

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 1604

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Ingolia

SUBJECT: Land Use and Development Regulations

DATE: April 20, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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.

Additionally, the bill precludes an independent special district from complying with the terms of a development agreement executed within 3 months preceding a law modifying the manner of selecting members of the governing body of the special district, and requires the new governing body to vote on whether to seek re adoption of such development agreement within 4 months of taking office. These provisions expire on July 1, 2028, unless reviewed and reenacted by the Legislature.

The bill takes effect on July 1, 2023, except for the provisions concerning independent special districts, which take effect upon becoming law.

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.¹ Each county and municipality must maintain a comprehensive plan to guide future development.²

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.³ 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.⁴

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.⁵

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.⁶ 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.⁷ Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.⁸ 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.⁹

¹ Section 163.3167(1), F.S.

² Section 163.3167(2), F.S.

³ Section 163.3194(3), F.S.

⁴ Section 163.3177(6), F.S.

⁵ *Id.*

⁶ 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.

⁷ Section 163.3191(2), F.S.

⁸ Section 163.3191(3), F.S.

⁹ 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.¹⁰ 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.¹¹ 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.¹² 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.¹³

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.¹⁴

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.¹⁵

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.¹⁶ Local governments are encouraged to use innovative land development regulations¹⁷ and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.¹⁸

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.¹⁹ Additionally, land

¹⁰ Section 163.3177(5)(a), F.S.

¹¹ 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.

¹² Section 163.3177(6)(a)1., F.S.

¹³ Section 163.3177(6)(a)2., F.S.

¹⁴ 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).

¹⁵ *Id.*

¹⁶ Section 163.3202, F.S.

¹⁷ Section 163.3202(3), F.S.

¹⁸ Sections 125.01055 and 166.04151, F.S.

¹⁹ 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.²⁰

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.²¹

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.²² 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.²³

This prohibition does not apply to:²⁴

- 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 body²⁵; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.²⁶

²⁰ See Sections 163.3161(6) and 163.3194(1)(a), F.S.

²¹ 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).

²² Section 163.3202(5)(a), F.S.

²³ Section 163.3202(5)(b)

²⁴ Section 163.3202(5)(a)1.-7., F.S.

²⁵ “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.

²⁶ 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 (last visited April 3, 2023.)

Development Agreements

A development agreement is a contract between a local government and a property owner or developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.²⁷

Development agreements are regulated by the Florida Local Government Development Agreement Act in ch. 163 F.S.²⁸ A local government may enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.²⁹ Before entering into, amending, or revoking a development agreement, a local government must conduct at least two public hearings.³⁰ Any development agreement entered into by a local government with a developer must be consistent with the local government's comprehensive plan.³¹

A development agreement must include:³²

- A legal description of the land subject to the agreement, and the names of its legal and equitable owners;
- The duration of the agreement;
- 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, term, or restriction.

A local government's laws and policies governing the development of the land at the time of the execution of the development agreement govern the development of the land for the duration of the development agreement.³³ The duration of a development agreement may not exceed 30 years, unless it is extended by mutual consent of the governing body and the developer.³⁴ A local

²⁷ *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002).

²⁸ Section 163.3221, F.S.

²⁹ Section 163.3223, F.S.

³⁰ Section 163.3225, F.S.

³¹ Section 163.3231, F.S.

³² Section 163.3227, F.S.

³³ Section 163.3233, F.S.

³⁴ Section 163.3229, F.S.

government must review land subject to a development agreement at least once every 12 months to determine if there has been good faith compliance with the terms of the development agreement, and may modify or revoke such agreement if there is failure to comply.³⁵

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.³⁶ If state or federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties' compliance with the terms of a development agreement, such agreement must be modified or revoked as is necessary to comply with the relevant state or federal laws.³⁷

Special Districts

A “special district” is a unit of local government created for a special purpose, as opposed to a general purpose, with jurisdiction to operate within a limited geographic boundary.³⁸ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³⁹ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.

Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county,⁴⁰ and are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.⁴¹ Throughout Florida, special districts provide about 80 specialized purposes.⁴² Some common types of special districts in Florida include community development districts, drainage and water control districts, fire control districts, and neighborhood improvement districts.

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.⁴³ An “independent special district” is any district that is not a dependent special district.⁴⁴

³⁵ Section 163.3235, F.S.

³⁶ Section 163.3237, F.S.

³⁷ Section 163.3241, F.S.

³⁸ Section 189.012(6), F.S.

³⁹ See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

⁴⁰ Florida House of Representatives, Local Government Formation Manual (2020 – 2022) p. 64, available at: <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last visited Apr. 19, 2023).

⁴¹ The method of financing a district must be stated in its charter. See 189.02(4)(g), 189.031(3)(k), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters.

