

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 Judiciary

BILL: CS/SB 540

INTRODUCER: Judiciary Committee and Senator DiCeglie

SUBJECT: Local Government Comprehensive Plans

DATE: March 30, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 540 revises the statute providing for an expedited state review process for adoption of comprehensive plan amendments by:

- Providing that if a comprehensive plan amendment is not adopted at the second public hearing, the amendment must be formally adopted by the local government within 180 days after the second public hearing, or the amendment is deemed withdrawn.
- Eliminating the exception to the 180-day limitation for amendments processed pursuant to the Development of Regional Impact statute.
- Providing that these revisions are remedial in nature, are intended to clarify existing law, and apply retroactively to January 1, 2022.

The bill provides that in challenges to the comprehensive plan and plan amendments, including small scale plan amendments, the prevailing party is entitled to recover attorney fees and costs, including reasonable appellate attorney fees and costs.

The bill revises the statute regulating land development regulations, to provide that land development regulations relating to any characteristic of development other than use, or intensity or density of use, do not apply to Florida College System institutions.

Lastly, the bill clarifies the scope of review for a local government decision to grant or deny a development order by providing that the order may only be challenged if it would materially

alter the use, density, or intensity of the property in a manner not consistent with the comprehensive plan.

The bill takes effect on 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.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 consider and address 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. Other plans and programs may be added as optional elements to a comprehensive plan.⁵

A comprehensive plan is implemented through the adoption of land development regulations⁶ that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.⁷ Such regulations must, among other prescriptions, regulate the subdivision of land and the use of land for the land use categories in the land use element of the comprehensive plan.⁸

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(3) and (6), F.S.

⁵ *Id.*

⁶ "Land development regulations" means 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, except that this definition does not apply in s. 163.3213, F.S. (governing the administrative review of land development regulations). *See* s. 163.3164(26), F.S.

⁷ Section 163.3202(2), F.S.

⁸ *Id.*

Any affected person may challenge whether a plan or plan amendment complies with the Act by petitioning the Division of Administrative Hearings (DOAH) for a formal hearing.⁹ An administrative law judge must hold a hearing in the affected local jurisdiction on whether the plan or plan amendment is in compliance.¹⁰

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 50 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan.¹¹ Any affected person may challenge a small scale plan amendment by petitioning DOAH for a hearing. An administrative law judge must hold a hearing in the affected jurisdiction.¹² Attorney fees and costs are awarded in administrative proceedings before DOAH only if the non-prevailing adverse party participated in the proceedings for an improper purpose.¹³

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.¹⁴

Development Permits and Orders

The Community Planning Act defines “development” as “the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.”¹⁵ When a party wishes to engage in development activity, the party must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes “any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.”¹⁶ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.¹⁷ A development order vests certain rights related to the land.¹⁸

An aggrieved or adversely affected party¹⁹ may bring an action for declaratory, injunctive, or other relief against a local government to challenge a decision granting or denying an application

⁹ Section 163.3184(5)(a), F.S.

¹⁰ Section 163.3184(5)(c), F.S.

¹¹ Section 163.3187(1), F.S. If the amendment involves a site within an area of rural opportunity, the proposed small scale amendment may involve up to 100 acres. Section 163.3187(3), F.S.

¹² Section 163.3187(5)(a), F.S.

¹³ Section 120.595(1)(b), F.S. “Improper purpose” is defined as participating “in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.” Section 120.595(1)(e)1., F.S.

¹⁴ Sections 163.3174(4)(a) and 163.3184, F.S.

¹⁵ Section 163.3164(14), F.S. (incorporating by reference the definition in s. 380.04(1), F.S.).

¹⁶ Section 163.3164 (16), F.S.

¹⁷ Section 163.3164 (15), F.S.

¹⁸ Section 163.3167(3), F.S.

¹⁹ An “aggrieved or adversely affected party” means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety,

for, or to prevent such local government from taking any action on, a development order, which materially alters the use or density or intensity of use on a particular piece of property in a manner not consistent with the comprehensive plan.²⁰ There is currently a split among Florida district courts of appeal concerning the application of this provision to “other aspects of development.”²¹

The Florida College System

The Florida College System includes the following 28 public postsecondary educational institutions and their branch campuses, centers, and other affiliates:

- 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.

police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order. Section 163.3215(2), F.S.

²⁰ Section 163.3215(3), F.S.

