

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 431 CS

Local Government Land Development Regulation

SPONSOR(S): Littlefield

TIED BILLS:

IDEN./SIM. BILLS: SB 980

REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR			
1) <u>Utilities & Telecommunications Committee</u>	<u>14 Y, 1 N, w/CS</u>	<u>Cater</u>	<u>Holt</u>
2) <u>Growth Management Committee</u>	<u>7 Y, 3 N, w/CS</u>	<u>Strickland</u>	<u>Grayson</u>
3) <u>Local Government Council</u>	<u>7 Y, 0 N, w/CS</u>	<u>Camechis</u>	<u>Hamby</u>
4) <u>Commerce Council</u>	<u></u>	<u>Cater</u>	<u>Randle</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The zoning districts for electrical substation siting are determined by individual local governments. As a result, varying regulations for substation siting have been established. Currently, electrical substations for distribution lines are sited as a special use or a conditional use through the local government planning and zoning processes. Likewise, land development regulations and ordinances for vegetation maintenance vary among local governments.

HB 431 w/CS creates ss. 163.3208, 163.3209, and 186.0201, F.S., to provide a statewide process governing the siting of electric substations and maintenance of right-of-ways for electrical transmission or distribution lines. The bill provides a definition of "distribution electric substations," to which this bill applies. The bill also provides consistency among the regulations for substation siting and in the vegetation management within electric power line rights-of-way. The bill additionally establishes a role for utilities to submit their five-year plans for siting substations and to have that advisory information included in the regional planning councils' annual reports.

Generally, the bill establishes new substations as a permissible use in all land use categories and zoning districts within a utility's service territory. If a local government does not adopt reasonable standards for setback, landscaping, buffering, or screening substations, provisions are provided in the bill for default standards. The bill also provides a timeframe for a local government to grant or deny an application for an electrical substation, or the application is deemed approved. The bill further provides for a waiver of timeframes under certain circumstances.

The bill prohibits local governments from requiring permits or other approvals for vegetation maintenance in an established electrical transmission or distribution line right-of-way, but requires the utility to provide the local government with five days advance notice before conducting vegetation management activities. These activities must conform to standards established by the American National Standards Institute (ANSI) and must be supervised by qualified utility personnel, licensed contractors under the utility's control, or certified arborists. Further, the bill specifies vegetation height limits within an established right-of-way.

The bill clarifies a reference to "department" to expressly provide that Regional Planning Councils are to submit annual reports to the state land planning agency, the Department of Community Affairs.

The bill appears to have a minimal fiscal impact on individual local governments due to the loss of tree trimming permit fees paid by electric utilities.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/17/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates statewide procedures governing the siting of electric substations and maintenance of right-of-ways for electrical transmission or distribution lines to replace individual local government procedures. The bill limits the authority of local governments to enact regulations governing the siting of electric substations and right-of-way maintenance. The bill provides default requirements in case the local government does not adopt “reasonable” standards for substation siting. The bill provides that a local government may not require permits or other approval for vegetation management and tree trimming within an electric utility’s established right-of-way, and provides minimum standards for vegetation maintenance by electric utilities.

Maintain Public Security: The bill may increase reliability of electric services by making electrical substations permissible in all land use categories and zoning districts, thereby placing them closer to the loads they serve, and by making it easier for electric utilities to manage intrusive vegetation within their rights-of-way.

B. EFFECT OF PROPOSED CHANGES:

Background

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3161 – 163.3217, F.S., requires each local government to plan for future development and growth through the adoption and amendment of comprehensive plans. Local governments have broad constitutional and statutory powers to plan for and regulate land use. A local government’s comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.¹ Section 163.3164(23), F.S., defines the term “land development regulations” as “ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, . . .” A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government’s comprehensive plan.² Citizens have standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.³

Electrical Power Plant and Transmission Line Siting

Part II of ch. 403, F.S., governs electrical power plant and transmission line siting, and establishes a process for applying for electrical power plant site certification with the Department of Environmental Protection (DEP). Within 90 days after DEP receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.⁴ The sole issue for determination at the hearing is whether the proposed site is consistent, and in compliance, with the jurisdiction’s existing land use plan and zoning ordinances.⁵ For purposes of this application process,

¹ s. 163.3202(1), Fla. Stat. (2005).

