

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 Community Affairs

BILL: SB 208

INTRODUCER: Senator McClain

SUBJECT: Land Use and Development Regulations

DATE: January 9, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Fleming</u>	<u>CA</u>	Favorable
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 208 makes the local government review and approval process for certain kinds of residential development and redevelopment projects more efficient and less costly by amending various provisions of law relating to compatibility, infill residential development, and building design element regulations.

With respect to compatibility, the bill:

- Revises the Community Planning Act’s existing definition of “compatibility” to clarify under what circumstances land uses or conditions may be deemed compatible.
- Amends the statute governing minimum requirements for land development regulations to limit local government reliance on compatibility as a basis for denying, conditioning, or delaying the approval of a residential development.

With respect to infill residential development, the bill:

- Creates a new definition of “infill residential development” for purposes of the Act.
- Requires administrative approval of an application for infill residential development if the proposed development is consistent with current development standards and if its density is the same as the average density of contiguous properties.
- Regulates fees and charges in connection with the review, processing, and inspection of an infill residential development application.

With respect to building design elements, the bill:

- Narrows the exception allowing local governments to apply regulations related to building design elements to certain single-family or two-family dwellings.
- Creates a new definition of “architectural review board” for purposes of the exception.

The bill takes effect July 1, 2026.

II. Present Situation:

Comprehensive Plans

The Community Planning Act directs counties and municipalities to plan for future development by adopting comprehensive plans.¹ Each local government 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 gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

Comprehensive plans lay out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. They are made up of 10 required elements, each laying out regulations for different facets of development.⁴

The 10 required elements consider and address capital improvements; future land uses; 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

Future Land Use Element and Compatibility

Comprehensive plans must include an element regarding future land use that designates the 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.⁶ 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.⁷ 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.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 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. Section 163.3177(6)(a)10., F.S.

⁷ Section 163.3177(6)(a)1., F.S.

⁸ Section 163.3177(6)(a)2., F.S.

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.⁹

The future land use element must consider what uses are compatible with one another to guide rezoning requests, development orders, and plan amendments.¹⁰ Compatibility means "a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition."¹¹ In other words, the compatibility requirement permits local governments to consider whether a proposed use can peacefully coexist with existing uses.

Local governments, through the future land use plan, are responsible for ensuring compatibility of uses on adjacent lands, and particularly those lands in proximity to military installations and airports.¹² To act on this requirement, land use regulations are required to contain specific and detailed provisions necessary to ensure the compatibility of adjacent land uses.¹³ In practice, these regulations take the form of zoning codes with compatibility standards for height, density, setbacks, parking, and other general regulations on what types of developments can coexist.¹⁴

Comprehensive Plan Amendments

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.¹⁵

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.¹⁶ An administrative law judge must hold a hearing in the affected local jurisdiction on whether the plan or plan amendment is in compliance.¹⁷ In challenges filed by an affected person, the comprehensive plan or plan amendment must be determined to be in compliance if the local government's determination of compliance is fairly debatable. If the administrative law judge recommends that the amendment be found in compliance, the judge must submit the recommended order to the state land planning agency for a final order in its favor.¹⁸

A comprehensive plan amendment may be classified as a small scale amendment if the amendment involves 50 acres or fewer of land, does not require substantive changes to the text

⁹ 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)).

¹⁰ Section 163.3194(3), F.S.

¹¹ Section 163.3164(9), F.S.

¹² Section 163.3177(6)(a)2., F.S.

¹³ Section 163.3202(2)(b), F.S.

¹⁴ See, e.g., s. 5.10 (Residential Compatibility Standards), Land Development Code of Maitland, Florida.

¹⁵ Sections 163.3174(4)(a) and 163.3184, F.S.

¹⁶ Section 163.3184(5)(a), F.S.

¹⁷ Section 163.3184(5)(c), F.S.

