

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 1494

INTRODUCER: Senator Perry

SUBJECT: Small-scale Comprehensive Plan Amendments

DATE: April 8, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1494 revises the conditions under which local government “small-scale” comprehensive plan amendments may be adopted. Specifically, the bill repeals the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government.

The fiscal impact of the bill is indeterminate. See the Fiscal Impact Statement heading for additional information.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Community Planning Act**

The Community Planning Act provides counties and municipalities the power to plan for future development by the adoption of comprehensive plans.<sup>1</sup> Each county and municipality must maintain a comprehensive plan.<sup>2</sup> Municipal comprehensive plans cover the total area of the municipality’s jurisdiction, as well as any unincorporated areas adjacent to the municipality that the municipality and the county have agreed should be covered by the municipality’s plan.<sup>3</sup> County comprehensive plans cover the total unincorporated area of the county, but may include municipalities in charter counties.<sup>4</sup> Counties and municipalities may also enter into interlocal agreements with other counties and/or municipalities to exercise their planning powers.<sup>5</sup>

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<sup>1</sup> Section 163.3167(1), F.S.

<sup>2</sup> Section 163.3167(2), F.S. The Ready Creek Improvement District, an independent special district created by ch. 67-764, Laws of Fla., may exercise the powers of the act as if it were a municipality. Section 163.3167(6), F.S.

<sup>3</sup> Section 163.3171(1), F.S.

<sup>4</sup> Section 163.3171(2), F.S.

<sup>5</sup> Section 163.3171(3), F.S.

Each county and municipality must establish a local planning agency.<sup>6</sup> The local planning agency is responsible for managing the comprehensive planning program.<sup>7</sup> The duties of the local planning agency include:<sup>8</sup>

- Preparing the comprehensive plan and plan amendments;
- Monitoring the effectiveness and status of the comprehensive plan and recommending changes to the local governing body, including periodic evaluation and appraisal of the plan as required by s. 163.3191, F.S.;
- Reviewing proposed land development regulations and land development codes for consistency with the adopted comprehensive plans; and
- Performing any other functions, duties, and responsibilities assigned by local governing body, general law, or special law.

The local governing body may designate itself as the local planning agency or assign the powers to a local planning commission, a planning department, or another body.<sup>9</sup>

The Department of Economic Opportunity serves as the state land planning agency.<sup>10</sup>

### **Comprehensive Plans and Plan Amendments**

Comprehensive plans are intended to provide for “orderly and balanced future economic, social, physical, environmental, and fiscal development” in a county or municipality.<sup>11</sup> A comprehensive plan must take into account:<sup>12</sup>

- Projected seasonal and permanent population growth;
- Current and existing public facilities needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;
- Consideration of two planning periods, one covering at least 5 years and another covering at least 10 years; and
- A future land use plan element.<sup>13</sup>

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<sup>6</sup> Section 163.3174(1), F.S. If a county or municipality has entered into an interlocal agreement under s. 163.3171, F.S. to exercise its planning powers under the Community Planning Act, those counties and municipalities may establish a joint local planning agency.

<sup>7</sup> Section 163.3174(4), F.S.

<sup>8</sup> Section 163.3174(4)(a)-(d), F.S.

<sup>9</sup> Section 163.3174(1), F.S.

<sup>10</sup> Section 163.3164(44), F.S.

<sup>11</sup> Section 163.3177(1), F.S.

<sup>12</sup> Section 163.3177(1), (3)-(6), F.S.

<sup>13</sup> A future land use plan element designates proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses of land and includes the approximate acreage and the general range of density or intensity of use for the gross land area included in each existing land use category. This element of a local comprehensive plan is intended to “establish the long-term end toward which land use programs and activities are ultimately directed.” Section 163.3177 (6)(a), F.S.

