




Interoffice Memorandum

November 30, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners (BCC)

FROM: Alberto A. Vargas, MArch., Manager, Planning Division 

THROUGH: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development Services Department

SUBJECT: 2021-2 Out-of-Cycle Regular Cycle Staff-Initiated Text Amendment
2021-2-C-PRE-1 (Property Rights Element)
Board of County Commissioners (BCC) Adoption Public Hearing

The 2021-2 Out-of-Cycle Regular Cycle Staff-Initiated Text Amendment is scheduled for a BCC adoption public hearing on November 30, 2021. This amendment was heard by the Planning and Zoning Commission/Local Planning Agency at an adoption hearing on November 18, 2021. The report will also be available under the Amendment Cycle section of the County's Comprehensive Planning webpage:

<http://www.orangecountyfl.net/PlanningDevelopment/ComprehensivePlanning.aspx>.

The 2021-2 **Out-of-Cycle Regular Cycle-State-Expedited** Review amendment scheduled for consideration on November 30 entails one staff-initiated text amendment. The text amendment includes changes to the Goals, Objectives, and/or Policies of the Comprehensive Plan.

The 2021-2 **Out-of-Cycle Regular Cycle-State-Expedited** Review Amendment was heard by the PZC/LPA at a transmittal public hearing on August 19, 2021, and by the BCC at a transmittal public hearing on September 14, 2021. This amendment has been reviewed by the Department of Economic Opportunity (DEO), as well as other state and regional agencies. On November 4, 2021, DEO issued a comment letter, which did not contain any concerns about the amendment undergoing the State-Expedited Review process. Pursuant to 163.3184, F.S., the proposed amendment must be adopted within 180 days of the comment letter. The Regular Cycle Amendment undergoing the State-Expedited Review process will become effective 31 days after DEO notifies the County that the plan amendment package is complete. This amendment is expected to become effective in December 2021, provided no challenges are brought forth for the amendment.

Any questions concerning this document should be directed to Alberto A. Vargas, MArch, Manager, Planning Division, at (407) 836-5802 or Alberto.Vargas@ocfl.net or Greg Golgowski, AICP, Chief Planner, Comprehensive Planning Section, at (407) 836-5624 or Gregory.Golgowski@ocfl.net.

AAV/sw

Enc: 2021-2 Out-of-Cycle Regular Cycle Comprehensive Plan Amendment –
BCC Adoption Staff Report

c: Christopher R. Testerman, AICP, Deputy County Administrator
Joel Prinsell, Deputy County Attorney
Roberta Alfonso, Assistant County Attorney
Whitney Evers, Assistant County Attorney
Eric Raasch, AICP, Planning Administrator, Planning Division
Gregory Golgowski, AICP, Chief Planner, Planning Division
Olan D. Hill, AICP, Assistant Manager, Planning Division
Read File



ORANGE COUNTY

PLANNING DIVISION

2021-2 OUT-OF-CYCLE REGULAR CYCLE AMENDMENT 2021-2-C-PRE-1

2010 - 2030 COMPREHENSIVE PLAN

**BOARD OF COUNTY
COMMISSIONERS**

**NOVEMBER 30, 2021
ADOPTION PUBLIC HEARING**

PREPARED BY:
ORANGE COUNTY PLANNING, ENVIRONMENTAL
AND DEVELOPMENT SERVICES

PLANNING DIVISION
COMPREHENSIVE PLANNING SECTION



Amendment Number	Sponsor		Project Planner	Rezoner	Staff Rec	LPA Rec
2021-2-C-PRE-1	Planning Division		Jennifer DuBois	N/A	Adopt	
ABBREVIATIONS INDEX:						

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2021 SECOND REGULAR CYCLE OUT-OF-CYCLE STAFF-INITIATED TEXT AMENDMENT

