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2012 Legislature

1  
2 An act relating to developments of regional impact;  
3 amending s. 163.3184, F.S.; requiring that  
4 comprehensive plan amendments proposing certain  
5 developments follow the state coordinated review  
6 process; amending s. 380.06, F.S.; limiting the scope  
7 of certain recommendations and comments by reviewing  
8 agencies regarding proposed developments; revising  
9 certain review criteria for reports and  
10 recommendations on the regional impact of proposed  
11 developments; requiring regional planning agency  
12 reports to contain recommendations consistent with the  
13 standards of state permitting agencies and water  
14 management districts; providing that specified changes  
15 to a development order are not substantial deviations;  
16 providing an exemption from development-of-regional-  
17 impact review for proposed developments that meet  
18 specified criteria and are located in certain  
19 jurisdictions; requiring an agreement for such  
20 exemption; providing notice requirements; providing  
21 for effect and applicability; amending s. 380.115,  
22 F.S.; revising conditions under which a local  
23 government is required to rescind a development-of-  
24 regional-impact development order; providing a  
25 presumption that certain agricultural enclaves do not  
26 constitute urban sprawl; establishing qualifications  
27 for designation as an agricultural enclave for such  
28 purpose and establishing exceptions from the

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29 definition for designated protected areas; providing  
 30 an effective date.

31

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

33

34 Section 1. Paragraph (c) of subsection (2) of section  
 35 163.3184, Florida Statutes, is amended to read:

36 163.3184 Process for adoption of comprehensive plan or  
 37 plan amendment.—

38 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

39 (c) Plan amendments that are in an area of critical state  
 40 concern designated pursuant to s. 380.05; propose a rural land  
 41 stewardship area pursuant to s. 163.3248; propose a sector plan  
 42 pursuant to s. 163.3245; update a comprehensive plan based on an  
 43 evaluation and appraisal pursuant to s. 163.3191; propose a  
 44 development pursuant to s. 380.06(24) (x); or are new plans for  
 45 newly incorporated municipalities adopted pursuant to s.  
 46 163.3167 shall follow the state coordinated review process in  
 47 subsection (4).

48 Section 2. Paragraph (a) of subsection (7), subsection  
 49 (12), and paragraph (e) of subsection (19) of section 380.06,  
 50 Florida Statutes, are amended, and paragraph (x) is added to  
 51 subsection (24) of that section, to read:

52 380.06 Developments of regional impact.—

53 (7) PREAPPLICATION PROCEDURES.—

54 (a) Before filing an application for development approval,  
 55 the developer shall contact the regional planning agency having  
 56 ~~with~~ jurisdiction over the proposed development to arrange a

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57 | preapplication conference. Upon the request of the developer or  
58 | the regional planning agency, other affected state and regional  
59 | agencies shall participate in this conference and shall identify  
60 | the types of permits issued by the agencies, the level of  
61 | information required, and the permit issuance procedures as  
62 | applied to the proposed development. The levels of service  
63 | required in the transportation methodology shall be the same  
64 | levels of service used to evaluate concurrency in accordance  
65 | with s. 163.3180. The regional planning agency shall provide the  
66 | developer information about the development-of-regional-impact  
67 | process and the use of preapplication conferences to identify  
68 | issues, coordinate appropriate state and local agency  
69 | requirements, and otherwise promote a proper and efficient  
70 | review of the proposed development. If an agreement is reached  
71 | regarding assumptions and methodology to be used in the  
72 | application for development approval, the reviewing agencies may  
73 | not subsequently object to those assumptions and methodologies  
74 | unless subsequent changes to the project or information obtained  
75 | during the review make those assumptions and methodologies  
76 | inappropriate. The reviewing agencies may make only  
77 | recommendations or comments regarding a proposed development  
78 | which are consistent with the statutes, rules, or adopted local  
79 | government ordinances that are applicable to developments in the  
80 | jurisdiction where the proposed development is located.

