

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 940

INTRODUCER: Senator Perry

SUBJECT: Growth Management

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Favorable
2.	_____	_____	EP	_____
3.	_____	_____	RC	_____

I. Summary:

SB 940 requires local governments to address the protection of private property rights in their comprehensive plans by setting forth principles, guidelines, standards, and strategies to achieve certain objectives. The bill also specifies that the state land planning agency shall approve the private property rights element adopted by each local government if it is substantially in a specified form.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act,¹ also known as Florida’s Growth Management Act, was adopted in 1985. The act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development.² Comprehensive plans contain chapters or “elements” that address topics including future land use, housing, transportation, conservation, and capital improvements, among others.³ The state land planning agency that administers these provisions is the Department of Economic Opportunity (DEO).⁴

There are nine elements that are required in a comprehensive plan: future land use; conservation; transportation; capital improvements; sanitary sewer, solid waste, drainage, potable water and aquifer recharge; recreation and open space; housing; intergovernmental coordination; and

¹ See ch. 163, part II, F.S.

² Section 163.3167(1)(b), F.S.

³ Section 163.3177, F.S.

⁴ Section 163.3221(14), F.S.

coastal management (for coastal local governments).⁵ Optional elements are also allowed. A private property rights element is not required.

Amendments to a Comprehensive Plan

A local government may choose to amend its comprehensive plan for a variety of reasons. A local government may wish to expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government.⁶

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.⁷ The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including DEO, the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.⁸

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for “extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region” as well as adverse effects on regional resources or facilities.⁹ Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote, it is transmitted to the DEO for final review.¹⁰ The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant laws and agency rules.¹¹

Consistency with the Comprehensive Plan

Consistency is an important part of a comprehensive plan, and s. 163.3177(2), F.S., states that “the several elements of the comprehensive plan shall be consistent.” Consistent data is to be used.¹² In sum, the elements of the comprehensive plan shall not be at odds with one another. In terms of land development regulations and development orders, s. 163.3194(3)(a), F.S., provides a definition of what is meant by “consistent.”

A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the

⁵ Section 163.3184 (6), F.S.

⁶ Section 163.3184, F.S.

⁷ Sections 163.3174(4)(a), and 163.3184, F.S.

⁸ Section 163.3184, F.S.

⁹ Section 163.3184(3)(b)3.a., F.S.

¹⁰ Section 163.3184, F.S.

¹¹ Sections 163.3184(3)(c)4., and 163.3184(4)(e)4., F.S.

¹² Section 163.3177(2), F.S.

comprehensive plan and if it meets all other criteria enumerated by the local government.

All public and private development must be consistent with the local government's adopted comprehensive plan.¹³ Additionally, all land development regulations must also be consistent with the plan.¹⁴ Whether a proposed development project is consistent with a local comprehensive land use plan and all of its elements is tested on review by a standard of strict scrutiny; the burden is on the applicant for rezoning to show by competent and substantial evidence that the requested rezoning conforms to the legislative plan.¹⁵

Private Property Rights

The express legislative intent in ch. 163 states that all government entities in Florida recognize and respect judicially acknowledged or constitutionally protected private property rights.¹⁶ Private property rights are also protected by numerous state and federal judicial decisions which are binding on all Florida local governments.¹⁷

Recourse for an adverse impact on property rights that create an "inordinate burden" on a property owner is provided for in the Bert J. Harris, Jr., Private Property Rights Protection Act, s. 70.001, F.S. In addition, a cause of action for damages for a prohibited government exaction ("any condition imposed by a governmental entity on a property owner's proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate") is provided for in s. 70.45, F.S., adopted in 2015.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 163.3167(9), F.S., to require local governments to address the protection of private property rights in their comprehensive plans.

