

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: CS/SB 428

INTRODUCER: Community Affairs Committee and Senator Perry

SUBJECT: Growth Management

DATE: March 28, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 428 requires a comprehensive plan adopted by a municipality to recognize the terms of development orders. The bill requires local land development regulations to provide for existing development orders identified in municipal comprehensive plans. The bill amends s. 163.3177(6), F.S., adding a required property rights element to local comprehensive plans. The added element requires local governments to consider certain property rights, including a property owner's right to quiet enjoyment, in their decision-making. The bill provides a model statement of rights acknowledging private property rights but allows local governments to create their own provision that does not conflict with the model. The bill requires local governments to adopt a property rights element by July 1, 2020.

II. Present Situation:

The Bert J. Harris, Jr., Private Property Rights Protection Act

The "Bert Harris Jr., Private Property Rights Protection Act" (Harris Act)¹ entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use of real property or a vested right to a specific use of real property.² The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property

¹ Section 70.001(1), F.S.

² Section 70.001(2), F.S.

rights as applied may fall short of a taking under the State Constitution or the U.S. Constitution.³ The law is not applicable to the U.S. government, federal agencies, or state or local government entities exercising formally delegated U.S. or federal agency powers.⁴

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity's development order or enforcement action is unreasonable or unfairly burdens the use of the owner's real property,⁵ or when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.⁶ A prohibited exaction occurs when an imposed condition 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.⁷

The Community Planning Act

The Harris Act is balanced against the state's need to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth and development.⁸ Statutes govern how the state and local governments direct land development⁹ with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.¹⁰

The State Comprehensive Plan must provide long-range policy guidance for the orderly social, economic, and physical growth of the state.¹¹ The goals and policies of the State Comprehensive Plan must be consistent with the protection of private property rights.¹² The State Comprehensive Plan must be reviewed every two years by the Legislature and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.¹³

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹⁴ The Community Planning Act governs how local governments create and adopt their local comprehensive plans. The Legislature intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.¹⁵ Authority under the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and

³ Section 70.001(1), F.S.

⁴ Section 70.001(3)(c), F.S.

⁵ Section 70.51(3), F.S.

⁶ Section 70.45(2), F.S.

⁷ Section 70.45(1)(c), F.S.

⁸ *See* s. 186.002(1)(b), F.S.

⁹ *See* chs. 186, 187, and 163, part II, F.S.

¹⁰ Section 163.3167(1)(b), F.S.

¹¹ Section 187.101(1), F.S.

¹² Section 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.

¹³ Section 187.101(1), F.S.

¹⁴ *See* ch. 2011-139, s. 4, Laws of Fla.

¹⁵ Section 163.3161(10), F.S.

leave property owners free from actions by others which would harm their property or constitute an inordinate burden on property rights under the Harris Act.¹⁶

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.¹⁷ Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.¹⁸ Plans may include optional elements,¹⁹ but must include the following nine elements:

- Capital improvements;²⁰
- Future land use plan;²¹
- Intergovernmental coordination;²²
- Conservation;²³
- Transportation;²⁴
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;²⁵
- Recreation and open space;²⁶
- Housing;²⁷ and
- Coastal management (for coastal local governments).²⁸

All local government land development regulations must be consistent with the local comprehensive plan.²⁹ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.³⁰ However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.³¹

¹⁶ *Id.*

¹⁷ Section 163.3177(1), F.S.

¹⁸ Section 163.3177(1)(d), F.S.

¹⁹ Section 163.3177(1)(a), F.S.

²⁰ Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

²¹ Section 163.3177(6)(a), F.S.

²² Section 163.3177(6)(h), F.S.

²³ Section 163.3177(6)(d), F.S.

²⁴ Section 163.3177(6)(b), F.S.

²⁵ Section 163.3177(6)(c), F.S.

²⁶ Section 163.3177(6)(e), F.S.

²⁷ Section 163.3177(6)(f), F.S.

²⁸ Section 163.3177(6)(g), F.S.

²⁹ Section 163.3194(1)(b), F.S.

³⁰ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

³¹ Section 189.081(1)(b), F.S.

