

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1118

INTRODUCER: Community Affairs Committee and Senator McClain

SUBJECT: Land Use and Development Regulations

DATE: March 19, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	Fav/CS
2.			RI	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1118 amends various provisions of law relating to comprehensive planning, land use regulations, and homeowners' associations.

With regard to comprehensive planning, the bill:

- Provides a substantially new mechanism for the administrative approval of development on agricultural enclaves;
- Provides that all residential land use categories, residential zoning categories, and housing types are compatible with each other;
- Prohibits optional elements of the comprehensive plan from containing policies which restrict the density or intensity established in the future land use element;
- Provides that the adoption by ordinance of a comprehensive plan or plan amendment that contains more restrictive or burdensome procedures concerning development must be approved by a supermajority vote of the members of the governing body; and
- Provides for court review of comprehensive plan amendments with more favorable standards of review than the existing DOAH challenge framework.

With regard to land development regulations, the bill:

- Provides a definition of "extraordinary circumstance" for the purposes of raising impact fees beyond the statutorily prescribed percentage,
- Provides that the production of ethanol as it is used in the context of agricultural purposes is not considered chemical manufacturing or refining;

- Prohibits a county or municipality from requiring the installation of a work of art as a precondition to issuing a development permit;
- Revises timelines and procedures for meetings on and review of plat submittals; and
- Protects the assumption of land use regulation by a municipality which annexes unincorporated land

With regard to homeowners' associations, the bill creates part IV for ch. 720, F.S., introducing the concept of recreational covenants to occupy the subject of amenity fees, dues, and expenses. The bill provides that certain dues may only be imposed and collected as provided in a recreational covenant, specifies requirements for such a document, and provides further requirements for the creation and use of the same.

The bill takes effect July 1, 2025.

## II. Present Situation:

### Comprehensive Plans

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.<sup>1</sup> Each county and municipality must maintain a comprehensive plan to guide future development.<sup>2</sup>

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.<sup>3</sup> 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.<sup>4</sup>

The 10 required elements consider and address 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. Other plans and programs may be added as optional elements to a comprehensive plan.<sup>5</sup>

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<sup>1</sup> Section 163.3167(1), F.S.

<sup>2</sup> Section 163.3167(2), F.S.

<sup>3</sup> Section 163.3194(3), F.S.

<sup>4</sup> Section 163.3177(3) and (6), F.S.

<sup>5</sup> *Id.*

### ***Future Land Use Element***

Comprehensive plans must contain an element regarding future land use that designates proposed future general distribution, location, and extent of the uses of land for a number of uses and categories of public and private uses of land.<sup>6</sup> Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities.<sup>7</sup> The proposed distribution, location, and extent of the various categories of land use must be shown on a land use map or map series. Future land use plans and plan amendments are based on surveys, studies, and data regarding the area.<sup>8</sup>

A comprehensive plan's future land use element establishes a range of allowable uses and densities and intensities over large areas, and the specific use and intensities for specific parcels within that range are decided by a more detailed, implementing zoning map.<sup>9</sup>

### ***Comprehensive Plan Amendments***

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.<sup>10</sup>

Any affected person may challenge whether a plan or plan amendment complies with the Act by petitioning the Division of Administrative Hearings (DOAH) for a formal hearing.<sup>11</sup> An administrative law judge must hold a hearing in the affected local jurisdiction on whether the plan or plan amendment is in compliance.<sup>12</sup> In challenges filed by an affected person, the comprehensive plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable. If the administrative law judge recommends that the amendment be found in compliance, the judge shall submit the recommended order to the state land planning agency for a final order in its favor.<sup>13</sup>

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 50 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan.<sup>14</sup> Any affected person may challenge a small scale plan amendment by petitioning DOAH for a hearing. An administrative law judge

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<sup>6</sup> Section 163.3177(6)(a), F.S. Applicable uses and categories of public and private uses of land include, but are not limited to, residential, commercial, industrial, agricultural, recreational, conservation, educational, and public facilities. S. 163.3177(6)(a)10., F.S.

<sup>7</sup> Section 163.3177(6)(a)1., F.S.

<sup>8</sup> Section 163.3177(6)(a)2., F.S.

<sup>9</sup> Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) citing Brevard Cty. v. Snyder, 627 So. 2d 469, 475 (Fla. 1993).

