HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 359 Local Government Comprehensive Plans
SPONSOR(S): State Affairs Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	17 Y, 0 N, As CS	Roy	Darden
2) Civil Justice Subcommittee	17 Y, 1 N	Mawn	Jones
3) State Affairs Committee	13 Y, 5 N, As CS	Roy	Williamson

SUMMARY ANALYSIS

The Community Planning Act ("Act") requires each local government to adopt and maintain a comprehensive plan that must comply with statutory requirements and provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area. Any affected person may challenge whether a comprehensive plan or plan amendment complies with the Act by petitioning the Division of Administrative Hearings for a formal hearing on the matter, which hearing must be held in the affected local jurisdiction and conducted under the Administrative Procedure Act ("APA"). However, the APA generally prohibits the award of reasonable attorney fees and costs to a prevailing party in an administrative proceeding involving a disputed issue of material fact, including a challenge to a comprehensive plan or plan amendment, unless the administrative law judge determines that the non-prevailing adverse party participated in the proceeding for an improper purpose.

The Act also prohibits public or private development except in conformity with a comprehensive plan prepared and adopted in conformity with the Act, which plan must govern any local government action on a development order – that is, an order granting, denying, or granting with conditions an application for a development permit, such as a building or zoning permit, a variance, or other government action with the effect of permitting land development. An aggrieved party may generally bring an action for declaratory, injunctive, or other relief against a local government in circuit court to challenge the local government's decision regarding, or to prevent the local government from taking any action on, a development order that materially alters the use or density or intensity of use on a particular property in a manner inconsistent with the comprehensive plan. However, there is currently a split between the First and Second District Courts of Appeal about the extent of a permissible development order challenge.

The bill authorizes the prevailing party in a comprehensive plan or plan amendment challenge to recover attorney fees and costs, including reasonable appellate attorney fees and costs, without having to show that the non-prevailing adverse party participated in the proceeding for an improper purpose. It also resolves the split between the First and Second District Courts of Appeal by clarifying that the scope of the circuit court's review in a development order challenge is limited to inconsistencies between the comprehensive plan and the order's alteration of the use or density or intensity of use on a property. In addition, the bill provides that if a proposed amendment to a comprehensive plan under the expediated state review process is heard but not adopted at the second public hearing then the amendment must be formally adopted within 180 days after the second hearing or it is deemed withdrawn. Finally, the bill provides that land development regulations, except those relating to the use, or intensity or density of use, do not apply to Florida College System institutions.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Comprehensive Plans

The Community Planning Act ("Act"), codified in Part II of Ch. 163, F.S., promotes the establishment and implementation of comprehensive planning programs to guide and manage a local government's development.[1] Through the comprehensive planning process, the Legislature intended that local governments:

- Preserve, promote, protect, and improve public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare;
- Facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and
- Conserve, develop, utilize, and protect natural resources within their jurisdictions.[2]

To that end, the Act requires each local government to adopt and maintain a comprehensive plan that must provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.[3] Specifically, the comprehensive plan must:

- Identify programs and activities for ensuring the comprehensive plan's implementation;
- Establish meaningful and predictable standards for land use and development and meaningful guidelines for the adoption of detailed land development regulations;[4] and
- Consist of elements set out in statute that must be based upon relevant and appropriate data and an analysis by the local government that may involve surveys, studies, community goals and vision, and other data available at the plan's adoption or amendment.[5]

Comprehensive Plan Adoption

Each of Florida's counties and municipalities has a comprehensive plan.[6] However, a newly-incorporated municipality must follow the state coordinated review process to adopt a comprehensive plan, which process begins with an initial public hearing during which the municipality's governing body decides whether to transmit the plan to the reviewing agencies;[7] such decision must be by an affirmative vote of at least a majority of the governing body's members present at the hearing.[8] The municipality must then, within 10 working days of the hearing, transmit the proposed comprehensive plan to:

[1] S. 163.3161(2), F.S.
[2] S. 163.3161(4), F.S.
[3] S. 163.3177(1) and (2), F.S.
[4] "Land development regulations" means ordinances enacted to regulate any land development aspect, including zoning, rezoning, subdivision, building construction, and sign regulation. Within one year after submitting a new or revised comprehensive plan, a local government must adopt or amend and enforce land development regulations that are consistent with the plan. S. 163.3164(26), F.S.
[5] A comprehensive plan may also consist of optional elements. S. 163.3177(1), F.S.
[6] For the purposes of the Act, a county's authority extends to the total unincorporated area under its jurisdiction and to such unincorporated areas not included in a joint agreement with a municipality. A municipality's authority extends to the total area under its jurisdiction and adjacent unincorporated areas included in a joint agreement with the county. S. 163.3171(1) and (2), F.S.; Florida Department of Environmental Protection, *Comprehensive Plan*, https://floridadep.gov/oip/oip/content/comprehensive-plan (last visited March 9, 2023).
[7] "Reviewing agencies" means the state land planning agency; the appropriate regional planning council and water management district; the Florida Departments of Environmental Protection, State, and Transportation; the Florida Department of Education, if the plan amendment relates to public schools; the commanding officer of any affected military installation; the Florida Fish and Wildlife Conservation Commission and Department of Agriculture and Consumer Services, in the case of county plans and plan amendments; and the county in which the municipality is located, in the case of municipal plans or plan amendments. S. 163.3184(1), F.S.
[8] S. 163.3184(2), (4), and (11), F.S.

- The reviewing agencies for comment or, if the reviewing agency is the state land planning agency, for the production of the state land planning agency's statutorily-required report;[9] and
- Any other local government or government agency that filed a written request for a copy of the plan with the municipality.[10]

Within 180 days after receipt of the state land planning agency's report, the municipality must hold a second public hearing to determine whether to adopt the comprehensive plan; such determination must be by an affirmative vote of at least a majority of the governing body's members present at the hearing.[11] An adopted comprehensive plan, along with the supporting data and analyses, must be transmitted within 10 working days of the adoption hearing to the state land planning agency and any other agency or local government that provided timely comments.[12] The state land planning agency then reviews the package for completeness and publishes a notice of intent to find that the plan complies or does not comply with the Act.[13] A comprehensive plan takes effect pursuant to the notice of intent.[14]

Comprehensive Plan Amendment

Comprehensive plan amendments are generally governed by the state expedited review process, which process typically begins with an initial public hearing during which the local government's governing body decides whether to transmit the proposed amendment to the reviewing agencies; such decision must be by an affirmative vote of at least a majority of the governing body's members present at the hearing.[15] Within 10 working days of such hearing, the local government must transmit the plan amendment and appropriate supporting data and analyses to the reviewing agencies for expedited comment[16] and to any other local government or governmental agency that filed a written request for such transmittal with the local government.[17] Interested persons may also provide the local government with written or oral comments, recommendations, or objections to the plan amendment.[18]

Within 180 days after receipt of agency comments, the local government must generally hold a second public hearing to determine whether to adopt the plan amendment.[19] However, where the proposed plan amendment is a small-scale development amendment,[20] the local government must hold only the public adoption hearing; an initial public hearing is not required.[21] In either case, plan amendment adoption must be by an affirmative vote of at least a majority of the governing body's members present at the hearing, and failure to hold a timely adoption hearings causes the amendment to be deemed withdrawn unless the timeframe is extended by agreement with specified notice to the state land planning agency and other parties.[22]

Within 10 working days of the adoption hearing, the local government must transmit the plan amendment to the state land planning agency and any affected person who provided timely comments

[9] If the state land planning agency reviews a proposed comprehensive plan, it must issue a report stating its objections, recommendations, and comments about the plan within 60 days of the plan's transmission to the agency. The state land planning agency is currently the Department of Economic Opportunity. S. 163.3184(4), F.S.; Florida Department of Economic Opportunity, *Community Planning, Development, and Services*, https://floridajobs.org/community-planning-and-development (last visited March 9, 2023).
[10] S. 163.3184(4), F.S.
[11] S. 163.3184(4) and (11), F.S.
[12] S. 163.3184(4), F.S.
[13] *Id.*
[14] *Id.*
[15] The state coordinated review process applies to plan amendments that are in an area of critical state concern; propose a rural land stewardship area; propose a sector plan or an amendment to an adopted sector plan; or update a comprehensive plan based on an evaluation and appraisal. S. 163.3184(4) and (11), F.S.
[16] The expedited review process is set out in s. 163.3184(3), F.S.
[17] S. 163.3184(3), F.S.
[18] *Id.*
[19] *Id.*
[20] A "small-scale development amendment" involves a use of 50 acres or fewer; only proposes a land use change to the future land use map for a site-specific small-scale development activity; and applies to property not located within an area of critical state concern, absent an exception related to affordable housing development. *Id.*
[21] Ss. 163.3184(2) and 163.3187(2), F.S.
[22] S. 163.3184(3), (4), and (11), F.S.

