The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 496

INTRODUCER: Community Affairs Committee and Senator Perry

SUBJECT: Growth Management

DATE: March 12, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.	Ravelo	Cibula	JU	**Pre-Meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 496 amends various sections of Florida law concerning growth management. The bill makes the following changes to current law:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, must incorporate development orders existing before the plan's effective date. The plan may not impair the completion of a development with such a development order and must vest the density and intensity approved by the development order.
- Requires a local comprehensive plan to have a property rights element, which requires the local government to consider certain private property rights in its decision-making process. Local governments must adopt this element during the next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S.
- Specifies that a party, or its successor in interest, may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, as long as the amendment or cancellation does not directly modify the allowable uses or entitlements of such owner's property.
- 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.

- Allows agreements pertaining to existing developments of regional impact that are classified as essentially built out, and were valid on or before April 6, 2018, to be amended, including amendments exchanging land uses under certain circumstances.

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

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

II. Present Situation:

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by the corresponding Effect of Proposed Changes. The below discussion tracks the order of sections contained in the bill.

III. Effect of Proposed Changes:

Comprehensive Plans and Preexisting Development Orders (Section 1)

Present Situation

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.[1] The Community Planning Act governs how local governments create and adopt their local comprehensive plans. A comprehensive plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.[2]

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.[3] The plan may not impair a party's ability to complete development in accordance with the development order and must vest the density[4] and intensity[5] approved by the development order without any limitations or modifications. Land development regulations must incorporate preexisting development orders.[6]

Effect of Proposed Changes

The bill amends s. 163.3167, F.S., to provide that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, and all land development regulations adopted to implement the plan, must incorporate development orders existing before

---

[1] *See* ch. 2011-139, s. 4*,* Laws of Fla.
[2] *Payne v. City of Miami*, 52 So. 3d 707, 737 (Fla. 3rd DCA 2010)
[3] *See* ch. 2019-165, s. 3, Laws of Fla.
[4] Section 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.
[5] Section 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.
[6] Sections 163.3167(3) and 163.3203, F.S.

the plan's effective date, may not impair the completion of a development with such a development order, and must vest the density and intensity approved by such a development order.

Private Property Rights and the Community Planning Act (Section 2)

Present Situation

Constitutional Private Property Rights

Under article I, section 2 of the Florida Constitution's Declaration of Rights, individuals are guaranteed the right "*to acquire, possess, and protect property*."[7] Although these property rights are enshrined in the Florida Constitution, the state and local governments may curtail these rights through sovereign police powers. State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."[8] Under this provision, states have police powers to establish and enforce laws protecting the welfare, safety, and health of the public.[9] Regarding private property rights, courts have continuously held that "even constitutionally protected property rights are not absolute, and 'are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare.'"[10]

When a state or political subdivision exercises police powers to affect property rights, citizens are provided two constitutional challenges to oppose the governmental act. The first challenge is that the government may have acted arbitrarily in violation of due process.[11] In the *City of Coral Gables v. Wood*, the court ruled that "[a] zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and is a mere arbitrary exercise of power without reference to public health, morals, safety or welfare."[12] In the first constitutional challenge, government action is simply invalid under the Constitution's due process clause.[13]

The second challenge is whether the government so intrusively regulated the use of property in pursuit of legitimate police power objectives to take the property without compensation in violation of the just compensation clause (takings clause).[14] When reasoning whether a regulation or land use plan constitutes a taking of a landowner's property, the operative inquiry is whether the landowner has been deprived of all or substantially all economic, beneficial or

---

[7] FLA. CONST. art. I, s. 2.
[8] U.S. CONST. amend. X.
[9] "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." *See NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).
[10] *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarthy*, 337 So.2d 388, 390 (Fla. 1976)).
[11] *See* U.S. CONST. amend. V, XIV, s. 1; FLA. CONST. art. I s. 9; *see also Fox v. Town of Bay Harbor Islands*, 450 So.2d 559, 560 (Fla. 3rd DCA 1984).
[12] *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3rd DCA 1974).
[13] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[14] *See* FLA. CONST. art X, s. 6.

