparagraph (I).

(III) A maximum of 120 acres in a county established pursuant to Article VIII, Section 9 of the State Constitution.

b. The proposed amendment does not involve the same property granted a change within the prior 12 months.

c. The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.

d. The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity.

e. The property that is the subject of the proposed amendment is not located within an area of critical state concern.

f. If the proposed amendment involves a residential land use, the residential land use has a density of 10 units or less per acre, except that this

limitation does not apply to small scale amendments described in sub-sub-subparagraph a.(I) that are designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e).

2.a. A local government that proposes to consider a plan amendment pursuant to this paragraph is not required to comply with the procedures and public notice requirements of s. 163.3184(15)(c) for such plan amendments if the local government complies with the provisions in s. 125.66(4)(a) for a county or in s. 166.041(3)(c) for a municipality. If a request for a plan amendment under this paragraph is initiated by other than the local government, public notice is required.

b. The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high hazard area as identified in the local comprehensive plan.

3. Small scale development amendments adopted pursuant to this paragraph require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(7), and are not subject to the requirements of s. 163.3184(3)-(6) unless the local government elects to have them subject to those requirements.

(d) Any comprehensive plan amendment required by a compliance agreement pursuant to s. 163.3184(16) may be approved without regard to statutory limits on the frequency of adoption of amendments to the comprehensive plan.

(e) A comprehensive plan amendment for location of a state correctional facility. Such an amendment may be made at any time and does not count toward the limitation on the frequency of plan amendments.

(f) Any comprehensive plan amendment that changes the schedule in the capital improvements element, and any amendments directly related to the schedule, may be made once in a calendar year on a date different from the two times provided in this subsection when necessary to coincide with the adoption of the local government's budget and capital improvements program.

Section 4. Paragraph (b) of subsection (2) of section 163.3189, Florida Statutes, 1996 Supplement, is amended to read:

163.3189 Process for amendment of adopted comprehensive plan.—

(2) A local government which has a comprehensive plan that has been found to be in compliance may amend its comprehensive plan as set forth in s. 163.3184, with the following exceptions:

(b) If the Administration Commission, upon a hearing pursuant to s. 163.3184, finds that the adopted plan amendment is not in compliance, the commission shall specify actions that would bring the plan amendment into compliance, and may specify the sanctions provided in s. 163.3184(11) to which the local government will be subject if it elects to make the amendment effective notwithstanding the determination of noncompliance. However, after the final order of the commission, the local government, except in designated areas of critical state concern ~~by resolution at a public meeting after public notice~~, may elect to make the amendment effective by resolution at a public meeting after public notice and be subject to sanctions pursuant to s. 163.3184(11). If the local government enacts the remedial actions specified in the commission's final order, the local government shall no longer be subject to sanctions.

Section 5. Subsections (6) and (8) of section 380.05, Florida Statutes, 1996 Supplement, are amended to read:

380.05 Areas of critical state concern.—

(6) Once ~~If~~ the state land planning agency determines whether ~~finds that~~ the land development regulations or ~~and~~ local comprehensive plan or amendment submitted by a local government is consistent ~~comply~~ with the principles for guiding the development of the area specified under the rule designating the area, the state land planning agency shall ~~by rule~~ approve or reject the land development regulations or portions thereof by final order, and shall determine compliance of the plan or amendment, or portions thereof, pursuant to s. 163.3184. The state land planning agency shall publish its final order to approve or reject land development regulations, which shall constitute final agency action, in the Florida Administrative Weekly. If the final order is challenged pursuant to s. 120.57, the state planning agency has the burden of proving the validity of the final order ~~and plan~~. Such approval or rejection of the land development regulations shall be no later than 60 days after submission of the land development regulations ~~and plan~~ by the local government. No proposed land development regulation ~~or local comprehensive plan~~ within an area of critical state concern becomes effective under this subsection until the state land planning agency issues its final order or, if the final order is challenged, until the challenge to the order is resolved pursuant to chapter 120 ~~rule approving it becomes effective~~.

