

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Non-Charter County

Indian River County is a non-charter county operating pursuant to s. 1(f), Art. VIII of the Florida Constitution, which provides that a county ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

Land Use Regulations

Municipalities within Indian River County must exercise comprehensive land use and zoning power for the total area under its jurisdiction. Unincorporated areas adjacent to incorporated municipalities may be included in the area of municipal jurisdiction if the governing bodies of the municipality and the county, agree on the boundaries, on procedures for joint action in preparation and adoption of the comprehensive plan, on administration of land development regulations, and on the manner of representation on any joint body or instrument created under the joint agreement.

Indian River County has authority to exercise comprehensive land use and zoning power for the total unincorporated area under its jurisdiction. The Indian River County comprehensive plan establishes an urban service boundary area, outside of which consists of the unincorporated area of the county.

Transfer of Powers

On November 7, 2006, the voters of Indian River County gave approval for the Board of County Commissioners to have exclusive authority and power to adopt a comprehensive plan within the entire area of Indian River County outside of the urban service boundary area, including both unincorporated and the incorporated areas.

Article VIII. section 4 of the Florida Constitution provides that

By law or by resolution of the governing board bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

In *Sarasota County v. Town of Longboat Key*,¹ the court examined Art. VIII, s. 4, and determined that the “by law” reference connotes the need for a separate legislative act addressed to a specific transfer, while the “as otherwise provided by law” reference only addresses the means for approval.² This bill appears to address both provisions.

¹ *Sarasota County v. Town of Longboat Key*, 355 So. 2d 1197, 1201 (Fla. 1978).

² *Id.*

Effect of Proposed Changes

The bill defines “urban service boundary area” as property within the unincorporated area and may in the future include property within one or more municipalities. The bill preempts land use power to the county over the total area outside the urban service boundary area. In the event of annexation of any such land by a municipality after the effective date of this act, any land development regulations adopted and implemented for the annexed area by a municipality are subject to and must be consistent with, or must be amended to be subject to and consistent with, the comprehensive plan adopted by the board of county commissioners.

The bill also provides for modification of the urban service boundary area subject to referendum. Electorate approval is required only if the board of county commissioners takes any action to permit any housing development outside the urban service boundary area with a density higher than the maximum density allowed pursuant to the county’s adopted comprehensive plan.

As discussed above, the bill provides that it is an alternative provision otherwise provided by law as authorized by s. 4, Art. VIII of the Florida Constitution. The bill is effective upon approval by 60 percent of the qualified electors voting in the referendum which asks the following question:

Shall legislation be enacted to: establish an urban service boundary area in Indian River County; transfer comprehensive land use and zoning power to Indian River County from any affected municipality for property outside the urban service boundary area; and require referendum approval of any future modification to the urban service boundary area by the board of county commissioners?

C. SECTION DIRECTORY:

- Section 1: Provides definitions.
- Section 2: Establishes urban service boundary area.
- Section 3: Provides preemption of land use power to county
- Section 4: Provides for modification of urban service boundary area subject to referendum.
- Section 5: Provides that act is under the authority provided in s. 4 Art. VIII. of the Florida Constitution.
- Section 6: Provides for referendum.
- Section 7: Provides effective date subject to referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? In conjunction with the next countywide general election.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES