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Robert M. Rhodes

Robert C. Apgar

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CHARTING FLORIDA'S COURSE: THE STATE AND REGIONAL PLANNING ACT OF 1984

ROBERT M. RHODES* AND ROBERT C. APGAR**

Your task for the next two years will be to study how [growth management] policies at every level can be integrated into a coordinated response to help manage the state's growth without causing duplication, fragmentation or proliferation of government regulation.

Governor Bob Graham¹

I. INTRODUCTION

On the closing day of the 1984 legislative session, the Florida legislature adopted the Florida State and Regional Planning Act of 1984.² It is, potentially, the most far-reaching legislation passed by the 1984 legislature. The Act creates a planning process that will cut across the responsibilities of every state and regional agency. It mandates the development and adoption of a state comprehensive plan and establishes an integrated system through which the state plan will guide the development of the budgets and programs of all agencies operating at the state and regional level.³ When it is implemented, the Act will provide overall policy direction for the multitude of state and regional programs that presently operate in relative isolation.

The Act was developed to enable all levels of government—state, regional, and local—to better manage the explosive urban development that is the inevitable product of Florida's rapid population growth. Florida's growth is a matter of broad public concern. As population centers have mushroomed throughout Florida, the press, public officials, and citizens groups have complained about


³ The authors thank George H. Meier, Staff Director of the House Select Committee on Growth Management; John M. DeGrove, Secretary of the Department of Community Affairs; and Jack Osterholt, Governor's Office, for their assistance on Part VII of this article.

¹ Address by Governor Bob Graham to the Second Environmental Land Management Study Committee (Dec. 1, 1982).

² Ch. 84-257, 1984 Fla. Laws 1166 (codified at Fla. Stat. §§ 23.01-.015, 160.002-.076 (Supp. 1984)). The bill was signed by the Governor on June 19, 1984, and took effect on July 1, 1984.

³ Id.
overburdened public facilities and a steady erosion of Florida's fragile natural environment. They have repeatedly expressed their dissatisfaction and frustration with the numerous shortsighted governmental programs that respond to pressing, immediate problems but do not anticipate future needs or guide future growth.

Against this backdrop, Governor Bob Graham appointed the Second Environmental Land Management Study Committee (ELMS Committee). At about the same time, Speaker of the House Lee Moffitt created the Select Committee on Growth Management of the Florida House of Representatives and appointed a Task Force on Water Issues. Both the ELMS Committee and the House Select Committee centered their attention on statewide planning as a possible means to improve growth management in Florida.

Statewide planning is not a new idea in Florida, but earlier planning efforts have had little success. The State Comprehensive Planning Act was enacted by the legislature in 1972. It was one of a number of innovative statutes enacted in 1972, including the Environmental Land and Water Management Act, that were intended to improve management of the state's resources and to guide and direct growth. Development of a comprehensive state plan took place over the next six years. In the interim, the first ELMS Committee recommended adoption of the Local Government Comprehensive Planning Act (LGCPA). The LGCPA, which became law in 1975, mandated that each of Florida's local governments adopt a local comprehensive plan. Thus, it appeared that Florida would implement planning programs at both the state and local level. However, in 1978 the state legislature became dissatisfied with the state-level planning effort.
ture amended the State Comprehensive Planning Act to provide that "[t]he state comprehensive plan shall be advisory only, except as specifically authorized by law" and that, "[e]xcept as specifically authorized by law, no part of the state comprehensive plan, or the policies set forth therein, or any revision thereto shall be implemented or enforced by any executive agency."

Various reasons have been suggested to explain the legislature’s action. The plan was under development for six years and the final plan document was broad and detailed. It included hundreds of statements of policies and objectives. The legislature may well have been concerned that the detailed plan document would have concentrated too much power in state-level executive agencies. Whatever the reason, the legislature’s action effectively terminated the state planning effort, leaving local governments to complete their planning in a policy vacuum.

In 1980 a new planning initiative appeared. The legislature amended chapter 160, Florida Statutes, to require that each of Florida’s eleven regional planning councils adopt a regional policy plan. However, funding to prepare regional policy plans has been minimal. Without state funds, the regions have largely been unable to meet their planning responsibilities.

The 1984 planning bill began its life in the 1983 legislative session as House Bill 1331. The bill, which was developed by the House Select Committee on Growth Management, passed the House, but died in the Senate. As the 1983 session ended, the ELMS Committee focused its attention on statewide planning. Over the next six months the committee debated the concepts and mechanisms of state planning in exhaustive detail in public hearings across the state.

Mindful of the apparent shortcomings of the earlier state plan, the ELMS Committee developed a decentralized planning process

10. See Fla. Stat. § 23.0114(1) (1983). This section was further amended by ch. 84-257, § 5, 1984 Fla. Laws 1166, 1169-70.
12. The Department of Community Affairs reported to the ELMS Committee that almost all local governments have adopted local government comprehensive plans. However, the quality of the plans reportedly varies widely. Environmental Land Management Study Committee, tape recording of proceedings (Dec. 1, 1982) (on file with Fla. Dep’t of State, Div. of Archives, Tallahassee, Fla.) (testimony of Michael C. Garretson, Director, Division of Local Resource Management, Department of Community Affairs).
in which the responsibility to implement legislatively adopted state policies was spread among the government entities that have day-to-day implementation responsibility. In addition, the committee recommended that the state plan not include a land-use map, to avoid any implication that the plan would be a precursor to statewide zoning. Significantly, the committee did not devote any time to writing a proposed state plan. Instead, responding to the Governor's charge, the committee concentrated on designing a framework that would maintain the proper balance and interaction between state policies, regional concerns, and Florida's traditionally strong local governments. The ELMS Committee presented its final report to Governor Bob Graham on February 15, 1984, including its recommendations for a statewide planning framework. In the 1984 legislative session, the ELMS Committee's recommendations were merged with the 1983 planning bill. The planning bill had been reintroduced by the House Select Committee on Growth Management chaired by Representative Ray Liberti, a member of the ELMS Committee. A similar bill incorporating the ELMS Committee's recommendations was filed in the Senate by Senator Edgar M. Dunn, Jr., who was also a member of the ELMS Committee. Both bills were subject to intense legislative review.