AMENDMENTS TO THE 2010-2030 COMPREHENSIVE PLAN BOARD OF COUNTY COMMISSIONERS ADOPTION BOOK

INTRODUCTION

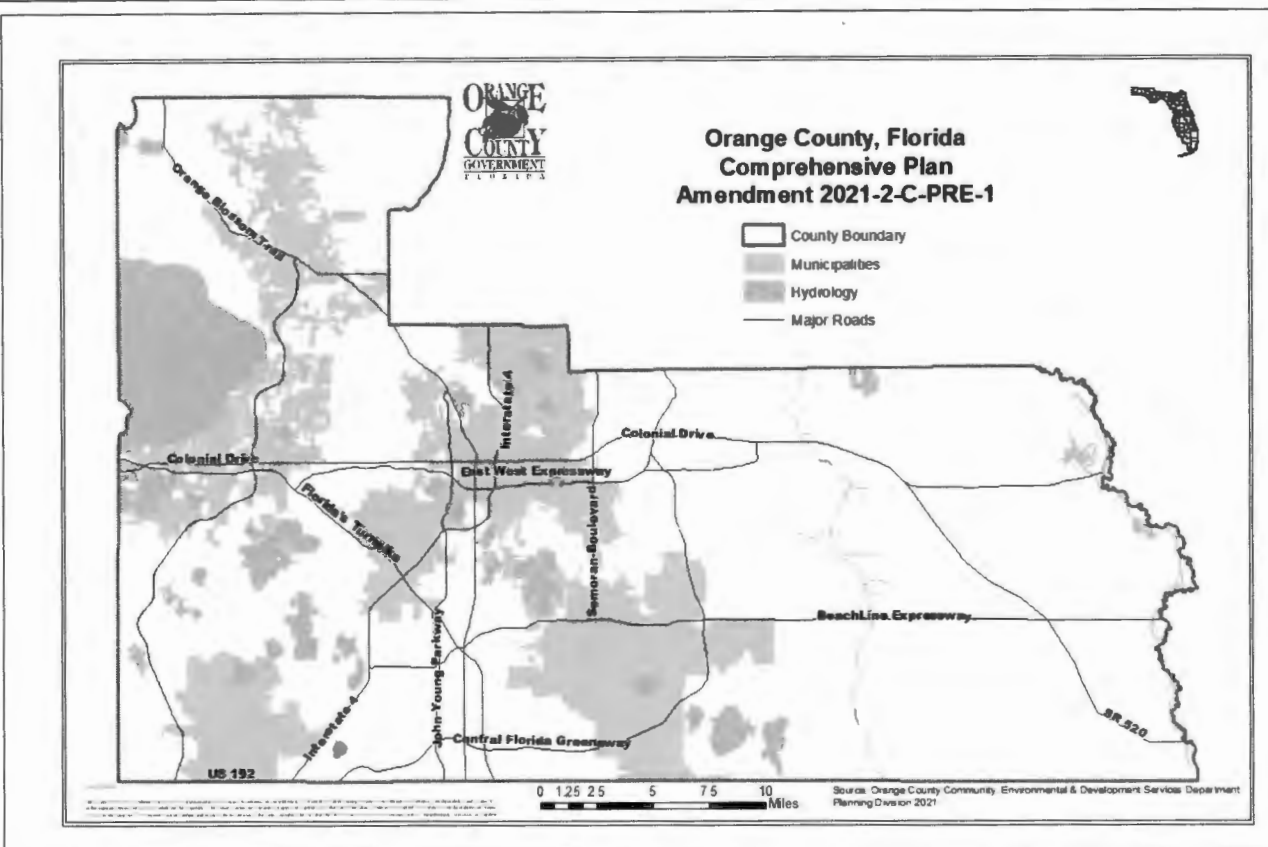
This is the Board of County Commissioners (BCC) adoption public hearing staff report for the proposed Out-of-Cycle Second Regular Cycle Staff-Initiated Text Amendment (2021-2) to the Future Land Use Map (FLUM) and Comprehensive Plan (CP). The adoption public hearing for this amendment was conducted before the Planning and Zoning Commission (PZC)/Local Planning Agency (LPA) on November 18, 2021, and is scheduled before the BCC on November 30, 2021.

