

By Representatives Turnbull and Gay

1 A bill to be entitled
2 An act relating to local government planning;
3 amending s. 163.3184, F.S., which provides
4 procedures for adoption of a local government's
5 comprehensive plan or plan amendment; revising
6 the definition of "affected person"; removing a
7 restriction on alleging a new issue as a reason
8 to find a plan or plan amendment not in
9 compliance in certain administrative pleadings;
10 reenacting s. 163.3191(12)(f), F.S., relating
11 to petitions by affected persons for review of
12 the state land planning agency's action with
13 respect to a written agreement with certain
14 local governments regarding requirements for
15 evaluation and appraisal of their comprehensive
16 plans, and s. 163.3244(4) and (5)(a), F.S.,
17 relating to petitions by affected persons for
18 review of a local government's compliance with
19 an agreement designating it as a sustainable
20 community or review of comprehensive plan
21 amendments by a local government so designated,
22 to incorporate the amendment to s. 163.3184,
23 F.S., in references thereto; creating s.
24 163.3190, F.S.; prohibiting any ex parte
25 communication to the Department of Community
26 Affairs regarding a comprehensive plan or plan
27 amendment under review by the department;
28 providing duties of a departmental employee who
29 receives such a communication; providing for
30 rebuttal of such communication; providing a
31 penalty; amending s. 235.193, F.S.; providing

1 requirements with respect to challenge by an
2 affected person of a local government's
3 determination of a proposed public educational
4 facility's consistency with the local
5 comprehensive plan and land development
6 regulations under certain conditions; providing
7 an effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Paragraph (a) of subsection (1) and
12 paragraph (a) of subsection (10) of section 163.3184, Florida
13 Statutes, 1996 Supplement, are amended to read:

14 163.3184 Process for adoption of comprehensive plan or
15 plan amendment.--

16 (1) DEFINITIONS.--As used in this section:

17 (a) "Affected person" includes the affected local
18 government; persons owning property, residing, or owning ~~or~~
19 ~~operating~~ a business within the boundaries of the local
20 government whose plan is the subject of the review; and
21 adjoining local governments that can demonstrate that the plan
22 or plan amendment will produce substantial impacts on the
23 increased need for publicly funded infrastructure or
24 substantial impacts on areas designated for protection or
25 special treatment within their jurisdiction. Each person,
26 other than an adjoining local government, in order to qualify
27 under this definition, shall also have submitted oral or
28 written comments, recommendations, or objections to the local
29 government during the period of time beginning with the
30 transmittal hearing for the plan or plan amendment and ending
31 with the adoption of the plan or plan amendment.

1 (10) PROCESS IF LOCAL PLAN OR AMENDMENT IS NOT IN
2 COMPLIANCE.--

3 (a) If the state land planning agency issues a notice
4 of intent to find the comprehensive plan or plan amendment not
5 in compliance with this act, the notice of intent shall be
6 forwarded to the Division of Administrative Hearings of the
7 Department of Management Services, which shall conduct a
8 proceeding under ss. 120.569 and 120.57 in the county of and
9 convenient to the affected local jurisdiction. The parties to
10 the proceeding shall be the state land planning agency, the
11 affected local government, and any affected person who
12 intervenes. ~~No new issue may be alleged as a reason to find a~~
13 ~~plan or plan amendment not in compliance in an administrative~~
14 ~~pleading filed more than 21 days after publication of notice~~
15 ~~unless the party seeking that issue establishes good cause for~~
16 ~~not alleging the issue within that time period. Good cause~~
17 ~~shall not include excusable neglect.~~ In the proceeding, the
18 local government's determination that the comprehensive plan
19 or plan amendment is in compliance is presumed to be correct.
20 The local government's determination shall be sustained unless
21 it is shown by a preponderance of the evidence that the
22 comprehensive plan or plan amendment is not in compliance. The
23 local government's determination that elements of its plans
24 are related to and consistent with each other shall be
25 sustained if the determination is fairly debatable.

26 Section 2. For the purpose of incorporating the
27 amendment to section 163.3184(1)(a), Florida Statutes, 1996
28 Supplement, in a reference thereto, paragraph (f) of
29 subsection (12) of section 163.3191, Florida Statutes, 1996
30 Supplement, is reenacted to read:

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1 163.3191 Evaluation and appraisal of comprehensive
2 plan.--

3 (12)

4 (f) The state land planning agency's decision to
5 grant, modify, or terminate a written agreement on local
6 planning requirements authorized by this subsection shall be
7 subject to a formal administrative hearing pursuant to ss.
8 120.569 and 120.57(1) upon petition by an affected person as
9 defined in s. 163.3184(1).