<sup>10</sup> Sections 163.3174(4)(a) and 163.3184, F.S.

<sup>11</sup> Section 163.3184(5)(a), F.S.

<sup>12</sup> Section 163.3184(5)(c), F.S.

<sup>13</sup> Section 163.3184(5)(e), F.S.

<sup>14</sup> Section. 163.3187(1), F.S. If the amendment involves a site within an area of rural opportunity, the proposed small scale amendment may involve up to 100 acres. Section 163.3187(3), F.S.

must hold a hearing in the affected jurisdiction.<sup>15</sup> Attorney fees and costs are awarded in administrative proceedings before DOAH only if the non-prevailing adverse party participated in the proceedings for an improper purpose.<sup>16</sup>

### **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.<sup>17</sup>

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.<sup>18</sup> Local governments are encouraged to use innovative land development regulations<sup>19</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>20</sup> Land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>21</sup>

### **Agricultural Enclaves**

An agricultural enclave is an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity;
- Has been in continuous use for bona fide agricultural purposes for 5 years prior to the date of any comprehensive plan amendment application;
- Is surrounded on at least 75 percent of its perimeter by existing industrial, commercial, or residential development; or property designated in the local government's comprehensive plan and land development regulations for future industrial, commercial, or residential development, and 75 percent of which currently contains such development;
- Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure; and
- Does not exceed 1,280 acres, or 4,480 acres if the property is surrounded by existing or authorized residential development with a density buildout of at least 1,000 residents per square mile.<sup>22</sup>

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<sup>15</sup> Section 163.3187(5)(a), F.S.

<sup>16</sup> Section 120.595(1)(b), F.S. "Improper purpose" is defined as participating "in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity." Section 120.595(1)(e)1., F.S.

<sup>17</sup> Section 163.3164, F.S.

<sup>18</sup> Section 163.3202, F.S.

<sup>19</sup> Section 163.3202(3), F.S.

<sup>20</sup> Sections 125.01055 and 166.04151, F.S.

<sup>21</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>22</sup> Section 163.3164(4), F.S.

The owner of an agricultural enclave may apply for an amendment to the local government comprehensive plan. Such amendment is presumed not to be urban sprawl<sup>23</sup> if it includes land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.<sup>24</sup>

The local government and the owner of a parcel of land that is the subject of an application for an amendment shall have 180 days following the date that the local government receives a complete application to negotiate in good faith to reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Within 30 days after the local government's receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent of the local government and the owner. Regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review.<sup>25</sup>

The agricultural enclave provisions do not preempt or replace any protection currently existing for property located within the boundaries of the Wekiva Study Area, as described in s. 369.316, F.S., or to the Everglades Protection Area, as defined in s. 373.4592.<sup>26</sup>

### **Local Government Impact Fees**

In Florida, impact fees are imposed pursuant to local legislation and are generally charged as a condition for the issuance of a project's building permit. The principle behind the imposition of impact fees is to transfer to new users of a government-owned system a fair share of the costs the new use of the system involves.<sup>27</sup> Impact fees have become an accepted method of paying for public improvements that must be constructed to serve new growth.<sup>28</sup> In order for an impact fee to be a constitutional user fee and not an unconstitutional tax, the fee must meet a dual rational nexus test, in that the local government must demonstrate the impact fee is proportional and reasonably connected to, or has a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditure of the funds collected and the benefits accruing to the new residential or nonresidential construction.<sup>29</sup>

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<sup>23</sup> "Urban sprawl" means a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses. S. 163.3164, F.S.

<sup>24</sup> Section 163.3162(5), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 163.3162(4)(d), F.S.

<sup>27</sup> *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317-318 (Fla. 1976).

<sup>28</sup> *St. Johns County v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991); s. 163.31801(2), F.S.

<sup>29</sup> *See St. Johns County* at 637. Codified at s. 163.31801(3)(f) and (g), F.S.

Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

### **Impact Fee Increases**

Section 163.31801(6), F.S., provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees as follows:

- An impact fee increase of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
- If the increase in rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal annual installments.
- No impact fee increase may exceed 50 percent of the current impact fee rate.
- An impact fee may not be increased more than once every four years.
- An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

A local government, school district, or special district may increase an impact fee rate beyond these phase-in limitations if a local government, school district, or special district:

- Completes, within the 12-month period before the adoption of the impact fee increase, a demonstrated-need study justifying the increase and expressly demonstrating the *extraordinary circumstances* necessitating the need to exceed the limitations;
- Holds at least two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the limitations; and
- Approves the impact fee increase ordinance by at least a two-thirds vote of the governing body.

