



## Expedited State Review Pilot Program Working Well But Faces Challenges

### *at a glance*

The 2007 Legislature created a pilot program to expedite state review of comprehensive plan amendments proposed by selected local governments. Participating city and county government representatives report that the pilot program has reduced the time needed to approve comprehensive plan amendments. Under statutory timelines, the alternative state review process pilot project reduced the time allotted for state review by 71 days. However, local governments and other stakeholders identified several challenges they faced in implementing the pilot program, including determining how to address reviewing agencies' comments on proposed amendments, meeting established deadlines, and ensuring public participation in the review process.

The Legislature may wish to consider four options for continuing or expanding the pilot program. These options include extending the pilot program and re-evaluating it in 2010 after it has operated for a longer period; expanding the pilot program to include cities and counties that are built out; expanding the pilot program to include highly urbanized cities and counties based on their population sizes and densities; and expanding the expedited review process to all local governments.

### Scope

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As directed by the Legislature, this report reviews the pilot program created in 2007 to expedite the state's review of local governments' comprehensive plan amendments.<sup>1</sup>

The report addresses three questions.

- What are the pilot program's benefits and challenges?
- What criteria could be used to identify issues of regional and statewide importance that agencies should consider in reviewing comprehensive plan amendments under the pilot program?
- What criteria could the Legislature use to identify additional local governments that could participate in the alternative expedited state review process?

### Background

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The 2007 Legislature created a pilot program to expedite the process for state review of comprehensive plan amendments proposed by highly urbanized counties and municipalities. Local governments selected to participate in the pilot program included Broward County and its municipalities, Pinellas County and its municipalities, and the Cities of Hialeah Jacksonville, Miami, and Tampa.<sup>2,3</sup>

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<sup>1</sup> Section [163.32465](#), *F.S.*

<sup>2</sup> Broward and Pinellas counties have approval power over their municipalities' comprehensive plan amendments.

<sup>3</sup> Municipalities in Broward and Pinellas counties may elect to not participate in the pilot program by super majority votes of their governing bodies. As of June 30, 2008, 2 of the 31 municipalities in Broward County, Plantation and Weston, had opted out of the pilot program. None of Pinellas County's 24 municipalities have opted out of the program.

In creating the pilot program, the Legislature found that

- different planning and growth management approaches, strategies, and techniques are required in urban areas, and that the state’s role in overseeing growth management should vary based on local government conditions, capabilities, needs, and extent of development;
- reduced state oversight of local comprehensive planning is justified for some local governments in urban areas because of their high degree of urbanization and the planning capabilities and resources of many of their local governments; and
- an alternative process for amending local comprehensive plans in urban areas should be established with an objective of streamlining the process and recognizing local responsibility and accountability.

Under the pilot program, certain types of comprehensive plan amendments are excluded from the expedited review process. These include amendments related to a local government’s evaluation and appraisal report, those that propose rural land stewardship areas, and those that implement new statutory requirements or new plans for recently incorporated municipalities.<sup>4</sup>

As shown in Exhibit 1, the process for reviewing comprehensive plan amendments under the pilot program differs from the traditional process in several important ways. Under the traditional process

- the Department of Community Affairs reviews proposed amendments transmitted by local governments for completeness, examines comments submitted from other reviewing entities, and conducts an independent review. These other reviewing entities include state agencies such as the Department of Environmental Protection, the Department of State, and the Department of Transportation, and regional planning councils and water management districts.

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<sup>4</sup> Section [163.3191](#), *F.S.*, requires each local government to adopt an evaluation and appraisal report (EAR) once every seven years that assesses the progress made in implementing its comprehensive plan.

The department and the other entities review the amendments to determine whether they are consistent with the requirements of Ch. 163, Part II, *Florida Statutes*;

- the department issues an Objections, Recommendations, and Comments report that identifies any areas in which the amendment is inconsistent with state growth management laws; and
- the department publishes a notice of intent if it finds that an adopted amendment complies with the law. Affected persons may then challenge the department’s determination by requesting an administrative hearing. If the department finds that an amendment is not in compliance, it publishes a notice of intent and requests an administrative hearing in which affected parties may intervene.

