

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 1604

INTRODUCER: Senator Ingoglia

SUBJECT: Land Use and Development Regulations

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1604 makes a number of changes to current law relating to land use and development, including:

- Revising definitions for the community planning terms of “density,” “intensity,” “urban service area” and “urban sprawl.”
- Revising data sources that are used in consideration of the comprehensive plan and plan amendments.
- Providing that optional elements of a comprehensive plan may not contain policies that restrict density or intensity established in the future land use element of a comprehensive plan.
- Increasing the length of the required planning period to 10 years and 20 years, from 5 and 10.
- Removing a list of indicators a local government must consider relating to urban sprawl, instead requiring local governments to discourage urban sprawl by planning for future growth.
- Revising the comprehensive plan evaluation and appraisal process to ensure timely updates, by requiring an affidavit attesting that all elements of local government’s comprehensive plan are in compliance with the law, and that optional elements of the comprehensive plan may not be updated until required elements have been updated.
- Requiring land development regulations adopted by a local government to establish minimum lot sizes consistent with the maximum density authorized by the comprehensive plan.
- Providing that a local government must establish infill development standards for single-family homes, two-family homes, and fee-simple townhouse dwelling units to allow for the administrative approval of such development.
- Prohibiting a local government from using a level of service established in a comprehensive plan as the basis for the denial of a development order or permit.

- Prohibiting a local government from requiring specified building design elements for residential dwellings in planned unit developments, master planned communities, and certain communities with a design review board or architectural review board.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Comprehensive Plans

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.<sup>1</sup> Each county and municipality must maintain a comprehensive plan to guide future development.<sup>2</sup>

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.<sup>3</sup> A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.<sup>4</sup>

The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.<sup>5</sup>

At least once every 7 years, each local government must evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and must notify the state land planning agency as to its determination.<sup>6</sup> If the local government determines amendments to its comprehensive plan are necessary, the local government must prepare and send to the state land planning agency within one year such plan amendment or amendments for review.<sup>7</sup> Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.<sup>8</sup> If a local government fails to submit an evaluation of its comprehensive plan at least once in 7 years

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

<sup>2</sup> Section 163.3167(2), F.S.

<sup>3</sup> Section 163.3194(3), F.S.

<sup>4</sup> Section 163.3177(6), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 163.3191(1), F.S. The state land planning agency is the Department of Economic Opportunity pursuant to s. 163.3164(44), F.S.

<sup>7</sup> Section 163.3191(2), F.S.

<sup>8</sup> Section 163.3191(3), F.S.

to the state land planning agency or update its plan as necessary in order to reflect changes in state requirements, the local government may not amend its comprehensive plan until such time that an evaluation is submitted.<sup>9</sup>

Comprehensive plans must include at least two planning periods, one covering the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.<sup>10</sup> Additional planning periods are permissible and accepted as part of the planning process.

All elements of a plan or plan amendment must be based on relevant, appropriate data<sup>11</sup> and an analysis by the local government.<sup>12</sup> The data supporting a plan or amendment must be taken from professionally accepted sources.<sup>13</sup> The plan must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.<sup>14</sup> The analysis by the local government may include, but is not limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.<sup>15</sup>

### ***Capital Improvements Element***

Comprehensive plans must contain a capital improvement element (CIE) designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities. The CIE must set forth:<sup>16</sup>

- A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. These components must cover at least a 5-year period.
- Estimated public facility costs, including a delineation of when facilities will be needed, the general location of facilities, and projected revenue sources to fund the facilities.
- Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.
- A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding.
- The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8), F.S., to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must be coordinated with the applicable

<sup>9</sup> Section 163.3191(4), F.S.

<sup>10</sup> Section 163.3177(5)(a), F.S.

<sup>11</sup> "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." Section 163.3177(1)(f), F.S.

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

<sup>13</sup> Section 163.3177(1)(f)2., F.S.

<sup>14</sup> Section 163.3177(1)(f)3., F.S.

<sup>15</sup> Section 163.3177(1)(f), F.S.

