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F I S C A L I M P A C T R E P O R T

SPONSOR: Gubbels DATE TYPED: 02/20/01 HB 363
SHORT TITLE: Transfer of Development Rights SB
ANALYST: Padilla

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

Companion to/Relates to House Bill 464, which transforms land use “master plans” from their current status as documents that guide local government land use planning into binding “comprehensive plans”. HB 464 requires that transfer of development rights programs (the subject of HB 363) be consistent with comprehensive plans.

SOURCES OF INFORMATION

LFC Files
Attorney General
Department of Finance and Administration (DFA)
Energy, Mineral and Natural Resources Department (EMNRD)
State Land Office

SUMMARY

Synopsis of Bill

House Bill 363 authorizes municipalities and counties to establish a transfer of development rights program to allow the transfer of development rights across jurisdictional boundaries.

Significant Issues

The bill defines “development right” as the right of a landowner to a particular use, or density or intensity of use for its land under a master plan. A “transfer of development rights program” would be a program of a county or municipality to allow landowners to transfer development rights for one parcel to another parcel located in “another geographical or zoning area.” The rights attributable to the original parcel would be extinguished through a conservation easement.

DFA’s Local Government Division notes that transfers of development rights programs have been used in one-half of the states in the United States to facilitate the use of development itself to save

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other land from development. The typical uses for a transfer of development rights (TDR) program have been for prevention of urban sprawl, preservation of open space, maintenance of farming on agricultural lands located within or next to urbanizing areas, and protection of environmentally sensitive areas. A TDR program must have both a sending area, from which development rights arise, and a receiving area, to which the development rights will be sent.

FISCAL IMPLICATIONS

This bill contains no appropriation.

ADMINISTRATIVE IMPLICATIONS

Municipalities and counties that wish to include transfers of development rights programs into their master plans would have to assume any accompanying administrative obligations.

TECHNICAL ISSUES

The State Land Office notes that the bill provides for local governments to hold “conservation easements.” Under the Land Use Easement Act, conservation easements are referred to as “land use easements.” Governmental entities do not have the authority to hold such easements.

The Land Office also notes that the bill defines development rights to mean rights created under a master plan. Master plans, however, are advisory and do not appear to confer any property rights on specific landowners.

Finally, the Land Office believes that the term “another geographical or zoning area” is vague and undefined.

OTHER SUBSTANTIVE ISSUES

The State Land Office notes that the bill should provide greater flexibility to local governments and landowners in planning and approving development. Benefits may flow to the State Land Office in its programs to encourage commercial development on state trust lands.

EMNRD notes that the bill appears to address structure, infrastructure, housing intensities and related zoning issues. Broad interpretations of the term “particular use” could connect this development right to land use within EMNRD jurisdiction, including energy, oil, mining, forestry and recreational developments.

LP/ar