II. THE KEY LEGISLATIVE ISSUE—ADOPTION OF THE STATE PLAN

In every major bill there is a critical issue, a question or subject which attracts controversy and gives the legislation its session image. The resolution or nonresolution of this issue invariably dictates the bill's fate, particularly in short legislative sessions. As noted, in 1983 the House of Representatives passed state and regional planning legislation similar to the 1984 Act. Although it built momentum, the 1983 bill died on the Senate calendar because the Senate was not comfortable with House provisions regarding plan adoption. Thus, resolution of the adoption issue was critical if the Act were to pass the Senate in 1984.

Why is this question so sensitive? The adoption issue is the choice of who or which entity adopts or finally approves the plan. In our trifurcated system of governmental powers, the legislature is generally recognized as the state's prime policy-making body. Al-
though executive branch officials can mold and propose policy, the legislature jealously guards its prerogative to establish state policy against possible executive branch intrusion. Because the state plan would establish a blueprint for agency budgets and programs\textsuperscript{19} and would set statewide goals and policies,\textsuperscript{20} the legislature understandably viewed the plan as a major policy document which merited critical legislative scrutiny.

\textbf{A. ELMS Committee Recommendations}

The ELMS Committee, which included legislators and executive officials, considered various legislative roles in plan adoption and fashioned recommendations which provided direction for successful legislative resolution of the adoption issue.\textsuperscript{21} The ELMS Committee's discussion, debate, and final recommendations reflect a sensitivity to the need for significant and meaningful legislative involvement in the state plan.\textsuperscript{22} The members recognized that too often plans become only "shelf-fulfilling exercises"—artfully prepared, successfully adopted, and then filed and ignored. Thus, an effective plan, a plan that expresses fundamental state policy and guides the budget process and agency programs, should be reviewed, amended if necessary, and adopted or rejected by the legislature. Several points reinforce this conclusion.

First, legislative analysis and debate on the plan provides additional elected official review, adds a desirable different perspective to the executive branch proposals, extends the opportunity for public participation, enhances the plan's visibility and credibility, and hopefully results in a more refined, representative, and supportable plan. Second, legislative review, debate, and action promotes the ultimate goal of the planning process—implementation of plan policies through the budget process, statutory enactment, and amendment of programs. Third, legislative action can encourage more innovative and imaginative plan policies which, if not subject to legislative approval, would be constrained by ex-

\begin{itemize}
\item \textsuperscript{19} \textbf{FLA. STAT.} § 23.013 (Supp. 1984).
\item \textsuperscript{20} \textit{Id.} § 23.0114.
\item \textsuperscript{21} Environmental Land Management Study Committee, Final Report 10-12 (Feb. 1984) (on file with Fla. Dep't of State, Div. of Archives, Tallahassee, Fla.) [hereinafter cited as ELMS Report].
\item \textsuperscript{22} Environmental Land Management Study Committee, tape recording of proceedings (July 27 & Oct. 25, 1983) (on file with Fla. Dep't of State, Div. of Archives, Tallahassee, Fla.).
\end{itemize}
isting law. Similarly, legislative blessing of specific policies would mute the inevitable challenges to particular plan policies adopted as rules under the state Administrative Procedure Act on the ground that they exceed delegated legislative authority. Finally, legislative familiarity with the plan provides a desirable feedback mechanism and stimulates continuing legislative interest in monitoring the effectiveness of the policies with a view to possible amendment. Consequently, the ELMS Committee determined that an effective state plan and planning process necessitated legislative input, including review, debate, action, implementation through the budget and programs, monitoring, and feedback through the amendatory process.

Based on these conclusions, the ELMS Committee recommended that the Administration Commission, composed of the Governor and the Cabinet, identify portions of the plan that are not based on existing law and adopt a resolution transmitting the proposed state plan to the legislature. The legislature should have the primary responsibility to give statewide effect to the plan by enacting it into law with any necessary modifications. If the legislature failed to adopt the plan, the Administration Commission should adopt by rule all or any part of the plan consistent with existing general law. The adopted state plan would then be implemented and enforced by state agencies consistently with their lawful responsibilities. Amendments would be made in the same manner as initial adoption.

B. Legislative Action

The Florida House of Representatives initially viewed the legislature's involvement in the state plan differently than the ELMS Committee. The 1983 House-passed bill provided that the plan would be adopted as a rule by the Administration Commission. The plan would become effective on adoption but could subsequently be reviewed by the legislature at its discretion. Legislative amendments to the plan would be accomplished by joint resolution.

23. FLA. STAT. § 120.56 (1983).
24. ELMS Report, supra note 21, at 11. The Administration Commission is created by FLA. STAT. § 14.202 (1983), which states that the Administration Commission is composed of the Governor and the Cabinet and is part of the Executive Office of the Governor. The Governor is designated as chairman of the Commission.
25. ELMS Report, supra note 21, at 12.
The 1984 version of the State and Regional Planning Act, introduced by the House Select Committee on Growth Management as House Bill 1153, was similar to the 1983 bill. Like its predecessor, it required the legislature to affirmatively act to reject or amend the adopted plan based on the recommendations of an expanded joint legislative administrative procedures committee. However, legislative action could only be taken by three-fifths vote of each house approving a general law.\(^{27}\) Failing such action, the plan would remain in effect.

The legislature's role in the adoption process was intensely debated before the House Select Committee.\(^{28}\) The committee's preference to provide a discretionary and somewhat passive function for the legislature was based on a belief that it is not appropriate for a 160-member collegial body to review and act on the details of a plan, because to expect the legislature to do so in a responsible manner is unrealistic. An undercurrent in the debate was a fear that legislative action on the plan would yield a soft, vague, and overly compromised product.