(8) If any local government fails to submit land development regulations or a local comprehensive plan ~~within 180 days after the commission adopts a rule designating an area of critical state concern~~, or if the regulations or plan or plan amendment submitted do not comply with the principles for guiding development set out in the rule designating the area of critical state concern, ~~in either case,~~ within 120 days after the adoption of the rule designating an area of critical state concern, or within 120 days after the issuance of a recommended order on the compliance of the plan or plan amendment pursuant to section 163.3184, or within 120 days after the effective date of an order rejecting a proposed land development regulation, the state land planning agency shall submit to the commission recommended land development regulations and a local comprehensive plan or portions thereof applicable to that local government's portion of the area of critical state concern.

Within 45 days following receipt of the recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the recommendation with or without modification, and by rule establish land development regulations and a local comprehensive plan applicable to that local government's portion of the area of critical state concern. However, such rule shall not become effective prior to legislative review of an area of critical state concern pursuant to paragraph (1)(c). In the rule, the commission shall specify the extent to which its land development regulations, ~~and~~ plans, or plan amendments will supersede, or will be supplementary to, local land development regulations and plans. Notice of any proposed rule issued under this section shall be given to all local governments and regional planning agencies in the area of critical state concern, in addition to any other notice required under chapter 120. The land development regulations and local comprehensive plan adopted by the commission under this section may include any type of regulation and plan that could have been adopted by the local government. Any land development regulations or local comprehensive plan or plan amendments adopted by the commission under this section shall be administered by the local government as part of, or in the absence of, the local land development regulations and local comprehensive plan.

Section 6. Section 380.051, Florida Statutes, is amended to read:

380.051 Coordinated agency review; Florida Keys area.—

(1)(a) In order to facilitate the planning and preparation of permit applications for projects in the Florida Keys area of critical state concern, and in order to coordinate the information required to issue such permits, a developer may elect to request coordinated agency review under this section at the time of application for a development permit subject to s. 380.05.

(b) "Coordinated agency review" means review of the proposed location, densities, intensity of use, character, major design features, and environmental impacts of a proposed development in the Florida Keys area of critical state concern required to undergo review under s. 380.05 for the purposes of considering whether these aspects of the proposed development comply with the certifying agency's statutes and rules.

(2)(a) ~~The state land planning agency shall, in cooperation with state and regional agencies, develop by rule a coordinated agency review procedure in the Florida Keys area of critical state concern by January 1, 1987.~~ If a developer chooses to seek review under this section, the developer shall complete a coordinated review application and the state land planning agency shall distribute copies of the application to participating agencies. Each state and regional agency with jurisdiction over the project shall certify, within 60 days of receipt of such application, whether the project is consistent with agency statutes and rules.

(b) The Department of Environmental Protection, the Department of Health ~~and Rehabilitative Services~~, and other state and regional agencies that require permits in the Florida Keys area of critical state concern shall, within 180 days after the effective date of this act, enter into interagency agreements with the state land planning agency to establish~~, by rule,~~ a set

of procedures necessary for coordinated agency review created pursuant to this section. Such procedures shall be consistent with ~~the procedures developed pursuant to~~ paragraph (a).

(c) State and regional agencies shall enter into intergovernmental agreements with local governments in the Florida Keys area of critical state concern to coordinate their permit review, including delegation of review authority to local governments, where applicable, to ensure that state and regional agency decisions are reached in coordination with the local government decision on the local government order.

(3) State and regional agencies shall coordinate with local governments and, when possible, federal permitting agencies to standardize, to the extent possible, review procedures, data requirements, and data collection methodologies among all participating agencies operating in the Florida Keys area of critical state concern consistent with the requirements of the statutes for permitting programs for each agency. ~~The state land planning agency shall, by rule, establish minimum procedures for this subsection.~~

Section 7. Paragraphs (a), (b), (d), and (f) of subsection (25) of section 380.06, Florida Statutes, 1996 Supplement, are amended to read:

