# HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/CS/HB 203 Growth Management
**SPONSOR(S):** State Affairs Committee, Commerce Committee, Local, Federal & Veterans Affairs Subcommittee, McClain and others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 410

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**FINAL HOUSE FLOOR ACTION:** 71 **Y's** 43 **N's** **GOVERNOR'S ACTION:** Vetoed

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## SUMMARY ANALYSIS


CS/CS/CS/HB 203 passed the House on March 11, 2020, as CS/CS/SB 410 as amended. The Senate concurred in the House amendments to the Senate Bill and subsequently passed the Bill as amended on March 12, 2020. The bill includes portions of CS/CS/CS/HB 395, CS/HB 519, CS/SB 1398, CS/SB 1766, CS/SB 7018, SB 7054, and HB 7099.

In order to manage growth in Florida, certain statutory procedures and requirements have been put in place for state agencies and local governments to follow and enforce.

The bill requires local governments to include a private property rights element in their comprehensive plans no later than July 1, 2023. Municipal comprehensive plans effective, instead of adopted, after July 1, 2019, must incorporate all existing development orders. The bill prohibits a county from adopting, after January 1, 2020, a comprehensive plan, land development regulation, or other restriction that limits a municipality's control of land use or zoning either within the municipal boundary or over lands annexed into the municipality. The bill provides an exemption for charter counties meeting certain requirements.

The bill allows developers and local governments to amend or cancel a development agreement without seeking consent from any other unaffected landowners. In addition, the bill specifies that development agreements for certain developments of regional impact may be amended using the process adopted by the local government for amending development orders.

The bill prohibits a municipality from annexing land within another municipality without the latter's consent.

The bill requires counties and municipalities to issue or deny permit applications for utilities in a public right-of-way in accordance with specified timeframes.

The bill requires the Department of Transportation, when selling a parcel of land, to provide a right of first refusal to the prior owner of the land and provides a process for implementing this right of first refusal. The bill also requires the Department of Economic Opportunity to give preference to grant applications by certain counties and municipalities for assistance in making certain determinations pertaining to a proposed multiuse corridor interchange, including necessary changes or updates to a local government's comprehensive plan.

The bill provides a declaration that the act fulfills an important state interest.

The effective date of this bill was July 1, 2020; however, this bill was vetoed by the Governor on June 30, 2020.

# I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

**Local Comprehensive Plans**

Background

*Private Property Rights*

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, 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 Florida Constitution or the United States Constitution and establishes a separate and distinct cause of action for relief, or payment of compensation, when a new law, rule, or ordinance of the state or a political entity in the state unfairly affects real property.[2] The Harris Act applies generally to state and local governments but not to the U.S. government, federal agencies, or state or local government entities exercising formally delegated federal powers.[3]

In addition to action inordinately burdening a property right, an owner may seek relief when a state or local governmental entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[4] 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.[5]

The "Florida Land Use and Environmental Dispute Resolution Act" provides a non-judicial alternative dispute resolution process for a landowner to request relief from a government entity's development order or enforcement action when the order or action allegedly is unreasonable or unfairly burdens the use of the owner's real property.[6] Parties in pending judicial proceedings may agree to use this process if the court approves.[7]

*State and Local Comprehensive Plans*

Laws protecting private property rights are balanced against the state's need to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.[8] The State Comprehensive Plan provides long-range policy guidance for the orderly management of state growth,[9] which must be consistent with the protection of private property rights.[10] Local governments are required to adopt local comprehensive plans to manage the future growth of their communities.[11]

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[1] S. 70.001(2), F.S.
[2] S. 70.001(1), F.S.
[3] S. 70.001(3)(c), F.S.
[4] S. 70.45(2), F.S.
[5] S. 70.45(1)(c), F.S.
[6] S. 70.51, F.S.
[7] S. 70.51(29), F.S.
[8] *See* s. 186.002(1)(b), F.S.
[9] S. 187.101(1), F.S.
[10] 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.
[11] S. 163.3167(2), F.S.

