

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 374

INTRODUCER: Senator Detert

SUBJECT: Growth Management

DATE: April 1, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	<b>Favorable</b>
2.	Askey	Hrdlicka	CM	<b>Favorable</b>
3.	Stearns	Phelps	RC	<b>Favorable</b>

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**I. Summary:**

SB 374 removes the prohibition against some local initiative and referendum processes related to comprehensive plan amendments and map amendments. Current law allows local initiatives and referendums if they:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized for comprehensive plan or map amendments in a local government charter.

The bill removes the requirement that the initiative or referendum affect more than five parcels of land.

**II. Present Situation:**

**Growth Management**

The Local Government Comprehensive Planning and Land Development Regulation 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 topics including future land use, housing, transportation, conservation, and capital improvements, among others.<sup>3</sup> The state land planning agency that administers these provisions is the Department of Economic Opportunity.<sup>4</sup>

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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(14), F.S.

## Local Initiatives and Referenda on Land Use Changes

In 2006, voters in St. Pete Beach amended the city's charter to require voter referenda on all future changes to comprehensive plans, redevelopment plans, and building height regulations.<sup>5</sup> This process, often called "Hometown Democracy," caused delay in the local development process.<sup>6</sup> In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote on Amendment 4.<sup>7</sup> Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions by 54.07 percent.<sup>8</sup>

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Section 7 of the bill, 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, irrespective of the number of parcels affected.<sup>9</sup>

At the time, very few local governments had a land use referendum or initiative process in place.<sup>10</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>11</sup> Following the enactment of HB 7207 (2011), Yankeetown filed a complaint seeking to maintain its ability to hold referenda on growth management issues. The suit led to an agreement with the Department of Community Affairs (now the Department of Economic Opportunity) that called for the two parties to jointly seek passage of a proposed amendment to the Community Planning Act.<sup>12</sup>

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

In October 2012, a Palm Beach County Circuit Court interpreted CS/HB 7081 as extending the "grandfather" exception to include all local government charter provisions related to *general*

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<sup>5</sup> "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 19, 2010. Available at: <http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/> (last visited March 18, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> See, November 2, 2010 General Election Official Results provided by the Florida Department of State. Available at: <https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE=> (last visited March 18, 2014).

<sup>8</sup> See, 2011 Municipal Election Results provided by the Pinellas County Supervisor of Elections. Available at: <http://www.votepinellas.com/index.php?id=1789> (last visited March 18, 2014).

<sup>9</sup> See, "The Community Planning Act," s.7, ch. 2011-139, L.O.F., 2011 HB 7207.

<sup>10</sup> Longboat Key, Key West, Miami Beach, and the Town of Yankeetown.

<sup>11</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>12</sup> Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011-CA-002036 (9/28/2011).

<sup>13</sup> Section 1, ch. 2012-99, L.O.F.

referendum or initiative processes in effect as of June 1, 2011.<sup>14</sup> As a result, the Legislature revisited the issue again in 2013. The bill, CS/CS/HB 537, was intended to clarify that the grandfathering provision only applied to local government charter provisions enabling initiatives or referenda that were specifically related to comprehensive plan amendments or map amendments. The Legislature passed the bill on May 2, 2013, and the Governor signed CS/CS/HB 537 (2013) into law on June 5, 2013.

### **The Town of Longboat Key**

In 1984, the Town of Longboat Key adopted an amendment to its charter to create provisions controlling the creation and alteration of the town's comprehensive plan. The amendment, which added Art. II, s. 22 to its charter, required any increase to the town's then-existing density limitations to garner referendum approval from the town's electors, including requests to increase the allowable density on single parcels. However, CS/CS/HB 537, enacted in 2013 by the Legislature, only grandfathered in local government charter provisions that affected five or more parcels. As such, there is some question regarding whether the passage of the bill has entirely or partially invalidated Longboat Key's charter provision. Because of the retroactive nature of the statute, there is also some question as to its effects on developments that had obtained permission to increase density through referendum approval after June 1, 2011, but before CS/CS/HB 537 took effect on July 1, 2013.

### **III. Effect of Proposed Changes:**

**Section 1** of the bill amends s. 163.3167(8), F.S., to remove the requirement that the local initiative or referendum be related to a comprehensive plan or map amendment affecting more than five parcels of land. The bill also makes technical changes to subsection (c).

**Section 2** provides that the bill shall take effect upon becoming law.

### **IV. Constitutional Issues:**

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

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>14</sup> *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.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill increases the number of development projects in Longboat Key potentially subject to the initiative or referendum process prior to final approval. This may delay projects and thereby increase costs for implementation.

**C. Government Sector Impact:**

The bill restores Longboat Key's established procedure for managing density increases to the town comprehensive plan. The management of initiatives and referenda on growth management issues will require more costs to local government than the prohibition of such processes. However, these costs may be offset by a reduction in legal fees associated with litigating whether the town's law was only partially or wholly invalidated by CS/CS/HB 537 (2013) and the effects of the statute's retroactive nature on developments that had obtained permission to increase density prior to its passage.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.3167 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.