

By Senator Peaden

1-1087-02

1                                   A bill to be entitled  
2           An act relating to local-government development  
3           orders; amending s. 163.3215, F.S.; revising  
4           the methods for challenging the consistency of  
5           a development order with a comprehensive plan;  
6           redefining the term "aggrieved or adversely  
7           affected party"; providing 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.   Section 163.3215, Florida Statutes, is  
12   amended to read:

13           163.3215   Standing to enforce local comprehensive plans  
14   through development orders.--

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

21           (2) As used in this section, the term "aggrieved or  
22 adversely affected party" means any person or local government  
23 that will suffer an adverse effect to an interest protected or  
24 furthered by the local-government comprehensive plan,  
25 including interests related to health and safety, police and  
26 fire protection service systems, densities or intensities of  
27 development, transportation facilities, health care  
28 facilities, equipment or services, or environmental or natural  
29 resources. The alleged adverse interest may be shared in  
30 common with other members of the community at large, but must  
31 exceed in degree the general interest in community good shared

1 by all persons. The term includes the owner, developer, or  
2 applicant for a development order.

3 (3)(1) Any aggrieved or adversely affected party may  
4 maintain an action for declaratory, injunctive, or other  
5 relief against any local government to challenge any decision  
6 of local government granting or denying an application for, or  
7 to prevent such local government from taking any action on, a  
8 development order, as defined in s. 163.3164, which materially  
9 alters the use or density or intensity of use on a particular  
10 piece of property which that is not consistent with the  
11 comprehensive plan adopted under this part. The action must be  
12 filed no later than 30 days following rendition of a  
13 development order or other written decision, or when all local  
14 administrative appeals, if any, are exhausted, whichever  
15 occurs later.

16 ~~(2) "Aggrieved or adversely affected party" means any~~  
17 ~~person or local government which will suffer an adverse effect~~  
18 ~~to an interest protected or furthered by the local government~~  
19 ~~comprehensive plan, including interests related to health and~~  
20 ~~safety, police and fire protection service systems, densities~~  
21 ~~or intensities of development, transportation facilities,~~  
22 ~~health care facilities, equipment or services, or~~  
23 ~~environmental or natural resources. The alleged adverse~~  
24 ~~interest may be shared in common with other members of the~~  
25 ~~community at large, but shall exceed in degree the general~~  
26 ~~interest in community good shared by all persons.~~

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

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

4           (4) If a local government elects to adopt or has  
5 adopted an ordinance establishing, at a minimum, the  
6 requirements listed in this subsection, the sole method by  
7 which an aggrieved and adversely affected party may challenge  
8 any decision of local government granting or denying an  
9 application for a development order, as defined in s.  
10 163.3164, which materially alters the use or density or  
11 intensity of use on a particular piece of property, on the  
12 basis that it is not consistent with the comprehensive plan  
13 adopted under this part, is by a petition for certiorari filed  
14 in circuit court no later than 30 days following rendition of  
15 a development order or other written decision of the local  
16 government, or when all local administrative appeals, if any,  
17 are exhausted, whichever occurs later. An action for  
18 injunctive or other relief may be joined with the petition for  
19 certiorari. Principles of judicial or administrative res  
20 judicata and collateral estoppel apply to these proceedings.  
21 Minimum components of the local process are as follows:

22           (a) The local process must make provision for notice  
23 of an application for a development order that materially  
24 alters the use or density or intensity of use on a particular  
25 piece of property, including notice by publication or mailed  
26 notice consistent with the provisions of s. 166.041(3)(c)2.b.  
27 and c. and s. 125.66(4)(b)2. and 3., and must require  
28 prominent posting at the job site. The notice must be given  
29 within 10 days after the filing of an application for  
30 development order; however, notice under this subsection is  
31 not required for an application for a building permit or any

1 other official action of local government which does not  
2 materially alter the use or density or intensity of use on a  
3 particular piece of property. The notice must clearly  
4 delineate that an aggrieved or adversely affected person has  
5 the right to request a quasi-judicial hearing before the local  
6 government for which the application is made, must explain the  
7 conditions precedent to the appeal of any development order  
8 ultimately rendered upon the application, and must specify the  
9 location where written procedures can be obtained that  
10 describe the process, including how to initiate the  
11 quasi-judicial process, the timeframes for initiating the  
12 process, and the location of the hearing. The process must  
13 include an opportunity for an alternative dispute resolution  
14 and may include a stay of the formal quasi-judicial hearing  
15 for this purpose.

