

UNINTENDED CONSEQUENCES OF GROWTH MANAGEMENT LEGISLATION RELATED TO PROPERTY RIGHTS

The legislature passed [House Bill 59](#) in the 2021 Legislative Session, which amended Part II of Chapter 163, with the goal of ensuring that protections for private property rights are a part of all local comprehensive plans. Specifically, Section 163.3177(6)(i)2, Florida Statutes (Chapter 2021-195, Laws of Florida), now requires a local government to adopt and include a property rights element in its comprehensive plan for any proposed plan amendment initiated after July 1, 2021.

As listed in Section 163.3177(6)(i), F.S., a local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decision making:

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

It is expected, and we are seeing, that most municipalities are responding to House Bill 59 by adopting the statutory language verbatim. Some local governments are intending to adopt their own property rights element. If a local government develops their own element language, the element must not conflict with the statement of rights provided by the statute.

There have been some unintended consequences of House Bill 59. First, the bill had an immediate impact on the timing of comprehensive plan amendments. The Department of Economic Opportunity (“DEO”) initially interpreted the requirement as an immediate need, before which no comprehensive plan amendments could be processed. That stance caused some comprehensive plan amendments to be delayed. Outcry from the development community caused DEO to adjust their initial interpretation such that most existing applications are able to move forward. There are also some municipalities that already had reasonable private property rights protections as part of their comprehensive plans. None the less, the statute forces them to change their comprehensive plans to comply with the bill. Those municipalities are essentially innocent bystanders forced to act so that the legislature can ensure private rights exist across the entire state. DEO has provided their guidance on their [website](#).

What may also come to pass are comprehensive plan provisions that attempt to protect additional rights not typically considered, which could have the opposite effect on a landowner’s rights. Some groups have seized on this opportunity to prepare their own model private property rights element and encourage members of the public to engage in the adoption of this element and the overall planning process. Other possible plan provisions could include protections for privacy or other rights, which if improperly drafted could be used to argue against development for invasion of a neighbor’s property rights.

Interested parties should watch local government action closely in the coming months. Local governments should be encouraged to act quickly to update their comprehensive plans. Failure of a local government to adopt the private property rights element may jeopardize the approval of upcoming comprehensive plan amendments by DEO. Further, if a local government decides not to adopt the default statutory language, the language chosen should be carefully reviewed and commented on to ensure that any language adopted both meets the intent of the new statutory language and does not create an inadvertent pitfall that might be used to limit a landowner's rights unreasonably in favor of another's.