81 | (12) REGIONAL REPORTS.—

82 | (a) Within 50 days after receipt of the notice of public  
83 | hearing required in paragraph (11)(c), the regional planning  
84 | agency, if one has been designated for the area including the

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85 local government, shall prepare and submit to the local  
 86 government a report and recommendations on the regional impact  
 87 of the proposed development. In preparing its report and  
 88 recommendations, the regional planning agency shall identify  
 89 regional issues based upon the following review criteria and  
 90 make recommendations to the local government on these regional  
 91 issues, specifically considering whether, and the extent to  
 92 which:

93 1. The development will have a favorable or unfavorable  
 94 impact on state or regional resources or facilities identified  
 95 in the applicable state or regional plans. As used in ~~For the~~  
 96 ~~purposes of~~ this subsection, the term "applicable state plan"  
 97 means the state comprehensive plan. As used in ~~For the purposes~~  
 98 ~~of~~ this subsection, the term "applicable regional plan" means an  
 99 ~~adopted comprehensive regional policy plan until the adoption of~~  
 100 ~~a strategic regional policy plan pursuant to s. 186.508, and~~  
 101 ~~thereafter means an~~ adopted strategic regional policy plan.

102 2. The development will significantly impact adjacent  
 103 jurisdictions. At the request of the appropriate local  
 104 government, regional planning agencies may also review and  
 105 comment upon issues that affect only the requesting local  
 106 government.

107 3. As one of the issues considered in the review in  
 108 subparagraphs 1. and 2., the development will favorably or  
 109 adversely affect the ability of people to find adequate housing  
 110 reasonably accessible to their places of employment if the  
 111 regional planning agency has adopted an affordable housing  
 112 policy as part of its strategic regional policy plan. The

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113 determination should take into account information on factors  
114 that are relevant to the availability of reasonably accessible  
115 adequate housing. Adequate housing means housing that is  
116 available for occupancy and that is not substandard.

117 (b) The regional planning agency report must contain  
118 recommendations that are consistent with the standards required  
119 by the applicable state permitting agencies or the water  
120 management district.

121 (c) ~~(b)~~ At the request of the regional planning agency,  
122 other appropriate agencies shall review the proposed development  
123 and shall prepare reports and recommendations on issues that are  
124 clearly within the jurisdiction of those agencies. Such agency  
125 reports shall become part of the regional planning agency  
126 report; however, the regional planning agency may attach  
127 dissenting views. When water management district and Department  
128 of Environmental Protection permits have been issued pursuant to  
129 chapter 373 or chapter 403, the regional planning council may  
130 comment on the regional implications of the permits but may not  
131 offer conflicting recommendations.

132 (d) ~~(e)~~ The regional planning agency shall afford the  
133 developer or any substantially affected party reasonable  
134 opportunity to present evidence to the regional planning agency  
135 head relating to the proposed regional agency report and  
136 recommendations.

137 (e) ~~(d)~~ If ~~When~~ the location of a proposed development  
138 involves land within the boundaries of multiple regional  
139 planning councils, the state land planning agency shall  
140 designate a lead regional planning council. The lead regional

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141 planning council shall prepare the regional report.

142 (19) SUBSTANTIAL DEVIATIONS.—

143 (e)1. Except for a development order rendered pursuant to  
 144 subsection (22) or subsection (25), a proposed change to a  
 145 development order which ~~that~~ individually or cumulatively with  
 146 any previous change is less than any numerical criterion  
 147 contained in subparagraphs (b)1.-10. and does not exceed any  
 148 other criterion, or which ~~that~~ involves an extension of the  
 149 buildout date of a development, or any phase thereof, of less  
 150 than 5 years is not subject to the public hearing requirements  
 151 of subparagraph (f)3., and is not subject to a determination  
 152 pursuant to subparagraph (f)5. Notice of the proposed change  
 153 shall be made to the regional planning council and the state  
 154 land planning agency. Such notice must ~~shall~~ include a  
 155 description of previous individual changes made to the  
 156 development, including changes previously approved by the local  
 157 government, and must ~~shall~~ include appropriate amendments to the  
 158 development order.