### **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>30</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>31</sup> An area is compact if it is concentrated in a single area and does not create enclaves, pockets, or finger areas.<sup>32</sup> All lands to be annexed must be in the same county as the annexing municipality.<sup>33</sup>

The exact method of municipal annexation is proscribed by general law and includes involuntary and voluntary means of producing new municipal boundaries. Voluntary annexation, as provided by law, does not apply to municipalities in counties with charters which provide for an exclusive

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<sup>30</sup> Sections 171.0413(1) and 171.044(1), F.S.

<sup>31</sup> Section 171.031(11), F.S.

<sup>32</sup> Section 171.031(12), F.S.

<sup>33</sup> Section 171.045, F.S.

method of municipal annexation.<sup>34</sup> In such cases, the means established by county charter prevail.

### **Platting**

In Florida law, “plat” means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.<sup>35</sup> Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets and parks of a new residential subdivision.<sup>36</sup>

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.<sup>37</sup> Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.<sup>38</sup>

Before a plat is offered for recording with the clerk of the circuit court, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation.<sup>39</sup>

Jurisdiction over plat approval is as follows:<sup>40</sup>

- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:<sup>41</sup>

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.

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<sup>34</sup> Section 171.044(4), F.S.

<sup>35</sup> Section 177.031(14), F.S.

<sup>36</sup> Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*, <https://www.floridacondoalawblog.com/2018/05/17/why-is-a-plat-so-important/> (last visited Mar. 11, 2025).

<sup>37</sup> Section 177.011, F.S.

<sup>38</sup> Section 177.081(1), F.S.

<sup>39</sup> Section 177.071(1) F.S.

<sup>40</sup> *Id.*

<sup>41</sup> Section 177.091, F.S.

- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.
- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk's certificate and the professional surveyor and mapper's seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course bearings and distances, and the point of beginning. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.
- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled "Not a part of this plat."
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

### **Homeowners' Associations**

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.<sup>42</sup>

A "homeowners' association" is defined as a:<sup>43</sup>

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

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<sup>42</sup> See s. 720.302(1), F.S.

<sup>43</sup> Section 720.301(9), F.S.



Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.<sup>44</sup>

Homeowners' associations are administered by a board of directors that is elected by the members of the association.<sup>45</sup> The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>46</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>47</sup>

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.], the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.<sup>48</sup>

The governing documents of a homeowners' association are:<sup>49</sup>

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

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<sup>44</sup> Section 720.302(5), F.S.

<sup>45</sup> See ss. 720.303 and 720.307, F.S.

<sup>46</sup> See ss. 720.301 and 720.303, F.S.

<sup>47</sup> Section 720.303(1), F.S.

<sup>48</sup> Section 720.306(9)(c), F.S.

<sup>49</sup> Section 720.301(8), F.S.

Section 720.301(3), F.S., defines a “community” as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term “includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto.”

### ***Homeowners’ Association Assessments and Charges***

The governing documents of a homeowners’ association describe the manner in which expenses are shared and each member’s proportional share; assessments levied to members must be in the member’s proportional share.<sup>50</sup> In a homeowners’ association with mandatory maintenance or amenity fees, the developer or owner is required to publish<sup>51</sup> a complete financial report of the receipts of mandatory maintenance or amenity fees and an itemized listing of the resulting expenditures.<sup>52</sup>

A recent court case revolved around the question of whether such mandatory assessments for “expenses” could include funds that ultimately result in profits for a third party which operates recreational facilities in the community such as restaurants and pools.<sup>53</sup> The court held for the resident seeking to have those fees generating profits struck down, though some uncertainty remains due to the varied nature of these contractual relationships throughout the state in different associations.

## **III. Effect of Proposed Changes:**

### ***Agricultural Enclaves***

**Section 2** in part amends s. 163.3162, F.S., to provide a substantially new mechanism for agricultural enclaves. Under the bill, the owner of an agricultural enclave may apply for administrative approval of development regardless of the future land use map designation of the parcel or any conflicting comprehensive plan goals, objectives, or policies if the owner’s request includes land uses and densities and intensities consistent with those approved for the industrial, commercial, or residential areas surrounding the parcel.