on the amendment.[23] The state land planning agency must review the amendment package for any deficiencies and send notice of such deficiencies to the local government within five working days of receipt of the amendment package.[24] If no deficiencies are found, the amendment takes effect 31 days after the state land planning agency notifies the local government that the amendment package is complete.[25]

Challenges to Comprehensive Plans or Plan Amendments

Any affected person[26] may challenge whether a comprehensive plan or plan amendment, including a small-scale development amendment, complies with the Act by petitioning the Division of Administrative Hearings ("DOAH") for a formal hearing on the matter,[27] which hearing must be held in the affected local jurisdiction and conducted under the Administrative Procedure Act ("APA") codified in ch. 120, F.S..[28] A challenged comprehensive plan or plan amendment does not take effect until entry of a final order determining that the plan or plan amendment complies with the Act, and such a plan or plan amendment must be determined compliant if the local government's determination of compliance is fairly debatable.[29] However, the APA prohibits the award of reasonable attorney fees and costs to a prevailing party in an administrative proceeding involving a disputed issue of material fact, including a challenge to a comprehensive plan or plan amendment, unless the administrative law judge determines that the non-prevailing adverse party participated in the proceeding for an "improper purpose."[30]

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.[31] Local governments are encouraged to use innovative land development regulations[32] and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.[33]

All local government land development regulations must be consistent with the local comprehensive plan.[34] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[35] However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.[36]

Development Orders

The Act prohibits public or private development except in conformity with a comprehensive plan prepared and adopted in conformity with the Act,[·] which comprehensive plan governs the local

[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] "Affected persons" means the affected local government; persons owing property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can show that the plan or plan amendment will produce substantial impacts on the need for publicly funded infrastructure or on areas designated for protection or special treatment within their jurisdictions. However, to qualify as an affected person, such persons or entities must also have submitted oral or written comments, recommendations, or objections to the local government during the time between the initial public hearing and the relevant plan's or plan amendment's adoption. S. 163.3184(1), F.S.
[27] The petition must be filed within 30 days of the plan's or plan amendment's adoption. S. 163.3184(5), F.S.
[28] The state land planning agency may also challenge whether a plan or plan amendment complies with the act by petitioning DOAH for a formal hearing on the matter. Florida law provides additional requirements and limitations for such challenges. Ss. 163.3184(5) and 163.3187(5), F.S.
[29] S. 163.3184(3)-(5), F.S.
[30] S. 120.595(1), F.S.
[31] S. 163.3202, F.S.
[32] S. 163.3202(3), F.S.
[33] Ss. 125.01055 and 166.04151, F.S.
[34] S. 163.3194(1)(b), F.S.
[35] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[36] S. 189.081(1), F.S.

government's actions on a development order.[37] A development order is an order that grants, denies, or grants with conditions an application for a development permit.[38] Under the Act, a development order is consistent with the comprehensive plan if the:

- Land uses and densities or intensities and other aspects of development authorized by the order are compatible with and further the comprehensive plan's objectives, policies, land uses, and densities or intensities; and
- Order meets all other criteria enumerated by the local government.[39]

Actions on Development Orders

Within 30 days of receiving a development permit application, a local government must review the application for completeness and issue a letter indicating that all required information is submitted or specifying any deficiencies.[40] If the application is deficient, the applicant has 30 days to address the deficiencies by submitting additional requested information.[41] Within 120 days after the local government has deemed the application complete, or 180 days after the completeness determination for applications requiring final action through a quasi-judicial or public hearing, the local government must approve, approve with conditions, or deny the application and include in the approval or denial written findings supporting its decision.[42] Where the local government denies an application, the local government must give written notice of the denial to the applicant, which notice must include a citation to the applicable portions of the ordinance, rule, statute, or other legal authority forming the basis for the denial.[43]

