

**PINELLAS PLANNING COUNCIL  
AGENDA MEMORANDUM**

**PRELIMINARY FOR  
PAC REVIEW ONLY**

**AGENDA ITEM:**

**MEETING DATE:** April 16, 2008

**SUBJECT:**

Legislative Update – 2008 Session

**RECOMMENDATION:**

Council Receive And Discuss As Determined Appropriate  
(Information Only - No Action Required)

**BACKGROUND**

The Florida Legislature began its 2008 regular session on March 4<sup>th</sup>. This memo updates the Council with information about legislation being considered that, in the opinion of the staff, is of particular interest.

Special Districts

Chapter 189, Florida Statutes (F.S.), addresses special districts. Senate Bill (SB) 1210 (Baker) and House Bill (HB) 795 (Kriseman) say that it is the policy of the state to codify the charter of each independent and dependent special district every 10 years. These bills are of particular importance to the Pinellas Planning Council because the Council is a special district as defined by Chapter 189, F.S. Subsection 189.403(1) F. S.

The proposed legislation states that the government entity that created either a dependent or independent special district is responsible for conducting and paying for an examination of the district charter. For example, if the special district was created by the Legislature, then that body must certify to the Department of Community Affairs (DCA) that the charter is to be codified. In this example, the Legislature is to “review each special district charter and may revive, revive with modifications in structure or powers, or both, or abolish the charter.”

As proposed, planning and zoning functions as defined in the Department of Community Affairs Special Districts Function Index are not to have their charter reviews submitted until October 2016. However, index functions in Pinellas County including community

**PINELLAS PLANNING COUNCIL ACTION:**

**COUNTYWIDE PLANNING AUTHORITY ACTION:**

**SUBJECT:** Legislative Update

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development, community redevelopment, county development, downtown development, economic development, and industrial development are to have their charters reviewed by October 2013.

**Commercial Development and Capital Improvements**

SB 1966 (Bennett) proposes creation of Section 288.064, F.S., (Economic Stimulus Act of 2008) that recommends a substitute for transportation impact fees called the “per trip mobility fee.” At the time this memo was written, the bill did not yet have a House companion.

The per trip mobility fee can be paid by a developer in lieu of impact fees, proportionate share, or proportionate fair-share payment. Local governments can set the fee, but it is not to exceed \$250 per trip. The collected funds are to be expended “in the area in which they were collected for the purpose of benefiting the proposed development.”

Under the proposal, if a mobility fee is assessed, all developer transportation concurrency requirements have been met at the time of payment. Additionally, a local government “may not require that the transportation facilities be in place as a prerequisite to approval of the applicant’s development.”

**Vox Populi – Voice of the People**

SB 2276 (Lynn) and HB 991 (Hukill) propose the “Voice of the People” legislation. The bills propose requirements for decorum in meetings of local governments and their various boards and opportunities for people to address issues. The preamble recognizes that Florida has a good reputation for open government, but at the same time says that more needs to be done because some unidentified entities circumvent public participation through a number of devices. The bills say that it is the intent of the Legislature “to prevent local governments from thwarting their citizens’ right to speak on issues of concern to them and to codify the entitlement to certain basic levels of citizen participation and input at meetings of local government authorities.”

The bills outline citizen participation entitlements at several types of meetings, e.g., public hearings and as well as workshops. The requirements will cause some local governments to change the way normal meetings are done. The bills say that at the beginning of meetings, the local government “must allocate, at a minimum, 15 minutes...for citizens who wish to appear before the governing body to make a request..., voice a complaint or concern, express an opinion, or express recognition” on any subject. Each person who wishes to speak must be given at least 3 minutes during which the speaker can talk about anything they want to including items on the consent agenda or topics totally unrelated to any government business.

**SUBJECT:** Legislative Update

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By October 1, 2008, each local government authority must adopt a written policy that implements the requirements of the bills. Interestingly, the legislation does not impose the vox populi requirements on the Legislature or other state government entities. Finally, if a local government authority maintains a web site, within 30 days after adoption of the policy, the site home page must contain the policy or have a link to it.

