

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 439 Land Use and Development Regulations

SPONSOR(S): State Affairs Committee and Commerce Committee and Local Administration, Federal Affairs & Special Districts Subcommittee, McClain

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1604

FINAL HOUSE FLOOR ACTION: 75 Y's

34 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 439 passed the House on May 3, 2023, as CS/CS/SB 1604 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on May 4, 2023.

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans. Each county and municipality must maintain a comprehensive plan to guide future development. Local governments may enter into development agreements with developers. A local government may establish by ordinance procedures and requirements for considering and entering into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.

The bill revises local comprehensive planning requirements by increasing the required planning periods and prohibiting local governments that fail to update their comprehensive plans in accordance with the seven-year evaluation and appraisal process from initiating and adopting any publicly-initiated plan amendments. The bill prescribes certain procedures for the Department of Economic Opportunity to apply when local governments remain out of compliance with comprehensive planning updates.

The bill prohibits local governments from requiring certain building design elements for single-family or two-family dwellings located in planned unit developments and master planned communities approved on or after July 1, 2023, and limits the application of those elements in communities with a design review board or architectural review board to those who had such a board before January 1, 2020.

The bill precludes an independent special district from complying with the terms of a development agreement, or any other agreements connected to the development agreement, adopted within three months preceding a law changing the selection method of the members of the governing body, and requires the new governing body to vote on whether to seek readoption of such development agreement within four months of taking office. These provisions expire on July 1, 2028, unless reviewed and reenacted by the Legislature.

The bill revises the existing process for the approval of new electric distribution substations to apply to all new and existing substations.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 5, 2023, ch. 2023-31, L.O.F., and will become effective on July 1, 2023, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Comprehensive Plans

The Community Planning Act¹ provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.² Each county and municipality must maintain a comprehensive plan to guide future development.³

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.⁴ 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.⁵

The 10 required elements include 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..⁶

At least once every seven years, each local government must evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and notify the state land planning agency as to its determination.⁷ If the local government determines amendments to its comprehensive plan are necessary, the local government must prepare and send to the state land planning agency within one year such plan amendment or amendments for review.⁸ Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.⁹ If a local government fails to submit an evaluation of its comprehensive plan at least once in seven years to the state land planning agency or update its plan as necessary in order to reflect changes in state requirements, the local government may not amend its comprehensive plan until such time the evaluation is submitted.¹⁰

Comprehensive plans must include at least two planning periods, one covering the first five-year period occurring after the plan's adoption and one covering a period of at least 10 years.¹¹ Additional planning periods are permissible and accepted as part of the planning process.

¹ Part II, ch. 163, F.S.

² S. 163.3167(1), F.S.

³ S. 163.3167(2), F.S.

⁴ S. 163.3194(3), F.S.

⁵ S. 163.3177(6), F.S.

⁶ *Id.*

⁷ S. 163.3191(1), F.S. The state land planning agency is the Department of Economic Opportunity pursuant to s. 163.3164(44), F.S.

⁸ S. 163.3191(2), F.S.

⁹ S. 163.3191(3), F.S.

¹⁰ S. 163.3191(4), F.S.

¹¹ S. 163.3177(5)(a), F.S.

Future Land Use Element

Comprehensive plans must contain an element regarding future land use that designates 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.¹² 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.¹³ 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 area¹⁴ and the future land use element must include a future land use map or map series.¹⁵

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 includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.¹⁶

Each county and municipality must adopt and enforce land development regulations consistent with and that implements its adopted comprehensive plan.¹⁷ Local governments are encouraged to use innovative land development regulations¹⁸ and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.¹⁹

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.²⁰ Additionally, land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.²¹

Amendments to comprehensive plans may be initiated by any interested party, including private land owners and public parties.²²

Building Design Elements for Single-family or Two-family Dwellings

Local governments are generally prohibited from adopting land development regulations relating to building design elements for single-family or two-family dwellings.²³ This prohibition does not apply to:²⁴

- Dwellings listed in, or located in a historic district listed in, the National Register of Historic Places;

¹² S. 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. S. 163.3177(6)(a) 10., F.S.