First adopted in 1975[12] and extensively expanded in 1985,[13] Florida's laws on comprehensive land planning were significantly revised in 2011, becoming the Community Planning Act.[14] The Community Planning Act directs how local governments create and adopt their local comprehensive plans. All governmental entities in the state must recognize and respect judicially acknowledged or constitutionally protected private property rights, exercising their authority without unduly restricting private property rights, leaving property owners free from actions by others that 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 orderly and balanced future land development. Plans must reflect community commitments to implement the plan[16] and identify procedures for monitoring, evaluating, and appraising its implementation.[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]

Counties and municipalities may employ individual comprehensive plans or joint plans if both entities agree. Alternatively, they may coordinate plans in any combined manner that aligns with their common interests.[28] A county plan controls in a municipality until a municipal comprehensive plan is adopted. New municipalities must adopt a comprehensive plan within three years after the date of incorporation.[29]

*Amendments to a Local Comprehensive Plan*

Local governments must review and amend their comprehensive plans every seven years to reflect any changes in state requirements.[30] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[31] A local government is

[12] *See* ch. 75-257, Laws of Fla.
[13] *See* ch. 85-55, Laws of Fla.
[14] *See* ch. 2011-139, s. 17, Laws of Fla.
[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 local government must annually review the capital improvements element.
[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] S. 163.3167(1), F.S.
[29] S. 163.3167(3), F.S.
[30] S. 163.3191, F.S.
[31] S. 163.3203, F.S.

not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[32]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[33] 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.[34] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[35] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[36]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[37] 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.[38] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[39] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[40]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[41] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[42] 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.[43] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.[44]

After receiving the adopted amendment and determining it is complete, DEO has 45 days to determine if the adopted plan amendment complies with the law[45] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[46] 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.[47] Unless challenged, a local comprehensive plan amendment takes effect pursuant to the notice of intent.[48] If there is a timely filed challenge, then the plan amendment will not take effect until DEO or the Administration Commission enters a final order determining the adopted amendment complies with the law.[49]

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[32] S. 163.3161(12), F.S.
[33] S. 163.3184(3)(a), F.S.
[34] S. 163.3184(2)(c), F.S.
[35] S. 163.3184(4)(a), F.S.
[36] S. 163.3164(44), F.S.
[37] S. 163.3184(4)(b) and (11)(b)1., F.S.
[38] S. 163.3184(4)(b) and (c), F.S.
[39] S. 163.3184(4)(b), F.S.
[40] S. 163.3184(4)(c), F.S.
[41] S. 163.3184(4)(d)1., F.S.
[42] 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.
[43] 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 withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. S. 163.3184(4)(e)1., F.S.
[44] S. 163.3184(4)(e)2., F.S.
[45] S. 163.3184(4)(e)3. and 4., F.S.
[46] S. 163.3184(4)(e)4., F.S.
[47] *Id.*
[48] S. 163.3184(4)(e)5., F.S.
[49] *Id.*

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.

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date. The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[50] and intensity[51] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[52]

<u>Effect of the Bill</u>

The bill requires local governments to include a property rights element in their comprehensive plans at their next proposed plan amendment or by July 1, 2023, whichever comes first. The bill provides that a local government may develop its own property rights language if such language does not conflict with the model statement of rights. The model statement of rights requires the local government to consider the following four elements in local decision-making:

- Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
- 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;
- Privacy and exclusion of others from the property to protect the owner's possessions and property; and
- Disposal of the property owner's property through sale or gift.

The bill provides that all local comprehensive plans effective, rather than adopted, after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the plan's effective date. After January 1, 2020, no county may adopt a comprehensive plan, land development regulation, or other restriction limiting the authority of any municipality to establish land use and zoning regulations for lands located within the municipality's boundary unless the municipality by ordinance adopts such restrictions, nor may a county limit a municipality's decisions on land use within areas annexed into the municipality. The bill creates an exception to these prohibtions for counties with populations that exceed 750,000 as of January 1, 2020, which have provisions governing land use that apply to all jurisdictions within the county in their charters.

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[50] S. 163.3164(12), F.S., defines the term "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.
[51] S. 163.3164(22), F.S., defines the term "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.
[52] Ss. 163.3167(3) and 163.3203, F.S.

**Local Government Development Agreements**

Background

Local governments may enter into development agreements with developers.[53] A "development agreement" is a "contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits."[54]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[55] A development agreement must include the following:[56]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[57] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.[58]

The requirements and benefits in a development agreement are binding upon and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[59] also known as a successor in interest.[60] A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.[61]

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[53] S. 163.3220(4), F.S. *See* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[54] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[55] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[56] S. 163.3227(1), F.S.
[57] S. 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[58] S. 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[59] S. 163.3239, F.S.
[60] A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. Black's Law Dictionary 1473 (8th ed. 2004).
[61] S. 163.3237, F.S.

Effect of the Bill

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other parcel owners of property that were originally subject to the development agreement unless the amendment, modification or termination directly modifies the allowable uses or entitlements of an owner's property.

