



July 16, 2019

House State Affairs Chair Blaise Ingoglia
Senate Community Affairs Chair Anitere Flores
The Capitol
400 S. Monroe Street
Tallahassee, Florida 32399

Re: Request for repeal of Brandes amendment to House Bill 7103

Dear Chair Ingoglia and Chair Flores,

On June 29, Gov. Ron DeSantis signed into law House Bill 7103. This bill originated in Chair Ingoglia's State Affairs Committee and was related to Senate Bill 1730, referred after its introduction on March 1 to Chair Flores' Community Affairs Committee. But the new law is having additional, drastically different consequences than the legislation considered in either of your committees because of an unvetted amendment approved on the Senate floor on Day 59 of the 2019 session.

The hundreds of thousands of concerned Floridians represented by the groups that have signed this letter urge you to support and advance legislation in the 2020 session to repeal the amendment and reverse its destructive impact on the rights of citizens to shape the future of their communities. If the amendment stands, it will deal a mortal blow to Florida's decades-old system of growth management. It will undercut action to alleviate our state's water quality crisis and protect the Everglades, natural springs and other environmental treasures – a priority for Gov. DeSantis and legislators from both parties.

As you may recall, HB 7103 and SB 1730 originally addressed local government development orders requiring housing to be affordable, maximum timelines for local governments to approve or deny development orders, and impact fees. By the time the legislation passed, however, it had been amended with a draconian provision never considered in either of your committees or the other House and Senate committees to which the legislation was referred.

Before addressing the substance and dire implications of that amendment, some background is in order: Florida's Community Planning Act, first enacted in 1985 as the Growth Management Act, wisely stipulated that all local governments adopt and maintain a comprehensive plan to guide future land development. These plans can address a broad range of growth-related categories fundamental to preserving a community's environment, economy, quality of life and property values, including future land use, capital improvements, transportation, sanitary sewer, solid waste, drainage, potable water, natural groundwater aquifer recharge, conservation, recreation and open space, housing, coastal management, and intergovernmental coordination.

All actions a local government takes in authorizing development must be consistent with its comprehensive plan. To ensure that local governments honor this legal commitment, state law provides a cause of action for persons with standing to seek a local circuit court order invalidating a development order on the basis that it is inconsistent with a governing comprehensive plan. This cause of action, the consistency challenge, is the *only* legal mechanism available to challenge development orders that are not consistent with a local government's comprehensive plan. The state, landowners, developers, and residents have no other way to ensure that local governments abide by their own plans.

The amendment at issue, introduced on the floor by Senator Brandes on May 1, will require losing parties in consistency challenges to pay the opposing party's attorney fees and costs, and incline courts to hear those actions

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using an expedited, summary procedure designed to limit discovery. Senators did not discuss the amendment, did not receive any staff analysis on it, did not hear any public testimony on it, and did not debate it before approving it. Two days later, the Senate and House passed the amended HB 7103.

Now that the bill has become law, this amendment will effectively end citizen enforcement of city and county comprehensive plans. Those who can only defend their interests by bringing suit on safety, clean water, community livability, safe hurricane evacuation times or any other grounds addressed by a comprehensive plan simply cannot take the risk of losing a close case and having to pay tens or hundreds of thousands of dollars to the local government or to an intervening party. Prevailing party entitlement to attorney fees and costs will rule out, as a practical matter, persons or organizations with an interest in local government adhering to its plans from bringing a consistency challenge. The law also will chill local government efforts to defend their decisions against well-funded applicants who seek to challenge adverse decisions.

In addition, summary procedures are not appropriate in cases involving complex issues of law and fact. These procedures limit the process of discovery to save time. But land-use cases are expert-intensive and typically present novel questions of law. Summary procedures will prevent a court from fulfilling the role the Community Planning Act assigns it.

Ultimately, there is no legal need whatsoever for this amendment. The Community Planning Act already allows judges to award attorney fees against anyone who brings a consistency challenge for an improper purpose such as “to harass or to cause unnecessary delay or for economic advantage, competitive reasons or frivolous purposes or needless increase in the cost of litigation.” Also, Florida Statutes require all claims to be supported by facts and allow courts to award attorney fees for claims that are unsupported.

In addition, only landowners and residents who are “aggrieved or adversely affected” have standing to bring consistency challenges. The law prohibits “gadfly” litigation by persons who want to obstruct development but have no substantive interest in the outcome of the dispute. Courts have definitively held that persons with only a generalized interest in community well-being or the environment do not have standing to bring consistency challenges.

Legislators could not have realized the full negative consequences of this amendment to HB 7103 in the absence of any analysis or discussion. Indeed, it is hard to fathom a majority of Florida Representatives and Senators – especially those who believe in limited government – knowingly stacking the deck in *favor* of government and *against* citizens in community planning disputes.

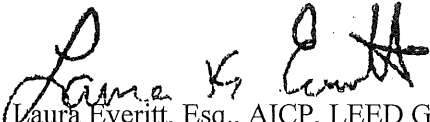
There are other provisions in HB 7103 that organizations signing this letter strongly oppose, and will be pushing to alter or reverse. But because the Brandes amendment was adopted without any opportunity for public scrutiny and debate, and because it eviscerates the Community Planning Act, we are hopeful that you will support legislation to repeal its provisions during the 2020 session.


Representatives of our organizations stand ready to meet with you to discuss these issues further. We appreciate your consideration.


Sincerely,




Paul Owens
President
1000 Friends of Florida

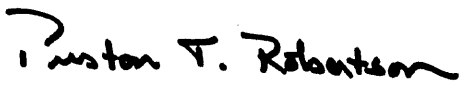

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