This Out-of-Cycle Regular Cycle Staff-Initiated Text Amendment scheduled for BCC consideration on November 30 was heard by the PZC/LPA at a transmittal public hearing on August 19, 2021, and by the BCC at a transmittal public hearing on September 11, 2021.

The 2021-2 ***Out-of-Cycle Regular Cycle-State-Expedited*** Review amendment scheduled for consideration on November 30 is a staff-initiated text amendment. This amendment includes changes to the Goals, Objectives, and/or Policies of the Comprehensive Plan.

The 2021-2 ***Out-of-Cycle Regular Cycle-State-Expedited*** Review Amendment has been reviewed by the Department of Economic Opportunity (DEO), as well as other state and regional agencies. On November 4, 2021, DEO issued a comment letter, which did not contain any concerns about the amendment undergoing the State-Expedited Review process. Pursuant to 163.3184, F.S., the proposed amendment must be adopted within 180 days of the comment letter. The Regular Cycle Amendment undergoing the State-Expedited Review process will become effective 31 days after DEO notifies the County that the plan amendment package is complete. This amendment is expected to become effective in December 2021, provided no challenges are brought forth for the amendment.

Any questions concerning this document should be directed to Alberto A. Vargas, Manager, Planning Division, at (407) 836-5802 or Alberto.Vargas@ocfl.net or Greg Golgowski, AICP, Chief Planner, Comprehensive Planning Section, at (407) 836-5624 or Gregory.Golgowski@ocfl.net.



The following meetings and hearings have been held for this proposal:			Project/Legal Notice Information	
Report/Public Hearing	Outcome		Title: Amendment 2021-2-C-PRE-1	
✓ Staff Report	Recommend Transmittal		Division: Planning	
✓ LPA Transmittal August 19, 2021	Recommend Transmittal (6-1)		Request: Text amendment creating a Property Rights Element in the Comprehensive Plan, as required by HB 59 (2021), amending Sec. 163.3177, Florida Statutes.	
✓ BCC Transmittal September 14, 2021	Transmit (7-0)		New: GOAL PRE1, OBJ PRE1.1, and Policies PRE1.1.1, PRE1.1.2, PRE1.1.3, and PRE1.4.4	
✓ State Comments	Comments received November 4, 2021			
✓ LPA Adoption	November 18, 2021			
BCC Adoption	November 30, 2021			

Staff Recommendation

This request involves a staff-initiated text amendment to include a new, separate Property Rights Element in the Orange County Comprehensive Plan, in response to the passage of House Bill 59, signed into law on June 29, 2021, and effective as of July 1, 2021. Staff and the Local Planning Agency (LPA) have made a

finding of consistency with the Comprehensive Plan, have determined that the plan amendment is in compliance, and recommend **ADOPTION** of Amendment 2021-2-C-PRE-1.

A. Background

Introduced during the 2021 Legislative Session, House Bill 59: Growth Management was signed into law on June 29, 2021, and became effective July 1, 2021. Among the provisions of House Bill 59 (Chapter 2021-195, Laws of Florida), attached hereto as **Appendix "A"**, is the addition of s. 163.3177(6)(i), F.S., requiring each local government in the State of Florida to include a property rights element in its comprehensive plan to ensure that private property rights are considered in local decision-making. Per the bill, a local government may adopt the statement of rights below or may adopt its own property rights element, so long as such element does not conflict with the statement of rights below.

The following rights shall be considered in local decision-making:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
4. The right of a property owner to dispose of his or her property through sale or gift.

Each local government must adopt a property rights element by the earlier of its adoption of its next proposed plan amendment initiated after July 1, 2021, or the next scheduled evaluation and appraisal of its comprehensive plan. In its July 7, 2021, Notice of Legislative Change Concerning Property Rights, issued to its local government partners, the Florida Department of Economic Opportunity's (DEO's) Bureau of Community Planning and Growth states that any submitted comprehensive plan amendment package which had its first local planning agency hearing after July 1, 2021, will be returned to the local government if the package does not also include a proposed property rights element, which has already received a transmittal public hearing, or if the comprehensive plan does not already include the required property rights element. Following its July 7 Notice, the DEO issued further guidance indicating that if an application for a comprehensive plan amendment was deemed complete prior to July 2, 2021, that application could be adopted prior to the adoption of the proposed property rights element. In accordance with the new legislation and the Bureau of Community Planning and Growth's directive, the County is proceeding toward the adoption of a Property Rights Element, which will be adopted as a separate element of the Comprehensive Plan, to allow new privately-initiated and staff-initiated Comprehensive Plan amendments to move forward.

