

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 Community Affairs Committee

BILL: SB 440

INTRODUCER: Senator Bennett

SUBJECT: Initiatives and Referenda

DATE: December 5, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Yeatman	CA	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill authorizes a local government to retain certain initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment which was in effect as of June 11, 2011.

This bill substantially amends s. 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. Now, the statute states all initiatives or referendums on a development order or comprehensive plan amendment are prohibited. Previously, the prohibition only applied to those affecting five or fewer parcels.

Subsection 163.3167(8), F.S., prohibits a local government from adopting “an initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment.”

Town of Yankeetown vs. Department of Community Affairs, et al.

The Town of Yankeetown, Florida, has sued the State of Florida regarding HB 7207 (Chapter 2011-139 Laws of Florida).⁴ The suit maintains several alleged violations. The essential complaints are: (1) the law contained too many subjects and was not properly titled, (2) there are vague terms in the law, and (3) the provision against public referenda on comprehensive plan amendments violates Yankeetown’s Charter. Yankeetown seeks 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.

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

³ ch. 2011-139, L.O.F

⁴ *Yankeetown v. DCA* (37 2011 CA 002036).

III. Effect of Proposed Changes:

Section 1 amends s. 163.3167(8), F.S., to allow an initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment which was in effect as of June 1, 2011, to be retained and completed.

Section 2 provides the bill shall take effect upon becoming law.

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:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