productive use of the property.[15] In the second constitutional challenge, the government action is invalid absent compensation. So the government may either abandon its regulation or validate its action by payment of appropriate compensation to the landowner.[16]

Since these constitutional protections were enacted, the scale of government and land use regulation has considerably expanded. Still, courts have been reluctant to afford relief to property owners under these constitutional challenges.[17] Thus, property owners who experienced property devaluation or economic loss caused by government regulation were seldom compensated.[18]

In 1995, the Legislature addressed the ineffectiveness of these constitutional challenges to government regulation by enacting ch. 70, F.S., which is known as the "Bert J. Harris, Jr., Private Property Rights Protection Act" (hereinafter the "Harris Act").[19]

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

The Harris Act[20] entitles private property owners to relief when a governmental entity's specific action inordinately burdens the owner's existing use of the real property or a vested right to a specific use of the real property.[21] The Harris Act recognizes that the excessive burden, restriction, or limitation on private property rights as applied may fall short of a taking or due process violation under the State Constitution or the U.S. Constitution.[22] The law does not apply to the U.S. government, federal agencies, or state or local government entities exercising delegated U.S. or federal agency powers.[23]

In addition to action that inordinately burdens a property right, an owner may seek relief when a government entity's development order or enforcement action is unreasonable or unfairly burdens the use of the owner's real property,[24] or when a government entity imposes a condition on the proposed use of the real property that amounts to a prohibited exaction.[25] 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.[26]

The Community Planning Act

The Harris Act is balanced against the state's sovereign rights. The state needs to effectively and efficiently plan, coordinate, and deliver government services amid the state's continued growth

[15] *See Taylor v. Village of North Pam Beach*, 659 So.2d 1167 (Fla. 4th DCA 1995).
[16] *See Department of Transp. v. Weisenfeld*, 617 So.2d 1071 (Fla. 5th DCA 1993).
[17] *See* Cooper, Weaver, and 'Connor, The Florida Bar, Florida Real Property Litigation, *Statutory Private Property Rights Protection*, s.13.1 (2018).
[18] *Id.*
[19] *Id.*
[20] Section 70.001(1), F.S.
[21] Section 70.001(2), F.S.
[22] Section 70.001(1), F.S.
[23] Section 70.001(3)(c), F.S.
[24] Section 70.51(3), F.S.
[25] Section 70.45(2), F.S.
[26] Section 70.45(1)(c), F.S.

and development.[27] Statutes govern how the state and local governments direct land development[28] with the State Comprehensive Plan and local comprehensive plans adopted by counties and municipalities as required by statute.[29]

The Legislature expressly intended for all governmental entities in the state to recognize and respect judicially acknowledged or constitutionally protected private property rights.[30] The authority provided by the Community Planning Act must be exercised with sensitivity for private property rights, without undue restriction, and leave property owners free from actions by others that would harm their property or constitute an inordinate burden on property rights under the Harris Act.[31]

The State Comprehensive Plan must provide long-range policy guidance for the state's orderly social, economic, and physical growth.[32] The State Comprehensive Plan's goals and policies must be consistent with the protection of private property rights.[33] The State Comprehensive Plan must be reviewed every 2 years by the Legislature, and legislative action is required to implement its policies unless specifically authorized otherwise in the Constitution or law.[34]

Local Comprehensive Plan Elements

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development that reflects community commitments to implement the plan and its elements.[35] Plans are also required to identify procedures for monitoring, evaluating, and appraising the plan's implementation.[36] Plans may include optional elements[37] but must include the following nine elements:

- Capital improvements;[38]
- Future land use plan;[39]
- Intergovernmental coordination;[40]
- Conservation;[41]
- Transportation;[42]

