

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1221 Land Use and Development Regulations

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, McClain

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 5 N, As CS	Mwakyanjala	Darden
2) Agriculture, Conservation & Resiliency Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

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 definitions within the Community Planning Act;
- Provides requirements for self-storage facility expansions;
- Establishes criteria for approval of infill residential developments;
- Revises data sources used in consideration of the comprehensive plan and plan amendments;
- Requires land development regulations adopted by a local government to establish minimum lot sizes consistent with the maximum density authorized by the comprehensive plan and to provide standards for infill residential development;
- Prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element;
- Revises criteria to include in the future land use element to; and
- Revises the procedure for adoption of small-scale comprehensive plan amendments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 10-year period occurring after the plan's adoption and one covering a period of at least 20 years.¹¹ Additional planning periods are permissible and accepted as part of the planning process.

¹ Ch. 163, part II 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 Commerce 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.

All elements of a plan or plan amendment must be based on relevant, appropriate data¹² and an analysis by the local government.¹³ The data supporting a plan or amendment must be taken from professionally accepted sources.¹⁴ The plan must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.¹⁵ The analysis by the local government may include, but is not limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.¹⁶

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.¹⁷ 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.¹⁸ 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 area¹⁹ and the future land use element must include a future land use map or map series.²⁰

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:²¹

- The proposed amendment involves a use of 50 or fewer acres of land (100 acres in a rural area of opportunity);²²
- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that relate directly to, and are adopted simultaneously with, the small scale FLUM change;
- The property is not located in an area of critical state concern, unless the project involves the construction of affordable housing units meeting statutory criteria;²³ and
- The amendment must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the governing body of the county or municipality for approval.²⁴ Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.²⁵

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.²⁶ The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law

¹² "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.

¹³ S. 163.3177(1)(f), F.S.

¹⁴ S. 163.3177(1)(f)2., F.S.

¹⁵ S. 163.3177(1)(f)3., F.S.

¹⁶ S. 163.3177(1)(f), F.S.

¹⁷ 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.

¹⁸ S. 163.3177(6)(a)1., F.S.

¹⁹ S. 163.3177(6)(a)2., F.S.

²⁰ S. 163.3177(6)(a)10., F.S.

²¹ S. 163.3187(1)(a)-(d), (4), F.S., see also Dept. of Commerce, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date> (last visited Jan. 22, 2024).

²² S. 163.3187(3), F.S.

²³ See s. 420.0004(3), F.S.

²⁴ S. 163.3187(2), F.S.

²⁵ Compare s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) with s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).

²⁶ S. 163.3187(5)(a), F.S.

judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.²⁷

If the ALJ finds that the amendment is in compliance with the comprehensive plan, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission if the department determines the amendment is not in compliance.²⁸ If the ALJ does not find that the amendment is in compliance, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.²⁹ If the amendment is challenged, the amendment may not become effective until DEO or the Administration Commission issues a final order determining the amendment complies with the overall comprehensive plan.

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.³⁰

Each county and municipality must adopt and enforce land development regulations consistent with and that implements its adopted comprehensive plan.³¹ Local governments are encouraged to use innovative land development regulations³² and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.³³

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 receive two public hearings, the first held by the local planning board, and subsequently by the governing board.³⁴ Additionally, land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.³⁵

Amendments to comprehensive plans may be initiated by any interested party, including private land owners and public parties.³⁶

²⁷ *Id.*

²⁸ S. 163.3187(5)(b), F.S.

²⁹ S. 163.3187(5)(c), F.S.

³⁰ *Id.*

³¹ S. 163.3202, F.S.

³² S. 163.3202(3), F.S.

³³ S. 125.01055 and 166.04151, F.S.

³⁴ S. 163.3174(4)(a) and 163.3184, F.S.

³⁵ See Sections 163.3161(6) and 163.3194(1)(a), F.S.

