

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 41 Land Development Initiative and Referendum Processes  
**SPONSOR(S):** State Affairs Committee and Local Administration, Federal Affairs & Special Districts  
Subcommittee, Garcia and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 718

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**FINAL HOUSE FLOOR ACTION:** 91 Y's      26 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 41 passed the House on May 2, 2023, as CS/CS/SB 718. The bill includes portions of CS/HB 653 and SB 856.

Every local government must plan for future development and growth by adopting, implementing, and amending, as necessary, a comprehensive plan. Comprehensive plans are implemented through land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.

Current law prohibits an initiative or referendum process for any development order, as well as any local comprehensive plan amendment or map amendment not expressly authorized by specific language in a local government charter in effect on June 1, 2011.

A municipality may propose to annex any area of contiguous, compact, unincorporated territory by ordinance or may be petitioned for annexation by owner(s) of contiguous... and reasonably compact real property. An area may only be annexed by ordinance if the annexation is approved by the majority of electors within the affected area voting in a referendum, while an area may be annexed by petition only upon unanimous consent of the landowners.

A municipality may initiate the contraction of its boundaries by proposing an ordinance or upon receipt of a petition signed by 15 percent of the qualified voters in the area to be excluded. The petition must be filed with the clerk of the municipal governing body. Upon receipt of the petition, the municipality must undertake a study of the feasibility of the proposal and either initiate the proceedings or reject the petition, stating the facts upon which the rejection is based, within six months.

The bill revises the current prohibition on initiative and referendum processes to prohibit those processes from being used for any land development regulations.

The bill revises requirements for municipal annexation and contraction. The bill requires a municipality to conduct a feasibility study before conducting an annexation or contraction and removes the requirement for a municipality to provide specific findings when rejecting a petition for contraction. If more than 70 percent of the acres proposed to be contracted are owned by individuals, corporations, or legal entities that are not registered electors, the bill requires contraction to be approved by the owners of more than 50 percent of the acres in the area to be contracted.

The bill does not appear to have a fiscal impact on state government. To the extent local governments would no longer need to conduct an election in response to a land development regulation, the bill would likely have a positive fiscal impact.

The bill was approved by the Governor on June 28, 2023, ch. 2023-305, L.O.F., and will become effective on July 1, 2023.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Present Situation

#### Comprehensive Plans

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.<sup>1</sup> All elements of a plan or plan amendment must be based on relevant, appropriate data<sup>2</sup> and an analysis by the local government may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.<sup>3</sup> The data supporting a plan or amendment must be taken from professionally accepted sources and must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.<sup>4</sup> In order to prepare and provide guidance for future development and growth, local governments must maintain comprehensive plans and implement these plans through adoption of appropriate land development regulations or other elements.<sup>5</sup>

Comprehensive plans adopted by local governments provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.<sup>6</sup> A key purpose of the plan is to establish meaningful and predictable standards for the use and development of land.

#### Land Development Regulations

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.<sup>7</sup> Local governments are encouraged to use innovative land development regulations<sup>8</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>9</sup>

All local government land development regulations must be consistent with the local comprehensive plan.<sup>10</sup> Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>11</sup> However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.<sup>12</sup>

#### Development Permits and Orders

The Community Planning Act<sup>13</sup> defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."<sup>14</sup> When a party wishes to engage in development

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<sup>1</sup> Ss. 163.3167(2), 163.3177(2), F.S.

<sup>2</sup> "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.

<sup>3</sup> S. 163.3177(1)(f), F.S.

<sup>4</sup> S. 163.3177(1)(f).

<sup>5</sup> S. 163.3167(1)(a-c) and (2), F.S.

<sup>6</sup> S. 163.3177(1), F.S.

<sup>7</sup> S. 163.3202, F.S.

<sup>8</sup> S. 163.3202(3), F.S.

<sup>9</sup> Ss. 125.01055 and 166.04151, F.S.

<sup>10</sup> S. 163.3194(1)(b), F.S.

<sup>11</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>12</sup> S. 189.081(1), F.S.

<sup>13</sup> Part II, ch. 163, F.S.

