

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	13 Y, 3 N, As CS	Mwakyanjala	Darden
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA) provides an informal mechanism for a property owner to challenge a government action that may infringe on his or her property without having to file a lawsuit. Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her property may file a request for relief with the government that issued the notice or order.

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan. Each comprehensive plan contains elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.

The bill revises the FLUEDRA process to allow a negotiated settlement between a property owner and a local government to include the same types of relief that could be ordered by the special magistrate and provides that a special magistrate's recommendation or a negotiated settlement between the property owner and the local government may contain relief that would otherwise be inconsistent with the local government's comprehensive plan if the local government finds the relief is protects the public interest served by the comprehensive plan provisions with which it is inconsistent.

The bill makes a number of changes to statutes relating to comprehensive planning, including:

- Revising definitions and data sources that are used in consideration of the comprehensive plan and plan amendments;
- Increasing the length of required planning period to 10 years and 20 years;
- Removing a list of indicators a local government must consider relating to urban sprawl, instead requiring local governments to discourage urban sprawl by more effectively planning for future growth;
- Revising the comprehensive plan evaluation and appraisal process to ensure timely updates;
- Requiring 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; and
- Prohibits a local government from requiring building design elements for certain residential structures in planned unit developments, master planned communities, or communities with a design review board or architectural review board created on or after January 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Land Use and Environmental Dispute Resolution Act

In 1995, the Legislature adopted the Florida Land Use and Environmental Dispute Resolution Act ("FLUEDRA"), codified as s. 70.51, F.S., to facilitate the resolution of disputes between property owners and government entities.¹ FLUEDRA provides an informal mechanism for a property owner to challenge a government action that may infringe on his or her property without having to file a lawsuit.

FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.² Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her property may, within 30 days of receiving the notice or order, file a request for relief with the government that issued the notice or order.³ The government must forward the request to a special magistrate, who must hold a hearing within 45 days of receiving the request for relief.⁴ The special magistrate's primary role is to facilitate a resolution of the conflict between the property owner and government without involving the courts.⁵ In this role, the special magistrate acts as a "facilitator or mediator."⁶

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner's real property, based on a list of statutory guidelines.⁷ Within 14 days of the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.⁸ If the special magistrate's recommendation is that the government action does not unreasonably or unfairly burden the property, the property owner may still file suit or pursue other remedies.⁹ If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend alternatives that allow for reduced government restraints on the property, including, but is not limited to:

- An adjustment of land development or permit standards or other provisions controlling the development or use of land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of onsite mitigation;
- Location on the least sensitive portion of the property;
- Conditioning the amount of development or use permitted;
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action; and
- Purchase of the real property, or an interest therein, by an appropriate governmental entity.¹⁰

¹ See s. 70.51, F.S.

² S. 70.51(24), F.S.

³ S. 70.51(3) and (4), F.S.

⁴ S. 70.51(15)(a), F.S. A "special magistrate" is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and powers; and the law governing the same. S. 70.51(2)(c) and (4), F.S.

⁵ See s. 70.51(17)(a), F.S.

⁶ *Id.*

⁷ S. 70.51(17)(b) and (18), F.S.

⁸ S. 70.51(19), F.S.

⁹ S. 70.51(19)(a), F.S.

¹⁰ S. 70.51(19)(b), F.S.

The government entity must respond within 45 days of receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.¹¹ If the government accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.¹²

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.¹³ The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.¹⁴

Comprehensive Plans

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.¹⁵ Comprehensive plans are implemented through land development regulations and elements.¹⁶ Each comprehensive plan contains elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

At least once every 7 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 must notify the state land planning agency as to its determination.¹⁷ 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.¹⁸ Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.¹⁹ If a local government fails to submit an evaluation of its comprehensive plan at least once in 7 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 that an evaluation is submitted.²⁰

Comprehensive plans must include at least two planning periods, one covering the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.²¹ Additional planning periods are permissible and accepted as part of the planning process.

