

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Council for Competitive Commerce offered the following:

Amendment

On page 39, line 13, through page 44, line 3,
remove from the bill: all of said lines

and insert in lieu thereof:

(1) Any aggrieved or adversely affected party may maintain an action for declaratory and injunctive or other relief against any local government to challenge any decision of local government granting or denying an application for, or to prevent such local government from taking any action on a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property t hat is not consistent with the comprehensive plan adopted under this part. Such action shall be filed no later than 30 days following rendition of a development order or other written decision, or when all local administrative appeals, if any, are exhausted, whichever is later.

(2) "Aggrieved or adversely affected party" means any

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1 person or local government which will suffer an adverse effect
2 to an interest protected or furthered by the local government
3 comprehensive plan, including interests related to health and
4 safety, police and fire protection service systems, densities
5 or intensities of development, transportation facilities,
6 health care facilities, equipment or services, or
7 environmental or natural resources. The alleged adverse
8 interest may be shared in common with other members of the
9 community at large, but shall exceed in degree the general
10 interest in community good shared by all persons. The term
11 shall include the owner, developer or applicant for a
12 development order.

13 ~~(3)(a) No suit may be maintained under this section~~
14 ~~challenging the approval or denial of a zoning, rezoning,~~
15 ~~planned unit development, variance, special exception,~~
16 ~~conditional use, or other development order granted prior to~~
17 ~~October 1, 1985, or applied for prior to July 1, 1985.~~

18 ~~(b) Suit under subsections (1) or (4) this section~~
19 ~~shall be the sole action available to challenge the~~
20 ~~consistency of a development order with a comprehensive plan~~
21 ~~adopted under this part. The local government that issues~~
22 ~~that development order shall be named as the respondent.~~

23 ~~(4) As a condition precedent to the institution of an~~
24 ~~action pursuant to this section, the complaining party shall~~
25 ~~first file a verified complaint with the local government~~
26 ~~whose actions are complained of setting forth the facts upon~~
27 ~~which the complaint is based and the relief sought by the~~
28 ~~complaining party. The verified complaint shall be filed no~~
29 ~~later than 30 days after the alleged inconsistent action has~~
30 ~~been taken. The local government receiving the complaint~~
31 ~~shall respond within 30 days after receipt of the complaint.~~

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1 ~~Thereafter, the complaining party may institute the action~~
2 ~~authorized in this section. However, the action shall be~~
3 ~~instituted no later than 30 days after the expiration of the~~
4 ~~30-day period which the local government has to take~~
5 ~~appropriate action. Failure to comply with this subsection~~
6 ~~shall not bar an action for a temporary restraining order to~~
7 ~~prevent immediate and irreparable harm from the actions~~
8 ~~complained of.~~If a local government elects to adopt or has
9 adopted an ordinance establishing, at a minimum, the
10 requirements listed in this subsection, then the sole action
11 for an aggrieved and adversely affected party to challenge
12 consistency of a development order with the comprehensive plan
13 shall be by a petition for certiorari filed in circuit court
14 no later than 30 days following rendition of a development
15 order or other written decision of the local government, or
16 when all local administrative appeals, if any, are exhausted,
17 whichever is later. An action for injunctive or other relief
18 may be joined with the petition for certiorari. Principles of
19 judicial and administrative res judicata and collateral
20 estoppel shall apply to these proceedings. Minimum components
21 of the local process shall be as follows:

22 (a) Notice by publication and by mailed notice to all
23 abutting property owners within 10 days of the filing of an
24 application for development review, provided that notice under
25 this subsection shall not be required for an application for a
26 building permit. The notice must delineate that aggrieved or
27 adversely affected persons have the right to request a
28 quasi-judicial hearing, that the request need not be a formal
29 petition or complaint, how to initiate the quasi-judicial
30 process and the time-frames for initiating the process. The
31 local government shall include an opportunity for an

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1 alternative dispute resolution process and may include a stay
2 of the formal quasi-judicial hearing for this purpose.