**Affordable Housing**

SB 2014 (Deutch) and HB 561 (Vana) authorizes, but does not require, jurisdictions to adopt an affordable senior housing element together with implementation plans and programs in their comprehensive plans.

SB 2592 amends Subsection 163.3177(6), F.S., (comprehensive plan housing element content) and requires that by July 1, 2009, counties are to adopt a local land development regulations requiring 15 percent of all newly constructed housing within developments of 200 or more units to be affordable. The DCA is to provide a model LDR for counties as well as administrative rules to implement the new legislation. If the LDR is not adopted, a local government will be prohibited from amending its comprehensive plan if the proposed amendment would increase density until the LDR is adopted.

The legislation proposes creating a new statutory section (163.32461, F.S.) titled "Affordable housing growth strategies." The intent is "to streamline and expedite state review of comprehensive plan amendments and local government review of development proposals that will provide for affordable housing" and "to require local governments to amend their respective local comprehensive plans so that there is a greater opportunity for the development of affordable housing" and "to establish a procedure for the state to review local decisions that deny a unified application to provide affordable housing."

Subsection 163.32461(3), F.S., (Expedited Review of Future Land Use Map Amendments) proposes that counties having a population greater than 75,000 and the municipalities within them are to amend their comprehensive plans by July 1, 2009, "to include specific criteria that a proposal for the development of affordable housing must satisfy in order to receive expedited state and regional review." If a local comprehensive plan is not amended as required by the legislation, then that community is ineligible to receive any affordable housing funding from the state until the plan is amended.

Subsection 163.32461(4) F.S., (Affordable Housing Density Bonuses) proposes that each county with a population greater than 75,000 and the municipalities within them "shall amend its respective comprehensive plan by December 31, 2009, to provide density bonuses that encourage the provision of affordable housing." The subsection further identifies circumstances under which the plans are to be amended.

**SUBJECT:** Legislative Update

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The Subsection (5) (Unified Application and Streamlined Review) says that local governments are to amend their comprehensive plans and land development regulations to provide “a process for the unified and streamlined review of an application for a proposal to develop affordable housing, green affordable housing, or mixed-use affordable housing near an employment center.”

**Surplus Land for Affordable Housing**

Current state law (Section 125.379, F.S.) requires that by July 1, 2007, and every three years thereafter, local governments are required to inventory “all real property within its jurisdiction to which the county (or municipality) holds fee simple title that is appropriate for use as affordable housing.” While not stated explicitly, some jurisdictions have apparently not done the inventory. Thus, SB 2562 (Gaetz) and HB 905 (McKeel) provide sanctions saying that if a local government “fails to complete and update the inventory in accordance with the provisions of this section (it) is ineligible to receive any state funding for affordable housing until the inventory or update is completed.”

New legislation is proposed with the creation of Section 1011.775, F.S., “Disposition of district school board property for affordable housing” which will have the same requirements imposed upon them as local governments have with regard to the affordable housing land inventory.

**Energy Efficiency and Conservation**

Committee Substitute (CS) for CS for SB 560 amends Section 163.3177, F.S., by requiring future land use elements to have policies that discourage urban sprawl and promote energy-efficient land use patterns. The transportation element is to contain strategies intended to reduce greenhouse gas emissions and by January 1, 2011, all comprehensive plans are to contain an “energy element.” That element is to contain provisions that encourage energy conservation and efficiency; renewable energy resources; and the reduction of greenhouse gases.

**Department of Community Affairs Legislative Proposals**

Proposed DCA legislation was discussed with Council at the February 20, 2008, meeting. Topics discussed included the state alternative comprehensive plan amendment review process, the Citizens Planning Bill of Rights, and coastal management proposals. Since that time, the department has produced additional new proposals addressing transportation concurrency, affordable housing, as well as some amendments to the bills previously discussed.

