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In order to chart our course we must organize and implement a statewide framework that will require every state and regional agency and local government to anticipate the effect of its activities on Florida's natural resources and public facilities, through comprehensive planning. The statewide planning framework does not equate to a mandated "statewide plan". Rather, it is a structure through which agencies and local governments can focus their separate programs and activities on common goals and objectives set out by the Legislature, anticipate the effects of other entities' planned actions, and resolve conflicts. The beginning of this framework is a state policy plan that expresses statewide goals; the second part is the development of plans that achieve these goals throughout the planning framework; the final part is a continuing effort to communicate, coordinate, and mediate differences.[1]

I. INTRODUCTION

For more than a decade Florida has been attempting to create a statewide comprehensive planning process to manage the state's phenomenal growth. The effort commenced in 1971 with the appointment by Governor Reubin Askew of a Task Force On Resource Management to develop proposed growth management legislation.[2] The work of the task force culminated in the passage by the 1972 Florida Legislature of a landmark package of land management legislation. This legislation included the Florida State Comprehensive Planning Act of 1972[3] and The Florida Environmental Land and Water Management Act of 1972.[4] The former di-

1. ENVIRONMENTAL LAND MANAGEMENT STUDY COMM., FINAL REPORT 6 (Feb. 1984) (available in Fla. Dep't of State, Div. of Archives, Tallahassee, Fla.) [hereinafter cited as ELMS REP.].

2. The appointment and work of the Task Force is discussed in J. DEGROVE, LAND GROWTH & POLITICS 109-10 (1984). The author of the book was a member of the Task Force.

3. Ch. 72-295, 1972 Fla. Laws 1072 (current version at FLA. STAT. §§ 186.001-.911 (Supp. 1984)).

4. Ch. 72-317, 1972 Fla. Laws 1162 (current version at FLA. STAT. §§ 380.012-.12 (1983 & Supp. 1984)) (hereinafter referred to in the text as chapter 380). The 1972 legislative package also included the Florida Water Resources Act of 1972, ch. 72-299, 1972 Fla. Laws 1082 (current version at FLA. STAT. ch. 373 (1983)), and the Land Conservation Act of 1972, ch.

rected the Division of State Planning to prepare a state comprehensive plan for consideration and approval by the Governor and the legislature, and the latter created a statutory framework for regulating developments of regional impact (DRI) and areas of critical state concern.[5]

The drive to create a statewide comprehensive planning process gained new momentum with the enactment of the Local Government Comprehensive Planning Act of 1975 (LGCPA).[6] This Act, which at the time constituted the strongest piece of local planning enabling legislation ever enacted in this country, required every local government in Florida to adopt a comprehensive plan in accordance with detailed statutory requirements by 1979. Although the Act did not require local plans to be consistent with the state comprehensive plan being prepared pursuant to the State Comprehensive Planning Act of 1972, the LGCPA did establish the foundation for a strong local component of an integrated statewide comprehensive planning process.[7]

Florida's planning movement faltered badly in 1978 when the proposed state comprehensive plan was submitted to the legislature for approval. Although the plan, which had been prepared over a period of six years, was approved by the Governor, the legislature refused to adopt the proposed plan as official state policy. Instead, the legislature amended the State Comprehensive Planning Act to provide that the plan would be advisory only, thereby rendering the document virtually meaningless.[8] The failure of the 1978 legislature to adopt the proposed state comprehensive plan temporarily halted the state's effort to establish an integrated statewide comprehensive planning framework.

72-300, 1972 Fla. Laws 1126 (current version at FLA. STAT. ch. 259 (1983)).

5. For an early analysis of chapter 380 by a member of the Governor's Task Force on Resource Management, see Finnell, *Saving Paradise: The Florida Environmental Land and Water Management Act of 1972*, 1973 URB. L. ANN. 103. A much later analysis by the same author is presented in Finnell, *Coastal Land Management in Florida*, 1980 AM. B. FOUND. J. 303.

6. Ch. 75-257, 1975 Fla. Laws 794 (current version at FLA. STAT. §§ 163.3161-.3211 (1983)).

7. For a discussion of the LGCPA's requirements, *see infra* notes 153 -155 and accompanying text.

8. For an analysis of the State Comprehensive Planning Act of 1972 and an account of the preparation and rejection of the proposed state comprehensive plan, see T. PELHAM, STATE LAND-USE PLANNING AND REGULATION 151-58 (1979). The 1978 legislature adopted the Florida Coastal Management Act of 1978, ch. 78-287, §§ 5-10, 1978 Fla. Laws 814, 816 (current version at FLA. STAT. §§ 380.20-.25 (1983)). However, this Act created no new regulatory authority and provided that coastal management would be accomplished through existing statutes and processes.

By that time, the weaknesses in chapter 380 and the LGCPA were becoming increasingly evident. Shortly after assuming office in January 1979, Governor Bob Graham appointed a Resource Management Task Force to study Florida's growth management legislation.[9] The Task Force recommended strengthening chapter 380's areas of critical state concern program by expanding legislative involvement.[10] Also, the Task Force recommended retention and streamlining of the developments of regional impact process, the adoption of comprehensive regional resource management policies by each regional planning agency, and the creation of a comprehensive coastal planning and regulatory system for the state.[11] In response, the 1980 legislature retained the developments of regional impact program with some procedural revisions, and adopted a major amendment to the state's regional planning legislation.

The Florida Regional Planning Council Act[12] required each of the state's eleven regional planning agencies to adopt a comprehensive regional policy plan.[13] These plans were to constitute the basis for review of developments of regional impact, local comprehensive plans, and any other regional review functions.[14] Although most regional planning agencies have been unable to comply with this statutory mandate because of inadequate state funding, the Act did represent another important step in the development of a statewide comprehensive planning process.

In 1982, Governor Graham appointed the Environmental Land Management Study Committee (ELMS Committee). The Governor

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9. *See* RESOURCE MANAGEMENT TASK FORCE, FINAL REPORT (1980) (available at Fla. Dept. of State, Div. of Library Servs., Tallahassee, Fla.) [hereinafter cited as TASK FORCE REP.].

10. RESOURCE MANAGEMENT TASK FORCE, INTERIM REPORT 6 (1979) (available at Fla. Dep't of State, Div. of Library Servs., Tallahassee, Fla.). These recommendations occurred after the Florida Supreme Court declared portions of chapter 380's areas-of-critical state concern provisions unconstitutional in Askew v. Cross Key Waterways, 372 So. 2d 913 (Fla. 1978). For analysis of this decision and the legislature's response to the Task Force's recommendations, see Pelham, *Regulating Areas of Critical State Concern: Florida and the Model Code*, 18 URB. L. ANN. 3, 53-77, 82-83 (1980).

11. TASK FORCE REP., *supra* note 9, at 3.

12. Ch. 80-315, 1980 Fla. Laws 1370 (current version at FLA. STAT. §§ 160.01-.09 (1983)).

13. *Id.* § 3, 1980 Fla. Laws at 1372, 1375 (current version at FLA. STAT. § 160.07 (1983)). The Act defined "comprehensive regional policy plan" as "a long-range guide for physical, economic, and social development of a comprehensive planning district which identifies regional goals and objectives and opportunities as embodied in the policies of a regional planning council." *Id.* § 3, 1980 Fla. Laws at 1372 (current version at FLA. STAT. § 160.003(7) (1983)).

14. *Id.* § 3, 1980 Fla. Laws 1372, 1375 (current version at FLA. STAT. § 160.07 (1983)).

"charged the Committee to review chapter 380, and all related growth management programs, and to prepare a blueprint to guide growth and development in Florida for the 80's and beyond."[15] In February 1984 the ELMS Committee issued its final report containing three major sets of recommendations. The first set called for the development of a statewide planning framework which would include a legislatively adopted state plan to be implemented in state agency functional plans, regional plans, and local government comprehensive plans. The second set of recommendations consisted of proposals to improve the DRI review process and to integrate the process into the statewide planning framework. The third group of recommendations addressed Florida's coastal management program and urged new legislation to protect the state's coastal resources and to require state approval of the coastal protection elements of local comprehensive plans.[16]

The recommendations of the ELMS Committee met with only limited success when considered by the 1984 legislature, which was preoccupied with major wetlands legislation.[17] A number of proposed bills, which collectively contained many of the elements of a statewide comprehensive planning framework, were introduced but were not passed by the legislature.[18] Several bills proposing reform of the developments of regional impact review process were also introduced, but only one passed.[19] However, the 1984 legislature did enact one highly significant piece of planning legislation which added important state and regional components to the emerging statewide comprehensive planning framework.

The Florida State and Regional Planning Act of 1984[20] had several significant features. First, it required preparation of a state comprehensive plan and established procedures for its adoption and implementation.[21] Second, the Act required each state agency to prepare and adopt a state agency functional plan consistent

15. ELMS REP., *supra* note 1, at 1.

16. *Id.* at 2-4.

17. The Warren S. Henderson Wetlands Protection Act, ch. 84-79, 1984 Fla. Laws 202 (codified at FLA. STAT. §§ 403.91-.929 (Supp. 1984)).

18. Fla. SB 962 (1984); Fla. SB 964 (1984); Fla. SB 1048 (1984); Fla. HB 1271 (1984).

19. Fla. SB 1096 (1984); Fla. SB 814 (1984). The exception that passed was CS for SB 860 (1984) (codified at FLA. STAT. § 380.06(26) (Supp. 1984)), which created a procedure for reviewing and approving areawide development plans.

20. Ch. 84-257, 1984 Fla. Laws 1166 (codified at FLA. STAT. §§ 186.001-.911 (Supp. 1984)) (hereinafter referred to as SRPA). For an excellent analysis of the Act, see Rhodes & Apgar, *Charting Florida's Course: The State and Regional Planning Act of 1984*, 12 FLA. ST. U.L. REV. 583 (1984).

21. FLA. STAT. §§ 186.007-.008 (Supp. 1984).

with the state comprehensive plan.[22] Third, the Act required each regional planning agency to prepare and adopt a comprehensive regional policy plan which is consistent with and implements the state comprehensive plan.[23] However, the Act did not require that local comprehensive plans be consistent with either the regional or state comprehensive plans. Thus, one essential component of an integrated statewide comprehensive planning framework was still missing.

The efforts of the past fourteen years finally reached fruition in 1985 with the enactment of two growth management laws of national significance. House Bill 1338 adopts the State Comprehensive Plan. House Bill 287, an omnibus act relating to growth management, requires local plans to be consistent with the state and regional comprehensive plans and provides for state review and approval of local plans, substantially alters the DRI review process and integrates the process into the statewide planning framework, and establishes new regulations for protecting the state's coastal resources. With the enactment of these two laws, Florida has finally achieved a statutory framework for a fully integrated state, regional, and local comprehensive planning process.

This Article is organized around the four major components of this landmark 1985 legislation. Part II of the Article describes and analyzes the preparation and adoption of the state comprehensive plan. Part III chronicles the legislative history of House Bill 287. Part IV analyzes the changes to the LGCPA, with special attention given to state administrative review of local comprehensive plans. Part V analyzes the revisions to the DRI process. Part VI analyzes the new coastal protection legislation. Based on these analyses, some conclusions are drawn about the efficacy and probable future of this legislation.

II. House Bill 1338: Adopting the State Comprehensive Plan

The State and Regional Planning Act of 1984[24] provided the planning framework under which the State Comprehensive Plan was to be prepared and adopted. Essentially, the Act created a hierarchical planning process consisting of a State Comprehensive Plan to be implemented through state agency functional plans and

22. Fla. Stat. § 186.021 (Supp. 1984).
23. Fla. Stat. §§ 186.507-.508 (Supp. 1984).
24. Ch. 84-257, 1984 Fla. Laws 1166 (codified at Fla. Stat. §§ 186.001-.911 (Supp. 1984)).

regional policy plans which are required to be consistent with the state plan.

As envisioned by the 1984 Act, the State Comprehensive Plan is a policy document "composed of goals and policies that are briefly stated in plain, easily understandable words and that give specific policy direction to state and regional agencies."[25] The purpose of the plan is to provide "long-range guidance for the orderly social, economic, and physical growth of the state."[26] Preparation of the plan is the responsibility of the Executive Office of the Governor which must also recommend the proposed plan to the Administration Commission for transmittal to both houses of the legislature.[27] The legislature was given authority to amend and adopt or reject the comprehensive plan during the legislative session immediately following transmittal of the plan by the Administration Commission.[28]

Within one year of adoption of the State Comprehensive Plan, the 1984 Act requires all state agencies to prepare functional plans consistent with the state comprehensive plan. The agency plan must contain "policies guiding the programs and functions of the agency" and objectives by which to evaluate the agency's achievement of its policies and the goals and policies of the state comprehensive plan.[29] The 1984 Act provides for agency adoption of the plans by rule after review of the plans by the Office of the Governor for consistency with the state plan.[30] An agency may petition the Florida Land and Water Adjudicatory Commission to resolve disputes between the Governor and state agency regarding the Governor's recommended changes or the consistency of the agency plan with the state comprehensive plan.[31]

Finally, the 1984 Act provides that each regional planning agency must prepare a comprehensive regional policy plan. The regional plan must contain regional goals and policies which are con-

25. FLA. STAT. § 186.007(1) (Supp. 1984). The state comprehensive plan cannot include a land use map. *Id.*

26. *Id.*

27. FLA. STAT. § 186.008(1)-(2) (Supp. 1984).

28. FLA. STAT. § 186.008(4) (Supp. 1984).

29. FLA. STAT. § 186.021(2) (Supp. 1984). Each agency plan must also identify "specific agency programs which support and further the goals and policies of the growth management portion" of the state plan and "infrastructure and capital improvement needs associated with the agency programs." *Id.*

30. FLA. STAT. § 186.022(1)-(2) (Supp. 1984).

31. FLA. STAT. § 186.022(2) (Supp. 1984).

sistent with and implement the state comprehensive plan.[32] In addition, the 1984 Act provides for adoption of regional policy plans in a manner similar to the functional agency plan adoption process, subject to review of the regional plans by the Office of the Governor and resolution of disputes by the Florida Land and Water Adjudicatory Commission.[33]

Obviously, preparation and adoption of the state comprehensive plan was the necessary first step in the implementation of the 1984 Act. This step was completed with the adoption of the state comprehensive plan by the legislature in 1985. The following sections describe and analyze the state plan and the process by which it was adopted.

A. Preparation of the Plan and Transmittal to the Legislature

The Office of Planning and Budgeting in the Executive Office of the Governor prepared a draft state comprehensive plan (Governor's Plan) which was published in December 1984.[34] Subsequently, a series of public hearings were held around the state during January 1985 to obtain public response and recommendations.[35] Following the public hearings, the Office of Budgeting and Planning made numerous refinements and amendments to the Governor's Plan.[36] Acting as the Administration Commission, the Governor and Cabinet held public hearings on the proposed plan on February 19 and March 6, 1985. During its consideration of the Governor's Plan, the Administration Commission made only two minor technical amendments to the proposed state plan.[37]

The revised Governor's Plan considered by the Administration

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32. FLA. STAT. § 186.507(1) (Supp. 1984).

33. FLA. STAT. § 186.508 (Supp. 1984).

34. OFFICE OF PLANNING AND BUDGETING, EXEC. OFFICE OF THE GOV., THE PROPOSED FLORIDA STATE PLAN (Dec. 1984) [hereinafter cited as DECEMBER 1984 PLAN].

35. ATT'Y GEN. JIM SMITH, DISSENTING REPORT ON PROPOSED STATE COMPREHENSIVE PLAN 2-3 (Mar. 1985) [hereinafter cited as DISSENTING REP.]. The attorney general criticized the public hearing process as providing little opportunity for public input since many participants had not seen the plan prior to the public meetings. *Id.*

36. *Compare* DECEMBER 1984 PLAN, *supra* note 34, *with* GOVERNOR AND CABINET, THE FLORIDA STATE PLAN, (Mar. 1985) [hereinafter cited as MARCH 1985 PLAN]. The structure and format of the December and March State Plans were identical. Modifications consisted primarily of refinements to goal and policy statements, the combining of two goals relating to education into a single goal, and the elimination of the goal of "Encouraging Independence and Family Integrity." *Id.*

37. Fla. Admin. Comm'n, tape recording of proceedings (Mar. 6, 1985) (on file, Fla. Dep't of State, Tallahassee, Fla.).

Commission was divided into five general sections: "Our People, Our Natural Environment, Our Communities, Our Economy and Managing our Growth and Change".[38] Within each broad subject category, the plan contained an introduction, guiding principles, measurable goals, and specific policies designed to achieve the goals. The purpose of the goals was to provide the benchmark by which success in implementation of the plan could be measured.[39]

Although the 1984 Act only required that the state plan address growth and development, it permitted the plan to encompass a wide range of other problems.[40] The Office of Planning and Budgeting exercised this discretionary authority and prepared a state comprehensive plan that deals with almost all areas of life in Florida. The Governor's Plan offered ambitious and optimistic goals in all these subject areas with little recognition of the potential conflict among them and of the policy choices that will have to be made along the way. A basic assumption of the draft plan was that "Florida can support population and economic growth and still protect its environmental heritage by fulfilling the policies established in this Plan."[41]

The Administration Commission unanimously adopted a motion to transmit the Governor's Plan to the legislature at the close of its public hearing on March 6, 1985, after Attorney General Jim Smith objected to a motion to both "adopt and transmit" the plan to the legislature.[42] In his dissenting report transmitted to the legislature as provided in the State and Regional Planning Act, the Attorney General objected to the draft plan because of its limited time frame which precluded adequate analysis and public partici-

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38. MARCH 1985 PLAN, *supra* note 36, PREFACE.

39. *Id.* The March 1985 State Plan described goals as "measurable specific outcomes that represent one desired result if the policies in each section are fully implemented. Each one is time-specific, and the outcome is clearly stated. Using these goals, we will be able to mark our progress as we proceed into the future." *Id.*

40. FLA. STAT. § 186.007(2) (Supp. 1984) *requires* the plan to deal with "problems, opportunities, and needs associated with growth and development in this state, particularly . . . land use, water resources, and transportation system development." FLA. STAT. § 186.007(3) (Supp. 1984) provides that the plan "*may* include goals and policies related to the following program areas: economic opportunities; agriculture; employment; public safety; education; health concerns; social welfare concerns; housing and community development; natural resources and environmental management; recreational and cultural opportunities; transportation; and governmental direction and support services" (emphasis added).

41. MARCH 1985 PLAN, *supra* note 36, at ii. Some speakers at the public hearings on the draft State Plan before the Governor and Cabinet criticized the plan for not seeking to limit or discourage growth. Fla. Admin. Comm'n, tape recording of proceedings (Feb. 19, 1985) (on file, Fla. Dep't of State, Tallahasssee, Fla.).

42. Fla. Admin. Comm'n, *supra* note 37.

pation, the lack of a fiscal analysis accompanying the plan, and a lack of standards and criteria in the state plan.[43] The Attorney General recommended the plan not be adopted by the legislature but be returned to the Administration Commission for further development.[44]

A fiscal analysis of the proposed plan was released by the Governor's office on April 11, 1985.[45] The analysis attempted a generalized estimate of the cost of attaining the goals identified in the plan. The total governmental cost of achieving the plan's goals was estimated at between $32 and $35 billion.[46] While many of the estimated costs were identified as "costs that governments in Florida would have incurred with or without the Plan,"[47] the estimate did not offer suggestions for how to pay the price tag of the plan. Instead, it suggested only that "growth must pay for itself, and that, to the extent possible, those costs should be borne by a variety of user-related assessments."[48]

The State and Regional Planning Act of 1984 required the Administration Commission to identify "those portions of the plan that are not based on existing law."[49] In a memorandum dated March 21, 1985, the Governor's office identified no goals and only six policies as "needing additional statutory authority prior to their implementation."[50] The short list of policies not authorized by existing law emphasized the evolutionary nature of the state plan based on the existing regulatory system. Curiously, the plan did not identify any goals or policies for managing growth and change as requiring additional legislative authority, although the 1985 legislature was already considering drastic revisions to the state's growth management system.

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43. FLA. STAT. § 186.008(1) (Supp. 1984); DISSENTING REP., *supra* note 35, at 1-2.

44. DISSENTING REP., *supra* note 35, at 8.

45. Memorandum from John T. Herndon, Director of Office of Planning and Budgeting, to Interested Parties, Estimated Fiscal Impact of the Florida State Plan (Apr. 11, 1985) [hereinafter cited as Herndon Memorandum].

46. Office of Planning and Budgeting, Exec. Office of the Gov., The Florida State Plan (1985) Fiscal Note (Apr. 12, 1985) (available at Office of Planning and Budgeting) [hereinafter cited as Fiscal Note].

47. Herndon Memorandum, *supra* note 45, at 2.

48. *Id.*

49. FLA. STAT. § 186.008(2) (Supp. 1984).

50. Memorandum from John T. Herndon, Director of Office of Planning and Budgeting, to Harry A. Johnston, II, President of the Senate, and James Harold Thompson, Speaker of the House, Update on Citations for the Florida State Plan (Mar. 21, 1985).

