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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 410
INTRODUCER:	Rules Committee; Community Affairs Committee; and Senator Perry
SUBJECT:	Growth Management
DATE:	March 3, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.	Davis	Cibula	JU	**Favorable**
3.	Paglialonga	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 410 amends various sections of Florida law concerning growth management. The bill makes the following changes to current law:

- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during their next plan amendment process, or by July 1, 2023.
- Provides that a county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not impose a limitation on lands within a municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy.
- Provides that a county charter provision or comprehensive plan may not restrict a municipality from deciding the land uses, density, and intensity allowed on lands annexed into a municipality as long as the municipality's comprehensive plan complies with the Community Planning Act.
- Provides that all municipal comprehensive plans *effective*, rather than *adopted*, after January 1, 2019, must incorporate development orders existing before the plan's effective date.
- Directs the Department of Economic Opportunity, when selecting applicants for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities located near a proposed multiuse corridor interchange.
- Specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally

subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.
- Requires that all utility permit applications for the use of the public rights-of-way be processed within the timeframes that currently apply to permit applications submitted by communications services providers.
- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, which agreements were valid on or before April 6, 2018, to be amended including amendments exchanging land uses under certain circumstances.

II. Present Situation:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by the corresponding Effect of Proposed Changes. The below discussion tracks the order of sections contained in the bill.

III. Effect of Proposed Changes:

Comprehensive Plans and Preexisting Development Orders (Section 1)

Present Situation

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.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans. A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.[2]

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.[3] The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[4] and intensity[5] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[6]

[1] *See* ch. 2011-139, s. 4, Laws of Fla.
[2] *Payne v. City of Miami*, 52 So. 3d 707, 737 (Fla. 3rd DCA 2010)
[3] *See* ch. 2019-165, s. 3, Laws of Fla.
[4] Section 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.
[5] Section 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.
[6] Sections 163.3167(3) and 163.3203, F.S.

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to provide 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.

County and Municipal Home Rule Powers (Section 1)

Present Situation

The State Constitution establishes and describes the duties, powers, structure, and function of government in Florida, and establishes the basic law of the state. The State Constitution recognizes that: "All political power is inherent in the people."[7]

Florida is divided into 67 counties.[8] Out of these counties, there are 20 counties in which the electorate has adopted a charter form of government as described in the State Constitution.[9] The remaining 47 counties are considered non-charter counties. Collectively, charter counties are home to more than 75 percent of Florida's residents.[10]

Under the State Constitution, a county without a charter has such power of self-government as provided by general[11] or special law, and may enact county ordinances not inconsistent with general law or special law.[12] Non-charter county ordinaces in conflict with a municipal ordinace are not effective within the municipality to the extent of such conflict.[13] Alternatively, counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by a vote of the electors.[14] In the event a charter county ordinance conflicts with a municipal ordinance, the county's charter shall provide which ordinance shall control.[15] General law authorizes counties "the power to carry on county government"[16] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[17]

As for municipalities, the State Constitution describes how municipalities are established, the powers of a municipality, and the manner municipalities annex territory.[18] Municipalities are authorized to exercise any power for municipal purposes except as otherwise provided by law.[19] Chapter 166, F.S., also known as the Municipal Home Rule Powers Act, acknowledges the

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[7] FLA. CONST. Art. I, sec. 1.
[8] Florida Department of State, *Quick Facts*, *available at:* https://dos.myflorida.com/florida-facts/quick-facts/ (last visited March 3, 2020).
[9] Florida Association of Counties, *Charter County Information*, *available at*: https://www.fl-counties.com/charter-county-information (last visited March 3, 2020); *see also* FLA. CONST. Art. VIII, s. 1(g).
[10] *Id.*
[11] Chapter 125, Part I, F.S.
[12] FLA. CONST. Art. VIII, s. 1(f).
[13] *Id.*
[14] FLA. CONST. Art. VIII, s. 1(g).
[15] *Id.*
[16] Section 125.01(1), F.S.
[17] Section 125.01(1)(w), F.S.
[18] FLA. CONST. Art. VIII, s. 2(a) – (c).
[19] *Id.* at (a).

constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services. Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the State Constitution, applicable laws, and county charters.