² s. 163.3213, Fla. Stat. (2005).

³ s. 163.3215, Fla. Stat. (2005).

⁴ s. 403.508(1), Fla. Stat. (2005).

⁵ s. 403.508(2), Fla. Stat. (2005).

an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant's option.⁶

Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process. The terms "special use" or "conditional use" refer to those land uses that are not permitted outright under a local government's zoning code, but may be approved by the zoning board.

Vegetation Management and Tree Trimming in a Utility Right-of-Way

Based on a compilation of the 2004 Electric Reliability Reports⁷ submitted by the investor-owned electric utilities, 17 percent of all electrical outages are vegetation related, making it second only to equipment failures. Moreover, this statistic excludes events such as hurricanes and tornados since, pursuant to Rule 25-6.0455(2), F.A.C., outages related to these events may be excluded from the report.

In order to avoid tree-related outages, the electric utilities have established vegetation management plans. Depending on the species of tree, the management plan will establish a schedule and an allowable distance for trimming. Vegetation management may also include the removal of nuisance trees, the use of growth retardants, and selective directional trimming to maintain a balanced canopy. There are national standards for tree trimming that have been developed by the International Society of Arboriculture and the National Arborist Association. A primary vegetation management concern is that fast-growing invasive species can make contact with facilities in rights-of-way and contribute to power outages.

Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Electric utility providers may be subject to these tree ordinances or permit requirements.

Regional Planning Councils' Annual Report

Florida has 11 regional planning councils that serve as a link between the state and local governments that share mutual resources, characteristics, and issues within an area. Each regional planning council includes members from counties and municipalities located in the region's planning district and gubernatorial appointees. Section 186.513, F.S., requires each regional planning council to provide an annual report on its activities to the department⁸ and the local general-purpose governments within its jurisdiction. Interested persons may also obtain a copy of the report for a fee.

EFFECT OF PROPOSED CHANGES

Section 1. Creates s. 163.3208, F.S., relating to Electric Substation Siting

The bill creates s. 163.3208, F.S., to provide a uniform, statewide process applicable to siting distribution electric substations⁹ and maintenance of vegetation surrounding electric substations. Local government regulations and processes that are inconsistent with the procedures provided for in this bill may not be applicable. The term "distribution electric substation" is defined as an "electrical substation which takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid though one or more distribution lines less than 69 kilovolts in size."

⁶ s. 403.503(12), Fla. Stat. (2005).

⁷ The 2005 reports are due to be filed early March 2006.

⁸ Existing law does not identify to which "department" the regional planning councils are directed to provide their annual report. Historically, the term "department" was identified as the Department of Community Affairs [See s. 160.03(6), F.S. (1980), which revisers changed to s. 160.003, F.S. (See Table of Section Changes By 1980 Legislative Sessions)]. The sections comprising former chapter 160 were transferred to chapter 186 by the editors incident to compiling the 1984 supplement to the Florida Statutes 1983. Then, ch. 84-257, s. 18, L.O.F., deleted s. 186.503(6), F.S., which provided: "'Department' means the department of community affairs."

⁹ Electric utilities use substations to "step-down" voltage so it is usable by end users.

This new section states that it is the Legislature's intent to maintain, encourage, and ensure adequate and reliable electric infrastructure in the state, and that it is essential for electric infrastructure to be constructed and maintained in various locations to ensure efficient and reliable delivery of electric service. The bill further finds that electric infrastructure should be constructed, to the maximum extent practicable, to achieve compatibility with adjacent and surrounding land uses and that the criteria included in this section are intended to balance the need for electricity with land use compatibility.