---

[27] *See* s. 186.002(1)(b), F.S.
[28] *See* ch. 186, 187, and 163, part II, F.S.
[29] Section 163.3167(1)(b), F.S.
[30] *See* s. 163.3161(10), F.S.; *see also* s. 187.101(3), F.S.
[31] *Id.*
[32] Section 187.101(1), F.S.
[33] Section 187.101(3), F.S. The plan's goals and policies must also be reasonably applied where they are economically and environmentally feasible and not contrary to the public interest.
[34] Section 187.101(1), F.S.
[35] Section 163.3177(1), F.S.
[36] Section 163.3177(1)(d), F.S.
[37] Section 163.3177(1)(a), F.S.
[38] Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.
[39] Section 163.3177(6)(a), F.S.
[40] Section 163.3177(6)(h), F.S.
[41] Section 163.3177(6)(d), F.S.
[42] Section 163.3177(6)(b), F.S.

- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;[43]
- Recreation and open space;[44]
- Housing;[45] and
- Coastal management (for coastal local governments).[46]

All local government land development regulations must be consistent with the local comprehensive plan.[47] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[48] However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.[49]

Amendments to a Local Comprehensive Plan

Local governments must review and amend their comprehensive plans every 7 years to reflect any changes in state requirements.[50] Within 1 year of any such amendments, local governments must adopt or amend local land use regulations consistent with the amended plan.[51] A local government is not required to review its comprehensive plan before its regular review period unless the law specifically requires otherwise.[52]

Generally, a local government amending its comprehensive plan must follow an expedited state review process.[53] Certain plan amendments, including amendments required to reflect a change in state requirements, must follow the state coordinated review process to adopt comprehensive plans.[54] Under the state process, the state land planning agency is responsible for plan review, coordination, and preparing and transmitting comments to the local government.[55] The Department of Economic Opportunity (DEO) is designated as the state land planning agency.[56]

Under the state coordinated review process, local governments must hold a properly noticed public hearing[57] about the proposed amendment before sending it in for comment from several reviewing agencies,[58] including DEO, the Department of Environmental Protection, the appropriate regional planning council, and the Department of Transportation.[59] Local governments or government agencies within the state filing a written request with the governing

---

[43] Section 163.3177(6)(c), F.S.
[44] Section 163.3177(6)(e), F.S.
[45] Section 163.3177(6)(f), F.S.
[46] Section 163.3177(6)(g), F.S.
[47] Section 163.3194(1)(b), F.S.
[48] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[49] Section 189.081(1)(b), F.S.
[50] Section 163.3191(1), F.S.
[51] Section 163.3191(2), F.S.
[52] Section 163.3161(12), F.S.
[53] Section 163.3184(3)(a), F.S.
[54] Section 163.3184(2)(c), F.S.
[55] Section 163.3184(4)(a), F.S.
[56] Section 163.3164(44), F.S.
[57] Sections 163.3184(4)(b) and (11)(b)1., F.S.
[58] *See* s. 163.3184(1)(c), F.S., for a complete list of all reviewing agencies.
[59] Section 163.3184(4)(b) and (c), F.S.

body are also entitled to copies of the amendment.[60] Comments on the amendment must be received within 30 days after DEO receives the proposed plan amendment.[61]

DEO must provide a written report within 60 days after receipt of the proposed amendment if it elects to review the amendment.[62] The report must state the agency's objections, recommendations, and comments with certain specificity, and must be based on written, not oral, comments.[63] Within 180 days after 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.[64] Adopted plan amendments must be sent to DEO and any agency or government that provided timely comments within 10 working days after the second public hearing.[65]

Once DEO receives the adopted amendment and determines it is complete, it has 45 days to determine if the adopted plan amendment complies with the law[66] and to issue on its website a notice of intent finding whether or not the amendment is compliant.[67] 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.[68] Unless the local comprehensive plan amendment is challenged, it may go into effect pursuant to the notice of intent.[69] If there is a timely challenge, then the plan amendment will not take effect until DEO or the Administration Commission[70] enters a final order determining whether the adopted amendment complies with the law.[71]

Effect of Proposed Changes

The bill amends s. 163.3177(6), F.S., to require local governments to incorporate a private property rights element into their comprehensive plans and respect private property rights in local decision making.