²¹ Compare *Heine v. Lee County*, 221 So. 3d 1254 (Fla. 2d DCA 2017) (scope of claims limited to use, density, and intensity challenges only) with *Imhof v. Walton County*, 328 So. 3d 32 (Fla. 1st DCA 2021) (scope of claims includes other aspects of development that render the development order inconsistent with comprehensive plan).

- 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.
- Valencia College, which serves Orange and Osceola Counties.²²

The mission of the Florida College System is to “provide access to high-quality, affordable academic and career educational programs that maximize student learning and success, develop a globally competitive workforce and respond rapidly to diverse state and community needs.”²³ It is the primary access point to higher education for Floridians, including recent high school graduates and returning adult students.²⁴

III. Effect of Proposed Changes:

CS/SB 540 revises the statute providing for an expedited state review process for adoption of comprehensive plan amendments by:

- Providing that if a comprehensive plan amendment is not adopted at the second public hearing, the amendment must be formally adopted by the local government within 180 days after the second public hearing, or the amendment is deemed withdrawn.
- Eliminating the exception to the 180-day limitation for amendments processed pursuant to the Development of Regional Impact statute.
- Providing that these revisions are remedial in nature, are intended to clarify existing law, and apply retroactively to January 1, 2022.

In proceedings before the Division of Administrative Hearings challenging a comprehensive plan or plan amendments, including small scale plan amendments, the bill allows the prevailing party to recover attorney fees and costs, including reasonable appellate attorney fees and costs.

The bill revises the statute regulating land development regulations, to provide that land development regulations relating to any characteristic of development other than use, or intensity or density of use, do not apply to Florida College System institutions.

The bill seeks to resolve a split among Florida district courts of appeal by clarifying that the scope of review for a challenge to a local government decision to grant or deny a development order is limited to whether the development order would materially alter the use, density, or intensity of a property in a manner not consistent with the comprehensive plan.

The bill takes effect on July 1, 2023.

²² Section 1000.21(3), F.S.

²³ Florida Department of Education, *Higher Education: Florida College System*, <https://www.fldoe.org/schools/higher-ed/fl-college-system/> (last visited Mar. 29, 2023).

²⁴ *Id.*

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:

Section 2 of the bill provides that its revisions to the expedited state review process for adoption of comprehensive plan amendments are remedial in nature, are intended to clarify existing law, and apply retroactively to January 1, 2022. There is no express constitutional prohibition against the retroactive application of a noncriminal statute. Because (to the extent of retroactive application) the bill only revises procedural requirements in connection with the 180-day limitation for plan amendments, does not impair contractual obligations or create new or take away vested rights, and appears to qualify as remedial legislation, the general rule against the retrospective operation of laws does not apply.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive fiscal impact on private parties to the extent they may recover attorney fees and costs as prevailing parties in certain challenges to comprehensive plans and plan amendments. The bill may also have a negative fiscal impact on such private parties to the extent they are found responsible and must pay such fees and costs.

²⁵ See *City of Lakeland v. Catinella*, 129 So. 2d 133, 136-37 (Fla. 1961) (providing that “Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes”) (internal citation omitted); see also *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (providing that “[i]f a statute is found to be remedial in nature, it can and should be retroactively applied in order to serve its intended purposes”).

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on county and municipal governments to the extent those governments are engaged in litigation concerning their comprehensive plan and whether those governments are the prevailing party in those actions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184, 163.3187, 163.3202, 163.3215.

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 Judiciary on March 29, 2023:

The committee substitute:

- Eliminates the provision giving local governments the authority to update the 5-year capital improvement schedule via administrative modification if all of the projects have been adopted by the projects' appropriate board.
- Revises the statute providing for an expedited review process for adoption of comprehensive plan amendments by:
 - Providing that if a comprehensive plan amendment is not adopted at the second public hearing, the amendment must be formally adopted by the local government within 180 days after the second public hearing, or the amendment is deemed withdrawn.
 - Eliminating the exception to the 180-day limitation for amendments processed pursuant to the Development of Regional Impact statute.
 - Providing that these revisions are remedial in nature, are intended to clarify existing law, and apply retroactively to January 1, 2022.
- Revises the statute regulating land development regulations, to provide that land development regulations relating to any characteristic of development other than use, or intensity or density of use, do not apply to Florida College System institutions.

B. Amendments:

None.