Under the pilot program,

- the department does not conduct a completeness review after it receives a proposed comprehensive plan amendment nor does it collect and compile comments regarding the amendment from other reviewing entities and the public; instead, the department and each reviewing agency directly submit comments to the local government within 30 days;<sup>5</sup>
- the department does not issue an Objections, Recommendations, and Comments report on the proposed amendment; and
- an affected person or the department has 30 days to challenge the local government’s decision by requesting an administrative hearing; under the traditional process, an affected person has 21 days to petition for an administrative hearing to challenge the department’s decision that an amendment is or is not in compliance with state law.

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<sup>5</sup> The same reviewing entities review amendments under the pilot program and the traditional process.

**Exhibit 1**  
**The Traditional and Pilot Program Processes for Reviewing Comprehensive Plan Amendments**  
**Differ in Several Significant Ways**

Steps in the Traditional Review Process <sup>1</sup>	Steps in the Expedited Review Process <sup>2</sup>
<p>1. A local government must hold an initial public hearing on comprehensive plan amendments on a weekday at least seven days after the first advertisement (notice) is published.</p>	<p>1. A local government must hold an initial public hearing on comprehensive plan amendments on a weekday at least seven days after the first advertisement (notice) is published.</p>
<p>2. The local governing body transmits the proposed amendment by an affirmative vote of not less than a majority to the Department of Community Affairs, the appropriate regional planning council and water management district, and state agencies such as the Department of Environmental Protection, the Department of State, and the Department of Transportation.</p> <p>If the amendment relates to the public school facilities element, the state land planning agency shall submit a copy to the Office of Educational Facilities of the Commissioner of Education for review and comment.</p>	<p>2. The process is the same as the traditional process except that the local government transmits the amendments relating to the public school facilities element directly to the Office of Educational Facilities of the Commissioner of Education for review and comment.</p>
<p>3. The department reviews the amendment for completeness. All reviewing agencies, including regional planning councils, have 30 days from the determination of completeness to provide written comments to DCA. The public may also submit written comments within 30 days. The department performs a coordinating function by maintaining a single file containing all of the comments.</p> <p>Within 60 days from the determination of completeness, the department issues its Objections, Recommendations, and Comments report. The report also includes comments submitted by all other entities and the public.</p>	<p>3. The department does not conduct a completeness review. All governmental agencies, including regional planning councils, must submit their comments directly to the local government so they are received within 30 days after transmittal. Although the public can comment, the law creating the pilot program says nothing about the submission of public comments on an amendment. The department does not issue an Objections, Recommendations, and Comments (ORC) report that identify areas in which the amendment is inconsistent with state growth management laws.</p> <p>Agencies are encouraged to limit their comments to issues of regional and statewide importance. Agency comments must clearly identify issues that, if not resolved, may result in a challenge.</p>
<p>4. A local governing body has 60 days after receiving an Objections, Recommendations, and Comments report to adopt, reject, or adopt with changes an amendment by an affirmative vote of not less than a majority of those present. This must be done during a second public hearing held on a weekday at least five days after the second advertisement (notice) is published.</p>	<p>4. The law does not establish a deadline for local governments to adopt amendments after receiving comments. The public hearing requirement is the same.</p>
<p>5. After conducting a completeness review of the adopted amendment, the department has 45 days to review an adopted amendment and publish a notice of intent as to whether or not the amendment is in compliance with state law. The notice is published in a local newspaper and on the department’s website. Any affected person may challenge’s the department’s decision that an amendment is in compliance by requesting an administrative hearing within 21 days. The department requests an administrative hearing when it finds an amendment is not in compliance.</p>	<p>5. A local government must transmit adopted amendments to the department and any other agencies that provided comments within 10 days of the second public hearing. Any affected person may challenge the local government’s decision by requesting an administrative hearing within 30 days. The department may challenge the decision within 30 days after determining that the amendment is complete. The department does not publish a notice of intent as to whether the amendment complies with state law.</p>

<sup>1</sup>Section 163.3184, *F.S.*

<sup>2</sup>Section 163.32465, *F.S.*

Source: OPPAGA review of the *Florida Statutes*.

- an affected person or the department has 30 days to challenge the local government’s decision by requesting an administrative hearing; under the traditional process, an affected person has 21 days to petition for an administrative hearing to challenge the department’s notice that an amendment is or is not in compliance with state law.

## Questions and Answers —

### *Question 1: What are the pilot program’s benefits and challenges?*

Since the pilot program’s inception in July 2007 through September 12, 2008, 17 local governments have transmitted a total of 324 plan amendments for review by the Department of Community Affairs and other reviewing agencies; 200 of these amendments came from one municipality.<sup>6</sup> Fifty-eight of these 324 amendments have been adopted by local governments while the others are still being reviewed and have yet to be adopted.

The pilot program amendments have typically been non-controversial. However, the Department of Community Affairs has recently challenged one amendment by requesting an administrative hearing. The outcome of the department’s challenge has not been determined as the hearing has not yet been completed.

**The expedited process has reduced time for state review of amendments.** Municipal and county government representatives report that the pilot program’s expedited review process has speeded up the comprehensive plan amendment process. Under the statutory timeline for the traditional process, it takes up to 136 days to conduct state review of a proposed and then adopted comprehensive plan amendment. Under the alternative review

process, state review takes up to 65 days, for a time savings of 71 days.

**Participating governments report several challenges in the process.** However, local governments and other stakeholders also identified several challenges they faced in implementing the pilot program. These challenges included having limited guidance on how to address reviewing agencies’ comments on proposed amendments, concerns regarding meeting statutory deadlines for reviewing amendments, and little guidance on public participation in the review process.

**Local governments are unsure how to respond to state agency review comments.** The law creating the pilot program requires reviewing agencies to clearly identify issues that, if not resolved, may result in an agency challenge to a plan amendment. However, three local government representatives indicated that some reviewing agencies’ comments on pilot program amendments did not always identify issues that could result in a challenge to an amendment. Consequently, the local governments were uncertain as to the seriousness of the agencies’ concerns.

Under the traditional process, the Department of Community Affairs issues an Objections, Recommendations, and Comments report that specifically identifies “objections” and cautions the local governments to expect the amendment to be challenged unless it is revised.<sup>7</sup> However, under the expedited process, the department does not issue this report or designate agency comments as “objections.” This makes it difficult for local governments to decide what actions, if any, they need to take to address the reviewing agencies’ comments.

To address this concern, the Legislature may wish to consider amending the law to require the other reviewing entities to clearly identify any issue regarding a pilot program amendment they believe may result in a challenge to an amendment as an objection rather than simply providing comments on the amendment.

<sup>6</sup> Local governments transmitting amendments included Broward County and five of its municipalities (Coconut Creek, Coral Springs, Fort Lauderdale, Pembroke Pines, and Sunrise); eight municipalities in Pinellas County (Clearwater, Dunedin, Gulfport, Largo, Oldsmar, Redington Shores, St. Petersburg, and St. Pete Beach); and the Cities of Jacksonville and Tampa. The number of amendments transmitted by a single local government ranged from 1 to 200.

<sup>7</sup> Although other reviewing agencies provide comments, the Department of Community Affairs makes the final determination about which concerns become “objections.” See s. [163.3184\(6\)\(c\)](#), *F.S.*

This would clarify the seriousness of the entities' concerns to local governments.

**Local governments are unsure how to handle split amendment packages.** Some local government and state agency staff said they lack guidance on how to handle department and agency comments to pilot program amendments submitted as part of a "split" amendment package. In such amendment packages, a local government transmits proposed amendments to be reviewed under the expedited pilot program process along with other amendments that must be reviewed under the traditional process.

When local governments submit a split amendment package, they can receive the department's and reviewing agencies' comments on the amendments submitted under the pilot program's expedited process before they receive the department's Objections, Recommendations, and Comments report on the other amendments. Local government representatives said that the law does not provide them with guidance as to whether their county or municipality could go ahead and adopt amendments submitted under the pilot program before they receive the department's report on the other amendments.

In one case where this occurred, a local government asked the department for guidance and was informed that it was the department's position that the pilot program amendments could be adopted prior to the other amendments. However, as the law prohibits the department from adopting rules regarding the pilot program, it cannot provide definitive guidance on this issue to all participating local governments.<sup>8</sup>

To address this concern, the Legislature may wish to consider amending the law to specify that a local government may adopt a pilot program amendment as soon as the 30-day comment period ends. This would clarify that local governments are allowed to adopt pilot program amendments prior to adopting traditional amendments transmitted in split packages.

**Local governments are concerned about pilot process deadlines.** As noted earlier, the

department and other reviewing entities, such as the Department of Environmental Protection, the Department of Transportation, regional planning councils, and water management districts, send their comments on pilot program amendments directly to local governments. To date, state and regional agency staff has been able to complete reviews of pilot program amendments within the established deadlines. However, state and local government staff reported a concern regarding the statutory deadlines for reviewing pilot program amendments.