<sup>14</sup> S. 163.3164(14), F.S.

activities, the party must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.<sup>15</sup> Once a local government has officially granted or denied a development permit, the official action constitutes a development order,<sup>16</sup> which vests certain rights related to the land.<sup>17</sup>

### Comprehensive Plans and Referendums

In 2006, the voters of the city of St. Pete Beach amended the city's charter to require a referendum for any future changes to the city's comprehensive plan. These actions effectively stalled local development and led to a series of litigation between the city and the proponents of the amendment to the city's charter.<sup>18</sup> At the time, state law only prohibited an initiative or referendum concerning a development order, comprehensive plan amendment, or map amendment that affected five or fewer parcels of land.<sup>19</sup> The prohibition was revised in 2011 to apply to all initiatives and referenda concerning a development order, comprehensive plan amendment, or map amendment.<sup>20</sup> This provision was further revised to allow an initiative and referendum process in regard to any local comprehensive plan amendment or map amendment if it was expressly authorized by the local government charter that was in effect on June 1, 2011.<sup>21</sup>

There is currently no prohibition against the use of initiatives or the referendum process in regard to land development regulations. Citizens within two cities, Venice<sup>22</sup> and Pinecrest,<sup>23</sup> have initiated the referendum process in order to challenge land development regulations proposed by those municipalities. While the Venice vote has yet to occur, the Pinecrest initiative failed on March 7, 2023.<sup>24</sup>

### Municipal Annexation

A municipality may propose to annex any area of contiguous, compact, unincorporated territory by ordinance or may be petitioned for annexation by owner(s) of "contiguous... and reasonably compact" real property.<sup>25</sup> An area is considered "contiguous" if a substantial part of its boundary is coterminous with a part of the boundary of the municipality.<sup>26</sup> An area is compact if it is concentrated in a single area and does not create enclaves, pockets, or finger areas.<sup>27</sup> All lands to be annexed must be in the same county as the annexing municipality.<sup>28</sup>

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<sup>15</sup> S. 163.3164 (16), F.S.

<sup>16</sup> S. 163.3164 (15), F.S.

<sup>17</sup> S. 163.3167(3), F.S.

<sup>18</sup> Mike Vogel, *Where Citizens Decide Growth Changes*, Florida Trend, available at <https://www.floridatrend.com/print/article/4365> (last visited Feb. 13, 2023).

<sup>19</sup> S. 163.3167(12), F.S. (2006).

<sup>20</sup> Ch. 2011-139, s. 7, Laws of Fla.

<sup>21</sup> Chs. 2012-99, 2013-115, 2013-213, and 2014-178, Laws of Fla.

<sup>22</sup> Earle Kimel, *Venice residents get OK to start petition for referendum on development rules*, Sarasota Herald-Tribune, available at <https://www.heraldtribune.com/story/news/politics/elections/2022/08/16/elections-2022-venice-residents-get-ok-start-petition-referendum-development-rules/10326297002/> (last visited Apr. 25, 2023).

<sup>23</sup> Tess Riski, *Pinecrest touts its trees. But residents battle mayor over zoning changes*, Miami Herald, available at <https://www.msn.com/en-us/news/us/pinecrest-touts-its-trees-but-residents-battle-mayor-over-zoning-changes/ar-AA167ldZ> (last visited Apr. 25, 2023).

<sup>24</sup> Miami Dade County Supervisor of Elections, Pinecrest Special Election, available at <https://enr.electionsfl.org/DAD/3366/Summary/> (last visited Apr. 25, 2023).

<sup>25</sup> Ss. 171.0413(1) and 171.044(1), F.S.

<sup>26</sup> S. 171.031(11), F.S. An area may be contiguous to a municipality even if it is separated by a county-owned public park, a right-of-way, a body of water, or other minor geographic division, as long as those areas do not prevent the annexing municipality and the area being annexed from being a "unified whole with respect to municipal services."

<sup>27</sup> S. 171.031(12), F.S.

<sup>28</sup> S. 171.045, F.S.

The governing body of a municipality may only propose annexation of an area that is contiguous, reasonably compact, and either:<sup>29</sup>

- Developed for “urban purposes;”<sup>30</sup>
- Lies between the municipal boundary and an area developed for urban purposes; or
- Adjacent, on at least 60 percent of its external boundary, to any combination of the municipal boundary and areas developed for urban purposes.

A municipality may begin the annexation process by adopting a non-emergency ordinance.<sup>31</sup> The municipality is required to hold two advertised public meetings before the adoption of the ordinance, one held on a weekday at least seven days after the publication of the first advertisement and one held on a weekday at least five days after the publication of the second advertisement. At least 10 days prior to the first public meeting, the municipal governing body must provide written notice to all residents and property owners in the area proposed for annexation.<sup>32</sup> The notice must contain the annexation proposal, the time and location of the public meeting, and locations where the proposed ordinance may be inspected by the public.