Once introduced as a select committee bill, House Bill 1153 traveled to the General Government Subcommittee of the House Appropriations Committee.\(^{29}\) There, the substance of the ELMS Committee's adoption recommendations was offered as an amendment to the bill and was accepted by the subcommittee.\(^{30}\) Specifi-

\(^{27}\) The House Select Committee's change of position regarding legislative action by joint resolution was due largely to an incisive memorandum drafted by the committee's attorney, Dana D. Minerva, which, citing Immigration & Naturalization Serv. v. Chadha, 103 S. Ct. 2764 (1983), correctly concluded that the legislature can only take formal and legally binding action by general law. Memorandum from Dana D. Minerva, Staff Attorney, House Select Committee on Growth Management, to Honorable Dexter Lehtinen (Mar. 29, 1984), reprinted in Fla. H.R., Select Committee on Growth Management, Monographs, Memorandums, and Other Materials 77 (June 1984) (available from Fla. H.R., Office of the Clerk) [hereinafter cited as Monographs]. But see FLA. STAT. § 380.06(2)(a) (1983), which requires rules establishing development of regional impact (DRI) presumptive guidelines and standards to be approved by joint legislative resolution. The existing FLA. ADMIN. CODE chapter 27F-2 rules were approved by Fla. HCR 1039 (1973). It is likely that \textit{Chadha} will require that future changes to the DRI guidelines and standards be approved by general act. Ms. Minerva also opined that in view of FLA. CONST. art. III, § 7, which provides that passage of a bill requires only a majority vote of each house, if the legislature were to require an extraordinary majority, this mandate would be superseded by a majority vote of a subsequent legislature.

\(^{28}\) Fla. H.R., Select Committee on Growth Management, tape recording of proceedings (Apr. 11 & 18, 1984) (on file with Florida Legislative Library, The Capitol, Tallahassee, Fla.).


\(^{30}\) \textit{Id.}
cally, the amendment required the Administration Commission to adopt a resolution, rather than a rule, officially transmitting the proposed state plan to the legislature with any Commission-proposed amendments, dissenting reports, and an identification of those portions of the plan that would change existing law.\textsuperscript{31} Additionally, the amended Act states: “The legislature shall have the primary responsibility to give statewide effect to the state comprehensive plan by enacting it into law, with any necessary modifications.”\textsuperscript{32} This is accomplished by allowing the legislature “to adopt or to reject” the plan before it may take effect.\textsuperscript{33} If, after receiving the proposed state plan, the legislature enacts a state plan into law, the planning process is concluded.

If the legislature rejects the plan, the entire adoption process begins anew. If the legislature takes no action, however, the draft state plan would “automatically return” to the Administration Commission.\textsuperscript{34} The Commission is then authorized, but not required, to “adopt by rule all or any part of the plan consistent with existing law.”\textsuperscript{35} Adoption under this procedure requires the assent of five Commission members instead of the usual majority of four.\textsuperscript{36} (Further, the Governor is not required to vote in the affirmative for the plan to pass.)\textsuperscript{37} Another amendment emphasized that the plan was to be implemented and enforced by all state agencies “whether it is put in force by law or administrative rule.”\textsuperscript{38}

In this manner, the critical interbranch compromise on the adoption issue was negotiated and preliminary agreement reached. The plan could not become effective until the legislature first had

\textsuperscript{31} Unlike a rule adopted pursuant to the state Administrative Procedure Act, the resolution would not have the force and effect of law. However, it could only be adopted following public notice and a reasonable opportunity for public comment. Fla. Stat. § 23.013(2) (Supp. 1984).

\textsuperscript{32} Id. § 23.013(4).

\textsuperscript{33} Id.

\textsuperscript{34} Id.

\textsuperscript{35} Id.

\textsuperscript{36} Id.

\textsuperscript{37} Id. § 23.013. An interesting question is what happens if the legislature enacts legislation that is subsequently vetoed by the Governor and the veto is not overridden by the legislature. The authors suggest that in this situation the legislative action is invalid, and the entire plan-adoption process, commencing with the Administration Commission resolution and transmittal to the legislature, is retriggered. The legislative provision returns the plan to the Administration Commission only if the legislature fails to act. Since the legislature acted, even though the action was negated by gubernatorial veto, the plan would not automatically return to the Administration Commission for action. Thus, the adoption process would start anew.

\textsuperscript{38} Id. § 23.013(5).
the opportunity to review and take action. If the legislature chose not to act or legislation addressing the plan did not pass, the plan could be adopted as a rule by an extraordinary vote of the Administration Commission.

The issue, however, was not finally settled. The bill as amended by the General Government Subcommittee passed the full Appropriations Committee without controversy. Then in debate on the House floor, Representative Ray Liberti, Chairman of the House Select Committee on Growth Management, offered an amendment to substitute “rejects” for “to reject” in the language of the bill relating to legislative action, significantly modifying the adoption compromise. The Liberti amendment, which was adopted, allowed that if the legislature affirmatively rejected the plan, the Administration Commission would still be able to adopt the plan by rule so long as it was consistent with existing law. House Bill 1153, as amended, passed the House.

Meanwhile, the Senate version of the planning bill, Senate Bill 550, was debated in the Senate Natural Resources and Conservation Committee. The committee accepted a number of amendments that would conform the Senate bill to the House bill, but refused to accept the Liberti amendment. Thus, under the Senate plan, only if the legislature failed to take any action to adopt or reject the plan could the Administration Commission adopt those parts of the plan authorized by existing law. The Senate position prevailed on final passage of the bill.

C. Legislative Review

The House Select Committee originally proposed that an expanded joint legislative administrative procedures committee be responsible for reviewing the plan and for proposing appropriate legislative action. This provision was deleted by the Senate Economic, Community and Consumer Affairs Committee.

