HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 487 Growth Management
SPONSOR(S): Duggan, Hardy and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1274

FINAL HOUSE FLOOR ACTION: 106 **Y's** 10 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 487 passed the House on April 1, 2021. The bill was amended in the Senate on April 26, 2021, and returned to the House. The House concurred in the Senate amendments and subsequently passed the bill as amended on April 29, 2021.

The Community Planning Act (Act) governs community and land development in Florida by providing how local governments create, adopt, maintain, and amend their comprehensive plans, which in turn impact property rights and land uses within their respective jurisdictions. The 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 five-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.

Local governments may enter into mutually advantageous agreements to provide services or facilities to other localities. To effectuate interlocal cooperation, local governments jointly exercising power must form and execute a contract detailing the relationship's terms and conditions. An interlocal agreement does not relieve a public agency of any obligation or responsibility imposed by law.

The bill allows an entity created by interlocal agreement to acquire title to any water or wastewater plant utility facility, other facility, or property, which was acquired by the use of eminent domain, if 10 or more years have passed since the date of the acquisition by eminent domain.

The bill provides that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the newly created municipality's comprehensive plan and land development regulations. The vested uses, density, and intensity must be consistent with the municipality's comprehensive plan, and all existing concurrency obligations in the development order remain valid.

The bill also 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 may have a positive fiscal impact on state and local governments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-206, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Community Planning Act

The Community Planning Act (Act)[1] provides counties and municipalities the power to plan for future development by the adoption of comprehensive plans.[2] Each county and municipality must maintain a comprehensive plan.[3] 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.[4] County comprehensive plans cover the total unincorporated area of the county but plans for charter counties may include municipalities within their jurisdictions.[5] Counties and municipalities may also enter into interlocal agreements with other counties or municipalities to exercise their planning powers.[6]

Each county and municipality must establish a local planning agency.[7] The local planning agency is responsible for managing the comprehensive planning program.[8] The duties of the local planning agency include:[9]

- 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;[10]
- 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.[11]

The Department of Economic Opportunity (DEO) serves as the state land planning agency.[12]

Community Planning and Development

The Act governs community and land development in Florida by providing how local governments create, adopt, maintain, and amend their comprehensive plans, which in turn impact property rights and land uses within their respective jurisdictions.[13] Under the Act, development generally includes any

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[1] Part II, ch. 163, F.S.
[2] S. 163.3167(1), F.S.
[3] 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.
[4] S. 163.3171(1), F.S.
[5] S. 163.3171(2), F.S.
[6] S. 163.3171(3), F.S.
[7] 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.
[8] S. 163.3174(4), F.S.
[9] S. 163.3174(4)(a)-(d), F.S.
[10] S. 163.3191, F.S.
[11] S. 163.3174(1), F.S.
[12] S. 163.3164(44), F.S.
[13] S. 163.3167(1)(b), F.S.

building activity or mining operation, any material change in the use or appearance of any structure or land, or dividing land into three or more parcels.[14] A party wanting to develop land must seek a development permit from the appropriate local government having jurisdiction. A development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."[15] Once a local government has officially granted or denied a development permit, the official action constitutes a development order,[16] vesting certain rights related to the land.[17]

Municipalities established after October 1, 1985,[18] must prepare and adopt a comprehensive plan within three years after the date of incorporation. The county comprehensive plan controls until the municipality adopts a comprehensive plan. A municipal comprehensive plan adopted after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density[19] and intensity[20] approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.[21]

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.[22] A comprehensive plan must take into account:[23]

- Projected seasonal and permanent population growth;
- Current and existing public facility needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;
- Consideration of two planning periods, one covering at least five 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:[24]

- 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.[25]

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[14] *See* s. 163.3164(14), F.S., incorporating the extensive definition of "development" in s. 380.04, F.S.
[15] S. 163.3164(16), F.S.
[16] S. 163.3164(15), F.S.
[17] *See* s. 163.3167(3), F.S.; *see also Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So. 3d 1176, 1179 (Fla. 4th DCA 2010).
[18] Section 163.3167, F.S., was substantially rewritten as part of the Community Planning Act, ch. 85-55, Laws of Fla. The "effective date of this act" referenced in s. 163.3167(3), F.S., was October 1, 1985. *See* ch. 85-55, s. 51, Laws of Fla.
[19] "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. Section 163.3164(12), F.S.
[20] "Intensity" means 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 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. Section 163.3164(22), F.S.
[21] S. 163.3167(3), F.S.
[22] S. 163.3177(1), F.S.
[23] S. 163.3177(1), (3)-(6), F.S.
[24] S. 163.3184(2), F.S.
[25] 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.

