HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 291 Growth Management
SPONSOR(S): Commerce Committee, McClain, Clemons and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 428

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	10 Y, 4 N	Rivera	Miller
2) Commerce Committee	12 Y, 8 N, As CS	Smith	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida's growth and development is managed by the State Comprehensive Plan and local county and municipal comprehensive plans. The goals and policies of the State Comprehensive Plan must be consistent with the protection of private property rights. Local comprehensive plans, governed by the Community Planning Act, must recognize protected private property rights.

Local comprehensive plans have nine required elements, including a capital improvements element and a future land use element, and may include optional elements. All land use regulations and public and private developments must be consistent with the plan. Generally, plan amendments must undergo an expedited state review process before adoption, but certain plan amendments, including those required due to a change in state law, must follow the state coordinated review process for the adoption of comprehensive plans.

The bill amends s. 163.3177(6), F.S., adding a required property rights element to local comprehensive plans. The added element requires local governments to consider certain property rights, including a property owner's right to quiet enjoyment, in their decision-making. The bill provides a model form acknowledging private property rights but allows local governments to create their own property rights element that does not conflict with the model. The bill requires local governments to adopt a property rights element by July 1, 2020.

The bill amends ss. 163.3167 and 163.3202, F.S., to require municipal comprehensive plans adopted after January 1, 2019, and their corresponding land development regulations, to recognize the terms of existing development orders.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Bert J. Harris, Jr., Private Property Rights Protection Act

The "Bert Harris Jr., Private Property Rights Protection Act" (Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use of real property or a vested right to a specific use of real property.[1] The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the State Constitution or the U.S. Constitution.[2] The law is not applicable to the U.S. government, federal agencies, or state or local government entities exercising formally delegated U.S. or federal agency powers.[3]

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity's development order or enforcement action is unreasonable or unfairly burdens the use of the owner's real property,[4] or when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[5] A prohibited exaction occurs when an imposed condition lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.[6]

The Community Planning Act

The Harris Act is balanced against the state's need to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.[7] Statutes govern how the State and local governments direct land development[8] with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.[9]

The State Comprehensive Plan must provide long-range policy guidance for the orderly social, economic, and physical growth of the state.[10] The goals and policies of the State Comprehensive Plan must be consistent with the protection of private property rights.[11] The State Comprehensive Plan must be reviewed every two years by the Legislature and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.[12]

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[13] The Community Planning Act governs how local governments create and

[1] S. 70.001(2), F.S.
[2] S. 70.001(1), F.S.
[3] S. 70.001(3)(c), F.S.
[4] S. 70.51(3), F.S.
[5] S. 70.45(2), F.S.
[6] S. 70.45(1)(c), F.S.
[7] *See* S. 186.002(1)(b), F.S.
[8] *See* chs. 186, 187, and 163, part II, F.S.
[9] S. 163.3167(1)(b), F.S.
[10] S. 187.101(1), F.S.
[11] S. 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.
[12] S. 187.101(1), F.S.
[13] *See* ch. 2011-139, s. 17, L.O.F.

adopt their local comprehensive plans. The Legislature intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.[14] Authority under the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others which would harm their property or constitute an inordinate burden on property rights under the Harris Act.[15]

Local Comprehensive Plan Elements

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.[16] Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.[17] Plans may include optional elements,[18] but must include the following nine elements:

- Capital improvements;[19]
- Future land use plan;[20]
- Intergovernmental coordination;[21]
- Conservation;[22]
- Transportation;[23]
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;[24]
- Recreation and open space;[25]
- Housing;[26] and
- Coastal management (for coastal local governments).[27]

All local government land development regulations must be consistent with the local comprehensive plan.[28] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[29] However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.[30]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.[31] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[32] A local government is

[14] S. 163.3161(10), F.S.
[15] S. 163.3161(10), F.S.
[16] S. 163.3177(1), F.S.
[17] S. 163.3177(1)(d), F.S.
[18] S. 163.3177(1)(a), F.S.
[19] S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[20] S. 163.3177(6)(a), F.S.
[21] S. 163.3177(6)(h), F.S.
[22] S. 163.3177(6)(d), F.S.
[23] S. 163.3177(6)(b), F.S.
[24] S. 163.3177(6)(c), F.S.
[25] S. 163.3177(6)(e), F.S.
[26] S. 163.3177(6)(f), F.S.
[27] S. 163.3177(6)(g), F.S.
[28] Section 163.3194(1)(b), F.S.
[29] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[30] S. 189.081(1), F.S.
[31] S. 163.3191, F.S.
[32] S. 163.3203, F.S.

not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[33]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[34] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive plans.[35] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[36] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[37]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[38] about the proposed amendment before sending it for comment from several reviewing agencies, including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of State.[39] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[40] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[41]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[42] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[43] Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.[44] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.[45]

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law[46] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[47] A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.[48] Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.[49] If there is a timely challenge then the plan amendment will not take effect until DEO, or the Administration Commission, enters a final order determining the adopted amendment is in compliance with the law.[50]