Neither the ELMS Committee recommendations nor the en-

41. Id.
42. Fla. S., Committee on Natural Resources and Conservation, tape recording of proceedings (May 18, 1984) (on file with committee).
acted legislation provides direction as to how the legislature should actually review the proposed plan. This decision will have to be made by the legislative leadership. One approach is to appoint a select committee of both houses or in each house to review the Administration Commission resolution. Alternatively, various parts of the plan could be reviewed by appropriate substantive committees in each house.

The best approach would seem to be a review of the various subject areas of the plan by the committees familiar with the subject matter. This approach capitalizes on the committees' subject matter expertise and facilitates introduction of legislation necessary to complement and implement the plan. If this tack is followed, it is essential that an overall coordinating entity, such as the speaker's or president's office or one of the rules committees, be responsible for timely committee review and ensuring that committee action is internally consistent.

Although the Administration Commission's initial action will be by resolution, without the force and effect of law, the resolution will be an available public document and, arguably, could simply be referenced in the legislation adopting, amending, or rejecting the plan. This approach should be discouraged. Maximum legislative consideration should be encouraged and facilitated. The entire plan proposed by a majority of the Administration Commission should be included in legislation and subjected to full legislative review and action. In addition, because the legislature is likely to amend the proposed plan, if enactment by reference is attempted, only those parts of the plan acted on by the legislature would be incorporated in the statutes. Thus one would have to review and compare both general law and the Administration Commission resolution to determine the valid plan policies. This is impractical and inefficient and would create needless confusion. A

45. This approach was taken in the Warren S. Henderson Wetlands Protection Act, ch. 84-79, 1984 Fla. Laws 202, which, pursuant to Fla. Stat. § 403.817 (1983), simply approved by reference certain parts of a rule previously adopted by the Environmental Regulation Commission. Other parts of the rule were included in the Wetlands Protection Act and amended in the same manner as regular legislation. In another example, legislative action approving the initial development of regional impact guidelines under Fla. Stat. § 380.06(2)(b) (1983) was accomplished by a concurrent resolution which simply referenced the previously adopted Administration Commission rule. See Fla. HCR 1039 (1973).

46. The authors would like to acknowledge the perspectives shared on this issue by Robert Kennedy, Senate Bill Drafting; Jim Lowe, House Bill Drafting; Dana Minerva, House Select Committee on Growth Management; and Lee Johnson and Steve Lewis of Messer, Rhodes and Vickers. The conclusions and recommendations are those of the authors.
single document is preferable.

Because a single plan document is preferred, the legislature should not act selectively on the Administration Commission proposal. If the legislature adopts or rejects parts of the plan, but fails to act on other parts, the parts that were not acted on will return to the Administration Commission. If the Commission adopts these parts, the plan will be bifurcated, part in the statutes and part in the administrative rules. As noted, this is not desirable.

III. **Overview of the Planning Framework**

As finally passed, the Act features a decentralized planning process that spreads responsibility for implementing state policies to state and regional agencies, and an innovative adoption process that highlights legislative involvement. The Act stresses that planning is an ongoing process and establishes mechanisms for continuing mediation and conflict resolution among planning units.

Notably, the Act does not apply to local governments. The Act contains no requirement that local governments' comprehensive plans be consistent with state goals and policies or with regional plans. Because of the strong resistance of local governments to any law that might circumscribe their homerule authority, an early policy decision was made to delete from the drafts any mandate that would apply to local governments.

A. **The State Comprehensive Plan**

Under the Act, the state comprehensive plan “shall be composed of goals and policies briefly stated in plain, easily understood words that give specific policy direction to state and regional agencies.”

47. FLA. STAT. § 23.0114(1) (Supp. 1984). Although the ELMS Committee opted to support an intergovernmentally integrated “rational” planning system, this approach was not without significant debate. A rational planning system keys on goals that are effectuated by policies that are further implemented by objectives. The potential effectiveness of this approach was questioned particularly by legislative and business community members on the committee. These members preferred an incremental approach to problem solving that would focus attention to current problems and remedies which offer immediate resolution. This approach would mitigate problems as they arrive rather than create a system to achieve specified goals through reasonably articulated means. The alternative approach, referred to in the committee as “disjointed incrementalism,” is supported and discussed in Lindblom, *The Science of “Muddling Through,”* 19 PUB. AD. REV. 79 (1959). Lindblom’s approach generally reflects legislative problem solving, which is usually characterized by amendments to existing policies that differ only incrementally from such policy, consideration of a relatively small number of means, simultaneous choice of ends and means, and
emphasis in Florida's state planning process. The Act makes it clear that the state plan is not to become a lengthy, detailed document to which every unit of government will look for specific direction in every situation. Rather, the goals and policies of the state plan must be developed further in functional plans by each unit of government.

B. State Agency Functional Plans

The distinction between the state plan and agency functional plans is clearly drawn through the Act's definitions of three plan components:

"Goal" means the long-term end toward which programs and activities are ultimately directed.48
"Policy" means the ways in which programs and activities are conducted to achieve identified goals.49
"Objective" means specific, measurable, intermediate ends that are achievable and mark progress toward a goal.50

The Act combines these elements as follows: The state plan is composed of "goals" and "policies," while an agency functional plan contains "agency program policies and objectives and administrative directions." State "goals," the long-term end of all state programs, are found only in the state plan; "policies," expressing the manner in which programs are to be conducted to achieve these goals, are a shared responsibility of the state plan and agency plans; and "objectives," specific measurable ends, are reserved for the agencies' functional plans.