¹³ S. 163.3177(6)(a)1., F.S.

¹⁴ S. 163.3177(6)(a)2., F.S.

¹⁵ S. 163.3177(6)(a)10., F.S.

¹⁶ *Id.*

¹⁷ S. 163.3202, F.S.

¹⁸ S. 163.3202(3), F.S.

¹⁹ S. 125.01055 and 166.04151, F.S.

²⁰ S. 163.3174(4)(a) and 163.3184, F.S.

²¹ See Sections 163.3161(6) and 163.3194(1)(a), F.S.

²² See e.g., Osceola County, *Amending the Comprehensive Plan*, available at <https://www.osceola.org/agencies-departments/community-development/offices/planning-office/comprehensive-plan/amending-comprehensive-plan.stml> (last visited April 3, 2023).

²³ S. 163.3202(5)(a), F.S. "Building design elements" include the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms

²⁴ S. 163.3202(5)(a)1.-7., F.S.

- Dwellings listed as a historic property or located in a historic district as determined by a local preservation ordinance;
- Regulations adopted in order to implement the National Flood Insurance Program;
- Regulations adopted in accordance and compliance with procedures established for the adoption of local amendments to the Florida Building Code;
- Dwellings located in a community redevelopment area;
- Regulations that are required to ensure protection of coastal wildlife in compliance with the Dennis L. Jones Beach and Shore Preservation Act or the Florida Water Resources Act of 1972;
- Dwellings located in a planned unit development or a master planned community created by a local governing body²⁵; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.²⁶

Electric Substation Approval Process

The construction of new distribution electrical substations is a permitted use in future land use categories and zoning districts, except for those designated for preservation, conservation, or historic preservation.²⁷ However, local governments may adopt reasonable land development regulations concerning setback, landscaping, buffering, screening, lighting, and other aesthetic compatibility-based standards.²⁸ If the local government has not adopted land development regulations concerning substations, the following standards apply:

- In non-residential areas, the substation must comply with setback and landscaped buffer area criteria applicable to other similar uses in that district.
- In residential areas, a setback of up to 100 feet between the substation property boundary and permanent equipment structures must be maintained.²⁹

If the application for development of a distribution substation demonstrates the substation design is consistent with the local government's standards, the local government must approve the application.³⁰

Prior to submitting an application for a substation in a residential area, the utility must consult the local government regarding site selection.³¹ The utility provides information on the proposed site and up to three alternative sites, upon which the local government must make a determination on the proposed sites within 90 days. If the local government and the utility are unable to agree upon a site, the site selection is submitted to mediation.

If a local government has adopted standards for siting an electrical substation, it must grant or deny an application to locate an electrical substation within 90 days after the date the properly completed application is declared complete.³² If the local government does not take action on the application within the specified timeframe, the application is deemed automatically approved. Issuance of a permit does not relieve the applicant from complying with applicable federal or state laws or rules or applicable local land development or building rules.

²⁵ "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. Section 163.3202 F.S.

²⁶ See e.g., City of Wellington Architectural Review Board, available at <https://www.wellingtonfl.gov/303/Architectural-Review-Board> and City of St. Petersburg Design Review Board, available at https://www.stpete.org/government/boards___committees/development_review_commission.php (last visited April 3, 2023.)

²⁷ S. 163.3208(4), F.S.

²⁸ S. 163.3208(3), F.S.

²⁹ S. 163.3208(4), F.S.

³⁰ S. 163.3208(5), F.S.

³¹ S. 163.3208(6)(a), F.S.

³² S. 163.3208(8)(a), F.S.