After review and discussion of the adopted legislation with the County Attorney's Office (CAO), including the model statement of rights, staff opted to craft the Property Rights Element presented below. In its review of the legislation, the CAO noted that there is no definition of "local decision-

making”, but based on the scope of the property rights covered by the proposed statement of rights, it appears that the legislature intended the property rights element to apply to all local decision-making, not solely to land use decisions and amendments to the comprehensive plan (e.g., Future Land Use Map amendments).

The CAO also noted that each of the rights listed in the statement of rights is already a right that is protected by either the U. S. Constitution, the Florida Constitution, Florida Statutes, settled judicial caselaw, or a combination thereof. However, certain of the enumerated rights in the statement of rights are ones of which the County may not always be aware when making decisions (e.g., mineral rights and leases) because we do not have a full title report or due diligence on the properties that are the subject of our decisions, or some of those enumerated rights may not show up or be evident. The CAO was concerned that if we adopt the statement of rights as is, we may be opening the County up to potential liability for not considering rights of which the County has no knowledge. Therefore, to comply with the intent of the legislation, staff is proposing the Property Rights Element below, which states that the County will take into account those property rights protected by the U. S. Constitution, the Florida Constitution, Florida Statutes, and settled judicial caselaw, but that if there is a specific property right of which we are unaware and an applicant or interested party expects us to take that right into account, we are asking them to provide us that information. It is staff’s belief that the proposed Property Rights Element is comprehensive, perhaps more so than the statement of rights in the legislation, and complies with the new legislation’s purpose and intent that local governmental entities respect private property rights and ensure that private property rights are considered in local decision-making, while still balancing the County’s interest in avoiding potential liability for not considering rights of which we may not be aware.

Proposed **GOAL PRE1** states that Orange County shall ensure that private property rights are considered in its local decision-making. **Objective OBJ PRE1.1** establishes that the County shall consider private property rights in its local decision-making in accordance with four policies: **PRE1.1.1, PRE1.1.2, PRE1.1.3, and PRE1.1.4**. Such consideration will help ensure compliance with the legislative intent expressed in s. 163.3161(10), F.S., that governmental entities respect private property rights, and the requirements of s. 163.3177(6), F.S., that each local government include a property rights element in its comprehensive plan. **Policy PRE1.1.1**, as proposed, mandates that the County shall consider constitutionally-protected private property rights in its local decision-making, while **Policy PRE1.1.2** requires that the County shall consider judicially-acknowledged private property rights in its local decision-making, consistent with the language in s. 163.3177(6)(i), F.S. As further affirmation of Orange County’s respect for private property rights, staff proposes **Policy PRE1.1.3**, stating that the County shall consider statutorily-protected private property rights in its local decision-making. Finally, recognizing the importance of working cooperatively with individual property owners and obtaining a thorough and accurate history of each subject property to allow for the issuance of an informed decision, the County proposes **Policy PRE1.1.4**, stating that to the extent Orange County may be unaware of a private property right, such as an easement, lease, or mineral interest, the owner shall be responsible for informing the County of such private property right so that the County can consider it in its local decision-making.

As discussed previously, adoption of this requested amendment will enable the County to fulfill its statutory requirement that each local government in the State of Florida include a property rights element in its comprehensive plan to ensure that private property rights are considered in local decision-making. It is staff's position that the proposed Property Rights Element presented below meets the purpose and intent of the newly-effective legislation. Staff, therefore, recommends the LPA make a finding of **CONSISTENCY** with the Comprehensive Plan and recommend **ADOPTION** of Amendment 2021-2-C-PRE-1.

B. Proposed Property Rights Element

Below is the Property Rights Element proposed by this amendment, to be included as a separate element of the Orange County Comprehensive Plan. The new text is shown in underline/~~strikethrough~~ format. Staff recommends transmittal of this amendment.

Property Rights Element Goals, Objectives, and Policies

GOAL PRE1 Orange County shall ensure that private property rights are considered in its local decision-making.

OBJ PRE1.1 In order to comply with the legislative intent expressed in Section 163.3161(10), F.S., that governmental entities respect private property rights, and the requirements of Section 163.3177(6), F.S., that each local government include a property rights element in its comprehensive plan, Orange County shall consider private property rights in its local decision-making in accordance with the policies herein.

POLICIES

PRE1.1.1 Orange County shall consider constitutionally-protected private property rights in its local decision-making.

PRE1.1.2 Orange County shall consider judicially-acknowledged private property rights in its local decision-making.

PRE1.1.3 Orange County shall consider statutorily-protected private property rights in its local decision-making.

PRE1.1.4 To the extent Orange County may be unaware of a private property right, such as an easement, lease, or mineral interest, the owner shall be responsible for informing Orange County of such private property right so that Orange County can consider it in its local decision-making.

Appendix "A"

CHAPTER 2021-195

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 59

An act relating to growth management; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; amending s. 163.3177, F.S.; requiring local governments to include a property rights element in their comprehensive plans; providing a statement of rights which a local government may use; requiring a local government to adopt a property rights element by the earlier of its adoption of its next proposed plan amendment initiated after a certain date or the next scheduled evaluation and appraisal of its comprehensive plan; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; amending s. 163.3237, F.S.; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; providing an exception; amending s. 337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances; providing requirements and procedures for the right of first refusal; amending s. 380.06, F.S.; authorizing certain developments of regional impact agreements to be amended under certain circumstances; providing retroactive applicability; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan for a newly incorporated municipality which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or

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cancellation directly modifies the allowable uses or entitlements of such owners' property.

Section 4. Subsection (4) of section 337.25, Florida Statutes, is amended to read:

337.25 Acquisition, lease, and disposal of real and personal property.

(4) The department may convey, in the name of the state, any land, building, or other property, real or personal, which was acquired under subsection (1) and which the department has determined is not needed for the construction, operation, and maintenance of a transportation facility. When such a determination has been made, property may be disposed of through negotiations, sealed competitive bids, auctions, or any other means the department deems to be in its best interest, with due advertisement for property valued by the department at greater than \$10,000. A sale may not occur at a price less than the department's current estimate of value, except as provided in paragraphs (a)-(d). The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated, except in a conveyance transacted under paragraph (a), paragraph (c), or paragraph (e). Notwithstanding any provision of this section to the contrary, before any conveyance under this subsection may be made, except a conveyance under paragraph (a) or paragraph (c), the department shall first afford a right of first refusal to the previous property owner for the department's current estimate of value of the property. The right of first refusal must be made in writing and sent to the previous owner via certified mail or hand delivery, effective upon receipt. The right of first refusal must provide the previous owner with a minimum of 30 days to exercise the right in writing and must be sent to the originator of the offer by certified mail or hand delivery, effective upon dispatch. If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property. The right of first refusal set forth in this subsection may not be required for the disposal of property acquired more than 10 years before the date of disposition by the department.

(a) If the property has been donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, the governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.

(b) If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.

(c) If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the department may negotiate for the sale of such property as replacement

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housing. As compensation, the state shall receive at least its investment in such property or the department's current estimate of value, whichever is lower. It is expressly intended that this benefit be extended only to persons actually displaced by the project. Dispositions to any other person must be for at least the department's current estimate of value.

(d) If the department determines that the property requires significant costs to be incurred or that continued ownership of the property exposes the department to significant liability risks, the department may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.

(e) If, at the discretion of the department, a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the department's current estimate of value.

Section 5. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 6. The Legislature finds and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2021.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.