

FINANCIAL INFORMATION STATEMENT

FLORIDA GROWTH MANAGEMENT INITIATIVE GIVING CITIZENS THE RIGHT TO DECIDE LOCAL GROWTH MANAGEMENT PLAN CHANGES, #07-07

Florida law requires each local government to adopt a comprehensive plan. Comprehensive plans may be amended twice per year, or more often, as provided by law. Under current law and practice, local governments typically “package” a number of individual amendments in each biannual update. The proposed constitutional amendment requires that local governments establish a new process to enable citizens to petition for referenda on growth management plans and amendments.

Based on information provided through public workshops and collected through staff research, the Financial Impact Estimating Conference principals determined that local governments cumulatively will incur significant costs related to the new Florida Growth Management Initiative petition process. Nevertheless, the fiscal impact is indeterminate. The proposed amendment is expected to have the following impacts:

- Each county supervisor of elections, city clerk, or similar election authority for the local government will incur additional costs to establish and administer the new process regardless of whether it is used. This includes, at a minimum, establishing procedures, forms, and notification requirements.
- To the extent the petition process is used, there will be additional costs to the local government associated with the filing and noticing of the petition, acceptance of signatures, and other interaction with the public in the signature collection process. Costs will also be associated with making sure signatures are complete and within the time frame allowed. In this regard, there may be multiple petitions occurring simultaneously.
- The proposed constitutional amendment requires that costs associated with the verification of signatures will be borne by the person or persons initiating the petition.
- Initiatives resulting in a referendum will include additional election costs regardless of the method by which local governments choose to conduct the vote - special or general election, whether by mail ballot or at the polls. At a minimum, such costs will include noticing and advertising the ballot information and printing ballots.
- The impact on state government expenditures will be insignificant. While implementation of this amendment will not require statutory changes, some changes may be desirable. In addition, the Department of Community Affairs will likely need to amend its rule relating to the submission and receipt of local government comprehensive plans and amendments thereto.
- No state or local revenue sources will be increased or decreased directly as a result of this amendment.

FINANCIAL IMPACT STATEMENT

The direct impact of this amendment on local government expenditures cannot be determined precisely. Local governments will incur significant costs to establish and administer the new Florida Growth Management Initiative petition process. Additional costs will be incurred for petition notification and signature collection, as well as ballot preparation and associated expenses for conducting any required referendum. The direct impact on state government expenditures will be insignificant. There will be no direct impact on government revenues.

I. SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes

Ballot Summary:

Allows Floridians to call for voter approval of changes to local growth management plans through a citizen petition. Voter approval of growth management plan changes will be required if 10% of the voters in the city or county sign a petition calling for such a referendum. Defines terms and establishes petition requirements.

Full Text of Amendment:

a) Statement and Purpose:

The Legislature has enacted growth management and land use planning legislation; these laws do not provide for voters' direct approval of the resulting plans or amendments. The purpose of this amendment is to provide a limited opportunity for voters to approve or disapprove these plans or amendments. Because thousands of growth management plans and amendments are adopted statewide each year, this amendment would limit such referenda to situations where a sufficient number of persons file a petition seeking such a referendum during a set period of time. The criteria for signing and filing a petition are intended to demonstrate that there is substantial interest in a referendum, and are based, in part, on existing Section 550.175, Fla. Stat. This amendment is intended to modify existing law, permit flexibility in future growth management-related legislation (except rules which would affect voters' ability to petition for referenda), and pre-empt or supersede recent proposals to subject all comprehensive land use plans and amendments to votes, thus balancing competing interests without over-burdening voters.

b) Amendment of Florida Constitution:

Art. II, Section 7, Fla. Const., is amended by inserting the following new subsection at the end thereof, to read:

"Florida Growth Management Initiative Petitions."

“a) In addition to any power or ability of voters to participate in growth management planning processes provided by this Section or by general law, the registered voters of a local government may offer a Florida Growth Management Initiative Petition regarding any growth management plan or amendment to such a plan.

“b) If a valid and sufficient Florida Growth Management Initiative Petition is filed and verified by the appropriate election authorities for a local government, the local government shall conduct a referendum approving or disapproving the specific growth management plan or amendment. The referendum shall be conducted as provided by applicable general law of the State or the local government. If a plan or amendment is disapproved in such a referendum, it is not effective and may not be adopted or implemented by the local government or relied on by others. The fact that a plan or amendment has been the subject of a referendum under this Section does not preclude future changes to that plan or amendment, or exempt such changes from these or other procedures and requirements. If a valid and sufficient Florida Growth Management Initiative Petition is not filed for a particular plan or amendment, notwithstanding any other provision of this Section or of general law, no referendum on that particular plan or amendment shall be held pursuant to this Section.