The Act requires each state agency to develop a functional agency plan that is consistent with the state plan within one year of the adoption of the state comprehensive plan.52 Each agency's plan is required to contain a statement of the policies that guide the agency's programs, in addition to the objectives "against which the agency's achievement of its policies and the state comprehen-


49. Id. § 23.0112(7).
50. Id. § 23.0112(8).
51. Id. § 23.0112(5).
52. Id. § 23.0131.
sive plan's goals and policies shall be evaluated."\textsuperscript{53}

C. Comprehensive Regional Policy Plans

Comprehensive regional policy plans comprise a second category of implementing functional plans. As with the functional agency plans, the regional plan must be consistent with the state comprehensive plan.\textsuperscript{54} Unlike an agency plan, however, the regional plan is an intermediate-level plan; it addresses "regional goals and policies" but not objectives.\textsuperscript{55} The Act further directs: "Regional plans shall address significant regional resources, infrastructure needs, or other issues of importance within the region."\textsuperscript{56}

Regional plans should form a vital link between state and local governments. Presently, this link is incomplete because there is no requirement in the Act for local government comprehensive plans to be consistent with the state's goals and policies. The Act lays the groundwork, however, for the region to become the coordinating body between state and local units of government. It emphasizes a strong local role in developing the regional plan and requires the regional planning council to "seek the full cooperation and assistance of local governments" in the planning process.\textsuperscript{57} Further, "[t]he draft regional plan shall be circulated to all local governments in the region. Local governments shall be afforded a reasonable opportunity to comment on the regional plan."\textsuperscript{58}

D. The Scope of Regional Agency Plans

One of the significant issues that emerged from the 1984 legislative debate concerned the proper scope of the regional plan. The question was whether the regional policy plan should go beyond the policies reflected in the state plan or statutes, or whether the state plan and statutes should constitute an absolute outer limit for the policies and programs that a region might adopt. The ELMS Committee struck a balance on this issue and recommended:

Regional plans shall minimize overlap or duplication between the regional plan and state regulatory and permitting programs. Any

\textsuperscript{53} Id. § 23.0131(2).
\textsuperscript{54} Id. § 160.07(1).
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id. § 160.07(3).
\textsuperscript{58} Id. § 160.07(5).
proposed regional standard that is substantially different from a state agency regulatory or permitting standard covering the same subject shall be accompanied by an explanation and justification setting out the importance of the standard to the region, the impact on the affected state regulatory program, and the benefits and costs of the standard.\textsuperscript{59}

The ELMS Committee also recommended that "substantially different" regional standards be specifically reviewed and approved by the Administration Commission before taking effect.\textsuperscript{60}

By the time the Senate Natural Resources Committee considered Senate Bill 550 some concern had arisen about the scope of regional authority. The ELMS Committee's recommendation was dropped from the bill and the following language was substituted and included in the bill passed by the legislature:

Regional plans shall specify regional issues that may be used in reviewing a development of regional impact. Such issues shall be consistent with any state statutes, rules, or policies that specifically relate to or govern a regional issue or criteria adopted for DRI reviews. All regional issues and criteria shall be included in the comprehensive regional policy plan adopted by rule pursuant to s. 160.072.\textsuperscript{61}

Debate on the role of regional planning councils is a major unresolved issue that could seriously hamper the development of a statewide planning framework. The debate erupted early in 1984 in hearings before a subcommittee of the House Select Committee on Growth Management, chaired by Representative Sam Bell.\textsuperscript{62} After this early flurry, opposing interests seemed to reach an uneasy truce. Only late in the 1984 session did regional planning councils

\textsuperscript{59} ELMS Report, supra note 21, at 15.

\textsuperscript{60} Id.

\textsuperscript{61} FLA. STAT. § 160.07(1) (Supp. 1984). This statutory language may have interesting consequences for development of regional impact reviews. It could significantly limit the scope of DRI reviews through the requirements that regional plans specify regional issues that may be used in such reviews and that "all regional issues and criteria" shall be included in the plan. Note also that the term "criteria" inserted in the Act is the same term used in the Warren S. Henderson Wetlands Protection Act, ch. 84-79, 1984 Fla. Laws 202, to describe the standards to be used by the Department of Environmental Regulation (DER) in reviewing permit applications. This correlation raises the question of whether regional criteria for DRI reviews regarding wetlands must henceforth be consistent with DER criteria.

\textsuperscript{62} Fla. H.R., Select Committee on Growth Management, Government Management Subcommittee, tape recording of proceedings (Jan. 11, Feb. 7 & Mar. 6, 1984) (on file with Florida Legislative Library, The Capitol, Tallahassee, Fla.).
reemerge to secure a strong position for themselves in the planning process.

IV. THE ROLES OF THE EXECUTIVE OFFICE OF THE GOVERNOR AND OF THE CABINET

The Act establishes a strong central role for the Governor but provides a check against the Governor's authority through review by the Cabinet at various points in the process. The Governor has a vital role—to prevent the plan from becoming simply a collection of numerous agency desires. As the state's highest elected official, it is appropriate that this task fall to the Governor. The Governor's role begins with preparing the draft plan. During that process, the Governor is authorized to "[p]repare or direct appropriate state or regional agencies to prepare such studies, reports, data collections, or analyses as are necessary or useful in the preparation or revision of the state comprehensive plan, state agency functional plans, or regional comprehensive plans."63 The Governor's office is given wide latitude in drafting the plan. The Act directs the Governor's office to prepare "statewide goals and policies" dealing with "growth and development in Florida," with initial emphasis on "the management of land use, water resources, and transportation system development."64

Before the plan is submitted to the legislature, the Administration Commission will review the proposed state plan. The Act provides that the plan will be transmitted to the Administration Commission "on or before December 1, 1984," and at that time "copies shall also be provided to each state agency, to each regional planning agency, to any other unit of government that requests a copy, and to any member of the public who requests a copy."65 As an intermediate step, the Commission serves two important functions. First, it provides a public forum. Submission to the Administration Commission is the first date for formal publication of the proposed plan document. After receiving public comment, the Commission submits the plan to the legislature "together with any amendments approved by the Commission, and any dissenting reports."66 The Act thus provides an opportunity for formal public comment, for an expression of differences at the executive level, and for those