159 2. The following changes, individually or cumulatively  
 160 with any previous changes, are not substantial deviations:

161 a. Changes in the name of the project, developer, owner,  
 162 or monitoring official.

163 b. Changes to a setback which ~~that~~ do not affect noise  
 164 buffers, environmental protection or mitigation areas, or  
 165 archaeological or historical resources.

166 c. Changes to minimum lot sizes.

167 d. Changes in the configuration of internal roads which  
 168 ~~that~~ do not affect external access points.

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169 e. Changes to the building design or orientation which  
170 ~~that~~ stay approximately within the approved area designated for  
171 such building and parking lot, and which do not affect  
172 historical buildings designated as significant by the Division  
173 of Historical Resources of the Department of State.

174 f. Changes to increase the acreage in the development, if  
175 ~~provided that~~ no development is proposed on the acreage to be  
176 added.

177 g. Changes to eliminate an approved land use, if ~~provided~~  
178 ~~that~~ there are no additional regional impacts.

179 h. Changes required to conform to permits approved by any  
180 federal, state, or regional permitting agency, if ~~provided that~~  
181 these changes do not create additional regional impacts.

182 i. Any renovation or redevelopment of development within a  
183 previously approved development of regional impact which does  
184 not change land use or increase density or intensity of use.

185 j. Changes that modify boundaries and configuration of  
186 areas described in subparagraph (b)11. due to science-based  
187 refinement of such areas by survey, by habitat evaluation, by  
188 other recognized assessment methodology, or by an environmental  
189 assessment. In order for changes to qualify under this sub-  
190 subparagraph, the survey, habitat evaluation, or assessment must  
191 occur before ~~prior to~~ the time that a conservation easement  
192 protecting such lands is recorded and must not result in any net  
193 decrease in the total acreage of the lands specifically set  
194 aside for permanent preservation in the final development order.

195 k. Changes that do not increase the number of external  
196 peak hour trips and do not reduce open space and conserved areas

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197 within the project except as otherwise permitted by sub-  
 198 subparagraph j.

199 ~~l.k.~~ Any other change that ~~which~~ the state land planning  
 200 agency, in consultation with the regional planning council,  
 201 agrees in writing is similar in nature, impact, or character to  
 202 the changes enumerated in sub-subparagraphs a.-k. ~~a.-j.~~ and that  
 203 ~~which~~ does not create the likelihood of any additional regional  
 204 impact.

205  
 206 This subsection does not require the filing of a notice of  
 207 proposed change but requires ~~shall require~~ an application to the  
 208 local government to amend the development order in accordance  
 209 with the local government's procedures for amendment of a  
 210 development order. In accordance with the local government's  
 211 procedures, including requirements for notice to the applicant  
 212 and the public, the local government shall either deny the  
 213 application for amendment or adopt an amendment to the  
 214 development order which approves the application with or without  
 215 conditions. Following adoption, the local government shall  
 216 render to the state land planning agency the amendment to the  
 217 development order. The state land planning agency may appeal,  
 218 pursuant to s. 380.07(3), the amendment to the development order  
 219 if the amendment involves sub-subparagraph g., sub-subparagraph  
 220 h., sub-subparagraph j., ~~or~~ sub-subparagraph k., or sub-  
 221 subparagraph l. and if the agency ~~it~~ believes that the change  
 222 creates a reasonable likelihood of new or additional regional  
 223 impacts.

224 3. Except for the change authorized by sub-subparagraph



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225 2.f., any addition of land not previously reviewed or any change  
226 not specified in paragraph (b) or paragraph (c) shall be  
227 presumed to create a substantial deviation. This presumption may  
228 be rebutted by clear and convincing evidence.