In addition to the procedures described above, a local government may adopt by ordinance the following procedures applicable to actions on development orders:

- Notice of a development permit application that, if approved, would materially alter the use or density or intensity of use on a particular property, which notice:
  - Is published or mailed in a specified manner and posted prominently on the job site;
  - Clearly delineates that an aggrieved person has the right to request a quasi-judicial hearing before an impartial special master;[44]
  - Explains the conditions precedent to the appeal of any development order ultimately rendered upon the application; and
  - Specifies the location where written procedures can be obtained that describe the approval process, the applicable timeframes, and the hearing's location.[45]
- A written preliminary decision, with the time to request a quasi-judicial hearing running from the issuance of such decision.[46]
- An opportunity for:
  - Witnesses and exhibit disclosure and depositions before the quasi-judicial hearing; and
  - All aggrieved parties to present evidence and argument on all issues involved, conduct cross-examination, and submit rebuttal evidence at the quasi-judicial hearing, with or without legal representation.[47]
- A duly-noticed public hearing before the local government at which public testimony is allowed.[48]

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[37] S. 163.3161(6), F.S.
[38] A development permit includes any building permit, zoning permit, subdivision approval, rezoning approval, certification, special exception, variance, or any other official local government act having the effect of permitting land development. S. 163.3164(15) and (16), F.S.
[39] S. 163.3194(3), F.S.
[40] Ss. 125.022(1) and 166.033(1), F.S.
[41] Additional timelines and procedures apply if the local government makes a second or third request for additional information. Ss. 125.022(1) and (2), and 166.033(1) and (2), F.S.
[42] Ss. 125.022(1) and 166.033(1), F.S.
[43] Ss. 125.022(1) and 166.033(3), F.S.
[44] The special master must be an attorney with at least five years' experience. S. 163.3215(4), F.S.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*

- A final decision in writing, which decision includes findings of fact and conclusions of law.[49]

Development Order Challenges

An aggrieved party[50] may generally bring an action for declaratory, injunctive, or other relief in circuit court against a local government to challenge the local government's decision to grant or deny an application for, or to prevent such local government from taking any action on, a development order that materially alters the use or density or intensity of use on a particular property in a manner inconsistent with the comprehensive plan.[51] Such an action must be filed in the county where the development order was issued within the later of 30 days after the development order's rendition or when all local administrative appeals, if any, are exhausted.[52] However, where the local government adopted by ordinance the additional procedures for actions on development orders discussed above, the sole method by which an aggrieved party may challenge the local government's decision is by a petition for writ of certiorari[53] filed in circuit court, to which an action for an injunction may be joined.[54] In any event, the prevailing party in such a challenge may recover reasonable attorney fees and costs incurred in challenging or defending the order, including reasonable appellate attorney fees and costs.[55]

However, there is currently a split between the First and Second District Courts of Appeal about the extent of a permissible development order challenge, which may only be brought if the order materially alters the use or density or intensity of use on a particular property.

- The Second District Court of Appeal has held that the circuits court's review in such a challenge is limited in scope to inconsistencies between the comprehensive plan and the use and density or intensity of use alterations.[56]
- The First District Court of Appeal has held that the circuit court may, once the challenge "makes it through the courthouse doors," review other elements of the order for consistency with the comprehensive plan.[57]

Effect of Proposed Changes

Comprehensive Plans

The bill authorizes the prevailing party in a comprehensive plan or plan amendment challenge, including a small-scale plan amendment challenge, to recover attorney fees and costs, including reasonable appellate attorney fees and costs, without having to show that the non-prevailing adverse party participated in the proceeding for an "improper purpose." This conforms the attorney fee provision applicable to such challenges to the attorney fee provision applicable to development order challenges.