Comprehensive plan amendments fit into one of three categories based on both the size and nature of the area impacted by the proposed amendment. These categories include:<sup>14</sup>

- General amendments subject to the expedited state review process;<sup>15</sup>
- Small-scale development amendments subject to the small-scale review process; and
- Amendments subject to the state coordinated review process.<sup>16</sup>

### **Small-Scale Comprehensive Plan Amendments**

A small-scale comprehensive plan amendment must meet four criteria for local government adoption:<sup>17</sup>

- The proposed amendment involves a use of 10 acres of land or fewer (20 acres in a rural area of opportunity);<sup>18</sup>
- The cumulative annual effect for all small-scale development amendments adopted by the local government does not exceed 120 acres in a calendar year;
- The amendment does not involve a text change to the goals, policies, and objectives of the local government’s comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity, except for text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment.; and
- The property is not located in an area of critical state concern, unless the project involves the construction of housing units meeting the definition of “affordable” in s. 420.0004(3), F.S., and is located within an area of critical state concern designated by s. 380.0552, F.S., (the Florida Keys) or by the Administrative Commission<sup>19</sup> pursuant to s. 380.05(1), F.S.

All comprehensive plan amendments, including small-scale development amendments, must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the governing body of the county or municipality for approval.<sup>20</sup> Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.<sup>21</sup>

<sup>14</sup> Section 163.3184(2), F.S.

<sup>15</sup> This process applies to all comprehensive plan amendments statewide, except for small-scale development amendments and amendments subject to the state coordinated review process. *See* Section 163.3184(3) and (4), F.S.

<sup>16</sup> Section 163.3184(2)(c), F.S. The amendments include amendments which are in areas of critical state concern pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose or amend a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on evaluation and appraisal pursuant to s. 163.3191, F.S., propose a development that is subject to state coordinated review pursuant to s. 380.06, F.S., and plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S.

<sup>17</sup> Section 163.3187(1)(a)-(d), (4), F.S. *See also* Department of Economic Opportunity, Small Scale Amendments Defined; Adoption; Challenge; Effective Date, *available at* <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date> (last visited March 11, 2019).

<sup>18</sup> Section 163.3187(3), F.S.

<sup>19</sup> The Administration Commission is composed of the Governor and Cabinet (The cabinet is composed of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 20.03(1), F.S.). Section 14.202, F.S.

<sup>20</sup> Section 163.3187(2), F.S.

<sup>21</sup> *Compare* s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) *with* s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.<sup>22</sup> The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge must be heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The ALJ must determine the plan amendment to be in compliance if the local government's determination that the amendment is in compliance is "fairly debatable."<sup>23</sup>

If the ALJ finds that the amendment is in compliance, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission (if DEO thinks the amendment is not in compliance).<sup>24</sup> If the ALJ does not find that the amendment is in compliance, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.<sup>25</sup>

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.<sup>26</sup> If the amendment is challenged, the amendment may not become effective until DEO or the Administration Commission issues a final order determining that the amendment is in compliance with the overall comprehensive plan.

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3187, F.S., to repeal the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government. Local government adoption of small-scale development amendments to their comprehensive plans would no longer be subject to the cumulative annual acreage restriction, thereby allowing amendments to local comprehensive plans that meet the remaining three criteria for adoption.

**Section 2** provides that the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>22</sup> Section 163.3187(5)(a), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Section 163.3187(5)(b), F.S.

<sup>25</sup> Section 120.569, F.S. *See also* s. 120.57, F.S.

<sup>26</sup> Section 163.3187(5)(c), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill would expedite the granting of small-scale development amendments, to the extent local governments are currently limited by the annual acreage cap, potentially reducing costs for developers. However, the number of applications for, and the nature and complexity of, any proposed plan amendments are unknown; therefore, the fiscal impact is indeterminate.

C. Government Sector Impact:

The bill will enable local governments to process more small-scale comprehensive plan amendments per year, increasing revenue to the extent additional applications are filed. However, the number of applications for, and the nature and complexity of, any proposed plan amendments are unknown. The bill would increase expenditures by local governments to the extent additional staff may be needed to review the increase in applications for small-scale comprehensive plan amendments. The extent to which, if any, the potential increased revenue would be offset by possibly increased expenditures to local governments is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.3187 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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