

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 537	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Local & Federal Affairs Committee, Economic Development & Tourism Subcommittee, and Moraitis, Rogers	114 Y's	0 N's
COMPANION BILLS:	(CS/CS/SB 528, CS/HB 7019)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 537 passed the House on April 12, 2013. The bill was amended by the Senate on April 25, 2013, and subsequently passed the House on May 2, 2013.

The bill prohibits local government initiative or referendum processes for local comprehensive plan and map amendments affecting more than five parcels of land, except for those processes in effect as of June 1, 2011, and specifically authorized by charter language.

The bill also repeals Section 4, Chapter 2012-75, Laws of Florida, which allowed qualifying agricultural enclaves to use a different approval process when applying for comprehensive plan amendments.

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

The bill was approved by the Governor on June 5, 2013, ch. 2013-115, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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statewide with a 67.1 percent 'no' vote on Amendment 4.³ Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions by 54.07 percent.⁴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.

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.

Agricultural Enclaves

Chapter 163.3164, F.S., defines an agricultural enclave as an unincorporated, undeveloped parcel that: a) is owned by a single person or entity, b) has been used for at least five continuous years for agricultural purposes prior to a comprehensive plan amendment application and c) is surrounded on at least 75 percent of its perimeter by: property that has existing industrial, commercial, or residential development or property designated for said development that is substantially developed.

Chapter 163.3162, F.S., allows an owner of an agricultural enclave as designated by s. 163.3164, F.S., to apply for a comprehensive plan amendment pursuant to s. 163.3184, F.S. The statute presumes such development is not urban sprawl, but allows for rebuttal of the presumption by clear and convincing evidence. There is no limit to the size of an allowable enclave, although enclaves in excess of 640 acres are required to include new urbanism concepts in the development plan.

Owners of agricultural enclaves seeking a comprehensive plan amendment must apply for the change and then engage in good faith negotiations with the local government to reach an agreement about the land uses that are consistent with surrounding areas. The landowner and local government must also reach agreement on a schedule for information submittal, public hearings, negotiations, and final action on the amendment.

Following good faith negotiations between the landowner and local government, or the passage of 180 days after receipt of the complete application, the local government shall transmit the proposed amendment to the state land planning agency for final review. While agricultural enclave amendments are presumed not to be urban sprawl, this presumption may be rebutted by clear and convincing evidence, and does not apply if the landowner fails to engage in good faith negotiations with the local government.

In 2012, the passage of CS/HB 979 created an alternate route for owners of designated agricultural enclaves to apply for a comprehensive plan amendment pursuant to s. 163.3184, F.S.¹² The alternate route for amendment approval is available only to enclaves greater than 500 acres and less than 640 acres in size, and surrounded by 95 percent or more of land designated for development. Under the alternate route, land owners are not required to engage in good faith negotiations with local governments, the presumption of no urban sprawl is not rebuttable, and final review by the state land planning agency is not required. In order to qualify for the alternate route, land owners were required to submit an application to the county by January 1, 2013.

Effect of Proposed Changes

Local Initiatives and Referenda on Land Use Changes

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.

¹² S. 4, Ch. 2012-75, Laws of Florida.

CS/CS/HB 537 narrows the current interpretation of s. 163.3167(8), F.S., while preserving the purpose of the 2011 Community Planning Act. CS/HB 537 prohibits initiative or referendum processes for any development order, local comprehensive plan amendment, or map amendment. However, if the local government charter (1) specifically authorizes initiative and referendum voting processes for land use amendments 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.

Agricultural Enclaves

CS/CS/HB 537 repeals s. 4, ch. 2012-75, Laws of Florida, eliminating the alternate route application process for owners of land qualifying as an agricultural enclave to apply for comprehensive plan amendments.

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:

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.¹³

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removes potential impediments to developers seeking land use permit changes and eliminates an alternative method of applying for comprehensive plan amendments by owners of land located in an unincorporated area of a county that qualifies as an agricultural enclave.

D. FISCAL COMMENTS:

None.

¹³ 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).