The bill provides that if a proposed amendment to a comprehensive plan under the expedited state review process is heard, but not adopted at the second public hearing, the amendment must be formally adopted by the local government within 180 days after holding the second public hearing or it

[49] The special master must issue a written report at the hearing's conclusion, which report must recommend findings of fact and conclusions of law; the local government is bound by the special master's findings of fact unless they are unsupported by competent substantial evidence and may modify the conclusions of law only if it finds that the special master's application or interpretation of the law is erroneous. *Id.*

[50] An "aggrieved party" means any person or local government that will suffer an adverse effect to an interest protected or furthered by the comprehensive plan, such as an interest relating to health and safety, densities or intensities of development, and environmental or natural resources. Such interest may be shared in common with other community members but must exceed in degree the general interest in community good shared by all persons. S. 163.3215(2), F.S.

[51] S. 163.3215(3), F.S.

[52] S. 163.3215(3) and (5), F.S.

[53] A "writ of certiorari" is a petition asking a higher court to review the decision of a lower court or quasi-judicial body. Legal Information Institute, *Certiorari*, https://www.law.cornell.edu/wex/certiorari#:~:text=Certiorari%20simply%20defined%20is%20a,decision%20to%20a%20higher%20court (last visited March 9, 2023).

[54] S. 163.3215(4), F.S.

[55] S. 163.3215(8), F.S.

[56] *Heine v. Lee County*, 221 So. 3d 1254 (Fla. 2d DCA 2017).

[57] *Imhof v. Walton County*, 328 So. 3d 32 (Fla. 1st DCA 2021).

is deemed withdrawn. This provision is remedial in nature, intended to clarify existing law, and applies retroactively to January 1, 2022.

Development Orders

The bill resolves the split between the First and Second District Courts of Appeal by specifying that the scope of the circuit court's review in a development order challenge is limited to inconsistencies between the comprehensive plan and the order's alteration of the use or density or intensity of use on a property. In other words, the bill clarifies that the circuit court may not review other elements of the order for consistency with the plan.

Land Development Regulations

The bill provides that land development regulations relating to any characteristic of development other than use, or intensity or density of use, may not be applied to Florida College System institutions.[58]

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3184, F.S., relating to the process for adoption of comprehensive plan or plan amendments.
Section 2: Provides that certain provisions in section 1 of this act apply retroactively to January 1, 2022.
Section 3: Amends s. 163.3187, F.S., relating to process for adoption of small scale comprehensive plan amendments.
Section 4: Amends s. 163.3202, F.S., relating to land development regulations.
Section 5: Amends s. 163.3215, F.S., relating to standing to enforce local comprehensive plans through development orders.
Section 6: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[58] The term "Florida College System institution" includes all of the following public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution (except as otherwise specifically provided): Eastern Florida State College, which serves Brevard County; Broward College, which serves Broward County; College of Central Florida, which serves Citrus, Levy, and Marion Counties; Chipola College, which serves Calhoun, Holmes, Jackson, Liberty, and Washington Counties; Daytona State College, which serves Flagler and Volusia Counties; Florida SouthWestern State College, which serves Charlotte, Collier, Glades, Hendry, and Lee Counties; Florida State College at Jacksonville, which serves Duval and Nassau Counties; The College of the Florida Keys, which serves Monroe County; Gulf Coast State College, which serves Bay, Franklin, and Gulf Counties; Hillsborough Community College, which serves Hillsborough County; Indian River State College, which serves Indian River, Martin, Okeechobee, and St. Lucie Counties; Florida Gateway College, which serves Baker, Columbia, Dixie, Gilchrist, and Union Counties; Lake-Sumter State College, which serves Lake and Sumter Counties; State College of Florida, Manatee-Sarasota, which serves Manatee and Sarasota Counties; Miami Dade College, which serves Miami-Dade County; North Florida College, which serves Hamilton, Jefferson, Lafayette, Madison, Suwannee, and Taylor Counties; Northwest Florida State College, which serves Okaloosa and Walton Counties; Palm Beach State College, which serves Palm Beach County; Pasco-Hernando State College, which serves Hernando and Pasco Counties; Pensacola State College, which serves Escambia and Santa Rosa Counties; Polk State College, which serves Polk County; St. Johns River State College, which serves Clay, Putnam, and St. Johns Counties; St. Petersburg College, which serves Pinellas County; Santa Fe College, which serves Alachua and Bradford Counties; Seminole State College of Florida, which serves Seminole County; South Florida State College, which serves DeSoto, Hardee, and Highlands Counties; Tallahassee Community College, which serves Gadsden, Leon, and Wakulla Counties; and Valencia College, which serves Orange and Osceola Counties. S. 1000.21(3), F.S.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an economic impact on the private sector by allowing a prevailing private party in a comprehensive plan or plan amendment to recover his or her reasonable attorney fees and costs without having to show that the local government participated in the hearing for an improper purpose.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on local governments to the extent a local government is awarded or must pay attorney fees and costs in a comprehensive plan or plan amendment challenge. The bill may also reduce a local government's litigation costs in a development order challenge by limiting the scope of the court's review in such a challenge.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Special Laws