As noted at the February Council meeting, SB 474 was a shell bill which only said that the Legislature intended to amend state growth management legislation. On March 27<sup>th</sup> a committee substitute containing many of the DCA proposals was introduced during a

***SUBJECT:*** Legislative Update

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meeting of the Senate Community Affairs Committee. Following committee discussion of the substitute bill, further discussion was “temporarily postponed.” If the legislation survives, there is a good chance that it will be significantly amended from what was originally proposed because there is both opposition to, as well as support for, various provisions in it. For example, some local governments are opposed to the enhanced public participation aspects of the bill, but populist organizations like 1000 Friends of Florida, are supportive. Because the eventual form of the bill is unknown at this time, the text below discusses only the DCA proposals, not the committee substitute.

Transportation Concurrency

For the first time, the State has apparently recognized that its traditional one size fits all transportation concurrency approach may not be appropriate for all jurisdictions, especially urban ones. A proposed amendment to Section 163.3180 (Concurrency) says that “the Legislature now recognizes that in Florida’s urban centers, transportation cannot be effectively managed and mobility cannot be improved solely through expansion of roadway capacity...” and that in many circumstances, roadways cannot be expanded either for financial or physical reasons. As a result “a range of transportation alternatives (is) essential” to meet identified needs. One alternative is the use of transportation concurrency exception areas to achieve transportation goals. A modified version of this proposal was inserted in the committee substitute for SB 474 mentioned above.

The legislation proposes that “within municipalities, transportation concurrency exception areas are hereby established” for areas identified in comprehensive plans for: a. urban infill development; b. urban redevelopment; c. downtown revitalization; and d. urban infill and redevelopment under Section 163.2517, F.S. Other jurisdictions are still required to adopt comprehensive plan amendments and strategies to establish a TCEA.

A significant DCA proposal included in the committee substitute for SB 474, is the creation and implementation of a “transportation mobility fee” (See discussion of SB 1966). The proposal says the State recognizes that “the existing transportation concurrency system has not adequately addressed Florida’s transportation needs...and is not producing a sustainable transportation system for the state.” A transportation mobility fee is proposed as a better means to address the needs. The purpose of the fee is “to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system, and promote compact, mixed-use, and energy efficient development.”

The DCA, in cooperation with the Department of Transportation, is to amend Chapter 9J-5, F.A.C., to incorporate the fee methodology no later than February 15, 2009, with the intent of having the amendment effective not later than July 1, 2009. Subsequent to adoption of the amendments to 9J-5, the DCA is to develop a schedule for county/municipal adoption of local comprehensive plan amendments incorporating the methodology.

**SUBJECT:** Legislative Update

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Alternative State Review Process

A provision is added that establishes a 120 day time period for local governments to adopt comprehensive plan amendments after agency review or the amendments “shall be deemed abandoned.”

Coastal High Hazard Area

In the March 4<sup>th</sup> version of the proposed legislation, two additional sentences are added to Subsection 163.3178(1)(h) in reference to the definition of coastal high hazard area.

The coastal high-hazard area is the area seaward of the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. It includes all land within the area, regardless of elevation, from the mean low water line to the inland extent of the category 1 storm surge area. It is depicted by, but not limited to, the areas illustrated in the most current SLOSH Storm Surge Atlas.

The March 4<sup>th</sup> legislation extends by one year (to July 1, 2009) the time local governments have to amend their future land use map and coastal management element to include the new CHHA definition and to depict the CHHA on the map. These provisions are also included in the committee substitute for SB 474.

Affordable Housing

Proposed legislation creates Section 163.32461 (Affordable Housing Growth Strategies) with the intent “that state review of comprehensive plan amendments and local government review of development proposals that will provide for affordable housing be streamlined and expedited.” This proposal has, with some modification, been incorporated into SB 2592 discussed above.

Citizen’s Planning Bill of Rights

The January 18<sup>th</sup> version of this legislation proposed amendment of Subsection 163.3174(1), F.S., that prohibits elected bodies (commissions or councils) from also serving as the local planning agency. The March 4<sup>th</sup> version amends that prohibition by saying that no members of a governing body may serve on a local planning agency. It also removes the requirements for comprehensive plan amendment data and analysis certification and consistency with state and regional plans.