When it comes to charter counties and municipalities within those counties, a charter county may exercise such authority over municipalities within its boundaries as is provided for in its charter.[20] A charter county may preempt a municipality's land use regulation by so providing in the charter.[21] As for non-charter counties, a county land use regulation in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.[22]

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to state that a county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not impose a limitation on lands within a municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy. This revision additionally provides that a county charter provision or comprehensive plan may not restrict a municipality from deciding the land uses, density, and intensity allowed on lands annexed into a municipality as long as the municipality's comprehensive plan complies with the Community Planning Act.

Technical Assistance Funding (Section 2)

Present Situation

DEO Technical Assistance Grant Program

Section 163.3168(3), F.S., requires the Depatment of Economic Opportunity (DEO), as the state land planning agency, to help communities find creative solutions to fostering vibrant, healthy communities and authorizes DEO to use various means to provide direct and indirect technical assistance within available resources. To carry out this charge, DEO's Bureau of Community Planning and Growth manages the Community Planning Technical Assistance Grant Program. Under the program, DEO awards grant funds 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.[23] The program has funded a wide range of activities which have included, for example, 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.

[20] Section 163.3171(2), F.S.
[21] *Seminole County v. City of Winter Springs*, 935 So.2d 521 (Fla. 5th DCA 2006)
[22] FLA. CONST. Art. VIII, s. 1(f).
[23] 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. 8, 2020).

Beginning in fiscal year 2011-2012, the Legislature has annually appropriated state funds to DEO to implement the program. From fiscal years 2015-2016 to 2019-2020, DEO has expended almost $6 million on 174 approved grant projects.[24]

M-CORES Program

Enacted during the 2019 Regular Session,[25] 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.[26] 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.[27]

Section 338.2278(1)(a)-(k), F.S., enumerates the intended benefits which the M-CORES Program seeks to address, which 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.

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).[28]

As required by law, the Florida Department of Transportation (FDOT) has assembled three task forces to study the three specific multi-use corridors.[29] The task forces will make recommendations to FDOT regarding the potential economic and environmental impacts of the corridor and other factors as specified in the M-CORES legislation. Task Forces are required to report their evaluations in a final report submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.[30] 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.[31]

[24] Information received from DEO staff on Jan. 23, 2020 (on file with Senate Committee on Judiciary).
[25] Chapter 2019-43, Laws of Fla.
[26] For additional detailed information about M-CORES, see the FDOT M-CORES website, https://floridamcores.com/ (last visited Jan. 28, 2020).
[27] Section 338.2278(1), F.S.
[28] Section 338.2278(2)(a)-(c), F.S.
[29] Section 338.2278(3)(c)1., F.S.
[30] Section 338.2278(3)(c)9., F.S.
[31] Section 338.2278(6), F.S.

Effect of Proposed Changes

The bill amends s. 163.3168, F.S., to require DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities 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 land use, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

Counties with a population of 200,000 or less, and municipalities within such counties, are eligible for the funding preference provided in the bill.

Private Property Rights and the Community Planning Act (Section 3)

Present Situation

Constitutional Private Property Rights

Under Article I, section 2 of the Florida Constitution's Declaration of Rights, individuals are guaranteed the right "*to acquire, possess, and protect property*."[32] Although these property rights are enshrined in Florida's constitution, the state and local governments may curtail these rights through sovereign police powers. State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."[33] Under this provision, states have police powers to establish and enforce laws protecting the welfare, safety, and health of the public.[34] Regarding private property rights, courts have continuously held that "even constitutionally protected property rights are not absolute, and 'are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare.'"[35]

