

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 Community Affairs

BILL: SB 528

INTRODUCER: Senator Simpson

SUBJECT: Community Planning Act

DATE: March 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Pre-meeting
2.			JU	
3.			CM	
4.			RC	
5.				
6.				

I. Summary:

SB 528 authorizes a local government to retain an existing initiative or referendum process relating to a local comprehensive plan amendment or map amendment in certain circumstances. The bill provides legislative intent and retroactive application.

This bill substantially amends section 163.3167 of the Florida Statutes.

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 by the 1985 Legislature. The Act requires all of Florida’s counties and municipalities to adopt local government comprehensive plans that guide future growth and development. 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. The state land planning agency that administers these provisions is the Department of Economic Opportunity.

¹ See Chapter 163, Part II, F.S.

Amendments to the Comprehensive Plan

A local government may choose to amend its comprehensive plan for a host of reasons. It 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. 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.² 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. Notice must be published in a newspaper of general paid circulation in the jurisdiction of interest. 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.

Referenda Approval of Amendments to Comprehensive Plans or Development Orders

During the 2011 Florida legislative session, the Community Planning Act (HB 7207) was passed.³ Within this new Florida growth management law was a provision altering the requirements for local governments to use the referendum process. At that time the statute stated that all initiatives or referendums on a development order or comprehensive plan amendment were prohibited. Previously, the prohibition only applied to those affecting five or fewer parcels.

The Town of Yankeetown filed suit in Leon County Circuit Court against the Department of Community Affairs (DCA) and the Administration Commission challenging ch. 2011-139, L.O.F., on numerous constitutional and other grounds. The City of St. Pete Beach intervened as a defendant on the side of the state entities. Yankeetown sought a declaratory judgment that it still be allowed to apply its referenda provisions, requiring voters to approve all comprehensive land use changes affecting more than five parcels, because they existed before HB 7207 was passed.

To settle the lawsuit, DCA, the Administration Commission, St. Pete Beach and Yankeetown agreed to ask the legislature to amend the statutory prohibition on an initiative or referendum process 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. 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. The current language provides that any local government charter provision, in effect as of June 1, 2011, for an initiative or referendum process in regard to development orders or in regard to local comprehensive plan amendments or map amendments may be retained and implemented. This allows local governments such as Yankeetown, to retain and implement specific charter provisions in effect on June 1, 2011, providing for an initiative or referendum process for the approval of development orders or local comprehensive plan or map amendments. Any other

² Section 163.3181, F.S., setting out the minimum requirements for public participation in the comprehensive planning process.

³ Chapter 2011-139, L.O.F.

initiative or referendum processes in regard to any development order or in regard to any local comprehensive plan amendment or map amendment continues to be prohibited. Pursuant to the settlement agreement between Yankeetown and the Department of Community Affairs, Yankeetown dismissed its case with prejudice upon HB 7081 becoming law.

Court Interpretation of s. 163.3167 (8), F.S. (2012)

In a recent case involving a development order issued by the City of Boca Raton, a challenger to the development order sought to commence referendum proceedings under the language in the City's charter that allowed generally for referenda on ordinances and/or resolutions of the local government body.⁴ The language in the City's charter was not specific to development orders or comprehensive plan amendments. The City moved for summary judgment arguing that because the referendum language in its charter did not address development orders, the challenger's suit seeking a referendum should be dismissed. The trial court denied the City's motion, stating in its order of denial that the general language in the City charter applies to all ordinances and resolutions, including those addressing development orders.

III. Effect of Proposed Changes:

Section 1 amends subsection (8) of s. 163.3167, F.S., to allow local governments to retain and implement an existing initiative or referendum process relating to comprehensive plan amendments or map amendments if:

- the process was in effect before June 2, 2011;
- affects six or more parcels of land; and
- is expressly authorized by specific language in the local government charter.

A charter provision authorizing voter approval by an initiative or referendum process relating to a development order would no longer be permitted.

Section 2 provides legislative intent and retroactive application. The bill provides that in enacting s. 1, ch. 2012-99, L.O.F., the legislature intended to clarify s. 7, ch. 2011-139, L.O.F., by grandfathering applicable charter provisions created before June 2, 2011.

The bill further provides that the amendment to s. 163.3167, F.S., made by this bill is intended to clarify that s. 1, ch. 212, L.O.F., is remedial in nature and applies retroactively to June 2, 2011.

Any initiative or referendum process not consistent with Senate Bill 528 is void.

Section 3 provides, except as otherwise stated in Section 2, the bill is effective upon it becoming law.

⁴ *City of Boca Raton vs. Kathleen Kennedy, et al.* Case No. 2012-CA-009962MB (Fla. 15th Jud. Cir. 2012).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could potentially promote more private development projects to be implemented and for the time required for implementation to be reduced.

C. Government Sector Impact:

None.

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.)

None.

B. Amendments:

None.