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.³² Within a year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.³³ A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.³⁴

Generally, a local government amending its comprehensive plan must follow an expedited state review process.³⁵ Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process for the adoption of comprehensive plans.³⁶ Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.³⁷ The Department of Economic Opportunity (DEO) is designated as the state land planning agency.³⁸

Under the state coordinated review process, local governments must hold a properly noticed public hearing³⁹ about the proposed amendment before sending it for comment from several reviewing agencies,⁴⁰ including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.⁴¹ Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.⁴² Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.⁴³

DEO must provide a written report within 60 days of receipt of the proposed amendment if it elects to review the amendment.⁴⁴ The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.⁴⁵ Within 180 days of receiving the report from DEO, the local government must review the report and any written comments and hold a second properly noticed public hearing on the adoption of the amendment.⁴⁶ Adopted plan amendments must be sent to DEO and any

³² Section 163.3191(1), F.S.

³³ Section 163.3191(2), F.S.

³⁴ Section 163.3161(12), F.S.

³⁵ Section 163.3184(3)(a), F.S.

³⁶ Section 163.3184(2)(c), F.S.

³⁷ Section 163.3184(4)(a), F.S.

³⁸ Section 163.3164(44), F.S.

³⁹ Sections 163.3184(4)(b) and (11)(b)1., F.S.

⁴⁰ *See s. 163.3184(1)(c), F.S.*, for complete list of all reviewing agencies.

⁴¹ Sections 163.3184(4)(b) and (c), F.S.

⁴² Section 163.3184(4)(b), F.S.

⁴³ Section 163.3184(4)(c), F.S.

⁴⁴ Section 163.3184(4)(d)1., F.S.

⁴⁵ Section 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. *See s. 163.3184(4)(d)2., F.S.*

⁴⁶ Sections 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. *See s. 163.3184(4)(e)1., F.S.*

agency or government that provided timely comments within 10 working days after the second public hearing.⁴⁷

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law⁴⁸ and to issue on its website a notice of intent finding whether or not the amendment is compliant.⁴⁹ A compliance review is limited to the findings identified in DEO's original report unless the adopted amendment is substantially different from the reviewed amendment.⁵⁰ Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.⁵¹ If there is a timely challenge then the plan amendment will not take effect until DEO, or the Administration Commission,⁵² enters a final order determining the adopted amendment is in compliance with the law.⁵³

Establishment of Municipalities

The Florida Constitution provides that “municipalities may be established or abolished and their charters amended pursuant to general or special law.”⁵⁴ Chapter 165 of the Florida Statutes lays out the local government formation process and provides standards, direction, and procedures for the formation of municipalities in the state.⁵⁵ The provisions of this act are the exclusive procedure for forming or dissolving municipalities in Florida, except in those counties operating under a home rule charter which provides for an exclusive method as authorized by Article VIII, section 6(e) of the Florida Constitution.⁵⁶ A charter for incorporation of a municipality shall be adopted only by a special act of the Legislature upon determination that the standards provided in ch. 165, F.S., are met.⁵⁷ To inform the Legislature on the feasibility of a proposed incorporation of a municipality, a feasibility study shall be completed and submitted to the Legislature.⁵⁸

A municipality established after the effective date of the Community Planning Act must within 1 year after incorporation, establish a local planning agency⁵⁹ pursuant to s. 163.3174, F.S., and prepare and adopt a comprehensive plan within 3 years after the date of incorporation.⁶⁰ A

⁴⁷ Section 163.3184(4)(e)2., F.S.

⁴⁸ Sections 163.3184(4)(e)3. and 4., F.S.

⁴⁹ Section 163.3184(4)(e)4., F.S.

⁵⁰ *Id.*

⁵¹ Section 163.3184(4)(e)5., F.S.

⁵² Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that “Cabinet” means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).

⁵³ *Id.*

⁵⁴ FLA. CONST. art. VIII, s. 2.

⁵⁵ Section 165.021, F.S.

⁵⁶ Section 165.022, F.S.

⁵⁷ Section 165.041(1)(a), F.S. The procedure for a municipal incorporation by merger is also included in this section.

⁵⁸ Section 165.041(1)(b), F.S. The study must be submitted no later than the first Monday after September 1 of the year before the regular session of the Legislature during which the municipal charter would be enacted.

⁵⁹ Section 163.3164(30), F.S., defines “local planning agency” as the agency designated to prepare the comprehensive plan or plan amendments required by the Community Planning Act.

