HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 739 Local Government Land Development Actions
SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Borrero
TIED BILLS: **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N, As CS	Darden	Miller
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Community Planning Act (Act) governs how local governments create and adopt their local comprehensive plans. The provisions of the Act are implemented at the local level by land development regulations, such as zoning and other housing-related ordinances, adopted by each county and municipality to be consistent with and to implement their adopted comprehensive plans. A development permit is any official action of a local government that effectively authorizes the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances. A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.

The bill prohibits local governments that have noted a deficiency in an application for a development order, development permit, or building permit, from requesting additional information from the applicant beyond information on the noted deficiency or new issues raised by the applicant. This provision applies to building permit applications even if a local government ordinance would otherwise allow additional requests for information.

The bill requires each local government with total revenues of $10 million or more to adopt to adopt residential infill development (RID) standards in its local land use regulations by January 1, 2023. The standards must include a list of guidelines for determining whether a development qualifies as a RID, guidelines to assist an applicant in determining if an area qualifies as a RID, and requires the applicant consider certain factors. A local government may not approve an application for a RID if it contains any deficiencies, but must approve any request for a RID that shows compliance with the general intent and development standards of this provision. Denials of an application for a RID are appealed to the local government planning commission. The bill requires each local government to amend its development regulations to include residential infill development as a zoning classification and incorporate the classification as an appropriate land use classification under the local government's comprehensive plan.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act (Act).[2] The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The intent of the Act is that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.[3] A housing element is required as part of every comprehensive plan. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."[4]

Municipalities established after the effective date of the Act must adopt a comprehensive plan within three years after the date of incorporation.[5] The county comprehensive plan controls until a municipal comprehensive plan is adopted.[6]

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.[7]

Land Development Regulations

Land development regulations are the method by which local governments implement their comprehensive plan. Within one year of adoption or revision of its comprehensive plan, a county or municipality must adopt or amend their land development regulations to ensure they are consistent with and implement the plan.[8]

Local land development regulations must contain specific and detailed provisions for implementing the adopted comprehensive plan, and shall, at a minimum:

- Regulate the subdivision of land;
- Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space;
- Provide for protection of potable water wellfields;
- Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensure the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulate signage;

[1] *See* ch. 85-55, s. 1, Laws of Fla.
[2] *See* ch. 2011-139, s. 17, Laws of Fla. *See also* s. 163.3161(1), F.S. The Act is codified as ch. 163, part II, F.S.
[3] S. 163.3161(4), F.S.
[4] S. 163.3177(6)(f)1.g., F.S.
[5] S. 163.3167(3), F.S.
[6] *Id*.
[7] S. 163.3202, F.S.
[8] S. 163.3202(1), F.S.

- Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177, F.S. and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development;[9]
- Ensure safe and convenient onsite traffic flow, considering needed vehicle parking;
- Maintain the existing density of residential properties or recreational vehicle parks, if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178, F.S.; and
- Incorporate preexisting development orders identified pursuant to s. 163.3167(3), F.S.[10]

Local governments are encouraged to use "innovative land development regulations," such as transfers of development rights, incentive and inclusionary zoning, planned unit development, impact fees, and performance zoning.[11] All land development regulations must be combined and complied into a single land development code for the jurisdiction. A general zoning code is not required if the local government's adopted land development regulations comply with statute.[12]

The Department of Economic Opportunity (DEO), as the state land planning agency, is responsible for adopting rules for review and schedules for adoption of land development regulations.[13] DEO may review land development regulations if there are reasonable grounds to believe a local government has not adopted one or more required land development regulations.[14] DEO must provide written notice to the local government within 30 days stating whether the local government has adopted the required regulations.

Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.[15] A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[16]

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specifying the deficiencies.[17] If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.[18]

If a county or municipality requests additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or municipality must:
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's first request;
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 10 days of receiving the information, if the request is the county or municipality's second request; and
- Deem the application complete within 10 days of receiving the information or proceed to process the application for approval or denial unless the applicant waived the county or

[9] A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.
[10] S. 163.3202(2), F.S.
[11] S. 163.3202(3), F.S.
[12] *Id*.
[13] S. 163.3202(6), F.S.
[14] S. 163.3202(4), F.S.
[15] S. 163.3164(16), F.S.
[16] *See* ss. 125.022, 163.3164(15), and 166.033, F.S.
[17] Ss. 125.022(1) and (2), and 166.033 (1) and (2), F.S.
[18] *Id.*

municipality's time limitations in writing, if the request is the county or municipality's third request.[19]

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.[20] If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant may request the county or municipality proceed to process the application for approval or denial.[21] If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.[22]

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.[23]

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.[24]

Building Permit Applications

Local governments are required to review certain building permit applications within a specified time period after receiving the application.[25] These permit types include, but are not limited to, construction or installation of an accessory structure, installation of an alarm system, a nonresidential building less than 25,000 square feet, electric, plumbing, mechanical, or roofing systems, master building permits, or the construction of single-family residential buildings.[26]