¹⁸ Section 163.3184(5)(e), F.S.

of the plan, and does not impact land located in an area of critical state concern.¹⁹ 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.²⁰ Attorney fees and costs may be awarded in administrative proceedings before DOAH only if the non-prevailing adverse party participated in the proceedings for an improper purpose.²¹

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 include any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.²²

Each county and municipality must adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.²³ Local governments are encouraged to use innovative land development regulations²⁴ and may adopt measures for the purpose of increasing affordable housing using land use mechanisms.²⁵ Land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.²⁶

Building Design Elements

Some land development regulations touch upon building design elements, such as external paint color, architectural styling, building material, and the location of windows and doors.²⁷ In 2021,²⁸ the Legislature preempted local governments from applying land development regulations relating to building design elements to single-family or two-family dwellings except in certain situations, including:

- Dwellings listed in the National Register of Historic Places, located in a National Register Historic District, or designated as a historic property or located in a historic district under the terms of a local preservation ordinance.
- Regulations adopted in order to implement the National Flood Insurance Program.
- Dwellings within a community redevelopment area.
- Dwellings located in a planned unit development or master planned community created pursuant to a local ordinance, resolution, or other final action approved by the local governing body before July 1, 2023.

¹⁹ 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.

²⁰ Section 163.3187(5)(a), F.S.

²¹ Section 120.595(1)(b), F.S. “Improper purpose” means “participation 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.

²² Section 163.3164(26), F.S.

²³ Section 163.3202(1), F.S.

²⁴ Section 163.3202(3), F.S.

²⁵ Sections 125.01055 and 166.04151, F.S.

²⁶ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

²⁷ Section 163.3202(5)(b)1., F.S.

²⁸ Chapter 2021-201, s. 1, Laws of Fla. (codifying s. 163.3202(5), F.S.).

- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board created before January 1, 2020.²⁹

III. Effect of Proposed Changes:

The bill makes the local government review and approval process for certain kinds of residential development and redevelopment projects more efficient and less costly by amending various provisions of law relating to compatibility, infill residential development, and building design element regulations.

Compatibility

The bill revises the existing definition of “compatibility” found in the Community Planning Act.³⁰ As revised, “compatibility” means a condition in which land uses or conditions within the same land use category can reasonably coexist in relative proximity to each other in a stable and enduring manner without creating undue adverse impacts on each other.

Under the bill, compatibility requires a reasonable ability to fit within the existing community fabric but does not require uniformity or identical development. Additionally, residential land uses falling within the same residential land use category in the local government’s comprehensive plan will be deemed compatible.

The bill also amends the statute governing minimum requirements for land development regulations³¹ to provide that they may not require the denial of, or condition or delay the approval of, residential development on the basis of a lack of compatibility if the proposed residential use is located adjacent to, or across a public right-of-way from, any existing residential development within the same land use category.

Infill Residential Development

The bill creates a definition for “infill residential development” for purposes of the Community Planning Act. Under the bill, “infill residential development” means the development of one or more parcels that are:

- No more than 100 acres in size.
- Within a residential future land use category.
- Within a residential zoning district.
- Contiguous with residential development on at least 50 percent of the parcels’ boundaries.

For the purposes of this definition, “contiguous” means touching, bordering, or adjoining along a boundary and includes properties that would be contiguous if not separated by a roadway, railroad, canal, or other public easement.

The bill also provides that notwithstanding any ordinance to the contrary, an application for an infill residential development must be administratively approved without requiring a

²⁹ Section 163.3202(5)(a), F.S.

³⁰ See s. 163.3164(9), F.S.

³¹ Section 163.3202, F.S.

comprehensive plan amendment, rezoning, variance, or any other public hearing by any board or reviewing body if the proposed infill residential development is consistent with current development standards and its density is the same as the average density of contiguous properties. An infill residential development authorized under the bill must be treated as a conforming use notwithstanding the local government's comprehensive plan, future land use designation, or zoning.

The bill also regulates fees and charges in connection with the review, processing, and inspection of an infill residential development application. Land development regulations may not condition the approval of an application for infill residential development, or any other residential development authorized under the Community Planning Act, on the payment of any fee, charge, or exaction based on a percentage of construction costs, site costs, or project valuation.

Any fee or charge imposed by a local government in connection with the review, processing, or inspection of a residential development application must:

- Be limited to the actual cost of the service provided.
- Be clearly itemized and published on the local government's fee schedule.
- Not exceed the statutory limits for building and inspection fees.³²

The bill also prohibits local governments from withholding or delaying the approval of a residential development application because of nonpayment, or conditioning on payment, of a fee or charge imposed in violation with the bill.