⁶⁰ Section 163.3167(3), F.S.

county comprehensive plan is deemed controlling until the municipality adopts a comprehensive plan.⁶¹

Land Development Regulations

Counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its comprehensive or revised comprehensive plan for review.⁶² Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Under certain circumstances, the DEO may require a local government to submit one or more land development regulations for the agency's review.⁶³ The DEO is required to adopt rules for review and schedules for adoption of land development regulations.⁶⁴

III. Effect of Proposed Changes:

Section 1 amends s. 163.3167, F.S., to provide that a municipal comprehensive plan effective after January 1, 2019, and all land development regulations adopted to implement the plan, must recognize a development order in existence as of the comprehensive plan's effective date. Such comprehensive plan may not impair a party's ability to complete development in accordance with the development order, and, notwithstanding whether future amendments to the development order are sought, must vest the density⁶⁵ and intensity⁶⁶ approved by such a development order.

Section 2 amends s. 163.3202, F.S., to require local land development regulations to provide for existing development orders identified in municipal comprehensive plans.

⁶¹ *Id.*

⁶² Section 163.3202(1), F.S.

⁶³ Section 163.3202(4), F.S.

⁶⁴ Section 163.3202(5), F.S.

⁶⁵ Section 163.3164(12), F.S., defines "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

⁶⁶ Section 163.3164(22), F.S., defines "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

Section 3 amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans.

A model property rights element form is included in the new paragraph that local governments may use. The form lists the following five property rights that must be considered in local government decision-making:

- Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights
- Quiet enjoyment of the property, to the exclusion of all others;
- Use, maintenance, development, and improvement of the property for personal use or the use of any other person, subject to state law and local ordinances;
- Privacy and exclusion of others from the property to protect the owner's possessions and property; and
- Disposal of the property owner's property through sale or gift.

Local governments may use their own property rights element form if it does not conflict with the statutory form. Local governments are required to adopt a property rights element by July 1, 2020.

Section 4 provides the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, paragraph (a) of section 18 of the Florida Constitution, provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

The bill will require cities and counties to incur costs to amend their comprehensive plans in order to add a private property rights element by July 1, 2020. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.^{67,68,69}

The cost for cities and counties to amend their comprehensive plans to comply with the provisions of the bill is unknown at this time. However, the Village of Palm Springs

⁶⁷ FLA. CONST. art. VII, s. 18(d).

⁶⁸ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 9, 2019).

⁶⁹ Based on the Florida Demographic Estimating Conference's November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 18, 2019).

estimates their costs may range from \$25,000 to \$40,000 in consulting fees and \$350 to \$700 for public noticing fees in local newspapers.⁷⁰

If the cumulative cost for cities and counties is determined to exceed \$2 million, paragraph (a) of section 18 would require the bill to contain a finding of important state interest and meet one of the exceptions specified in that paragraph (e.g., provision of funding or a funding mechanism, or enactment by vote of two-thirds of the membership in each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 163.3184, F.S. requires DEO to conduct a review of any proposed amendment to a comprehensive plan after a public meeting is held, and prior to adoption by a local government. DEO is then required to review the adopted amendment after a second public meeting is held. These reviews will be conducted in addition to scheduled/anticipated comprehensive plan reviews that are conducted at least every seven years as required by s. 163.3191, F.S. There are 467 local governments that would be subject to the changes required by this bill, which would require a maximum of 934 reviews be conducted by 7/1/2020, in addition to the already scheduled reviews. This represents a

⁷⁰ E-mail correspondence from the Village of Palm Springs to the Florida League of Cities (March 21, 2019) (on file with the Senate Committee on Community Affairs)

workload increase for the Division of Community Development of approximately \$50,000 to \$100,000.⁷¹

Local governments will also incur costs due to the development of new comprehensive plan elements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 163.3167, 163.3177, and 163.3202 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Community Affairs on March 26, 2019:

The committee substitute:

- Amends s. 163.3167, F.S., to require a comprehensive plan adopted by a municipality recognize the terms of existing development orders; and
- Amends s. 163.3202, F.S., to require local land development regulations to provide for existing development orders identified in municipal comprehensive plans.

B. Amendments:

None.

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

⁷¹ Department of Economic Opportunity, *2019 Agency Legislative Bill Analysis for SB 428* (Feb. 4, 2019) (on file with the Senate Committee on Community Affairs)