Notwithstanding the new provision which allows only one comprehensive plan amendment cycle per year, the March 4<sup>th</sup> version would allow amendments of land within designed areas including urban infill, urban redevelopment, downtown revitalization,

**SUBJECT:** Legislative Update

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urban infill and redevelopment, or urban service areas to be exceptions to the once per year limitation.

**Revised and Supplanted Provisions**

There are a variety of topics covered by this proposed legislation.

Subsection 163.3177(10(i) is amended by inserting the following:

The Legislature recognizes that due to varying local conditions, governments in Florida have different planning needs that cannot be addressed by one uniform set of minimum planning criteria. Therefore, the state land planning agency may amend chapter 9J-5, Florida Administrative Code, to establish different minimum criteria that will be applicable to local governments based on the following factors:

- (1) current and projected population;
- (2) size of the local jurisdiction;
- (3) amount and nature of undeveloped land; and
- (4) the scale of public services provided by the local government.

This text is also included in the committee substitute for SB 474. It implies that after more than twenty years, the DCA finally recognizes that the one size fits all approach to growth management may not be the optimal one to employ in every circumstance. What form the rule amendment will take, however, is uncertain.

Subsection 163.3177(13) dealing with community vision and subsections (14) and (17) which address designation of an urban service boundary are deleted in their entirety. And, Section 163.3246 which established the local government comprehensive planning certification program is discontinued and no more local governments will be certified.

**Conclusion**

There is the potential for significant modifications of the state growth management legislation to be enacted during this year's legislative session. There are at least two themes in the proposed growth management legislation: affordable housing and enhanced public participation in the planning process. More mandates are proposed for local governments, but no funding is provided to implement them. There are some hints that the state is finally recognizing that a one-size-fits all approach to growth management may not be the best thing for either local governments or the state. How this potential change in attitude will be carried out by the State will signal if it is really interested in making growth management more meaningful or the emphasis will remain on a rigid process as it currently is.

SENATE					
Bill #	Sponsor	Companion	Subject	Content	Status
474 Comm. Sub. *	Comm. Sub.		Growth Management	<ul style="list-style-type: none"> <li>• Modifies SB 2562 by adding a July 1 date for AH land inventory &amp; requires that a county certify that the inventory is complete</li> <li>• Prohibits members of the governing body from serving on the LPA</li> <li>• Provides for senior affordable housing comp plans</li> <li>• Modifies definition of CHHA</li> <li>• Addresses municipal transportation concurrency exception areas</li> <li>• Provides for a transportation mobility fee</li> <li>• Establishes certain provisions of the "Citizens Planning Bill of Rights"</li> <li>• Establishes a once per year comp plan cycle</li> <li>• Provides for expedited review for affordable housing projects</li> <li>• Discontinues comp plan certification program</li> <li>• Establishes affordable housing strategies &amp; expedited review</li> </ul>	<ul style="list-style-type: none"> <li>• ED 7/1/08</li> <li>• CS by Comm. on Community Affairs</li> <li>• Bill is temporarily postponed</li> </ul>
CS for CS for 560 & 1544 *	Comm. Sub.		Energy Efficiency & Conservation	<ul style="list-style-type: none"> <li>• S. 163.3177 is amended</li> <li>• Future Land Use Element to have policies regarding discouragement of urban sprawl &amp; energy-efficient land use patterns</li> </ul>	<ul style="list-style-type: none"> <li>• ED 7/1/08</li> <li>• CS by Comm. on Regulated Industries; Comm. Affairs, &amp; Senator Constantine</li> </ul>