All elements of a plan or plan amendment must be based on relevant, appropriate data²² and an analysis by the local government.²³ The data supporting a plan or amendment must be taken from professionally accepted sources.²⁴ 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.²⁵ The analysis by the local government may include, but is not limited to, surveys, studies, community goals

¹¹ S. 70.51(21), F.S.

¹² S. 70.51(22), F.S.

¹³ S. 70.51(25), F.S.

¹⁴ S. 70.51(23), F.S.

¹⁵ Ss. 163.3167(2), 163.3177(2), F.S.

¹⁶ S. 163.3167(1)(c), F.S.

¹⁷ S. 163.3191(1), F.S. The state land planning agency is the Department of Economic Opportunity. S. 163.3164(44), F.S.

¹⁸ S. 163.3191(2), F.S. The review process is pursuant to s. 163.3184(4), F.S., the state coordinated review process for comprehensive plans and plan amendments.

¹⁹ S. 163.3191(3), F.S.

²⁰ S. 163.3191(4), F.S.

²¹ S. 163.3177(5)(a), F.S.

²² "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.

²³ S. 163.3177(1)(f), F.S.

²⁴ S. 163.3177(1)(f)2., F.S.

²⁵ S. 163.3177(1)(f)3., F.S.

and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.²⁶

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.²⁷ Local governments are encouraged to use innovative land development regulations²⁸ and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.²⁹

All local government land development regulations must be consistent with the local comprehensive plan.³⁰ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.³¹ However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.³²

Local governments are generally prohibited from adopting land development regulations relating to building design elements for single-family or two-family dwellings.³³ This prohibition does not apply to:

- Dwellings listed in, or located in a historic district listed in, the National Register of Historic Places;
- 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 body; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.³⁴

Capital Improvements Element

Comprehensive plans must contain a capital improvement element (CIE) designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities. The CIE must set forth:³⁵

- A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. These components must cover at least a 5-year period.

²⁶ S. 163.3177(1)(f), F.S.

²⁷ S. 163.3202, F.S.

²⁸ S. 163.3202(3), F.S.

²⁹ Ss. 125.01055 and 166.04151, F.S.

³⁰ S. 163.3194(1)(b), F.S.

³¹ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

³² S. 189.081(1), F.S.

³³ S. 163.3202(5)(a), F.S. Building design elements include 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, but does include the height, bulk, orientation, location of a dwelling on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors. S. 163.3202(5)(b)1., F.S.

³⁴ S. 163.3202(5)(a)1.-7., F.S.

³⁵ S. 163.3177(3)(a), F.S.

- Estimated public facility costs, including a delineation of when facilities will be needed, the general location of facilities, and projected revenue sources to fund the facilities.
- Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.
- A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding.
- The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8), F.S., to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

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.³⁶ 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.³⁷ 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 area³⁸ and the future land use element must include a future land use map or map series.³⁹

The future land use element of a comprehensive plan or any amendment to the future land use element must discourage the proliferation of urban sprawl.⁴⁰ Current law provides a list of primary indicators to determine whether a plan or plan amendment encourages the proliferation of urban sprawl and states that a future land use element or plan amendment will be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more statutory factors.⁴¹

Effect of Proposed Changes

The bill revises the FLUEDRA process to allow a negotiated settlement between the private property owner and the governmental entity to include the types of relief a special magistrate may recommend make when the special magistrate determines that the government action unreasonably or unfairly burdens the property. The bill revises the circumstances a special magistrate may consider when determining whether a development order or enforcement action is unreasonable or unfairly burdens a use of property to include the public interest served by the local comprehensive plan provisions that are inconsistent with the proposed relief granted by the special magistrate's recommendation.

The bill provides that in circumstances in which the relief granted by the special magistrate's recommendation or a negotiated settlement contravenes the local comprehensive plan in effect or is inconsistent with the local government's comprehensive plan, the special magistrate or the local governing board may deem the recommendation or approved negotiated settlement consistent with the comprehensive plan if the local government finds that the negotiated settlement and approved development protect the public interest served by the comprehensive plan.

³⁶ 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.

³⁷ S. 163.3177(6)(a)1., F.S.

