

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 856

INTRODUCER: Senator Rodriguez

SUBJECT: Amendments to Land Development Regulations

DATE: March 27, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

The bill prohibits local governments from requiring an initiative and referendum process for amendments to land development regulations.

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 is effective July 1, 2023.

II. Present Situation:

Comprehensive Plans

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.¹ Each county and municipality must maintain a comprehensive plan to guide future development.²

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.³ A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

¹ Section 163.3167(1), F.S.

² Section 163.3167(2), F.S.

³ Section 163.3194(3), F.S.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.⁴

The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.⁵

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Land development regulations are ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.⁶

Each county and municipality must adopt and enforce land development regulations which are consistent with and implement their adopted comprehensive plan.⁷ Local governments are encouraged to use innovative land development regulations⁸ and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.⁹

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.¹⁰ Additionally, land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.¹¹

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."¹² When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of

⁴ Section 163.3177(6), F.S.

⁵ *Id.*

⁶ Section 163.3164, F.S.

⁷ Section 163.3202, F.S.

⁸ Section 163.3202(3), F.S.

⁹ Sections 125.01055 and 166.04151, F.S.

¹⁰ Sections 163.3174(4)(a) and 163.3184, F.S.

¹¹ *See* Sections 163.3161(6) and 163.3194(1)(a), F.S.

¹² Section 163.3164(14), F.S.

permitting the development of land."¹³ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.¹⁴ A development order vests certain rights related to the land.¹⁵

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.¹⁶ At the time, state law only prohibited an initiative or referendum concerning a development order, comprehensive plan amendment, or map amendment that affected five or fewer parcels of land.¹⁷ 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.¹⁸ 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, 2011.¹⁹

There is currently no prohibition against the use of initiatives or the referendum process in regard to land development regulations. Citizens within two cities, Venice²⁰ and Pinecrest,²¹ have initiated the referendum process in order to challenge land development regulations proposed by those municipalities. While the Venice vote is yet to occur, the Pinecrest initiative failed on March 7, 2023.²²

III. Effect of Proposed Changes:

The bill amends s. 163.3167, F.S., to prohibit local governments from requiring an initiative and referendum process for amendments to land development regulations.

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.

¹³ Section 163.3164 (16), F.S.

¹⁴ Section 163.3164 (15), F.S.

¹⁵ Section 163.3167(3), F.S.

¹⁶ Mike Vogel, *Where Citizens Decide Growth Changes*, Florida Trend, available at <https://www.floridatrend.com/print/article/4365> (last visited Mar. 26, 2023).

¹⁷ Section 163.3167(12), F.S. (2006).

¹⁸ Ch. 2011-139, s. 7, Laws of Fla.

¹⁹ Chs. 2012-99, 2013-115, 2013-213, and 2014-178, Laws of Fla.

²⁰ 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 Mar. 26, 2023).

²¹ 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-AA167IdZ> (last visited Feb. 13, 2023).

²² Miami Dade County Supervisor of Elections, Pinecrest Special Election, available at <https://enr.electionsfl.org/DAD/3366/Summary/> (last visited Mar. 26, 2023).

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