## Municipal Annexation

Background

Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities must be completed as provided by general or special law.[62] The Legislature established local annexation procedures by general law in 1974 with the "Municipal Annexation or Contraction Act."[63] The act provides how property may be annexed or de-annexed by municipalities without legislative action. The purpose of the act is to:

- Ensure sound urban development and accommodation to growth;
- Establish uniform legislative standards for the adjustment of municipal boundaries;
- Ensure efficient provision of urban services to areas that become urban in character; and
- Ensure areas are not annexed unless municipal services can be provided to those areas.[64]

Before local annexation procedures may begin, the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed.[65] A copy of the report must be filed with the board of county commissioners where the municipality is located.[66] This report must include appropriate maps, plans for extending municipal services, timetables, and financing methodologies. The report must certify the subject area is appropriate for annexation because it meets the following standards and requirements:[67]

- The area to be annexed must be contiguous to the boundary of the annexing municipality.[68]
- The area to be annexed must be reasonably compact.[69]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[70]
- Alternatively, if the proposed area is not developed for urban purposes, it must either border at least 60 percent of a developed area or provide a necessary bridge between two urban areas for the extension of municipal services.[71]

The Interlocal Service Boundary Agreement Act (Interlocal Boundary Act)[72] authorizes an alternative to these statutory procedures. Intended to encourage intergovernmental coordination in planning, delivery

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[62] Art. VIII, s. 2(c), Fla. Const.
[63] Ch. 171, F.S. *See* ch. 74-190, s. 1, Laws of Fla., the "Municipal Annexation or Contraction Act."
[64] S. 171.021, F.S.
[65] S. 171.042(1), F.S.
[66] S. 171.042(2), F.S.
[67] S. 171.042(1)(a)-(c), F.S.
[68] "Contiguous" means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water. *See* s. 171.031(11), F.S.
[69] S. 171.031(12), F.S., defines the term "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.
[70] An area developed for urban purposes is defined as one that meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less. S. 171.043(2), F.S.
[71] S. 171.043, F.S.
[72] Ch. 171, Part II, F.S. *See* s. 171.20, F.S.

of services, and boundary adjustments, the primary purpose of the Interlocal Boundary Act is to reduce the costs of local governments, prevent duplication of services, increase local government transparency and accountability, and reduce intergovernmental conflicts.[73]

An interlocal agreement may provide an annexation procedure with a flexible process for securing the consent of those within the area to be annexed, while continuing the requirement for approval of the proposed annexation by a majority of the registered voters, the landowners, or both, within the proposed annexation area. The alternate process also must provide for certain disclosures pertaining to a privately owned solid waste disposal facility located within the proposed annexation area, including whether the owner of the facility objects to the proposed annexation.[74] Although an interlocal service boundary agreement may alter the restrictions on the character of land that may be annexed,[75] the agreement may not allow annexation of land within a municipality not a party to the agreement or land within another county.[76]

Effect of the Bill

The bill prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent.

The bill provides an exception to these annexation requirements when an interlocal agreement is in effect for property annexed by a municipality.

**Developments of Regional Impact**

Background

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[77]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[78] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[79]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[80] until repeal of the requirements for state and regional reviews in 2018.[81] Local governments, where a DRI is located, are responsible for implementing and amending existing DRI agreements and development orders.[82]

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[73] S. 171.201, F.S.
[74] S. 171.205, F.S.
[75] *See* ss. 171.042 and 171.043, F.S.
[76] S. 171.204, F.S.
[77] S. 380.06(1), F.S.
[78] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[79] Ch. 72-317, s. 6, Laws of Fla.
[80] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[81] Ch. 2018-158, Laws of Fla.
[82] S. 380.06(4)(a) and (7), F.S.

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:[83]

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by local government to be essential to the public health, safety, or welfare.

Any proposed change to a previously approved DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[84] A proposed change reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[85]

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.[86]

For such agreements, a DRI is essentially built out if:[87]

- All the mitigation requirements in the development order were satisfied, all developers were in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or
- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of the Bill

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses. Subject to the developer demonstrating that the exchange will not increase impacts to public facilities, amendments are made pursuant to the processes adopted by the local government for amending development orders.

[83] S. 380.06(4)(a), F.S.
[84] S. 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.
[85] *Id.*
[86] Ch. 2018-158, s. 1, Laws of Fla.
[87] S. 380.06(15)(g)3. and 4., F.S. (2017).