B. Action on the State Plan by the Legislature

1. The House of Representatives

After receiving the Governor's proposed plan from the Administration Commission, the House commenced preparation of its own version. A new draft plan, prepared with considerable input from the Speaker of the House, James Harold Thompson,[51] was considered by the House Appropriations Committee on April 25 and 26, 1985. The plan was embodied in House Bill 1338. A major difference between the Governor's Plan and the House version was the elimination of quantitative goals and specific deadlines for obtaining the goals. In sharp contrast to the Governor's Plan which contained twenty-nine goals stated in quantitative terms with specific time frames for attaining the goals, the plan considered by the House Appropriations Committee contained only one quantitative goal with a specific time frame.[52] While over 230 amendments were filed by members of the House Appropriations Committee, only minor changes were made at the April 26th committee meeting. At the House Appropriations Committee hearing, two new goals and corresponding policies were added, property rights and the family.[53] The family goal—"strengthen the family and promote its economic independence"[54]—is typical of the general nature of the House goals. The property rights goal called for protection of private property rights and contained a policy calling for a "system of compensable regulation" for government action determined to be a taking.[55] In addition, the House Appropriations Committee approved an amendment which would have required functional agency plans to be adopted by the legislature prior to their implementation[56] and added a provision creating a State Comprehensive Plan Resource Commission to review the ability of state and local government to finance current operations and infrastructure im-

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51. Dem., Gretna. Bruns, *Graham pushes plan for growth as House leader drafts ideas*, Tallahassee Democrat, Apr. 18, 1985, at A5, col. 4.

52. *Compare* MARCH 1985 PLAN, *supra* note 36 (which had only one goal with no specific time frames or quantitative measure for implementing the Plan) *with* Fla. H.R. PCB AP 85-4, sec. 2 (1985) (which had only one quantitative goal, air quality).

53. Fla. H.R., Comm. on Approp., tape recording of proceedings (Apr. 26, 1985) (on file with the committee); the new goals as approved by the House Comm. on Approp. are contained in Fla. HB 1338, sec. 2 (1985) ((3) Families and (15) Property Rights).

54. Fla. HB 1338, sec. 2 (1985), at 9, subsection (3), paragraph (a).

55. *Id.* at 41, subsection (27), paragraph (a), subparagraph 2. This would allow government to modify, recind, or grant a variance in lieu of judicial compensation. *Id.*

56. Fla. HB 1338, sec. 1 (1985), at 3, subsection (5).

provements needed to implement the State Comprehensive Plan.[57]

The House adopted House Bill 1338, which contained the State Comprehensive Plan, by a unanimous vote on April 30, 1985.[58] Before adopting the bill, however, the House substituted language requiring legislative review and appropriation of specific program funding prior to implementation of an agency functional plan. Ongoing legislative review of agency plans after implementation was also required.[59] The bill also repealed the provision of the State and Regional Planning Act of 1984 requiring agencies to adopt agency plans as rules.[60] The House added a provision requiring the Governor to submit a biennial report on the State Comprehensive Plan to the legislature.[61]

2. *The Senate*

The proposed state plan was considered by a select committee of fourteen members chaired by Senator Kenneth Jenne.[62] The Select Committee's initial approach to plan drafting was to codify in Senate Bill 549 the proposed Governor's Plan as submitted by the Administration Commission.[63] After a series of Select Committee subcommittee meetings in April, the Select Committee considered a revised version of the Governor's Plan at a meeting on April 29, 1985.[64]

Like the Governor's Plan transmitted by the Administration Commission, the revised plan emerging from the Select Committee contained thirty goals. Twenty-eight goals covered essentially the same topic areas in both plans. The Senate plan combined the policies included under two goals, Transportation As A Support System and Transportation and Growth Management, into the single goal of Coordinated Transportation Systems, and added a new goal of Property Rights.[65] While the Governor's Plan attempted to pro-

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57. *Id.* sec. 3 (1985).

58. FLA. H.R. JOUR. 228 (Reg. Sess. Apr. 30, 1985).

59. *Id.* at 224 (Amendment 19).

60. *Id.* (Amendment 21).

61. *Id.* (Amendment 19).

62. Dem., Hollywood. Fla. S., Select Comm. on the State Comprehensive Plan, Agenda (Apr. 1, 1985).

63. Fla. SB 549, sec. 2 (1985). "The Legislature hereby adopts as the Official State Comprehensive Plan the specific goals and policies . . . transmitted to the Legislature by the Administration Commission on March 6, 1985. . . ." *Id.*

64. Fla. S., Select Comm. on the State Comprehensive Plan, tape recording of proceedings (Apr. 29, 1985) (on file with Fla. S. Comm. on Nat. Resources).

65. *Compare* Fla. SB 549, sec. 2 (1985) (Amendment 1) *with* Fla. SB 549, sec. 2 (1985)

vide quantifiable goals with reasonable time frames for almost all goals, the Senate Select Committee, like the House, eliminated many of the quantitative goals and time frames. However, the Committee's revised plan retained thirteen goals with both quantifiable goals and specific target dates.[66]

As in the House, the Senate devoted numerous hours to consideration of amendments to the wording of various goals and policies proposed by interest groups who monitored the plan's progress. The precise wording of the goals and policies that emerged from the Select Committee was the result of vigorous interaction and debate among legislators and competing interest groups. Nevertheless, the only new goal to emerge from the Select Committee Hearing on April 29 was a goal to protect private property rights.[67] While the Select Committee considered language previously approved by the House Appropriations Committee which provided for "a system of compensation" for regulation that resulted in a taking, the Select Committee specifically eliminated any reference to "compensable regulation."[68]

The sharpest debate in the Select Committee concerned the role of the legislature in the approval of agency functional plans. As submitted to the Select Committee, the draft of Senate Bill 549 amended sections 186.021 and 186.022 of the State and Regional Planning Act of 1984 regarding the preparation and amendment of agency functional plans. There was a general consensus among committee members that the adoption of agency plans constitutes important policymaking which should not be delegated to the executive branch. The basic change proposed in the agency functional plan process was to provide for legislative review and modification of state agency plans.[69] A similar provision was added to the com-

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(containing the goals as transmitted by the Admin. Comm'n).

66. Fla. SB 549 (1985) (Amendment 1). The plan contains the following goals in sec. 2 with quantifiable criteria and specific timeframes: (2) expanded educational opportunities; (3) protection of children; (4) increased self sufficiency for elderly persons; (6) expanded community based treatment; (7) an improved correctional system; (8) increased emphasis on prevention; (12) protection of air quality; (18) expanded access to cultural and historical resources; (19) increased highway safety; (20) reduced crime; (24) increased research to promote economic development; (26) increased tourism and (28) expanded access to the job market.

67. Fla. S., Select Comm. on the State Comprehensive Plan, *supra* note 64. The new goal was included as goal 30 in Fla. SB 549, sec. 2 (1985) (Amendment 1).

68. *Id.*

69. Fla. SB 549, sec. 3 (1985) (preliminary draft of Amendment 1) (amending FLA. STAT. § 186.022(2) (Supp. 1984)) (on file, *Florida State University Law Review*).

mittee draft bill covering regional policy plans.[70] The committee bill also proposed to exempt agency adoption of functional plans as rules from the drawout procedures of the Florida Administrative Procedure Act (APA).[71]

Similar to the House's action, the Senate Select Committee added a provision to the plan to create a Local Government Infrastructure Needs and Financing Alternatives Committee.[72] One purpose of the proposed committee was to examine infrastructure needs and to propose "innovative financing techniques . . . to provide for needed infrastructure investment."[73]

On May 9, the full Senate approved the State Comprehensive Plan as an amendment to the earlier adopted House Bill 1338, the House's version of the plan.[74] The Senate made only four minor amendments to the bill[75] and passed the State Comprehensive Plan by a 37-1 vote, with Senator Dempsey Barron[76] the lone dissenter.[77]

3. Conference Committee Report on House Bill 1338 and Adoption of the State Comprehensive Plan

The House and the Senate versions of the State Comprehensive Plan were structured around the topics included in the Governor's plan.[78] Both plans contained identical language concerning legislative intent, construction, and application.[79] The primary differences in the plans were twofold. First, the Senate plan contained numerous quantifiable goals with measurable time frames compared to the more general House goals which had no attainment deadlines.[80] Second, the Senate plan provided for legislative adop-

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70. *Id.* sec. 6 (amending FLA. STAT. § 186.508(2) (Supp. 1984)).

71. *Id.* sec. 4 (amending FLA. STAT. § 186.021(5) (Supp. 1984)) exempts agency plans from drawout procedures available in the Administrative Procedure Act rulemaking process, FLA. STAT. § 120.54(4) (1983).

72. Fla. SB 549, sec. 8 (1985) (Amendment 1).

73. *Id.* at 46, subsection (3), paragraph (c).

74. FLA. S. JOUR. 259, 260 (Reg. Sess. May 9, 1985).

75. *Id.* at 259.

76. Dem., Panama City.

77. FLA. S. JOUR. 259 (Reg. Sess. May 9, 1985).

78. *Compare* Fla. HB 1338 (1985) (First Engrossed) *with* Fla. HB 1338 (1985) (as approved by the Senate; FLA. S.JOUR. 249-260 (Reg. Sess. May 9 1985)).

79. *Compare* Fla. HB 1338, sec. 2 (1985) (First Engrossed) *with* Fla. HB 1338 (1985) (as approved by the Senate, FLA. S. JOUR. 249-260 (Reg. Sess. May 9, 1985)).

80. Fla. HB 1338, sec. 2 (1985) (as approved by the Senate) had thirteen quantitative goals with specific timeframes. The goals were numbered 2, 3, 4, 6, 7, 8, 12, 18, 19, 20, 24, 26, and 28. Fla. HB 1338, sec. 2 (1985) (First Engrossed) had one specific goal, goal 11.

tion of state agency functional plans while the House bill provided for legislative review but provided no mechanism for legislative approval or rejection of agency plans.[81] These differences were resolved by a Conference Committee of the two houses.

A compromise bill emerged from the Conference Committee and was approved by both houses of the legislature[82] and signed into law by the Governor on May 31, 1985.[83] As adopted, House Bill 1338 contains a statement of legislative intent, the state comprehensive plan, amendments to chapter 186, Florida Statutes (concerning the preparation of agency functional plans), and the creation of a twenty-one member State Comprehensive Plan Committee to study infrastructure needs and financing techniques necessary to implement the plan.[84]

The adopted State Comprehensive Plan represents the consolidation of, and a compromise between, the House and the Senate plans. Some of the Senate goals were relegated to policies in the adopted plan.[85] Although the conference committee report included a projected time frame of "the next 10 or 15 years" for attainment of all goals,[86] House Bill 1338, as finally adopted, rejected the quantitative goals and specific time frames proposed in the Governor's Plan and the Senate plan in favor of the more generalized goals of the House plan. The adopted State Comprehensive Plan contains twenty-five goals, each of which has its own set of policies.[87] To illustrate the nature of the State Comprehensive Plan, the goal and policies for land use as established by the Act are set forth here:

> (16) LAND USE.—
>
> (a) Goal.—In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or

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81. *Compare* Fla. HB 1338, sec. 1 (1985) (First Engrossed) *with* Fla. HB 1338, sec. 1 (1985) (as approved by the Senate, FLA. S. JOUR. 249 (Reg. Sess. May 9, 1985)).

82. *See* FLA. S. JOUR. 397 (Reg. Sess. May 23, 1985); FLA. H.R. JOUR. 493 (Reg. Sess. May 21, 1985).

83. Ch. 85-57, § 8, 1985 Fla. Laws 295, 324.

84. *See* FLA. H.R. JOUR. 481 (Reg. Sess. May 21, 1985) (Summary, Conference Committee Amendments to HB 1338).

85. Goals 2, 7, and 20 of the Senate Plan in FLA. S. JOUR. 249-60 (Reg. Sess. May 9, 1985) became policies 1(b)7, 7(b)1, and 7(b)8 in ch. 85-57, § 2, 1985 Fla. Laws 295, 296.

86. *See* FLA. H.R. JOUR. 481 (Reg. Sess. May 21, 1985) (Summary, Conference Committee Amendments to HB 1338).

87. Ch. 85-57, § 2, 1985 Fla. Laws 295, 296.

have agreements to provide, the land and water resources, fiscal abilities, and the service capacity to accommodate growth in an environmentally acceptable manner.

(b) Policies.—

1. Promote state programs, investments, and development and redevelopment activities which encourage efficient development and occur in areas which will have the capacity to service new population and commerce.

2. Develop of a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats.

3. Enhance the liveability and character of urban areas through the encouragement of an attractive and functional mix of living, working, shopping, and recreational activities.

4. Develop a system of intergovernmental negotiation for siting locally unpopular public and private land uses which considers the area of population served, the impact on land development patterns or important natural resources, and the cost-effectiveness of service delivery.

5. Encourage and assist local governments in establishing comprehensive impact-review procedures to evaluate the effects of significant development activities in their jurisdictions.

6. Consider, in land use planning and regulation, the impact of land use on water quality and quantity, the availability of land, water, and other natural resources to meet demands, and the potential for flooding.

7. Provide educational programs and research to meet state, regional, and local planning and growth-management needs.[88]

The generalized goals of the state plan represent both a legislative reluctance to provide levers which could be used by interest groups to compel adoption of their special programs and a recognition that fixed and specific goals and attainment deadlines may not be realistic. However, even in their highly generalized form, the

88. *Id.*

adopted goals and policies are a remarkable policy statement on the diverse subject matter which the legislature has adopted as law. By adopting these goals and policies, the legislature has given the state comprehensive planning process a credibility and stature it probably could never have achieved if the legislature had opted to take no action on the plan and forced the Administration Commission to adopt the plan by rule as originally allowed by chapter 186.[89]

House Bill 1338 contains a statement of legislative intent and construction which provides guidelines for the state plan's application. The purpose of the state plan is to provide "long-range policy guidance."[90] It is a "direction-setting document," which is to be implemented "only to the extent that financial resources are provided . . . . The plan does not create regulatory authority or authorize the adoption of agency rules, criteria, or standards not otherwise authorized by law."[91] If taken in isolation, this statement would indicate that the plan has little if any statutory authority and would not provide a basis for decisionmaking except in the preparation of agency functional plans and regional policy plans. However, it should be noted that House Bill 287, the growth management act also adopted in 1985 and discussed in subsequent sections of this Article, provides that local comprehensive plans must be consistent with the State Comprehensive Plan.[92]

Two other rules of application should be noted. The goals and policies of the state plan must be "reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, and consistent with the protection of private property rights."[93] Also, the plan must be construed and applied as a whole; no goal or policy is to be construed or applied in isolation from the other goals and policies of the plan.[94]

Reflecting the legislature's concern about the cost of implementing the plan, House Bill 1338 creates a State Comprehensive Plan Committee, made up of members appointed by the Governor, the President of the Senate, and the Speaker of the House.[95] The Committee is directed to prepare studies analyzing state and local

89. FLA. STAT. § 186.008(4) (Supp. 1984).
90. Ch. 85-57, § 1, 1985 Fla. Laws 295, 295.
91. *Id.*
92. Ch. 85-55, § 6, 1985 Fla. Laws 207, 215 (to be codified at FLA. STAT. § 163.3177(9)(c)).
93. Ch. 85-57, § 1, 1985 Fla. Laws. 295, 295.
94. *Id.*
95. Ch. 85-57, § 3, 1985 Fla. Laws 295, 322.

governments' abilities to fund existing operations and the future operations and facilities needed to implement the State Comprehensive Plan during the next ten years. In addition, the Committee is also required to recommend a set of tax and alternative financing mechanisms for the financing of state and local governmental programs necessary to implement the plan.[96] Establishment of the study commission is an encouraging sign that the legislature recognizes that unless new funding sources are made available to state and local governments in Florida, the estimated revenues of over $30 billion needed to implement the state plan during the next ten years will not be available.[97]

House Bill 1338 also amends the provisions of the State and Regional Planning Act of 1984 concerning the adoption and status of state agency functional plans. The 1984 Act provided for the adoption of the plans as rules by state agencies after incorporation of revisions recommended by the Governor or the Adjudicatory Commission.[98] House Bill 1338 eliminates the requirement that state agency functional plans be adopted as rules and exempts the plans from the provisions of the Florida Administrative Procedure Act.[99] While House Bill 1338 does require that each agency must submit its functional plan to the President of the Senate and the Speaker of the House at least thirty days prior to the next legislative session, no provision is made for legislative review, adoption, or rejection.[100]

Under the provisions of House Bill 1338, state agency functional plans are to be based on existing statutory or constitutional authority. Each agency plan must identify the specific legislative authority and financial resources necessary to implement its functional plan. The agency cannot implement any portion of its plan unless both the necessary legal authority and the financial re-

96. *Id.*

97. Fiscal Note, *supra* note 46. Lack of adequate funding has significantly hindered the planning process at all levels of state government. ELMS REP., *supra* note 1, at 7.

98. FLA. STAT. § 186.022(2) (Supp. 1984).

99. Ch. 85-57, § 4, 1985 Fla. Laws 295, 323 (amending FLA. STAT. § 186.022 (Supp. 1984)).

100. *Id.* (amending FLA. STAT. § 186.022(3) (Supp. 1984)). The legislature, in amending the State and Regional Planning Act of 1984, created a role for itself in the oversight of agency plans. The State and Regional Planning Act now provides for (1) the Governor's office to consult with the Speaker of the House and the President of the Senate in developing instructions for use by agencies in preparing plans, *id.*; (2) transmittal of agency plans to the legislature, *id.* (amending FLA. STAT. § 186.022(6) (Supp. 1984)). This transmittal to the legislature is apparently for informational purposes only and the legislature has given itself no authority to review or modify agency plans.

sources for that portion already exist.[101] Thus, an agency plan will not invest an agency with any independent or additional legal authority.

4. Other Changes in the State and Regional Comprehensive Planning Process

House Bill 1338 is not the only legislation affecting the State Comprehensive Plan to be enacted in 1985. House Bill 287, which is analyzed in detail in Part IV, also includes some provisions which significantly enhance the status of both the State Comprehensive Plan and the comprehensive regional policy plans. The Act includes the State Comprehensive Plan and regional policy plans as criteria to be used in (1) state and regional review and approval of local comprehensive plans;[102] (2) reviewing requests to decrease or increase developments of regional impact (DRI) thresholds; and (3) acting on petitions for certification of local governmental review of developments of regional impact.[103]

Given the increased significance of regional plans, it is not surprising that the legislature changed the process for their adoption. The State and Regional Planning Act of 1984 required each regional planning agency to adopt a plan by rule with no provision for state legislative review and approval.[104] House Bill 287 amends the adoption process for comprehensive regional policy plans to provide that the legislature shall review and may modify, reject, or take no action on regional policy plans prior to their adoption by the regional planning agencies.[105]

III. HOUSE BILL 287: THE LEGISLATIVE HISTORY

In his State of the State speech to a joint session of the Florida Legislature on April 2, 1985, Governor Bob Graham issued a clarion call for a state comprehensive plan, more special taxing districts to pay for growth, and forcing coastal cities and counties either to meet state planning standards or lose state aid. " 'Growth

101. Ch. 85-57, § 4, 1985 Fla. Laws 295, 323 (amending FLA. STAT. § 186.022 (Supp. 1984)).

102. Ch. 85-55, § 6, 1985 Fla. Laws 207, 215 (amending FLA. STAT. § 163.3177(9) (1983)); *id.* § 8, 1985 Fla. Laws 207, 221 (amending FLA. STAT. § 163.3184(2) (Supp. 1984)).

103. *Id.* § 43, 1985 Fla. Laws 207, 256 (amending FLA. STAT. § 380.06(3)(a) (Supp. 1984)); *id.* § 45, 1985 Fla. Laws 207, 286 (to be codified at FLA. STAT. § 380.065 (2)).

104. FLA. STAT. § 186.508(2) (Supp. 1984).

105. Ch. 85-55, § 23, 1985 Fla. Laws 207, 236 (amending FLA. STAT. § 186.508 (Supp. 1984)).

in Florida must pay the cost of growth in Florida. . . . The alternatives are unacceptable,' " said Governor Graham.[106] With that gubernatorial mandate, the House of Representatives and the Senate began deliberations on House Bill 287 and its Senate counterparts.

House Bill 287,[107] prefiled by Representative Jon Mills,[108] the speaker-designate of the 1985 Regular Session, contained three major parts. The first part set forth substantial amendments to the DRI provisions of chapter 380. The second major subject of House Bill 287 essentially constituted an attempt at providing greater protection for Florida's coastal resources, including strengthened building codes and coastal infrastructure policy. The third major section substantially amended the provisions of the LGCPA. The Senate did not follow the House's omnibus approach but instead tackled the three general topics set forth in House Bill 287 in three separate bills.[109] Generally, however, House Bill 287 and its Senate counterparts contained substantially similar, and in many cases identical, provisions.

Committees of both houses then began the arduous process of considering these legislative packages and the amendments proposed by developers, other private interests, environmental groups, state agencies, and municipal and county governments. Hundreds of proposed amendments, the overwhelming majority of which were largely technical or noncontroversial in nature, were considered by the respective committees of both houses. That is not to say that the amendatory process was without controversy. There were, moreover, several substantive additions that were not contemplated in the original legislative packages.

Perhaps the most significant addition to House Bill 287 was the inclusion of provisions relating to certification of local government review of DRIs.[110] Frustrated in their attempts to either pare down

106. Bruns, *Graham opens session with upbeat speech,* Tallahassee Democrat, Apr. 3, 1985, at A1, col. 4.

107. Fla. HB 287 (1985) was substantially revised in committee after its introduction. The committee substitute, Fla. CS for HB 287 (1985), became the vehicle for further legislative deliberations in the House and was eventually adopted by the legislature. *See* ch. 85-55, 1985 Fla. Laws 207. For convenience and readability, however, the new law will be referred to throughout this article as House Bill 287.

108. Dem., Gainesville.

109. *See* Fla. SB 441 (1985) (amendments to DRI provisions of chapter 380); Fla. SB 1143 (1985) (amendments to LGCPA); Fla. SB 122 (1985) (Senate Bills 84, 85, and 122 had been previously combined into Fla. CS for Fla. SB 112 (1985) on Mar. 6, 1985 by the Senate Comm. on Nat. Resources & Conser.).

110. Ch. 85-55, § 45, 1985 Fla. Laws 207, 286 (to be codified at FLA. STAT. § 380.065).

or "sunset"[111] the DRI provisions of section 380.06, representatives of Florida's large community developers proposed that local governments meeting certain specified criteria be allowed to petition the Administration Commission for certification to review DRIs located within their jurisdiction in lieu of meeting the regional review requirements set forth in section 380.06. The Florida Department of Community Affairs (DCA) originally took a rather dim view of this proposal, and Secretary John DeGrove even went so far as to assert that such a local review option was unnecessarily duplicative of procedures and resources already in place with the respective regional planning councils.[112] However, the Department's representatives subsequently lessened their opposition to the proposal and even worked with representatives of Florida's large community developers to prepare a mutually acceptable package for submission to the Senate and the House. An agreement was reached and on May 7, 1985 the local review option provisions were adopted without objection by the Senate Committee on Economic, Community, and Consumer Affairs and were thereafter incorporated in all subsequent revisions of each house's proposed bills.[113]

The second significant addition to House Bill 287 was the inclusion of the "Florida's Quality Developments program."[114] The seed for this exemption from the regional review requirements of section 380.06 for "thoughtfully planned" developments meeting certain stringent criteria was apparently planted in the mind of Representative Mills by a well-respected lobbyist who opined to the Representative that it was unfortunate that exceptionally well-planned DRIs were not exempt from section 380.06. [115] That seed having been planted, Representative Mills then made a similar observation to a lobbyist for several environmental groups, who in turn proposed the creation of "Florida's Quality Developments program."[116] Subsequent meetings between these two lobbyists ironed out the provisions of this limited exemption, and it was inserted into House Bill 287 without objection and with little

111. FLA. STAT. § 11.61 (1983).

112. Fla. H.R., Select Comm. on Growth Mgmt., tape recording of proceedings (Apr. 24, 1985) (statement by John DeGrove, Sec., Dep't of Community Affairs).

113. Fla. CS for CS for SB 441 (1985).

114. Ch. 85-55, § 44, 1985 Fla. Laws 207, 282 (to be codified at FLA. STAT. § 380.061).

115. Telephone conversation with Wade Hopping, Esq., lobbyist for ITT Community Development Corp. and Gulfstream Land & Development Corp. (July 10, 1985).

116. Telephone conversation with Casey Gluckman, Esq., lobbyist for Sierra Club and Fla. League of Anglers (July 10, 1985).

fanfare.

The foremost controversy generated during consideration of House Bill 287 concerned local citizens' standing to challenge development and development orders. Initially, both legislative packages granted broad standing to any "substantially affected" person to challenge DRIs[117] and to "any aggrieved or adversely affected citizen" to challenge other local development orders as well as to enforce the provisions of the LGCPA and any ordinances adopted pursuant to that Act.[118]

The provision granting standing to "substantially affected" persons to challenge DRIs was soon eliminated upon the general agreement of the interested parties, including environmental interests. Accordingly, the provisions regarding broader standing under chapter 380 were excised in later drafts of the proposed legislation without fanfare.[119] On the other hand, broadened standing to challenge other local development orders as well as to enforce the provisions of the LGCPA quickly became the major source of controversy and remained a point of conflict between the House and Senate until the waning days of the 1985 Regular Session.

The Senate Natural Resources Committee struck first on April 16, 1985, when it reported favorably a Committee Substitute for Senate Bill 441 that gave all "affected" citizens the right to sue when a local government failed to follow or implement a duly adopted local government comprehensive plan.[120] The House leadership bridled at such broadened standing provisions, and the House Natural Resources Committee, on May 6, 1985, approved a substantial rewrite of House Bill 287 by its Select Committee on Growth Management to allow standing only to those persons who could prove that their interests were affected to a greater degree than those in the community at large.[121] This more restrictive standing test, the second of three standing tests articulated by the court in *Renard v. Dade County*,[122] was commonly referred to

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117. Fla. HB 287, sec. 6 (1985) (amending FLA. STAT. § 380.07(2) (Supp. 1984)); Fla. SB 441, sec. 7 (1985) (to be codified at FLA. STAT. § 163.3215).

118. Fla. HB 287, sec. 55 (1985) (to be codified at FLA. STAT. § 163.3298); Fla. SB 441, sec. 7 (1985) (to be codified at FLA. STAT. § 163.3215).

119. *Compare* Fla. CS for HB 287 (1985) *with* Fla. HB 287, sec. 6 (1985); *compare* Fla. CS for SB 441 (1985) *with* Fla. SB 441, sec. 7 (1985).

120. *See* Fla. CS for SB 441, sec. 7 (1985); Leonard, *Bill would give citizens right to sue over development plans*, Tallahassee Democrat, Apr. 17, 1985, at A6, col. 2.

121. Fla. CS for HB 287, sec. 37 (1985) (to be codified at FLA. STAT. § 163.3125(1)-(2)).

122. *See* Renard v. Dade County, 261 So. 2d 832, 837-38 (Fla. 1972). The second test in *Renard* states that "persons having a legally recognizable interest, which is adversely af-

throughout the legislative process as *Renard* II. It was subsequently approved by the full House upon the first reading of House Bill 287 on May 15, 1985. This prompted a spokesman for the Florida Audubon Society to remark, "The only hope for growth management this year now comes from the Senate."[123]

Standing, however, was not the only major bone of contention between the two houses. Both legislative packages originally set very stringent standards for state funding of infrastructure in coastal areas, particularly on coastal barrier islands. In effect, the original provisions of both House Bill 287 and Senate Bill 122 virtually precluded any state infrastructure funding whatsoever for defined coastal barrier areas.[124] Such a provision was generally acceptable to the Senate, and it remained in the various committee substitutes for Senate Bill 122 until the final days of the session. However, the House, and particularly Speaker James Harold Thompson, vigorously opposed such a cutoff of state funds, arguing that it unfairly discriminated against north Florida's relatively undeveloped beach areas.[125] Accordingly, the House Select Committee on Growth Management, and subsequently the House Natural Resources Committee and the full House narrowed this coastal infrastructure policy to provide only that state funding for infrastructure in such areas must be consistent with a duly promulgated local government comprehensive plan.[126]

One further sticking point concerned the rebuilding of structures destroyed by a major storm event which were located within the thirty-year erosion control line. The Senate required that there be an intact foundation upon which the property owner could rebuild.[127] The House, apparently finding this too restrictive, expanded the exemption from the erosion control line to allow property owners to rebuild structures even if the foundation were gone.[128]

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fected by the proposed zoning action" have standing to attack a validly enacted zoning ordinance as an unreasonable exercise of legislative power. *Id.* at 838. According to the court, a person having a "legally recognizable interest" is one with "a definite interest exceeding the general interest in community good shared in common with all citizens." *Id.* at 837.

123. Bruns, *House passes weakened growth management bill*, Tallahassee Democrat, May 15, 1985, at A6, col. 1.

124. Fla. HB 287, sec. 24 (1985); Fla. SB 122, sec. 3 (1985).

125. Bruns, *House, Senate Leaders make tentative deal on managing growth*, Tallahassee Democrat, May 24, 1984, at A6, col. 4.

126. Fla. CS for HB 287, sec. 15 (1985) (to be codified at FLA. STAT. § 161.55).

127. Bruns, *supra* note 123.

128. Fla. CS for HB 287, sec. 12 (1985) (First Engrossed) (to be codified at FLA. STAT. § 161.053(12)).

Against this backdrop the House and Senate entered the final days of the session seemingly deadlocked on these three issues. On the one hand, House leaders stated that they would never accept the original broadened standing provisions to challenge local development orders and to enforce local government comprehensive plans. Environmental groups, on the other hand, threatened to ask Governor Graham to veto the entire package unless the final package gave greater rights to citizens to challenge developments in court.[129]

Accordingly, on May 20, 1985, key Senate and House members met to discuss a possible compromise.[130] Senate President-designate Ken Jenne, Senate Natural Resources Committee Chairman George Stuart,[131] House Budget Committee Chairman Sam Bell,[132] House Speaker-designate Jon Mills and House Natural Resources Committee Chairman James Ward[133] were present.[134] Senators Stuart and Jenne proposed that ordinary citizens be given standing to challenge local government comprehensive plans and regulations but that standing be otherwise limited to those persons meeting the *Renard* II criteria.[135] Still, the House legislative leaders balked at compromise,[136] and several days later, the House and Senate leadership still could not reach agreement on standing and coastal building controls.[137] The controversy with regard to coastal building controls was over the circumstances in which the owner of a destroyed structure could rebuild it.

On May 22, 1985, the Senate Budget Committee approved a three-tiered standing provision in an apparent attempt to reconcile the differences between the House and Senate on this point.[138] Under the standing provisions approved by the Senate Budget Committee, any citizen would be afforded standing to challenge a local government's comprehensive plan.[139] However, only "substantially affected" persons could challenge land development regula-

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129. Bruns, *House OKs state plan, accord on growth bill worked out by senators*, Tallahassee Democrat, May 22, 1985, at A5, col. 4.

130. *Id.*

131. Dem., Orlando.

132. Dem., Ormond Beach.

133. Dem., Panama City.

134. Bruns, *supra* note 129.

135. *Id.*

136. *Id.*

137. Bruns, *Lawmakers can't reach growth deal*, Tallahassee Democrat, May 23, 1985, at A6, col. 4.

138. *Id.*

139. *Id.*

tions and ordinances, while standing to challenge individual projects was limited to those persons meeting a variation of the *Renard* II criteria.[140]

The next day, May 23, 1985, a tentative agreement was reached as a result of a meeting between Representatives Mills and Ward and Senator Stuart.[141] For his part, Senator Stuart agreed to modify the Senate's ban on funding coastal infrastructure to ban only bridges to coastal barrier islands that were not now served by bridges.[142] Otherwise, he agreed to accept the House language that state funding for coastal infrastructure was permissible so long as it was in accord with a duly promulgated local government comprehensive plan.[143] Stuart also agreed to compromise on the rebuilding of structures destroyed by a major storm event to allow rebuilding within the confines of the original foundation.[144] In exchange, the House agreed to the three-tiered standing approach approved by the Senate Budget Committee a few days earlier. It also receded from its previous position that a local government comprehensive plan could be amended a maximum of four times per year; instead, the conferees agreed that plans could only be amended two times per year, except in case of emergencies and in connection with DRI orders.[145]

These compromises having been effectuated, the House overwhelmingly passed House Bill 287 and sent it back to the Senate on May 28, 1985 with mostly technical changes. [146] In fact, the only substantive change in that House-approved legislation concerned an amendment to the tourist development tax, which previously had not placed any restriction on applying such tax proceeds to beach renourishment projects.[147] As amended, only one-half of the money generated by the tourist development tax could be applied by the affected municipality to back bonds for beach renourishment and restoration projects.[148] The Senate passed House Bill 287

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140. *Id.*

141. Leonard, *Legislature approves blueprint for future*, Tallahassee Democrat, May 24, 1985, at A8, col. 5.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *House sends growth measure back to Senate with mostly minor changes*, Tallahassee Democrat, May 29, 1985, at A7, col. 4. Fla. SB 122, 441, and 1143 died in the House Comm. on Nat. Resources on May 31, 1985.

147. Fla. HB 287, sec. 14 (1985) (amending FLA. STAT. § 125.1014(5) (Supp. 1984)).

148. Ch. 85-55, § 40, 1985 Fla. Laws 207, 254 (to be codified at FLA. STAT. § 125.0104(5)(b)).

on a 27-0 vote on May 29, 1985,[149] and sent it to Governor Graham, who signed it on May 31, 1985.[150]

Given the magnitude of House Bill 287, it may seem surprising that the entire package was passed by the 1985 legislature with relatively few substantial changes. However, this massive bill was not developed overnight or even in one legislative session. For the most part, House Bill 287 was based on the detailed recommendations of the ELMS Committee for creation of an integrated statewide planning process, a streamlined DRI process, and stronger coastal protection measures. Proposed legislation based on some of the ELMS Committee's recommendations had been introduced during the 1984 Regular Session. Although only one part of this package, the State and Regional Planning Act of 1984, was passed by the 1984 legislature, many of the issues involved were considered and debated. By the time House Bill 287 was drafted and introduced in the 1985 Regular Session, many of these issues had been resolved. Only a few major sticking points, such as state approval of local plans and standing, remained. Consequently, the effort of the 1985 legislature was devoted to refinement of the bill and the resolution of three or four major controversies.

IV. The Local Comprehensive Plan

A. Existing Law and Problems

Prior to 1975, Florida did not require its local governments to adopt a legally binding comprehensive plan. Although the legislature had enacted statutes enabling local governments to adopt comprehensive plans, the legislation was permissive. In addition, this legislation contained a very general delegation of planning authority with no meaningful substantive standards to control its exercise.[151] Local governments which adopted comprehensive plans pursuant to this legislation were not legally bound by the plans which were deemed to be only advisory guidelines. Consequently, zoning and other land use regulations were not controlled by the provisions of the advisory comprehensive plan.[152]

In 1975, the Florida Legislature sought to change the role of the local comprehensive plan by enacting the Local Government Com-

149. *Growth bill finished*, Tallahassee Democrat, May 30, 1985, at A6, col. 1.

150. Ch. 85-55, § 51, 1985 Fla. Laws 207, 292.

151. Fla. Stat. §§ 163.160-.3207 (1983) (repealed by ch. 85-55, § 19, 1985 Fla. Laws 207, 235).

152. City of Gainesville v. Cone, 365 So. 2d 737 (Fla. 1st DCA 1979).

prehensive Planning Act (LGCPA).[153] The LGCPA transformed the legal status of the local comprehensive plan in two important respects. First, adoption of the comprehensive plan was no longer optional for local governments. The LGCPA required every local government to adopt a comprehensive plan in accordance with specified procedural and substantive requirements.[154] Second, the mandatory local comprehensive plan was not merely an advisory document; it had legally binding status. After adoption of the comprehensive plan, the local government was required to implement the plan through adoption of land development regulations. All local development regulations and local development orders had to be consistent with the adopted plan.[155] The intent of these statutory requirements was to make the local comprehensive plan the preeminent local enactment for controlling and managing land use and development.

Implementation of the LGCPA in the ensuing years revealed some serious weaknesses in the Act.[156] First, because the LGCPA provided no mechanism for quality control of local plans, there was wide variation in the quality of local plans. For the most part, the content requirements of the LGCPA were written in broad and general terms, and did not expressly provide for or require a land use plan map. More importantly, the LGCPA did not provide for effective state review of local plans. The Department of Community Affairs was authorized to review and offer purely advisory comments on local plans and had no authority to require changes to be made to local plans.

Second, the LGCPA provided no effective mechanism for requiring and ensuring that local governments implemented their adopted plans through adequate land development regulations and development orders. The Act did not expressly require local governments to conform their existing land development regulations to a subsequently adopted comprehensive plan. In addition, the state was not authorized to review and disapprove local land development regulations and orders which failed to implement or were

153. Ch. 75-257, 1975 Fla. Laws 794 (current version at FLA. STAT. §§ 163.3161-.3211 (1983)). For a detailed summary of the LGCPA's requirements, see T. PELHAM, *supra* note 8, at 169-81.

154. FLA. STAT. §§ 163.3167, .3177, .3184 (1983).

155. *Id.* §§ 163.3194, .3201.

156. These weaknesses were discussed in the ELMS REP., *supra* note 1, at 18-30, and in Staff of Fla. H.R. Comm. on Nat. Resources, CS for HB 287 (1985) Staff Analysis 1-2 (July 25, 1985) (on file with committee). The discussion of these problems in the text is based in part on these two reports.

not consistent with an adopted local plan.

These deficiencies were compounded by the LGCPA's failure to provide for citizen enforcement of local comprehensive plans. This defect was accentuated by the Supreme Court's recent decision in *Citizens Growth Management Coalition v. City of West Palm Beach, Inc.*[157] The court held that the LGCPA did not broaden the law of standing and that suits to enforce local comprehensive plans were governed by the traditional standing rules applicable in zoning cases.[158]

A third weakness of the LGCPA was that it permitted amendments to be made to an adopted local plan on a piecemeal basis at any time. In practice the local plan was frequently amended if necessary to permit a proposed development. Many local governments amended their plans on an ad hoc basis without any consideration of the relationship of the amendment to other amendments and without regard for the impact of the amendment on the comprehensive nature of the local plan.

Another major weakness of the LGCPA was that it did not require local comprehensive plans to be consistent with or to implement state and regional policies. Consequently, most local comprehensive plans have not been well coordinated with the planning efforts of other local governments, regional agencies, and the state. This deficiency is not surprising in the absence of an adopted state comprehensive plan or a comprehensive regional policy plan. However, with the advent of state and regional comprehensive plans, this deficiency in the local planning process can be easily eliminated by requiring local plans to be consistent with state and regional plans.

House Bill 287 addresses each of these major problem areas and significantly amends the LGCPA. It prescribes some new content requirements for local plans and requires deadlines for local gov-

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157. 450 So. 2d 204 (Fla. 1984).

158. *Id.* at 207. The plaintiff, a local citizens group, brought suit alleging that the city's approval of a development project was inconsistent with the local comprehensive plan. Affirming the trial court's ruling that the plaintiff lacked standing, the supreme court held that standing under the LGCPA was governed by the rules established in Renard v. Dade County, 261 So. 2d 832 (Fla. 1972). Under these rules, a person may sue to enforce a local zoning action only if he alleges and proves special damages and may sue to invalidate a validly adopted local zoning ordinance only if he has a legally recognizable interest which is adversely affected by the local action. *Id.* at 835, 837. In the *Citizens Growth Mgt. Coalition* case, the supreme court held that "only those persons who already have a legally recognizable right which is adversely affected have standing to challenge a land use decision on the ground that it fails to conform with the comprehensive plan." 450 So. 2d at 208.

ernmental compliance with these requirements. It also strengthens the obligation of local governments to implement their plans and provides for state review and disapproval of both local plans and implementing regulations. Finally, House Bill 287 establishes qualifications for standing to challenge local plans, land development regulations, and development orders. These new statutory provisions are described in the following sections.

B. House Bill 287: Amendments to the LGCPA

1. New Plan Adoption Schedule

Each county and municipality in the state is required to adopt a comprehensive plan in accordance with the requirements of the new Act. Local governments may satisfy this requirement by preparing a new comprehensive plan or by amending their existing plans to meet the new requirements. The Act establishes a time schedule for compliance with the mandatory planning requirement. Each county must adopt its plan between July 1, 1987, and December 1, 1987. Each municipality located in the coastal zone must adopt its comprehensive plan between January 1, 1988, and December 1, 1988. All other municipalities must adopt the requisite comprehensive plan between January 1, 1989, and December 1, 1989. If a local government demonstrates that it cannot meet the statutory time limits, the Florida Department of Community Affairs (DCA) may extend the adoption deadline for a period of not more than six months. Prior to July 1, 1986, DCA is required to adopt a rule which establishes a schedule of local governments which must submit comprehensive plans for review and which provides for extensions of time.[159]

If a local government fails to adopt all of the required elements or to amend its plan as required by the Act, the regional planning agency with jurisdiction over the local government must prepare and adopt, after DCA review, the elements or amendments necessary to bring the local plan into compliance with the Act. The regional planning agency is required to adopt the necessary elements or amendments by July 1, 1988, or within one year after the time deadlines specified by the Act and the DCA review schedule, whichever is later.[160]

The local government must pay the regional planning agency for

159. Ch. 85-55, § 3, 1985 Fla. Laws 207, 211 (amending FLA. STAT. § 163.3167(2) (1983)).
160. *Id.* (amending FLA. STAT. § 163.3167(4) (1983)).

preparing or amending its local comprehensive plan. If the regional planning agency and the local government cannot agree upon a method of compensation, the regional planning agency must file invoices for its cost with the local governing body. If the local government fails to pay the invoices within ninety days, the regional planning agency may file its invoices with the State Comptroller who is then required to pay the regional planning agency from the defaulting local government's share of unencumbered state revenue or other tax sharing funds. The local government may challenge the amount charged in an administrative hearing pursuant to section 120.57, Florida Statutes. Payment to the regional planning agency shall be withheld until the conclusion of the administrative hearing and final agency action by DCA.[161]

2. *The Substantive Requirements: Content of the Local Plan*

House Bill 287 significantly amends and strengthens the content requirements for the local comprehensive plan. In addition to mandating a capital improvements element and the preparation and adoption of a land use plan map, the Act greatly expands the content requirements of the coastal management and conservation elements.