Development Agreements

Local governments may enter into development agreements with developers.³³ A development agreement is a “contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.”³⁴

A local government may establish, by ordinance, procedures and requirements for considering and entering into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.³⁵ A development agreement may provide that the entire agreement, or any phase thereof, must be commenced or completed within a specific time and must include:³⁶

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;³⁷
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who will provide such facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

A local government must conduct two public hearings before entering into, amending, or revoking a development agreement.³⁸ The local government must publish a notice of intent to consider the agreement at least seven days before each public hearing in a newspaper of general circulation in the county where the local government is located and provide notice by mail to all affected property owners before the first public meeting.³⁹

Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the clerk of the circuit court in the county where the local government is located, and such an agreement is not effective until it is properly recorded.⁴⁰ A development agreement binds any person who obtains ownership of a property already subject to an agreement (successor in interest).⁴¹

³³ S. 163.3220(4), F.S.; See ss. 163.3220-163.3143, F.S., known as the “Florida Local Government Development Agreement Act.” For purposes of the act, a “local government” means any county, municipality, special district, or local government entity established pursuant to law that exercises regulatory authority over, and grants development permit for, land development. S. 163.3221(10), F.S.

³⁴ *Morgan Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

³⁵ S. 163.3223, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

³⁶ S. 163.3227(1) and (2), F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

³⁷ The maximum length for a development agreement is 30 years, unless it is extended by mutual consent of the local government and the developer. S. 163.3229, F.S.

³⁸ S. 163.3225(1), F.S.

³⁹ S. 163.3225(2)(a), F.S.

⁴⁰ S. 163.3239, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

⁴¹ A successor in interest is one who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance. Black’s Law Dictionary 1473 (8th ed. 2004); s. 163.3239, F.S.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.⁴² An agreement may also be modified or revoked if a change in state or federal law after the execution of the agreement precludes either party from complying with the terms of the agreement.⁴³

Effect of the Bill

The bill revises the two required planning periods included in a comprehensive plan from five years to 10 years and from 10 years to 20 years, but still allows local governments to adopt additional planning periods for specific components, elements, land use amendments, and projects.

The bill requires the chair of the governing body of the county or mayor of the municipality to sign an affidavit as part of seven-year evaluation and appraisal process attesting all elements of the comprehensive plan comply with statutory requirements. If a local government fails to submit such evaluation and affidavit to the state land planning agency as statutorily required, the local government may not initiate or adopt any publicly initiated plan amendment to its comprehensive plan until the local government complies with the submission requirements. This prohibition does not apply to privately initiated plan amendments.

If a local government fails to update its comprehensive plan, the bill requires the state land planning agency to provide population projections to the local government, which must be utilized in updating the plan. If the state land planning agency finds the update was not in compliance, the bill requires the state land planning agency to establish a timeline of up to 12 months for the local government to address the deficiencies. The bill allows a local government to provide alternative population projections based on professionally accepted methodologies, but only if those projections exceed the population projections provided by the state land planning agency.

The bill removes the ability of local governments to require certain building design elements to single-family or two-family dwellings located in a planned unit development or master planned community created on or after July 1, 2023, and limits the application of those elements in communities with a design review board or architectural review board to those who had such a board before January 1, 2020.

The bill precludes an independent special district from complying with the terms of a development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, if the agreement was executed within three months before the effective date of a law modifying the selection manner of the governing body from election to appointment or vice versa. The new governing body of the special district must review any affected agreement within four months of taking office and, after such review, must vote on whether to seek re-adoption of the agreement. This requirement applies to any development agreement in effect on, or executed after, the effective date of this bill. This requirement expires on July 1, 2028, unless saved from repeal by the Legislature.

The bill expands the definition of “electric substation” to include accessory administration or maintenance buildings and related accessory uses and structures, and makes the existing process for approval of new electric distribution substations applicable to all new and existing substations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁴² S. 163.3237, F.S.

⁴³ S. 163.3241, F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The prohibition on the application of building design standards to certain types of residential development may decrease the cost of constructing those developments.

D. FISCAL COMMENTS:

None.