When a local government receives an application for a building permit, except for master building permits, and single-family residential buildings, the local government must: [27]

- Inform the applicant within 10 days of receiving the application what additional information, if any, is needed to complete the application;[28]
- Notify the applicant within 45 days of the application being deemed complete if additional information is necessary to determine the sufficiency of the application;[29] and
- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.[30]

These time limitations do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[31]

Local governments are required to reduce the permit fee for any building permit application by 10 percent of the original permit fee for each business day that a local government fails to meet the time

[19] Ss. 125.022(2)(b)-(d) and 166.033(2)(b)-(d), F.S.
[20] Ss. 125.022(2)(d) and 166.033(2)(d), F.S.
[21] Ss. 125.022(2)(e) and 166.033(2)(e), F.S.
[22] Ss. 125.022(3) and 166.033(3), F.S.
[23] Ss. 125.022(2)(a) and 166.033(2)(a), F.S.
[24] Ss. 125.022(1) and 166.033(1), F.S.
[25] S. 553.792, F.S.
[26] S. 553.792(2), F.S.
[27] S. 553.792(1), F.S.
[28] If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
[29] If additional information is needed the local government must specify what additional information is necessary.
The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
[30] This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.
[31] S. 553.792(2), F.S.

period required for building permit application approval by statute or local ordinance.[32] This requirement does not apply if the local government and the applicant have agreed to an extension of time to process the permit.

Growth Policy Act

Enacted in 1999, the Growth Policy Act (GPA)[33] encourages state and local governments to work with private sector entities to promote and sustain urban cores by encouraging infill development and redevelopment.[34] The GPA allows local governments to designate areas within their jurisdiction as "urban infill and redevelopment areas" for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation, and land use incentives.[35] Each urban infill and redevelopment area must:

- Have access to public services such as water and wastewater, transportation, schools, and recreation (or be scheduled to have access to these services in the local government's adopted five-year schedule of capital improvements)
- Suffer from pervasive poverty, unemployment, and general distress as defined by s. 290.0058, F.S.;
- Have a proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete that is higher than the average for the local government;
- Have a majority of its area with one quarter of a mile of a transit stop; and
- Either include or be adjacent to a community redevelopment area, brownfield, enterprise zone, or Main Street programs, or have been designed by state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community programs or similar programs.[36]

Local governments are encouraged to work with community partners, such as neighborhood groups, financial institutions, religious organizations, businesses, schools, and residents, to design and implement an urban infill and redevelopment plan.[37] The plan must demonstrate the local government and community's commitment to comprehensively address the problems within the urban infill and redevelopment area and identify activities and programs to accomplish locally identified goals to improve both the residential and commercial quality of life in the area.[38] The plan may be a new plan drafted for the area, or use an existing plan (or combination of plans) developed for a community redevelopment area, Florida Main Street program area, Front Porch Florida Community, sustainable community, enterprise zone, or neighborhood improvement district. Each plan must:

- Contain a map of the area;
- Confirm the area is within an area designated for urban uses in the local government's comprehensive plan;
- Identify, map, and provide a framework for coordinating infill and redevelopment programs with other revitalization programs (such as enterprise zones, community redevelopment agencies, brownfield areas, downtown redevelopment districts, neighborhood improvement districts, and historic preservation districts);
- Include a memorandum of understanding between the district school board and the local government regarding public school facilities located within area to identify how the school board will prioritize enhancing public school facilities and programs in the area (including the reuse of existing buildings for schools within the area);
- State the community preservation and revitalization goals and projects for each neighborhood in the area and discuss how those goals and projects may be implemented;
- Identify how the local government and community-based organizations intend to implement affordable housing programs, including, but not limited to, economic and community development programs administered by federal and state agencies, within the area;

[32] S. 553.792(1)(b), (2)(b), F.S.
[33] Ss. 163.2511-163.2520, F.S.
[34] S. 163.2511, F.S.
[35] S. 163.2517(1), F.S.
[36] S. 163.2514(2), F.S.
[37] S. 163.2517(2), F.S.
[38] S. 163.2517(3), F.S.

- Identify strategies for reducing crime;
- Provide guidelines for adopting land development regulations specific to the urban infill and redevelopment area which include, for example, setbacks and parking requirements appropriate for urban development.
- Identify and map any existing transportation concurrency exception areas and any relevant public transportation corridors designated by a metropolitan planning organization in its long-range transportation plans or by the local government in its comprehensive plan for which the local government seeks designation as a transportation concurrency exception area;
- Adopt a package of financial incentives to encourage new development, expansions of existing development, and redevelopment;
- Identify how activities and incentives will be coordinated and what administrative mechanisms the local government will use for the coordination;
- Identify how partnerships with the financial and business community will be developed;
- Identify the governance structure that the local government will use to involve community representatives in the implementation of the plan; and
- Identify performance measures to evaluate the success of the local government in implementing the plan.[39]

The local government may adopt the selected plan by ordinance.[40] If the plan is adopted, the local government must amend its comprehensive plan to delineate the boundaries of the urban infill and redevelopment area within the future land use element.[41]

