



# Marion County

## Board of County Commissioners

### Walk-on Agenda

McPherson Governmental Campus  
601 SE 25th Ave.  
Ocala, FL 34471  
Phone: 352-438-2323  
Fax: 352-438-2324

District 1 – Craig Curry, Commissioner  
District 2 – Kathy Bryant, Commissioner  
District 3 – Jeff Gold, Chairman  
District 4 – Carl Zalak III, Vice Chair  
District 5 – Michelle Stone, Commissioner

---

**Tuesday, July 20, 2021**

**9:00 AM**

**McPherson Governmental  
Campus Auditorium**

- 
- 8.1. Request Approval to Seek an Opinion of the Attorney General Regarding House Bill (HB) 59



# Marion County

## Board of County Commissioners

### Agenda Item

**File No.:** 2021-3881

**Agenda Date:** 7/20/2021

**Agenda No.:** 8.1.

**SUBJECT:**

**Request Approval to Seek an Opinion of the Attorney General Regarding House Bill (HB) 59**

**INITIATOR:**

**Matthew G. Minter, County Attorney**

**DEPARTMENT:**

**Legal**

**DESCRIPTION/BACKGROUND:**

A recent Act sponsored by Representative Stan McClain, HB 59, related to growth management, became effective July 1, 2021. Among other things, this Act amended subsection (6) of section 163.3177, Florida Statutes, adding the following requirement in new sub- paragraph (i) 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. 163.3101. If a local government adopts its own property rights element, the element **may not conflict with** the statement of rights provided in subparagraph 1.” This text is at the bottom of Page 4 of 8 of the Act; a copy of the entire Act is attached hereto for your reference.

As is sometimes the case with new legislation, local government attorneys and land use attorneys are already asking questions about the interpretation of certain portions of the new requirements. Among those is the issue: Is Marion County required to adopt this new Property Rights Element before it approves any other comprehensive plan amendment? Or, focusing on the word “its,” in the text, is Marion County only required to adopt the new element before the County adopts any new County-initiated plan amendment? -- Meaning that we can and should consider privately initiated plan amendments even before we adopt the new Property Rights Element?

The Act permits a local government to adopt its own version of a Property Rights Element - but if we do, it “may not conflict with” a statement of property rights contained in the Act.

I am requesting Board approval to request an opinion from the Attorney General to clarify certain provisions of the Act for the benefit of our Growth Services Division.

**BUDGET/IMPACT:**

None

**RECOMMENDED ACTION:**

Motion to authorize the County Attorney to seek an opinion of the Attorney General for the purposes described above.

Attachment

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

An act relating to growth management; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; amending s. 163.3177, F.S.; requiring local governments to include a property rights element in their comprehensive plans; providing a statement of rights which a local government may use; requiring a local government to adopt a property rights element by the earlier of its adoption of its next proposed plan amendment initiated after a certain date or the next scheduled evaluation and appraisal of its comprehensive plan; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; amending s. 163.3237, F.S.; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; providing an exception; amending s. 337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances; providing requirements and procedures for the right of first refusal; amending s. 380.06, F.S.; authorizing

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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.

30

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

32

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

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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:

71  
 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.

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

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

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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

ENROLLED

CS/CS/CS/HB 59, Engrossed 1

2021 Legislature

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.