The section limits local governments' authority to enact regulations regarding substation siting by authorizing the adoption and enforcement of "reasonable land development regulations for new distribution electric substations addressing only setback, landscaping, buffering, screening, lighting, and other aesthetic compatibility-based standards." Local governments may not require vegetated buffers or screening beneath aerial access points to the substation equipment to have a mature height in excess of 14 feet.

The section provides that, within a utility service territory, new substation siting is a permissible use in all land use categories in the applicable comprehensive plan and zoning districts. An exception is provided for new substation siting in areas designated as preservation, conservation, or historic preservation on future a land use map or by ordinance. If a local government has not adopted "reasonable" standards for new substation siting in accordance with this section, default standards are provided as follows:

- *Nonresidential Areas* – The new substation must comply with the same setback and buffer criteria for similar uses in that district.
- *Residential Areas* -- Unless the local government adopts a lesser setback or landscape requirement, a setback of up to 100 feet between the property boundary of the substation and permanent equipment structures must be maintained as follows:
 - *Setbacks between 50 and 100 feet* – A green-space must be formed by installing native landscaping material with a security fence around the equipment.
 - *Setbacks of less than 50 feet* – An eight foot buffer wall or eight foot fence with native landscaping must be installed around the substation.

The section provides that if a proposed electric substation is consistent with the local government's applicable setback, landscaping, buffering, screening, and other aesthetic compatibility-based standards, an application for siting the substation must be approved. Standards for substation siting adopted after the effective date of this bill are not applicable to applications that were submitted prior to the local government's notice of adoption hearing.

The section establishes procedures specifically applicable to placement or construction of substations in residential areas. Under these procedures, the utility must consult with the local government regarding the selection of a site prior to submitting an application for the location of a new distribution electric substation in a residential area. The utility must provide information regarding the utility's preferred site and as many as three alternative available sites, including sites within non-residential areas, that are technically and electrically reasonable for the load to be served, if the local government deems that the siting of a new distribution electric substation warrants this additional review and consideration. The final determination on the site application as to the preferred and alternative sites is made solely by the local government within 90 days of presentation of all the necessary and required information on the preferred site and on the alternative sites. In the event the utility and the local government are unable to reach agreement on an appropriate location, the substation site selection must be submitted to mediation conducted pursuant to ss. 44.401 – 44.406, F.S., unless otherwise agreed to in writing by the parties, and the mediation must be concluded within 30 days unless extended by written agreement of the parties. The 90-day time period for the local government to render a final decision on the site application is tolled from the date a notice of intent to mediate the site selection issue is served on the utility or local government, until the mediation is concluded, terminated

or an impasse is declared. The local government and utility may agree to waive or extend this 90-day time period. Upon rendition of a final decision of the local government, a person may pursue available legal remedies in accordance with law and the matter must be considered on an expedited basis.

A local government's land development and construction regulations for electrical distribution substations and the local government's review of an application for the placement or construction of a new electrical substation may only address land development, zoning, or aesthetic compatibility-based issues. In such local government regulations or review, a local government may not require information or evaluate a utility's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the utility voluntarily offers this information to the local government.

If a local government has adopted substation siting standards within any land use category or zoning district, the local government must grant or deny a properly completed application within 90 days after the application is declared complete.¹⁰ The application review process does not, however, address the situation whereby an applicant is not compliant with applicable federal or state laws or regulations, or applicable local land development regulations or building codes. If the local government fails to grant or deny a properly completed application within 90 days, the application is deemed automatically approved, and without penalty or interference, construction may proceed consistent with the application.

The section establishes time frames for determining whether an application for siting a substation is complete as follows:

- The local government must notify the permit applicant within 30 days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and submitted.
- Further determination of completeness must be provided to the applicant within 15 days after the local government receives additional information; however, such determination is not considered approval of the application.

This section also provides that the timeframes may be waived if voluntarily agreed to by the utility applicant and the local government; however, a one-time waiver may be required by the local government in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government. A local government may establish a reasonable timeframe by which the required information to cure an application deficiency must be provided or the application will be considered withdrawn or closed.