Some state agency staff expressed concern that they would not be able to effectively review proposed amendments within the statutory deadlines if local governments transmitted amendments without needed supporting documentation or provided this documentation late in the review period. The staff said that if this occurred, they would have difficulty providing comments to the local government within the established deadline. This could be problematic because the law creating the pilot program provides that only affected persons and the Department of Community Affairs may challenge a pilot program amendment. Consequently, the department needs the opportunity to fully examine reviewing agencies' comments prior to sending its response to local governments.

To address this concern, the Legislature may wish to consider amending the law to allow the other reviewing entities to consider the failure of a local government to provide appropriate supporting data and analyses on a timely basis as an issue that may result in a challenge to an amendment. This would help ensure that municipalities and counties participating in the pilot program provide needed information in a timely manner.

**Public participation requirements are unclear.** Public participation is an important part of the process for developing and amending a local government's comprehensive plan. The traditional review process allows the public to submit written comments to reviewing agencies within 30 days after an amendment is transmitted to the agencies.

However, the law creating the pilot program does not directly address public participation in the review of pilot program amendments.

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<sup>8</sup> Section [163.32465\(8\)](#), F.S.

Consequently, some citizen group representatives expressed concern that there may be less public participation in reviewing pilot project amendments. Given that the pilot program process has only been implemented for 15 months, it is too early to determine if this concern is warranted. However, as citizens have submitted comments on only 1 of the 324 pilot program amendments transmitted by a local government to date, it is possible that citizens may not be aware of their ability to participate in the process by submitting comments on pilot program amendments.

To address this concern, the Legislature may wish to amend the law to allow the public to send comments to reviewing agencies during the 30-day comment period. This would help encourage public participation in the expedited review process.

***Question 2: What criteria could be used to identify issues of regional and statewide importance that agencies should consider in reviewing comprehensive plan amendments under the pilot program?***

The law creating the pilot program strongly encourages state agencies to limit their comments to issues of statewide or regional importance.<sup>9</sup> However, the law does not establish criteria the reviewing agencies are to use in identifying such issues. This is important because the law limits the Department of Community Affairs' challenges to pilot program amendments to issues raised in the agencies' comments.<sup>10</sup>

To determine what criteria agencies are using to identify issues of regional or statewide importance when reviewing pilot project amendments, we interviewed staff of state agencies, regional planning councils, water management districts, and local governments, and reviewed agency comments on pilot program amendments.

Most of these staff indicated that they identify issues of regional or statewide importance based on consideration of the amendment's effect on matters related to their agencies' major goals and priorities. For example, Department of Environmental Protection staff considers amendments affecting property near state parks, areas of critical concern, and aquifer recharge areas as issues of state or regional importance. Department of Transportation staff considers amendments to have state or regional importance if they affect parts of the Strategic Intermodal System and traffic flows on segments of the state highway system and hurricane evacuation routes. Regional planning councils consider comprehensive plan amendments that affect major elements of strategic regional policy plans as issues of regional importance while water management districts consider amendments affecting water supplies within their jurisdictions.<sup>11</sup> Our review of agency comments on pilot program amendments indicated that the reviewing agencies were using such criteria to identify issues of regional and statewide importance. For example, the Department of Transportation's comments focused on an amendment's effects on the adopted levels of service on state roadways while the Department of Environmental Protection's comments focused on proposed developments in wetlands and floodplains.

It would be helpful for the reviewing entities to compile lists of the conditions that would be considered issues of regional or statewide importance and to provide these lists to local governments. This would help local governments determine whether a proposed pilot program amendment would affect an issue of regional or statewide importance and potentially be subject to challenge by the department.

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<sup>9</sup> Section [163.32465](#)(4)(b), *F.S.*

<sup>10</sup> Section [163.32465](#)(6)(c), *F.S.* However, current law also requires the department to determine if the elements of a comprehensive plan are consistent with each other. See ss. [163.3177](#)(2) and (9)(b), *F.S.*

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<sup>11</sup> The councils' regional policy plans must include regional goals and policies that address affordable housing, economic development, emergency preparedness, natural resources of regional significance, regional transportation, and other subjects that relate to the council's particular needs and circumstances.