The original LGCPA required local comprehensive plans to set forth the economic assumptions on which the plans were based and fiscal proposals relating to the expenditure of public funds for capital improvements, including the estimated costs and proposed funding sources for such improvements.[162] This general requirement has been replaced by a detailed requirement for a capital improvements element. The purpose of the capital improvements element is "to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities . . . ."[163] At a minimum, the capital improvements element must contain:

> (1) A component outlining principles for construction, extension, or increase in the capacity of public facilities which covers at least five years;
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> (2) A component outlining principles for correcting existing public facility deficiencies over at least a five-year period if neces-

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161. *Id.* (amending FLA. STAT. § 163.3167(7)-(8) (1983)).

162. FLA. STAT. § 163.3177(3) (1983).

163. Ch. 85-55, § 6, 1985 Fla. Laws 207, 215 (amending FLA. STAT. § 163.3177(3)(a) (1983)).

> sary to implement the comprehensive plan;
>
> (3) An estimate of public facility costs which includes a projection of when facilities will be needed, the general location of the facilities, and the revenue funding sources for the facilities;
>
> (4) A set of standards to ensure the availability and adequacy of public facilities; and
>
> (5) Soil surveys for areas served by septic tanks which indicate the suitability of the soils for septic tanks.[164]

The capital improvements element must be reviewed and, if necessary, modified annually in accordance with the Act's amendatory procedures.[165] All public facilities must be consistent with the element.[166]

The new Act amends the original LGCPA to require the future land use plan element to include a land use map or map series. The land use plan map must depict the proposed distribution, location, and extent of the various categories of land use and must generally identify historic district boundaries and historically significant properties. The land use plan map must be supplemented by measurable goals, objectives, and policies. Each land use category depicted on the map must be defined in terms of the types of permitted uses and the specific standards for density or intensity of use.[167]

House Bill 287 expands the conservation element to expressly provide that the natural resources covered by the element include water recharge areas, wetlands, waterwells, bays, and marine habitats. The element must assess the local government's current, as well as projected, water needs and resources for a ten-year period. In addition, the land use plan map contained in the future land use element must generally identify and depict existing and planned water wells and cones of influence; beaches and shores, including estuarine systems; rivers, bays, lakes, flood plains, and harbors; wetlands; and minerals and soils. All land uses identified on the land use plan map or map series must be consistent with

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164. *Id.*

165. *Id.* (amending FLA. STAT. § 163.3177(3)(b) (1983)). However, corrections, updates, and modifications concerning costs; revenue sources; acceptance of dedicated facilities which are consistent with the plan; and the date of construction of any facility delineated in the element may be made by ordinance and do not have to comply with the amendatory procedures of ch. 85-55, § 9, 1985 Fla. Laws 207, 226 (amending FLA. STAT. § 163.3187 (1983)).

166. Ch. 85-55, § 6, 1985 Fla. Laws 207, 215 (amending FLA. STAT. § 163.3177(3)(b) (1983)).

167. *Id.* (amending FLA. STAT. § 163.3177(6)(a) (1983)).

applicable state law and rules.[168]

The new Act substantially rewrites the coastal management element requirement. The increased emphasis on the coastal management element for each local government located in the coastal zone[169] reflects the legislature's desire to protect Florida's coast. The expressed intent of the amendments to the coastal management element provisions is "that local government comprehensive plans restrict development activities where such activities would damage or destroy coastal resources, and protect human life and limit public expenditures in areas that are subject to destruction by natural disaster."[170] Consistent with this intent, the Act expands the range of objectives to be accomplished by the coastal management element to include limitation of public expenditures which subsidize development in high-hazard coastal areas, protection against natural disasters, orderly development and use of ports, and preservation of historic and archaeological resources.[171]

To accomplish these purposes and objectives, House Bill 287 requires each coastal management element to include eleven new components. Among the more important are a land use and inventory map of coastal areas, an impact analysis of the development proposed in the future land use plan element on the coast, the plans and principles to be used in controlling development to eliminate or mitigate the adverse impacts of development on the coast, principles for hazard mitigation and protection of human life against natural disaster, the identification of public access to beach and shore line areas, and a comprehensive master plan prepared by certain deep water ports.[172]

3. *State and Regional Review of Local Plans*

Perhaps the most significant change effectuated by House Bill 287 is the strengthening of state and regional review of local com-

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168. *Id.* (amending FLA. STAT. § 163.3177(6)(d) (1983)).

169. *Id.* (amending FLA. STAT. § 163.3177(6)(g) (1983)). FLA. STAT. § 380.24 (1983) provides:

> Units of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule pursuant to s. 403.817 constitute the dominant plant community, shall develop a coastal zone protection element pursuant to s. 163.3177.

170. Ch. 85-55, § 7, 1985 Fla. Laws 207, 219 (to be codified at FLA. STAT. § 163.3178(1)).

171. *Id.* (to be codified at FLA. STAT. § 163.3178(2)). The deepwater ports are those listed in FLA. STAT. § 403.021(9) (1983).

172. Ch. 85-55, § 7, 1985 Fla. Laws 207, 219 (to be codified at FLA. STAT. 163.3178(2)).

prehensive plans. The new Act empowers DCA to challenge local plans in formal administrative hearings for noncompliance with the Act's requirements and authorizes the Administration Commission to impose sanctions on local governments which fail to adopt plans in compliance with the Act's requirements.

Prior to February 15, 1986, DCA must adopt a rule establishing minimum criteria for the review of local comprehensive plan elements for compliance with the Act.[173] The rule becomes effective only after it has been submitted to the 1986 Florida Legislature for review. The legislature may reject, modify, or take no action on the proposed rule. If the legislature takes no action, the proposed rule shall become effective. However, DCA must adopt any changes proposed by the legislature before the rule becomes effective.[174]

The rule must include criteria for determining whether local plans are in compliance with the Act; comprehensive plan elements are related to and consistent with each other; local comprehensive plans are consistent with the state and regional comprehensive plans; bays, estuaries, and harbors falling under the jurisdiction of more than one local government are managed in a consistent and coordinated manner; local plans identify the mechanisms and procedures for monitoring, evaluating and appraising implementation of the plan; plan elements contain policies to guide future decisions in a consistent manner and programs and activities to ensure plan implementation; and whether local plans identify processes and procedures for ensuring coordination of development with other local governments, regional planning agencies, water management districts, and state and federal agencies.[175]

DCA is also empowered, but not required, to adopt procedural rules for the review of local comprehensive plans. In addition, DCA is required to provide model plans and ordinances and, if requested, other assistance to local governments in the adoption and implementation of their comprehensive plans.[176]

At least ninety days prior to the adoption of a comprehensive plan or any portion of the plan, or before the adoption of an amendment to a previously adopted plan, the local governing body

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173. *Id.* § 6, 1985 Fla. Laws 207, 215 (to be codified at FLA. STAT. § 163.3177(9)). The rule is not subject to rule challenges under FLA. STAT. § 120.54(4) (1983) or to drawout proceedings under FLA. STAT. § 120.54(17) (1983). *Id.*

174. Ch. 85-55, § 6, 1985 Fla. Laws 207, 215 (to be codified at FLA. STAT. § 163.3177(a)).

175. *Id.*

176. *Id.* The present state and regional review provisions of the LGCPA remain in effect until the substantive rule criteria are adopted. *Id.*

must transmit five copies of the proposal to DCA. The local governing body must transmit the proposed comprehensive plan or all elements or portions of the plan at the same time and cannot transmit elements or parts of the plan at various times. However, in the case of comprehensive plan amendments, the local governing body only has to submit the plan elements to be amended. DCA is required to transmit a copy of the local plan proposal to various agencies, including the Department of Environmental Regulation, the Department of Natural Resources, the regional planning agency, and the appropriate county, within five working days after receipt of the plan proposal. These agencies must provide comments to DCA within thirty days after receipt of the plan proposal.[177]

The regional planning agency and the county, in the case of a municipal plan, must submit written comments within thirty days after receipt of the local plan proposal from DCA. Regional review of the local plan shall be primarily in the context of the relationship and effect of the local plan proposal to or on any regional policy plan. County review shall be primarily in the context of the relationship and effect of the municipal plan on the county plan. In their written comments, the regional planning agency and county must specify their objections to, and may recommend modification of, the local plan proposal.[178]

DCA is required to review each adopted local plan, element, or amendment and determine within three months whether it is in compliance with the statutory and rule requirements. Following its review, DCA must issue a notice of intent to determine that the local action is in compliance or not in compliance.[179] If DCA finds the local plan in compliance, the local government shall adopt the plan. Within twenty-one days after the adoption, any affected person may challenge the finding of compliance by filing a petition with DCA pursuant to section 120.57.[180]

On the other hand, if DCA decides preliminarily that the local plan proposal is not in compliance, it must submit to the local gov-

177. *Id.* § 8, 1985 Fla. Laws 207, 221 (amending FLA. STAT. § 163.3184 (Supp. 1984)).

178. *Id.* A regional planning agency is prohibited from reviewing a local comprehensive plan which it prepared unless the plan has been subsequently changed by the local government. *Id.*

179. *Id.* (to be codified at FLA. STAT. §§ 163.3184(4), (11)). DCA's notice of intent must be issued through a senior administrator other than the secretary and must be published in a local newspaper in the manner required by *id.* (to be codified at FLA. STAT. § 163.3184(15)(c)).

180. *Id.* (to be codified at FLA. STAT. § 163.3184(5)(a)).

ernment specific objections and recommendations for bringing the local plan into compliance. The local government must then hold a public hearing on DCA's proposed changes and either reject or adopt the changes as proposed, or adopt another comprehensive plan, element, or amendment in accordance with the statutory amendment process. The revised plan, element, or amendment must then be resubmitted to DCA, which is required to review the revised plan proposal in the same manner as the original submittal. If DCA determines that the local plan is still not in compliance and if DCA has fully complied with the statutory review requirements and participated in the local public hearing at the request of the local government, DCA must, within ninety days after receipt of the revised plan, issue its notice of intent to find the local action not in compliance.[181] The notice of intent must be forwarded to the Division of Administrative Hearings which shall conduct a hearing and issue a recommended order.[182] If, after reviewing the recommended order, DCA then determines that the local plan is in compliance, DCA must enter a final order. However, if DCA decides the plan is not in compliance, it must submit the recommended order to the Administration Commission for final agency action.[183]

4. *Standing To Challenge Local Plans*

The standing issue arises in two different contexts. First, what persons have standing to intervene as parties in an administrative hearing resulting from DCA's determination that a local plan is not in compliance? Second, who has standing to initiate an administrative hearing if DCA determines that a local plan is in compliance?

As a result of the compromises reached on the standing issue,[184] broad standing is conferred to participate in administrative proceedings to determine the compliance of local plans with state law. The Act permits any "affected person" to intervene in an administrative proceeding resulting from DCA's determination that a local plan is not in compliance.[185] In addition, any affected person may petition DCA for an administrative hearing if DCA issues a notice

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181. *Id.* (to be codified at FLA. STAT. § 163.3184(6)(a) and (b)).

182. *Id.* (to be codified at FLA. STAT. § 163.3184(7)(a)). The hearing is conducted pursuant to FLA. STAT. § 120.57 (Supp. 1984).

183. Ch. 85-55, § 8, 1985 Fla. Laws 207, 221 (to be codified at FLA. STAT. § 163.3184(7)(a)).

184. *See supra* notes 117-123 and accompanying text.

185. Ch. 85-55, § 8, 1985 Fla. Laws 207, 221 (to be codified at FLA. STAT. § 163.3184(7)(a)).

of intent to find the local plan to be in compliance.[186]

"Affected person" is defined by the Act. The statutory definition includes three categories of persons: (1) the affected local government whose plan is being challenged; (2) all persons owning property or residing or owning or operating a business within the boundaries of the affected local government; and (3) adjoining local governments which can demonstrate that adoption of the challenged plan would produce substantial impacts on the increased need for publicly funded infrastructure or on areas designated for protection or special treatment within the jurisdiction of the adjoining local government.[187] However, to qualify under the second category, any person, other than an adjoining local government, must have submitted either oral or written objections to the local plan during the local governmental review and adoption proceedings.[188]

5. *The Standard of State Review*

The legislative compromises among the various competing interests are nowhere more evident than in the new statutory provisions controlling the scope and standard of state review of local plan compliance. As a result of the tradeoffs between the various factions, the rules governing review of local compliance vary, depending upon the identity of the challenger and the issue to be resolved. The result is a rather confusing and illogical system of state administrative review. Administrative hearings to determine local plan compliance are to be conducted pursuant to section 120.57 of Florida's Administrative Procedure Act. Ordinarily, administrative hearings conducted pursuant to the APA are subject to the substantial competent evidence rule.[189] Under this rule, a local government's determination that its plan complies with the Act's requirements would be upheld only if that determination was supported by substantial evidence, and would not be upheld merely because a local government's determination was deemed fairly debatable.[190]

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186. *Id.* (to be codified at FLA. STAT. § 163.3184(5)(a)).

187. *Id.* (to be codified at FLA. STAT. § 163.3184(3)(a)).

188. *Id.*

189. FLA. STAT. § 120.57(1)(b)(9) (1983). This rule provides that an agency's decision must be supported by substantial, competetent evidence. *Id.*

190. *See* Manatee County v. Estech Gen. Chem. Corp., 402 So. 2d 1251, 1256 (Fla. 2d DCA 1981), *cert. denied*, 412 So. 2d 468 (Fla. 1982), where the court says it has "serious doubts" about the standard of review being fairly debatable, but doesn't reach that question.

However, notwithstanding the fact that the administrative proceedings are to be conducted pursuant to the APA, House Bill 287 apparently establishes a different standard of review for determining local plan compliance.

The standard of review depends upon which party initiates the administrative proceeding. If DCA determines that the local plan is in compliance and this finding is challenged by an affected person in a section 120.57 proceeding, "the local plan shall be determined to be in compliance if the local government's determination of compliance is fairly debatable."[191] However, if DCA preliminarily determines that the local plan is not in compliance, the resulting administrative proceeding under section 120.57 is governed by a different standard. The local government's determination of compliance is presumed to be correct and "must be sustained unless it is shown by a preponderance of the evidence that the local plan, element, or amendment is not in compliance."[192] However, even in this proceeding, with regard to the issue of whether the various elements of the local plan are related to and consistent with each other, the local government's determination "must be sustained if the determination is fairly debatable."[193] Thus, within the same proceeding, different issues will be governed by different standards of review.

6. *Remedial Actions and Sanctions*

House Bill 287 provides that the Administration Commission is authorized to take final agency action on local plans in two situations. The first situation occurs when DCA receives a recommended order from the Division of Administrative Hearings following a hearing instituted by an affected person who contends the local plan is not in compliance. If DCA concludes that the local plan is not in compliance, then the agency must submit the recommended order to the Administration Commission for final agency action.[194] The second situation arises when DCA triggers an administrative hearing by issuing a notice of intent to determine that the local plan is not in compliance. In those proceedings, the Division of Administration Hearings must submit its recommended or-

191. Ch. 85-55, § 8, 1985 Fla. Laws 207, 221 (to be codified at FLA. STAT. § 163.3184(5)(a)).

192. *Id.* (to be codified at FLA. STAT. § 163.3184(7)(b)).

193. *Id.*

194. *Id.* (to be codified at FLA. STAT. § 163.3184(5)(b)).

der directly to the Administration Commission for final agency action.[195]

If, after reviewing the recommended order, the Administration Commission finds that the local plan is not in compliance, the Commission must specify remedial actions to bring the plan into compliance and may impose sanctions on the defaulting local government. The Commission is expressly granted the power to:

> (1) Direct state agencies not to provide funds to increase the capacity of roads, bridges and water and sewer systems in the local government;
>
> (2) Declare the local government ineligible for grants administered under various state funding programs;
>
> (3) Order that the Department of Natural Resources, in issuing coastal construction permits, and the Board of Trustees of the Internal Improvement Trust Fund, in deciding whether to convey any interest in sovereignty or submerged lands, shall consider the fact that the coastal management element of a local plan is not in compliance.[196]

7. *Amendment of the Comprehensive Plan*

House Bill 287 recognizes the need to periodically update the comprehensive plan after it has been adopted. At the same time, however, the Act also recognizes that frequent amendments will undermine the purpose of having a comprehensive plan. Thus, the Act attempts to balance these two conflicting considerations by restricting the times during which the comprehensive plan may be amended while requiring that the plan be updated and amended at certain intervals.

Except in emergency situations[197] and in the case of developments of regional impact,[198] plan amendments may not be adopted

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195. *Id.* (to be codified at FLA. STAT. § 163.3184(7)(b)).

196. *Id.* (to be codified at FLA. STAT. § 163.3184(8)(a)-(b)).

197. *Id.* § 9, 1985 Fla. Laws 207, 226 (amending FLA. STAT. § 163.3187 (1983)). An emergency is defined as "any occurrence or threat thereof whether accidental or natural, caused by man, 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." Emergency amendments must be approved by all the members of the governing body. *Id.*

198. *Id.* Plan amendments directly related to a proposed development of regional impact (DRI) may be considered at the same time as the application for DRI development approval without regard for statutory or local limits on the frequency of consideration of amend-

more often than twice during a calendar year. Moreover, amendments must be adopted in accordance with the same procedures which apply to original adoption of the comprehensive plan.[199]

As in the case of the original LGCPA, the new Act envisions the local planning program as "a continuous and ongoing process."[200] The local planning agency is required to assess and evaluate the success or failure of the comprehensive plan in a written report to the local governing body at least once every five years. Unlike the original LGCPA, however, the governing body is required to adopt, or adopt with changes, the report from the local planning agency and to amend its local comprehensive plan based on the recommendations contained in the report. The amendment must be made in accordance with the same procedures that govern original adoption of the plan.[201]

8. The Consistency Requirement and Implementation of the Local Comprehensive Plan

The original LGCPA expressed the legislative intent that adopted local comprehensive plans should be implemented through adoption and enforcement of local land development regulations. In addition, the original act required any adopted land development regulations to be consistent with the local comprehensive plan. However, the Act contained no specific or detailed provisions regarding the type or nature of regulations to be adopted by local governments, did not provide any mechanism to compel local governments to adopt implementing regulations, and did not attempt to define consistency. House Bill 287 seeks to remedy each of these defects and omissions.

House Bill 287 establishes a specific deadline for adoption of land development regulations that are consistent with and implement an adopted comprehensive plan. Each local government in the state must adopt implementing regulations within one year after submission of its revised comprehensive plan to DCA for review as required by the statute. The regulations must contain specific and detailed provisions for implementing the comprehensive plan and at a minimum must regulate subdivision of land and the use of land and water for all categories included in the land use element;

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ments. *Id.*

199. *Id.*

200. *Id.* § 10, 1985 Fla. Laws 207, 227 (amending FLA. STAT. § 163.3191 (1983)).

201. *Id.*

protect potable waterfields; regulate flood-prone areas and provide for stormwater management; protect environmentally sensitive lands designated by the comprehensive plan; regulate signs and billboards; provide that public facilities and services comply with the standards established in the capital improvements element; and ensure safe and convenient onsite traffic flow.[202]

The new Act expressly encourages local governments to adopt such innovative land development regulations as transfer of development rights, incentive and inclusionary zoning, planned unit development, impact fees, and performance zoning. All local land development regulations must be compiled into a single land development code for the local jurisdiction.[203]

Unlike the original LGCPA, the new Act defines "land development regulation." The term encompasses local ordinances which regulate any aspect of development, including a general zoning code. However, the term does not include a zoning map, an action zoning or rezoning land or any building construction standard adopted under chapter 553.[204]

House Bill 287 expressly requires amendment of existing land development regulations which are not consistent with the revised comprehensive plan. If the local government allows an inconsistent regulation to remain in effect, it must adopt a schedule for bringing the inconsistent regulation into conformity with the revised plan. During the interim period, the revised comprehensive plan rather than the inconsistent land use regulation shall govern any action taken by the local government on an application for a development order.[205]

Probably the most important concept in the original LGCPA was the requirement that all land development regulations and all local actions regarding development be consistent with the comprehensive plan. Nevertheless, the original LGCPA provided no definition of consistency. House Bill 287 corrects this omission. A land development regulation, a development order, and development approved or undertaken by local government shall be

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202. *Id.* § 14, 1985 Fla. Laws 207, 229 (to be codified at FLA. STAT. § 163.3202(1)-(2)). With regard to public services and facilities, the regulations must also require that the necessary services and facilities will be available when needed by development and that no development order or permit will be issued which results in a reduction in the level of services below the level established in the comprehensive plan of the local government. *Id.*

203. *Id.* (to be codified at FLA. STAT. § 163.3202(3)). If the local regulations meet the requirements of the Act, no general zoning code is required. *Id.*

204. *Id.* § 15, 1985 Fla. Laws 207, 231 (to be codified at FLA. STAT. § 163.3213(2)(b)).