Section 2. Creates s. 163.3209, F.S., relating to Right-of-Way Maintenance

Currently, ss. 337.401-337.404, F.S., provide that the Department of Transportation and local governmental entities with jurisdiction and control of public roads or publicly owned rail corridors may prescribe and enforce reasonable rules or regulations regarding the placing and maintaining along, across, or on any road or publicly owned rail corridors, under their respective jurisdictions, any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility." Currently, the majority of local governments require utilities to obtain a permit each time routine vegetation maintenance is conducted in any established electric utility right-of-way.

This bill creates s. 163.3209, F.S., providing that after a right-of-way for an electrical transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning, or trimming within that right-of-way. This section

¹⁰ Currently, there are varying timeframes for this process.

defines the term “vegetation maintenance and tree pruning or trimming” as the “mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the right-of-way.” This section requires a utility to provide five business days advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. An exception applies for emergencies, service restoration, avoidance of imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner has approval of the local government if required.

Local governments are authorized to request a meeting with a utility provider to discuss the utility’s vegetation-maintenance plan, including the utility’s trimming specifications and maintenance practices. In addition, vegetation maintenance performed by utilities must conform to ANSI¹¹ standards, and vegetation management activities must be supervised by qualified utility personnel, licensed contractors under the utility’s control, or certified arborists. Consistent with the height provision in Section 1 of the bill, a local government may not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation in an established right-of-way that achieves a height greater than 14 feet or intrudes from the side closer than the clearance distance specified in referenced standards.

The section explicitly notes that it does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and must not be construed to limit a local government’s franchising authority. In addition, this section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government’s ordinances or regulations, or trees within designated canopied protection areas. This section does not apply if a local government develops, with input from the utility, and the local government adopts, a written plan specifically for vegetation maintenance, tree pruning, tree removal and tree trimming by the utility within the local government’s established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission. Provided, however, the plan does not require the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-way. Vegetation maintenance costs are considered recoverable costs.

Section 3. Creates s. 186.0201, F.S., relating to Electrical Substation Planning

This new section requires each electric utility to annually notify the local regional planning council, each June 1 beginning the year after the effective date of this bill, of the utility’s current plans to site electrical substations, over a five year period, within the local government jurisdictions contained in each region.

The notification must identify whether each electric substation planned within a general area is a distribution or transmission electric substation, include a listing of the proposed substations’ site acreage needs and anticipated capacity, and include maps showing general locations of the planned electric substations. The information is advisory only, must be included in the regional planning council’s annual report prepared pursuant to s. 186.513, F.S., and must be supplied directly to local governments requesting the information.

Section 4. Amends s. 186.513, F.S., relating to Reports of Regional Planning Councils

Currently, s. 186.513, F.S., requires the regional planning councils to submit an annual report to “the department” and the local general purpose governments within its boundaries; however, current law does not identify the specific “department” to which the regional planning councils must provide the annual report.¹²

¹¹ American National Standards Institute

¹² Historically, the term “department” was identified as the Department of Community Affairs [See s. 160.03(6), F.S. (1980), which revisers changed to s. 160.003, F.S. (See Table of Section Changes By 1980 Legislative Sessions)]. The sections comprising former chapter 160 were transferred to chapter 186 by the editors incident to compiling the 1984 supplement to the Florida Statutes 1983. Then, ch. 84-257, s. 18, L.O.F., deleted s. 186.503(6), F.S., which provided: “‘Department’ means the department of community affairs.”

The bill amends s. 186.513, F.S., to replace the word “department” with “state land planning agency as defined in s. 163.3164(20), F.S.” The state land planning agency is defined as the Department of Community Affairs, which is the agency to which the reports have historically been submitted.

Section 5. Provides that nothing in this part is intended to supersede the provisions of ch. 403, pt. II, F.S., The Electrical Power Plant Siting Act, which is administered by the Department of Environmental Protection.