A local government that has adopted a plan under the Growth Policy Act may use revenue bonds and tax increment financing in the same manner as community redevelopment agencies for the purposes of implementing the plan as well as exercise the powers of a neighborhood improvement district, including the authority to levy special assessments.[42] These powers are lost if the combined amount of annual residential, commercial, and institutional development within the area does not increase by at least ten percent during the local government's seven-year comprehensive plan review cycle.[43]

Effect of Proposed Changes

The bill provides that once a local government has noted deficiencies in an application for a development order, development permit, or building permit, the local government may only request additional information on the noted deficiency or new issues raised by the applicant and may not request additional information on the original application. This provision applies to building permit applications even if a local government ordinance would otherwise allow additional requests for information.

The bill requires each local government with $10 million or more in total revenue to adopt residential infill development (RID) standards in its local land use regulations by January 1, 2023. If a local government's revenue exceeds $10 million in any year after July 1, 2022, the local government is required to adopt standards with 18 months of reaching that threshold. The adopted standards must be considered in local land use decision making. Local governments may adopt their own RID standards or use the guidelines established by the bill, but in either case must provide that a RID project that is within an area that has a basin management action plan adopted pursuant to s. 403.067, F.S. must comply with the water quality standards established in such basin management action plan.

The bill defines a RID as an area consisting of a development or subdivision of land designated by a local government where the dimensional requirements of the land use district are relaxed and the local government review process is expedited. The bill requires each local government to adopt the following guidelines as part of their standards:

[39] S. 163.2517(3)(a)-(n), F.S.
[40] S. 163.2517(5), F.S.
[41] S. 163.2517(4), F.S.
[42] Ss. 163.2520(1), (2), F.S.
[43] S. 163.2517(6)(a), F.S.

- The size of the land development or subdivision may be below the minimum dimensional requirements otherwise applicable for the land use category where it is located;
- The RID may not exceed the maximum allowable density established by the local government's comprehensive plan;
- The RID must be located in an area with a defined development pattern;
- A RID must be located within one or more residential suburban or low land use districts;
- A RID must be located within an area with sufficient services to avoid future public service deficiencies, including schools, public water and sewer, road capacities, law enforcement, fire, emergency medical services, and reasonable proximity to public parks;
- A RID must be on a parcel that is adjacent to similar development;
- Lots within a RID must be at least as large as the average lot size in the immediate vicinity;
- Building setbacks must at least equal to those on abutting parcels and be consistent with the dimensional requirements of the land use district specified in the local government's comprehensive plan;
- If a RID abuts a roadway stub-out, new roadways constructed in the RID must connect to the stub-out;
- Stormwater retention facilities within a RID may not be constructed to degrade or adversely affect the existing character of the immediate vicinity;
- A RID may not be larger than 120 acres and development may not be phased or incrementally expanded to circumvent the average limit; and
- Building types within the RID may only include types that exist on any parcel in the immediate vicinity (excluding mobile homes).

The bill also requires each local government to adopt guidelines to be used by applicants seeking to construct a RID. The guidelines require the applicant to:

- Consider the impact of the RID on the surrounding pattern of development and whether the RID is consistent with the density and dimensional requirements of adjoining land tracts;
- Consider the surrounding pattern of development; and
- Confirm certain types of concurrency in the designation application.

The bill states that a local government may not approve a deficient application for a RID. The bill states that the applicant is responsible for showing that the benefits of the development are sufficient to outweigh any deficiencies in services. The local government must approve any request for a RID that shows compliance with the development standards stated in the new statutory provision. Denials of an application for a RID are appealed to the local government planning commission.

The bill requires each local government to amend its development regulations to include residential infill development as a zoning classification and incorporate the classification as an appropriate land use classification under the local government's comprehensive plan.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.022, F.S., concerning development orders and permits issued by counties.

Section 2: Amends s. 166.033, F.S., concerning development orders and permits issued by municipalities.

Section 3: Amends s. 163.3202, F.S., requiring local governments to adopt residential infill development standards as part of their land development regulations.

Section 4: Amends s. 553.792, F.S., concerning building permit applications to local governments.

Section 5: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a fiscal impact on local governments to the extent local governments must amend their comprehensive plans to incorporate residential infill development standards before January 1, 2023.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities to adopt residential infill development standards in its land use regulations by January 1, 2023. However, an exemption may apply, as laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 1, 2, and 4 of the bill may result in delays in receiving permit approval, to the extent the provisions of the bill result in applicants needing to resubmit rejected permit applications that contain deficiencies that may have been corrected if the local government could have asked for additional information.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2022, the Local Administration & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revises the requirement for local governments to adopt RID standards to only apply to local governments with $10 million or more in total

revenue, provides safeguards for water quality standards, and replaces the checklist in the bill as filed with a series of statements that the developer must confirm.

The analysis is drafted to the committee substitute as passed by the Local Administration & Veterans Affairs Subcommittee.