

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill provides that electrical substations shall be considered a permissible use in all land use categories and zoning districts. The bill also provides that a local government shall not require permits or other approval for vegetation management and tree trimming within an electric utility's established right-of-way.

Maintain Public Security-The bill may increase electric reliability by making electrical substations permissible in all land use and zoning districts and by making it easier for electric utilities to manage vegetation within their rights-of-way. Based on a compilation of the 2004 Distribution Service Reliability Reports the investor-owned electric utilities filed with the Public Service Commission, vegetation was the cause of approximately 17 percent of all electric outages, second only to equipment failures.¹

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 local governments to plan for future development and growth through the adoption and amendment of their comprehensive plans. Local governments enjoy 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.² 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.³ Citizens also enjoy standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.⁴

Electrical Power Plant and Transmission Line Siting

Part II of ch. 403, F.S., governs electrical power plant and transmission line siting. It sets forth a process for applying for electrical power plant site certification with the Department of Environmental Protection. Within 90 days after the department receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.⁵ 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.⁶ For purposes of this application process,

¹ It should be noted pursuant to s. 25-6.0455(2) F.A.C., outage events directly caused by hurricanes, tornados, and other severe weather events may be excluded from the report.

² S. 163.3202(1), Fla. Stat. (2005).

³ S. 163.3213, Fla. Stat. (2005).

⁴ S. 163.3215, Fla. Stat. (2005).

⁵ S. 403.508(1), Fla. Stat. (2005).

⁶ 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.⁷ Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process.

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

Based on a compilation of the 2004 Electric Reliability Reports submitted by the investor-owned electric utilities, 17 percent of all electrical outages are vegetation related, making it second only to equipment failures. However, this statistic does exclude events such as hurricanes and tornados since pursuant to s. 25-6.0455(2), FAC, 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. Another vegetation management concern is that fast-growing invasive species in rights-of-way may result in 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.

Proposed Changes

Electric Substation Siting

The bill creates s. 163.3206, F.S., relating to electrical substations.⁸ It provides legislative intent to maintain, encourage, and ensure adequate and reliable electric infrastructure. It also provides that it is essential that electrical infrastructure be constructed and maintained in various locations to ensure the efficient and reliable delivery of electrical service.

The bill provides that electrical substations are a critical component of electric transmission and distribution. It provides that substations shall be considered a permissible use in all land use categories and zoning districts. The bill allows local governments to set reasonable setback, landscape, buffering, or screening standards for substations.

At this time, which zoning districts that substations are permitted is determined by individual local governments, causing varying regulations among local governments. The bill will provide consistency among the regulations concerning where substations can be located, while retaining a local government's authority to set aesthetic related standards.

Electric Power Right-of-Way

Section 337.401(1), F.S., provides that the Department of Transportation and local governmental entities "that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to 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."

⁷ S. 403.503(12), Fla. Stat. (2005).

⁸ Electric utilities use substations to "step-down" voltage so it is usable by end users.

The bill creates s. 163.3208, F.S. providing that after a right-of-way for an electric power line has been established, a local government shall not require a permit or other approval for vegetation management and tree trimming within the established right-of-way. The bill also requires that the electric utility, upon the request of a local government, shall meet with the local government to discuss the utility's vegetation maintenance plan, including tree trimming specifications and management practices.

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3206, relating to electrical substations.

Section 2. Creates s. 163.3208, F.S., relating to electric power line rights-of-way.

Section 3. This act shall take effect upon becoming law.

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:

Based on information provided by the investor-owned electric utilities, they pay permit fees to some local governments in order to trim trees in rights-of-way. However, in the aggregate, the total amount is negligible. Therefore, the bill is expected to have a negligible negative fiscal impact on individual cities and counties 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.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES