HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 59 Growth Management
SPONSOR(S): McClain and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee		Darden	Miller
2) Civil Justice & Property Rights Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In order to manage growth in Florida, certain statutory procedures and requirements have been put in place for state agencies and local governments to follow and enforce.

The bill makes the following changes to growth management regulations:

- Requires local governments to include a private property rights element in their comprehensive plans in their next proposed plan amendments or by July 1, 2024, whichever comes first;
- Allows developers and local governments to amend or cancel a development agreement without seeking consent from other property owners subject to the agreement, unless the amendment or cancellation would directly modify the allowable uses or entitlements of those properties;
- Prohibits a municipality from annexing land within another municipality without the latter's consent;
- Specifies that development agreements for certain developments of regional impact may be amended using the process adopted by the local government for amending development orders; and
- Requires the Florida Department of Transportation, when selling a parcel of land, to provide a right of first refusal to the prior owner of the land and provides a process for implementing this right of first refusal.

The bill provides a declaration that the act fulfills an important state interest.

The effective date of this bill is July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Local Comprehensive Plans

Background

Private Property Rights

The "Bert Harris Jr., Private Property Rights Protection Act" (Harris Act) entitles private property owners to relief when a specific action of a governmental entity inordinately burdens the owner's existing use, or a vested right to a specific use, of real property.[1] The Harris Act recognizes that the inordinate burden, restriction, or limitation on private property rights as applied may fall short of a taking under the Florida Constitution or the United States Constitution and establishes a separate and distinct cause of action for relief, or payment of compensation, when a new law, rule, or ordinance of the state or a political entity in the state unfairly affects real property.[2] The Harris Act applies generally to state and local governments but not to the U.S. government, federal agencies, or state or local government entities exercising formally delegated federal powers.[3]

In addition to action inordinately burdening a property right, an owner may seek relief when a state or local governmental entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[4] 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.[5]

The "Florida Land Use and Environmental Dispute Resolution Act" provides a non-judicial alternative dispute resolution process for a landowner to request relief from a government entity's development order or enforcement action when the order or action allegedly is unreasonable or unfairly burdens the use of the owner's real property.[6] Parties in pending judicial proceedings may agree to use this process if the court approves.[7]

State and Local Comprehensive Plans

Laws protecting private property rights are 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] The State Comprehensive Plan provides long-range policy guidance for the orderly management of state growth,[9] which must be consistent with the protection of private property rights.[10] Local governments are required to adopt local comprehensive plans to manage the future growth of their communities.[11]

First adopted in 1975[12] and extensively expanded in 1985,[13] Florida's laws on comprehensive land planning were significantly revised in 2011, becoming the Community Planning Act.[14] The Community

[1] S. 70.001(2), F.S.
[2] S. 70.001(1), F.S.
[3] S. 70.001(3)(c), F.S.
[4] S. 70.45(2), F.S.
[5] S. 70.45(1)(c), F.S.
[6] S. 70.51, F.S.
[7] S. 70.51(29), F.S.
[8] *See* s. 186.002(1)(b), F.S.
[9] S. 187.101(1), F.S.
[10] S. 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.
[11] S. 163.3167(2), F.S.
[12] *See* ch. 75-257, Laws of Fla.
[13] *See* ch. 85-55, Laws of Fla.
[14] *See* ch. 2011-139, s. 17, Laws of Fla.

Planning Act directs how local governments create and adopt their local comprehensive plans. All governmental entities in the state must recognize and respect judicially acknowledged or constitutionally protected private property rights, exercising their authority without unduly restricting private property rights, leaving property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[15]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for orderly and balanced future land development. Plans must reflect community commitments to implement the plan[16] and identify procedures for monitoring, evaluating, and appraising its implementation.[17] Plans may include optional elements,[18] but must include the following nine elements:

- Capital improvements;[19]
- Future land use plan;[20]
- Intergovernmental coordination;[21]
- Conservation;[22]
- Transportation;[23]
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[24]
- Recreation and open space;[25]
- Housing;[26] and
- Coastal management (for coastal local governments).[27]

Counties and municipalities may employ individual comprehensive plans or joint plans (if both entities agree such a plan would align with their common interests).[28] A county plan controls in a municipality until a municipal comprehensive plan is adopted.[29] New municipalities must adopt a comprehensive plan within three years after the date of incorporation.

