

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 718

INTRODUCER: Rule Committee; Community Affairs Committee; and Senator Yarborough

SUBJECT: Local Government

DATE: April 25, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Hunter</u>	<u>Twogood</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 718 changes the requirements for annexation and contraction, wherein property is either added to, or removed from, the boundaries of a municipality. The bill identifies the “report” a municipality must prepare prior to any annexation or contraction action as a “feasibility study,” and provides that such study must analyze the economic, market, technical, financial, and management feasibility of a proposed annexation or contraction.

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

Finally, the bill prohibits local governments from requiring an initiative and referendum process for amendments to land development regulations. Current law generally prohibits an initiative or referendum process for any development order, as well as any local comprehensive plan amendment or map amendment.

The bill takes effect on July 1, 2023.

II. Present Situation:

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.¹ An area is considered “contiguous” if a substantial part of its boundary is coterminous with a part of the boundary of the municipality.² An area is compact if it is concentrated in a single area and does not create enclaves, pockets, or finger areas.³ All lands to be annexed must be in the same county as the annexing municipality.⁴

The governing body of a municipality may only propose annexation of an area that is contiguous, reasonably compact, and is either:⁵

- Developed for “urban purposes,” which is defined as having a resident population or 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 1 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 5 acres or less;
- 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.⁶ The municipality is required to hold two advertised public meetings before the adoption of the ordinance, one held on a weekday at least 7 days after the publication of the first advertisement and one held on a weekday at least 5 days after the publication of the second advertisement. At least 10 days prior to the first public meeting, the governing body of the municipality must provide written notice to all residents and property owners in the area proposed for annexation.⁷ 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 is required to prepare a report that contains:⁸

- 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

¹ Sections. 171.0413(1) and 171.044(1), F.S.

² Section 171.031(11), F.S.

³ Section 171.031(12), F.S.

⁴ Section 171.045, F.S.

⁵ Section 171.043, F.S.

⁶ Section 171.0413(1), F.S. A non-emergency ordinance is adopted using standing procedures specified by s. 166.041, F.S.

⁷ Section 171.042(3), F.S.

⁸ Section 171.042(1), F.S.

- 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 governing body of the municipality must file a copy of the report with the governing body of the county within 15 days of the commencement of annexation procedures.⁹ 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.¹⁰ 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.¹¹

The referendum may be conducted during the next regularly scheduled election or at a special election.¹² 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.¹³ If the referendum is approved by the voters, the annexation occurs on the effective date provided by the ordinance.¹⁴ If the voters reject annexation, the municipality may not propose annexation of the same area in the 2 years following the referendum.

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.¹⁵

Alternatively, the owner(s) of real property in a contiguous, reasonably compact, and unincorporated area of the county may petition a municipality for annexation.¹⁶ 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 7 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.¹⁷

Municipal Contraction

A municipality may initiate the contraction of its boundaries by ordinance¹⁸ or by a petition signed by of fifteen percent of the qualified voters in the area to be excluded.¹⁹ The petition must be filed with the clerk of the municipal governing body. Upon receipt of a petition, the

⁹ Section 171.042(2), F.S.

¹⁰ Section 171.0413(2), F.S.

¹¹ Section 171.0413(5), F.S.

¹² Section 171.0413(2)(a), F.S.

¹³ Section 171.0413(2)(a)-(b), F.S.

¹⁴ Section 171.0413(2)(e), F.S.

¹⁵ Section 171.0413(6), F.S.

¹⁶ Section 171.044, F.S.

¹⁷ Section 171.044(5), F.S.

¹⁸ Section 171.051(1), F.S.

¹⁹ Section 171.051(2), F.S.

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 6 months.²⁰

Once the contraction proposal is initiated, the governing body must publish notice of the proposed contraction ordinance at least once a week for 2 consecutive weeks in a newspaper of general circulation in the municipality.²¹ 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 that 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.²² The municipal governing body is required to publish notice of the referendum election at least once a week for 2 consecutive weeks in a newspaper of general circulation in the municipality or in the area proposed to be excluded.²³ 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 least 2 years.²⁴

An area removed from a municipality must fail to meet the criteria for annexation.²⁵ Under these criteria, an area to be annexed must be contiguous to the annexing municipality, must be reasonably compact, and must not be located within the boundaries of another municipality.²⁶ For annexation, an area must also meet one of the following criteria:

- The area is developed for urban purposes;²⁷
- The area links the municipality with areas developed for urban purposes;²⁸ or
- At least 60 percent of the boundary of the area is adjacent to the municipal boundary and lands developed for urban purposes.²⁹

The results of the contraction must not separate any portion of the municipality from the rest of the municipality.³⁰ The contracting ordinance must provide for apportionment of any prior

²⁰ *Id.*

²¹ Section 171.051(3), F.S.