Building Design Elements

The bill revises two of the exceptions listed in s. 163.3202(5)(a), F.S., which is the land development regulations statute that otherwise prohibits local governments from applying regulations relating to building design elements to single-family or two-family dwellings.

Specifically, local governments may apply regulations relating to building design elements to single-family or two-family dwellings if:

- In addition to the dwellings being located within planned unit developments or master planned communities approved before July 1, 2023, the regulations were expressly adopted as part of the approval documents for the planned unit development or master planned community.
- In addition to the dwellings being located within the jurisdiction of a local government that has a design review board or an architectural review board created before January 1, 2020, the design review board or architectural review board was created by ordinance and has continuously existed since that date. A local government may not create, recreate, or expand the jurisdiction of such a board after January 1, 2020, for the purpose of regulating single-family or two-family dwellings.

The bill also creates a definition for "architectural review board." As used in these provisions, "architectural review board" means a body established and maintained by a private homeowners'

³² See s. 553.80, F.S.

association, property owners' association,³³ or condominium association³⁴ which is authorized by recorded covenants or governing documents to review and approve building design elements on private property. The term does not include any board, committee, or panel created or controlled by a local government.

Cross-Reference

The bill amends s. 212.055, F.S., to conform a cross-reference to changes made by the bill.

Effective Date

The bill takes effect July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits local governments from conditioning the approval of certain infill residential development applications, or any other residential development authorized under the Community Planning Act, on the payment of any fee, charge, or exaction based on a percentage of construction costs, site costs, or project valuation. Instead, local

³³ See ch. 720, F.S.

³⁴ See ch. 718, F.S.

governments may only impose fees or charges that reflect the actual cost of the service provided and do not exceed the statutory limits for building and inspection fees.

Based upon this change, it appears likely that the bill will result in a positive fiscal impact to private sector applicants because they will generally pay less in fees and charges to local governments, although the extent of this impact is unclear.

C. Government Sector Impact:

The bill prohibits local governments from conditioning the approval of certain infill residential development applications, or any other residential development authorized under the Community Planning Act, on the payment of any fee, charge, or exaction based on a percentage of construction costs, site costs, or project valuation. Instead, local governments may only impose fees or charges that reflect the actual cost of the service provided and do not exceed the statutory limits for building and inspection fees.

Based upon this change, it appears likely that the bill will result in a negative fiscal impact to local governments because they will generally collect less in fees and charges from private sector applicants, although the extent of this impact is unclear. The bill will reduce revenues to local governments to the extent that they charge more than their actual costs for services.

VI. Technical Deficiencies:

Section 163.3202(5)(a), F.S., prohibits local governments from applying land development regulations related to building design elements to single-family or two-family dwellings unless one of seven listed exceptions applies.

One of the seven listed exceptions, s. 163.3202(5)(a)7., F.S., allows local governments to apply land development regulations related to building design elements to single-family or two-family dwellings if “[t]he dwelling is located within the jurisdiction of a local government that has a design review board or an architectural review board created before January 1, 2020.”

In lines 102-108, the bill amends this exception to require the design review board or architectural review board to have been created “by ordinance,” which is an act that may only be performed by a local government, and also amends the exception to expressly prohibit local governments from “creat[ing], recreat[ing], or expand[ing] the jurisdiction of such a board after January 1, 2020, for the purpose of regulating single-family or two-family dwellings.”

However, in lines 110-117, the bill defines the term “architectural review board” to include only a body established and maintained by a private homeowners’ association, property owners’ association, or condominium association. The term expressly does not include “any board, committee, or panel created or controlled by a local government.”

Comparing these provisions of the bill, it appears that the new definition of “architectural review board” in lines 110-117 could be construed as conflicting with, or at least creating confusion regarding, the scope of the exception in s. 163.3202(5)(a)7., F.S. One way to resolve this issue

would be to delete the definition of “architectural review board” in lines 110-117 and revise the language in lines 102-108 to further restrict or qualify the scope of the exception.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3164, 163.3202, and 212.055 .

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.