Expedited State Review Process

The expedited state review process is the default method for the consideration of local comprehensive plan amendments.[26] 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.[27] Within 10 working days after the public hearing, the county or municipality must transmit the amendment, as well any supporting documentation, to the following agencies for review:[28]

- 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.[29] State agencies review the proposed amendment for any adverse impacts on important state resources and facilities that fall within their respective jurisdictions.[30] 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.[31] Comments from counties and municipalities are limited to the impact of the proposed amendment on that local government's comprehensive plan.[32]

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 amendment.[33] 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 any other agency or local government that provided timely comments within 10 working days after the hearing.[34] DEO must review the amendment for any deficiencies and inform the county or municipality within five working days.[35] 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.[36]

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[26] *See* s. 163.3184(2)(a), F.S.
[27] S. 163.3184(3)(a), (11)(a), F.S.
[28] S. 163.3184(1)(c), (3)(b)1., F.S.
[29] S. 163.3184(3)(b)1., F.S.
[30] 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.
[31] S. 163.3184(3)(b)3.a., F.S.
[32] S. 163.3184(3)(b)3.b.-c., F.S.
[33] 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.
[34] S. 163.3184(3)(c)2., F.S.
[35] S. 163.3184(3)(c)3., F.S.
[36] S. 163.3184(3)(c)4., F.S. The Administration Commission is composed of the Governor and Cabinet. S. 14.202, F.S.

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:[37]

- The proposed amendment involves a use of 10 or fewer acres of land (20 acres in a rural area of opportunity);[38]
- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that relate directly to, and are adopted simultaneously 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;[39] 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.[40] Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.[41]

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.[42] 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.[43]

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.[44] 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.[45] If the amendment is challenged, the amendment 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

[37] 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).
[38] S. 163.3187(3), F.S.
[39] *See* s. 420.0004(3), F.S.
[40] S. 163.3187(2), F.S.
[41] *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).
[42] S. 163.3187(5)(a), F.S.
[43] *Id.*
[44] S. 163.3187(5)(b), F.S.
[45] S. 163.3187(5)(c), F.S.

natural disaster, or severe or chronic distress.[46] The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.

The Governor may designate up to three RAO areas for five-year periods upon recommendation by the Rural and Economic Development Initiative (REDI).[47] 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:[48]

- 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.

Interlocal Agreements

Local governments may enter into mutually advantageous agreements to provide services or facilities to other localities.[49] The state's public agencies[50] may exercise joint governmental powers with any other public agency of the state, of any other state, or the United States Government.[51] To effectuate interlocal cooperation under the statute, local governments jointly exercising power must form and execute a contract detailing the relationship's terms and conditions.[52]

An interlocal agreement does not relieve a public agency of any obligation or responsibility imposed by law.[53] Neither an entity created by interlocal agreement, nor any of the local governments that are parties to the agreement acting on behalf of the entity, may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity created by interlocal agreement acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of the Act.[54]

Effect of Proposed Changes

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[46] 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.

[47] S. 288.0656(7)(a), F.S.

[48] 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).

[49] *See* s. 163.01, F.S.

[50] A "public agency" is defined as a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity created under s. 163.01(7), F.S., an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States. S. 163.01(3)(b), F.S.

[51] S. 163.01(4), F.S.

[52] S. 163.01(5), F.S.

[53] S. 163.01(9)(b), F.S.

[54] S. 163.01(7)(g)7., F.S. The effective date of the Community Planning Act was October 1, 1985. *See* ch. 85-55, s. 51, Laws of Fla.

The bill allows entities created by an interlocal agreement between local governments to acquire title to any water or wastewater plant utility facilities, other facilities, or property acquired by the use of eminent domain if 10 or more years have passed since the date of eminent domain acquisition.

The bill provides that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the newly created municipality's comprehensive plan and land development regulations. The vested uses, density, and intensity must be consistent with the municipality's comprehensive plan. All existing concurrency obligations in the development order remain valid.

The bill increases the 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.

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.

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:

The bill may reduce development costs for landowners that determine developing property under the comprehensive plan and land development regulations of a new municipality are more advantageous than continuing under a preexisting development order.

D. FISCAL COMMENTS:

None.