***Question 3: What criteria could the Legislature use to identify additional local governments that could participate in the alternative expedited state review process?***

The Legislature created the pilot program to determine if an expedited review process could be successfully implemented and expanded to other municipalities and counties in the state. Under the pilot program, 324 comprehensive plan amendments have been transmitted for review as of September 12, 2008. Municipal and county governments report that the pilot program has benefited them by reducing the time taken to approve comprehensive plan amendments. As a result, it would be appropriate for the Legislature to consider criteria for identifying additional local governments to participate in the pilot program.

To identify potential criteria, we interviewed stakeholders from state and local governments and reviewed relevant literature. Based on this research, we concluded that the Legislature could consider using two criteria to identify additional municipalities or counties to participate in the pilot program:

- the extent to which a municipality or county is built out; and
- a municipality or county's population size and density.

**The program could be expanded to built out local governments.** The term "built out" is not defined in law, but is generally considered to mean that a high percentage of the property within a municipality's or county's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed or are the subject of an approved development order. Consequently, a built out municipality or county contains little vacant developable land. In these communities, the development that occurs usually involves replacing existing, older structures with new structures. In general, a comprehensive plan amendment in a built out community is more likely to be non-controversial and therefore go through the process more quickly.

To identify built out counties and municipalities in the state, we worked with the Florida Natural Areas Inventory to analyze data from its Florida Land Use, Cover and Forms Classification System.<sup>12</sup> The data enabled us to determine the percentage of privately-owned, developed land in Florida's cities and counties. A municipality or county was considered built out if analysis determined that at least 80% of its land was developed.<sup>13</sup>

This analysis identified 101 additional municipalities that met the 80% criteria for being built out. These ranged from small municipalities such as Indian Creek with an estimated population of 37 in 2007, to larger cities such as Miami Gardens with an estimated population of 97,286 in 2007. Broward and Pinellas counties, which are already participating in the pilot program, are the only counties that met or exceeded the 80% built-out threshold.<sup>14</sup>

Department of Community Affairs managers noted reservations about using a measure of the extent to which a county or municipality was built out as a criterion for determining whether a local government should be included in the pilot program. These managers noted that a new large redevelopment project in a built out municipality could significantly change the use of the land, and planning staff in small municipalities may not have sufficient expertise to properly deal with such amendments. Consequently, the managers asserted that the pilot program's expedited review process would not be appropriate for comprehensive plan amendments involving large development projects, especially in small built out communities.

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<sup>12</sup> The Florida Natural Areas Inventory is a non-profit organization administered by Florida State University that collects, interprets, and disseminates ecological information on Florida's biological diversity. It also serves as a primary source for information on Florida's conservation lands. The Florida Land Use Land Cover Classification System is a geographical information system maintained by the Florida Natural Areas Inventory that identifies land use in the state.

<sup>13</sup> Planners generally accept an 80% threshold as a criterion for determining whether a jurisdiction is built out. See S. Mark White, "Development Codes for Built-Out Communities," *Zoning Practice*, Vol. 23, No. 8, August 2006.

<sup>14</sup> The City of Jacksonville, which is currently in the pilot program, did not meet the 80% criteria. The analysis indicated that 42% of the land in Jacksonville was developed. Another city in the pilot program, Tampa, falls just below the 80% criteria at 78%.

**The pilot program could be expanded based on population size and density.** A second potential criterion for expanding the pilot program would be to extend it to large population and high density areas. The law creating the pilot program states that local governments participating in the program shall represent highly developed counties and the municipalities within these counties and highly populated municipalities. Municipalities and counties participating in the pilot program had estimated populations exceeding 200,000 and 800,000, respectively, according to data from the U.S. Census Bureau.<sup>15</sup>

Our analysis of 2007 U.S. Census population estimates identified one city in the state with a population exceeding 200,000 (Orlando) and four counties with populations exceeding 800,000 (Hillsborough, Miami-Dade, Orange, and Palm Beach) that are not already participating in the pilot program. The Legislature could expand the program to include these local governments.

If the Legislature wished to further expand the pilot program, it could include counties with populations exceeding 500,000 and municipalities with populations exceeding 100,000. This would expand the program to include four additional counties (Brevard, Lee, Polk, and Volusia), and five additional municipalities (Cape Coral, Gainesville, Palm Bay, Port St. Lucie, and Tallahassee.)<sup>16</sup>

## Legislative Options

The Legislature may wish to consider four options for continuing or expanding the pilot program. These options include:

- maintaining the pilot program and reevaluating it in 2010, after it has had more time to operate;
- expanding the pilot program to include cities and counties that are at least 80% built out;
- expanding the pilot program to include highly urbanized cities and counties based on the similarity of their population sizes and densities to local governments currently participating in the pilot program; and
- expanding the pilot program to all local governments.