²² Section 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.

²³ Section 171.051(7), F.S.

²⁴ Section 171.051(10), F.S.

²⁵ Section 171.052(1), F.S.

²⁶ Section 171.043(1), F.S.

²⁷ Section 171.043(2), F.S.

²⁸ Section 171.043(3)(a), F.S.

²⁹ Section 171.043(3)(b), F.S.

³⁰ Section 171.052(1), F.S.

existing debt and property.³¹ 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.³² 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.³³

Comprehensive Plans

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.³⁴ Each county and municipality must maintain a comprehensive plan to guide future development.³⁵

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.³⁶ A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.³⁷

The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.³⁸

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Land development regulations are ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.³⁹

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.⁴⁰ Local governments are

³¹ Section 171.052(2), F.S.

³² Section 171.061(2), F.S.

³³ Section 171.062(3), F.S.

³⁴ Section 163.3167(1), F.S.

³⁵ Section 163.3167(2), F.S.

³⁶ Section 163.3194(3), F.S.

³⁷ Section 163.3177(6), F.S.

³⁸ *Id.*

³⁹ Section 163.3164, F.S.

⁴⁰ Section 163.3202, F.S.

encouraged to use innovative land development regulations⁴¹ and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.⁴²

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.⁴³ Additionally, land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.⁴⁴

Development Permits and Orders

The Community Planning Act 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."⁴⁵ When a party wishes to engage in development activity, they 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."⁴⁶ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.⁴⁷ A development order vests certain rights related to the land.⁴⁸

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.⁴⁹ 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.⁵⁰ The prohibition was revised in 2011 as part of the Community Planning Act to apply to all initiatives and referenda concerning a development order, comprehensive plan amendment, or map amendment.⁵¹ This provision was further revised to allow an initiative and referendum process in regard to any local

⁴¹ Section 163.3202(3), F.S.

⁴² Sections 125.01055 and 166.04151, F.S.

⁴³ Sections 163.3174(4)(a) and 163.3184, F.S.

⁴⁴ See ss 163.3161(6) and 163.3194(1)(a), F.S.

⁴⁵ Section 163.3164(14), F.S.

⁴⁶ Section 163.3164 (16), F.S.

⁴⁷ Section 163.3164 (15), F.S.

⁴⁸ Section 163.3167(3), F.S.

⁴⁹ Mike Vogel, *Where Citizens Decide Growth Changes*, Florida Trend, available at <https://www.floridatrend.com/print/article/4365> (last visited Apr. 25, 2023).

⁵⁰ Section 163.3167(12), F.S. (2006).

⁵¹ Ch. 2011-139, s. 7, Laws of Fla.

comprehensive plan amendment or map amendment if it was expressly authorized by the local government charter that was in effect on June 1, 2011.⁵²

There is currently no prohibition against the use of initiatives or the referendum process in regard to land development regulations. Citizens within two cities, Venice⁵³ and Pinecrest,⁵⁴ 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, 2023.⁵⁵

III. Effect of Proposed Changes:

Annexation and Contraction

The bill amends the Municipal Annexation or Contraction Act in ch. 171, F.S.

The bill identifies the report a municipality must prepare prior to any annexation or contraction action as a “feasibility study,” and defines the study as 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 that a municipality 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 in situations where more than 70 percent of the acres proposed to be contracted are owned by private entities that are not registered electors. The bill requires in these instances that the owners of *more than 50 percent* of the acreage consent to such contraction. This change, which mirrors requirements in current law for municipal annexation, is intended to be prospective in nature and applies only to petitions filed on or after July 1, 2023.

Amendments to Land Development Regulations

The bill amends s. 163.3167, F.S., to prohibit local governments from requiring an initiative and referendum process for amendments to 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.

⁵² Chs. 2012-99, 2013-115, 2013-213, and 2014-178, Laws of Fla.

⁵³ 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).

⁵⁴ 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-AA167IdZ> (last visited Apr. 25, 2023).

⁵⁵ Miami Dade County Supervisor of Elections, Pinecrest Special Election, available at <https://enr.electionsfl.org/DAD/3366/Summary/> (last visited Apr. 25, 2023).

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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, pursuant to the changes in section 1. This will reduce potential election costs for local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3167, 171.031, 171.0413, 171.042, 171.051, and 171.204.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 24, 2023:

The CS:

- Specifies that the changes to contraction procedures are prospective in nature and apply only to petitions filed on or after July 1, 2023;
- Prohibits local governments from requiring an initiative and referendum process for amendments to land development regulations; and
- Changes the title of the bill to an act relating to local government.

CS by Community Affairs on March 22, 2023:

The CS removes the paragraph in section 2 of the bill that made substantive changes to current law regarding annexation in areas with no registered electors.

- B. **Amendments:**

None.