64. Id. § 23.0114(4).
65. Id. § 23.013(1).
66. Id. § 23.013(2).
comments to accompany the draft plan to the legislature. The Commission's second important function is to identify the parts of the draft plan that go beyond existing law and therefore could not survive if the legislature fails to adopt the plan.\textsuperscript{67}

Review by the Administration Commission is an important threshold step in the innovative adoption process. It sets the stage both for legislative consideration and for adoption by rule if the legislature fails to act. However, it would be unfortunate if the Cabinet attempted to resolve all conflicts and concerns of various interests in this phase. This fine-tuning should take place in the legislative process. In recognition of this fact, the Act provides for both the draft plan "and any dissenting reports" to be forwarded to the legislature.\textsuperscript{68}

The Governor's plan implementation responsibilities are also significant. The Act states that the Governor "as chief planning officer of the state, shall oversee the implementation process."\textsuperscript{69} For that task, the Governor is empowered to prepare and adopt by rule "criteria, formats, and standards for the preparation and the content of state agency functional plans and comprehensive regional policy plans."\textsuperscript{70} The Governor designates and prepares specific data, forecasts, and projections, and, perhaps most significantly, "assumptions" to be used "by each state and regional agency in the preparation of plans."\textsuperscript{71} Finally, the Governor has general authority to "[d]irect state and regional agencies to prepare and implement, consistent with their authority and responsibilities under law, such plans as are necessary to further the purposes and intent of the state comprehensive plan."\textsuperscript{72}

The Executive Office of the Governor has a strong central role in coordinating the functional plans of agencies and regional policy plans. The Act provides that state agency functional plans shall be submitted to the Executive Office of the Governor "within 1 year of the adoption of the state comprehensive plan."\textsuperscript{73} The Governor's office is allowed ninety days to review a proposed agency functional plan for consistency with the state plan and then is to return the plan to the agency "together with any revisions recommended

\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{69} Id. § 23.013(5).
\textsuperscript{70} Id. § 23.01131(3).
\textsuperscript{71} Id. § 23.01131(5).
\textsuperscript{72} Id. § 23.01131(9).
\textsuperscript{73} Id. § 23.0132(1).
by the Governor."74 The state agency must incorporate the Governor's recommended changes or petition the Florida Land and Water Adjudicatory Commission to resolve any disputes.75 Here the Adjudicatory Commission is a check on the power of the Governor's office. In addition to conducting a review upon request of a state agency, the Adjudicatory Commission may initiate a review by its own vote or upon petition by the Executive Office of the Governor.76 Upon order of the Adjudicatory Commission, a state agency must amend its plan to achieve consistency with the state comprehensive plan.77

The Governor has similar review authority for comprehensive regional policy plans. As with the agency functional plan, the region must accept all revisions recommended by the Governor, or petition the Florida Land and Water Adjudicatory Commission to resolve disputes regarding inconsistency of the comprehensive regional policy plan or the revisions recommended by the Governor.78 Additionally, the Adjudicatory Commission is given the authority to review a regional plan at any time, either on its own motion or upon petition by the Governor's office. It may require a regional planning council to amend its plan to achieve consistency with the state plan.79 Finally, the Act provides that the Governor's office may reject a regional plan entirely, and if the region fails to resubmit its plan within six months, the state land planning agency "shall develop a regional plan and submit the plan to the Florida Land and Water Adjudicatory Commission" and the Adjudicatory Commission shall adopt the plan with any necessary amendments by rule for the region after allowing an opportunity for public comment.80

V. MEDIATION OF CONFLICTS

An innovative ELMS Committee contribution to the State and Regional Planning Act is the recognition and requirement of informal dispute resolution when agency plans conflict. The ELMS

74. Id.
75. Id. § 23.0132(2). Id. § 380.07(1) (1983) defines the Florida Land and Water Adjudicatory Commission to consist of the Administration Commission, which in turn is composed of the Governor and the Cabinet. See supra note 24 and accompanying text.
76. FLA. STAT. § 23.0132(3) (Supp. 1984).
77. Id. § 23.0132(4).
78. Id. § 160.072(2).
79. Id. § 160.072(5).
80. Id. § 160.072(3).
Committee concluded that intergovernmental and interagency coordination are vital to an effective statewide system. Successful planning only occurs when all levels of government regularly communicate and coordinate their comprehensive and functional plans. To effect this aim and to encourage a cooperative conflict resolution approach, the committee recommended mediation rather than an adversary proceeding, such as a judicial or administrative hearing. If conflicts cannot be settled by mediation, the ELMS Committee recommended that a formal appeal should be available to allow the Florida Land and Water Adjudicatory Commission to resolve the controversy.81

The ELMS Committee's mediation recommendations are incorporated in several of the Act's provisions. Once the state comprehensive plan is adopted, each state agency must adopt a functional plan that is consistent with the adopted state comprehensive plan.82 Consistency is initially determined by the Executive Office of the Governor. The Governor is also required to mediate all consistency disputes between agencies.83 If mediation is unsuccessful, the Adjudicatory Commission will take final action.84 The language in the statute that mandates the Governor to mediate all disputes provides an opportunity for informal dispute resolution in all cases prior to formal adjudication by the Adjudicatory Commission.

