

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: SB 540

INTRODUCER: Senator DiCeglie

SUBJECT: Local Government Comprehensive Plans

DATE: March 28, 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>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 540 revises the process for modifying the five-year capital improvement schedule of a local government's comprehensive plan, allowing the schedule to be updated administratively if all the projects have been adopted by the appropriate project board.

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.

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

¹ Section 163.3167(1), F.S.

² Section 163.3167(2), F.S.

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

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

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.*

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.

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

Capital Improvements Element

The comprehensive plan must contain a capital improvements element designed to consider the need for, and the location of, public facilities in order to encourage the efficient use of such facilities.¹⁵ The capital improvements element must include:

- A component outlining principles for construction, extension or increase in capacity, as well as a component outlining principles for correcting existing facility deficiencies, both of which must cover a five-year period;
- Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities;
- Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service; and
- A schedule of capital improvements including certain transportation improvements from the applicable metropolitan improvement organization transportation improvement program.

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.”¹⁶ 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.”¹⁷ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.¹⁸ A development order vests certain rights related to the land.¹⁹

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 163.3177(3)(a), F.S.

¹⁶ Section 163.3164(14), F.S. (incorporating by reference the definition in s. 380.04(1), F.S.).

¹⁷ Section 163.3164 (16), F.S.

¹⁸ Section 163.3164 (15), F.S.

¹⁹ Section 163.3167(3), F.S.

An aggrieved or adversely affected party²⁰ may bring an action for declaratory, injunctive, or other relief against a local government to challenge a decision granting or denying an application 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.²¹ There is currently a split among Florida district courts of appeal concerning the application of this provision to “other aspects of development.”²²

III. Effect of Proposed Changes:

The bill amends the process for modifying the five-year capital improvement schedule. The schedule may be updated either by ordinance or administratively if all the projects have been adopted by the project’s appropriate board.

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 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁰ 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, 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.

²¹ Section 163.3215(3), F.S.

²² 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).

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 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.

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: 163.3177, 163.3184, 163.3187, 163.3215.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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