



## Most Local Governments Participating in the Expedited Review Process Report Benefits

### *at a glance*

Since our 2008 review, the Legislature has amended the expedited comprehensive plan amendment review process and has considered expanding the program to additional local governments. The number of local governments that have used the pilot program has increased, while the number of challenged plan amendments remains small.

Most local governments report that the expedited review process is working well. State and regional agencies that review comprehensive plan amendments report that the pilot project has both advantages and disadvantages; cited concerns include less thorough reviews of plan amendments and inadequate inter-agency coordination. Local governments and reviewing agencies offered many suggestions for modifying the program.

### Scope

In accordance with state law, this progress report informs the Legislature of actions taken in response to a 2008 OPPAGA report.<sup>1, 2</sup>

<sup>1</sup> Section 11.51(6), *F.S.*

<sup>2</sup> *Expedited State Review Pilot Program Working Well But Faces Challenges*, OPPAGA [Report No. 08-62](#), November 2008.

### Background

The 2007 Legislature created a pilot program within the Department of Community Affairs (DCA) to expedite the process for state review of comprehensive plan amendments.<sup>3</sup> Several local governments were selected to participate in the pilot program: Broward and Pinellas counties and their municipalities, and the cities of Hialeah, Jacksonville, Miami, and Tampa.

The pilot program differs from the traditional comprehensive plan review process in several ways. Under the pilot program, DCA and other reviewing entities simultaneously review proposed amendments and separately submit their comments to the local government, rather than DCA collecting and summarizing all agency comments in an Objections, Recommendations, and Comments report.<sup>4</sup> The state portion of the expedited review process may take up to 65 days, compared to up to 136 days for the traditional process.<sup>5</sup>

<sup>3</sup> Section 163.32465, *F.S.* The program began on July 1, 2007.

<sup>4</sup> Reviewing agencies include the Department of Community Affairs, regional planning councils, the Department of Transportation, the Department of Environmental Protection, the Department of Education, and the Department of State.

<sup>5</sup> Under expedited review, local governments do not have a statutorily mandated period for amendment adoption, while

Our 2008 report noted that participating city and county government representatives indicated that the pilot program had significantly reduced the time needed to approve their comprehensive plan amendments. However, local governments and stakeholders identified several challenges in implementing the program. Some local governments were unsure how to respond to state agency review comments or how to handle split amendment packages, which contain both traditional and expedited amendments, and they were concerned about pilot program deadlines.<sup>6</sup> In addition, some citizen group representatives expressed concern that public participation requirements were unclear.

## Current Status

The Legislature has modified the expedited review pilot program. The 2009 Legislature amended s. 163.32465(2), *Florida Statutes*, to allow any local government, in addition to the pilot program jurisdictions, to use the alternative process to designate an urban service area in its comprehensive plan. An urban service area is a built-out area where public facilities and services, including central water and sewer capacity and roads, are already in place or are committed in the first three years of the capital improvement schedule.<sup>7</sup> To date, no local governments have used the legislation to designate an urban service area.

The 2009 Legislature also considered but did not pass a bill that would have expanded the program, using municipality or county population size and density to identify additional municipalities or counties to participate in the pilot program.<sup>8</sup>

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under the traditional review process, the law prescribes up to 60 days (or 120 days for a major plan update) for final local action.

<sup>6</sup> A split package includes both traditional and expedited review amendments.

<sup>7</sup> Section 163.3164(29), *F.S.*

<sup>8</sup> [House Bill 7049](#).

Pilot program participation has increased, while the number of challenged amendments remains small. In Fiscal Year 2007-08, relatively few (14) local governments had used the process, and they had transmitted 273 plan amendments for review by DCA and other reviewing agencies (see Exhibit 1). The local governments had adopted slightly less than one-fifth (51) of these amendments. Since the program's inception, participation in the pilot project has substantially increased, with 41 local governments transmitting 601 plan amendments in the most recent fiscal year. Overall, as of June 30, 2010, local governments have used the pilot project for 1,309 plan amendments. During this period, local governments adopted 1,219 plan amendments.

### Exhibit 1 Pilot Program Participation Has Increased

Period	Fiscal Year		
	2007-08	2008-09	2009-10
Local governments transmitting amendments	14	37	41
Amendments transmitted for review	273	435	601
Amendments adopted	51	757 <sup>1</sup>	411

<sup>1</sup> Because capital improvement elements are transmitted as adopted rather than proposed, it is possible for the number of adopted amendments to be greater than the number transmitted.

Source: Department of Community Affairs.

Of the adopted amendments, only five have been challenged through the Division of Administrative Hearings.<sup>9</sup> Concerns with these amendments included inconsistency with state law regarding increasing residential densities in the coastal high hazard area and inconsistency with requirements to ensure that

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<sup>9</sup> Affected persons challenged two amendments, with the Division of Administrative Hearings finding one amendment in compliance with state growth management laws and one out of compliance. The Department of Community Affairs has challenged three amendments, one of which has been settled; the remaining cases are still pending. For the same period, the percentage of challenges for the expedited process (4.3% of adopted amendments) was slightly lower than challenges for the traditional process (6.8% of adopted amendments).

development around military installations is compatible with installation operations.

Most local governments report that the expedited review process is beneficial. Local governments that have used the pilot project report that the expedited review process is beneficial. Of the 27 local governments that responded to our survey, more than half (16) indicated that the pilot program is working well. Most (14) reported reduced time to adopt amendments, with some of these local governments reporting the time saved was from one to three months. Additional reported benefits include saving time and money for amendment sponsors and having more flexibility and efficiency in scheduling staff work.

However, some local governments reported that the process also had disadvantages. For example, eliminating DCA's Objections, Recommendations, and Comments report requires local governments to collect and assess comments from each reviewing agency. In addition, some municipalities within Broward and Pinellas counties report that the expedited process had not reduced time for their amendment adoption because these counties, which are charter counties, require additional review of local government amendments. Several local governments also expressed uncertainty regarding whether state review comments could become the basis for legal challenges and confusion about how the process worked, and indicated that statutory timeframes allowed insufficient time due to separate government adoption timeframes.

Reviewing agencies cite both advantages and disadvantages of the expedited review process. State and regional agencies that review comprehensive plan amendments indicated that the expedited process has both advantages and disadvantages. They reported that they have adapted to the expedited process and noted that it has not substantially increased their workload. They indicated that the process enables them to collaborate more closely with local governments and

respond more quickly to their questions. Reviewing agencies also indicated that the expedited process allows developers to begin construction projects more quickly than under the traditional comprehensive plan amendment process.

The reviewing agencies also voiced several concerns about the expedited review process. These concerns included

- belief that the expedited process does not enable them to work with DCA to address issues with comprehensive plan amendments as is done during the traditional review process;
- uncertainty about how to handle split amendment packages, which contain both traditional and expedited amendments;
- concern about inadequate time to sufficiently review amendments to protect state interests; and
- belief that the process, because it tends to involve small incremental changes, can have a negative impact on development patterns and long-term planning.

Department of Community Affairs officials expressed concern that the expedited review process is less thorough than the traditional process and that it is more difficult to coordinate with reviewing agencies and local governments. To address these concerns, the department has identified several technical revisions.

- Establish a completeness review prior to a substantive review of a proposed amendment, which would help ensure that all parties have a clear understanding of the proposed amendment.
- All agencies providing comments to the local government should provide a copy to the department.
- Provide authority to local governments to elect to use the traditional review process for all amendment types, which would avoid procedural difficulties when an

amendment package is split between expedited and traditional amendments.

- Clarify the effective date of expedited amendments.
- Provide authority to the department to adopt procedural rules.

The department also suggests additional types of amendments be considered for inclusion under the expedited review process.

- Future land use map amendments and associated special area policies within areas designated for downtown revitalization, urban redevelopment, urban infill development, or urban infill and redevelopment.
- Future land use map amendments for proposed developments within areas the

Governor has designated rural areas of critical economic concern.<sup>10</sup>

Local governments and reviewing agencies recommend several program modifications. The local governments and reviewing entities who responded to our survey offered several recommendations for improving the expedited review process. These recommendations can be grouped into three categories: amendment review and adoption; expedited process timeframes; and program expansion. Appendix A includes stakeholder recommendations within these categories.

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<sup>10</sup> Such amendments should include written certification by the Office of Tourism, Trade, and Economic Development that the amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7), *F.S.*, and is for a qualified job creation project under ss. 288.0656 or 403.973, *F.S.*

## Appendix A

# Local Governments and Reviewing Agencies Have Diverse Suggestions for Modifying the Expedited Review Process

To obtain stakeholder perspectives about the expedited review process and recommendations for improving the program, we surveyed the 41 local governments that have used the process and the 11 state and regional agencies that review plan amendments. We received responses from 27 local governments and 9 reviewing agencies. The following table lists respondent recommendations for modifying the program. We grouped these recommendations into three categories: amendment review and adoption; expedited process timeframes; and program expansion. Within each of these categories, local government and reviewing agency recommendations were diverse and sometimes contradictory; for example, some respondents advocated program expansion to all local governments, while others suggested eliminating the program.