A similar process to resolve consistency disputes is provided when conflicts arise between the Governor's office and regional planning councils, whose comprehensive regional policy plans also must be consistent with the adopted state comprehensive plan.85

Although the Act places the responsibility for mediation on the Governor, the spirit of the legislation would seem to enable the Governor to designate an experienced and recognized mediator to carry out the Governor's duty. This may be desirable for several reasons. Mediation is a voluntary process in which those involved in a dispute jointly explore and hopefully reconcile their differences with the assistance of a qualified and impartial third party.86 To maintain necessary credibility, a mediator must be impartial, and just as important, must not be perceived as entertaining any

83. Id. § 23.0132(5).
84. Id.
85. Id. § 160.07(1).
posibility of bias. Since the Governor's own office must initially determine if a state agency functional plan or regional comprehensive plan is inconsistent with the state plan, it is possible the Governor might be perceived as biased in favor of his office's findings. To avoid this perception, and thereby maximize the potential for effective resolution through mediation, the Governor could appoint recognized and experienced mediators as his designees in this process.

Another option is to request the Division of Administrative Hearings to assign a hearing officer to mediate, provided the hearing officer is adequately trained in mediation techniques. If this approach is followed, and mediation is unsuccessful, a different hearing officer would have to be assigned to hear an appeal if the Land and Water Adjudicatory Commission were to assign the appeal to the Division of Administrative Hearings.

The ELMS Committee also recommended that regional planning agencies establish a mediation process to resolve conflicts among local government comprehensive plans. However, the resolution of any issue through the mediation process should not alter any person's right to a judicial determination of any issue if otherwise authorized by law. These recommendations were incorporated in the Act.

The ELMS Committee's several mediation recommendations were accepted by the legislature as promising alternatives to time-consuming, costly, and perhaps improvident formal litigation between government agencies. If implemented by agencies with the proper orientation towards problem resolution, mediation will fulfill this promise.

VI. THE CONSISTENCY MANDATE

The key word used throughout the Act to describe the relationship between the state plan and lower tiers of implementing plans is "consistency." State agency functional plans and comprehensive regional policy plans are required to be consistent with the state plan and are subject to mandatory change if they are found to be inconsistent. In the ELMS Committee's discussion of the planning

87. ELMS Report, supra note 21, at 16.
89. For a discussion of practical applications of mediation in environmental and land use disputes, see Management and Control of Growth 245-55 (F. Schnidman, J. Silverman & R. Young ed. 1978).
bill, and in the legislative debate, the question repeatedly arose: Can we define “consistency” so that we can better understand the nature and extent of the obligation it imposes? No satisfactory definition emerged, because in large part the definition depends on the specific language of the applicable state goal or policy.⁹⁰

Fundamentally, the consistency mandate requires that state agency and regional plans remain within the limits that the state plan places on lower tiers of implementing plans or regulations. Those limits will always be either express or implied within the different elements of the state plan. For example, suppose the state plan includes the following policy: “channelization or other alteration of natural rivers or streams shall be prohibited.” Obviously, the range of options on this issue for state agency functional plans or regional plans would be very limited. On the other hand, if the state comprehensive plan states that “the state shall have a management system adequate to protect the state’s water quality and quantity resources,” a great many different state and regional agency policies and programs could be fashioned that would contribute significantly toward achieving this goal.

The state plan should include a general definition of “consistency” and additional specific definitions for particular program areas where they would prove useful. The general definition should be along the following lines: “A policy, objective, program, or regulation that contributes significantly to the attainment of a goal or goals stated in the state comprehensive plan, and which does not substantially detract from the attainment of any other state goal shall be found to be consistent with the state comprehensive plan.”

VII. CONCLUSIONS AND RECOMMENDATIONS

The State and Regional Planning Act of 1984 is law. Now comes the crucial challenge—implementation. Since Florida has not experienced a successful state planning process, there is no helpful positive precedent. Nonetheless, lessons can be learned from the unsuccessful 1978 experience, the Act’s legislative adoption history,⁹¹ and similar efforts in other states.⁹²

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⁹⁰ This question has been the subject of a great many inquiries. See generally Memorandum from Dana D. Minerva, Staff Attorney, House Select Committee on Growth Management, to Honorable Tom C. Brown (Apr. 9, 1984), reprinted in Monographs, supra note 27, at 131; J. DiMENTO, THE CONSISTENCY DOCTRINE AND THE LIMITS OF PLANNING (1980).

⁹¹ For a comprehensive analysis of seven states’ experiences enacting and administering state growth management laws, including Florida’s, see generally J. DeGROVE, supra note 5.

⁹² For an analysis of three states’ experiences implementing state comprehensive plan-
First, to facilitate legislative adoption, which for the reasons previously explained is preferable to Administration Commission adoption, the state plan must be short, concise, and plainly written. Not surprisingly, the legislation does not address the length of the plan; however, a document of less than fifty pages is likely to receive more serious and considered legislative attention.

Second, to be consistent with the ELMS Committee recommendations as expressed in the legislation, policies and goals must be as definitive as possible. Soft, vague statements provide little guidance and undercut the plan’s objective to establish an understandable statewide policy base.93

Third, all of the possible subject areas that could be addressed in the plan or within each subject area of the plan need not be included in the initial document. The Act requires initial emphasis be given the management of land use, water resources, and transportation systems.94 However, within these core “growth management”95 areas, the plan can selectively focus on particularly significant activities, resources, and geographic areas. Again, the initial plan should be as refined as possible.

Fourth, the plan should not only address growth management. It can attract critical, initial positive support from the business community if goals and policies related to housing and economic opportunities are also included.96 These elements should be part of the first plan. This point is reinforced by the Act’s requirement

94. Id. § 23.0114(4).
96. Oregon’s Statewide Planning Goals and Guidelines include housing goals and specific guidelines and proposed implementation measures. OREGON LAND CONSERVATION AND DE-VELOPMENT COMMISSION, STATEWIDE PLANNING GOALS AND GUIDELINES 10 (Mar. 1980). Accord Environmental Land Management Study Committee, tape recording of proceedings (Apr. 26, 1983) (on file with Fla. Dep’t of State, Div. of Archives, Tallahassee, Fla.) (testi-mony of Henry Richmond, Executive Director, 1000 Friends of Oregon):

The statewide planning goal for housing [in Oregon] has prohibited moratoria on construction and has limited systems development charges, it has required local government to change approval standards that say vague things like, “your application has to be in conformity with the character of the neighborhood” to approval standards that are sight specific. The conditions are stated in terms of numbers or other objective terms, so that when somebody is going into the process, they know what they are likely going to end up with. For this reason, the program was on the ballot to be repealed in 1978. There was more money from the development industry to oppose this repeal than from the other sector of the political landscape.