³⁸ S. 163.3177(6)(a)2., F.S.

³⁹ S. 163.3177(6)(a)10., F.S.

⁴⁰ S. 163.3177(6)(a)9., F.S. "Urban sprawl" is defined as "a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses" S. 163.3164(52), F.S.

⁴¹ S. 163.3177(6)(a)9.-10., F.S.

The bill revises the definition of urban service area to include both areas that receive (or could receive, with investment by the local government or the private sector) certain public facilities and services and any land contained in a county or municipality that has been designated as a dense urban land area by the Department of Economic Opportunity.

The bill requires comprehensive plan elements and plan amendments to be based on relevant data and removes the consideration of community goals and vision as a separate component of a local government's analysis. The bill removes a provision that allows local government to collect and use original data in their analysis. For purposes of population estimates and projections, 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 also amends the definitions of density and intensity to clarify their use.

The bill revises the two required planning periods that must be included in a comprehensive plan to a 10-year period and a 20-year period. Local governments may still adopt additional planning periods for specific components, elements, land use amendments, and projects.

The bill removes a list of primary indicators used to determine if a plan or plan amendment encourages or discourages the proliferation of urban sprawl, instead requiring local governments to discourage urban sprawl by planning for future growth.

The bill requires the chair of the governing body of the county or mayor of the municipality to sign an affidavit attesting that all elements of the comprehensive plan complies with statutory requirements as part of the periodic review process. The bill provides that 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 provides that the state land planning agency shall provide population projections to the local government that must be utilized in updating the comprehensive plan. The bill provides that a local government may 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 requires local governments to evaluate and update their comprehensive plans to reflect changes in local conditions, with updates to required elements processed in the same plan amendment cycle. Optional elements of the comprehensive plan may not be updated until required elements have been updated, unless those updates are required by law.

The bill requires that local land development regulations must contain minimum lot sizes within single-family, two-family and fee-simple, single-family townhome 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 townhome dwelling units. The bill provides that levels of service established in a comprehensive plan solely for planning purposes may not be a basis for the denial of a development order or permit.

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. The bill also 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.

B. SECTION DIRECTORY:

- Section 1: Amends s. 70.51, F.S, relating to land use and environmental dispute resolution.
- Section 2: Amends s. 163.3164, F.S., relating to Community Planning Act definitions.
- Section 3: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans.
- Section 4: Amends s. 163.3191, F.S., relating to evaluation and appraisal of the comprehensive plan.
- Section 5: Amends s. 163.3202, F.S., relating to land development regulations.
- Section 6: Amends s. 163.3246, F.S., conforming terminology.
- Section 7: Amends s. 189.08, F.S., conforming cross-references.
- Section 8: Amends s. 479.01, F.S., conforming cross-references.
- Section 9: Provides an effective date of July 1, 2023.

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:

The establishment of minimum lot sizes within single-family, two-family and fee-simple, single-family townhome zoning districts to accommodate the maximum density authorized in the comprehensive plan and the establishment of infill development standards may increase the amount of residential development. 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.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in a number of ways. The PCS differed from the underlying bill in the following ways:

- Removes a provision that would have made the decision of a special magistrate binding;
- Allows for negotiated settlements under FLUEDRA to include the types of relief a special magistrate may recommend;
- Provides that the special magistrate's recommendations or negotiated settlements inconsistent with the local comprehensive plan to be deemed consistent if the recommendations or settlements are found to protect the public interest served by the comprehensive plan;
- Removes a provision that would have required local governments to include affidavits related to their comprehensive plan as part of the annual financial auditing process;
- Revises the relationship between required and optional elements of the comprehensive plan;
- Entails that required elements of the comprehensive plan must be processed in the same plan cycle and prohibits updates to optional elements until required elements are updated;
- Requires that the comprehensive plan must be updated in a timely manner before publicly-initiated amendments are approved;
- Requires comprehensive plans to establish minimum lot sizes for certain residential zoning districts and to establish infill development standards; and
- Removes a provision related to withholding county transportation funds.

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