

**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 Rules

**BILL:** CS/CS/SB 528

**INTRODUCER:** Rules Committee; Community Affairs Committee; and Senator Simpson

**SUBJECT:** Growth Management

**DATE:** April 17, 2013      **REVISED:** \_\_\_\_\_

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

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/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.

The bill also retroactively repeals section 4 of chapter 2012-75, Laws of Florida, relating to a presumption regarding agricultural enclaves.

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),<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> The state land planning agency that administers these provisions is the Department of Economic Opportunity.<sup>4</sup>

### 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Notice must be published in a newspaper of general paid circulation in the jurisdiction of interest.<sup>8</sup> 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.<sup>9</sup>

### 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.<sup>10</sup>

In November 2010, the voters voted in a statewide election against the citizen initiative known as Amendment 4, otherwise known as "Florida Hometown Democracy."<sup>11</sup> This initiative would

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<sup>1</sup> See ch. 163, part II, F.S.

<sup>2</sup> Section 163.3167, F.S.

<sup>3</sup> Section 163.3177, F.S.

<sup>4</sup> Section 163.3221, F.S.

<sup>5</sup> See s. 163.3184, F.S.

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

<sup>7</sup> Section 163.3184(11)(b), F.S.

<sup>8</sup> Section 163.3184(6)(c), F.S.

<sup>9</sup> Section 163.3184(11)(a), F.S.

<sup>10</sup> Chapter 95-322, L.O.F.

have amended the Florida Constitution to require referenda approval by the local electorate 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.<sup>12</sup> 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.<sup>13</sup> The Town of Yankeetown subsequently challenged the Community Planning Act through a suit against the Department of Community Affairs and the Administration Commission.<sup>14</sup> 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 . . .”<sup>15</sup>

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, 2011 . . . .<sup>16</sup>

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.

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<sup>11</sup> “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).

<sup>12</sup> Chapter 2011-139, s. 7, L.O.F.

<sup>13</sup> Section 163.3167(8), F.S. (2011).

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

<sup>15</sup> Charter of Yankeetown, Article II, *Comprehensive Plan Amendments*.

<sup>16</sup> 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.<sup>17</sup> 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 election . . . .<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

### **Land Surrounded By Single Land Use Designation**

Current law allows the owner of a parcel of land defined as an "agricultural enclave" to apply for an amendment to the local government's comprehensive plan.<sup>21</sup> Such amendment is presumed not to be urban sprawl if it includes land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.<sup>22</sup> This presumption may be rebutted by clear and convincing evidence. If the parcel is larger than 640 acres, the development must include appropriate new urbanism concepts.<sup>23</sup>

An agricultural enclave is defined in s. 163.3164(4), F.S., as an unincorporated, undeveloped parcel that is owned by a single person or entity and that has been in continuous use for bona fide agricultural purposes, for a period of five years. The parcel must be surrounded on at least 75 percent of its perimeter by either property that has existing industrial, commercial, or residential development, or property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development. The parcel must have public services, including water, wastewater, transportation, schools, and recreation facilities, available or scheduled in the capital improvement element to be provided by the local government or provided by an alternative provider. Additionally, the parcel may not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will

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

<sup>18</sup> Section 6.02, City of Boca Raton Charter.

<sup>19</sup> *Supra* note 17 at 5.

<sup>20</sup> *Supra* note 17 at 6.

<sup>21</sup> Section 163.3162(4), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Such as clustering, mixed-use development, the creation of rural village and city centers and the transfer of development rights.

result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.<sup>24</sup>

The 2012 Legislature passed a new agricultural enclave provision that authorized certain qualifying agricultural lands located in an unincorporated area of a county to apply for an amendment to the local government comprehensive plan.<sup>25</sup> This amendment is presumed not to be urban sprawl<sup>26</sup> if the amendment proposes land uses and intensities of use that are consistent with existing or authorized land uses and intensities for industrial, commercial, or residential areas that surround the parcel subject to the amendment. The bill provided that if the parcel of land is abutted on all sides by land having only one land use designation, the same land use designation must be presumed by the county to be appropriate for the parcel subject to the amendment. After considering the proposed density and intensity of use, the county is required to grant the same land use designation as the surrounding parcels that abut the parcel subject to the amendment unless the county finds by clear and convincing evidence that granting the same land use designation would be detrimental to the health, safety, and welfare of its residents. In order to qualify as an enclave, the owner of the parcel of land must submit a written application to the county where the parcel is located by January 1, 2013.

### 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** states that Section 4 of chapter 2012-75, Laws of Florida, is repealed, retroactive to June 30, 2012.

**Section 3** provides that the bill takes effect upon becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>24</sup> Section 163.3164(4), F.S.

<sup>25</sup> Section 4, 2012-75, Laws of Fla., *see also* Section 163.3162, F.S., (Note 1).

<sup>26</sup> As defined in s. 163.3164, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.<sup>27</sup> The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.<sup>28</sup> In *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, s. 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.<sup>29</sup> This exception extends to laws that are reasonable and necessary to serve an important public purpose,<sup>30</sup> to include protecting the public's health, safety or welfare.<sup>31</sup> For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.<sup>32</sup>

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.<sup>33</sup>

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<sup>27</sup> *Stone v. Mississippi*, 101 U.S. 814 (1880).

<sup>28</sup> *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>29</sup> *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980).

<sup>30</sup> *Yellow Cab Co. v. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982).

<sup>31</sup> *Khoury v. Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981).

<sup>32</sup> *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1<sup>st</sup> DCA 1984).

<sup>33</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979).

**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/CS by Rules on April 17, 2013:**

The CS repeals a provision of law relating to a presumption regarding agricultural enclaves.

**CS by Community Affairs Committee on March 7, 2013:**

The CS made technical and clarifying changes.

**B. Amendments:**

None.