The bill provides a model statement of property rights, and local governments may incorporate the suggested language directly into their comprehensive plan. The property rights provided in

[60] Section 163.3184(4)(b), F.S.
[61] Section 163.3184(4)(c), F.S.
[62] Section 163.3184(4)(d)1., F.S.
[63] Section 163.3184(4)(d)1., F.S. All written communication the agency received or generated regarding a proposed amendment must be identified with enough information to allow for copies of documents to be requested. *See* s. 163.3184(4)(d)2., F.S.
[64] Sections 163.3184(4)(e)1. and (11)(b)2., F.S. If the hearing is not held within 180 days of receipt of the report, the amendment is deemed withdrawn absent an agreement and notice to DEO and all affected persons that provided comments. *See* s. 163.3184(4)(e)1., F.S.
[65] Section 163.3184(4)(e)2., F.S.
[66] Section 163.3184(4)(e)3. and 4., F.S.
[67] Section 163.3184(4)(e)4., F.S.
[68] *Id*.
[69] Section 163.3184(4)(e)5., F.S.
[70] Section 14.202, F.S., provides that the Administration Commission is composed of the Governor and the Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture).
[71] *Id*.

the bill include the following five acknowledgments that a local government should consider in the decision-making process:

- The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights;
- The right of the property owner to the quiet enjoyment of the property, to the exclusion of all others;
- The right of a property owner to use, maintain, develop, and improve his or her property for personal use or the use of any other person, subject to state law and local ordinances;
- The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property; and
- The right of the property owner to dispose of his or her property through sale or gift.

Each local government must adopt its own property rights element in its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, F.S. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in the bill.

Local Government Development Agreements (Section 3)

Present Situation

Local governments may enter into development agreements with developers.[72] 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."[73]

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.[74] A development agreement must include the following:[75]

- 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 that 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;

[72] Section 163.3220(4), F.S.; *see also* ss. 163.3220-163.3243, F.S., known as the "Florida Local Government Development Agreement Act."
[73] *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).
[74] Section 163.3223, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[75] Section 163.3227(1), F.S.

- 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 development agreement may also provide that the entire development, or any phase, must be commenced or completed within a specific time.[76] Within 14 days after a local government enters into a development agreement, the local government must record the agreement with the circuit court clerk in the county where the local government is located. A development agreement will not be effective until properly recorded in the public records of the county.[77]

The requirements and benefits in a development agreement are binding and vest or continue with any person who later obtains ownership from one of the original parties to the agreement,[78] also known as a successor in interest.[79] A development agreement may be amended or canceled by the parties' mutual consent to the agreement or by their successors in interest.[80]

Effect of Proposed Changes

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 parcel owners of property that were originally subject to the development agreement unless the amendment, modification, or termination directly modifies the allowable uses or entitlements of an owner's property.

Department of Transportation Disposal of Real Property (Section 4)

Present Situation

The Florida Department of Transportation (DOT) is authorized to convey any land, building, or other real or personal property it acquired if it determines the property is not needed for a transportation facility.[81] 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 and must advertise the disposal of any property valued over $10,000.[82]

[76] Section 163.3227(2), F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[77] Section 163.3239, F.S; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).
[78] Section 163.3239, F.S.
[79] 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).
[80] Section 163.3237, F.S.
[81] Section 337.25(4), F.S.
[82] *Id.*

DOT may not sell an unneeded property for a price less than DOT's current estimate of value, unless:

- The property was donated for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, then 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.[83]
- The property is to be used for a public purpose, then the property may be conveyed without consideration to a governmental entity.[84]
- The property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, then DOT may negotiate to sell such property as replacement housing.[85]
- DOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes DOT to significant liability risks, then 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.[86]

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.[87] Further, 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, DOT may first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated.[88]

Effect of Proposed Changes

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 a 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. Such an offer must be made in writing, by certified mail or hand delivery, and is effective upon receipt by the previous property owner. DOT must provide the previous property owner with at least 30 days to exercise the right of first refusal. If the previous property owner wants to purchase the property, he or she 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.