229 4. Any submittal of a proposed change to a previously  
230 approved development must ~~shall~~ include a description of  
231 individual changes previously made to the development, including  
232 changes previously approved by the local government. The local  
233 government shall consider the previous and current proposed  
234 changes in deciding whether such changes cumulatively constitute  
235 a substantial deviation requiring further development-of-  
236 regional-impact review.

237 5. The following changes to an approved development of  
238 regional impact shall be presumed to create a substantial  
239 deviation. Such presumption may be rebutted by clear and  
240 convincing evidence.

241 a. A change proposed for 15 percent or more of the acreage  
242 to a land use not previously approved in the development order.  
243 Changes of less than 15 percent shall be presumed not to create  
244 a substantial deviation.

245 b. Notwithstanding any provision of paragraph (b) to the  
246 contrary, a proposed change consisting of simultaneous increases  
247 and decreases of at least two of the uses within an authorized  
248 multiuse development of regional impact which was originally  
249 approved with three or more uses specified in s. 380.0651(3)(c),  
250 (d), and (e) and residential use.

251 6. If a local government agrees to a proposed change, a  
252 change in the transportation proportionate share calculation and

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253 mitigation plan in an adopted development order as a result of  
 254 recalculation of the proportionate share contribution meeting  
 255 the requirements of s. 163.3180(5)(h) in effect as of the date  
 256 of such change shall be presumed not to create a substantial  
 257 deviation. For purposes of this subsection, the proposed change  
 258 in the proportionate share calculation or mitigation plan may  
 259 ~~shall~~ not be considered an additional regional transportation  
 260 impact.

261 (24) STATUTORY EXEMPTIONS.—

262 (x) Any proposed development that is located in a local  
 263 government jurisdiction that does not qualify for an exemption  
 264 based on the population and density criteria in s.  
 265 380.06(29)(a), that is approved as a comprehensive plan  
 266 amendment adopted pursuant to s. 163.3184(4), and that is the  
 267 subject of an agreement pursuant to s. 288.106(5) is exempt from  
 268 this section. This exemption shall only be effective upon a  
 269 written agreement executed by the applicant, the local  
 270 government, and the state land planning agency. The state land  
 271 planning agency shall only be a party to the agreement upon a  
 272 determination that the development is the subject of an  
 273 agreement pursuant to s. 288.106(5) and that the local  
 274 government has the capacity to adequately assess the impacts of  
 275 the proposed development. The local government shall only be a  
 276 party to the agreement upon approval by the governing body of  
 277 the local government and upon providing at least 21 days' notice  
 278 to adjacent local governments that includes, at a minimum,  
 279 information regarding the location, density and intensity of  
 280 use, and timing of the proposed development. This exemption does

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281 not apply to areas within the boundary of any area of critical  
 282 state concern designated pursuant to s. 380.05, within the  
 283 boundary of the Wekiva Study Area as described in s. 369.316, or  
 284 within 2 miles of the boundary of the Everglades Protection Area  
 285 as defined in s. 373.4592(2).

286  
 287 If a use is exempt from review as a development of regional  
 288 impact under paragraphs (a)-(u), but will be part of a larger  
 289 project that is subject to review as a development of regional  
 290 impact, the impact of the exempt use must be included in the  
 291 review of the larger project, unless such exempt use involves a  
 292 development of regional impact that includes a landowner,  
 293 tenant, or user that has entered into a funding agreement with  
 294 the Department of Economic Opportunity under the Innovation  
 295 Incentive Program and the agreement contemplates a state award  
 296 of at least \$50 million.