3 (b) A point of entry into the process consisting of a
4 written preliminary decision, at a time and in a manner to be
5 established in the local ordinance, with the time to request a
6 quasi-judicial hearing running from the written preliminary
7 decision; provided that the local government is not bound by
8 the preliminary decision; provided that the local government
9 is not bound by the preliminary decision. A party may request
10 a hearing to challenge or support a preliminary decision.

11 (c) An opportunity to participate in the process for
12 an aggrieved or adversely affected party which provides a
13 reasonable time to prepare and present a case for a
14 quasi-judicial hearing.

15 (d) An opportunity for reasonable discovery prior to a
16 quasi-judicial hearing.

17 (e) A quasi-judicial hearing before an independent
18 special master who shall be an attorney with at least five
19 years experience and who shall, at the conclusion of the
20 hearing, recommend written findings of fact and conclusions of
21 law.

22 (f) At the quasi-judicial hearing all parties shall
23 have the opportunity to respond, present evidence and argument
24 on all issues involved that are related to the development
25 order and to conduct cross-examination and submit rebuttal
26 evidence.

27 (g) The standard of review applied by the special
28 master shall be strict scrutiny in accordance with Florida
29 law.

30 (h) A duly noticed public hearing before the local
31 government at which public testimony shall be allowed. At the

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1 hearing the local government shall be bound by the special
2 master's findings of fact unless the findings of fact are not
3 supported by competent substantial evidence. The governing
4 body may modify the conclusions of law if it finds that the
5 special master's application or interpretation of law is
6 erroneous. The governing body may make reasonable
7 interpretations of its comprehensive plan and land development
8 regulations without regard to whether the special master's
9 interpretation is labeled as a finding of fact or a conclusion
10 of law. The local government's final decision shall be
11 reduced to writing, including the findings of fact and
12 conclusions of law, and shall not be considered rendered or
13 final until officially date stamped by the city or county
14 clerk.

15 (i) No ex parte communication relating to the merits
16 of the matter under review shall be made to the special
17 master. No ex parte communication relating to the merits of
18 the matter under review shall be made to the governing body
19 after a time to be established by the local ordinance, but no
20 later than receipt of the recommended order by the governing
21 body.

22 (j) At the option of the local government this
23 ordinance may require actions to challenge the consistency of
24 a development order with land development regulations to be
25 brought in the same proceeding.

26 (k) Authority by the special master to issue and
27 enforce subpoenas and compel entry upon land.

28 (5) Venue in any cases brought under this section
29 shall lie in the county or counties where the actions or
30 inactions giving rise to the cause of action are alleged to
31 have occurred.

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1 (6) The signature of an attorney or party constitutes
2 a certificate that he or she has read the pleading, motion, or
3 other paper and that, to the best of his or her knowledge,
4 information, and belief formed after reasonable inquiry, it is
5 not interposed for any improper purpose, such as to harass or
6 to cause unnecessary delay or for economic advantage,
7 competitive reasons or frivolous purposes or needless increase
8 in the cost of litigation. If a pleading, motion, or other
9 paper is signed in violation of these requirements, the court,
10 upon motion or its own initiative, shall impose upon the
11 person who signed it, a represented party, or both, an
12 appropriate sanction, which may include an order to pay to the
13 other party or parties the amount of reasonable expenses
14 incurred because of the filing of the pleading, motion, or
15 other paper, including a reasonable attorney's fee.

16 (7) In any suit ~~action~~ under subsections (1) or (4)
17 ~~this section~~, no settlement shall be entered into by the local
18 government unless the terms of the settlement have been the
19 subject of a public hearing after notice as required by this
20 part.

21 (8) In any suit under this section, the Department of
22 Legal Affairs may intervene to represent the interests of the
23 state.

24 (9) Nothing in this section shall be construed to
25 relieve the local government of its obligations to hold public
26 hearings as required by law.

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