

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6017 Small-scale Comprehensive Plan Amendments

SPONSOR(S): Duggan

TIED BILLS: **IDEN./SIM. BILLS:** SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Darden	Miller
2) Commerce Committee	21 Y, 0 N	Smith	Hamon
3) State Affairs Committee	18 Y, 1 N	Darden	Williamson

SUMMARY ANALYSIS

The Community Planning Act requires each local government to adopt a comprehensive plan to provide for “orderly and balanced future economic, social, physical, environmental, and fiscal development” of the local government while taking into account projected population growth, public facility needs, development over a 5-year and 10-year period, comprehensive plans of adjacent local governments, and future land use.

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 10 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, does not require substantive changes to the text of the plan, and the local government considering the amendment has not adopted a cumulative total of 120 acres of small-scale comprehensive plan amendments in the current calendar year. Small-scale plan amendments may be approved with a single hearing before the governing body of the local government and do not require review by the Department of Economic Opportunity.

The bill repeals the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government.

The bill has no fiscal impact on state government. The bill may increase the total number of plan amendment applications, increasing local government revenues and expenditures to the extent additional application fees are collected and additional staff are needed to process applications.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.¹ Each county and municipality must maintain a comprehensive plan.² 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.³ County comprehensive plans cover the total unincorporated area of the county, but may include municipalities in charter counties.⁴ Counties and municipalities may also enter into interlocal agreements with other counties and/or municipalities to exercise their planning powers.⁵

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

- 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 the 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.⁹

The Department of Economic Opportunity (DEO) serves as the state land planning agency.¹⁰

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.¹¹ A comprehensive plan must take into account:¹²

- Projected seasonal and permanent population growth;

¹ S. 163.3167(1), F.S.

² S. 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. S. 163.3167(6), F.S.

³ S. 163.3171(1), F.S.

⁴ S. 163.3171(2), F.S.

⁵ S. 163.3171(3), F.S.

⁶ S. 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.

⁷ S. 163.3174(4), F.S.

⁸ S. 163.3174(4)(a)-(d), F.S.

⁹ S. 163.3174(1), F.S.

¹⁰ S. 163.3164(44), F.S.

¹¹ S. 163.3177(1), F.S.

¹² S. 163.3177(1), (3)-(6), F.S.

- Current and existing public facility 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.

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:¹³

- General amendments subject to the expedited state review process;
- Small-scale development amendments subject to the small-scale review process; and
- Amendments subject to the state coordinated review process.¹⁴

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:¹⁵

- The proposed amendment involves a use of 10 acres of land or fewer (20 acres in a rural area of opportunity);¹⁶
- 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 changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that related directly to and were adopted with the small scale FLUM change;
- The property is not located in an area of critical state concern, unless the project involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), F.S.; and
- The amendment 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.¹⁷ Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.¹⁸

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.¹⁹ The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.²⁰

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

¹³ S. 163.3184(2), F.S.

¹⁴ S. 163.3184(2)(c), F.S. The amendments include amendments 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.

¹⁵ S. 163.3187(1)(a)-(d), (4), F.S., *see also* Department of Economic Opportunity, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date> (last visited Feb. 4, 2019).

¹⁶ S. 163.3187(3), F.S.

¹⁷ S. 163.3187(2), F.S.

¹⁸ *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).

¹⁹ S. 163.3187(5)(a), F.S.

²⁰ *Id.*

to the Administration Commission²¹ if the department thinks the amendment is not in compliance.²² 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.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.²³ 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.

Effect of Proposed Changes

The bill repeals the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3187, F.S., to remove the cumulative annual limit on the total acreage of small-scale development amendments to local government comprehensive plans.

Section 2: 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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.

2. Expenditures:

The bill may increase expenditures by local governments to the extent additional staff are needed to review the increase in applications for small-scale comprehensive plan amendments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

None.

²¹ The Administration Commission is composed of the Governor and Cabinet. S. 14.202, F.S.

²² S. 163.3187(5)(b), F.S.

²³ S. 163.3187(5)(c), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.