380.06 Developments of regional impact.—

(25) AREAWIDE DEVELOPMENT OF REGIONAL IMPACT.—

(a) An authorized developer may submit an areawide development of regional impact to be reviewed pursuant to the procedures and standards set forth in this section. The areawide development-of-regional-impact review shall include an areawide development plan in addition to any other information required under ~~by rule pursuant to~~ this section. After review and approval of an areawide development of regional impact under this section, all development within the defined planning area shall conform to the approved areawide development plan and development order. Individual developments that conform to the approved areawide development plan shall not be required to undergo further development-of-regional-impact review, unless otherwise provided in the development order. As used in this subsection, the term:

1. “Areawide development plan” means a plan of development that, at a minimum:

a. Encompasses a defined planning area approved pursuant to this subsection that will include at least two or more developments;

b. Maps and defines the land uses proposed, including the amount of development by use and development phasing;

c. Integrates a capital improvements program for transportation and other public facilities to ensure development staging contingent on availability of facilities and services;

d. Incorporates land development regulation, covenants, and other restrictions adequate to protect resources and facilities of regional and state significance; and

e. Specifies responsibilities and identifies the mechanisms for carrying out all commitments in the areawide development plan and for compliance with all conditions of any areawide development order.

2. "Developer" means any person or association of persons, including a governmental agency as defined in s. 380.031(6), that petitions for authorization to file an application for development approval for an areawide development plan.

(b) ~~The state land planning agency shall establish by rule procedures and criteria for~~ A developer may ~~to~~ petition for authorization to submit a proposed areawide development of regional impact for a defined planning area in accordance with the following requirements~~. At a minimum, the rules shall provide for~~:

1. A petition ~~that~~ shall be submitted to the local government, the regional planning agency, and the state land planning agency.

2. A public hearing or joint public hearing shall be held if required by paragraph (e), with appropriate notice, before the affected local government.

3. The state land planning agency shall apply the following criteria for evaluating a petition~~, including, but not limited to~~:

a. Whether the developer is financially capable of processing the application for development approval through final approval pursuant to this section.

b. Whether the defined planning area and anticipated development therein appear to be of a character, magnitude, and location that a proposed areawide development plan would be in the public interest. ~~The rules shall specify that~~ Any public interest determination under this criterion is preliminary and not binding on the state land planning agency, regional planning agency, or local government.

4. The state land planning agency shall develop and make available standard forms for petitions and applications for development approval for use under this subsection.

(d) A general purpose local government with jurisdiction over an area to be considered in an areawide development of regional impact shall not have to petition itself for authorization to prepare and consider an application for development approval for an areawide development plan. However, such a local government shall initiate the preparation of an application only:

1. After scheduling and conducting a public hearing as specified in paragraph (e); and

2. After conducting such hearing, finding that the planning area meets the standards and criteria ~~established by the state land planning agency~~ pursuant to subparagraph (b)3. for determining that an areawide development plan will be in the public interest.

(f) Following the public hearing, the local government shall issue a written order, appealable under s. 380.07, which approves, approves with conditions, or denies the petition. It shall approve the petitioner as the developer if it finds that the petitioner and defined planning area meet the standards and criteria, consistent with applicable law, pursuant to subparagraph (b)3. ~~established by the state land planning agency.~~

Section 8. The state land planning agency shall evaluate statutory provisions relating to the evaluation and appraisal of comprehensive plans required pursuant to section 163.3191, Florida Statutes, and shall consider changes to the statutes, as well as to all pertinent rules associated with the statutes. The evaluation shall include the local government's overall character, including coastal areas and areas of critical state concern, as well as the number of comprehensive plan amendments. Special emphasis shall be given in this overall evaluation to small governments, including municipalities with a population of 10,000 or less, as calculated based on the University of Florida Bureau of Business Research's population estimates for the State of Florida and certified as official by the Executive Office of the Governor and small counties, as defined in applicable law. The evaluation shall be conducted in consultation with a technical committee of at least 15 members, appointed by the secretary of the state land planning agency. The membership shall be representative of local governments, regional planning councils, the private sector, and environmental organizations. On or before December 15, 1997, the state land planning agency shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on its recommendations for appropriate changes to the requirements for evaluation and appraisal of comprehensive plans in chapter 163, Florida Statutes, funding for local governments, and the roles of state agencies in assisting local governments.

Section 9. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.