When a state or political subdivision exercises police powers to affect property rights, citizens are provided two constitutional challenges to oppose the governmental act. The first challenge is that the government may have acted arbitrarily in violation of due process.[36] In the *City of Coral Gables v. Wood*, the court ruled that "[a] zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without

[32] FLA. CONST. art. I s. 2.
[33] U.S. CONST. amend. X.
[34] "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." *See NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).
[35] *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarthy*, 337 So.2d 388, 390 (Fla. 1976)).
[36] *See* U.S. CONST. amend. V, XIV, s. 1; FLA. CONST. art. I s. 9; *see also Fox v. Town of Bay Harbor Islands*, 450 So.2d 559, 560 (Fla. 3rd DCA 1984).

reference to public health, morals, safety or welfare."[37] In the first constitutional challenge, government action is simply invalid under the due process clause of the constitution.[38]

The second challenge is whether the government so intrusively regulated the use of property in pursuit of legitimate police power objectives to take the property without compensation in violation of the just compensation clause (takings clause).[39] When reasoning whether a regulation or land use plan constitutes a taking of a landowner's property, the operative inquiry is whether the landowner has been deprived of all or substantially all economic, beneficial or productive use of the property.[40] In the second constitutional challenge, the government action is invalid absent compensation, and so the government may either abandon its regulation or validate its action by payment of appropriate compensation to the landowner.[41]

Since the establishment of these constitutional protections for citizens, the scale of government and land use regulation has considerably expanded, but courts have been reluctant to afford relief to property owners under these constitutional challenges.[42] Thus, property owners who experienced property devaluation or economic loss caused by government regulation were seldom compensated.[43]

In 1995, the Legislature addressed the ineffectiveness of these constitutional challenges to government regulation by enacting ch. 70, F.S., which is known as the "Bert J. Harris, Jr., Private Property Rights Protection Act" (hereinafter the "Harris Act").[44]

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

The Harris Act[45] entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use of the real property or a vested right to a specific use of the real property.[46] The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking or due process violation under the State Constitution or the U.S. Constitution.[47] The law does not apply to the U.S. government, federal agencies, or state or local government entities exercising delegated U.S. or federal agency powers.[48]

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,[49] or when a government entity imposes a condition

[37] *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3rd DCA 1974).
[38] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[39] *See* FLA. CONST. art X, s. 6.
[40] *See Taylor v. Village of North Pam Beach*, 659 So.2d 1167 (Fla. 4th DCA 1995).
[41] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[42] *See* Cooper, Weaver, and 'Connor, The Florida Bar, Florida Real Property Litigation, *Statutory Private Property Rights Protection*, s.13.1 (2018).
[43] *Id.*
[44] *Id.*
[45] Section 70.001(1), F.S.
[46] Section 70.001(2), F.S.
[47] Section 70.001(1), F.S.
[48] Section 70.001(3)(c), F.S.
[49] Section 70.51(3), F.S.

on the proposed use of the real property that amounts to a prohibited exaction.[50] 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.[51]

The Community Planning Act

The Harris Act is balanced against the state's sovereign rights. The state needs to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.[52] Statutes govern how the state and local governments direct land development[53] with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.[54]

The Legislature expressly intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.[55] The authority provided by 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.[56]

The State Comprehensive Plan must provide long-range policy guidance for the orderly social, economic, and physical growth of the state.[57] The goals and policies of the State Comprehensive Plan must be consistent with the protection of private property rights.[58] 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.[59]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.[60] Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.[61] Plans may include optional elements,[62] but must include the following nine elements:

[50] Section 70.45(2), F.S.
[51] Section 70.45(1)(c), F.S.
[52] *See* Section. 186.002(1)(b), F.S.
[53] *See* Chapters 186, 187, and 163, part II, F.S.
[54] Section 163.3167(1)(b), F.S.
[55] *See* Section 163.3161(10), F.S.; *see also* s. 187.101(3), F.S.
[56] *Id*.
[57] Section 187.101(1), F.S.
[58] Section 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.
[59] Section 187.101(1), F.S.
[60] Section 163.3177(1), F.S.
[61] Section 163.3177(1)(d), F.S.
[62] Section 163.3177(1)(a), F.S.