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[33] S. 163.3161(12), F.S.
[34] S. 163.3184(3)(a), F.S.
[35] S. 163.3184(2)(c), F.S.
[36] S. 163.3184(4)(a), F.S.
[37] S. 163.3164(44), F.S.
[38] Ss. 163.3184(4)(b) and (11)(b)1., F.S.
[39] Ss. 163.3184(4)(b) and (c), F.S.
[40] S. 163.3184(4)(b), F.S.
[41] S. 163.3184(4)(c), F.S.
[42] S. 163.3184(4)(d)1., F.S.
[43] S. 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. S. 163.3184(4)(d)2., F.S.
[44] S. 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdraw absent an agreement and notice to DEO and all affected persons that provided comments. S. 163.3184(4)(e)1., F.S.
[45] S. 163.3184(4)(e)2., F.S.
[46] Ss. 163.3184(4)(e)3. and 4., F.S.
[47] S. 163.3184(4)(e)4., F.S.
[48] S. 163.3184(4)(e)4., F.S.
[49] S. 163.3184(4)(e)5., F.S.
[50] S. 163.3184(4)(e)5., F.S.

Establishment of Municipalities

The Florida Constitution provides that "municipalities may be established or abolished and their charters amended pursuant to general or special law."[51] Chapter 165 of the Florida Statutes lays out the local government formation process and provides standards, direction, and procedures for the formation of municipalities in the state.[52] The provisions of this act are the exclusive procedure for forming or dissolving municipalities in Florida, except in those counties operating under a home rule charter which provides for an exclusive method as authorized by Article VIII, section 6(e) of the Florida Constitution.[53] A charter incorporating a municipality shall be adopted only by a special act of the Legislature upon determination that the standards provided in ch. 165, F.S., are met.[54] To inform the Legislature on the feasibility of a proposed incorporation of a municipality, the statute requires a feasibility study be completed and submitted to the Legislature.[55]

A municipality established after the effective date of the Community Planning Act, within 1 year after incorporation, must establish a local planning agency[56] pursuant to s. 163.3174, F.S., and prepare and adopt a comprehensive plan within 3 years after the date of incorporation.[57] A county comprehensive plan is deemed controlling until the municipality adopts a comprehensive plan.[58]

Land Development Regulations

A county or municipality is required to adopt or amend land development regulations within 1 year after submitting its comprehensive or revised comprehensive plan for review.[59] Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Under certain circumstances DEO may require a local government to submit one or more land development regulations for the agency's review.[60] DEO is required to adopt rules for review and schedules for adoption of land development regulations.[61]

[51] FLA. CONST. art. VIII, s. 2.
[52] S. 165.021, F.S.
[53] S. 165.022, F.S.
[54] S. 165.041(1)(a), F.S. The procedure for a municipal incorporation by merger is also included in this section.
[55] S. 165.041(1)(b), F.S. The study must be submitted no later than the first Monday after September 1 of the year before the regular session of the Legislature during which the municipal charter would be enacted.
[56] S. 163.3164(30), F.S., defines "local planning agency" as the agency designated to prepare the comprehensive plan or plan amendments required by the Community Planning Act.
[57] S. 163.3167(3), F.S.
[58] *Id*.
[59] S. 163.3202(1), F.S.
[60] S. 163.3202(4), F.S.
[61] S. 163.3202(5), F.S.

Effect of Proposed Changes

The bill adds paragraph (i) to subsection (6) of s. 163.3177, F.S., requiring local governments to include a property rights element in their comprehensive plans. A model property rights element form is included in the new paragraph that local governments may use. The form lists the following five property rights that must be considered in local government decision-making:

1. Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
2. Quiet enjoyment of the property, to the exclusion of all others;
3. Use, maintenance, development, and improvement of the property for personal use or the use of any other person, subject to state law and local ordinances;
4. Privacy and exclusion of others from the property to protect the owner's possessions and property; and
5. Disposal of the property owner's property through sale or gift.

Local governments may use their own property rights element form if it does not conflict with the statutory form. Local governments are required to adopt a property rights element by July 1, 2020.

The bill amends s. 163.3167, F.S., to provide that a municipal comprehensive plan effective after January 1, 2019, and all land development regulations adopted to implement the plan, must recognize a development order in existence as of the comprehensive plan's effective date. The new municipal comprehensive plan may not impair a party's ability to complete development in accordance with the development order, and, notwithstanding whether future amendments to the development order are sought, must vest the density[62] and intensity[63] approved by the development order.

Further, the bill amends s. 163.3202, F.S., to require land development regulations to provide for existing development orders.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans by July 1, 2020.

Section 2. Amends s. 163.3167, F.S. to require certain comprehensive plans to recognize the terms of existing development orders.

Section 3. Amends s. 163.3202, F.S., requiring local land development regulations to provide for certain existing development orders.

Section 4. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[62] S. 163.3164(12), F.S., defines "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

[63] S. 163.3164(22), F.S., defines "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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, section 18, of the Florida Constitution may apply because this bill requires counties and municipalities to amend their comprehensive plans by July 1, 2020; however, an exemption may apply. Laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, section 18, of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2019, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment required municipalities, whose comprehensive plans are adopted after January 1, 2019, to recognize and not impair existing development orders issued prior to the adoption of the new comprehensive plan. Further, the amendment provided that local land development regulations must allow for these preexisting development orders.

This analysis is drafted to the committee substitute as approved by the Commerce Committee.