205. *Id.* § 11, 1985 Fla. Laws 207, 228 (amending FLA. STAT. § 163.3194(1)(b) (1983)).

deemed consistent with the comprehensive plan "if the land uses, densities or intensities, and other aspects of development . . . are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government."[206]

House Bill 287 establishes a system of state administrative review to ensure that local land development regulations are consistent with the local comprehensive plan. This statutory scheme permits certain persons to institute administrative actions challenging the consistency of local regulations with the local plan. The subsequent administrative review entails both informal review by DCA and formal administrative hearings conducted by the Division of Administrative Hearings. In addition, the Administration Commission is authorized to impose sanctions on local governments which adopt inconsistent regulations. To implement the statutory framework, DCA is required to adopt rules for review of local land development regulations by February 15, 1987. The rules become effective only after they have been submitted to the 1987 Florida Legislature for review. The legislature may reject or modify the rules, or take no action, in which case the rules will become effective.[207]

9. Standing to Challenge the Consistency of Local Development Regulations and Development Orders

Standing to challenge the consistency of local land development regulations is more limited than the standing to challenge the compliance of local comprehensive plans. Only "substantially affected persons" have standing to maintain an administrative action concerning the consistency of land development regulations. A "substantially affected person" is defined as "a substantially affected person as provided pursuant to chapter 120."[208]

A substantially affected person may challenge a land development regulation for inconsistency with the local comprehensive plan by filing a petition with DCA within twelve months after final adoption of the regulation. As a condition precedent to filing with the DCA, the substantially affected person must file a petition with

206. *Id.* (to be codified at FLA. STAT. § 163.3194(3)(a)-(b)).

207. *Id.* § 14, 1985 Fla. Laws 207, 229 (to be codified at FLA. STAT. § 163.3202(5)). The rules are not subject to rule challenges under FLA. STAT. § 120.54(4) or to drawout proceedings under FLA. STAT. § 120.54(17). *Id.*

208. *Id.* § 15, 1985 Fla. Laws 207, 231 (to be codified at FLA. STAT. §§ 163.3213(1)-(2)(a)).

the local government, setting forth the factual basis for the challenge and the reasons why the regulation is considered to be inconsistent. The local government has thirty days in which to respond to the petition. No later than thirty days after the local government has responded, the substantially affected person may petition DCA.[209]

After giving the local government notice of the petition, DCA must hold an informal hearing in which both the local government and the petitioner have an opportunity to present written or oral testimony. After conducting any necessary investigation of the matter, DCA must issue its written decision not later than sixty days but not earlier than thirty days after receipt of the petition.[210]

If DCA finds that the regulation is consistent with the local plan, the petitioner may request a formal hearing from the Division of Administrative Hearings within twenty-one days. On the other hand, if DCA determines that the regulation is inconsistent, DCA must request a hearing from the Division of Administrative Hearings within twenty-one days. In either case, the parties to the administrative hearing shall be the petitioner, DCA, the local government, and any intervenor. The hearing must be held pursuant to section 120.57(1) except that the hearing officer's order is a final order appealable pursuant to section 120.68. The hearing officer must find the regulation, which is deemed legislative in nature, to be consistent with the local plan if the issue is fairly debatable.[211]

An order finding the local land development regulation to be inconsistent must be submitted to the Administration Commission before any judicial appeal is taken pursuant to section 120.68. Not later than sixty days nor earlier than thirty days after rendition of the hearing officer's final order, the Administration Commission must conduct a hearing to determine whether sanctions should be imposed against the local government. The sanctions are identical to those which may be imposed for adopting a local plan that is not in compliance with statutory requirements.[212]

A land development regulation shall be deemed consistent with the local comprehensive plan unless it is challenged pursuant to

209. *Id.* (to be codified at FLA. STAT. § 163.3213(3)). The petitioner and the local government may agree to extend the thirty-day time period within which the local government must respond. *Id.*

210. *Id.* (to be codified at FLA. STAT. § 163.3213(4)).

211. *Id.* (to be codified at FLA. STAT. § 163.3213(5)(a)-(b)).

212. *Id.* (to be codified at FLA. STAT. § 163.3213(6)) (for a list of the sanctions, see *supra* note 196 and accompanying text).

these procedures within twelve months after its adoption. The administrative review proceeding under the statute is the exclusive proceeding for challenging the consistency of a land development regulation.[213]

House Bill 287 also provides for challenges to development orders which are alleged to be inconsistent with the local comprehensive plan and establishes standing requirements for bringing such actions. However, in lieu of the administrative review proceedings provided to challenge comprehensive plan compliance and the consistency of local development regulations, the new Act provides for suit in circuit court as the exclusive means of challenging the consistency of a development order.[214]

The new Act confers standing on "any aggrieved or adversely affected party" to institute an action in circuit court for injunctive or other relief to prevent a local government from taking any action on a development order materially altering the use or density or intensity of use of a tract of property which is not consistent with the comprehensive plan. An "aggrieved or adversely affected party" is defined as "any person or local government which will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan."[215]

House Bill 287 rejects the standing rule established by *Renard* I for bringing actions to enforce local zoning ordinances and adopts a variation of the test enunciated in the *Citizens Growth Management Coalition* case.[216] Under the first *Renard* test, a person was required to establish special injury different in kind and degree from the public at large in order to have standing to enforce a local land use ordinance.[217] In *Citizens Growth Management Coalition*, the supreme court reaffirmed the three *Renard* standing tests. However, the court did not treat an action challenging a local zoning ordinance for inconsistency with the comprehensive plan as an enforcement action. Instead it viewed the action as an attack on the reasonableness of the ordinance and therefore applied the *Renard* II test which confers standing on any person who has a le-

213. *Id.* (to be codified at FLA. STAT. § 163.3213(6)-(7)).

214. *Id.* § 18, 1985 Fla. Laws 207, 233 (to be codified at FLA. STAT. § 163.3215(1), (3)(b)).

215. *Id.* (to be codified at FLA. STAT. § 163.3215(2)). The act expressly provides that "interest[s] protected or furthered by the local government comprehensive plan" include "interests related to health and safety, policy and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, or environmental or natural resources." *Id.*

216. *See supra* notes 158-59 and accompanying text.

217. *See supra* note 122 and accompanying text.

gally recognizable interest which would be adversely affected.[218]

The new Act generally tracks the standing test adopted in *Citizens Growth Management Coalition*. However, the "legally recognizable interest" standard is refined to mean "an interest protected or furthered by the local government comprehensive plan."[219] As in the *Renard* II test, the new Act provides that the adverse interest "may be shared in common with other members of the community at large, but shall exceed in degree the general interest and community good shared by all persons."[220]

The enforcement action authorized by House Bill 287 is in the nature of an action for injunctive or other relief in circuit court in the county where the challenged action occurred. As a prerequisite to filing the complaint, the complaining party must file a verified complaint with the local government setting forth factual allegations and the relief sought. The complaint must be filed not later than thirty days after the alleged inconsistent action occurred, and the local government must respond within thirty days after receipt of the complaint. Within thirty days after the expiration of the thirty day period within which the local government must respond, the complaining party may institute its action in circuit court.[221]

V. DEVELOPMENTS OF REGIONAL IMPACT

Since the enactment of chapter 380 in 1972, the developments of regional impact (DRI) review process has been the primary state and regional land use control in Florida. From its inception the DRI process has been subject to criticism from the development industry, environmentalists, and other land use commentators.[222] Nevertheless, with the exception of a few relatively minor legislative refinements, the statutory framework for the DRI process remained unchanged until the enactment of House Bill 287. The following sections describe the existing legal framework of the DRI process and analyze the major revisions made by the new legislation.

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218. 450 So. 2d at 207-8.

219. Ch. 85-55, § 18, 1985 Fla. Laws 207, 233 (creating FLA. STAT. § 163.3215(2)).

220. *Id.*

221. *Id.* (to be codified at FLA. STAT. § 163.3215(4)-(5)). Note, however, that failure to satisfy these procedural prerequisites does not bar an action for a temporary restraining order to prevent immediate and irreparable harm. *Id.*

222. For detailed evaluations of the DRI process, see J. DEGROVE, *supra* note 2, at 153-66; T. PELHAM, *supra* note 8, at 99-143; Finnell, *Coastal Land Management*, *supra* note 5, at 357-95; Pelham, *Regulating Developments of Regional Impact: Florida and the Model Code*, 29 U. FLA. L. REV. 789 (1977).

A. Existing Law and Problems

Chapter 380 requires that prior to undertaking development of a DRI, the developer must comply with certain requirements in addition to those necessary for obtaining other local development approvals. These additional requirements include the submission of the project application for review by the appropriate regional planning agency.[223] A DRI developer must submit an application for development approval (ADA) to the local government, appropriate regional planning agency, and DCA. After receiving a completed ADA, the regional planning agency must prepare and submit to the local government a report and recommendations on the regional impact of the proposed DRI. The report must identify regional issues based upon specified review criteria and make recommendations to the local government on these issues.[224]

The local government with jurisdiction over the project must hold a hearing on the ADA in the same manner as for a rezoning as provided under the relevant special or local law or ordinance.[225] In considering whether the ADA should be approved, denied, or approved subject to conditions, the local government must consider whether the development (1) unreasonably interferes with the objectives of an adopted state land development plan; (2) is consistent with local land development regulations; and (3) is consistent with the regional planning agency report and recommendations.[226] The local government must render a decision on the ADA within thirty days after the public hearing unless the developer requests an extension.[227]

A local DRI development order may be appealed to the Florida Land and Water Adjudicatory Commission (Adjudicatory Commission) which has jurisdiction over any local development order re-

223. FLA. STAT. § 380.06(9) (Supp. 1984).

224. *Id.*. § 380.06(11). The specific review criteria are whether the development will have a favorable or unfavorable impact on the environment and natural resources of the region; a favorable or unfavorable impact on the region's economy; will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities; will efficiently use or unduly burden public transportation facilities; will favorably or adversely affect the ability of people to find adequate housing that is accessible to their places of employment; and whether the development complies with other criteria adopted by the regional planning agency. The regional planning agency may also review and make recommendations on local issues; however, the regional planning agency may not take an appeal to the Florida Land and Water Adjudicatory Commission except on regional issues. *Id.*

225. *Id.* § 380.06(10).

226. *Id.* § 380.06(13).

227. *Id.* § 380.06(14)(a).

lating to a DRI.[228] After conducting a hearing pursuant to chapter 120, the Adjudicatory Commission must issue a decision granting or denying the application and may attach conditions and restrictions to its decision.[229] The final decision of the Adjudicatory Commission is subject to judicial review.[230]

This process has been in operation for more than ten years.[231] During that time, a number of serious problems have surfaced. Accordingly, the ELMS Committee conducted an exhaustive evaluation of the DRI process. At fifteen public hearings in cities throughout Florida, the Committee received testimony and recommendations about the DRI process from many interested persons, including representatives of the business and development communities, environmental and conservation groups, local governments, and state and regional agencies. The most fundamental issue addressed by the Committee was whether the DRI process should be terminated. Despite much criticism of the process from all sectors, the Committee determined that the DRI process should "continue to play a central role in Florida's growth management."[232] However, based on testimony given at the hearings and the state's lengthy experience with the process, the ELMS Committee identified the major problems with the DRI process.[233]

First, the statutory scheme, as interpreted by the courts and implemented by DCA, made it very difficult to determine with certainty whether a development was a DRI. Chapter 380 contained a broad generic definition of DRI as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."[234] Recognizing the difficulty of applying this broad definition to particular developments, the legislature provided for the adoption of administrative DRI guidelines and standards "to be used in determining whether particular developments shall be *presumed* to be of regional impact."[235] Pursuant to

228. *Id.*. § 380.07(2).

229. *Id.* § 380.07(3)-(4).

230. *See, e.g.*, Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981), *cert. denied*, 454 U.S. 1083 (1981).

231. The DRI review process became operational on July 1, 1973, after the original DRI guidelines and standards were adopted. Pelham, *Regulating Developments*, *supra* note 222, at 794.

232. ELMS REP., *supra* note 1, at 37-38, 42.

233. *Id.* at 39-41, 44-60.

234. FLA. STAT. § 380.06(1) (Supp. 1984).

235. *Id.* § 380.06(2) (emphasis added).

the statutory mandate, the state land planning agency, the DCA, with legislative approval, adopted administrative guidelines providing that twelve categories of development are presumed to be of regional impact. Most of the categories contained a minimum DRI threshold expressed in terms of the physical dimensions of the developments.[236] If a developer was in doubt about the status of its project, it could apply to DCA for a binding letter of interpretation as to whether the project was a DRI.[237]

This statutory scheme for identifying DRIs was plagued by a myriad of problems. The original administrative guidelines did not cover several significant categories of development such as hotels and motels and mixed use developments. More importantly, these administrative guidelines were only presumptions. Although the state land planning agency originally treated the guidelines as conclusive, the important decision of *General Development Corp. v. Division of State Planning*[238] established that the guidelines created only rebuttable presumptions. A development which fell below the DRI threshold could in fact be a DRI, while a development which exceeded the threshold might not be a DRI.[239] This uncertainty greatly increased the importance of binding letter applications which evolved into time-consuming, "mini-DRI" reviews.[240] Consequently, many developers were reluctant to seek binding letters, and DCA previously had no authority to compel a developer to seek a binding letter for developments of questionable DRI status.

A second major problem identified by the ELMS Committee was that the DRI process tended to be unreasonably time-consuming and expensive; it unreasonably delayed commencement of development in many cases, and it was not well-coordinated with the reviews conducted by environmental permitting agencies.[241] Chapter 380 prohibited commencement of development of a DRI until the DRI review process had been completed and a development order entered for the project.[242] This prohibition applied even to the de-

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236. FLA. ADMIN. CODE R. 27F-2 (1982). The twelve categories are airports; attractions and recreational facilities; electrical generating facilities and transmission lines; hospitals; industrial plants and industrial parks; mining operations; office parks; petroleum storage facilities; port facilities; residential developments; schools; and shopping centers. *Id.*

237. FLA. STAT. § 380.06(4)(a) (Supp. 1984).

238. 353 So. 2d 1199 (Fla. 1st DCA 1977).

239. *Id.* at 1208.

240. ELMS REP., *supra* note 1, at 41, 57.

241. *Id.* at 40.

242. FLA. STAT. § 380.06(14)-(15) (Supp. 1984).

velopment of portions of a proposed project which would not cause any adverse regional impact. The optional coordinated review procedure did not effectively coordinate the DRI process with other permitting processes and was rarely used. Developers were not willing to commit the time and money necessary to provide the detailed information required by the other environmental permitting agencies until they were certain they would obtain favorable DRI approval.[243] Thus, developers usually obtained a DRI development order before seeking the other requisite environmental permits, thereby prolonging the development approval process.

A third major problem area was the imposition of inequitable exactions and conditions on DRI developers by local governments. Chapter 380 authorized local governments to approve DRI applications subject to conditions. Existing legislation established no guidelines for the imposition of these conditions. In *Contractors & Builders Assoc. v. City of Dunedin*,[244] the Florida Supreme Court established criteria for determining the validity of local impact fee systems which have been subsequently applied by the district courts of appeal. [245] However, no Florida appellate court has ever determined whether these criteria also apply to DRI development order exactions. Therefore, many local governments have imposed exactions on DRI applicants without regard for these criteria and despite the fact that similar exactions are not required of other developments in the jurisdiction.[246]

Fourth, the substantial deviation provisions of chapter 380 have created much difficulty. Because of their size, DRIs are typically developed over a long period of time. Therefore, changes in the original approved development plan are inevitable. Chapter 380 required a developer to submit any proposed changes in its approved DRI development order to the local government for a "substantial deviation determination." [247] If the local government determined that the proposed change was a substantial deviation, the development had to undergo further DRI review. Developers, as well as state, regional, and local agencies, all complained that the substan-

243. ELMS REP., *supra* note 1, at 75.

244. 329 So. 2d 314, 321 (Fla. 1976).

245. *See, e.g.*, Builders & Contractors Ass'n v. Board of County Comm'rs, 446 So. 2d 140, 145 (Fla. 4th DCA 1983), *cert. denied*, 451 So. 2d 848 (Fla. 1984); Hollywood, Inc. v. Broward County, 431 So. 2d 606, 611 (Fla. 4th DCA 1983), *cert. denied*, 440 So. 2d 352 (Fla. 1983).

246. ELMS REP., *supra* note 1, at 71.

247. FLA. STAT. § 380.06(17) (Supp. 1984).

tial deviation provision was ambiguous and confusing. It did not adequately define a substantial deviation, it did not set forth specific procedures to be followed in making substantial deviation determinations, and it did not adequately describe what further DRI review is required.[248]

A fifth major problem, and perhaps the most controversial, was standing to appeal local DRI development orders to the Adjudicatory Commission. Chapter 380 provided that the developer or owner, DCA, and the regional planning agency could initiate an appeal of a local DRI development order to the Adjudicatory Commission.[249] Florida courts have consistently interpreted this provision as setting forth an exclusive list of parties who have standing to appeal and have rejected numerous attacks on the constitutionality of the statutory limitation on standing.[250] Thus, although substantially affected parties may intervene in a DRI proceeding at the local level and participate in an appeal to the Adjudicatory Commission if an appeal is taken by one of the parties with standing,[251] such persons had no right to initiate an appeal no matter how much they are affected by the DRI development order.

Finally, from the inception of the DRI process, the state land planning agency had been handicapped by a lack of adequate enforcement authority. Chapter 380 provided only that DCA may seek injunctive relief in circuit court to halt violations of the statute.[252] The statute confered no authority on DCA to institute administrative enforcement proceedings for DRIs. Consequently, because injunctive relief is an extraordinary remedy that is not easily obtained, DCA has had very limited ability to enforce DRI requirements.[253]

B. House Bill 287: Amendments to Chapter 380

House Bill 287 addresses many of these problems. In some instances the legislature adopted variations of the recommendations made by the ELMS Committee. In other cases the legislature went

248. ELMS REP., *supra* note 1, at 79.

249. FLA. STAT. § 380.07(2) (1983).

250. *See, e.g.*, Friends of the Everglades, Inc. v. Monroe County, 456 So. 2d 904 (Fla. 1st DCA 1984); Londono v. City of Alachua, 438 So. 2d 91 (Fla. 1st DCA 1983); Caloosa Property Owners Ass'n v. Palm Beach County, 429 So. 2d 1260 (Fla. 1st DCA 1983), *cert. denied*, 438 So. 2d 831 (Fla. 1983).

251. Caloosa Property Owners Ass'n v. Palm Beach County, 429 So. 2d 1260, 1264-65 (Fla. 1st DCA 1983).

252. FLA. STAT. § 380.11 (1983).

253. ELMS REP., *supra* note 1, at 86.

beyond the Committee's recommendations and adopted other possible solutions to perceived problems with the DRI process. The major revisions of the DRI process are discussed in the following sections.

1. *DRI Guidelines, Standards, and Thresholds*

Florida's original DRI guidelines and standards, which were adopted by administrative rule in 1973, provided that twelve categories of development were presumed to be of regional impact.[254] These guidelines and standards remained unchanged until the enactment of House Bill 287. The new Act revises some of the existing guidelines and standards and creates several new ones. To the extent that they address the same development, the new guidelines and standards supercede those previously adopted in 1973.[255]

House Bill 287 revises the existing guidelines and standards for airports, industrial plants and parks, office development, port facilities, and residential development. The revisions consist primarily of alterations in the DRI thresholds or expansions of the type of development included within a DRI category.[256] Only minor technical revisions are made in the existing guidelines and standards for attractions and recreation facilities, and retail, service, and wholesale development.[257] The existing guidelines and standards for electrical generating facilities and transmission lines, mining operations, petroleum storage facilities, hospitals, and schools remain unchanged.[258]

Guidelines and standards are also created for three new DRI categories: hotel or motel development, recreational vehicle development, and multi-use development.[259] Of the three new categories, multi-use development is by far the most important. This category is designed to capture projects which include two or more of the DRI development categories, none of which individually exceed the

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254. FLA. ADMIN. CODE R. 27F-2 (1982).

255. Ch. 85-55, § 46, 1985 Fla. Laws 207, 288 (to be codified at FLA. STAT. § 380.0651). The Administration Commission is directed to publish the new guidelines and standards in the existing administrative rule without complying with the rulemaking requirements of chapter 120. *Id.*

256. *Id.* For example, the new guideline and standard for industrial plants and parks raises the parking space threshold from 1,500 to 2,500 vehicles. *Id.*

257. *Id.*

258. *Compare* FLA. ADMIN. CODE R. 27F-2 (1982) *with* ch. 85-55, § 46, 1985 Fla. Laws 207, 288.

259. Ch. 85-55, § 46, 1985 Fla. Laws 207, 288 (to be codified at FLA. STAT. § 380.0651(3)(g)-(i)).

DRI threshold. Under this new standard, any multi-use development is subject to the DRI process if the sum of the percentages of each of the thresholds for each land use in the project is equal to or greater than 130%.[260]

Finally, House Bill 287 requires the Administration Commission to adopt by March 1, 1986 specific criteria for determining whether two or more developments should be aggregated and treated as a single development for DRI review purposes. DCA is required to recommend to the Administration Commission the specific criteria for making aggregation determinations. However, House Bill 287 expressly limits the grant of statutory authority by providing that aggregation can only be accomplished in situations in which there exists common ownership or majority interest and at least one of the following factors: proximity, shared infrastructure, common advertising or management, or a master plan or unified plan of development.[261]

The second major change effectuated by House Bill 287 is the manner in which the DRI guidelines and standards are to be applied. As discussed earlier, the original guidelines and standards were only rebuttable presumptions. As a compromise between those factions who wanted to maintain the purely presumptive nature of the thresholds and those factions who wanted to abolish the presumptions in favor of definite, fixed thresholds, House Bill 287 adopts a banding concept that fixes definite DRI thresholds while retaining the presumption for a small "band" of projects above and below the threshold. A development that is 80% or less of all numerical thresholds in the applicable guidelines and standards is not required to undergo DRI review. However, any development that is 120% or more of any numerical threshold is required to undergo DRI review. Within the 80%-120% band, rebuttable presumptions still exist. If a development is between 80% and 100% of a numerical threshold, it is presumed not to be a DRI and therefore not subject to DRI review. However, if a development is at 100% or between 100% and 120% of a numerical threshold, it is presumed to be a DRI that is subject to DRI review.[262]

A third major change in the operation of the DRI guidelines and standards is the authorization of variations in DRI thresholds.