16 (b) The local process must provide a point of entry  
17 consisting of a written preliminary decision, at a time and in  
18 a manner to be established in the local ordinance, with the  
19 time to request a quasi-judicial hearing running from the  
20 issuance of the written preliminary decision; the local  
21 government, however, is not bound by the preliminary decision.  
22 A party may request a hearing to challenge or support a  
23 preliminary decision.

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

28 (d) The local process must provide an opportunity for  
29 reasonable discovery before a quasi-judicial hearing.

30 (e) The local process must provide for a  
31 quasi-judicial hearing before an independent special master

1 who is an attorney who has at least 5 years' experience and  
2 who shall, at the conclusion of the hearing, recommend written  
3 findings of fact and conclusions of law.

4 (f) At the quasi-judicial hearing all parties must  
5 have the opportunity to respond, to present evidence and  
6 argument on all issues involved which are related to the  
7 development order, and to conduct cross-examination and submit  
8 rebuttal evidence. Public testimony must be allowed.

9 (g) The standard of review applied by the special  
10 master is to be strict scrutiny in accordance with Florida  
11 law.

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

28 (i) An ex parte communication relating to the merits  
29 of the matter under review may not be made to the special  
30 master. An ex parte communication relating to the merits of  
31 the matter under review may not be made to the governing body

1 after a time to be established by the local ordinance, which  
2 time must be no later than receipt of the recommended order by  
3 the governing body.

4 (j) At the option of the local government the process  
5 may require actions to challenge the consistency of a  
6 development order with land development regulations to be  
7 brought in the same proceeding.

8 (k) The local process must provide for authority by  
9 the special master to issue and enforce subpoenas and compel  
10 entry upon the land.

11 ~~(4) As a condition precedent to the institution of an~~  
12 ~~action pursuant to this section, the complaining party shall~~  
13 ~~first file a verified complaint with the local government~~  
14 ~~whose actions are complained of setting forth the facts upon~~  
15 ~~which the complaint is based and the relief sought by the~~  
16 ~~complaining party. The verified complaint shall be filed no~~  
17 ~~later than 30 days after the alleged inconsistent action has~~  
18 ~~been taken. The local government receiving the complaint~~  
19 ~~shall respond within 30 days after receipt of the complaint.~~  
20 ~~Thereafter, the complaining party may institute the action~~  
21 ~~authorized in this section. However, the action shall be~~  
22 ~~instituted no later than 30 days after the expiration of the~~  
23 ~~30-day period which the local government has to take~~  
24 ~~appropriate action. Failure to comply with this subsection~~  
25 ~~shall not bar an action for a temporary restraining order to~~  
26 ~~prevent immediate and irreparable harm from the actions~~  
27 ~~complained of.~~

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.

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 challenge ~~action~~ under subsections (3) or  
17 ~~(4) this section~~, no settlement shall be entered into by the  
18 local government unless the terms of the settlement have been  
19 the subject of a public hearing after notice as required by  
20 this part.

21           (8) In any challenge ~~suit~~ under subsections (3) or (4)  
22 ~~this section~~, the Department of Legal Affairs may intervene to  
23 represent the interests of the state.

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

27           Section 2. This act shall take effect June 1, 2002.  
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SENATE SUMMARY

Creates the exclusive methods for challenging the consistency of a local-government development order with a local-government comprehensive plan.