“c) Definitions: For purposes of this section, the following terms shall have the following meanings:

“1) ‘Local government’ means a county or municipality.

“2) ‘Growth management plan’ means a plan to guide and control future land development in an area under the jurisdiction of a local government, including a comprehensive land use plan or similar document, and includes amendments to such plans, however described.

“3) ‘Florida Growth Management Initiative Petition’ means a written petition, on a form designated for that purpose, containing and describing all elements of the applicable growth management plan or amendment, and otherwise conforming in all respects to any requirements imposed by general law. Not more than one applicable growth management plan or amendment may be included in any one petition.

“4) ‘Offer a Florida Growth Management Initiative Petition’ means, in addition to any other requirement imposed by general law, that one or more individuals registered to vote for elections of a local government may complete a Florida Growth Management Initiative Petition form and deposit the form with the County Supervisor of Elections or City Clerk (or similar election authority for the local government). The individuals completing the form must provide identification information, including name, address, telephone numbers, any Internet address or website owned, operated or used by the individuals which contains or will contain information on the particular plan or amendment which is the subject of the Petition, and any information indicating whether they have a financial interest in the particular plan or amendment which is the subject of the Petition (including interests involving personal, commercial or other land uses affected by the plan or amendment), and if so, describing the financial interest. The identification information shall be made available to the public, along with notice of the availability of the Petition; posting of this information on the Internet, in a manner reasonably calculated by the election authority to inform the public, shall be considered sufficient public availability of this information. Individuals who are registered voters of the local government and who are in favor of holding a referendum on the particular growth management plan or amendment shall be permitted to sign the Florida Growth Management Initiative Petition; a signature shall be affixed in a manner which

clearly indicates that the signer is in favor of holding the referendum. Every signature upon every Florida Growth Management Initiative Petition must be signed at the office of the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government), and the signer must present at the time of such signing evidence showing the person's qualification as a voter of the local government at the time of the signing of the petition. Once the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government) determines that, prior to verification, the Florida Growth Management Initiative Petition contains the facially-valid original signatures of at least ten percent of persons registered to vote in elections of the local government, the election authority shall notify the persons who completed and deposited the petition form. The election authority shall inquire if the persons wish to offer the Florida Growth Management Initiative Petition for verification of the signatures; if the persons wish to offer the Florida Growth Management Initiative Petition, the election authority shall verify the signatures, with any costs paid by the offering persons, and consider the Petition offered and submitted.

“5) ‘Valid and sufficient Florida Growth Management Initiative Petition’ means a written petition containing the valid original signatures of at least 10 percent of persons registered to vote in elections of the local government, and which is offered and submitted to the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government) within sixty days from the date of the first signature on the petition.”

c) Effective Date and Severability:

This amendment shall be self-executing and effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

B. Effect of Proposed Amendment

Currently, local government comprehensive plans and plan amendments are approved by local elected officials representing the citizens of their respective county or municipality, generally after review by the Department of Community Affairs (DCA). Typically, adopted comprehensive plans and amendments become effective following a statutorily defined challenge period. The proposed constitutional amendment would allow citizens to petition for any growth management plan or amendment to such a plan to be approved by the citizens through an election. The proposed constitutional amendment defines growth management plan to mean *“a plan to guide and control future land development in an area under the jurisdiction of a local government, including a comprehensive land use plan or similar document, and includes amendments to such plans, however described.”* Although this definition explicitly includes comprehensive land use plans and related amendments, other unidentified plans, may also be subject to the petition and referendum process, to the extent they are determined to be plans *“to guide and control future land development”*. Further, the amendment does not specify that petitions are solely for amendments or plans that are pending final adoption or within the challenge period specified by law. As such, any plan or

previously approved plan amendment may be subject to the petition and referendum process, even though the plan or plan amendment is already effective and being implemented by the local government.

Background

In 1985, the Florida Legislature passed the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes), commonly referred to as the Growth Management Act. This act requires all local governments to adopt comprehensive land use plans and implement those plans through land development regulations and development orders. The Department of Community Affairs (DCA) is designated as the lead oversight agency, responsible for reviewing comprehensive plans and amendments thereto to determine consistency with State law.