³⁶ See e.g., Osceola County, *Amending the Comprehensive Plan*, <https://www.osceola.org/agencies-departments/community-development/offices/planning-office/comprehensive-plan/amending-comprehensive-plan.stml> (last visited Jan. 21, 2023).

Effect of Proposed Changes

The bill provides a definition for “infill residential development” in the Community Planning Act. The term is defined as the expansion of an existing residential development on a contiguous vacant parcel of no more than 20 acres in size within a residential future land use category and a residential zoning district that is contiguous on the majority of all sides by residential development. For the purposes of this definition, “contiguous” is defined as the touching, bordering, or adjoining along a boundary. The bill provides that properties separated by a roadway, railroad, canal, or other public easement are considered contiguous if they would be contiguous but for the easement.

The bill also revises the following definitions in the Community Planning Act:

- “Intensity,” providing that the term shall be expressed in square feet per unit of land;
- “Urban service area,” to mean areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or may be expanded through investment by the local government or the private sector as evidenced by an executed agreement with the local government to provide urban services within the local government’s 20-year planning period; and
- “Urban sprawl,” to mean an unplanned or uncontrolled development pattern.

The bill requires comprehensive plan elements and amendments to be based on relevant data, removes the consideration of community goals and vision as a separate component of a local government’s analysis, and remove a provision that allows local governments to collect and use original data in their analysis. The bill directs comprehensive plans to be based on the greater of the estimates and projections published by the Office of Economic and Demographic Research and the local government.

The bill prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element portion of a comprehensive plan. The bill requires the future land use element to account for the amount of land necessary to accommodate single-family, two-family, and fee simple townhome development, the amount of land outside of the urban service area (excluding lands designated for conservation, preservation, or other public use), and to encourage the location of schools in all areas necessary to provide adequate school capacity.

The bill requires local land development regulations to contain minimum lot sizes within single-family, two-family and fee-simple, single-family townhouse zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the area required for other mandatory items, and infill development standards for single-family homes, two-family homes and fee-simple townhouse dwelling units.

The bill provides that applications for infill development must be administrative approved without the need of a comprehensive plan amendment, rezoning, or variance if the proposed infill development has the same or less gross density as the existing development and is generally consistent with the development standards of existing development. The bill provides that development orders issued pursuant to this provision are to be deemed consistent with all local comprehensive plans and land development regulations. This provision applies notwithstanding any ordinance existing on July 1, 2024.

The bill revises the procedure for adoption of small-scale comprehensive plan amendments by increasing the maximum qualifying size of land to be affected from 50 acres to 150 acres.

The bill provides that the expansion of a self-storage facility that is adjacent to and abutting an existing self-storage facility that is owned and managed by the same person or entity may not be considered a new self-storage facility for the purposes of any minimum distance requirements imposed by local ordinances or regulations. The bill requires the proposed expansion facility be deemed an integral part of the existing facility for the purposes of satisfying any minimum distance requirements established by a local authority. The bill provides that the facility expansion is still subject to provisions of general law

related to the satisfaction of an owner's lien, notice requirements, and publication requirements, as applicable to existing self-service storage facilities.

B. SECTION DIRECTORY:

- Section 1: Creates s. 83.8085, F.S., relating to self-storage facility expansion.
- Section 2: Amends s. 163.3164, F.S., relating to definitions used in the Community Planning Act.
- Section 3: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans.
- Section 4: Amends s. 163.3187, F.S., relating to the process for adoption of small-scale comprehensive plan amendments.
- Section 5: Amends s. 163.3202, F.S., relating to land development regulations.
- Section 6: Amends s. 212.055, F.S., relating to discretionary sales surtaxes.
- Section 7: Amends s. 479.01, F.S., relating to definitions used in ch. 479, F.S.
- Section 8: Provides for severability.
- Section 9: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Local Administration, Federal Affairs, & Special Districts Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions revising the process for rezoning an agricultural enclave;
- Added a provision concerning local minimum distance requirements when expanding a self-service storage facility; and
- Provides for severability.

The analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs, & Special Districts Subcommittee.