

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 528

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Growth Management

DATE: April 2, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Anderson | Yeatman | CA | Fav/CS |
| 2. | Brown | Cibula | JU | Favorable |
| 3. | Malcolm | Hrdlicka | CM | Favorable |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 528 clarifies which local initiative and referendum processes relating to development orders, comprehensive plan amendments, or map amendments are not prohibited. Under the bill, the local initiative and referendum processes that are allowed to continue are limited to those that:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized in a local government charter specifically for matters such as development orders or comprehensive plan or map amendments.

The bill applies retroactively to any initiative or referendum process on local growth management issues commenced after June 1, 2011.

This bill amends s. 163.3167, F.S.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),¹ also known as Florida's Growth Management Act, was adopted in 1985. The Act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development.² Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools.³ The state land planning agency that administers these provisions is the Department of Economic Opportunity.⁴

Amendments to a Comprehensive Plan

A local government may choose to amend its comprehensive plan for a variety of reasons. A local government may wish to expand, contract, accommodate proposed job creation projects or housing developments, or change the direction and character of growth. Some comprehensive plan amendments are initiated by landowners or developers, but all must be approved by the local government.⁵ The first step in the process is for the local government to develop a comprehensive plan amendment proposal. Public participation is a critical part of the comprehensive planning process.⁶ Citizens often want to be a part of planning their communities and landowners need to be aware of changes that could affect their property. A local government considering a plan amendment must hold at least two advertised public hearings on the proposed comprehensive plan or plan amendment.⁷ Notice must be published in a newspaper of general paid circulation in the jurisdiction of interest.⁸ The procedure for transmittal of a proposed or adopted comprehensive plan amendment requires the affirmative vote of a majority of the members of the governing body present at the hearing.⁹

Referenda Approval of Amendments to Comprehensive Plans or Development Orders

The 1995 Legislature prohibited all initiative or referendum processes on development orders, local comprehensive plan amendments, or map amendments affecting five or fewer parcels of land.¹⁰

In November 2010, the voters voted in a statewide election against the citizen initiative known as Amendment 4, otherwise known as "Florida Hometown Democracy."¹¹ This initiative would have amended the Florida Constitution to require referenda approval by the local electorate

¹ See ch. 163, part II, F.S.

² Section 163.3167, F.S.

³ Section 163.3177, F.S.

⁴ Section 163.3221, F.S.

⁵ See s. 163.3184, F.S.

⁶ See section 163.3181, F.S. (setting out the minimum requirements for public participation in the comprehensive planning process).

⁷ Section 163.3184(11)(b), F.S.

⁸ Section 163.3184(6)(c), F.S.

⁹ Section 163.3184(11)(a), F.S.

¹⁰ Chapter 95-322, L.O.F.

¹¹ "Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans", available at <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=37681&seqnum=2> (last visited March 4, 2013).

before a local government could adopt a new comprehensive land use plan or amend an existing comprehensive land use plan.

In 2011, the Legislature passed the Community Planning Act.¹² The Community Planning Act prohibited all voter initiatives or referendums on development orders, comprehensive plan amendments, and map amendments irrespective of the number of parcels of land involved.¹³ The Town of Yankeetown subsequently challenged the Community Planning Act through a suit against the Department of Community Affairs and the Administration Commission.¹⁴ The City of St. Petersburg Beach intervened as a defendant on the side of the state.

Yankeetown sought a declaratory judgment from the court to allow the city to apply its referenda provision to require voter approval for comprehensive land use changes affecting more than five parcels, as the charter provision pre-dated the Community Planning Act. The charter provision at issue appeared in the section of the charter titled “Comprehensive Plan Amendments,” and read, in part, “Adoption of the amendment may also require voter approval under the Town Charter . . .”¹⁵

To settle the lawsuit, the Department of Community Affairs, the Administration Commission, St. Petersburg Beach, and Yankeetown agreed to ask the Legislature to amend the statutory prohibition on initiative or referendum processes to allow charter provisions that authorized voter approval of comprehensive plans and comprehensive plan amendments if the charter provision was in effect as of June 1, 2011. The agreement, detailed in a letter, provides, in part:

The Department of Community Affairs (“DCA”) and Yankeetown will seek a legislative amendment to s. 163.3167(8), F.S., (2011) which, if it becomes law, will allow the Town to continue to require voter approval for comprehensive plan amendments pursuant to Section 11 of the Town of Yankeetown Charter, while retaining the ban on referenda for local governments which did not have a charter provision authorizing referenda on June 2, 2011¹⁶

During the 2012 Florida legislative session, the Legislature passed House Bill 7081 (ch. 2012-99, L.O.F.) which included a section amending the referenda approval of amendments provision found in s. 163.3167(8), F.S. The bill contained a grandfathering clause, which saved from repeal any local government charter provision, in effect as of June 1, 2011, for an initiative or referendum process on development orders, local comprehensive plan amendments, or map amendments. Satisfied with the savings clause, Yankeetown dismissed its case with prejudice upon HB 7081 becoming law.

¹² Chapter 2011-139, s. 7, L.O.F.

¹³ Section 163.3167(8), F.S. (2011).

¹⁴ *Yankeetown v. Dept. of Community Affairs*, Case. No. 37 2011 CA 002036 (Fla. 2nd Jud. Cir. 2011).

¹⁵ Charter of Yankeetown, Article II, *Comprehensive Plan Amendments*.

¹⁶ Letter dated Sept. 28, 2011, from David L. Jordan, Assistant General Counsel, DCA to Ralf Brookes, Town of Yankeetown and Suzanne Van Wyk, City of St. Pete Beach, signed by all parties and also signed by Jonathan Glogau, Administration Commission (on file with the Senate Committee on Commerce and Tourism).

Court Interpretation of s. 163.3167(8), F.S.

Subsequent to passage of ch. 2012-99, L.O.F., the City of Boca Raton challenged a local attempt to initiate a referendum on a development order, pursuant to a general charter referenda provision.¹⁷ The language in the city's charter was not specific to development orders or comprehensive plan amendments. The charter provision at issue reads, in part:

The qualified voters of the city shall have the power by petition to require reconsideration by the council of any adopted ordinance or resolution, and if the council fails to repeal an ordinance or resolution, to approve or reject it at a city election¹⁸

The city argued that the 2012 Legislature intended to limit application of the law to city charters that previously contained express language for a referendum process on a comprehensive plan amendment affecting more than five parcels.¹⁹ The trial court denied the city's motion for summary judgment, indicating that the current version of s. 163.3167(8), F.S., applies to all ordinances and resolutions, including those addressing development orders.²⁰

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 163.3167(8), F.S., to clarify which local initiative and referendum processes relating to development orders, comprehensive plan amendments, or map amendments are not barred by law. Under the bill, the local initiative and referendum processes that are not prohibited are those that:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized in a local government charter specifically for matters such as development orders or comprehensive plan or map amendments.

The bill applies retroactively to any initiative or referendum process on local growth management issues commenced after June 1, 2011.

Section 2 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ *City of Boca Raton vs. Kathleen Kennedy*, Case No. 2012-CA-009962MB (Fla. 15th Jud. Cir. 2012).

¹⁸ Section 6.02, City of Boca Raton Charter.

¹⁹ *Supra* note 17 at 5.

²⁰ *Supra* note 17 at 6.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may promote private development projects and reduce the time required for implementation.

C. Government Sector Impact:

This bill may lead to fewer local referenda on growth management issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Committee on March 7, 2013:
The CS made technical and clarifying changes.

B. Amendments:

None.