- Capital improvements;[63]
- Future land use plan;[64]
- Intergovernmental coordination;[65]
- Conservation;[66]
- Transportation;[67]
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[68]
- Recreation and open space;[69]
- Housing;[70] and
- Coastal management (for coastal local governments).[71]

All local government land development regulations must be consistent with the local comprehensive plan.[72] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[73] However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.[74]

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.[75] Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[76] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[77]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[78] 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.[79] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[80]

[63] Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[64] Section 163.3177(6)(a), F.S.
[65] Section 163.3177(6)(h), F.S.
[66] Section 163.3177(6)(d), F.S.
[67] Section 163.3177(6)(b), F.S.
[68] Section 163.3177(6)(c), F.S.
[69] Section 163.3177(6)(e), F.S.
[70] Section 163.3177(6)(f), F.S.
[71] Section 163.3177(6)(g), F.S.
[72] Section 163.3194(1)(b), F.S.
[73] *See* Sections 163.3161(6) and 163.3194(1)(a), F.S.
[74] Section 189.081(1)(b), F.S.
[75] Section 163.3191(1), F.S.
[76] Section 163.3191(2), F.S.
[77] Section 163.3161(12), F.S.
[78] Section 163.3184(3)(a), F.S.
[79] Section 163.3184(2)(c), F.S.
[80] Section 163.3184(4)(a), F.S.

The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[81]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[82] about the proposed amendment before sending it for comment from several reviewing agencies,[83] including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.[84] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[85] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[86]

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.[87] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[88] 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.[89] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the second public hearing.[90]

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[91] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[92] 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.[93] Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.[94] If there is a timely challenge, then the plan amendment will not take effect until DEO, or the Administration Commission[95] enters a final order determining the adopted amendment complies with the law.[96]

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[81] Section 163.3164(44), F.S.
[82] Sections 163.3184(4)(b) and (11)(b)1., F.S.
[83] *See* Section 163.3184(1)(c), F.S., for complete list of all reviewing agencies.
[84] Section 163.3184(4)(b) and (c), F.S.
[85] Section 163.3184(4)(b), F.S.
[86] Section 163.3184(4)(c), F.S.
[87] Section 163.3184(4)(d)1., F.S.
[88] Section 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. *See* s. 163.3184(4)(d)2., F.S.
[89] Sections 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. *See* s. 163.3184(4)(e)1., F.S.
[90] Section 163.3184(4)(e)2., F.S.
[91] Section 163.3184(4)(e)3. and 4., F.S.
[92] Section 163.3184(4)(e)4., F.S.
[93] *Id*.
[94] Section 163.3184(4)(e)5., F.S.
[95] Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).
[96] *Id*.

Effect of Proposed Changes

The bill amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans and respect private property rights in local decision making.

The bill provides a model statement of property rights, and local governments may incorporate the suggested language directly into their comprehensive plan. The property rights provided in the bill include the following five acknowledgments that a local government should consider in the decision-making process:

- The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
- The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others.
- The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances.
- The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
- The right of the property owner to dispose of his or her property through sale or gift.

Each local government must adopt its own property rights element in its comprehensive plan by the earlier of its next proposed plan amendment or by July 1, 2023. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in the bill.

Local Government Development Agreements (Section 4)

Present Situation

Local governments may enter into development agreements with developers.[97] 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."[98]

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.[99] A development agreement must include the following:[100]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;

[97] Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[98] *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).
[99] Section 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[100] Section 163.3227(1), F.S.

- 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, terms, or restrictions.

A development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[101] 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.[102]

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,[103] also known as a successor in interest.[104] A development agreement may be amended or canceled by the mutual consent of the parties to the agreement or by their successors in interest.[105]

Effect of Proposed Changes

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.