Recommendation Category	Local Government	Reviewing Agency
<b>Amendment Review and Adoption</b>	<ul style="list-style-type: none"> <li>▪ <b>Objections, Recommendations, and Comments (ORC) Report</b> <ul style="list-style-type: none"> <li>– Reinststate the ORC.</li> <li>– Allow local governments to ask DCA for an ORC report to determine what issues may result in a challenge.</li> <li>– Either issue an ORC or make no comments at all.</li> <li>– Institute a final ORC-type conference call with reviewing agencies.</li> </ul> </li> <li>▪ <b>Split Amendment Package Process</b> <ul style="list-style-type: none"> <li>– Eliminate the possibility of split packages.</li> <li>– Require DCA to provide guidance on handling split packages.</li> </ul> </li> <li>▪ <b>Agency Comment Process</b> <ul style="list-style-type: none"> <li>– Require DCA to provide local governments guidance on addressing agency comments.</li> <li>– Require agency comments to be submitted to local governments and DCA.</li> <li>– Require reviewing agencies to clearly identify issues that, if not resolved, may result in a challenge.</li> <li>– Require reviewing agencies to compile a list of conditions that would be considered serious issues of regional or statewide importance.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Objections, Recommendations, and Comments (ORC) Report</b> <ul style="list-style-type: none"> <li>– Reinststate the ORC.</li> </ul> </li> <li>▪ <b>Split Amendment Package Process</b> <ul style="list-style-type: none"> <li>– Require clear labeling of split packages.</li> </ul> </li> <li>▪ <b>Agency Comment Process</b> <ul style="list-style-type: none"> <li>– Clarify what degree of emphasis local governments should place on reviewing agency comments.</li> <li>– Revise plan amendment submission requirements to clarify the need, when applicable, to send to the Department of Education for agency review.</li> <li>– Require all agencies, including DCA, to have the same review and comment period, promoting better coordination.</li> <li>– Change the statutory reviewing agency deadline from the date that local governments receive comments to the date that agencies submit the comments.</li> </ul> </li> </ul>
<b>Expedited Process Timeframes</b>	<ul style="list-style-type: none"> <li>– Increase amendment transmittal and adoption timelines to accommodate local government legislative and scheduling processes.</li> <li>– Synchronize local government and DCA timeframes so that challenges precede amendment effective dates.<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>– Extend the review period from 30 to 45 days.</li> </ul>

Recommendation Category	Local Government	Reviewing Agency
Program Expansion	<ul style="list-style-type: none"> <li>▪ <b>Program Expansion</b> <ul style="list-style-type: none"> <li>– Expand the pilot program to all local governments.</li> <li>– Allow any local government that is a Dense Urban Land Area to use the expedited process.</li> <li>– Use the expedited process for all amendments.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Program Expansion</b> <ul style="list-style-type: none"> <li>– Expand program if DCA can handle workload.</li> <li>– Expand to all local governments or eliminate.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>▪ <b>Program Limitation</b> <ul style="list-style-type: none"> <li>– Limit the expedited review to built-out areas.</li> <li>– Require that the expedited review process apply to all plan amendments except as related to the evaluation and appraisal report.</li> <li>– Restrict the program to current participants.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Program Limitation</b> <ul style="list-style-type: none"> <li>– Allow local governments with rapid growth and adequate staff resources to use the process.</li> <li>– Restrict additional program participation to local governments that have demonstrated that they have not exceeded the need for land use. Restrict the program to urban areas without regional or statewide impacts.</li> <li>– Do not allow rural areas to participate in the program.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>▪ <b>Program Elimination</b> <ul style="list-style-type: none"> <li>– Eliminate the program.</li> </ul> </li> </ul>	

<sup>1</sup> Under the pilot program, once a local government adopts an amendment, it becomes effective after 30 days, while DCA has 35 days to challenge the amendment. Consequently, it is possible for DCA to challenge an amendment that has already been put into effect by a local government.

Source: OPPAGA analysis.



# *The Florida Legislature*

## *Office of Program Policy Analysis and Government Accountability*



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