

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 487 Small Scale Development Amendments

**SPONSOR(S):** Duggan

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	17 Y, 1 N	Darden	Miller
2) Commerce Committee	22 Y, 1 N	Brackett	Hamon
3) State Affairs Committee			

### SUMMARY ANALYSIS

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

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

The bill increases the maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres and increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

The bill has no fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Community Planning Act

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

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

- Preparing the comprehensive plan and plan amendments;
- Monitoring the effectiveness and status of the comprehensive plan and recommending changes to the local governing body, including periodic evaluation and appraisal of the plan as required by law;<sup>9</sup>
- Reviewing proposed land development regulations and land development codes for consistency with the adopted comprehensive plans; and
- Performing any other functions, duties, and responsibilities assigned by the local governing body, general law, or special law.

The local governing body may designate itself as the local planning agency or assign the powers to a local planning commission, a planning department, or another body.<sup>10</sup>

The Department of Economic Opportunity (DEO) serves as the state land planning agency.<sup>11</sup>

##### Comprehensive Plans and Plan Amendments

Comprehensive plans are intended to provide for "orderly and balanced future economic, social, physical, environmental, and fiscal development" in a county or municipality.<sup>12</sup> A comprehensive plan must take into account:<sup>13</sup>

- Projected seasonal and permanent population growth;
- Current and existing public facility needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;

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

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

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

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

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

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

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

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

<sup>9</sup> S. 163.3191, F.S.

<sup>10</sup> S. 163.3174(1), F.S.

<sup>11</sup> S. 163.3164(44), F.S.

<sup>12</sup> S. 163.3177(1), F.S.

<sup>13</sup> S. 163.3177(1), (3)-(6), F.S.

- Consideration of two planning periods, one covering at least 5 years and another covering at least 10 years; and
- A future land use plan element.

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

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

### Expedited State Review Process

The expedited state review process is the default method for the consideration of local comprehensive plan amendments.<sup>16</sup> The process begins with a public hearing conducted by the governing body of a county or municipality to approve of transmitting the proposed amendment for review.<sup>17</sup> Within 10 working days after the public hearing, the county or municipality must transmit the amendment, as well as any supporting documentation, to the following agencies for review:<sup>18</sup>

- DEO;
- The appropriate regional planning council;
- The appropriate water management district;
- Department of Environmental Protection;
- Department of State;
- Department of Transportation;
- The commanding officer of any affected military installation listed in s. 163.3175, F.S.;
- Department of Education (if the plan amendment relates to public schools);
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (if the plan amendment is to a county comprehensive plan), and
- The county in which the municipality is located (if the plan amendment is to a municipal comprehensive plan).

The county or municipality also must transmit the amendment and supporting documentation to any other local government or government agency that made a written request with the governing body.<sup>19</sup> State agencies review the proposed amendment for any adverse impacts on important state resources and facilities that fall within their respective jurisdictions.<sup>20</sup> Regional planning councils consider any adverse impacts of the amendment on regional resources or facilities identified in the strategic regional policy plan as well as any extra-jurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region.<sup>21</sup> Comments from counties and municipalities are limited to the impact of the proposed amendment on that local government's comprehensive plan.<sup>22</sup>

After receiving comments from the reviewing agencies and local governments, the governing body of the county or municipality conducts a second public hearing to consider adoption of the proposed

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

<sup>15</sup> S. 163.3184(2)(c), F.S. These amendments include amendments in areas of critical state concern pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose or amend a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on evaluation and appraisal pursuant to s. 163.3191, F.S., propose a development that is subject to state coordinated review pursuant to s. 380.06, F.S., and plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S.

<sup>16</sup> See s. 163.3184(2)(a), F.S.

<sup>17</sup> S. 163.3184(3)(a), (11)(a), F.S.

<sup>18</sup> S. 163.3184(1)(c), (3)(b)1., F.S.

<sup>19</sup> S. 163.3184(3)(b)1., F.S.

<sup>20</sup> Ss. 163.3184(3)(b)2., (3)(b)4., F.S. DEO, as the state land planning agency, provides comments on the impacts of any important state resources and facilities outside of the jurisdiction of other commenting agencies.

<sup>21</sup> S. 163.3184(3)(b)3.a., F.S.