Before adopting an annexation ordinance, a municipality must prepare a report containing:<sup>33</sup>

- Plans to provide urban services to the area to be annexed;
- A map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, and the general land use pattern in the area to be annexed;
- A statement certifying the area meets the annexation criteria specified in s. 171.043, F.S.; and
- A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

The municipal governing body must file a copy of the report with the governing body of the county within 15 days of the commencement of annexation procedures.<sup>34</sup> Failure to submit the report to the county in a timely manner may invalidate the annexation.

The municipality must submit the adopted annexation ordinance to a referendum in the area to be annexed.<sup>35</sup> The municipality may also choose to submit the ordinance to the voters of the municipality for approval. If more than 70 percent of the area to be annexed is not owned by registered voters, the municipality must obtain the consent of landowners owning at least 50 percent of area to be annexed before conducting the referendum.<sup>36</sup> The referendum may be conducted during the next regularly scheduled election or at a special election.<sup>37</sup> The referendum must not be held until at least 30 days after the adoption of the ordinance and must be advertised in a newspaper of general circulation in the area to be annexed.<sup>38</sup> If the referendum is approved by the voters, the annexation occurs on the effective date provided by the ordinance.<sup>39</sup> If the voters reject annexation, the municipality may not propose annexation of the same area in the two years following the referendum.

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<sup>29</sup> S. 171.043, F.S.

<sup>30</sup> “Urban purposes” means having a resident population of at least two persons per acre, having a resident population of at least one person per acre if the area is subdivided into lots where at least 60 percent of the total number of lots are one acre or less in size, or at least 60 percent of the total number of lots meet one of the preceding definitions and at least 60 percent of the total acreage not used for non-residential urban purposes is subdivided into lots of five acres or less. S. 171.043(2)(a)-(c), F.S.

<sup>31</sup> S. 171.0413(1), F.S. A non-emergency ordinance is adopted using standing procedures specified by s. 166.041, F.S.

<sup>32</sup> S. 171.042(3), F.S.

<sup>33</sup> S. 171.042(1), F.S.

<sup>34</sup> S. 171.042(2), F.S.

<sup>35</sup> S. 171.0413(2), F.S.

<sup>36</sup> S. 171.0413(5), F.S.

<sup>37</sup> S. 171.0413(2)(a), F.S.

<sup>38</sup> S. 171.0413(2)(a)-(b), F.S.

<sup>39</sup> S. 171.0413(2)(e), F.S.

If the area to be annexed has no registered electors, the area may be annexed without a referendum if the municipality obtains the consent of landowners representing both 50 percent of acreage and 50 percent of the parcels in the area to be annexed.<sup>40</sup>

Alternatively, the owner(s) of real property in a contiguous, reasonably compact, and unincorporated area of the county may petition a municipality for annexation.<sup>41</sup> The municipality must determine that all land owners in the area to be annexed have signed the petition and publish notice of the annexation before passing an ordinance annexing the area. A copy of the ordinance, including a map and a metes-and-bounds legal description of the area, must be filed with the clerk of the circuit court, the chief administrative officer of the county, and the Department of State within seven days after adopting the annexation ordinance. An area may not be annexed using this process if the annexation would result in the creation of an enclave.<sup>42</sup>

### Municipal Contraction

A municipality may initiate the contraction of its boundaries by ordinance<sup>43</sup> or by petition signed by 15 percent of the qualified voters in the area to be excluded.<sup>44</sup> The petition must be filed with the clerk of the municipal governing body. Upon receipt of a petition, the municipality must undertake a study of the feasibility of the proposal and either initiate the proceedings or reject the petition, stating the facts upon which the rejection is based, within six months.<sup>45</sup>

Once the contraction proposal is initiated, the governing body must publish notice of the proposed contraction ordinance at least once a week for two consecutive weeks in a newspaper of general circulation in the municipality.<sup>46</sup> This notice must:

- Include a description of the area to be excluded;
- Show the area fails to meet the general criteria for annexation;
- Set the time and place for the municipal governing body meeting at which the proposed ordinance will be considered; and
- Advise that all affected persons may be heard.