A proposed development authorized under this section must be administratively approved within 120 days, and no further action by the governing body of the local government is required. A local government may not enact or enforce regulations or laws more burdensome for agricultural enclave development than other types of development. Development so authorized must be treated going forward as a conforming use, notwithstanding the local government’s comprehensive plan and land use regulations.

Further, a local government must approve an application for development if it otherwise meets the section’s requirements and proposes only single-family residential, community gathering,

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<sup>50</sup> Section 720.308, F.S.

<sup>51</sup> Publication may be by mailing it to each owner, by publishing it in a publication regularly distributed within the subdivision, or by posting it in prominent locations in the subdivision.

<sup>52</sup> Section 720.3086, F.S.

<sup>53</sup> *Avatar Properties, Inc., v. Gundel*, 372 So.3d 715 (Fla. 6<sup>th</sup> DCA 2023).

and recreational uses at a density not exceeding the average density of adjacent parcels. A local government must treat an agricultural enclave adjacent to an urban service district as if it were within the urban service district.<sup>54</sup>

The bill otherwise removes the existing process related to agricultural enclaves.

**Section 3** in part amends s. 163.3164(4), F.S., the definition of “agricultural enclave.” The bill expands the definition to include that an agricultural enclave may include multiple parcels. The bill also provides that, as an alternative to the requirement that an enclave be 75 percent surrounded by existing development or planned development, a parcel or set of parcels may be either:

- Less than 700 acres 50 percent surrounded by planned development and sharing 50 percent of its perimeter with an urban service district, area, or line satisfies the requirement to be considered an enclave; or
- Located within the boundary of a rural study area adopted in the local government’s comprehensive plan as of January 1, 2025, which was intended to be developed with residential uses at a density of at least one dwelling unit per acre and at least 50 percent surrounded by parcels designated for industrial, commercial, or residential purposes.

The amended definition also provides that property not currently equipped with public services may nonetheless be an agricultural enclave if the applicant offers to agree to pay for, construct, or contribute proportionate share for concurrency purposes.

### *Comprehensive Plan Elements and Amendments*

**Section 2** in part amends s. 163.3162, F.S., to provide that, for the purposes of agricultural land uses, the production of ethanol from plants and plant products by fermentation, distillation, and drying is not chemical manufacturing or refining. The section provides that this provision is intended to be remedial and clarifying and, as such, apply retroactively.

**Section 3** in part amends s. 163.3164(9), F.S., the definition of “compatibility” for the purposes of the Community Planning Act, to provide that all residential land use categories, residential zoning categories, and housing types are compatible with each other. Some comprehensive plans will require a development to demonstrate that development is compatible with existing land uses; this amendment provides a short cut to meeting such a requirement.

**Section 5** amends s. 163.3177, F.S., to make two amendments to required and optional elements of a comprehensive plan. First, the section provides that a local government must not mandate that one particular professionally accepted methodology in data collection in support of a comprehensive plan amendment is better than another. Second, the section prohibits optional elements of the comprehensive plan from containing policies which restrict the density or intensity established in the future land use element.

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<sup>54</sup> “Urban service area” means areas identified in the comprehensive plan where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are identified in the capital improvements element. The term includes any areas identified in the comprehensive plan as urban service areas, regardless of local government limitation. S. 163.3164, F.S.

**Section 7** in part amends s. 163.3184(11), F.S., to provide that the adoption by ordinance of a comprehensive plan or plan amendment that contains more restrictive or burdensome procedures concerning development must be approved by a supermajority vote of the members of the governing body.

**Section 7** further amends s. 163.3184(14), F.S., to provide that an owner of real property subject to a comprehensive plan amendment or an applicant for such an amendment not adopted by the local government and who is not provided the opportunity for a hearing within 180 days after filing the application, may file a civil action for declaratory, injunctive, or other relief, which must be reviewed de novo. In such a proceeding the local government has the burden of providing by a preponderance of the evidence that the application is inconsistent with the local government's comprehensive plan. The court may not use a deferential standard for the benefit of the local government, and shall independently determine whether the local government's existing comprehensive plan is in compliance. This section is put forward as an alternative to the existing amendment challenge process which routes grievances through DOAH.

### ***Land Development Regulations***

**Sections 1 and 9** amend ss. 125.022 and 166.033, F.S., to provide that a county or municipality, respectively, may not require an applicant to install, pay a fee for, or reimburse the costs of a work of art as a condition of processing or issuing a development permit or order.