260. *Id.* (to be codified at FLA. STAT. § 380.0651(3)(i)).
261. *Id.* (to be codified at FLA. STAT. § 380.0651(4)).
262. *Id.* § 43, 1985 Fla. Laws 207, 256 (to be codified at FLA. STAT. § 380.06(2)(d)).

Upon petition by DCA, a regional planning agency, or a local government, the Administration Commission may adopt a rule increasing or decreasing a DRI threshold up to 50% above or below the statewide presumptive threshold. The rule does not become effective unless it is approved as submitted by general law at the next regular session of the legislature.[263]

DCA or a regional planning agency may petition the Administration Commission to increase or decrease a threshold for a particular local government's jurisdiction or a part of that particular local jurisdiction. A local government may petition for an increase or decrease of a threshold within any part of its jurisdiction. If DCA, a regional planning agency, or a local government files a petition, DCA is required to submit its report and recommendation on the proposed variation within 180 days to the Administration Commission. The report must evaluate and consider whether the local government has adopted and effectively implemented an adequate comprehensive plan, a comprehensive set of land development regulations, and the authority and fiscal mechanisms for enforcing development order conditions. The Administration Commission must adopt rules setting forth procedures for submission and review of variation petitions, including procedures which give the affected regional planning agency and the affected and adjoining local governments a reasonable opportunity to submit recommendations regarding variations to the Commission.[264]

2. *Binding Letters*

Chapter 380 originally provided that any developer in doubt as to whether his proposed development was a DRI could file an application with DCA for a binding letter determining the DRI status of the development. This statute contained no mechanism for requiring developers to apply for a binding letter.[265] Consequently, developers whose projects fell below the DRI thresholds could simply declare that they had no doubt that their proposed project was not a DRI. House Bill 287 provides the missing enforcement mechanism.

Under the new Act, DCA or the local government having jurisdiction over the development may require a developer to obtain a binding letter if the development (1) is at a presumptive numerical

263. *Id.* (amending FLA. STAT. § 380.06(3) (Supp. 1984)).
264. *Id.*
265. FLA. STAT. § 380.06(4)(a) (Supp. 1984).

threshold or up to 20% above a numerical threshold; or (2) is between a presumptive numerical threshold and 20% below the numerical threshold and the local government or DCA is in doubt as to whether the development creates a likelihood of substantial effect on the health, safety, or welfare of citizens of more than one county. In addition, any local government may petition DCA to require a developer of a project in an adjacent local jurisdiction to obtain a binding letter.[266]

House Bill 287 also provides for the expiration of binding letters determining the DRI status of a proposed development unless the plan of development has been substantially commenced. Binding letters issued prior to October 1, 1985, the effective date of the new Act, expire and become void three years from the effective date; binding letters issued after the effective date of House Bill 287 expire and become void three years from the date of issuance. However, the expiration date of a binding letter does not begin to run until after final disposition of all administrative and judicial appeals of the binding letter. The expiration date may be extended by mutual agreement of DCA, the local government, and the developer.[267]

3. *Preliminary Development Agreements*

A fundamental policy of the original chapter 380 was that development of a DRI should not commence until completion of the DRI review process and entry of a development order.[268] House Bill 287 significantly alters this policy in response to developers' complaints that the DRI process unnecessarily delays and increases the cost of development. The Act expressly recognizes and

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266. Ch. 85-55, § 43, 1985 Fla. Laws 207, 256 (amending FLA. STAT. § 380.06(4) (Supp. 1984)).

267. *Id.*

268. Pursuant to FLA. STAT. § 380.032(3) (1983), the state land planning agency has entered into agreements with developers which authorize *continuation* of development of DRIs which have not undergone DRI review pursuant to chapter 380. However, these agreements have been limited to a narrow range of circumstances in which developers inadvertently and in good faith commenced development of DRIs without undergoing DRI review. Either they erroneously assumed that the project was not a DRI or developments which originally were not DRIs were expanded to the point that they became subject to the DRI process. Unlike the preliminary development agreement provisions of the new Act, these agreements did not authorize *commencement* of projects which were admittedly DRIs prior to completion of DRI review. The administrative rules establishing standards and criteria for these § 380.032(3) agreements are found in FLA. ADMIN. CODE R. 9B-16.18 (1984). For a discussion of these agreements, see Pelham, *DRI Agreements: A New Technique for Implementing Chapter 380*, 56 FLA. B.J. 51 (1982).

authorizes preliminary development agreements which allow a developer to commence and complete a limited portion of the total development prior to issuance of a DRI development order. However, the legislature carefully circumscribed the use of such agreements.

Under the new provision, DCA, the developer, and all owners of the land in the development may enter into an agreement to commence development subject to the issuance of all other requisite governmental permits and solely at the developer's risk. The agreement must include ten statutorily enumerated conditions. Among the more important conditions are that the developer must comply with the DRI preapplication conference requirements within forty-five days after execution of the agreement, and must file a DRI application for the entire development within three months after execution of the agreement.[269] The agreement must describe both the preliminary development area and the total proposed development area; preliminary development must be limited to lands which DCA deems suitable for development in areas where adequate public infrastructure exists. The agreement may not provide the basis for a vested rights or equitable estoppel claim and will not entitle the developer to a final development order for the total development.

A preliminary development agreement may not allow development of more than 25% of any applicable DRI threshold unless certain conditions are met.[270] It must include a disclosure of all land or development within five miles of the total proposed development in which the developer and all the owners of the land have an interest, must be recorded in the public records of the county where the land is located, and is binding upon the successors and assigns of the parties to the agreement.[271]

4. *Florida's Quality Developments Program*

House Bill 287 also provides a means for obtaining an exemption from DRI review for an entire development. To encourage well-

269. Ch. 85-55, § 43, 1985 Fla. Laws 207, 256 (amending FLA. STAT. § 380.06(8) (Supp. 1984)). DCA may agree to a different time for good cause shown. Failure to timely file or diligently pursue the DRI application constitutes a breach of the agreement. *Id.*

270. *Id.* The developer must demonstrate that the additional development "is in the best interest of the state and local government, is essential to the ultimate viability of the proposed total development, and [that the] development will not result in material adverse impacts to existing resources or planned facilities." *Id.*

271. *Id.*

planned development, House Bill 287 permits certain developments which are above 80% of any numerical thresholds in the DRI guidelines and standards to be designated as Florida's Quality Developments and thus exempt from DRI review.[272] However, as a condition precedent to designation under this program the developer must comply with all statutory requirements which are particularly applicable to the site of the proposed development.[273]

The developer shall donate to or enter into a binding commitment with the Board of Trustees of the Internal Improvement Trust Fund or an appropriate water management district to donate the fee or a lesser interest sufficient to protect in perpetuity the natural attributes of wetlands and waterbodies within DER's jurisdiction, active beach or primary and secondary dunes, adequate public access ways to the beach, known significant sites, and habitat known to be significant to one or more endangered or threatened plant and animal species.[274] Alternatively, the developer may enter into a binding commitment which runs with the land to set aside such areas on the property as open space to be retained in a natural condition in perpetuity.[275]

Such "quality developments" may not produce, or dispose of, substances designated as hazardous or toxic by the United States Environmental Protection Agency, the Department of Environmental Regulation, or the Department of Agriculture and Consumer Services.[276] Also, they may not incorporate dredge and fill activities in, or storm water discharge into, waters designated as Class II, aquatic preserves, or outstanding Florida waters.[277] Participation in a downtown reuse or redevelopment program to improve and rehabilitate a declining downtown area may also render the proposed development eligible for "quality development" status.[278]

Such "quality developments" must include open space and recreation areas, promote energy conservation, and minimize impermeable surfaces as appropriate to the location and type of project.[279] Further, the developer must provide for construction and

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272. *Id.* § 44, 1985 Fla. Laws 207, 282 (to be codified at FLA. STAT. § 380.061(2),(5)).
273. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)).
274. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(1)a-d).
275. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(2)).
276. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(3)).
277. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(5)).
278. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(4)).
279. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(6)).

maintenance of all on-site infrastructure and enter into a binding commitment with the local government to provide an appropriate fair-share contribution toward the off-site impacts of the development.[280] The developer must also enter into a binding commitment with DCA to design and construct the development in a manner which is consistent with the adopted state plan, state land development plan, and the applicable local government's comprehensive plan.[281] In addition to all the foregoing requirements, the developer is also encouraged to plan its development in a manner which considers innovative design and the quality of life of the people who live and work in or near the development.[282]

To apply for designation as one of Florida's quality developments, the developer shall submit an application meeting statutorily enumerated requirements[283] to the state land planning agency, the appropriate regional planning agency, and the appropriate local government for review.[284] If all three reviewing entities agree that the project should be designated, the state planning agency shall issue a development order which incorporates the plan of development as set out in the application with any agreed upon modifications and conditions.[285]

If one or more of the reviewing entities recommends against designation as a quality development, the development shall undergo DRI review pursuant to section 380.06.[286] However, the developer may appeal the negative determination to the Quality Developments Review Board.[287] On appeal, the sole issue shall be whether the development meets the statutory criteria for designation under the program.[288] "An affirmative vote of at least five members of the board, including the affirmative vote of the chief executive officer of the appropriate local government, shall be necessary to designate the development by the board."[289]

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280. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(7)).

281. *Id.* (to be codified at FLA. STAT. § 380.061(3)(a)(8)).

282. *Id.* (to be codified at FLA. STAT. § 380.061(3)(b)). These factors will be considered in determining designation as a quality development.

283. *Id.* (to be codified at FLA. STAT. § 380.061(4)).

284. *Id.* (to be codified at FLA. STAT. § 380.061(5)(a)).

285. *Id.* (to be codified at FLA. STAT. § 380.061(5)(b)).

286. *Id.* (to be codified at FLA. STAT. § 380.061(5)(c)).

287. *Id.* (to be codified at FLA. STAT. § 380.061(6)(a)).

288. *Id.* (to be codified at FLA. STAT. § 380.061(6)(c)).

289. *Id.*

5. Conceptual Agency Review

The new Act seeks to streamline the permitting process for DRIs by more closely coordinating the DRI review process with other permitting processes. The coordinated review process[290] is replaced by a new conceptual agency review procedure. "Conceptual agency review" is defined by House Bill 287 as "general review of the proposed location, densities, intensity of use, character, and major design features of a proposed [DRI] . . . for the purpose of considering whether these aspects of the proposed development comply with the issuing agency's statutes and rules."[291] This procedure, which may be requested by the developer concurrently with DRI review and local comprehensive plan amendments or subsequent to a DRI preapplication conference, is a licensing action subject to the requirements of Florida's Administrative Procedure Act (APA).[292]

Approval or denial of conceptual agency review constitutes final agency action. If the proposed agency action on the requested conceptual approval is rendered following an administrative hearing pursuant to section 120.57 of the APA, final agency action will be conclusive as to all issues actually raised and adjudicated in the proceeding. Any such issues may not be raised by any parties to this proceeding in any subsequent proceeding under section 120.57 concerning the proposed development. In the absence of any state or regional agency rule to the contrary, conceptual approval shall be valid for up to ten years. However, an agency may revoke or appropriately modify a conceptual approval under certain conditions.[293]

Any state or regional agency that requires construction or operation permits, including the Department of Environmental Regulation and each water management district, must adopt rules establishing agency procedures necessary for conceptual agency review by July 1, 1986. The rule must cover permitting for construction and operation of potential water pollution sources, dredging and filling activities, management and storage of surface waters, and construction and operation of works of the district. In addition, any agency may adopt conceptual agency rules for any other per-

290. FLA. STAT. § 380.06(8) (Supp. 1984).

291. Ch. 85-55, § 43, 1985 Fla. Laws 207, 256 (to be codified at FLA. STAT. § 380.06(9)(a)(3)).

292. FLA. STAT. § 120 (1983).

293. Ch. 85-55, § 43, 1985 Fla. Laws 207, 256 (to be codified at FLA. STAT. § 380.06 (9)(e)).

mitting activity within its regulatory jurisdiction. The agency rule must also establish the information and application requirements for conceptual agency review.[294]

Although the approval does not obviate the necessity for obtaining a permit from the agency and meeting the agency's standards for issuance of a construction or operation permit in accordance with the agency's rules, the approval does constitute a rebuttable presumption that the applicant is entitled to receive a permit for an activity which has been granted conceptual review approval.[295] By comparison, the old coordinated review process did not commit an agency in any way to the ultimate issuance of a permit.[296]

6. *Certification of Local Governmental Review of Development*

House Bill 287 reaffirms the state's commitment to the DRI process. While the Act attempts to streamline the DRI process and to eliminate or at least ameliorate some of its more glaring weaknesses, the DRI process will continue to play a significant role in the management of Florida's growth. Consistent with the conclusions and recommendations of the ELMS Committee, the legislature declined to adopt a policy of terminating or phasing out the DRI program after the statewide comprehensive planning framework and improved local development regulations are implemented. However, House Bill 287 does create a mechanism for permitting certified local governments to review DRIs in their jurisdictions in lieu of the DRI review requirements set forth in chapter 380. This new program is designed to provide an incentive to local governments to adopt and effectively implement adequate local comprehensive plans and land development regulations.

After the state comprehensive plan and the appropriate comprehensive regional policy plan have been adopted, a local government may petition the Administration Commission for certification to review DRIs which are located within its jurisdiction.[297] Approval of this local review option is dependent upon the local government's having met certain specified criteria. First, it must have adopted and effectively implemented a local comprehensive plan and development regulations which comply with House Bill 287

294. *Id.* (to be codified at FLA. STAT. § 380.06(9)(b)).
295. *Id.* (to be codified at FLA. STAT. § 380.06(9)(e)).
296. FLA. STAT. § 380.06(8) (Supp. 1984).
297. Ch. 85-55, § 45, 1985 Fla. Laws 207, 286 (to be codified at FLA. STAT. § 380.065(1)).

and are consistent with the state comprehensive plan and the adopted regional comprehensive policy plan. Second, it must have adopted land development regulations and a capital improvements program which are consistent with and effectively implement the local comprehensive plan and which provide that no development order may be approved until adequate provision has been made for the services and infrastructure necessary to support the development. Third, the local government must demonstrate that it has an authorized, effective mechanism for resolving developmental impacts beyond its jurisdiction. Further, the local comprehensive plan shall provide for effective intergovernmental coordination, including a method for addressing incompatibilities between and among local government comprehensive plans where implementation of the plan would result in a substantial adverse effect on the citizens of another local government. Fourth, the local government must provide for orderly local citizen participation, adequate review procedures, and financing and staffing resources. Finally, the local government must have a record of effectively monitoring and enforcing compliance with development orders, permits, and chapter 380.[298]

After a local government has been certified, the DRI process is not applicable in its jurisdiction.[299] However, development orders issued in the jurisdiction may be appealed to the Adjudicatory Commission. In the event of an appeal, the local order is presumed to be correct. Moreover, the grounds for the appeal are limited to inconsistency with the local government's comprehensive plan or land use regulations; inconsistency with the state land development plan and the state comprehensive plan; inconsistency with any regional standard or policy identified in an adopted regional comprehensive policy plan; and failure of public facilities to meet the standards established in the capital improvements plan.[300]

After certification, the local review option may be revoked by the Administration Commission only upon a determination that one or more of the designation criteria are not being met. Once certification is revoked, developments of regional impact in the local jurisdiction shall be reviewed as set forth in chapter 380.[301]

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298. *Id.* (to be codified at FLA. STAT. § 380.065(2)).

299. *Id.* (to be codified at FLA. STAT. § 380.065(1)).

300. *Id.* (to be codified at FLA. STAT. § 380.065(3)).

301. *Id.* (to be codified at FLA. STAT. § 380.065(4)-(5)).

7. DRI Conditions and Exactions

House Bill 287 establishes specific criteria for DRI development order conditions and exactions. First, a local government is prohibited from adopting any DRI development order condition which requires a developer to contribute or pay for land acquisition or a construction or expansion of public facilities unless the local government has enacted a local ordinance which requires non-DRI developments to contribute their proportionate share of the funds, land, or public facilities essential to accommodate any impacts having a rational nexus to the proposed development. In addition, the local government cannot adopt any such condition unless the need to construct new facilities or supplement the present system of public facilities is reasonably attributable to the proposed development.[302]

Any DRI development order condition which requires a developer to contribute land for a public facility, or construct, expand, or pay for land acquisition or construction or expansion of a public facility must meet the following criteria:

> (1) The need must be reasonably attributable to the proposed DRI development;
>
> (2) Any required contribution must be comparable to the amount of funds, land, or public facilities that the state or local government would reasonably expect to expend or provide to mitigate the impacts reasonably attributable to the proposed development; and
>
> (3) Any contributions exacted from the developer must be expressly designated and used to mitigate impacts reasonably attributable to the proposed development.[303]

If a local government has a local impact fee or exactions ordinance which is applicable to a DRI, any contribution required by a DRI development order must be credited against the exaction imposed by the local ordinance. However, if the Adjudicatory Commission imposes additional exactions on the developer pursuant to an appeal of a local DRI development order, the local government is not required to grant a credit towards the local exaction unless it determines that the additional contribution meets the same need

302. Ch. 85-55, § 43, 1985 Fla. Laws 207, 256 (amending FLA. STAT. § 380.06(14) (Supp. 1984), to be codified at FLA. STAT. § 380.06(15)(d)(1)-(3)).

303. *Id.* (to be codified at FLA. STAT. § 380.06(16)).

addressed by the local exaction. If a local government imposes or increases a local impact fee or exaction after adoption of a DRI development order, the local government, upon petition from the developer, must modify the DRI development order to credit the developer for any contribution required by the development order for the same need.[304]

8. Substantial Deviations

House Bill 287 performs major surgery on the substantial deviation provisions of chapter 380. The Act retains the original broad statutory definition of a substantial deviation,[305] but adds a list of eighteen specific changes, expressed primarily in terms of numerical changes in the size of various aspects of the development, which are statutorily deemed substantial deviations.[306] Proposed changes which fall below these numerical criteria or which result from requirements imposed by certain state and federal regulatory agencies are presumed not to be substantial deviations, but the presumptions are rebuttable by clear and convincing evidence. Additionally, the extension of a development's build-out date by five or more years is presumed to create a substantial deviation, but this presumption is also rebuttable.[307]

The Act establishes a new procedure for reviewing proposed changes to previously approved DRIs. The developer must submit simultaneously to the local government, the regional planning agency, and DCA any proposed change. Between thirty and forty-five days after submission of the proposed change, the local government must give fifteen days' notice of a public hearing to consider any change which the developer contends is not a substantial deviation. The regional planning agency or DCA must review the proposed change and within thirty days of the submittal advise the

304. *Id.* Note, however, that credits do not have to be given for "internal, on-site facilities required by local regulations" or for "any off-site facilities to the extent such facilities are necessary to provide safe and adequate services to the development." *Id.*

305. Substantial deviation is "any change to the previously approved development of regional impact which creates a reasonable likelihood of additional adverse regional impact, or any other regional impact created by the change not previously reviewed by the regional planning agency." FLA. STAT. § 380.06(17) (Supp. 1984).

306. Ch. 85-55, § 43, 1985 Fla. Laws 207, 256 (amending FLA. STAT. § 380.06(17) (Supp. 1984), to be codified at FLA. STAT. § 380.06(19)). For example, "[a]n increase in industrial development area by 5 percent or 32 acres, whichever is greater" and "[a]n increase in the number of dwelling units by 5 percent, or 50 dwelling units, whichever is greater" are deemed substantial deviations. *Id.*

307. *Id.*

local government whether either intends to participate at the local public hearing. Applying the substantial deviation criteria and presumptions, the local government must determine at the public hearing whether the proposed change is a substantial deviation requiring further DRI review. The local government's decision to approve or deny the proposed change may be appealed to the Adjudicatory Commission. However, DCA and the regional planning agency may appeal the local decision only if they participated at the local hearing.[308]

The existing substantial deviation provision does not specify the nature of the DRI review required for substantial deviations; it simply provides that if a proposed change is determined to be a substantial deviation, "the development" shall be subject to further DRI review. House Bill 287 clarifies the nature and scope of the "further review."[309] The regional planning agency shall review only those issues raised by the proposed change in the context of the relationship of the proposed change to the entire development.[310] If the local government then determines that the proposed change, as it relates to the entire development, is "unacceptable," the proposed change shall be denied.[311] On the other hand, if the local government determines that the proposed change should be approved, any new conditions included in the DRI development order shall address only issues raised by the proposed change.[312] The amendment to the development order following completion of the review is subject to the appeal provisions of section 380.07.[313] Unlike the initial decision determining whether a proposed change is a substantial deviation, DCA and the regional planning agency may appeal the amended development order even if they did not participate at the local hearing.[314]

Prior to the new Act, it was not clear whether development of the DRI could continue during review of a proposed change which constitutes a substantial deviation. House Bill 287 eliminates this uncertainty by expressly providing that development within the previously approved DRI may continue during the DRI review pro-

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308. *Id.*

309. FLA. STAT. § 380.06(17) (Supp. 1984).

310. Ch. 85-55, § 43, 1985 Fla. Laws 207,256 (amending FLA. STAT. § 380.06 (Supp. 1984), to be codified at FLA. STAT. § 380.06(19)(g)).

