

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 537 Growth Management

SPONSOR(S): Local & Federal Affairs Committee, Economic Development & Tourism Subcommittee, Moraitis, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N, As CS	Flegiel	West
2) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Dougherty	Rojas
3) Economic Affairs Committee	15 Y, 0 N	Flegiel	Creamer

SUMMARY ANALYSIS

This bill amends s. 163.3167, F.S., prohibiting initiative or referendum processes for all development orders. This bill further amends s. 163.3167, F.S., prohibiting local government initiative or referendum processes for local comprehensive plan and map amendments affecting more than five parcels; except for those processes in effect as of June 1, 2011 and specifically authorized by charter language.

The bill has no fiscal impact on state or local funds.

The bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Initiatives and Referenda on Land Use Changes

In 2006, voters in St. Pete Beach amended the city's charter to require voter referendums on all future changes to comprehensive plans, redevelopment plans, and building height regulations.¹ This process, often called "Hometown Democracy," caused delay in the local development process.² In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote on Amendment 4.³ Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions by 54.07 percent.⁴

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Section 7, amending s. 163.3167, F.S., prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments.⁵

At the time, very few local governments had a land use referendum or initiative process in place.⁶ One of these affected governments, The Town of Yankeetown (Yankeetown), had a charter provision which specifically authorized a referendum vote on comprehensive plan amendments affecting more than five parcels of land.⁷ Following the enactment of HB 7207 (2011), Yankeetown filed a complaint in the Leon County Circuit Court against the Department of Community Affairs (DCA), now the Department of Economic Opportunity (DEO), stating its desire to maintain its charter provision.⁸

In September 2011, DCA and Yankeetown reached a proposed settlement agreement contingent upon the Legislature passing, and the Governor signing into law, a proposed amendment to the Community Planning Act.⁹ The resulting bill, CH/HB 7081 (2012), was designed to allow charter provisions like that of Yankeetown to remain valid. The bill was intended to have a limited impact, protecting only those local government charter provisions that: 1) were in effect as of June 1, 2011, and 2) authorized an initiative or referendum process for development orders, comprehensive plan amendments, or map amendments.¹⁰ The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 (2012) into law on April 6, 2012. It was codified in s. 8, ch. 163.3167, F.S.

¹ "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 19, 2010. Retrieved from: <http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/> (2/25/13).

² *Id.*

³ *See*, November 2, 2010 General Election Official Results provided by the Florida Department of State. Retrieved from: <https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE=> (2/26/13).

⁴ *See*, 2011 Municipal Election Results provided by the Pinellas County Supervisor of Elections. Retrieved from: <http://www.voteinellas.com/index.php?id=1789> (2/26/13).

⁵ *See*, "The Community Planning Act," s.7, ch. 2011-139, L.O.F., 2011 CS/HB 7207.

⁶ Longboat Key, Key West, Miami Beach, and the Town of Yankeetown.

⁷ *See*, *Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, No. 37 2011-CA-002036 (Fla. 2d Cir. Ct. 2011), Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).

⁸ *Id.* The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in s. 6, Art. III, State Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The city of St. Pete Beach also filed a motion to intervene as a defendant in the case, on the same side as the state.

⁹ Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011 CA 002036 (9/28/2011).

¹⁰ Section 1, ch. 2012-99, L.O.F.

CS/HB 7081 (2012) left open the possibility for an interpretation that allowed all referendum or initiative provisions in effect as of June 1, 2011, not merely those specifically for development orders, comprehensive plan amendments, or map amendments.

In October 2012, the Palm Beach County Circuit Court ruled that CS/HB 7081 (2012) extended the exception to all local government general referendum or initiative charter provisions in effect as of June 1, 2011.¹¹ The court held that such a general provision encompassed specific land amendments, such as development orders and comprehensive map amendments, despite the charter language not specifically authorizing either. This broad interpretation is contrary to the intent of the 2011 and 2012 legislation, which sought to restrict these voting mechanisms.

Effect of Proposed Changes

CS/HB 537 seeks to narrow the current interpretation of s. 163.3167(8), F.S., while preserving the purpose of the 2011 Community Planning Act.

With one exception, CS/HB 537 prohibits initiative or referendum processes for any development order, local comprehensive plan amendments, or map amendments. However, if the local government charter (1) specifically authorizes and (2) was lawful and in effect June 1, 2011, then such processes are allowed for (1) local comprehensive plan amendments or (2) map amendments affecting more than five parcels of land. Provisions in regard to development orders are not included in the exception and are always prohibited.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3167(8), F.S., to clarify that initiative and referendum processes for development orders are prohibited. Amends s. 163.3167(8), F.S., to limit the use of initiative or referendum processes for comprehensive plan and map amendments to specified local governments. Provides legislative intent.

Section 2: Provides that the Act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

¹¹ *City of Boca Raton v. Kennedy, et. al.*, No. 2012-CA-009962-MB (Fla. 15th Cir. Ct. 2012), Order denying plaintiff, City of Boca Raton's and Intervener/Co-Plaintiff, Archstone Palmetto Park, LLC's Motions for Summary Judgment and Granting Defendants' Motion for Summary Judgment. J. Chernow Brown, Oct. 16, 2012.

There could be cost savings for local governments by limiting the number special elections and the number of issues presented to voters in general and special elections.¹²

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removes potential impediments to developers seeking land use permit changes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6th, 2013, the House Economic Development and Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- Reorganizes s. 163.3167(8), F.S., into three sub-sub-sections.
- Removes language that provides for initiative or referendum process regarding any development order, local comprehensive plan amendment, or map amendment commenced or completed after June 1, 2011 is void.
- Adds clarification that a general initiative or referendum process is not sufficient to meet exception intended for specifically authorized initiative or referendum processes for comprehensive plan and map amendments in effect as of June 1, 2011.

¹² Financial Information Statement: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, #05-18. Office of Economic & Demographic Research. Retrieved from: <http://edr.state.fl.us/Content/constitutional-amendments/2010Ballot/LandUse/LandUseInformationStatement.cfm> (2/26/13).

- Sub-sub-section (c) adds legislative intent, clarifying the legislature's intention for the application of sub-sub-sections (a) and (b) and for s. 163.3167(8), F.S., to apply retroactively as of June 2, 2011.

On March 14, 2013, the House Local and Federal Affairs Committee adopted a technical amendment and passed the bill as amended.

This analysis has been updated to reflect the amendments adopted by the Economic Development & Tourism Subcommittee and the Local and Federal Affairs Committee.