

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 41 Land Development Initiative and Referendum Processes  
**SPONSOR(S):** State Affairs Committee, Local Administration, Federal Affairs & Special Districts  
Subcommittee, Garcia  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 856

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Mwakyanjala	Darden
2) State Affairs Committee	16 Y, 3 N, As CS	Mwakyanjala	Williamson

**SUMMARY ANALYSIS**

Every local government must plan for future development and growth by adopting, implementing, and amending, as necessary, a comprehensive plan. Comprehensive plans are implemented through land development regulations and elements. Each comprehensive plan contains elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.

Current law prohibits an initiative or referendum process for any development order, as well as any local comprehensive plan amendment or map amendment that was not expressly authorized by specific language in a local government charter that was in effect on June 1, 2011.

The bill revises the current prohibition on initiative and referendum processes to prohibit those processes from being used for any land development regulations.

The bill does not appear to have a fiscal impact on state government. To the extent local governments would no longer need to conduct an election in response to a land development regulation, the bill would likely have a positive fiscal impact.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Comprehensive Plans

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.<sup>1</sup> All elements of a plan or plan amendment must be based on relevant, appropriate data<sup>2</sup> and an analysis by the local government may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.<sup>3</sup> The data supporting a plan or amendment must be taken from professionally accepted sources and must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.<sup>4</sup> In order to prepare and provide guidance for future development and growth, local governments must maintain comprehensive plans and implement these plans through adoption of appropriate land development regulations or other elements.<sup>5</sup>

Comprehensive plans adopted by local governments provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.<sup>6</sup> A key purpose of the plan is to establish meaningful and predictable standards for the use and development of land.

##### Land Development Regulations

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.<sup>7</sup> Local governments are encouraged to use innovative land development regulations<sup>8</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>9</sup>

All local government land development regulations must be consistent with the local comprehensive plan.<sup>10</sup> Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>11</sup> However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.<sup>12</sup>

##### Comprehensive Plans and Referendums

In 2006, the voters of the city of St. Pete Beach amended the city's charter to require a referendum for any future changes to the City's comprehensive plan. These actions effectively stalled local development and led to a series of litigation between the city and the proponents of the amendment to the city's charter.<sup>13</sup> At the time, state law only prohibited an initiative or referendum concerning a

<sup>1</sup> Ss. 163.3167(2), 163.3177(2), F.S.

<sup>2</sup> "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.

<sup>3</sup> S. 163.3177(1)(f), F.S.

<sup>4</sup> S. 163.3177(1)(f).

<sup>5</sup> S. 163.3167(1)(a-c) and (2), F.S.

<sup>6</sup> S. 163.3177(1), F.S.

<sup>7</sup> S. 163.3202, F.S.

<sup>8</sup> S. 163.3202(3), F.S.

<sup>9</sup> Ss. 125.01055 and 166.04151, F.S.

<sup>10</sup> S. 163.3194(1)(b), F.S.

<sup>11</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>12</sup> S. 189.081(1), F.S.

<sup>13</sup> Mike Vogel, *Where Citizens Decide Growth Changes*, Florida Trend, available at <https://www.floridatrend.com/print/article/4365> (last visited Feb. 13, 2023).

development order, comprehensive plan amendment, or map amendment that affected five or fewer parcels of land.<sup>14</sup> The prohibition was revised in 2011 as part of the Community Planning Act to apply to all initiatives and referenda concerning a development order, comprehensive plan amendment, or map amendment.<sup>15</sup> This provision was further revised to allow an initiative and referendum process in regard to any local comprehensive plan amendment or map amendment if it was expressly authorized by the local government charter that was in effect on June 1, 2011.<sup>16</sup>

There is currently no prohibition against the use of initiatives or the referendum process in regard to land development regulations. Citizens within two cities, Venice<sup>17</sup> and Pinecrest,<sup>18</sup> have initiated the referendum process in order to challenge land development regulations proposed by those municipalities.

### **Effects of Proposed Changes**

The bill revises the current prohibition on initiative and referendum processes to prohibit those processes from being used for any land development regulations.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 163.3167, F.S., to prohibit initiatives and referendum processes to any land development regulations.

Section 2: Provides an effective date of July 1, 2023.

## **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:

Local governments that would need to conduct elections in response to an initiative or referendum regarding an amendment to a land development regulation would no longer need to do so. This would reduce potential election costs for local governments.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>14</sup> S. 163.3167(12), F.S. (2006).

<sup>15</sup> Ch. 2011-139, s. 7, Laws of Fla.

<sup>16</sup> Chs. 2012-99, 2013-115, 2013-213, and 2014-178, Laws of Fla.

<sup>17</sup> Earle Kimel, *Venice residents get OK to start petition for referendum on development rules*, Sarasota Herald-Tribune, available at <https://www.heraldtribune.com/story/news/politics/elections/2022/08/16/elections-2022-venice-residents-get-ok-start-petition-referendum-development-rules/10326297002/> (last visited Feb. 13, 2023).

<sup>18</sup> Tess Riski, *Pinecrest touts its trees. But residents battle mayor over zoning changes*, Miami Herald, available at <https://www.msn.com/en-us/news/us/pinecrest-touts-its-trees-but-residents-battle-mayor-over-zoning-changes/ar-AA167ldZ> (last visited Feb. 13, 2023).

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:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 10, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment revised the prohibition on initiative or referendum processes to apply to any land development regulation.

On March 23, 2023, the State Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute corrects a cross-reference.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.