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans at least once every seven years to reflect any changes in state requirements.[30] Conforming amendments to the comprehensive plan must be made within one year of the determination that an amendment is necessary. A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[31]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[32] 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.[33] Under this review process, the state land planning agency is responsible for plan review,

[15] S. 163.3161(10), F.S.
[16] S. 163.3177(1), F.S.
[17] S. 163.3177(1)(d), F.S.
[18] S. 163.3177(1)(a), F.S.
[19] S. 163.3177(3)(a), F.S. The local government must annually review the capital improvements element.
[20] S. 163.3177(6)(a), F.S.
[21] S. 163.3177(6)(h), F.S.
[22] S. 163.3177(6)(d), F.S.
[23] S. 163.3177(6)(b), F.S.
[24] S. 163.3177(6)(c), F.S.
[25] S. 163.3177(6)(e), F.S.
[26] S. 163.3177(6)(f), F.S.
[27] S. 163.3177(6)(g), F.S.
[28] S. 163.3167(1), F.S.
[29] S. 163.3167(3), F.S.
[30] S. 163.3191, F.S.
[31] S. 163.3161(12), F.S.
[32] S. 163.3184(3)(a), F.S.
[33] S. 163.3184(2)(c), F.S.

coordination, and preparing and transmitting comments to the local government.[34] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[35]

Under the state coordinated review process, local governments must hold a properly noticed public hearing about the proposed amendment before sending it for comment from several reviewing agencies, including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of State.[36] Local governments or government agencies within the state filing a written request with the governing body are also entitled to copies of the amendment.[37] Comments on the proposed plan amendment must be received within 30 days after its receipt by DEO.[38]

DEO must provide a written report within 60 days of receiving the proposed plan amendment if it elects to review it.[39] The report must state the agency's objections, recommendations, and comments with certain specificity and must be based on written, not oral, comments.[40] 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.[41] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the hearing.[42]

After receiving the adopted plan amendment and finding it complete, DEO has 45 days to determine if the amendment complies with the law and to issue on its website a notice of intent finding whether or not the amendment is compliant.[43] 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.[44] Unless challenged, a local comprehensive plan amendment takes effect pursuant to the notice of intent.[45] If there is a timely filed challenge, then the plan amendment will not take effect until DEO or the Administration Commission enters a final order determining the adopted amendment complies with the law.[46]

Requirements for Local Land Development Regulations and Comprehensive Plans

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.

[34] S. 163.3184(4)(a), F.S.
[35] S. 163.3164(44), F.S.
[36] S. 163.3184(4)(b), (c), and (11)(b)1., F.S.
[37] S. 163.3184(4)(b), F.S.
[38] S. 163.3184(4)(c), F.S.
[39] S. 163.3184(4)(d)1., F.S.
[40] S. 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. S. 163.3184(4)(d)2., F.S.
[41] S. 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. S. 163.3184(4)(e)1., F.S.
[42] S. 163.3184(4)(e)2., F.S.
[43] S. 163.3184(4)(e)4., F.S.
[44] *Id*.
[45] S. 163.3184(4)(e)5., F.S.
[46] *Id*. The Administration Commission consists of the Governor and Cabinet. S. 14.202, F.S.

Local comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate development orders existing before the comprehensive plan's effective date. The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[47] and intensity[48] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[49]

Effect of the Bill

The bill requires local governments to include a property rights element in their comprehensive plans at their next proposed plan amendment or by July 1, 2024, whichever comes first. The bill provides that a local government may develop its own property rights language if such language does not conflict with the model statement of rights. The model statement of rights requires the local government to consider the following four elements in local decision-making:

- Physical possession and control of the property owner's interests in the property, including easements, leases, or mineral rights;
- 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 through sale or gift.

Local Government Development Agreements

Background

Local governments may enter into development agreements with developers.[50] 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."[51]

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.[52] A development agreement must include the following:[53]

- A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- The duration of the agreement;
- 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;

[47] S. 163.3164(12), F.S., defines the term "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.
[48] S. 163.3164(22), F.S., defines the term "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.
[49] S. 163.3167(3), F.S.
[50] S. 163.3220(4), F.S. *See* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[51] *Morgran Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[52] S. 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[53] S. 163.3227(1), F.S.

- 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, term, or restriction.

A development agreement may provide that the entire development, or any phase, must be commenced or completed within a specific time.[54] 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.[55] A development agreement will not be effective until properly recorded in the public records of the county.