Section 2 amends s. 163.3177(6), F.S., to require local government comprehensive plans to include a property rights element that protects private property rights. The element must set forth the principles, guidelines, standards, and strategies to guide the local government's decisions and program implementation with respect to the following objectives:

- Consideration of the impact to private property rights of all proposed development orders, plan amendments, ordinances, and other government decisions;
- Encouragement of economic development;
- Use of alternative, innovative solutions to provide equal or better protection than the comprehensive plan; and,

¹³ Department of Economic Opportunity, *Senate Bill 940 Analysis* (February 21, 2017); *See* ss. 163.3161(6) and 163.3194(1), F.S.

¹⁴ Section 163.3194(1)(b), F.S.

¹⁵ *Machado v. Musgrove*, 519 So. 2d 629, 635 (Fla. 3d DCA 1987).

¹⁶ *See* section 163.3161(10), F.S.

¹⁷ Department of Economic Opportunity, *Senate Bill 940 Analysis* (February 21, 2017); *See* ss. 163.3161(6) and 163.3194(1), F.S.

¹⁸ *Id.*

- Consideration of the degree of harm created by noncompliance with the provisions of the comprehensive plan.

The bill provides that each county and municipality within the county shall adopt land development regulations consistent with this paragraph within 1 year after adopting its private property rights element. The bill also states that each local government shall adopt a private property rights element at its next evaluation and appraisal update review as required under this section, or by July 2019, whichever occurs first.

Finally, the bill contains a model form and states that the state land planning agency shall approve each private property rights element adopted by a local government if it is in substantially the form provided by the bill. The form's goal statement says: in all decisions, the commission will take into consideration the balancing of the comprehensive plan provisions with the protection of private property rights; the encouragement of economic development; the use of alternative, innovative solutions to provide equal or better protection than the comprehensive plan; and the degree of harm created by noncompliance with the provisions of the comprehensive plan. It then lists the following objectives and policies:

- Objective 1: In all decisions rendered under the comprehensive plan and implementing land development regulations, the local government shall balance the protection of private property rights with the comprehensive plan provisions applicable to the circumstance.
 - Policy 1.1: The commission shall render its decisions in support of economic development and in deference to private property rights.
 - Policy 1.2: In all decisions, the commission may approve alternative, innovative solutions that provide equal or better protection than the comprehensive plan.
 - Policy 1.3: If the degree of harm created by noncompliance with the provisions of the comprehensive plan is minimal or may be mitigated, the local government may approve the applicable request or application.
- Objective 2: The local government shall bring its land development regulations into internal consistency with the private property rights element.
 - Policy 2.1: No later than 1 year after the local government adopts the private property rights element, it shall review and revise its land development regulations as necessary to make them consistent with that element.

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Article VII, of the Florida Constitution requires any general law that would require the expenditure of money to be passed by a two-thirds vote of the membership of each house of the Legislature. By requiring that all local governments adopt a new element to their comprehensive plans, and subsequently amend all existing land development regulations to be consistent with the new element, the bill will require the expenditure of money by local governments.

An exemption from the mandates provision may apply if the expected fiscal impact of the bill is less than \$2 million. For a number of reasons, including the uncertainty regarding the exact cost each local government will undertake to develop a comprehensive plan amendment and consistent land development regulations, a precise estimate cannot be developed. As a guide, however, if the cost for each local government exceeds \$4,175, the \$2 million threshold will be exceeded. Therefore, in an abundance of caution, the Legislature will need to find the bill fulfills an important state interest and pass the bill by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEO has indicated that the bill will result in increased administrative cost to the state due to the review and approval of new comprehensive plan amendments. Local governments will also incur costs due to the development of new comprehensive plan elements and land use regulations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill as drafted contains a model form that includes the following policy: "If the degree of harm created by noncompliance with the provisions of the comprehensive plan is minimal or may be mitigated, the local government may approve the applicable request or application." This may cause litigation if a challenger argues that the bill language lacks meaningful and predictable standards, as required by s. 163.3177(1), F.S. Further, a challenger may argue that the language as proposed in the bill creates internal inconsistencies pursuant to s. 163.3177(2), F.S., in the portion of the model form that states "The commission shall render its decisions in support of economic development and in deference to private property rights."

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167 and 163.3177.

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.
