2012 Florida Legislative Session Clarifies Growth Management, Provides New Opportunities

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By Valerie Hubbard, FAICP, LEED AP

After the significant changes made in 2011 to Florida's growth management process, the 2012 session was relatively quiet. Nevertheless, the Legislature approved a few changes of interest to the development community. Discussed below are three bills that clean up inconsistencies, provide additional guidance, and create new opportunities, including a new 2-year extension. While these bills have not yet been signed by the Governor, it appears likely they will become law.

HB 7081 – Growth Management "Glitch Bill"

This is a true glitch bill, consisting primarily of clarifications and consistency fixes. Perhaps the bill's most important provision addresses the 2011 Community Planning Act prohibition on local charter provisions that require an initiative or referendum process for development orders or comprehensive plan amendments. This prohibition led to a lawsuit by the Town of Yankeetown, challenging the Act. HB 7081 seeks to resolve this challenge by grandfathering such charter provisions in effect as of June 1, 2011. In addition, the bill provides minor statutory refinements on several issues, including:

- Coordination with military installations (also addressed in HB 7075).
- Additional guidance regarding the methodology for allocating population projections between municipalities and unincorporated areas.
- Adjustments to the exemption from the public school interlocal agreement process for municipalities meeting certain criteria.
- Clarification of the process for comprehensive plan amendments rescinding optional concurrency provisions (which are not subject to state review).
- Revisions to the timeframe for transmittal of comprehensive plan amendments after public hearings (10 working days) and for issuance of a cumulative notice of intent by the state land planning agency (20 days).
- Revision of timeframes relative to recommended and final orders for comprehensive plan amendments, consistent with s. 120.569, Florida Statutes.
- Provision that regional planning councils may provide consulting services to a private developer or landowner for a project if not later serving in a review capacity. This restriction does not apply to statutorily mandated services.

Unless vetoed by the Governor, the bill will take effect upon becoming a law.

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HB 979 – Developments of Regional Impact (DRIs)

This bill provides new options for large-scale development projects and addresses regulatory consistency issues, including:

- Creates a new opportunity for a DRI exemption outside areas that are not already exempt. To be eligible, a project must be approved as a comprehensive plan amendment under the coordinated state review process, must be the subject of a qualified target industry business tax refund agreement pursuant to s. 288.106(5), F.S., and cannot be located within certain state-designated environmentally sensitive areas. A written agreement must be executed by the applicant, the local government and the state land planning agency and notice must be provided to adjacent local governments.

- Requires that reviewing agency comments and recommendations be consistent with statutes, rules and ordinances that are applicable to developments within the local jurisdiction.

- Amends the requirement that affordable housing availability shall be considered in the regional planning council (RPC) report on a DRI. The requirement now includes the condition that the RPC has adopted an affordable housing policy as part of its strategic regional policy plan.

- Requires that the regional planning agency (RPC) report contain recommendations that are consistent with the standards required by the applicable state permitting agencies and the water management district.

- Gives additional flexibility to existing DRIs by providing that changes that do not increase external peak hour trips and do not reduce open space and conserved area are not substantial deviations.

- Provides for rescission of DRIs that become exempt from the DRI process by virtue of their location in a dense urban land area (s. 380.06(29), F.S.).

- Changes the mitigation requirements for rescission of DRIs by providing that mitigation for the amount of development existing on the date of rescission shall either be completed or shall be ensured under an existing permit or other equivalent enforceable authorization.

- Creates a new time-limited opportunity relating to "agricultural enclaves." To qualify under this section, the property must meet very specific criteria regarding single ownership, size, use, location and adjacent uses; and a written application must be submitted to the county by January 1, 2013 requesting a comprehensive plan amendment. If the criteria are met, the legislation establishes presumptions regarding the land use designations for the property.

Unless vetoed by the Governor, this bill will take effect on July 1, 2012.

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HB 503 – Environmental Regulation

This bill contains numerous provisions relative to environmental regulation. The following changes may be of broader interest to the development community:

- For applications filed after July 1, 2012, prohibits counties and municipalities from requiring a permit or approval from a federal or state agency as a condition of processing or issuing a development permit, unless a final agency action has been issued to deny the federal or state permit before the local government acts. The local government may, however, include a permit condition requiring that any applicable state or federal permits be obtained before development can commence.

- Provides that the holder of a valid permit or authorization is not required to make a payment to the authorizing agency for use of the 2-year extensions granted under section 73 or 79 of the Community Planning Act or the new extension provided by this bill. This provision applies retroactively.

- Grants a new 2-year extension for certain development approvals. The extension is patterned after those passed in 2009, 2010 and 2011. It applies to certain approvals with expiration dates from January 1, 2012 through January 1, 2014. The extension may be combined with previous extensions, with certain limitations. The holder of the permit or other authorization must provide a notification to the authorizing agency in writing by December 31, 2012.

Unless vetoed by the Governor, this bill will take effect on July 1, 2012.

A number of other development-related bills passed and are their way to the Governor. Clients should watch for additional Practice Updates regarding 2011 legislative changes. Akerman can assist development interests and local governments in understanding and taking advantage of new legislation and the opportunities it creates, including the potential extension offered by HB 503. Akerman also offers a full array of lobbying services to represent clients' interests with regulatory agencies and in the legislative arena.