**Technical Assistance Funding**

Background

DEO, as the state land planning agency, must assist communities to find creative solutions fostering vibrant, healthy communities and by providing direct and indirect technical assistance within available resources.[88] To carry out this charge, the Bureau of Community Planning and Growth within DEO manages the Community Planning Technical Assistance Grant Program.[89]

Under the program, DEO awards grants to counties, cities, and regional planning councils to assist local governments in developing economic development strategies, meeting the requirements of the Community Planning Act, addressing critical local planning issues, and promoting innovative planning solutions to challenges identified by local government applicants. The program has funded a wide range of activities, including the development and revision of comprehensive plan amendments, economic development strategic plans, affordable housing action plans, downtown master plans, transportation master plans, and revitalization plans.[90]

Beginning in fiscal year (FY) 2011-2012, the Legislature appropriated funds for DEO to implement the program. From FY 2015-2016 to FY 2019-2020, DEO expended almost $6 million on 174 approved grant projects.[91]

*M-CORES Program*

Enacted during the 2019 Regular Session,[92] the Multi-use Corridors of Regional Economic Significance (M-CORES) Program is designed to advance the construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure.[93] The specific purpose of the program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing the quality of life and public safety, and protecting the environment and natural resources.[94]

The intended benefits to be provided through the M-CORES Program include, but are not limited to:
- Hurricane evacuation;
- Congestion mitigation;
- Trade and logistics;
- Broadband, water, and sewer connectivity;
- Energy distribution;
- Autonomous, connected, shared, and electric vehicle technology;
- Other transportation modes, such as shared-use nonmotorized trails, freight and passenger rail, and public transit;
- Mobility as a service;
- Availability of a trained workforce skilled in traditional and emerging technologies;
- Protection or enhancement of wildlife corridors or environmentally sensitive areas; and
- Protection or enhancement of primary springs protection zones and farmland preservation areas.[95]

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[88] S. 163.3168(3), F.S.
[89] DEO, Division of Community Planning, *Technical Assistance*, available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/technical-assistance (last visited Feb. 18, 2020).
[90] *Id.*
[91] *See* email and email attachment from Eva Davis, Senate Judiciary Committee, "DEO Information on SB 410 (footnote 2).pdf" (Feb. 17, 2020) (on file with House State Affairs Committee).
[92] Ch. 2019-43, Laws of Fla.
[93] *See* DOT, https://floridamcores.com/ (last visited Feb. 17, 2020).
[94] S. 338.2278(1), F.S.
[95] S. 338.2278(1)(a)-(k), F.S.

The following three corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).[96]

As required by the law, the Florida Department of Transportation (DOT) assembled three task forces to study the three specific multi-use corridors.[97] The task forces will make recommendations to DOT regarding the potential economic and environmental impacts of the corridor and other factors as specified in the M-CORES legislation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.[98] DOT must provide local governments affected by the report with a copy and project alignments,[99] and each local government with an interchange[100] within its jurisdiction must review its comprehensive plan by December 23, 2023. The review must consider whether the area around the interchange contains appropriate land uses and natural resource protections and whether the plan should be amended to provide appropriate uses and protections.[101] The law requires, to the maximum extent feasible, project construction to begin no later than December 31, 2022, with projects open to traffic no later than December 31, 2030.[102]

<u>Effect of the Bill</u>

The bill requires DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to counties with a population of 200,000 or less, and municipalities within such counties, for assistance in:

- Determining whether an area in and around a proposed multiuse corridor interchange contains appropriate land uses and natural resource protection; and
- Developing or amending a local government's comprehensive plan to provide for the land uses, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

**DOT Disposal of Real Property**

<u>Present Situation</u>

DOT is authorized to convey any land, building, or other real or personal property it acquired if DOT determines the property is not needed for a transportation facility.[103] In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest. DOT must advertise the disposal of property it values at greater than $10,000.[104]

A sale of unneeded property may not occur at a price less than DOT's current estimate of value except that:

- If donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose jurisdiction

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[96] S. 338.2278(2)(a)-(c), F.S.
[97] S. 338.2278(3)(c)1., F.S.
[98] S. 338.2278(3)(c)9., F.S.
[99] Project Alignment is the process of developing a common understanding among the key stakeholders of the purpose and goals of the project and the means and methods of accomplishing those goals. David Wiley, et. al, Project Management for Instructional Designers.553 (4th Ed.), available at https://pm4id.org/back-matter/glossary/ (last visited Feb. 19, 2020).
[100] An interchange is a grade-separated intersection (one road passes over another) with ramps to connect them. *See* DOT, RCI Features & Characteristics Handbook, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/statistics/statistics/rci/sections/252--interchanges.pdf?sfvrsn=50a6e807_0 (last visited Feb. 19, 2020).
[101] S. 338.2278(3)(c)10., F.S.
[102] S. 338.2278(6), F.S.
[103] S. 337.25(1) and (4), F.S.
[104] S. 337.25(4), F.S.