<sup>22</sup> S. 163.3184(3)(b)3.b.-c., F.S.

amendment.<sup>23</sup> If the proposed amendment is adopted, the governing body of the county or municipality must submit the amendment, as well as any supporting documentation, to DEO and other agency or local government that provided timely comments within 10 working days after the hearing.<sup>24</sup> DEO must review the amendment for any deficiencies and inform the county or municipality within 5 working days.<sup>25</sup> The amendment becomes effective 31 days after DEO notifies the local government that the plan amendment package is complete, unless the amendment has been timely challenged, in which case the amendment does not become effective until DEO or the Administration Commission enters a final order determining the adopted amendment is in compliance.<sup>26</sup>

### Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:<sup>27</sup>

- The proposed amendment involves a use of 10 or fewer acres of land (20 acres in a rural area of opportunity);<sup>28</sup>
- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that related directly to and adopted with the small scale FLUM change;
- The property is not located in an area of critical state concern, unless the project involves the construction of affordable housing units meeting statutory criteria;<sup>29</sup> and
- The amendment must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the governing body of the county or municipality for approval.<sup>30</sup> Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.<sup>31</sup>

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.<sup>32</sup> The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.<sup>33</sup>

If the ALJ finds that the amendment is in compliance with the comprehensive plan, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission if the department determines the amendment is not in compliance.<sup>34</sup> If the ALJ does not find that the amendment is in compliance, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.<sup>35</sup> If the amendment is challenged, the amendment

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<sup>23</sup> S. 163.3184(3)(c)1., F.S. Except for amendments concerning developments of regional impact, an amendment is considered withdrawn if the public hearing is not conducted within 180 days after receiving agency comments.

<sup>24</sup> S. 163.3184(3)(c)2., F.S.

<sup>25</sup> S. 163.3184(3)(c)3., F.S.

<sup>26</sup> S. 163.3184(3)(c)4., F.S. The Administration Commission is composed of the Governor and Cabinet. S. 14.202, F.S.

<sup>27</sup> S. 163.3187(1)(a)-(d), (4), F.S., see also Dept. of Economic Opportunity, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date> (last visited Feb. 17, 2021).

<sup>28</sup> S. 163.3187(3), F.S.

<sup>29</sup> See s. 420.0004(3), F.S.

<sup>30</sup> S. 163.3187(2), F.S.

<sup>31</sup> Compare s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) with s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).

<sup>32</sup> S. 163.3187(5)(a), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> S. 163.3187(5)(b), F.S.

<sup>35</sup> S. 163.3187(5)(c), F.S.

may not become effective until DEO or the Administration Commission issues a final order determining the amendment complies with the overall comprehensive plan.

### Rural Area of Opportunity

A Rural Area of Opportunity (RAO) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress.<sup>36</sup> The area may also be classified as a RAO if it presents a unique economic development opportunity for the impact.

The Governor may designate up to three RAO areas for five-year periods upon recommendation by the Rural and Economic Development Initiative (REDI).<sup>37</sup> These areas receive priority assignments for REDI, and the designation allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives. Currently, there are three designated RAO areas:<sup>38</sup>

- Northwest RAO, consisting of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, as well the area within the city limits of Freeport and in Walton County north of the Choctawhatchee Bay and the intercoastal waterway;
- South Central RAO, consisting of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, as well as the municipalities of Pahokee, Belle Glade, and South Bay in Palm Beach County and Immokalee in Collier County; and
- North Central RAO, consisting of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.

### Effect of Proposed Changes

The bill increases that maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres generally and increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 163.3187, F.S., to increase the maximum acreage for small-scale comprehensive plan amendments.

Section 2: Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may reduce state government expenditures to the extent that agencies will no longer be required to review certain amendments that would previously have been subject to the expedited state review process.

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<sup>36</sup> S. 288.0656(2)(d), F.S. A "rural community" is defined as any county with a population of 75,000 or fewer; any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; any municipality in a county that meets the aforementioned criteria; or any municipality or "unincorporated federal enterprise community" with a population of 25,000 or fewer and an employment base focused on traditional agriculture or resource-based industries located in a county not defined as rural and which suffers from three or more economic distress factors. S. 288.0656(2)(e), F.S.

<sup>37</sup> S. 288.0656(7)(a), F.S.

<sup>38</sup> Dept. of Economic Opportunity, *Rural Areas of Opportunity*, <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Feb. 17, 2021).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures to the extent that amendments that would previously have been subject to the expedited state review process would be eligible for review as small-scale development amendments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**