---

[83] Section 337.25(4), F.S.
[84] Section 337.25(4)(b), F.S.
[85] Section 337.25(4)(c), F.S.
[86] Section 337.25(4)(d), F.S.
[87] Section 337.25(4)(e), F.S.
[88] Section 337.25(4), F.S.

Developments of Regional Impact (Section 5)

Present Situation

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."[89]

The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[90] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[91]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[92] until the repeal of the requirements for state and regional reviews in 2018.[93] Local governments where a DRI is located are responsible for implementing and amending existing DRI agreements and development orders.[94]

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:[95]

- 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 the local government to be essential to the public health, safety, or welfare.

The local government must review any proposed change to a previously approved DRI based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[96] The local government must review a proposed change reducing the originally approved height, density, or intensity of the development based on the standards in the local comprehensive plan at the time the development was originally approved. If the proposed change

[89] Section 380.06(1), F.S.
[90] 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).
[91] Chapter 72-317, s. 6, Laws of Fla.
[92] *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).
[93] Chapter 2018-158, Laws of Fla.
[94] Sections 380.06(4)(a) and (7), F.S.
[95] Section 380.06(4)(a), F.S.
[96] Section 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.

would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[97]

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.[98]

For such agreements, a DRI is essentially built out if:[99]
- All the mitigation requirements in the development order were satisfied, all developers complied 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
- 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 Proposed Changes

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 are made pursuant to the local government's processes for amending development orders.

Important State Interest (Section 6)

The bill states that the Legislature finds and declares that this act fulfills an important state interest.

Effective Date (Section 7)

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution states in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds. The bill may implicate this constitutional restriction by potentially causing counties and municipalities to incur some costs amending their comprehensive plans to add a private property rights element by July 1, 2023.

[97] Section 380.06(7)(a), F.S.
[98] Chapter 2018-158, s. 1, Laws of Fla.
[99] Sections 380.06(15)(g)3. and 4., F.S. (2017).

Notwithstanding, article VII, section 18(d), of the Florida Constitution provides eight exemptions to the mandate restrictions. The mandate exemption relevant to this bill is the exemption for "laws having insignificant fiscal impact[.]"[100] For the Fiscal Year 2021-2022 the Senate's forecast for laws having a state-wide insignificant fiscal impact is $2,189,391.90.[101] Thus, if Florida's 67 counties and 411 municipalities spend on average $4,580.31 or less on the comprehensive plan amendment, the bill would be deemed to have an insignificant fiscal impact.

Complying with the bill may not necessitate a local government to expend additional funds beyond those already allocated to general government activities. Thus, the fiscal impact may be insignificant.

Still, if the judiciary determines that the bill is a mandate and no exemption or exception applies, the bill must have been approved by two-thirds of the membership of each house of the Legislature to be binding on local governments. The bill has the necessary determination that it fulfills an important state interest to be passed in this manner.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[100] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Feb. 24, 2021)

[101] Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is *available at* http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited Feb. 24, 2021).

C. Government Sector Impact:

Section 2 of CS/SB 496 may have a negative fiscal impact on local governments by requiring each county and municipality to adopt a private property rights element into its comprehensive plan by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan. However, the minimum costs associated with amending a comprehensive plan may be absorbed by a local government's budgetary allocations for general government activities. Thus, the fiscal impact may be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 163.3177, 163.3237, 337.25, and 380.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Community Affairs on March 3, 2021:
The committee substitute:

- Provides that a comprehensive plan for a newly incorporated municipality which becomes effective after January 1, 2016, instead of January 1, 2019, must incorporate development orders existing before the comprehensive plan's effective date, may not impair the completion of a development an existing development order, and must vest the density and intensity approved by such development order.
- Revises the timeframe within which a local government must adopt a property rights element in its comprehensive plan. Instead of the July 1, 2023, deadline, the bill now requires local governments to adopt a property rights element by the earlier of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan.

B. Amendments:

None.

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