

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 189 Growth Management

**SPONSOR(S):** Boyd

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 374

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Duncan	West
2) Local & Federal Affairs Committee	16 Y, 0 N	Flegiel	Rojas
3) Economic Affairs Committee	15 Y, 0 N	Duncan	Creamer

### SUMMARY ANALYSIS

HB 189 revises the prohibition on initiative and referendum processes for local comprehensive plan amendments or map amendments by removing a provision that allows such initiatives or referendum processes for any local comprehensive plan amendment or map amendment that affects more than five parcels of land under certain conditions.

The bill prohibits initiative or referendum processes for any local comprehensive plan amendment or map amendment, unless the initiative or referendum process is expressly authorized by specific language in a local government charter which was lawful and in effect on June 1, 2011.

The bill is effective upon becoming law.

The bill does not have a fiscal impact on state or local government revenues.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

In 2006, voters in the City of 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.<sup>1</sup> This process, often called "Hometown Democracy," caused delay in the local development process.<sup>2</sup> In November 2010, a similar proposal with statewide effect appeared on the general election ballot as a proposed amendment to Florida's Constitution. Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote, rejecting Amendment 4.<sup>3</sup> In March 2011, voters in the City of St. Pete Beach repealed the town's Hometown Democracy provisions by 54.18 percent.<sup>4</sup>

The 2011 Legislature passed HB 7207, known as the "Community Planning Act."<sup>5</sup> Among other things, the bill prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments in an attempt to provide clarity in local land development processes.<sup>6</sup> Prior to the passage of the act, local governments were prohibited from adopting initiative or referendum processes for comprehensive plan amendments or map amendments affecting 5 or fewer parcels of land.<sup>7</sup>

At the time, the Town of Longboat Key, the Town of Yankeetown, and the City of Miami Beach had land use referendum or initiative processes in place.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> During the 2012 legislative session, the resulting bill, CS/HB 7081, amended s.

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<sup>1</sup> "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 15, 2010.

<http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/> (last visited Jan. 15, 2014).

<sup>2</sup> *Id.*

<sup>3</sup> Florida Department of State, Division of Elections, November 2, 2010 General Election Official Results.

<http://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE=> (last visited Jan 15, 2014).

<sup>4</sup> Pinellas County Supervisor of Elections, 2011 Municipal Election Results, St. Pete Beach Charter Amendment 1.

<http://enr.votepinellas.com/FL/Pinellas/26521/43085/en/vts.html?cid=0116> (last visited Jan. 15, 2014).

<sup>5</sup> Part II of ch. 163, F.S. is known as the "Community Planning Act." Section 163.3161(1), F.S.

<sup>6</sup> Section 7, ch. 2011-139, L.O.F., (HB 7207). Section 163.3167(8), F.S., (2011).

<sup>7</sup> Section 163.3167(12), F.S. (2010).

<sup>8</sup> Florida Department of Economic Opportunity, Division of Community Development, Email to House Economic Development & Tourism Subcommittee staff (Jan. 22, 2014). Email on file with the subcommittee.

<sup>9</sup> *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).

<sup>10</sup> *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.

<sup>11</sup> Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011 CA 002036 (Sept. 28, 2011). Letter on file with the House Economic Development & Tourism Subcommittee.

163.3167(8), F.S., 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.<sup>12</sup> The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 into law on April 6, 2012.<sup>13</sup>

Chapter 2012-99, L.O.F., (CS/HB 7081) left open the possibility for an interpretation that deemed all referendum or initiative provisions in effect as of June 1, 2011, as valid, not merely those specifically related to 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.<sup>14</sup> 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 interpretation was contrary to the intent of the 2011 and 2012 legislation, which sought to restrict those voting mechanisms.

In 2013, the Legislature passed CS/HB 7019<sup>15</sup> and CS/CS/HB 537,<sup>16</sup> which narrowed the interpretation of s. 163.3167(8), F.S., while preserving the intent and purpose of the Community Planning Act. The laws prohibited initiative or referendum processes for any development order, local comprehensive plan amendment, or map amendment. However, if a local government charter specifically authorizes initiative and referendum voting processes for land use amendments and was lawful and in effect June 1, 2011, then such processes are allowed for local comprehensive plan amendments or map amendments affecting more than five parcels of land. Initiative and referendum processes relating to development orders were removed from the exception and were prohibited.

The Town of Longboat Key is one of the few local governments that have a land use referendum or initiative process in its charter. The provision in the Town of Longboat Key charter states, "The present density limitations provided in the existing comprehensive plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key."<sup>17</sup> Thus, the Town of Longboat Key is prohibited from authorizing a referendum vote on local comprehensive plan amendments affecting less than five parcels of land.

### **Effect of Proposed Changes**

The bill revises the prohibition on initiative or referendum processes for local comprehensive plan amendments or map amendments by removing a provision that allows such initiatives or referendum processes for any local comprehensive plan amendment or map amendment that affects more than five parcels of land under certain conditions.

The bill prohibits initiative or referendum processes for any local comprehensive plan amendment or map amendment, unless the initiative or referendum process is expressly authorized by specific language in a local government charter which was lawful and in effect on June 1, 2011. The bill effectively exempts the Town of Longboat Key's referendum charter provision from the state statutory provision prohibiting such initiative or referendum processes for local comprehensive plan amendments or map amendments.

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<sup>12</sup> Section 1, ch. 2012-99, L.O.F.

<sup>13</sup> CS/HB 7081 became law on April 6, 2012 and was published as ch. 2012-99, L.O.F.

<sup>14</sup> *City of Boca Raton v. Kennedy, et. al.*, Case No. 2012CA009962MB (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.

<sup>15</sup> Section 3, ch. 2013-213, L.O.F.

<sup>16</sup> Section 1, ch. 2013-115, L.O.F.

<sup>17</sup> Longboat Key Charter, Article II, Section 22(b). Municode Library, Longboat Key, Florida Code of Ordinances, Codified through Ordinance No. 2013-31, passed Dec. 2, 2013 (Supp. No. 5, Update 3).

[http://library.municode.com/HTML/14959/level2/LOKECH\\_ARTIITOCO.html#LOKECH\\_ARTIITOCO\\_S22COPLTO](http://library.municode.com/HTML/14959/level2/LOKECH_ARTIITOCO.html#LOKECH_ARTIITOCO_S22COPLTO) (Retrieved Feb. 6<sup>th</sup>, 2014).

Additionally, the bill provides that it is the intent of the Legislature that initiative and referendum processes be prohibited in regard to any local comprehensive plan amendment or map amendment, except as narrowly permitted under s. 163.3167(8)(b), F.S.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 163.3167(8)(b) and (c), F.S., relating to the scope of the Community Planning Act, to revise the prohibition of initiative or referendum processes for local comprehensive plan amendments or map amendments.

Section 2: Provides an effective date of upon becoming 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:  
None.

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

None.

**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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a 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**

N/A