

**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 Rules

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BILL: CS/SB 1604

INTRODUCER: Committee on Community Affairs and Senator Ingoglia

SUBJECT: Land Use and Development Regulations

DATE: April 18, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Hunter</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1604 revises local comprehensive planning requirements by increasing the two required planning periods to a 10-year and 20-year period, from 5 and 10, and prohibiting local governments that fail to update their comprehensive plans in accordance with the 7-year evaluation and appraisal process from initiating or adopting any publicly-initiated plan amendments. Additionally, the bill prescribes certain procedures for the Department of Economic Opportunity to apply when local governments remain out of compliance with comprehensive planning updates.

The bill also prohibits local governments from requiring specified building design elements for residential dwellings in planned unit developments, master planned communities, and communities with a design review board or architectural review board created on or after January 1, 2020.

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 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>

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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.

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

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.

### ***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>11</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>12</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>13</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>14</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>15</sup>

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.<sup>16</sup> Local governments are encouraged to use innovative land development regulations<sup>17</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>18</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>19</sup> Additionally, land

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

<sup>11</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>12</sup> Section 163.3177(6)(a)1., F.S.

<sup>13</sup> Section 163.3177(6)(a)2., F.S.

<sup>14</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>15</sup> *Id.*

<sup>16</sup> Section 163.3202, F.S.

<sup>17</sup> Section 163.3202(3), F.S.

<sup>18</sup> Sections 125.01055 and 166.04151, F.S.

<sup>19</sup> Sections 163.3174(4)(a) and 163.3184, F.S.

development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>20</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>21</sup>

### ***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>22</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>23</sup>

This prohibition does not apply to:<sup>24</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>25</sup>; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.<sup>26</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s.163.3177, F.S., to revise 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

<sup>20</sup> See Sections 163.3161(6) and 163.3194(1)(a), F.S.

<sup>21</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>22</sup> Section 163.3202(5)(a), F.S.

<sup>23</sup> Section 163.3202(5)(b)

<sup>24</sup> Section 163.3202(5)(a)1.-7., F.S.

<sup>25</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>26</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.)

may still adopt additional planning periods for specific components, elements, land use amendments, and projects.

**Section 2** amends s.163.3191, F.S., to require the chair of the governing body of the county or mayor of the municipality to sign an affidavit attesting that all elements of the comprehensive plan comply 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.

**Section 3** amends s. 163.3202, F.S., to remove 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.

**Section 4** corrects a cross references in statute.

**Section 5** 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 prohibition on the application of building design standards to certain types of residential development may decrease the cost of constructing those developments.

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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on April 5, 2023:**

The CS removes various provisions in the bill that:

- Change definitions of certain terms;
- Direct local governments to use certain data sources for comprehensive plans;
- Delete the list of primary urban sprawl indicators; and
- Require local governments to adopt residential infill development standards and minimum lot sizes for certain properties.

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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