Voter approval of the contraction is required if the municipal governing body calls for a referendum election on the question in the area proposed for exclusion or residents of the area submit a petition at the public meeting signed by at least 15 percent of the area's qualified voters. The date for the referendum is determined by the method used to call for the referendum.<sup>47</sup> The municipal governing body is required to publish notice of the referendum election at least once a week for two consecutive weeks in a newspaper of general circulation in the municipality or in the area proposed to be excluded.<sup>48</sup> If a majority of electors voting in the referendum opposes contraction, the municipality is prohibited from proposing the exclusion of the area in a contraction ordinance for a period of at least two years.<sup>49</sup>

An area removed from a municipality must fail to meet the criteria for annexation.<sup>50</sup> Under these criteria, an area to be annexed must be contiguous to the annexing municipality, must be reasonably compact,

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<sup>40</sup> S. 171.0413(6), F.S.

<sup>41</sup> S. 171.044, F.S.

<sup>42</sup> S. 171.044(5), F.S.

<sup>43</sup> S. 171.051(1), F.S.

<sup>44</sup> S. 171.051(2), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> S. 171.051(3), F.S.

<sup>47</sup> S. 171.051(6), F.S. If a referendum is required due to the filing of a petition signed by at least 15 percent of the area's qualified voters, the referendum must occur at the next regularly scheduled election. If the referendum is called at the discretion of the municipal governing body, a special election is called no sooner than 30 days after the verification of the petition or the passage of the resolution or ordinance calling for a referendum.

<sup>48</sup> S. 171.051(7), F.S.

<sup>49</sup> S. 171.051(10), F.S.

<sup>50</sup> S. 171.052(1), F.S.

and may not be located within the boundaries of another municipality.<sup>51</sup> For annexation, an area must also meet one of the following criteria:

- The area is developed for urban purposes;<sup>52</sup>
- The area links the municipality with areas developed for urban purposes;<sup>53</sup> or
- At least 60 percent of the boundary of the area is adjacent to the municipal boundary and lands developed for urban purposes.<sup>54</sup>

The results of the contraction must not separate any portion of the municipality from the rest of the municipality.<sup>55</sup> The contracting ordinance must provide for apportionment of any prior existing debt and property.<sup>56</sup> The county and the municipal governing body must reach an agreement determining which debt or property will be transferred to the county, the fair value of the debt or property, and the manner of transfer and financing.<sup>57</sup> An area that has been contracted is no longer subject to municipal laws, ordinances, or regulations and becomes subject to any laws, ordinances, or regulations of the county as of the effective date of the contraction.<sup>58</sup>

## Effect of the Bill

The bill prohibits an initiative or referendum process for amendments to *any* land development regulations. Current law prohibits an initiative or referendum process for any development order, as well as any local comprehensive plan amendment or map amendment that was not expressly authorized by specific language in a local government charter that was in effect on June 1, 2011.

Before commencing any annexation or contraction action, the bill requires a municipality to prepare a feasibility study. The bill defines “feasibility study” to mean an analysis conducted by qualified staff or consultants of the economic, market, technical, financial, and management feasibility of the proposed annexation or contraction.

As it pertains to contraction, the bill removes the requirement for a municipality to provide specific findings when rejecting a petition from the voters in an area desiring to be excluded from the municipal boundaries, and specifies that such rejection is a legislative decision. The bill also revises the contraction procedures where more than 70 percent of the acres proposed to be contracted are owned by private entities that are not registered electors to require the owners of more than 50 percent of the acreage to consent to such contraction. This change, which mirrors current requirements for municipal annexation, are prospective in nature and apply to petitions filed on or after July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

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<sup>51</sup> S. 171.043(1), F.S.

<sup>52</sup> S. 171.043(2), F.S. An area is considered “developed for urban purposes” if it has a population density of 2 persons per acre, a population density of 1 person per acre and at least 60 percent of the total lots and tracts in the area are less than or equal to 1 acre in size, or 60 percent of the total lots and tracts in the area would otherwise be considered used for urban purposes and at least 60 percent of the total acreage of the area, excluding areas used for nonresidential urban purposes, is lots and tracts less than or equal to 5 acres in size.

<sup>53</sup> S. 171.043(3)(a), F.S.

<sup>54</sup> S. 171.043(3)(b), F.S.

<sup>55</sup> S. 171.052(1), F.S.

<sup>56</sup> S. 171.052(2), F.S.

<sup>57</sup> S. 171.061(2), F.S.

<sup>58</sup> S. 171.062(3), F.S.

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Local governments that would need to conduct elections in response to an initiative or referendum regarding an amendment to a land development regulation would no longer need to do so. This would reduce potential election costs for local governments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.