Since the enactment of the Growth Management Act, all local governments have adopted a comprehensive plan, except for any recently incorporated municipalities. Currently, there are 479 local governments that are required to have comprehensive plans. The Act requires all local governments to periodically assess the implementation of their plan and submit an Evaluation and Appraisal Report to DCA. According to the Act, local governments may adopt amendments to their comprehensive plan no more than twice per calendar year, with some exceptions. In attempting to determine the number of actions that might be subject to the proposed constitutional amendment petition and referendum process, DCA cautions that there is no accurate accounting formula to determine the number of amendments in an amendment package. Although the number of adopted packages gives a more accurate accounting of development activity in Florida, the subject of the proposed amendment to the Constitution relates to plans as a whole or to specific amendments. In the last seven years, 7,945 amendment packages were adopted representing an estimate of 52,304 individual amendments. A cumulative number of amendments can only be grossly estimated at tens of thousands over the last twenty years. Plan amendments fall into the following categories:

- **Small-scale amendments** – These are land use amendments adopted pursuant to section 163.3187(1)(c), F.S. Small-scale amendments are usually 10 acres or less, and are exempt from the twice-per year limitation. DCA is statutorily prohibited from reviewing these amendments for compliance. According to DCA, 966 amendment packages were recorded in 2007, representing approximately 1,055 individual amendments. Over a four year period, the cumulative number of individual small scale amendments is estimated to be 4,090.
- **Large scale amendments** – These are land use amendments that are not defined as small scale amendments. DCA reviews these amendments for compliance with state law. According to DCA, they received a total of 433 adopted amendment packages containing approximately 4,422 adopted amendments in 2007. Over a four year period, the cumulative number of large scale amendments is estimated to be more than 23,958.

- **Evaluation and Appraisal Reports (EAR)** – Every seven years, each local government must submit an EAR to DCA. DCA reviews the report and subsequent EAR based amendment(s) for compliance with state law. Within an established time frame, the Department issues a sufficiency report that identifies areas of the EAR that are inconsistent with the provisions of Chapter 163, Part II, F.S. The local government must submit EAR-based amendments to implement the EAR report. The EAR-based amendments must be adopted within 18 months after the report is determined to be sufficient.

The Comprehensive Plan Amendment Process

The majority of large scale amendments follow the process detailed below; however slightly modified processes exist to address amendments within certified communities and the alternative state review process. The local government advertises and holds a Local Planning Agency hearing to discuss and recommend the proposed amendment to the Local Governing Body. The Local Governing Body then advertises a hearing to transmit the proposed amendment to DCA for review. DCA has 60 days from submittal of a complete package to issue its Objections, Recommendation and Comments Report (ORC). The local government has 60 days (for large scale amendments) or 120 days (for EAR based amendments) from the date the ORC is received to adopt the amendment, adopt the amendment with changes, or determine that it will not adopt the amendment. The local government advertises and adopts the amendment, and returns the plan amendment to DCA for compliance review. DCA has 45 days from receipt of the complete package or 20 days (if the package qualifies for expedited review) to review and issue the compliance determination (notice of intent) by publication in the local newspaper of the local government. An affected party has 21 days from the date of publication to challenge the DCA compliance determination pursuant to Chapter 120, F.S. The plan amendment does not become effective until 21 days after publication of the notice (if no challenge is filed) or until DCA issues a final order determining the adopted plan amendment to be in compliance, or the Administration Commission issues a final order determining the adopted amendment to be in compliance in accordance with section 163.3184(10), F.S. Amendments within certified communities do not receive state review. Amendments under the alternative review process have an expedited review process at the transmittal and adoption stage, as well as a slight variation in timing during the challenge period.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

Section 100.371, F.S, requires the Financial Impact Estimating Conference to “...complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenue or costs to state or local governments resulting from the proposed initiative.”

In determining the fiscal impact of the proposed amendment, the Financial Impact Estimating Conference (Conference) held a public workshop on February 11, 2008, a principals’ workshop on February 13, 2008, and two formal conferences on February 25, 2008, and February 27, 2008.

In addition to testimony and materials provided at the workshops or requested by the principals, the Conference utilized survey data from city and county officials and supervisors of elections obtained in 2004 through 2006 regarding the analysis of petition # 05-18. Survey data from city and county officials and supervisors of elections was received in 2004. The Conference determined that requesting additional data from city and county officials would not provide any new or significantly different information for consideration when analyzing the 2008 constitutional amendment. However, relevant information from the supervisors of elections and the Department of Community Affairs was updated.

III.