The Legislature may enact general acts applicable to all counties and municipalities within the state. The Florida Constitution provides that no special law may be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law.[59] Such notice is not necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

The Florida Constitution defines a "special law" as a special or local law.[60] As explained by case law, a special law is one relating to, or designed to operate upon particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within a classified territory when classification is not permissible or the classification is illegal.[61]

Even though the Supreme Court of Florida has recognized that the Legislature has wide discretion in establishing statutory classification schemes,[62] "[a] statute is invalid if 'the descriptive technique is

[59] Art. III, s. 10, Fla. Const.
[60] Art. X, s. 12(g). Fla. Const.
[61] *Lawnwood Medical Ctr. Inc. v. Seeger, M.D.*, 959 So. 2d 1222 (Fla. 1st DCA 2007), *aff'd by* 990 So. 2d 503 (Fla. 2008).
[62] *Dep't of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989); *Shelton v. Reeder*, 121 So. 2d 145 (Fla. 1960).

employed merely for identification rather than classification.'"[63] In determining whether the class of persons regulated by a statute is open so as to make the statute a general law as opposed to a special law that requires enactment in accordance with state constitutional provisions, the question "is not whether it is imaginable or theoretically possible that the law might be applied to others, but whether it is reasonable to expect that it will."[64] A general law may contain a classification if that scheme is reasonable and bears a reasonable relation to the purpose of the legislation.[65]

Retroactivity

In determining whether a law may be applied retroactively, a court first determines whether the law is procedural, remedial, or substantive in nature.[66] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[67] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[68] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[69]

The bill provides that if a proposed amendment to a comprehensive plan under the expedited state review process is heard, but not adopted at the second public hearing, then the amendment must be formally adopted by the local government within 180 days after holding the second public hearing or it is deemed withdrawn. The bill states that this provision is remedial in nature, intended to clarify existing law, and applies retroactively to January 1, 2022.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 22, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed a section authorizing administrative approval for updates to the five-year capital improvement schedule under specified circumstances.

On March 23, 2023, the State Affairs Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provided that:

- If a proposed amendment to a comprehensive plan under the expeditated state review process is heard but not adopted at the second public hearing, then the amendment must be formally adopted by the local government within 180 days after holding the second public hearing or it is deemed withdrawn.

[63] *City of Miami v. McGrath*, 824 So. 2d 143, 150 (Fla. 2002), citing *West Flagler Kennel Club, Inc. v. Florida State Racing Commission,* 153 So. 2d 5 (Fla.1963).
[64] *Dep't of Bus & Prof'l Regulation v. Gulfstream Park Racing Ass'n*, 912 So. 2d 616, 621 (Fla. 1st DCA 2005), *aff'd sub nom. Florida Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n,*, 967 So. 2d 802 (Fla. 2007).
[65] *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515, 520 (Fla. 3rd DCA 1984), *aff'd* 464 So. 2d 535 (Fla. 1985) (finding that where the purpose of a law applicable only to those counties listed in s. 125.011(1), F.S., was related to the general tourism industry, the classification was sufficient for the court to find the law was not an improper special law); *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259, 260-263 (Fla. 3rd DCA 1992) (finding a law based on the classification in s. 125.011(1), F.S., was a special law because other provisions made clear the law could only apply to Miami-Dade County).
[66] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[67] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[68] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[69] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

The amendment provided that this is a remedial change, intended to clarify existing law, and applies retroactively to January 1, 2022.

- Land development regulations relating to any characteristic of development other than use, or intensity or density of use, may not be applied to Florida College System institutions.

This analysis is drafted to the committee substitute as adopted by the State Affairs Committee.