10 Section 3. For the purpose of incorporating the
11 amendment to section 163.3184(1)(a), Florida Statutes, 1996
12 Supplement, in references thereto, subsection (4) and
13 paragraph (a) of subsection (5) of section 163.3244, Florida
14 Statutes, 1996 Supplement, are reenacted to read:

15 163.3244 Sustainable communities demonstration
16 project.--

17 (4) The department shall designate all or part of a
18 local government as a sustainable community by written
19 agreement, which shall be considered final agency action. The
20 agreement shall include the basis for the designation, any
21 conditions necessary to comply with the intent of this
22 section, including procedures for mitigation of
23 extrajurisdictional impacts of development in jurisdictions
24 where developments of regional impact would be abolished or
25 modified, and criteria for evaluating the success of the
26 designation. Subsequent to executing the agreement, the
27 department may remove the local government's designation if it
28 determines that the local government is not meeting the terms
29 of the designation agreement. If an affected person, as
30 defined by s. 163.3184(1)(a), determines that a local
31 government is not complying with the terms of the designation

1 agreement, he or she may petition for administrative review of
2 local government compliance with the terms of the agreement,
3 using the procedures and timeframes for notice and conditions
4 precedent described in s. 163.3213.

5 (5) Upon designation as a sustainable community, the
6 local government shall receive the following benefits:

7 (a) All comprehensive plan amendments affecting areas
8 within the urban growth boundary or functional equivalent
9 shall be adopted and reviewed in the manner described in ss.
10 163.3184(1), (2), (7), (14), (15), and (16) and 163.3187, such
11 that state and regional agency review is eliminated. The
12 department shall not issue an objections, recommendations, and
13 comments report on proposed plan amendments or a notice of
14 intent on adopted plan amendments; however, affected persons,
15 as defined by s. 163.3184(1)(a), may file a petition for
16 administrative review pursuant to the requirements of s.
17 163.3187(3)(a) to challenge the compliance of an adopted plan
18 amendment. Plan amendments that would change the adopted
19 urban development boundary, impact lands outside the urban
20 development boundary, or impact lands within the coastal
21 high-hazard area shall be reviewed pursuant to ss. 163.3184
22 and 163.3187.

23 Section 4. Section 163.3190, Florida Statutes, is
24 created to read:

25 163.3190 Ex parte communications.--

26 (1) No ex parte communication relative to the merits
27 or consistency of a plan or plan amendment shall be made to
28 the department during the review of a plan or plan amendment
29 by any person who, directly or indirectly, would have a
30 substantial interest in the proposed agency action, or by the
31 person's authorized representative or counsel.

1 (2) An employee of the department who is involved in
2 the decisional process involving a plan or plan amendment and
3 who receives an ex parte communication in violation of this
4 section shall place on the record of the pending matter all
5 written communications received, all written responses to such
6 communications, and a memorandum stating the substance of all
7 oral communications received and all oral responses made, and
8 shall also advise all parties that such matters have been
9 placed on the record. Any party desiring to rebut the ex
10 parte communications shall be allowed to do so, if such party
11 requests the opportunity for rebuttal within 10 days after
12 notice of such communication. The employee may, if necessary
13 to eliminate the effect of an ex parte communication, withdraw
14 from the decisional process.

15 (3) Any person who makes an ex parte communication
16 prohibited by this section, and any department employee who
17 fails to place in the record any such communication, violates
18 this section and may be assessed a civil penalty not to exceed
19 \$500.

20 Section 5. Subsection (5) of section 235.193, Florida
21 Statutes, is amended to read:

22 235.193 Coordination of planning with local governing
23 bodies.--

24 (5) As early in the design phase as feasible, but at
25 least before commencing construction of a new public
26 educational facility, the local governing body that regulates
27 the use of land shall determine, in writing within 90 days
28 after receiving the necessary information and a school board's
29 request for a determination, whether a proposed public
30 educational facility is consistent with the local
31 comprehensive plan and local land development regulations, to

1 the extent that the regulations are not in conflict with or
2 the subject regulated is not specifically addressed by this
3 chapter or the State Uniform Building Code, unless mutually
4 agreed. If the determination is affirmative, school
5 construction may proceed and further local government
6 approvals are not required, except as provided in this
7 section. Failure of the local governing body to make a
8 determination in writing within 90 days after a school board's
9 request for a determination of consistency shall be considered
10 an approval of the school board's application. If the local
11 government and the school board have adopted joint procedures
12 for school siting, any affected person, as defined by s.
13 163.3184, who challenges the local government's determination
14 of consistency must have submitted oral or written comments,
15 recommendations, or objections to the local government during
16 the period of time beginning with the transmittal of the
17 necessary information and the school board's request for a
18 determination, and ending with the issuance of the
19 determination by the local government.

20 Section 6. This act shall take effect October 1, 1997.
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HOUSE SUMMARY

Revises the definition of "affected person" for purposes of provisions which provide procedures for adoption of a local government's comprehensive plan or plan amendment. Removes a restriction on alleging a new issue as a reason to find a plan or plan amendment not in compliance in certain administrative pleadings.

Prohibits any ex parte communication to the Department of Community Affairs regarding a comprehensive plan or plan amendment under review by the department. Provides duties of a departmental employee who receives such a communication. Provides for rebuttal of such communication. Provides a penalty.

Provides requirements with respect to challenge by an affected person of a local government's determination of a proposed public educational facility's consistency with the local comprehensive plan and land development regulations when the local government and the school board have adopted joint procedures for school siting.