297 Section 3. Subsection (1) of section 380.115, Florida  
 298 Statutes, is amended to read:

299 380.115 Vested rights and duties; effect of size  
 300 reduction, changes in guidelines and standards.—

301 (1) A change in a development-of-regional-impact guideline  
 302 and standard does not abridge or modify any vested or other  
 303 right or any duty or obligation pursuant to any development  
 304 order or agreement that is applicable to a development of  
 305 regional impact. A development that has received a development-  
 306 of-regional-impact development order pursuant to s. 380.06, but  
 307 is no longer required to undergo development-of-regional-impact  
 308 review by operation of a change in the guidelines and standards

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309 or has reduced its size below the thresholds in s. 380.0651, or  
 310 a development that is exempt pursuant to s. 380.06(24) or (29)  
 311 ~~380.06(29)~~ shall be governed by the following procedures:

312 (a) The development shall continue to be governed by the  
 313 development-of-regional-impact development order and may be  
 314 completed in reliance upon and pursuant to the development order  
 315 unless the developer or landowner has followed the procedures  
 316 for rescission in paragraph (b). Any proposed changes to those  
 317 developments which continue to be governed by a development  
 318 order shall be approved pursuant to s. 380.06(19) as it existed  
 319 before ~~prior to~~ a change in the development-of-regional-impact  
 320 guidelines and standards, except that all percentage criteria  
 321 shall be doubled and all other criteria shall be increased by 10  
 322 percent. The development-of-regional-impact development order  
 323 may be enforced by the local government as provided by ss.  
 324 380.06(17) and 380.11.

325 (b) If requested by the developer or landowner, the  
 326 development-of-regional-impact development order shall be  
 327 rescinded by the local government having jurisdiction upon a  
 328 showing that all required mitigation related to the amount of  
 329 development that existed on the date of rescission has been  
 330 completed or will be completed under an existing permit or  
 331 equivalent authorization issued by a governmental agency as  
 332 defined in s. 380.031(6), provided such permit or authorization  
 333 is subject to enforcement through administrative or judicial  
 334 remedies.

335 Section 4. (1) Notwithstanding ss. 163.3162 and 163.3164,  
 336 Florida Statutes, the owner of a parcel of land located in an

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337 unincorporated area of a county that qualifies as an  
338 agricultural enclave under subsection (2) may apply for an  
339 amendment to the local government comprehensive plan pursuant to  
340 s. 163.3184, Florida Statutes. The subject of the amendment is  
341 presumed not to be urban sprawl, as defined in s. 163.3164,  
342 Florida Statutes, if it proposes land uses and intensities of  
343 use that are consistent with the existing uses and intensities  
344 of use of, or consistent with the uses and intensities of use  
345 authorized for, the industrial, commercial, or residential areas  
346 that surround the parcel. If the parcel of land that is the  
347 subject of an amendment under this section is abutted on all  
348 sides by land having only one land use designation, the same  
349 land use designation must be presumed by the county to be  
350 appropriate for the parcel. The county shall, after considering  
351 the proposed density and intensity, grant the parcel the same  
352 land use designation as the surrounding parcels that abut the  
353 parcel unless the county finds by clear and convincing evidence  
354 that the grant would be detrimental to the health, safety, and  
355 welfare of its residents.

356 (2) In order to qualify as an agricultural enclave under  
357 this section, the parcel of land must be a parcel that:

358 (a) Is owned by a single person or entity;

359 (b) Has been in continuous use for bona fide agricultural  
360 purposes, as defined by s. 193.461, Florida Statutes, for at  
361 least 5 years before the date of any comprehensive plan  
362 amendment application;

363 (c) Is surrounded on at least 95 percent of its perimeter  
364 by property that the local government has designated as land

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365 that may be developed for industrial, commercial, or residential  
 366 purposes; and

367 (d) Does not exceed 640 acres but is not smaller than 500  
 368 acres.

369 (3) This section does not preempt or replace the  
 370 protection currently existing for property located within the  
 371 boundaries of:

372 1. The Wekiva Study Area, as described in s. 369.316,  
 373 Florida Statutes; or

374 2. The Everglades Protection Area, as defined in s.  
 375 373.4592(2), Florida Statutes.

376  
 377 In order to qualify under this section as an enclave, the owner  
 378 of a parcel of land meeting the requirements of subsection (2)  
 379 must submit a written application to the county by January 1,  
 380 2013.

381 Section 5. This act shall take effect July 1, 2012.