A. FISCAL ANALYSIS

The fiscal impact summary for this proposed amendment is based on the information provided through public workshops; input from the Florida League of Cities, the Florida State Association of Supervisors of Elections the Department of State, and the Department of Community Affairs; independent research by staff; written material presented to the Conference; and discussion among the FIEC principals and other professional staff.

The Conference analyzed the cost data from a variety of sources in an effort to establish a specific dollar amount or at least develop an expected dollar range in which the fiscal impact may lie. The following data was reviewed and evaluated in determining the fiscal impact of this amendment:

Data

Number of counties	67
Number of incorporated cities ¹	412
Number of supervisor of elections and city clerk physical locations	indeterminate
Number of petitions anticipated to be initiated	indeterminate
Cost to establish and administer the new process	indeterminate
Number of elections (special, general or combinations thereof)	indeterminate
Number/percentage of referenda held by ballots & polling place	indeterminate
Average cost of advertising, public meetings, education, etc.	indeterminate
Other costs (legal, printing, equipment, staff, etc)	indeterminate
Number of adopted amendments and adopted packages: ²	

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Number of adopted amendments	10,791	9,018	4,447	9,198	6,388	6,985	5,477
Number of adopted packages	940	1,030	1,080	1,090	1,199	1,207	1,399

¹ Legislative Committee on Intergovernmental Relations

² Comprehensive Plan Processing Data provided by the Department of Community Affairs

Based on information provided through public workshops and collected through staff research, the Financial Impact Estimating Conference principals determined that local governments cumulatively will incur significant costs related to the new Florida Growth Management Initiative petition process. Nevertheless, the fiscal impact is indeterminate. The proposed amendment is expected to have the following impacts:

- Each county supervisor of elections, city clerk, or similar election authority for the local government will incur additional costs to establish and administer the new process regardless of whether it is used. This includes, at a minimum, establishing procedures, forms, and notification requirements.
- The proposed amendment authorizes the registered voters of a local government to offer a Florida Growth Management Initiative Petition regarding any growth management plan or amendment to such a plan. It is often difficult to separate specific amendments from an amendment package and it is unclear how a local government will determine what “specific” or “particular” amendment is subject to an initiative process and when multiple petitions will be required. Further, the proposed constitutional amendment does not appear to limit the new process to a plan or plan amendment that is going through the adoption process or under the challenge period specified by law. As such, any plan or previously approved plan amendment may be subject to the petition and referendum process.
- The amendment creates new roles for the supervisor of election, city clerk (or similar election authority for the local government) to manage the petition process. For example, it requires persons who want to sign the petition to physically go to the clerk or election official’s office. Input from one city clerk has indicated that this will require an investment in time for each individual that appears in the office to sign a petition, which could be significant when multiplied by the number of persons signing and the number of potential petitions resulting from multiple comprehensive plan amendments each year.
- To the extent the petition process is used, there will be additional costs to the local government associated with the filing and noticing of the petition, acceptance of signatures, and other interaction with the public in the signature collection process. Costs will also be associated with making sure signatures are complete and within the time frame allowed. In this regard, there may be multiple petitions occurring simultaneously.
- The proposed constitutional amendment requires that costs associated with the verification of signatures will be borne by the person or persons initiating the petition.
- Initiatives resulting in a referendum will include additional election costs regardless of the method by which local governments choose to conduct the vote - special or general election, whether by mail ballot or at the polls. At a minimum, such costs will include noticing and advertising the ballot information and printing ballots. However, the Conference concluded that no reasonable level of probability could be associated with determining the number of successful petitions requiring election. Therefore, election costs (which can be significant for even a low level of activity) were not specifically included in the estimate.
- The impact on state government expenditures will be insignificant. While implementation of this amendment will not require statutory changes, some changes may be desirable. In addition, the Department of Community Affairs will likely need to amend its rule relating

to the submission and receipt of local government comprehensive plans and amendments thereto.

- No state or local revenue sources will be increased or decreased directly as a result of this amendment. To the extent that the new petition initiative process results in actions that cause the local government to be out of compliance with other state requirements, revenue sharing between state and local governments (including school boards) may be affected.

B. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS:

1. State and Local Government Revenues:

There are no state or local revenue sources that will be increased or decreased directly as a result of this amendment.

2. State and Local Government Expenditures:

The impact on state government expenditures will be insignificant. While implementation of this amendment will not require statutory changes, some changes may be desirable. In addition, the Department of Community Affairs will likely need to amend its rule relating to the submission and receipt of local government comprehensive plans and amendments thereto. Local governments cumulatively will incur significant costs related to the new Florida Growth Management Initiative petition process. Nevertheless, the fiscal impact is indeterminate.