**Section 8** amends s. 163.3206, F.S., to amend the definition of "fuel terminal" to include situations where fuel is transferred and loaded through means other than from a loading rack into trucks or rail cars. Further, the term includes adjacent submerged lands or waters used by marine vessels or marine barges for loading and offloading.

The section further provides that a prohibition on amending land use and development regulations in a manner that would conflict with a fuel terminal's classification does not apply if the fuel terminal's owner notifies the local government that the fuel terminal is to be decommissioned.

**Section 12** amends s. 177.071, F.S., to provide that an agency approving a plat, which may include a board, committee, employee, or consultant, shall administer plat submittals and, within 45 days after receipt of a plat submittal, must recommend approval or provide written comments specifying areas of noncompliance. Upon recommending approval, the governing body shall at its next regularly scheduled meeting grant final administrative approval of the plat unless it determines error to have occurred in the recommendation.

### ***Impact Fees***

**Section 6** amends s. 163.31801, F.S., to provide a definition of "extraordinary circumstance" for the purposes of raising impact fees beyond the statutorily prescribed percentage.

- For a county, an extraordinary circumstance is when the permanent population estimate determined for the county by the University of Florida Bureau of Economic and Business Research is at least 1.25 times the 5-year high-series population projection for the county as published immediately before the year of the population estimate.
- For a municipality, an extraordinary circumstance is when the municipality is located within

a county experiencing extraordinary circumstances as above, and the municipality demonstrates that it has maintained a proportionate share of population growth over the preceding 5 years.

### ***Municipal Annexation***

**Section 4** amends s. 163.3167, F.S., to provide that, for the purposes of an existing prohibition on initiative or referendum processes regarding land development regulations, the term “land development regulation” includes any code, ordinance, rule, or charter provision regulating or affecting the use of land, including density regulations, municipal boundary lines, and regulations that could otherwise be accomplished or affected through the comprehensive planning process. This amendment most significantly includes municipal boundary lines, which have previously in certain circumstances been affected by referendums.

**Section 10** amends s. 171.044, F.S., to provide that an exclusive method of voluntary annexation provided in a county charter may not affect the powers granted to a municipality to assume control over the land use plan of the annexed area or prevent a municipality from exercising the municipal power to ratify a voluntary annexation. The section provides legislative intent that the grant of authority to charter counties to create a method of voluntary annexation was not intended to prevent municipalities from assuming control over land use regulations. The section is intended to be remedial and clarifying, and as such function retroactively.

**Section 11** amends s. 171.062, F.S., to conform with the amendments made by section 10. The section specifies that the assumption of land use regulation by the municipality is a power contemplated in s. 4, Art. VIII of the State Constitution, including by those municipalities in counties with charters providing for voluntary annexation. The section is intended to be remedial and clarifying, and as such function retroactively.

### ***Homeowners’ Associations and Recreational Covenants (Sections 13 through 21)***

The bill introduces to statute the concept of recreational covenants by creating Part IV of chapter 720, consisting of ss. 720.408-720.412, F.S., entitled “Recreational Covenants,” intended to provide certain protections for parcel owners and give statutory recognition to the use of recreational covenants.

The bill defines a recreational covenant as a recorded covenant which provides the nature and requirements of a membership in or use of privately owned commercial recreational facilities or amenities for parcel owners. It must be recorded in the public records, contain information regarding the amenity dues imposed, and require mandatory membership or mandatory payment of amenity dues. Amenity expenses, fees, and dues are defined to include those amounts paid under recreational covenants, which may include being paid to a third party, may include profits, and does not include expenses of a homeowners’ association.

A recreational covenant must be contained in a document specifying:

- The parcels subject to mandatory membership in a club or to the imposition of mandatory dues;
- The person responsible for owning, maintaining, and operating recreational facilities and amenities;

- The manner in which amenity dues are apportioned and collected;
- The amount of any amenity fees;
- The manner in which fees may be increased;
- Collection rights and remedies available for enforcement; and
- Statements on whether the collection rights are subordinate to an association's assessment rights, and whether the facilities and amenities are open to the public or may be used by nonmembers.