The requirements and benefits in a development agreement are binding upon and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[56] also known as a successor in interest.[57] A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.[58]

Effect of the Bill

The bill provides that a party or its designated successor in interest to a development agreement and the local government are authorized to amend or cancel a development agreement without securing the consent of other owners of property that were originally subject to the development agreement unless the amendment or cancellation directly modifies the allowable uses or entitlements of an owner's property.

Municipal Annexation

Background

Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities must be completed as provided by general or special law.[59] The Legislature established local annexation procedures by general law in 1974 with the "Municipal Annexation or Contraction Act."[60] The act provides how property may be annexed or de-annexed by municipalities without legislative action. The purpose of the act is to:

- Ensure sound urban development and accommodation to growth;
- Establish uniform legislative standards for the adjustment of municipal boundaries;
- Ensure efficient provision of urban services to areas that become urban in character; and
- Ensure areas are not annexed unless municipal services can be provided to those areas.[61]

Before local annexation procedures may begin, the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed.[62] A copy of the report must be filed with the board of county commissioners where the municipality is located.[63] This report must include appropriate maps, plans for extending municipal services, timetables, and financing

[54] S. 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[55] S. 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[56] S. 163.3239, F.S.
[57] 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).
[58] S. 163.3237, F.S.
[59] Art. VIII, s. 2(c), Fla. Const.
[60] Ch. 171, Part I, F.S. *See* ch. 74-190, s. 1, Laws of Fla.
[61] S. 171.021, F.S.
[62] S. 171.042(1), F.S.
[63] S. 171.042(2), F.S.

methodologies. The report must certify the subject area is appropriate for annexation because it meets the following standards and requirements:[64]

- The area to be annexed must be contiguous to the boundary of the annexing municipality.[65]
- The area to be annexed must be reasonably compact.[66]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[67]
- Alternatively, if the proposed area is not developed for urban purposes, it must either border at least 60 percent of a developed area or provide a necessary bridge between two urban areas for the extension of municipal services.[68]

The Interlocal Service Boundary Agreement Act (Interlocal Boundary Act)[69] authorizes an alternative to these statutory procedures. Intended to encourage intergovernmental coordination in planning, delivery of services, and boundary adjustments, the primary purpose of the Interlocal Boundary Act is to reduce the costs of local governments, prevent duplication of services, increase local government transparency and accountability, and reduce intergovernmental conflicts.[70]

An interlocal agreement may provide an annexation procedure with a flexible process for securing the consent of those within the area to be annexed, while continuing the requirement for approval of the proposed annexation by a majority of the registered voters, the landowners, or both, within the proposed annexation area. The alternate process also must provide for certain disclosures pertaining to a privately owned solid waste disposal facility located within the proposed annexation area, including whether the owner of the facility objects to the proposed annexation.[71] Although an interlocal service boundary agreement may alter the restrictions on the character of land that may be annexed,[72] the agreement may not allow annexation of land within a municipality not a party to the agreement or land within another county.[73]

Effect of the Bill

The bill prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent.

The bill provides an exception to these annexation requirements when an interlocal agreement is in effect for property annexed by a municipality.

Department of Transportation Disposal of Real Property

Present Situation

The Florida Department of Transportation (DOT) is authorized to convey any land, building, or other real or personal property it acquired if DOT determines the property is not needed for a transportation

[64] S. 171.042(1)(a)-(c), F.S.
[65] "Contiguous" means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water. *See* s. 171.031(11), F.S.
[66] S. 171.031(12), F.S., defines the term "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.
[67] An area developed for urban purposes is defined as one that meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less. S. 171.043(2), F.S.
[68] S. 171.043, F.S.
[69] Ch. 171, Part II, F.S. *See* s. 171.20, F.S.
[70] S. 171.201, F.S.
[71] S. 171.205, F.S.
[72] *See* ss. 171.042 and 171.043, F.S.
[73] S. 171.204, F.S.

facility.[74] In such cases, DOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest. DOT must advertise the disposal of property it values at greater than $10,000.

A sale of unneeded property may not occur at a price less than DOT's current estimate of value except that:

- If donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.[75]
- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.[76]
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, DOT may negotiate for the sale of such property as replacement housing.[77]

If DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[78]

If in DOT's discretion a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[79]

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing DOT to significant liability risks, as described above, DOT may, but is not required, to first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.[80]

Effect of the Bill

Notwithstanding any provision of s. 337.25, F.S., to the contrary, the bill requires DOT to afford a right of first refusal to the previous property owner from whom DOT originally acquired the property for DOT's current estimate of value if the property is to be used for public purpose, requires significant costs to be incurred or exposes DOT to significant liability risks, or if DOT determines that a sale to any person other than an abutting property owner would be inequitable.