311. *Id.*

312. *Id.*

313. *Id.* (to be codified at FLA. STAT. § 380.06(19)(h)).

314. *Id.*

cess in any portion of the development which is not affected by the proposed change.[315]

9. Vested Rights

House Bill 287 makes only a minor change in the vested rights provisions of chapter 380. The change concerns the vesting of rights pursuant to subdivision plat approvals granted between August 1, 1967, and July 1, 1973. Section 380.06(18)(a) formerly provided that a subdivision plat approval pursuant to local law after August 1, 1967, and prior to July 1, 1973, was sufficient to vest all property rights under chapter 380. This provision has been modified to provide that any person claiming vested rights under this provision must notify DCA in writing by January 1, 1986. The notification must include adequate documentation to support the vested rights claim. If the notification requirement is satisfied, any commencing of development upon which the developer has relied and changed his position will vest the applicant's rights until June 30, 1990. If the written notification is not filed by January 1, 1986, the vested rights conferred by this provision will expire on June 30, 1986.[316]

10. Enforcement of Chapter 380

A major weakness of chapter 380 from its inception has been the lack of an effective enforcement mechanism. Prior to the enactment of House Bill 287, the only mechanism available to DCA to enforce chapter 380 was an action for injunctive relief in circuit court.[317] The new Act provides DCA with administrative remedies for violations of chapter 380. DCA is authorized to institute an administrative proceeding to prevent, abate or control the violation of any rule, development or other order, or any agreement issued or entered into pursuant to chapter 380. In addition, DCA is authorized to institute an administrative proceeding against any developer or other responsible party to obtain compliance with the DRI review process and any binding letters, agreements, rules, or orders issued pursuant to chapter 380. Finally, DCA is authorized to seek enforcement of its final agency actions pursuant to section 120.69 of the APA or by written agreement with the alleged

315. *Id.*

316. *Id.* (amending FLA. STAT. § 380.06(18) (Supp. 1984), to be codified at FLA. STAT. § 380.06(20)).

317. FLA. STAT. § 380.11 (1983); *see supra* notes 252-53 and accompanying text.

violator.[318]

11. Standing to Appeal

As a result of the compromises on the standing issue, the legislature rejected proposals to permit substantially affected persons standing to appeal local DRI development orders to the Adjudicatory Commission.[319] The original draft of House Bill 287 provided that any substantially affected person could petition the Adjudicatory Commission for permission to bring an appeal on grounds specified in the bill. Rejection of the petition by the Adjudicatory Commission would have been appealable to the appropriate district court of appeal.[320] This provision was ultimately deleted from House Bill 287 which, as passed by the legislature, does not change the existing statutory provisions regarding standing to appeal to the Adjudicatory Commission. The disposition of the standing issue evinces a clear legislative intent that only the developer or owner, DCA, or the regional planning agency may appeal a local DRI development order to the Adjudicatory Commission.[321]

As discussed in Part IV of this Article, however, House Bill 287 does confer standing on any "aggrieved or adversely affected party" to maintain a circuit court action for injunctive or other relief to prevent a local government from taking action on a development order which is not consistent with the local comprehensive plan.[322] For purposes of this provision, "development order" is defined to include local DRI development orders.[323] Thus, while House Bill 287 will permit aggrieved or adversely affected parties to challenge local DRI development orders in circuit court, such challenges are limited to the issue of whether the local order is consistent with the local comprehensive plan. Apparently, the legislature intended to preclude such parties from raising regional issues under chapter 380 in any circuit court proceeding.[324]

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318. Ch. 85-55, § 48, 1985 Fla. Laws 207, 291 (amending Fla. Stat. § 380.11 (1983)).

319. *See supra* notes 118 -121 and accompanying text.

320. Fla. HB 287, sec. 6 (1985) (amending FLA. STAT. § 380.07 (2)(c) (1983)).

321. The legislature's rejection of a proposal to broaden the standing provisions of FLA. STAT. § 380.07(2) (1983) would seem to ratify the line of court decisions that construed these statutory provisions as permitting only the four named parties to appeal. *See supra* notes 249-51 and accompanying text.

322. *See supra* notes 214-221 and accompanying text.

323. *See* ch. 85-55, § 18, 1985 Fla. Laws 207, 233 (to be codified at FLA. STAT. § 163.3215 (1)).

324. *See* Upper Keys Citizens Ass'n v. Monroe County, 467 So. 2d 1018 (Fla. 3d DCA 1985), *clarified on rehearing*, 10 F.L.W. 1097 (3d DCA 1985), which involves an attempt by

VI. COASTAL ZONE PROTECTION

A. *Existing Law and Problems*

1. *Coastal Zone Construction*

The Beach and Shore Preservation Act constitutes the primary regulatory scheme for the protection of coastal areas of Florida. [325] The Act is divided into two parts. Part I regulates coastal construction and provides for beach renourishment and restoration programs.[326] Part II provides for the establishment of beach and shore preservation districts.[327] The amendments to the Act in House Bill 287 relate solely to the provisions of Part I.

Under the Act, construction or excavation within fifty feet of the mean high water line is prohibited except in certain limited situations.[328] The fifty foot set-back line is measured from the winter and most landward mean high water line, i.e., the vegetation line.[329] This line governs pending the establishment of a coastal construction control line by the Department of Natural Resources (DNR).[330]

The Act further directs DNR to establish coastal construction control lines on a county-by-county basis along the sand beaches of the state fronting on the Atlantic Ocean or the Gulf of Mexico.[331] Generally, such lines "shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions."[332] However, such lines shall be established by DNR "only after it has been determined from a comprehensive engineering study and a topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion."[333]

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a local citizens group to challenge a local DRI development order in circuit court for alleged violations of chapter 380.

325. FLA. STAT. §§ 161.011-.45 (1983).

326. *Id.* §§ 161.011-.212.

327. *Id.* §§ 161.25-.45.

328. *Id.* § 161.052(1)-(6).

329. Trustees of Internal Improvement Fund v. Ocean Hotels, Inc., 40 Fla. Supp. 26 (Fla. 15th Cir. Ct. 1974); W. BENTON & M. PROCTOR, *The Beach and Shore Preservation Act, Chapter 161, Florida Statutes, Coastal Construction Permits and Variances*, in ENVIRONMENTAL REGULATION AND LITIGATION IN FLORIDA 23.6 (1981).

330. FLA. STAT. § 161.053(9) (1983).

331. *Id.* § 161.053(1).

332. *Id.*

333. *Id.* § 161.053(2).

Once a coastal construction control line is established, construction, excavation, removal of beach material, vehicular traffic on sand dunes or other damage to sand dunes or vegetation seaward of the line without a permit from DNR is prohibited.[334] A permit may issue only where DNR determines that facts and circumstances, including engineering data concerning shoreline stability, clearly justify a permit.[335] DNR may also issue a permit where "in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the [coastal construction control line], and if the existing structures have not been unduly effected by erosion."[336]

Any coastal construction erected or excavated in violation of the fifty foot set-back line or the coastal construction control line is declared to be a "public nuisance," and DNR is authorized to give written notice requiring the removal or refilling of such a nuisance.[337] If the notice is not complied with within a reasonable period of time, DNR may itself remove the nuisance, and the cost of the removal becomes a lien on the property of the upland owner.[338]

The Act also provides that refusal to comply with or willful violations of any of the provisions of sections 161.052 or 161.053, Florida Statutes, or any rule or order promulgated thereunder shall render a *person* liable for a fine of up to $10,000per day for each day the violation occurs.[339] A violation of the fifty foot set-back line constitutes a first-degree misdemeanor and each month during which a violation occurs is a separate offense.[340] A violation of the coastal construction control lines established by DNR also constitutes a first-degree misdemeanor, except that the penalty for driving any vehicle on, over, or across any sand dune damaging or causing to be damaged such sand dune or the vegetation growing thereon constitutes a second-degree misdemeanor.[341]

2. *Coastal Zone Management*

In 1972, Congress enacted the Coastal Zone Management Act of

334. *Id.*
335. *Id.* § 161.053(4)(a).
336. *Id.* § 161.053(4)(b).
337. *Id.* §§ 161.052(7), .053(5).
338. *Id.*
339. *Id.* §161.054(1) (emphasis added).
340. *Id.* § 161.052(8).
341. *Id.* § 161.053(6).

1972 (CZMA) and subsequently amended it in 1976 and 1980.[342] The CZMA established a program utilizing federal grants as inducements to develop and implement management programs for land and water resources in coastal areas.[343] To be approved under the CZMA, a state program must include certain specified elements as part of an overall planning process for the protection of coastal resources.[344] Once approval is obtained, implementation is effected through operational funding, special grants, coastal energy impact funds, and program reviews provided under sections 306, 308, and 312 of the CZMA.

The Florida Legislature enacted the Florida Coastal Management Act of 1978 (FCMA),[345] which authorized the Department of Environmental Regulation (DER) to compile a program based upon existing statutes and regulations in order to receive administrative funds under the CZMA.[346] DER was designated as the lead agency[347] and the Office of Coastal Management within DER coordinated efforts to obtain program approval. While the FCMA did provide a framework as well as a funding source for the coordination of its efforts to manage the state's coastal resources, it provided no authority for the promulgation of new regulations for coastal management policies.[348] Thus, its regulatory impact was largely limited to the federal consistency requirement contained in both the FCMA and the CZMA.[349] In general, however, compliance with Florida law, which was usually the same as or more stringent than federal law, was usually sufficient to overcome federal regulatory hurdles.[350] Consequently, the salutary effects of the FCMA were largely in the planning area.

Continued state eligibility for federal funding under the CZMA was and is contingent upon Florida's providing its share of coastal management revenue.[351] However, the allocation of state monies for the various coastal programs has been inadequate. Moreover,

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342. Pub. L. No. 92-583, 86 Stat. 1281, *amended by* Act of July 26, 1976, Pub. L. No. 94-370, 90 Stat. 1013, *amended by* Act of Oct. 17, 1980, Pub. L. No. 96-464, 94 Stat. 2060 (codified as amended at 16 U.S.C. §§ 1451-64) [hereinafter referred to as CZMA].

343. Brindell, Frith, & McVoy, *The Approved Florida Coastal Management Program*, in ENVIRONMENTAL REGULATION AND LITIGATION IN FLORIDA 22.1, 22.2 (1982 Supp.).

344. *Id.* at 22.2-22.4.

345. FLA. STAT. §§ 380.19-.25 (1983).

346. *Id.* § 380.21(2).

347. *Id.* § 380.22(1).

348. *Id.* § 380.22(1), (3).

349. *Id.* § 380.23; 16 U.S.C. §§ 1451-1464.

350. J. BRINDELL, A. FRITH, & R. MCVOY, *supra* note 343, at 22.9-.10.

351. ELMS REP., *supra* note 1, at 95.

Florida has no state-funded coastal management and administrative staff positions in DER's Office of Coastal Management, and certain activities required by the FCMA are not being conducted because of a lack of state funds.[352]

The Local Government Comprehensive Planning Act of 1975[353] also required that all local government comprehensive plans for coastal communities contain coastal zone protection elements.[354] These elements were submitted to the Department of Community Affairs and DER for review and comment; however, there were no minimum state standards for the review and approval of coastal elements of an adopted local governmental comprehensive plan.[355] Consequently, the development and funding of coastal infrastructure by affected local governments was, for all practical purposes, dependent solely on the good offices of that local government. Further, problems often arose when state agencies provided funding for infrastructure "without regard to the adequacy of local government coastal management policies or the adverse impacts of postdisaster redevelopment on coastal areas."[356] Thus, coastal resource management was usually poor and uncoordinated.[357]

In 1981, in an attempt to partially rectify this situation, Governor Bob Graham issued Executive Order No. 81-105.[358] This order directed the Departments of Commerce, Environmental Regulation, Health and Rehabilitative Services, Transportation, and Community Affairs and the Director of the Governor's Office of Planning and Budgeting to take certain actions as applicable to their agencies. First, they were to give high consideration to the purchase of coastal barriers, including coastal barrier islands, beaches, and related lands, in existing state land acquisition programs, and priority in the development of future acquisition programs. Second, the order directed that state funds and federal grants for coastal barrier projects be applied only in those coastal areas which can accommodate growth, where there is need and desire for economic development, or where potential danger to human life and property from natural hazards is minimal. Such funds were not to be used to subsidize growth or postdisaster rede-

352. *Id.*
353. FLA. STAT. §§ 163.3161-.3211 (1983) [hereinafter referred to as the LGCPA].
354. *Id.* § 163.3177(6)(g).
355. *Id.*
356. ELMS REP., *supra* note 1, at 98.
357. *Id.*
358. Fla. Exec. Order No. 81-105 (1981).

velopment in hazardous coastal barrier islands. Third, the order directed the affected agencies to encourage, in cooperation with local governments, appropriate growth management so that population and property in coastal barrier areas were consistent with evacuation capabilities and hazard mitigation standards. The effectiveness of Executive Order No. 81-105, however, was limited because it was not established by statute and thus had questionable legal force. Moreover, the Department of Community Affairs did not attempt to effectuate the Governor's mandate through rulemaking until 1984; that rulemaking process is still pending.[359]

B. House Bill 287: Amendments to the Coastal Zone Construction and Management Programs

House Bill 287 provides for much more stringent regulation of construction and development within the coastal areas of the state. First, it significantly amends the provisions of the Beach and Shore Preservation Act to give DNR additional authority to restrict construction in a substantially greater area of Florida's coasts than was provided by the former Act.[360] Second, it creates the Coastal Zone Protection Act of 1985, which essentially provides for state-wide building criteria for structures located within coastal areas under DNR's newly expanded jurisdiction.[361] Third, it sets forth for the first time a definitive state policy regarding the funding of infrastructure in coastal areas.[362]

1. Amendments to the Beach and Shore Preservation Act

Perhaps the most significant amendment to the Beach and Shore Preservation Act is the creation of a thirty-year erosion control line. After October 1, 1985, DNR, or a local government to which the agency has delegated permitting authority,

> shall not issue any permit for any structure, other than a coastal or shore protection structure, minor structure, or pier, meeting the requirements of this part, or other than intake and discharge structures for a facility sited pursuant to Part II of chapter 403, which is proposed for a location that based on [DNR's] projec-

359. Telephone conversation with Dean Alexander, Dep't of Community Affairs (July 10, 1985).

360. Ch. 85-55, §§ 33-35, 1985 Fla. Laws 207, 242-47 (amending FLA. STAT. §§ 161.053, .0535, .054 (1983)).

361. *Id.* § 36, 1985 Fla. Laws 207, 246 (to be codified at FLA. STAT. §§ 161.52-.58).

362. *Id.* § 38, 1985 Fla. Laws 207, 253 (to be codified at FLA. STAT. 380.27).

> tions of erosion in the area, will be seaward of the seasonal high-water line within 30 years after the date of application for such permit.[363]

However, in determining the area which will be seaward of the seasonal high-water line in thirty years, DNR shall not include any areas landward of a coastal construction control line.[364] DNR is also required to consider the impact on erosion rates of a beach renourishment or restoration project. However, while DNR must deem each year that there is sand seaward of the erosion control line that no erosion took place that year, the seaward extent of a restoration or renourishment is not to be considered in determining erosion rates.[365]

Except for the structures enumerated above, the only structure which can be constructed seaward of a thirty-year erosion control line is a single-family dwelling meeting specific statutory requirements.[366] The inclusion of this exception to the otherwise absolute prohibition on the erection of major structures seaward of the thirty-year erosion control line was ostensibly for the purpose of preventing or at least lessening the opportunity for suits for inverse condemnation regarding parcels of land for which a use is otherwise prohibited.[367]

DNR may, at its discretion, issue a permit for the repair of a building within the confines of the original foundation of a major structure; however, under no circumstances shall it permit repairs or rebuilding that expand the capacity of the original structure seaward of the thirty-year erosion control line. In reviewing such applications, DNR shall specifically consider changes in shoreline conditions, the availability of other rebuilding options, and the design adequacy of the project sought to be rebuilt.[368]

Several minor amendments were also made to the provisions of

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363. *Id.* § 33, 1985 Fla. Laws 207, 242 (to be codified at FLA. STAT. § 161.053(6)(b)). The procedures for determining such erosion control lines shall be established by rule. *Id.*

364. *Id.*

365. *Id.* (to be codified at FLA. STAT. § 161.053(6)(d)).

366. *Id.* § 33, 1985 Fla. Laws 207, 242 (to be codified at FLA. STAT. § 161.053(6)(c)). The statutory requirements are that: (1) the land be platted or subdivided by Oct. 1, 1985; (2) the owner of the land not own another parcel of land immediately adjacent and landward; (3) the house is located landward of the frontal dune structure; and (4) the house will be as far landward as practicable without being seaward of or on the frontal dune. *Id.*

367. Fla. H.R., tape recording of proceedings (May 14, 1985) (on file with Clerk) (statement of Rep. Wallace, Chairman, Subcomm. on Growth Management) [hereinafter cited as May 14 House Debate].

368. Ch. 85-55, § 33, 1985 Fla. Laws 207, 242 (to be codified at FLA. STAT. § 161.053(12)).

the Beach and Shore Preservation Act. Specifically, the criminal liability provision of the Act was expanded to include not only "persons," but also a "firm, corporation, or agent thereof."[369] The administrative liability provisions of the Act were similarly expanded, and provisions for fines to be assessed against governmental agencies were also included.[370]

House Bill 287 also provides that no coastal construction control lines shall be set until a public hearing under section 120.54(3) has been held by the Governor and Cabinet, and affected persons have had an opportunity to appear. To prevent the "grandfathering" of permit applications or structures during the pendency of challenges, a rule establishing coastal control lines is exempt from rule challenge or drawout proceedings, and becomes effective upon filing with the Department of State.[371] Finally, it is worth noting that as a result of an apparent bureaucratic logjam at DNR, that agency has not been able to update since June 30, 1980 the coastal construction control lines for seventeen Florida counties.[372] House Bill 287 therefore provides that the update of these lines is a critical priority for DNR.[373] Should it not be able to meet the legislature's goal that all such lines be established by June 30, 1989, DNR is to notify the legislature so that it can consider interim lines of jurisdiction for these counties.[374]

2. *Coastal Zone Protection Act of 1985*

House Bill 287 also creates the Coastal Zone Protection Act of 1985.[375] Generally, this new Act sets forth strict construction standards for major structures,[376] minor structures,[377] and nonhabitable

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369. *Id.* (to be codified at FLA. STAT. § 161.053(8)).

370. *Id.* § 35, 1985 Fla. Laws 207, 247 (to be codified at FLA. STAT. § 161.054(1)).

371. *Id.* § 33, 1985 Fla. Laws 207, 242 (amending FLA. STAT. § 161.053(2) (1983)). Once adopted, however, the rule is subject to an invalidity challenge. *Id.*

372. Fla. H.R., Select Comm. on Growth Management, tape recording of proceedings (Apr. 23, 1985) (on file with H.R. Comm. on Natural Resources) (statement by Rep. Wallace, Chairman, Subcomm. on Growth Management).

373. Ch. 85-55, § 33, 1985 Fla. Laws 207, 242 (to be codified at FLA. STAT. § 161.053(3)).

374. *Id.*

375. Ch. 85-55, § 36, 1985 Fla. Laws 207, 247 (to be codified at FLA. STAT. §§ 161.52-.58).

376. *Id.* (to be codified at FLA. STAT. § 161.54(6)(a)). " 'Major structure' means houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, towers, other types of residential, commercial, or public buildings, and other construction having the potential for substantial impact on coastal zones." *Id.*

377. *Id.* (to be codified at FLA. STAT. § 161.54(6)(b)).

"Minor structure" means pile-supported, elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported, elevated view-

major structures,[378] located within a "coastal building zone" or on "coastal barrier islands."

The "coastal building zone" is defined as "the land area from the seasonal high-water line landward to a line 1,500 feet landward of the coastal construction control line . . . and, for those coastal areas fronting on the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Strait of Florida and not included under s. 161.053, a line 3,000feet landward from the mean high-water line."[379] "Coastal barrier islands" are generally defined as geological features which are completely surrounded by marine waters; however, excluded from the definition are mainland areas which were separated from the mainland by artificial channelization for the purpose of assisting marine commerce.[380]

All major structures located within the coastal building zone or on coastal barrier islands shall now conform to the Standard Building Code.[381] They shall be designed and constructed to survive a hundred-year storm event without flotation, collapse, or lateral displacement.[382] Major structures, except for mobile homes, must also be able to withstand wind velocities of not less than 140 m.p.h.[383] Certain other considerations must also be made for the design and construction of such a structure.[384]

Minor structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce potential damage from water or wind-blown ma-

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ing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts, and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be a characteristic of minor structures that they are considered to be expendable under design wind, wave, and storm forces.

Id.