A recreational covenant recorded before July 1, 2025, must be amended or supplemented to comply with these requirements by July 1, 2026. The bill contains provisions for situations governing recreational covenants lacking specific mechanisms for the increase of fees and expense costs. The bill provides for the relationship between the parties to a recreational covenant and the otherwise governing homeowners' association, as well as provisions for the termination of a recreational covenant.

The bill provides a disclosure that must be included in the contract for sale of a parcel subject to a recreational covenant beginning October 1, 2025, and includes a financial reporting requirement for the reporting of collections and expenditures under recreational covenants.

The amendments made by the bill related to homeowner associations are intended to clarify existing law and apply retroactively, without reviving or reinstating any right or interest fully adjudicated as invalid before July 1, 2025.

***Effective Date***

The bill takes effect July 1, 2025.

**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:

### *Single Subject*

The bill, entitled an act related to land use and development regulations, contains provisions relating to what might be considered a variety of subjects. Article III, s. 6 of the State Constitution requires that a bill must pertain “to one subject and matter properly connected to the” title of the bill. Courts have interpreted this to mean:

A connection between a provision and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.<sup>55</sup>

The single subject clause may be implicated as to whether the title embraces one subject, whether the variety of provisions stem naturally from the title, and whether those provisions have a “natural and logical” connection.

### *Retroactivity and Impairment of Contracts*

Sections of the bill related to the classification of ethanol production, the powers of a municipality following voluntary annexation, and homeowners’ associations, which are relationships built on contracts over time, are intended to clarify existing law and apply retroactively.

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective. The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.<sup>56</sup> When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often depends on whether the statute is procedural or substantive.

Florida’s contracts clause states that “no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”<sup>57</sup> An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. However, where the impairment is severe, “[t]he severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected.” There must be a “significant and legitimate public purpose behind the regulation.”<sup>58</sup>

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<sup>55</sup> See, e.g., *Franklin v. State*, 887 So. 2d 1063, 1078-79 (Fla. 2004); *Envtl. Confed. of Sw. Fla. v. State*, 886 So. 2d 1013, 1018-19 (Fla. 1st DCA 2004).

<sup>56</sup> *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

<sup>57</sup> FLA. CONST. art. I, s. 10.

<sup>58</sup> *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1192 (Fla. 2017) (internal citations omitted for clarity).

To the extent that the provisions related to homeowners' associations improperly apply retroactively or have the effect of impairing existing contracts, questions of constitutional validity may arise.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive impact on the private sector to the extent that the bill's provisions simplify forthcoming development and bring clarity to certain contractual relationships.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.022, 163.3162, 163.3164, 163.3167, 163.3177, 163.31801, 163.3184, 163.3206, 166.033, 171.044, 171.062, 177.071, 720.301, 720.302, and 720.3086.

This bill creates the following section of the Florida Statutes: 720.408-720.412.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on March 17, 2025:**

The committee substitute:

- Prohibits a county or municipality from requiring the installation of a work of art as a precondition to issuing a development permit;
- Provides that the approval of development allowed on an agricultural enclave must be within 120 days after application;



- Provides that the definition of an agricultural enclave may include up to 700 acres for the second boundary calculation (where the bill as filed specifies 640) and as a third alternative may be any property within the bounds of a rural study area intended for residential use;
- Provides that property not currently equipped with public services may nonetheless be an agricultural enclave if the applicant offers to agree to pay for, construct, or contribute proportionate share for concurrency purposes;
- Provides that the production of ethanol as it is used in the context of agricultural purposes is not considered chemical manufacturing or refining;
- Provides that the prohibition on initiatives or referendum processes for land use regulations includes any code, ordinance, rule, or charter provision, density regulations, and municipal boundaries;
- Redefines “extraordinary circumstances” for the purposes of impact fee increases to include a calculation based on population growth;
- Extends the requirement for supermajority votes to include those amendments reducing density;
- Removes provisions mandating administrative approval of residential infill development, and requiring minimum lot sizes to maximize density;
- Introduces a section relating to the definition of fuel terminals;
- Introduces sections relating to voluntary municipal annexation, which protect the assumption of land use regulation by a municipality which annexes unincorporated land;
- Introduces a timeline and procedures for meetings on and review of plat submittals; and
- Revises the current bill’s sections on homeowners’ associations. The introduction of “recreational covenants” is substantially similar in scope, while the amendment organizes these provisions into a newly created part IV for ch. 720, F.S.

**B. Amendments:**

None.