The bill requires DOT to offer the previous property owner the right of first refusal in writing, by certified mail or hand delivery, effective upon receipt by the property owner. The offer must provide the previous property owner at least 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, the owner must send notice to DOT by certified mail or hand delivery, and such acceptance is effective upon dispatch. Once the right is exercised, the previous property owner has at least 90 days to close on the property.

Developments of Regional Impact

Background

[74] S. 337.25(4), F.S.
[75] S. 337.25(4)(a), F.S.
[76] S. 337.25(4)(b), F.S.
[77] S. 337.25(4)(c), F.S.
[78] S. 337.25(4)(d), F.S.
[79] S. 337.25(4)(e), F.S.
[80] S. 337.25(4), F.S.

A Development of Regional Impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[81]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[82] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[83]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[84] until repeal of the requirements for state and regional reviews in 2018.[85] Affected local governments are responsible for the implementation and amendment of existing DRI agreements and development orders.[86]

Currently, an amendment to a development order for an approved DRI may not amend to an earlier date the date to which the local government had agreed not to impose downzoning, unit density reduction, or intensity reduction, unless:[87]

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or
- The change is clearly established by local government to be essential to the public health, safety, or welfare.

Any proposed change to a previously approved DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[88] A proposed change reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved. [89] If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.

DRI agreements classified as essentially built out and valid on or before April 6, 2018, were preserved, but the provisions that allowed such agreements to be amended to exchange approved land uses were eliminated.[90]

For such agreements, a DRI is essentially built out if:[91]

- All the mitigation requirements in the development order were satisfied, all developers were in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remained to be built was less than 40 percent of any applicable development-of-regional-impact threshold; or

[81] S. 380.06(1), F.S.
[82] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005).
[83] Ch. 72-317, s. 6, Laws of Fla.
[84] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[85] Ch. 2018-158, Laws of Fla.
[86] S. 380.06(4)(a) and (7), F.S.
[87] S. 380.06(4)(a), F.S.
[88] S. 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.
[89] *Id*.
[90] S. 380.06(4), F.S. *See also c*h. 2018-158, s. 1, Laws of Fla.
[91] S. 380.06(15)(g)3. and 4., F.S. (2017).

- The project was determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government.

Effect of the Bill

The bill authorizes the amendment of any DRI agreement previously classified as (or officially determined to be) essentially built out, and entered into on or before April 6, 2018, including amendments authorizing the developer to exchange approved land uses, subject to the developer demonstrating that the exchange will not increase impacts to public facilities. Amendments must be made pursuant to the processes adopted by the local government for amending development orders.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3177, F.S., requiring a comprehensive plan to include a private property rights element.

Section 2. Amends s. 163.3237, F.S., authorizing amendment or cancelation of certain development agreements without the consent of certain parties.

Section 3. Amends s. 171.042, F.S., prohibiting a municipality from annexing municipal land without consent of the affected municipality.

Section 4. Amends s. 337.25, F.S., requiring DOT provide a right of first refusal to the previous property owner from whom DOT acquired property that it proposes to sell.

Section 5. Amends s. 380.06, F.S., allowing certain agreements relating to an approved DRI to be amended under certain circumstances.

Section 6. Provides a declaration that the act fulfills an important state interest.

Section 7. Provides an effective date of July 1, 2021.

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:

   The bill may have an insignificant fiscal impact on local governments not scheduled to review their comprehensive plans before 2025 due to the requirement to amend their plans by July 1, 2024, to

include a property rights element and development orders existing before the plan's effective date if the plan does not already do so.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities that are not scheduled to amend their comprehensive plans before 2025 to amend their plans by July 1, 2024, to include the statement on property rights and development orders existing before the plan's effective date if the plan does not already do so. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits one municipality from annexing an area within the jurisdiction of another municipality unless that municipality consents. The bill does not specify in what form that consent must be given. The bill also does not address whether a municipality's consent to the annexation of a portion of the area within its jurisdiction may be construed as an exception both to the requirement that the area to be annexed not be within the boundary of another municipality[92] and that a municipality may contract its boundary only from areas that would not meet the criteria for annexation.[93] This prohibition appears to mirror the existing statutory prohibition that no part of the area proposed for annexation may fall within the boundary of another incorporated municipality.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[92] S. 171.043(1), F.S.
[93] S. 171.052(1), F.S.