the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.[105]

- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.[106]
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, DOT may negotiate for the sale of such property as replacement housing.[107]

If DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[108]

If in DOT's discretion a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[109]

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, as described above, DOT may, but is not required, to first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.[110]

Effect of the Bill

Notwithstanding any provision of s. 337.25, F.S., to the contrary, the bill requires DOT to afford a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's current estimate of value in cases of property to be used for a public purpose, in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, and in cases in which DOT determines that a sale to any person other than an abutting property owner would be inequitable. In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, DOT must offer a right of first refusal to the previous property owner before being authorized to offer the property to the local government or other political subdivision in whose jurisdiction the property is located.

The bill requires DOT to offer the previous property owner the right of first refusal in writing, by certified mail or hand delivery, effective upon receipt of the property owner. The offer must provide the previous property owner at least 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, the owner must send notice to DOT by certified mail or hand delivery, and such acceptance is effective upon dispatch. Once the right is exercised, the previous property owner has at least 90 days to close on the property.

**Utility Right-of-Way Permits**

Background

Pursuant to s. 337.401, F.S., DOT and each local government with jurisdiction and control of public roads or publicly owned rail corridors is authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility facilities across, on, or within the right-of-way (ROW) limits of any road or publicly owned rail corridor under its jurisdiction. Each of these entities is individually referred to as the "authority" when acting in this capacity. Each authority may

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[105] S. 337.25(4)(a), F.S.
[106] S. 337.25(4)(b), F.S.
[107] S. 337.25(4)(c), F.S.
[108] S. 337.25(4)(d), F.S.
[109] S. 337.25(4)(e), F.S.
[110] S. 337.25(4), F.S.

authorize any person who is a resident of this state, or any corporation organized or licensed to do business under Florida law, to use a public ROW for a utility[111] in accordance with the authority's rules or regulations. A utility may not be installed, located, or relocated within a public ROW unless authorized by a written permit.[112]

*The Advanced Wireless Infrastructure Deployment Act*

In 2017, the Legislature established an expedited permitting process for small wireless facilities[113] (SWF) that a wireless provider[114] seeks to place in the public ROW.[115] Under this process, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electric mail, as to whether the application is complete. If it determines the application is incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.

A completed permit application for a SWF is deemed approved if the authority fails to approve or deny the application within 60 days of receipt. This review period may be extended by mutual agreement. If an application is denied, the applicant may cure the deficiencies and submit a revised application within 30 days after denial. The revised application is deemed approved if the authority does not approve or deny it within 30 days of receipt. If the authority provides for administrative review of its denial of an application, the authority must complete its review and issue a written decision within 45 days of a written request for review.[116] In 2019, this expedited permitting process was expanded to include all communications facilities a provider of communications services[117] seeks to place in the public ROW.[118]

No timeframes are specified in current law for processing permit applications to use the public ROW for any other type of utility.

Effect of the Bill

The bill provides that all permit applications to a county or municipality to use the public ROW for any type of utility must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands application of the expedited

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[111] S. 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404" as a "utility."
[112] S. 337.401(2), F.S.
[113] "Small wireless facility" means a wireless facility that meets the following qualifications:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

S. 337.401(7)(b)10., F.S.
[114] The term "wireless provider" means a wireless infrastructure provider or a wireless services provider. S. 337.401(7)(b)14., F.S.
[115] Ch. 2017-136, L.O.F., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.
[116] S. 337.401(7), F.S.
[117] The term "communications services" means "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added." The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. Ss. 337.401(5) and 202.11(1), F.S.
[118] Ch. 2019-131, L.O.F.

permitting process to include county or municipal public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

## 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 an insignificant fiscal impact on local governments not scheduled to review their comprehensive plans before 2024 due to the requirement to amend their plans by July 1, 2023, to include a property rights element; and each local government to amend its comprehensive plan to include development orders existing before the plan's effective date if it does not already do so.

   The bill provides that permit applications submitted to a county or municipality to use the public ROW for a utility must be processed within the expedited timeframe currently pertaining only to permit applications submitted for communications facilities. Counties and municipalities may need to expend additional resources to satisfy this requirement. However, the bill does not constrain the ability of these local governments to adjust fees as necessary to account for to the potential extra workload.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.