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CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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2 An act relating to growth management; amending s.
3 163.3167, F.S.; specifying requirements for certain
4 comprehensive plans effective, rather than adopted,
5 after a specified date and for associated land
6 development regulations; amending s. 163.3177, F.S.;
7 requiring local governments to include a property
8 rights element in their comprehensive plans; providing
9 a statement of rights which a local government may
10 use; requiring a local government to adopt a property
11 rights element by the earlier of its adoption of its
12 next proposed plan amendment initiated after a certain
13 date or the next scheduled evaluation and appraisal of
14 its comprehensive plan; prohibiting a local
15 government's property rights element from conflicting
16 with the statement of rights contained in the act;
17 amending s. 163.3237, F.S.; providing that the consent
18 of certain property owners is not required for
19 development agreement changes under certain
20 circumstances; providing an exception; amending s.
21 337.25, F.S.; requiring the Department of
22 Transportation to afford a right of first refusal to
23 certain individuals under specified circumstances;
24 providing requirements and procedures for the right of
25 first refusal; amending s. 380.06, F.S.; authorizing

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26 | certain developments of regional impact agreements to
 27 | be amended under certain circumstances; providing
 28 | retroactive applicability; providing a declaration of
 29 | important state interest; providing an effective date.

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31 | Be It Enacted by the Legislature of the State of Florida:

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33 | Section 1. Subsection (3) of section 163.3167, Florida
 34 | Statutes, is amended to read:

35 | 163.3167 Scope of act.—

36 | (3) A municipality established after the effective date of
 37 | this act shall, within 1 year after incorporation, establish a
 38 | local planning agency, pursuant to s. 163.3174, and prepare and
 39 | adopt a comprehensive plan of the type and in the manner set out
 40 | in this act within 3 years after the date of such incorporation.

41 | A county comprehensive plan is controlling until the
 42 | municipality adopts a comprehensive plan in accordance with this
 43 | act. A comprehensive plan for a newly incorporated municipality
 44 | which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and
 45 | all land development regulations adopted to implement the
 46 | comprehensive plan must incorporate each development order
 47 | existing before the comprehensive plan's effective date, may not
 48 | impair the completion of a development in accordance with such
 49 | existing development order, and must vest the density and
 50 | intensity approved by such development order existing on the

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51 effective date of the comprehensive plan without limitation or
 52 modification.

53 Section 2. Paragraph (i) is added to subsection (6) of
 54 section 163.3177, Florida Statutes, to read:

55 163.3177 Required and optional elements of comprehensive
 56 plan; studies and surveys.—

57 (6) In addition to the requirements of subsections (1)-
 58 (5), the comprehensive plan shall include the following
 59 elements:

60 (i)1. In accordance with the legislative intent expressed
 61 in ss. 163.3161(10) and 187.101(3) that governmental entities
 62 respect judicially acknowledged and constitutionally protected
 63 private property rights, each local government shall include in
 64 its comprehensive plan a property rights element to ensure that
 65 private property rights are considered in local decisionmaking.
 66 A local government may adopt its own property rights element or
 67 use the following statement of rights:

68
 69 The following rights shall be considered in local
 70 decisionmaking:

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 72 1. The right of a property owner to physically
 73 possess and control his or her interests in the
 74 property, including easements, leases, or mineral
 75 rights.

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2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

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

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by

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101 mutual consent of the parties to the agreement or by their
 102 successors in interest. A party or its designated successor in
 103 interest to a development agreement and a local government may
 104 amend or cancel a development agreement without securing the
 105 consent of other parcel owners whose property was originally
 106 subject to the development agreement, unless the amendment or
 107 cancellation directly modifies the allowable uses or
 108 entitlements of such owners' property.