[101] Section 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[102] Section 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[103] Section 163.3239, F.S.
[104] 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).
[105] Section 163.3237, F.S.

Utility Right-of-Way Permitting (Section 5)

Present Situation

Pursuant to s. 337.401, F.S., FDOT 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 concerning 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 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[106] following 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.[107]

In 2017, the Legislature established an expedited permitting process for small wireless facilities[108] (SWF) that a wireless provider[109] seeks to place in the public ROW.[110] 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 an 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 the 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 an 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.[111] In 2019, this

[106] Section 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."

[107] Section 337.401(2), F.S.

[108] "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. Section 337.401(7)(b)10., F.S.

[109] The term "wireless provider" means a wireless infrastructure provider or a wireless services provider. Section 337.401(7)(b)14., F.S.

[110] Chapter 2017-136, Laws of Fla., codified in pertinent part at s. 337.401(7)(d)7.-9., F.S.

[111] Section 337.401(7), F.S.

expedited permitting process was expanded to include all communications facilities a provider of communications services[112] seeks to place in the public ROW.[113]

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

Effect of Proposed Changes

The bill provides that all permit applications to a county or municipality to use the public ROW for any utility must be processed within the expedited timeframe that currently applies only to permit applications submitted for communications facilities. Thus, the bill expands the application of the expedited permitting process to include county or municipal public ROW permits for, among other things, electric, natural gas, water, and sewer facilities.

Developments of Regional Impact (Section 6)

Present Situation

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."[114]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[115] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[116]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[117] until the repeal of the requirements for state and regional reviews in

[112] 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.

[113] Chapter 2019-131, Laws of Fla.

[114] Section 380.06(1), F.S.

[115] 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).

[116] Chapter 72-317, s. 6, Laws of Fla.

[117] *See* Chapter 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).

2018.[118] Local governments, where a DRI is located, are responsible for implementing and amending existing DRI agreements and development orders.[119]

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:[120]

- 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 the local government to be essential to the public health, safety, or welfare.

The local government must review any proposed change to a previously approved DRI based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[121] The local government must review a proposed change reducing the originally approved height, density, or intensity of the development 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.[122]

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.[123]

For such agreements, a DRI is essentially built out if:[124]

- All the mitigation requirements in the development order were satisfied, all developers complied 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 Proposed Changes

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

[118] Chapter 2018-158, Laws of Fla.
[119] Sections 380.06(4)(a) and (7), F.S.
[120] Section 380.06(4)(a), F.S.
[121] Section 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.
[122] Section 380.06(7)(a), F.S.
[123] Chapter 2018-158, s. 1, Laws of Fla.
[124] Sections 380.06(15)(g)3. and 4., F.S. (2017).

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.

Effective Date (Section 7)

The bill provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the State Constitution, provides in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds unless certain exemptions or exceptions are met.

The bill might require counties and municipalities to incur some costs to amend their comprehensive plans to add a private property rights element by July 1, 2023. Article VII, section 18 (d), provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an "insignificant fiscal impact"[125] are exempt from the mandate requirements, which for the Fiscal Year 2019-2020 is forecast at approximately $2.2 million.[126] The cumulative cost for counties and municipalities to update their comprehensive plans to comply with the provisions of the bill is unknown at this time. However, the model language supplied by the bill may help reduce some costs for local governments. Additionally, costs may be lower if a local government adopts a private property rights element concurrent with another necessary comprehensive plan amendment before July 1, 2023.