<sup>16</sup> Section 163.3177(3)(a), F.S.

metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

Urban service areas must be identified in the capital improvements element as well.<sup>17</sup> Under current law urban service areas are all areas identified in the comprehensive plan where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place.<sup>18</sup>

### ***Future Land Use Element***

Comprehensive plans must contain an element regarding future land use that designates proposed future general distribution, location, and extent of the uses of land for a number of uses and categories of public and private uses of land.<sup>19</sup> Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities.<sup>20</sup> The proposed distribution, location, and extent of the various categories of land use must be shown on a land use map or map series. Future land use plans and plan amendments are based on surveys, studies, and data regarding the area.<sup>21</sup>

A comprehensive plan's future land use element establishes a range of allowable uses and densities and intensities over large areas, and the specific use and intensities for specific parcels within that range are decided by a more detailed, implementing zoning map.<sup>22</sup>

Under current law 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.<sup>23</sup> Intensity currently 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.<sup>24</sup>

### **Land Development Regulations**

Comprehensive plans are implemented via land development regulations. Land development regulations are ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.<sup>25</sup>

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<sup>17</sup> Section 163.3164(51)

<sup>18</sup> *Id.*

<sup>19</sup> Section 163.3177(6)(a), F.S. Applicable uses and categories of public and private uses of land include, but are not limited to, residential, commercial, industrial, agricultural, recreational, conservation, educational, and public facilities. S. 163.3177(6)(a)10., F.S.

<sup>20</sup> Section 163.3177(6)(a)1., F.S.

<sup>21</sup> Section 163.3177(6)(a)2., F.S.

<sup>22</sup> Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) citing Brevard Cty. v. Snyder, 627 So. 2d 469, 475 (Fla. 1993).

<sup>23</sup> Section 163.3164 F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.<sup>26</sup> Local governments are encouraged to use innovative land development regulations<sup>27</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>28</sup>

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.<sup>29</sup> Additionally, land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>30</sup>

Amendments to comprehensive plans may be initiated by any interested party, including private land owners and public parties, including a local government's planning commission or governing board.<sup>31</sup>

Local governments may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.<sup>32</sup> Each level of service is the capacity per unit of demand for governmental services a development or facility will require and is used to ensure that new development does not outstrip a local government's ability to provide necessary services.<sup>33</sup> Developments meet level of service requirements when the local government has the infrastructure capacity to serve the new growth.

### ***Building Design Elements for Single-Family or Two-Family Dwellings***

Local governments are generally prohibited from adopting land development regulations relating to building design elements for single-family or two-family dwellings.<sup>34</sup> Building design elements include but are not limited to external building color, style or material of roofing, location or architectural styling of windows or doors, and number and type of rooms.<sup>35</sup>

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<sup>26</sup> Section 163.3202, F.S.

<sup>27</sup> Section 163.3202(3), F.S.

<sup>28</sup> Sections 125.01055 and 166.04151, F.S.

<sup>29</sup> Sections 163.3174(4)(a) and 163.3184, F.S.

<sup>30</sup> See Sections 163.3161(6) and 163.3194(1)(a), F.S.

<sup>31</sup> See e.g., Osceola County, *Amending the Comprehensive Plan*, available at <https://www.osceola.org/agencies-departments/community-development/offices/planning-office/comprehensive-plan/amending-comprehensive-plan.stml> (last visited April 3, 2023).

<sup>32</sup> Section 163.3202(2)(i), F.S.

<sup>33</sup> Section 163.3164, F.S.

<sup>34</sup> Section 163.3202(5)(a), F.S.

<sup>35</sup> Section 163.3202(5)(b)

This prohibition does not apply to:<sup>36</sup>

- Dwellings listed in, or located in a historic district listed in, the National Register of Historic Places;
- Dwellings listed as a historic property or located in a historic district as determined by a local preservation ordinance;
- Regulations adopted in order to implement the National Flood Insurance Program;
- Regulations adopted in accordance and compliance with procedures established for the adoption of local amendments to the Florida Building Code;
- Dwellings located in a community redevelopment area;
- Regulations that are required to ensure protection of coastal wildlife in compliance with the Dennis L. Jones Beach and Shore Preservation Act or the Florida Water Resources Act of 1972;
- Dwellings located in a planned unit development or a master planned community created by a local governing body<sup>37</sup>; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.<sup>38</sup>

### Urban Sprawl

Under current law, urban sprawl is considered a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses.<sup>39</sup>

The future land use element of a comprehensive plan or any amendment to the future land use element must discourage the proliferation of urban sprawl.<sup>40</sup> Current law provides a list of primary indicators to determine whether a plan or plan amendment encourages the proliferation of urban sprawl and states that a future land use element or plan amendment will be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more statutory factors.<sup>41</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 163.3164, F.S., to revise the definition of “urban service area” to include both areas that receive (or could receive, with investment by the local government or the private sector) certain public facilities and services and any land contained in a county or municipality

<sup>36</sup> Section 163.3202(5)(a)1.-7., F.S.

<sup>37</sup> “Planned unit development” or “master planned community” means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. Section 163.3202 F.S.