See also J. DEGROVE, supra note 5, at 384, 395-96.
that long-term infrastructure and capital outlay elements need only be "prepared" no later than July 1, 1986. It is possible that policies may not be submitted to the legislature until 1987. Because of the broad interest in these elements and their significance to the growth management core, they should be prepared as soon as possible and no later than in time for submission to the 1986 legislative session.

Fifth, the Executive Office of the Governor and the Administration Commission should ensure reasonable participation in the plan development process by state agencies. As a practical matter, combined agency opposition will likely defeat any plan. In a more positive vein, agency expertise should be tapped, and agencies which will implement the adopted comprehensive plan through functional agency plans should be given the opportunity to mold overall guiding policies. However, consistent with the intent of the Act, the Governor, as the state's chief planning officer, must drive and control the plan's development process. The plan should not be merely the sum of numerous individual agency desires.

Sixth, plan policies must be balanced. The 1978 effort was perceived as a regulatory supplement to existing programs. The proposal had a poor image and drew deadly opposition from potentially affected powerful interest groups. This pitfall can be avoided if the drafters keep in mind that the plan should ultimately be supportable by a broad spectrum of groups and interests. Regulatory policies must be matched with practical encouragement for economic growth, incentives for particularly desirable types of growth, and strong direction to streamline regulatory approval processes. As with state agencies, the state planners must reach out to groups which are antagonistic because they suspect that state-level planning is merely an additional form of state regulation or control, particularly of land use. This effort must be commenced early and sustained throughout the plan development and adoption process.

Seventh, initially proposed Administration Commission plan policies need not necessarily be constrained by existing law. The plan should look beyond the present—it should propose and paint a policy picture of a future Florida. If the legislature agrees, it will enact the plan with or without amendments. If not, the plan will be rejected. If the legislature fails to act, only those parts of the plan authorized by existing law may be adopted by the Adminis-

FLORIDA PLANNING ACT

tration Commission. Thus, new state policy will, and appropriately should, be enacted by the state legislature. The plan will serve as a significant conduit for new policy proposals.

Eighth, regional plans must not be viewed as replacements for local plans. They are not. Important regional issues and policy areas should be addressed. Local issues must be left to local government LGCPA efforts. There appears to be no public mood or disposition in Florida to retreat from a traditional reliance on local government to control the large majority of community growth decisions. Thus, maximum local government collaboration and assistance should be solicited to identify regional policy areas.

Like the state plan, regional plans must be short, concise, and definitive, particularly since plan policies will drive regional planning council development of regional impact (DRI) reports and recommendations. The state planning agency and the Governor's office must critically review and monitor regional planning council efforts to ensure that the intent of the Act is fulfilled, especially in regard to regional plan consistency with the state plan and with state statutes and rules governing a regional issue or criteria.

Ninth, State Planning Act administrators must persevere and accomplish necessary tasks within required timeframes. An initial positive image for the planning process must be established. Broad-based public participation must be solicited and information programs maximized. Floridians must understand the Act's aims and potential. They must also comprehend what a state planning process cannot and will not accomplish.

Tenth, legislative review of the plan and overview of the adopted plan should be accomplished by appropriate subject matter committees. A coordinating committee or office should be responsible for insuring timely review and for maintaining internal consistency. To encourage and facilitate legislative review, the proposed plan should be fully incorporated in a bill and acted upon in the same manner as a general law.

Eleventh, the state plan should incorporate a general definition of "consistency" and more specific definitions in program areas in which such definitions are useful.

Twelfth, the state plan should clearly include language that it does not grant any independent agency rulemaking authority.

98. Id. § 160.07(7).
100. A significant issue is whether the plan should grant agencies rulemaking authority
Finally, the ELMS Committee recognized that an effective statewide planning process requires intergovernmental coordination and implementation.\textsuperscript{101} State plan policies can provide a polestar for state and regional programs and budget proposals. An adopted state plan can draw together and help unify presently disparate and often conflicting state agency activity. It can set a tone for planning all of Florida's planning and regulatory aims. But particularly in regard to growth management,\textsuperscript{102} to be maximally effective, state and regional policies must ultimately be reflected in local government decisions.\textsuperscript{103} Local decisions form the pith of Florida's growth management system, and this will continue. The state government must understand this fact and now turn its attention to strengthening local plans and implementation and to facilitating local government recognition and application of adopted greater-than-local policies. As a first step, the state must fulfill an unmet responsibility to local governments. In 1975 the legislature required all cities and counties to comprehensively plan and implement these plans through programs and regulations. Yet, having recognized as a matter of statewide policy the significance and desirability of local plans, the legislature failed to match this mandate with adequate financial assistance, technical support, and administrative guidance. This neglect must be rectified if Florida is to achieve a vigorous and durable planning system. It should be our next area of concern and action.

\textsuperscript{101} ELMS Report, \textit{supra} note 21, at 16.

\textsuperscript{102} "Growth management" as used herein means the type, extent, location, and timing of governmentally approved development. At least one state, New Hampshire, has authorized local growth management by regulating and controlling the timing of development. N.H. REV. STAT. ANN. § 674.22 (Supp. 1983). John DeGrove correctly observes that the term "growth management" is broader than land management and "includes all elements typically encompassed by comprehensive plans, including the economic, social, and physical aspects of growth management." J. DeGrove, \textit{supra} note 5, at 397.

\textsuperscript{103} ELMS Report, \textit{supra} note 21, at 18-21.