If the bill does qualify as a mandate, and no exemption or exception applies, to be binding on the counties, the bill must include a finding of important state interest, and two-thirds of the membership of each house of the Legislature must approve the final passage.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[125] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Dec. 11, 2019)

[126] Based on the Florida Demographic Estimating Conference's Dec. 3, 2019 population forecast for 2020 of 21,555,986. The conference packet is *available at*: http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Dec. 11, 2019).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article VIII, section 1(g) of the State Constitution states that a county charter "shall provide which shall prevail in the event of conflict between county and municipal ordinances." By this provision, the Constitution expressly grants charter counties preemptive regulatory power over municipalities to the extent specified in the charter. Thus, charter counties may preempt a municipal land use regulation by so providing in the charter.[127] In the context of land use regulations, it is unclear to what extent the Legislature may curtail the preemption authority of a charter county by general law.[128]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Providing a preference to small M-CORES counties and municipalities for technical assistance grants will likely have a minimal fiscal impact, if any, on DEO.

Eligible small M-CORES counties and municipalities will receive preference when applying for DEO technical assistance grants.

There seems to be legitimate disagreement as to whether section 2 of the bill will have a fiscal impact on local governments that are not scheduled to review their plans before 2024 but under the bill, must amend their comprehensive plans by July 1, 2023, to include a property rights element.

Some people have expressed the opinion that this provision will not require significant costs because they believe no additional consultants will be needed to draft an amendment to comply with the provisions of the bill. They believe that, if the local staff does not have the "in-house" expertise, they may simply "copy and paste" the language into the comprehensive plan and be in compliance. The argument has also been offered that a notice requirement would be a minimal expense because the notice could be

[127] *See Seminole County v. City of Winter Springs*, 935 So.2d 521 (Fla. 5th DCA 2006)

[128] "Thus, charter counties have a direct constitutional grant of broad powers of self-government, which include the power of county citizens to enable their county to enact regulations of county-wide effect which preempt conflicting municipal ordinances. Op. Att'y Gen. Fla. 2007-41 (2007).

included on an existing agenda and would not require a separate meeting notice or separate meeting.

In contrast, the Florida League of Cities indicates that there is a range of responses for the cost for a municipality to adopt a comprehensive plan amendment. According to the Hillsborough County City-County Planning Commission, the cost to review and process a privately initiated amendment to the text of a comprehensive plan may be $10,375. The Fort Myers Community Development Department has found that a small town or city may spend $50,000 hiring a planning consultant to draft a comprehensive plan amendment and may end up spending another $50,000 on total staff time, advertising, and paperwork.[129] However, the costs to comply with the bill may be significantly lower for a local government depending on the timing of the adoption of the amendment (if done concurrently with another amendment) and whether a local government deems it necessary to enlist the assistance of an outside consultant.

DEO indicated that section 2 of the bill would have no fiscal impact on the department.[130]

The expedited right-of-way permitting timeframes imposed by the bill may cause counties and municipalities to expend additional resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3168, 163.3177, 163.3237, 337.401, and 380.06.

IX. Additional Information:

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

CS/CS by Rules on March 2, 2020:
The committee substitute adds the following provisions to the bill:

- Requires all municipal comprehensive plans "effective," as opposed to "adopted," after January 1, 2019, to incorporate development orders existing before the plan's effective date.
- Provides that a county charter provision or comprehensive plan goal, objective, or policy adopted after January 1, 2020, may not impose a limitation on lands within a

[129] Information received from the Florida League of Cities (Jan. 23, 2020) (on file with Senate Committee on Judiciary).
[130] Department of Economic Opportunity, 2020 Agency Legislative Bill Analysis for SB 410 (Oct. 23, 2019) http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29749.

municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy.
- Allows a party, or its successor in interest, to amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement.
- Requires counties and cities to process utility permit applications for the use of the public ROW within the timeframes currently applicable to permit applications submitted by communications services providers.
- Allows a DRI agreement previously classified as or officially determined to be essentially built out, and entered into on or before April 6, 2018, to be amended to authorize the developer to exchange approved land uses.

CS by Community Affairs on January 27, 2020:
The committee substitute requires DEO to give a preference for technical assistance grant funding to certain small counties and municipalities located near a proposed multiuse corridor interchange.

B. Amendments:

None.