⁴² Florida Department of Economic Opportunity, *Florida Special District Handbook*, p. 18 available at https://floridajobs.org/docs/default-source/2015-community-development/community-assistance/sdap/florida-special-district-handbook.pdf?sfvrsn=518356b0_2 (last visited Apr. 20, 2023).

⁴³ Section 189.012(2), F.S.

⁴⁴ Section 189.012(3), F.S.

As a general rule, dependent special districts are created at the prerogative of the counties and municipalities, and independent special districts are created by the Legislature through a special act or general law of local application.⁴⁵

Special districts are governed generally by the Uniform Special District Accountability Act in ch. 189, F.S., which centralizes the provisions governing special districts and applies to the formation, governance, administration, supervision, merger, and dissolution of special districts, unless otherwise expressly provided in law. The governing bodies of special districts are comprised of either appointed⁴⁶ or locally-elected members, or a combination of appointed and elected members.⁴⁷

According to the Department of Economic Opportunity's Special District Accountability Program, there are 1,319 active independent special districts and 615 active dependent special districts.⁴⁸

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 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.

⁴⁵ However, there are exceptions where the Governor and Cabinet, a municipality or county, or a regional combination of cities and counties may initiate the creation of certain independent special districts. See *Florida Special District Handbook*, p. 32, available at: https://floridajobs.org/docs/default-source/2015-community-development/community-assistance/sdap/florida-special-district-handbook.pdf?sfvrsn=518356b0_2 (last visited Apr. 20, 2023).

⁴⁶ Appointed members are appointed by the Governor or by a local authority, i.e., a county or city.

⁴⁷ Florida Department of Economic Opportunity, *Official List of Special Districts* (see "Governing Body Types"), available at <https://specialdistrictreports.floridajobs.org/OfficialList/CustomList> (last visited Apr. 20, 2023)

⁴⁸ Florida Department of Economic Opportunity, *Official List of Special Districts: Information and Downloads* (see TOTALS: Download Special District Totals – State Totals), available at <https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts> (last visited Apr. 20, 2023).

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 amends s. 189.031, F.S., to preclude independent special districts from complying with the terms of any development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, which is executed within 3 months preceding the effective date of a law modifying the manner of selecting members of the governing body of the special district from election to appointment or appointment to election. The newly elected or appointed governing body of the special district must review within 4 months of taking office any such development agreement, and any other agreement for which the development agreement serves as consideration, and vote on whether to seek readoption of the agreement.

The bill applies to any development agreement that is in effect on, or is executed after, the effective date of this section, which is effective upon becoming law.

This section expires July 1, 2028, unless reviewed and reenacted by the Legislature.

Section 5 corrects a cross references in statute.

Section 6 provides that except as otherwise expressly provided, the bill takes effect on 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:

Both the Federal and Florida Constitutions prohibit legislatures from enacting laws which impair the obligation of existing contracts.⁴⁹ For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights may implicate the contracts clause.⁵⁰ Courts apply a three-factor test in analyzing whether legislation is an impairment of contracts; the three factors are (1) the level of impairment, (2) the public purpose served by the legislation, and (3) whether such impairment is reasonable and appropriate to the public purpose justifying its adoption.⁵¹

Section 4 of the bill provides that certain independent special districts are precluded from complying with the terms of certain development agreements, a type of contract,⁵² under certain circumstances. To the extent this language affects previously recorded contracts, the bill may unconstitutionally impair contracts.

Section 163.3241, F.S., contemplates state or federal laws precluding compliance with an existing development agreement, and instructs parties to modify or revoke the agreement as necessary. Under certain circumstances, legislation can affect public-private contracts; courts have found very narrowly that the Legislature may revoke certain contracts which were, clearly upon entering the contract, subject to future appropriation.⁵³ The specific interaction between s. 163.3241, F.S., and the contracts clause has not been reviewed by any court.

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

⁴⁹ U.S. CONST., art. I, s. 10, FLA. CONST., art. I, s. 10.

⁵⁰ *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1st DCA 1984).

⁵¹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505 (1977)). Public-private contracts are subject to the same scrutiny, *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5 (Fla. 1984).

⁵² A development agreement is a type of contract. *Morgan Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002).

⁵³ *Northwood Assoc., LLC v. Ertel*, 265 So. 3d 665 (Fla. 1st DCA 2019). The court further opined that such contracts subject to future legislation could not be successfully impaired by a law stating outright that the contract would be void.

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 189.031, 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/CS by Rules on April 19, 2023:

The CS inserts section 4 of the bill relating to independent special districts preclusion from complying with development agreements executed by a former board under certain circumstances.

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.