Exhibit 2 (on page 9) summarizes the advantages and disadvantages of each option.

## Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Community Affairs for his review and response. The Secretary's written response has been reproduced in Appendix A.

<sup>15</sup> Based on 2007 Population Estimates, U.S. Census Bureau, July 2007.

<sup>16</sup> Tallahassee and Leon County have a joint comprehensive plan. While Tallahassee meets the 100,000 population threshold for municipalities, Leon County does not meet the 800,000 population threshold for counties. The Legislature may want to consider additional factors to determine if it wants to include Tallahassee/Leon County in the expedited review process.



**Exhibit 2**

**The Legislature Could Consider Several Options to Modify or Expand the Alternative State Review Pilot Program**

Option	Advantages	Disadvantages
<p><b>Option 1:</b> Maintain the pilot program and re-evaluate it in 2010</p>	<ul style="list-style-type: none"> <li>▪ Would allow more time for the pilot program to operate and for the Legislature to assess its impact before deciding whether to repeal or expand it</li> </ul>	<ul style="list-style-type: none"> <li>▪ Delays potentially eligible local governments from receiving benefits such as reductions in the time spent by state agencies in reviewing comprehensive plan amendments</li> </ul>
<p><b>Option 2:</b> Expand the pilot program to include additional cities and counties that are substantially built-out. Based on an analysis of Florida Natural Areas Inventory data, 101 additional municipalities would be eligible to participate</p>	<ul style="list-style-type: none"> <li>▪ Would allow more highly developed municipalities counties to receive benefits of reduced time spent by state agencies in reviewing comprehensive plan amendments</li> <li>▪ Would help ensure that expedited review process is implemented in densely developed areas</li> <li>▪ May reduce the Department of Community Affairs staff's workload as it would not have to spend as much time compiling agencies' comments and issuing Objections, Recommendations, and Comments reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ May result in the program being expanded to include small municipalities that do not have highly qualified planning staff who can deal with complex amendments related to large redevelopment projects</li> <li>▪ Could increase the number of amendment challenges by the department because it would be reviewing more amendments; if the number of challenges rose, this increases legal costs for the state, local governments, and affected parties</li> </ul>
<p><b>Option 3:</b> Expand the pilot program to include additional highly urbanized cities and counties based on the similarity of their population sizes and densities to those entities currently participating in the pilot program. There is one city with a population exceeding 200,000 (Orlando) and four counties with populations exceeding 800,000 (Hillsborough, Miami-Dade, Orange, and Palm Beach) that are not already participating in the pilot program.</p>	<ul style="list-style-type: none"> <li>▪ Would allow more urban areas to receive benefits of reduced time spent by state agencies in reviewing comprehensive plan amendments</li> </ul>	<ul style="list-style-type: none"> <li>▪ Would include counties that do not have approval power over municipalities' amendments as Broward and Pinellas counties do, thus removing a layer of oversight</li> <li>▪ Could increase the likelihood of amendment challenges by the department because it would be reviewing more amendments; if the number of challenges rose, this increases legal costs for the state, local governments, and affected parties</li> </ul>
<p><b>Option 4:</b> Expand the expedited review process to all local governments</p>	<ul style="list-style-type: none"> <li>▪ Would significantly reduce the timeframe for state review of local comprehensive plan amendments; would allow small municipalities and rural counties to use the expedited process</li> <li>▪ Would reduce Department of Community Affairs staff's workload as it would not have to spend as much time compiling agencies' comments and issuing Objections, Recommendations, and Comments reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ May be premature to expand the pilot program to all local governments as it has been implemented for only 15 months and its long-term outcomes are unclear</li> <li>▪ The increased volume of amendments could make it difficult for reviewing agencies to meet the statutory 30-day deadline for providing comments on amendments</li> <li>▪ Some local governments, particularly those in rural areas, may not have the staff resources needed to analyze and respond to review agency comments.</li> <li>▪ Could result in less scrutiny of amendments in environmentally sensitive rural areas</li> <li>▪ Could increase the likelihood of amendment challenges by the department which would increase legal costs for the state, local governments, and affected parties</li> </ul>

Source: OPPAGA analysis.