109 Section 4. Subsection (4) of section 337.25, Florida
 110 Statutes, is amended to read:

111 337.25 Acquisition, lease, and disposal of real and
 112 personal property.—

113 (4) The department may convey, in the name of the state,
 114 any land, building, or other property, real or personal, which
 115 was acquired under subsection (1) and which the department has
 116 determined is not needed for the construction, operation, and
 117 maintenance of a transportation facility. When such a
 118 determination has been made, property may be disposed of through
 119 negotiations, sealed competitive bids, auctions, or any other
 120 means the department deems to be in its best interest, with due
 121 advertisement for property valued by the department at greater
 122 than \$10,000. A sale may not occur at a price less than the
 123 department's current estimate of value, except as provided in
 124 paragraphs (a)-(d). The department may afford a right of first
 125 refusal to the local government or other political subdivision

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126 | in the jurisdiction in which the parcel is situated, except in a
127 | conveyance transacted under paragraph (a), paragraph (c), or
128 | paragraph (e). Notwithstanding any provision of this section to
129 | the contrary, before any conveyance under this subsection may be
130 | made, except a conveyance under paragraph (a) or paragraph (c),
131 | the department shall first afford a right of first refusal to
132 | the previous property owner for the department's current
133 | estimate of value of the property. The right of first refusal
134 | must be made in writing and sent to the previous owner via
135 | certified mail or hand delivery, effective upon receipt. The
136 | right of first refusal must provide the previous owner with a
137 | minimum of 30 days to exercise the right in writing and must be
138 | sent to the originator of the offer by certified mail or hand
139 | delivery, effective upon dispatch. If the previous owner
140 | exercises his or her right of first refusal, the previous owner
141 | has a minimum of 90 days to close on the property. The right of
142 | first refusal set forth in this subsection may not be required
143 | for the disposal of property acquired more than 10 years before
144 | the date of disposition by the department.

145 | (a) If the property has been donated to the state for
146 | transportation purposes and a transportation facility has not
147 | been constructed for at least 5 years, plans have not been
148 | prepared for the construction of such facility, and the property
149 | is not located in a transportation corridor, the governmental
150 | entity may authorize reconveyance of the donated property for no

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151 consideration to the original donor or the donor's heirs,
152 successors, assigns, or representatives.

153 (b) If the property is to be used for a public purpose,
154 the property may be conveyed without consideration to a
155 governmental entity.

156 (c) If the property was originally acquired specifically
157 to provide replacement housing for persons displaced by
158 transportation projects, the department may negotiate for the
159 sale of such property as replacement housing. As compensation,
160 the state shall receive at least its investment in such property
161 or the department's current estimate of value, whichever is
162 lower. It is expressly intended that this benefit be extended
163 only to persons actually displaced by the project. Dispositions
164 to any other person must be for at least the department's
165 current estimate of value.

166 (d) If the department determines that the property
167 requires significant costs to be incurred or that continued
168 ownership of the property exposes the department to significant
169 liability risks, the department may use the projected
170 maintenance costs over the next 10 years to offset the
171 property's value in establishing a value for disposal of the
172 property, even if that value is zero.

173 (e) If, at the discretion of the department, a sale to a
174 person other than an abutting property owner would be
175 inequitable, the property may be sold to the abutting owner for

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176 the department's current estimate of value.

177 Section 5. Paragraph (d) of subsection (4) of section
178 380.06, Florida Statutes, is amended to read:

179 380.06 Developments of regional impact.—

180 (4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

181 (d) Any agreement entered into by the state land planning
182 agency, the developer, and the local government with respect to
183 an approved development of regional impact previously classified
184 as essentially built out, or any other official determination
185 that an approved development of regional impact is essentially
186 built out, remains valid unless it expired on or before April 6,
187 2018, and may be amended pursuant to the processes adopted by
188 the local government for amending development orders. Any such
189 agreement or amendment may authorize the developer to exchange
190 approved land uses, subject to demonstrating that the exchange
191 will not increase impacts to public facilities. This paragraph
192 applies to all such agreements and amendments effective on or
193 after April 6, 2018.

194 Section 6. The Legislature finds and declares that this
195 act fulfills an important state interest.

196 Section 7. This act shall take effect July 1, 2021.