378. *Id.* (to be codified at FLA. STAT. § 161.54(6)(c)): " 'Nonhabitable major structure' means swimming pools; parking garages; pipelines; piers; canals, lakes, ditches, drainage structures, and other water retention structures; water and sewage treatment plants; electrical power plants, transmission lines, distribution lines, transformer pads, vaults and substations; roads, bridges, streets, and highways; and underground storage tanks." *Id.*

379. *Id.* (to be codified at FLA. STAT. § 161.54(1)).

380. *Id.* (to be codified at FLA. STAT. § 161.54(2)).

381. *Id.* (to be codified at FLA. STAT. § 161.55(1)(a)). Mobile homes, which are included in the definition of major structures, have additional safety and construction requirements. *Id.* (to be codified at FLA. STAT. § 161.55(1)(b)).

382. *Id.* (to be codified at FLA. STAT. § 161.55(1)(c)-(d), (f)).

383. *Id.* (to be codified at FLA. STAT. § 161.55)(1)(e)).

384. *Id.* (to be codified at FLA. STAT. § 161.55(2)).

terial. Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure will not be permitted by DNR.[385]

Nonhabitable major structures must be designed to produce the minimum adverse impact on the beach and dune system and shall comply with all applicable state and local standards not found in the Act.[386] In all circumstances, construction, except for elevated walkways, lifeguard support stands, piers, beach access ramps, gazebos, and coastal and shore protection structures, shall be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability.[387]

The new Act further provides that where the public has established an accessway through private lands development or construction shall not interfere with that right of public access unless a comparable alternative accessway is provided. The developer shall have the right, however, to improve, consolidate, or relocate such public accessways if certain conditions are met.[388] In order to implement the Act, each local government which is required to adopt a building code by section 553.73 and which has some portion of a coastal building zone within its territorial limits shall adopt, not later than March 1, 1986, and subsequently enforce these coastal zone building requirements.[389] Failure to properly adopt a building code pursuant to this section may subject the local government to the imposition of sanctions by the Administration Commission pursuant to section 163.3184(8).[390] However, nothing in the Act limits or abrogates the right and power of DNR to require permits or to adopt and enforce standards for construction seaward of the coastal construction control line or the rights or powers of local governments to enact and enforce setback requirements or zoning or building codes that are as restrictive as, or more restrictive than, the building requirements provided in this section.[391]

Finally, so that purchasers of interests in real property are fully apprised of the character of the regulation of the real property in such a coastal area, especially the fact that such lands are subject

385. *Id.* (to be codified at FLA. STAT. § 161.55(3)).
386. *Id.* (to be codified at FLA. STAT. § 161.55(4)).
387. *Id.* (to be codified at FLA. STAT. § 161.55(6)).
388. *Id.*
389. *Id.* (to be codified at FLA. STAT. § 161.56(1)).
390. *Id.* (to be codified at FLA. STAT. § 161.56(2)).
391. *Id.* (to be codified at FLA. STAT. § 161.56(3)).

to frequent and severe fluctuations, the seller of such property must deliver an affidavit, or a survey meeting the requirements of Chapter 472, delineating the location of the coastal construction control line on the property being transferred to the purchaser at or prior to the closing of the transaction.[392]

3. *Coastal Infrastructure Policy and Ancillary Amendments*

House Bill 287 has also created several new provisions relating to coastal construction and protection not contained in the Coastal Zone Protection Act of 1985. Most of these provisions are minor in character.[393] Significantly, though, House Bill 287 legislatively ratifies and reinforces Executive Order No. 81-105 regarding the provision of state funds for undeveloped coastal areas.

Henceforth, no state funds shall be used for the purpose of constructing bridges or causeways to coastal barrier islands which are not accessible by bridges or causeways by October 1, 1985.[394] Further, after a local government has an approved coastal management element adopted pursuant to section 163.3178, no state funds which are unobligated[395] at the time the element is approved shall be expended for projects which increase the capacity of infrastructure unless the expenditure is consistent with the approved coastal management element.[396] Further, the state land planning agency shall annually prepare and transmit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report on the state's coastal barrier areas. This report shall assess the effectiveness of the coastal barrier area infrastructure policy on growth and development.[397]

House Bill 287 also restates, renumbers, and significantly

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392. *Id.* (to be codified at FLA. STAT. § 161.57)).

393. *See, e.g.*, ch. 85-55, § 39, 1985 Fla. Laws 207, 254 (amending FLA. STAT. 403.813(2)(e) (Supp. 1984)) (providing that nothing in DER's general permit exemption for the restoration of seawalls affects permitting requirements under chapter 161); *id.* § 40, 1985 Fla. Laws 207, 254 (amending FLA. STAT. § 125.0104 (1983)) (permitting counties to apply tourist development tax proceeds to finance beach renourishment, restoration, improvement, maintenance, and erosion control).

394. Ch. 85-55, § 38, 1985 Fla. Laws 207, 253 (to be codified at FLA. STAT. § 380.27).

395. This qualification that state revenue sharing monies be "unobligated" was included to address concerns expressed by House Fin. & Tax. Comm. Chairman Carl Ogden, Dem., Jacksonville, as to the possible adverse effects of such a cutoff on a county's bonded indebtedness. Rep. Ogden had threatened to pull the bill into his committee unless his concerns were addressed. Leonard, *State Senate OKs goals for growth management*, Tallahassee Democrat, May 10, 1985, at A10, col. 4.

396. Ch. 85-55, § 38, 1985 Fla. Laws 207, 253 (to be codified at FLA. STAT. § 380.27).

397. *Id.*

amends the prior statutory prohibition on vehicular traffic on the dunes or native stabilizing vegetation of the dune system of coastal beaches. Except as necessary for cleanup, repair, or public safety, and as authorized by local or state dune crossovers, vehicular traffic is prohibited on coastal beaches. Nevertheless, a local government with jurisdiction over a coastal beach or a part of a coastal beach may, by a three-fifth's vote of its governing body, authorize vehicular traffic on all or portions of the beaches under its jurisdiction and may require a reasonable fee for such vehicular traffic access.[398] This express statutory authority to assess fees will legitimize a practice that has recently been the subject of negative judicial scrutiny.[399] The revenues from such fees, however, must only be used for beach maintenance purposes.[400]

VII. CONCLUSION

In 1985, the Florida Legislature completed construction of a statutory framework for an integrated statewide comprehensive planning process in Florida. This planning process has a hierarchical structure; it can be visualized as a pyramid with state, regional, and local levels in descending order. At the top is the state comprehensive plan with implementing state agency functional plans; in the middle are comprehensive regional policy plans; and at the bottom are the local comprehensive plans which are to be implemented through local land development regulations and orders. Integration of the three levels is to be achieved through consistency requirements. The goals and policies of the state comprehensive plan are to be implemented through state agency functional plans and regional policy plans which are consistent with the state plan. Local comprehensive plans must be consistent with both the regional and state plans.

The legislature laid the foundation for this rather imposing edifice with the enactment of the Local Government Comprehensive Planning Act in 1975. This Act required each local government to adopt a local comprehensive plan and to implement the plan through local land development regulations and orders. The next level was added in 1980 by the Florida Regional Planning Council Act which required each regional council to adopt a comprehensive regional policy plan. However, this Act provided no link between

398. *Id.* § 36, 1985 Fla. Laws 207, 247 (to be codified at FLA. STAT. § 161.58).
399. *See* City of Daytona Beach Shores v. State, 454 So. 2d 651 (Fla. 5th DCA 1984).
400. Ch. 85-55, § 36, 1985 Fla. Laws 207, 247 (to be codified at FLA. STAT. § 161.58).

local and regional plans. The State and Regional Planning Act of 1984 added several new building blocks to the planning pyramid. It required preparation and adoption of a state comprehensive plan and state agency functional plans and reaffirmed and strengthened the comprehensive regional planning requirement. In addition, the 1984 Act commenced the critically important task of integrating the various planning components by requiring both the state agency functional plans and the comprehensive regional policy plans to be consistent with the state comprehensive plan. Nevertheless, this Act did not establish a fully integrated statewide planning framework because it provided no linkage between the state and regional plans and local comprehensive plans.

House Bill 287, the major growth management act of 1985, provides the missing link and more. First, it amends the LGCPA to strengthen the substantive requirements for local comprehensive plans and to require them to be consistent with the state and regional plans. Second, it establishes a system of state review and approval of local plans to ensure their consistency with the state and regional plans. Third, the Act provides for state review and approval of local land development regulations to ensure that local plans will be implemented at the ground level. Finally, it broadens citizen standing to challenge local development orders to ensure their consistency with local plans. Thus, with the passage of this important legislation, the statutory framework for an integrated statewide planning process is finally in place.

Can this elaborate statutory framework be implemented through the adoption of meaningful state, regional, and local comprehensive plans? The 1985 legislature took a giant first step in the difficult process of implementation by adopting the State Comprehensive Plan. The plan establishes for the first time a set of official goals and policies for all aspects of growth and development in Florida, ranging from education to health to coastal and marine resources to transportation to land use to the economy. While the scope of the goals and policies is impressive, they tend to be very broad and general statements. Translating these generalized statements into more specific, meaningful regional and local policies will be a difficult task. After a period of experimentation with the new state plan, the legislature may need to modify, refine, and make more specific the goals and policies.

The more important question is whether Florida can afford or is willing to pay the price tag for the new plan. According to the Governor's Office of Planning and Budgeting, in excess of $30 billion

will be required to implement the plan. Finding sources of the necessary revenues will be a major challenge for the State Comprehensive Plan Committee created by House Bill 1338. It remains to be seen whether the legislature will follow through on its commitment to the State Comprehensive Plan or decide at some point that the price is simply too high.

Several other difficult steps remain to be taken in the implementation of the statewide comprehensive planning process. First, the state agency functional plans, which are the primary means of implementation of the State Comprehensive Plan by state agencies, must be prepared. The status of these plans is uncertain as a result of amendments to the State and Regional Planning Act of 1984. House Bill 1338 eliminates the requirement that state agency plans be adopted as rules pursuant to chapter 120. Moreover, legislative review and approval of the state agency plans is not required. Since the state agency plans are not to be adopted as rules and have not been adopted as law by the legislature, it is not clear that the plans have any legal status.

Elimination of the adoption requirement may not signify any legislative intent to downgrade the role of the state agency plans. Because the legislature has adopted the State Comprehensive Plan with which the state agency plans must be consistent, the legislature may have concluded that implementation of the State Comprehensive Plan by state agencies is an executive function which requires no legislative approval and should not be unduly encumbered by the cumbersome rulemaking requirements of chapter 120. Moreover, House Bill 1338 does provide that state agency functional plans shall be transmitted to the Speaker of the House and the President of the Senate. After receiving the plans, the legislature can always change its mind and decide to review, approve, or reject the plans by further amending the State and Regional Planning Act of 1984.

Second, adoption of comprehensive regional policy plans remains to be accomplished. In contrast to its treatment of the state agency plans, the 1985 legislature decided to take a much closer look at the regional policy plans which are required to be adopted as rules pursuant to chapter 120. House Bill 287 amends the State and Regional Comprehensive Planning Act of 1984 to require review by the legislature which may reject, modify, or take no action on the regional plans. Undoubtedly, the requirement for legislative review flows from the increased importance of the comprehensive regional policy plans. House Bill 287 provides that local comprehensive

plans must be consistent with the regional plans. Consequently, it is appropriate that the legislature should review these important regional policy documents. Nevertheless, this legislative review requirement presents another important hurdle in the implementation process and will present the legislature with another opportunity to either retreat from or reaffirm its commitment to a statewide comprehensive planning process.

Third, DCA must adopt and the legislature must approve rules establishing criteria for determining the compliance of local comprehensive plans and local development regulations with the new statutory requirements. The adequacy of these rules is critically important because they will govern initial state administrative review of local plans and regulations by DCA and any subsequent review by administrative hearing officers. If these rules are weak and ineffectual, state review and approval of local plans and regulations will not be very meaningful. Without an effective state review mechanism for ensuring quality control, local comprehensive plans and regulations are not likely to exhibit much improvement despite the lofty goals of the new legislation. Without adequate local plans and regulations, Florida's growth will not be managed properly. Thus, an effective set of rules for reviewing and approving local plans and regulations is essential for the successful implementation of the integrated statewide comprehensive planning process.

Fourth, all local governments must amend their existing comprehensive plans to conform with the new statutory and rule requirements which include consistency with the state and regional plans. As experience with the LGCPA has demonstrated, preparation and adoption of quality local comprehensive plans is not an easy task. However, unlike the original LGCPA, the new legislation does provide the state with adequate enforcement mechanisms which may be used to compel adoption of local plans and regulations which meet all statutory requirements. In addition, House Bill 287 has broadened citizens' standing to challenge local plans which are not in compliance with the statutory requirements. Finally, in sharp contrast to its refusal to provide adequate funding to implement the LGCPA, the 1985 legislature appropriated substantial sums of money to implement the new planning legislation.[401]

For the first time since the adoption of chapter 380, the legislature made significant changes in the DRI process. First, the DRI

401. Ch. 85-119, § 1, 1985 Fla. Laws 737, 737.

process has been more closely integrated into the statewide comprehensive planning process. Chapter 380 has always required local governments to consider whether a DRI application is consistent with local regulations. House Bill 287 amends chapter 380 to require that the local government must consider whether the application is also consistent with the local comprehensive plan. Since the new Act also requires the local comprehensive plan to be consistent with the state and regional plans, the DRI process will now be linked more closely with the statewide comprehensive planning process.

In addition, the legislature made an effort to streamline the DRI process. The revisions to the DRI guidelines and standards should give the process more certainty and stability. Some of the unnecessary delay and expense should be reduced by the provisions for preliminary development agreements and conceptual agency review. The new criteria for DRI development order exactions and conditions should greatly reduce the inequitable treatment given to DRIs in the past. The new substantial deviation review procedures should greatly facilitate the ability to review and make changes to approved DRIs. While its requirements are extremely onerous, the new Florida's Quality Developments program may provide some incentive for well-planned developments by exempting them from the DRI process.

Although the legislature made some significant changes in the DRI process, it reaffirmed its commitment to the process as an important part of Florida's land management program. No provision was made for phasing out or terminating the DRI process after the statewide comprehensive planning framework is fully implemented. House Bill 287 does provide a procedure whereby local governments may be certified to conduct development reviews in lieu of the DRI requirements of chapter 380. Certification is primarily contingent upon the local government's adoption and effective implementation of a local comprehensive plan and land development regulations which meet all the requirements of the new Act and which are consistent with the state and regional plans. Thus, while this certification procedure may provide an incentive to both local governments and developers to work toward adoption of strong local planning and regulatory programs, it also sends a clear signal that the legislature does not intend to abolish the DRI process in any area of the state unless and until a local government demonstrates that it will manage growth in a responsible manner.

No growth management program would be complete without

close attention to Florida's coast. As one prominent student of Florida's coastal management program has accurately observed, since much of the state is "two coasts back to back," arguably the entire state is in the coastal zone, "that ecologically unique area where sea and land meet and strongly influence each other."[402] Thus, it should not be surprising that protection of the coastal zone received much attention from the 1985 Florida Legislature.

House Bill 287 makes coastal zone management an integral part of the statewide comprehensive planning process. The Act requires each local comprehensive plan to include a coastal management element which satisfies detailed statutory criteria. Among the criteria are the limitation of public expenditures which subsidize development in high-hazard coastal areas and the restriction of development activities which damage or destroy coastal resources. In addition, the coastal zone protection element must be consistent with the goals and policies of the state and regional plans and is subject to state review and approval. Thus, the new Act creates in Florida for the first time a coordinated and comprehensive coastal planning and regulatory program in which the state will play a very strong role.

The coastal protection provisions of House Bill 287 were, with certain exceptions, noncontroversial in nature. For all practical purposes, enactment of a statewide coastal areas building code is expected to promote a certain uniformity among the local governments' building codes and thus may be a welcome addition to the law for developers, contractors, and others with multicounty interests.[403] To the extent that any controversy was generated, for example by coastal infrastructure policy, the resulting legislation was usually a compromise generally acceptable to, if not totally welcomed by, the diverse interests attending this bill.

As for fiscal impacts on the state, the cost should be relatively minimal and limited to funding for professional staff necessary to implement the statute. Indeed, the state may even receive significant long-term savings of tax dollars because of reduced state investments in infrastructure for coastal areas.[404] Fiscal impacts on local governments may be more significant. Local governments are required to incorporate and then implement construction standards contained in this bill into their local building codes. How-

402. Finnell, *Coastal Land Management in Florida*, *supra* note 5, at 309, 395.

403. 1 FLA. H.R., SELECT COMM. ON GROWTH MANAGEMENT, THE LEGISLATIVE INITIATIVES 67 (1984) (on file with Fla. H.R., Comm. on Nat. Resources).

404. *Id.* at 325.

ever, the cost of this requirement should vary depending upon the strictness of existing local codes. Further, local governments which fail to comply with the bill's coastal building code criteria may be subject to state revenue-sharing cutbacks by the Governor and Cabinet, which could have an additional fiscal impact upon them.[405] On the other hand, local governments may also reap a significant benefit under the bill through its requirement that expenditures on infrastructure in coastal areas be in accordance with the coastal element of the local comprehensive plan. As for the private sector, persons wishing to develop or build structures on coastal barriers may incur some increased costs due to the construction standards mandated in the bill.[406] Further, private developers who build in coastal areas may now be required by a local government to pay for most, if not all, infrastructure costs.[407]

As to overall effect, House Bill 287 will probably help to assure, but not guarantee, that continued growth and development in coastal areas is appropriately planned for and designed. Indeed, the coastal building code criteria will probably increase the safety of persons and property located on coastal barriers. However, the bill provides no assurances that rising sea levels, naturally migrating coastal barriers, and prolonged exposure to natural hazards will not ultimately endanger any structure built in a coastal area.[408]

The coastal infrastructure policy provision itself, even though the result of significant compromises by all sides, may yet provide the grist for future problems. The evident intent of that provision is to discourage development on coastal barrier islands. Whether this policy will actually be implemented, however, is quite another question, for it will be dependent upon meaningful implementation of the coastal element of local government comprehensive plans by Florida's myriad municipalities and county governments. Some of these local governments have displayed a somewhat blasé attitude toward planning in the past, and all of them are subject, to greater or lesser degrees, to pressure from development interests. Therefore, it remains to be seen whether local coastal management plans and the Department of Community Affairs' review of such plans will ensure that this legislative intent is effectively implemented on a county-by-county basis.

Second, and of potentially far greater concern, is the looming

405. *Id.* at 304.
406. *Id.*
407. *Id.* at 326.
408. *Id.* at 305.

spectre of suits for inverse condemnation arising from the site-specific application of the bill's patently stringent requirements regarding the siting of structures within the thirty-year erosion control zone.[409] The evident intent of the legislation, not to mention the expressed hope of certain legislators,[410] is that the single-family exception to the thirty-year erosion control line, as well as the provision for possible purchase of land seaward of the coastal construction control line[411] will ameliorate, if not altogether eliminate, landowners' claims that their property has been taken by inverse condemnation.

These provisions, while noteworthy, may still fail to address the legitimate "investment-backed expectations"[412] of landowners who have purchased specific property with an aim toward something more than a single-family residence. One cannot disregard, for example, the increasingly expensive nature of Florida's oceanfront land, which in some communities has reached almost astronomical figures. Accordingly, where a landowner has paid $500,000for a parcel of land and made other changes in position with the expectation of constructing a multi-unit condominium on it, the single-family residence exception may not defeat a claim of inverse condemnation. As for the purchase of these lands by the state, it need only be observed that House Bill 287 merely provides that the Executive Director of DNR shall make recommendations to the Governor and Cabinet regarding such purchases. It does not mandate that such purchases shall be made, nor does it provide any funding mechanism. Accordingly, the efficacy of this provision will be dependent upon the good will and attention of the state's future executive officers and legislatures.

Nineteen eighty-five was truly the year of growth management in the Florida Legislature. Passage of House Bill 287 and House Bill 1338 represents a major achievement in the effort to manage Florida's growth. However, the experience of the last decade teaches that it takes years to implement and evaluate statewide growth management legislation. It remains to be seen whether Florida can successfully implement and operate a truly integrated statewide comprehensive planning process. While the necessary

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409. *See* ch. 85-55, § 33, 1985 Fla. Laws 207, 242 (to be codified at FLA. STAT. § 161.053(6)(b)).

410. *See* May 14 House Debate, *supra* note 367.

411. Ch. 85-55, § 33, 1985 Fla. Laws 207, 242 (to be codified at FLA. STAT. § 161.053(13)).

412. Graham v. Estuary Properties, Inc., 399 So. 2d 1374, 1383 (Fla. 1981), *cert. denied*, 454 U.S. 1083 (1981).

statutory framework is now in place, the real challenge for the legislature, state and regional agencies, local governments, and all of Florida's citizens, will be to make it work.

The legislature faces the foremost challenge. Despite its impressive accomplishments in 1985, the legislature still has much to do if the statutory comprehensive planning framework is to be implemented effectively. It must decide what to do with the state agency functional plans. It must review and approve the comprehensive regional policy plans. It must review and approve DCA's rules for reviewing local comprehensive plans and land development regulations. It must continue to appropriate the necessary funds for implementing the planning process at the state, regional, and local levels. If at any of these critical junctures the legislature waivers from its commitment to manage Florida's growth, Florida's new integrated statewide comprehensive planning process will quickly disintegrate.