<sup>38</sup> See e.g., City of Wellington Architectural Review Board, available at <https://www.wellingtonfl.gov/303/Architectural-Review-Board> and City of St. Petersburg Design Review Board, available at [https://www.stpete.org/government/boards\\_committees/development\\_review\\_commission.php](https://www.stpete.org/government/boards_committees/development_review_commission.php) (last visited April 3, 2023.)

<sup>39</sup> Section 163.3164(52), F.S.

<sup>40</sup> Section 163.3177(6)(a)9., F.S.

<sup>41</sup> Section 163.3177(6)(a)9.-10., F.S.

that has been designated as a dense urban land area by the Department of Economic Opportunity (DEO).

The bill also amends the definition of “density,” by moving from a population standard to a dwelling unit standard. The bill redefines “intensity” by removing language related to use and demand on natural resources, facilities, and services and moving to a square foot per unit of land standard. Lastly, this section redefines “urban sprawl” to mean an unplanned and uncontrolled development pattern.

**Section 2** amends s.163.3177, F.S., to require comprehensive plan elements and plan amendments to be based on relevant data, but removes that such data be appropriate, and removes the consideration of community goals and vision as a separate component of a local government’s analysis. The bill removes a provision that allows local government to collect and use original data in their analysis. For purposes of population estimates and projections, the bill directs comprehensive plans to be based on the greater of the estimates and projections published by the Office of Economic and Demographic Research and the local government.

The bill prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element portion of a comprehensive plan.

The bill revises the two required planning periods that must be included in a comprehensive plan to a 10-year period and a 20-year period. Local governments may still adopt additional planning periods for specific components, elements, land use amendments, and projects.

The bill requires a comprehensive plan to encourage the location of schools proximate to urban service areas, to the extent possible, and encourage the location of schools in all areas if necessary to provide adequate school capacity to serve residential development.

The bill removes a list of primary indicators used to determine if a plan or plan amendment encourages or discourages the proliferation of urban sprawl, instead requiring local governments to discourage urban sprawl by planning for future growth.

**Section 3** amends s.163.3191, F.S., to require the chair of the governing body of the county and mayor of the municipality to sign an affidavit attesting that all elements of the comprehensive plan complies with statutory requirements as part of the periodic review process. If a local government fails to submit such evaluation and affidavit to the DEO within 1 year, the local government may not initiate or adopt any publicly initiated plan amendment to its comprehensive plan until the local government complies with the submission requirements. This prohibition does not apply to privately initiated plan amendments. If a local government fails to update its comprehensive plan, the bill provides that the DEO shall provide population projections to the local government that must be utilized in updating the comprehensive plan. A local government may provide alternative population projections based on professionally accepted methodologies, but only if those projections exceed the population projections provided by the DEO.

The bill requires local governments to evaluate and update their comprehensive plans to reflect changes in local conditions, with updates to required elements processed in the same plan

amendment cycle. Optional elements of the comprehensive plan may not be updated until required elements have been updated, unless those updates are required by law.

**Section 4** amends s. 163.3203, F.S., to require that local land development regulations must contain minimum lot sizes within single-family, two-family and fee-simple, single-family townhome zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the area required for other mandatory items,

The bill requires local governments to establish infill development standards for single-family homes, two-family homes and fee-simple townhome dwelling units that allow such development to be administratively approved.

The bill provides that levels of service established in a comprehensive plan solely for planning purposes may not be a basis for the denial of a development order or permit.

The bill removes the ability of local governments to require certain building design elements to single-family or two-family dwellings located in a planned unit development or master planned community. The bill also limits the application of those elements in communities with a design review board or architectural review board to those who had such a board before January 1, 2020

**Sections 5, 6, and 7** provide technical drafting changes and correct cross references in statute.

**Section 8** provides an effective date of July 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The establishment of minimum lot sizes within single-family, two-family and fee-simple, single-family townhome zoning districts to accommodate the maximum density authorized in the comprehensive plan and the establishment of infill development standards may increase the amount of residential development.

The prohibition on the application of building design standards to certain types of residential development may decrease the cost of constructing those developments.

By removing the indicating factors and changing the definition of urban sprawl it may lead to more development of communities that would currently be discouraged.

**C. Government Sector Impact:**

Local governments will need to amend their comprehensive plans to account for the extended planning period provided in the bill. However, such amendments can occur concurrently with the local government's 7-year evaluation and appraisal, as provided in s. 163.3191, F.S.

Local governments may incur costs to establish the residential infill development standards provided in the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 472-476 direct local governments to establish infill development standards for single-family homes, two-family homes and fee-simple townhome dwelling units that allow such development to be administratively approved. However, there is no definition of "infill development," and the bill does not make it clear to a local government what those standards may be.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.3164, 163.3177, 163.3191, 163.3202, 163.3246, 189.08, and 479.01.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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