**Appendix A**



STATE OF FLORIDA

**DEPARTMENT OF COMMUNITY AFFAIRS**

*“Dedicated to making Florida a better place to call home”*

CHARLIE CRIST  
Governor

THOMAS G. PELHAM  
Secretary

October 30, 2008

Mr. Gary R. VanLandingham, Director  
Office of Program Policy Analysis and  
Government Accountability  
111 West Madison Street, Room 312  
Claude Pepper Building  
Tallahassee, Florida 32399-1475

Re: Preliminary Findings and Conclusions on Alternative State Review Process Pilot Program

Dear Mr. VanLandingham:

This is to comment on OPPAGA’s Preliminary Findings and Conclusions on the Alternative State Review Process Pilot Program which was provided to the Department on October 9, 2008. The report was prepared pursuant to s. 163.32465(9), F.S.

Let me start by emphasizing the limited experience with the program to date. The Alternative State Review Process has been in place for only 16 months which is not an adequate time within which to reach firm conclusions about the applicability of the pilot program, whether the pilot program should be extended or contracted, changes to the pilot program, or the identification of criteria for determining issues of regional or statewide importance. As of September 12, 2008, a total of 506 individual amendments have been proposed by local governments subject to the program. However, 182 of these were included in split packages and underwent regular review. Further, of the 324 amendments subject to the Alternative State Review Process, 200 were submitted in a single package by the City of St. Pete Beach. These amendments implement the City’s redevelopment initiative and made minor density changes to numerous properties. The remaining 124 amendments were dispersed among 19 packages submitted by 14 local governments. Of the total of 324 amendments, only 58 had proceeded to adoption.

To some extent the report addresses procedural challenges with the pilot program including the lack of a completeness review of proposed plan amendments, the short time period for preparation and delivery of agency comments, the lack of defined public participation requirements, the lack of a time period for local government action, and the handling of

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Mr. Gary R. VanLandingham, Director  
October 30, 2008  
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comprehensive plan amendment packages which include proposals subject to and not subject to the alternative review process. The Department previously recognized these procedural issues and proposed technical revisions during the 2007 Legislative Session as a part of SB 474. However, that bill failed to pass.

We have read with interest the finding that local governments are unsure how to respond to state agency comments. This has been and continues to be a key concern of the Department. Under the normal process for comprehensive plan amendments, the Department prepares a unified report that takes into account the comments of reviewing agencies. Through the Department's report, issues are viewed as a whole and individual concerns are balanced. This does not occur through the pilot program so the uncertainty by local governments is not surprising. The Department believes that the agency's ORC Report should be restored to the process.

Another key finding is the difficulty of defining issues of regional and statewide importance. From the perspective of the Department, the legislatively created standards for comprehensive planning inherently encompass issues of regional and statewide importance.

Under the Legislative Options, you have suggested four basic approaches:

- maintain the pilot program and reevaluate it in 2010 after it has had more time to operate;
- expand the pilot program to include cities and counties which are at least 80% built out;
- expand the pilot program to include highly urbanized cities and counties based on the similarity of their population sizes and densities to local governments currently participating in the pilot program; and,
- expand the pilot program to all local governments.

The Department's first preference is to allow the pilot program more time before any expansion to additional local governments. We are concerned about the second and third options since the extent of buildout or the urbanized nature of a community does not automatically correlate to the significance of planning issues.

However, we do see some merit to a different approach under which the Alternative State Review Process would apply to all amendments to the future land use map with certain exceptions such as those which fall under a size threshold, which are not within an area of critical state concern or coastal high hazard area, and which do not relate to a development of regional impact, sector plan, or rural land stewardship area. Under this concept, textual plan amendments which amend the goals, objectives, and policies of a comprehensive plan would be subject to the normal review process.

We would ask that you take these comments into consideration as you complete the report.

Sincerely yours,

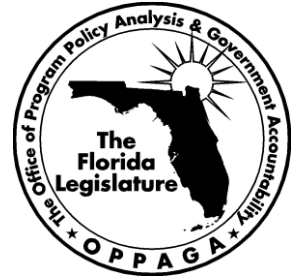


Thomas G. Pelham  
Secretary

TGP/cg

## *The Florida Legislature*

# *Office of Program Policy Analysis and Government Accountability*



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- [Florida Monitor Weekly](#), an electronic newsletter, delivers brief announcements of research reports, conferences, and other resources of interest for Florida's policy research and program evaluation community.
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OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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