SENATE					
Bill #	Sponsor	Companion	Subject	Content	Status
				<ul style="list-style-type: none"> <li>• Trans. Element to "incorporate trans. strategies to address reduction in greenhouse gas emissions from the trans. sector"</li> <li>• New comp plan energy element by 1/1/11 to address efforts to encourage energy conservation &amp; efficiency; use of renewable energy resources; &amp; greenhouse gas reduction strategies (SB 1544 does not have this provision)</li> </ul>	
1210 *	Baker	Identical to 795	Special Districts	<ul style="list-style-type: none"> <li>• Policy of the state to codify the charter of each independent &amp; dependent special district every 10 years</li> <li>• Requires each govt. entity that creates district to be responsible for subsequent examination of charter</li> <li>• Provides criteria for determining district performance</li> </ul>	<ul style="list-style-type: none"> <li>• In committee</li> <li>• ED 7/1/08</li> </ul>
1966 *	Bennett		Commercial Development & Capital Improvements	<ul style="list-style-type: none"> <li>• Creates Economic Stimulus Act of 2008</li> <li>• Applicants can pay a per trip mobility fee in lieu of paying impact fees, proportionate share, etc.</li> <li>• Mobility fee determined by local govt., but not greater than \$250 per trip</li> <li>• Requires that moneys collected from the assessment be used for the purpose of benefiting the proposed development</li> <li>• Applicant's development is deemed to have met all trans. concurrency</li> </ul>	<ul style="list-style-type: none"> <li>• In committee</li> <li>• ED 7/1/08</li> </ul>

SENATE					
Bill #	Sponsor	Companion	Subject	Content	Status
				requirement one the mobility fee is paid <ul style="list-style-type: none"> <li>Option to use the trip mobility fee will expire when the median home price in a county reaches 120 percent of the median price in that county on 1/1/06</li> </ul>	
2014 *	Deutch	Identical to 561	Affordable Senior Housing	<ul style="list-style-type: none"> <li>Authorizes local govts. to include affordable senior housing element setting out plans &amp; programs with supporting infrastructure &amp; public facilities in comp plans</li> </ul>	<ul style="list-style-type: none"> <li>In committee</li> <li>ED 7/1/08</li> </ul>
2276 *	Lynn	Identical to 991	Vox Populi – Voice of the People	<ul style="list-style-type: none"> <li>Requirements re: decorum in meetings of local govt. governing boards &amp; opportunities for people to address issues</li> <li>Local government authority means any regional, county, or municipal governmental entity, special district, community college district, or school district, or any elected or appointed political subdivision thereof</li> <li>By Oct. 1, 2008, each local govt. must adopt a written policy that implements the requirements</li> <li>Local govts. with a web site must publish the policy or a link to it on their home page within 30 day after adoption of the policy</li> </ul>	<ul style="list-style-type: none"> <li>In committee</li> <li>ED 7/1/08</li> </ul>

SENATE					
Bill #	Sponsor	Companion	Subject	Content	Status
2562 *	Gaetz	Similar to 905	Surplus Land for Affordable Housing	<ul style="list-style-type: none"> <li>Concerns former 125.379 renumbered as 163.32431 (counties) and former 166.0451 is renumbered as 163.32432 (municipalities)</li> <li>A county or municipality that fails to complete &amp; update the inventory of property which is appropriate for AH is ineligible to receive any state funding for AH.</li> <li>New 1011.775 requires school boards to prepare an inventory every 3 years</li> </ul>	<ul style="list-style-type: none"> <li>In committee</li> <li>ED 7/1/08</li> </ul>
2592 *	Gaetz		Affordable Housing	<ul style="list-style-type: none"> <li>Amends 163.3177(6)(f)</li> <li>Requires that by July 1, 2009, counties are to adopt a local LDR requiring 15 percent of all newly constructed housing within developments of 200 or more units to be affordable as defined by s. 420.0004</li> <li>DCA will develop a model LDR &amp; rules</li> <li>163.32461 is created titled "Affordable housing growth strategies"</li> <li>It is the intent of the Legislature to:                             <ul style="list-style-type: none"> <li>Streamline &amp; expedite state review of comp plan amendments &amp; local govt. review of development proposals that will provide for AH</li> <li>Require local govts. to amend their comp plans so that there is a greater opportunity for the development of AH</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>In committee</li> <li>ED 7/1/08</li> </ul>