C. SECTION DIRECTORY:

- Section 1. Creates s. 163.3208, F.S., relating to electrical substation approval process.
- Section 2. Creates s. 163.3209, F.S., relating to electrical transmission and distribution line right-of-way maintenance.
- Section 3. Creates s. 186.0201, F.S., relating to electrical substation planning.
- Section 4. Amends s. 186.513, F.S., relating to regional planning council annual reports.
- Section 5. Provides that nothing in this part is intended to supersede the provisions of ch. 403, pt. II, F.S.
- Section 6. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: None.
- 2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues: The bill appears to have a minimal fiscal impact on individual local governments due to the loss of tree trimming permit fees paid by electric utilities.
- 2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that an electric utility is no longer required to obtain a permit or other approval from local government for vegetation management and tree trimming within an established right-of-way for an electric power line. There may also be some costs to the electric utilities for providing the regional planning councils with their substation siting plans.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: While some municipalities and counties may lose tree trimming permit fees paid by electric utilities, the amount of the permit fees paid to an individual municipality or county is expected to be negligible. Therefore, it appears that this bill likely qualifies for the “laws having an insignificant fiscal impact” exemption in Article VII, Section 18(d) of the Florida Constitution.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: Beginning on page 5, line 127, the Committee Substitute creates s.163.3208(6), F.S., to establish procedures applicable to the placement or construction of substations in residential areas. On line 127, the language provides that this paragraph “may” apply to the proposed placement or construction of a new distribution electric substation within a residential area. Use of the word “may,” rather than “shall,” suggests that the provision is optional, and raises the question as to whether the local government or the utility may elect to use some other procedures rather than those provided in new subsection (6).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. The strike-all did the following:

- Provides a siting exception for historic preservation and conservation lands;
- Sets minimum setback requirements, if such requirements are not adopted by the local government;
- Provides that siting standards are on a going forward basis;
- Provides a deadline for approving a siting application;
- Provides that the bill does not affect the applicability and enforceability of any existing local regulatory land use procedures for conditional use or special exceptions which provide for public input if such procedures are in effect as of the act’s effective date. However, in land use, conditional use, or special-exception review, the local government is limited to the standards and conditions adopted under s. 163.3208(2), F.S.
- Requires five days notice to local government before an electric utility does vegetation management activities within a right-of-way;
- Provides standards for vegetation maintenance practices;
- Provides that local governments may not adopt ordinances to require planting vegetation on rights-of-way or below aerial access points to substations that will grow in excess of 14 feet;
- Provides side clearance standards;
- Provides that s. 163.3209, F.S., does not supersede current franchise agreements or limit franchise authority;
- Provides that s. 163.3209, F.S., does not supersede ordinances governing the removal of certain trees;
- Requires the electric utilities to file their current plans to site substations with regional planning councils, and that information is to be included in the regional planning council’s annual report.

On March 14, 2006, the Growth Management Committee adopted a strike-all amendment. The strike-all does the following:

- Provides a definition of “distribution electric substation.”
- Adds historical preservation land use classifications to the area excluded from the application of this bill.

- Provides new timeframes to be set by local governments with respect to the provision of additional information on the substation siting application.
- Provides a definition for “vegetation maintenance and tree pruning or trimming.”
- Clarifies the notification requirements for vegetation maintenance.
- Limits the maintenance activities that can impact specimens or historical trees or trees located in a canopy road protection area.
- Authorizes local governments to adopt a written maintenance plan for vegetation located within its rights-of-way with the concurrence from the applicable utility provider.
- Authorizes local governments to request a copy of electrical utilities’ annual substation siting plans, which were previously forwarded only to regional planning councils.
- Corrects a reference to the state land planning agency.

On April 11, 2006, the Local Government Council adopted three amendments offered by Representative Robaina, which may be summarized as follows:

- Amendment 1: Created procedures specifically applicable to the placement or construction of substations in residential areas.
- Amendment 2: Clarified that utilities must provide information to an official designated by a local government rather than to the local government generally.
- Amendment 3: Revises procedures regarding vegetation management and provides protection for historical and specimen trees or canopied designated areas.