

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 The Committee on Local Government & Veterans Affairs offered
12 the following:

14 **Amendment (with title amendment)**

15 Remove everything after the enacting clause

17 and insert:

18 Section 1. Section 163.3215, Florida Statutes, is
19 amended to read:

20 163.3215 Standing to enforce local comprehensive plans
21 through development orders.--

22 (1) Subsections (3) and (4) provide the exclusive
23 methods for an aggrieved or adversely affected party to appeal
24 and challenge the consistency of a development order with a
25 comprehensive plan adopted under this part. The local
26 government that issues the development order is to be named as
27 a respondent in all proceedings under this section.

28 Subsection (3) shall not apply to development orders for which
29 a local government has established a process consistent with
30 the requirements of subsection (4). A local government may
31 decide which types of development orders will proceed under

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1 subsection (4). Subsection (3) will apply to all other
2 development orders, that are not subject to subsection (4).

3 (2) As used in this section, the term "aggrieved or
4 adversely affected party" means any person or local government
5 that will suffer an adverse effect to an interest protected or
6 furthered by the local-government comprehensive plan,
7 including interests related to health and safety, police and
8 fire protection service systems, densities or intensities of
9 development, transportation facilities, health care
10 facilities, equipment or services, or environmental or natural
11 resources. The alleged adverse interest may be shared in
12 common with other members of the community at large, but must
13 exceed in degree the general interest in community good shared
14 by all persons. The term includes the owner, developer, or
15 applicant for a development order.

16 (3)(1) Any aggrieved or adversely affected party may
17 maintain a de novo an action for declaratory, injunctive, or
18 other relief against any local government to challenge any
19 decision of local government granting or denying an
20 application for, or to prevent such local government from
21 taking any action on, a development order, as defined in s.
22 163.3164, which materially alters the use or density or
23 intensity of use on a particular piece of property which that
24 is not consistent with the comprehensive plan adopted under
25 this part. The de novo action must be filed no later than 30
26 days following rendition of a development order or other
27 written decision, or when all local administrative appeals, if
28 any, are exhausted, whichever occurs later.

29 ~~(2) "Aggrieved or adversely affected party" means any~~
30 ~~person or local government which will suffer an adverse effect~~
31 ~~to an interest protected or furthered by the local government~~

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1 ~~comprehensive plan, including interests related to health and~~
2 ~~safety, police and fire protection service systems, densities~~
3 ~~or intensities of development, transportation facilities,~~
4 ~~health care facilities, equipment or services, or~~
5 ~~environmental or natural resources. The alleged adverse~~
6 ~~interest may be shared in common with other members of the~~
7 ~~community at large, but shall exceed in degree the general~~
8 ~~interest in community good shared by all persons.~~

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

14 ~~(b) Suit under this section shall be the sole action~~
15 ~~available to challenge the consistency of a development order~~
16 ~~with a comprehensive plan adopted under this part.~~

17 (4) If a local government elects to adopt or has
18 adopted an ordinance establishing, at a minimum, the
19 requirements listed in this subsection, the sole method by
20 which an aggrieved and adversely affected party may challenge
21 any decision of local government granting or denying an
22 application for a development order, as defined in s.
23 163.3164, which materially alters the use or density or
24 intensity of use on a particular piece of property, on the
25 basis that it is not consistent with the comprehensive plan
26 adopted under this part, is by an appeal filed by a petition
27 for writ of certiorari filed in circuit court no later than 30
28 days following rendition of a development order or other
29 written decision of the local government, or when all local
30 administrative appeals, if any, are exhausted, whichever
31 occurs later. An action for injunctive or other relief may be

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1 joined with the petition for certiorari. Principles of
2 judicial or administrative res judicata and collateral
3 estoppel apply to these proceedings. Minimum components of the
4 local process are as follows:

5 (a) The local process must make provision for notice
6 of an application for a development order that materially
7 alters the use or density or intensity of use on a particular
8 piece of property, including notice by publication or mailed
9 notice consistent with the provisions of s. 166.041(3)(c)2.b.
10 and c. and s. 125.66(4)(b)2. and 3., and must require
11 prominent posting at the job site. The notice must be given
12 within 10 days after the filing of an application for
13 development order; however, notice under this subsection is
14 not required for an application for a building permit or any
15 other official action of local government which does not
16 materially alter the use or density or intensity of use on a
17 particular piece of property. The notice must clearly
18 delineate that an aggrieved or adversely affected person has
19 the right to request a quasi-judicial hearing before the local
20 government for which the application is made, must explain the
21 conditions precedent to the appeal of any development order
22 ultimately rendered upon the application, and must specify the
23 location where written procedures can be obtained that
24 describe the process, including how to initiate the
25 quasi-judicial process, the timeframes for initiating the
26 process, and the location of the hearing. The process may
27 include an opportunity for an alternative dispute resolution.

28 (b) The local process must provide a clear point of
29 entry consisting of a written preliminary decision, at a time
30 and in a manner to be established in the local ordinance, with
31 the time to request a quasi-judicial hearing running from the

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1 issuance of the written preliminary decision; the local
2 government, however, is not bound by the preliminary decision.
3 A party may request a hearing to challenge or support a
4 preliminary decision.

5 (c) The local process must provide an opportunity for
6 participation in the process by an aggrieved or adversely
7 affected party, allowing a reasonable time for the party to
8 prepare and present a case for the quasi-judicial hearing.

9 (d) The local process must provide at a minimum an
10 opportunity for the disclosure of witnesses and exhibits prior
11 to hearing, and an opportunity for the depositions of
12 witnesses to be taken.

13 (e) The local process may not require that a party be
14 represented by an attorney in order to participate in a
15 hearing.

16 (f) The local process must provide for a
17 quasi-judicial hearing before an impartial special master who
18 is an attorney who has at least 5 years' experience and who
19 shall, at the conclusion of the hearing, recommend written
20 findings of fact and conclusions of law. The special master
21 shall have the power to swear witnesses and take their
22 testimony under oath, to issue subpoenas and other orders
23 regarding the conduct of the proceedings, and to compel entry
24 upon the land. The standard of review applied by the special
25 master in determining whether a proposed development order is
26 consistent with the comprehensive plan shall be strict
27 scrutiny in accordance with Florida law.

28 (g) At the quasi-judicial hearing all parties must
29 have the opportunity to respond, to present evidence and
30 argument on all issues involved which are related to the
31 development order, and to conduct cross-examination and submit

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1 rebuttal evidence. Public testimony must be allowed.

2 (h) The local process must provide for a duly noticed
3 public hearing before the local government at which public
4 testimony is allowed. At the quasi-judicial hearing the local
5 government is bound by the special master's findings of fact
6 unless the findings of fact are not supported by competent
7 substantial evidence. The governing body may modify the
8 conclusions of law if it finds that the special master's
9 application or interpretation of law is erroneous. The
10 governing body may make reasonable legal interpretations of
11 its comprehensive plan and land development regulations
12 without regard to whether the special master's interpretation
13 is labeled as a finding of fact or a conclusion of law. The
14 local government's final decision must be reduced to writing,
15 including the findings of fact and conclusions of law, and is
16 not considered rendered or final until officially date-stamped
17 by the city or county clerk.

18 (i) An ex parte communication relating to the merits
19 of the matter under review may not be made to the special
20 master. An ex parte communication relating to the merits of
21 the matter under review may not be made to the governing body
22 after a time to be established by the local ordinance, which
23 time must be no later than receipt of the special master's
24 recommended order by the governing body.

25 (j) At the option of the local government the process
26 may require actions to challenge the consistency of a
27 development order with land development regulations to be
28 brought in the same proceeding.

29 ~~(4) As a condition precedent to the institution of an~~
30 ~~action pursuant to this section, the complaining party shall~~
31 ~~first file a verified complaint with the local government~~

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1 ~~whose actions are complained of setting forth the facts upon~~
2 ~~which the complaint is based and the relief sought by the~~
3 ~~complaining party. The verified complaint shall be filed no~~
4 ~~later than 30 days after the alleged inconsistent action has~~
5 ~~been taken. The local government receiving the complaint~~
6 ~~shall respond within 30 days after receipt of the complaint.~~
7 ~~Thereafter, the complaining party may institute the action~~
8 ~~authorized in this section. However, the action shall be~~
9 ~~instituted no later than 30 days after the expiration of the~~
10 ~~30-day period which the local government has to take~~
11 ~~appropriate action. Failure to comply with this subsection~~
12 ~~shall not bar an action for a temporary restraining order to~~
13 ~~prevent immediate and irreparable harm from the actions~~
14 ~~complained of.~~

15 (5) Venue in any cases brought under this section
16 shall lie in the county or counties where the actions or
17 inactions giving rise to the cause of action are alleged to
18 have occurred.

19 (6) The signature of an attorney or party constitutes
20 a certificate that he or she has read the pleading, motion, or
21 other paper and that, to the best of his or her knowledge,
22 information, and belief formed after reasonable inquiry, it is
23 not interposed for any improper purpose, such as to harass or
24 to cause unnecessary delay or for economic advantage,
25 competitive reasons or frivolous purposes or needless increase
26 in the cost of litigation. If a pleading, motion, or other
27 paper is signed in violation of these requirements, the court,
28 upon motion or its own initiative, shall impose upon the
29 person who signed it, a represented party, or both, an
30 appropriate sanction, which may include an order to pay to the
31 other party or parties the amount of reasonable expenses

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1 incurred because of the filing of the pleading, motion, or
2 other paper, including a reasonable attorney's fee.

3 (7) In any proceeding ~~action~~ under subsections (3) or
4 ~~(4) this section~~, no settlement shall be entered into by the
5 local government unless the terms of the settlement have been
6 the subject of a public hearing after notice as required by
7 this part.

8 (8) In any proceeding ~~suit~~ under subsections (3) or
9 ~~(4) this section~~, the Department of Legal Affairs may
10 intervene to represent the interests of the state.

11 (9) Subsections (3) or (4) do not relieve the local
12 government of its obligations to hold public hearings as
13 required by law.

14 Section 2. This act shall take effect June 1, 2002.
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