

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Communications and Public Utilities Committee

BILL: CS/CS/SB 980

INTRODUCER: Communications & Public Utilities Committee, Community Affairs Committee and Senator Alexander

SUBJECT: Energy Reliability

DATE: April 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that electrical substations are a permissible land use in all land use categories and zoning districts, with specified exceptions. Local government can adopt reasonable standards for setback and landscape buffers, but if a local government does not do so, the standards set forth in the bill apply. The bill creates a process for selection of the site for a new distribution substation and timeframes for the process. If an application is not timely disposed of, it is deemed automatically approved.

Prior to submitting an application for a substation in a residential area, the utility is to consult the local government regarding site selection. The utility is to provide information on the proposed site and as many as three alternative sites. If the local government and the utility are unable to agree upon a site, selection is to be submitted to mediation.

Also, local governments may not require a permit or other approval for vegetation management and tree trimming within an established right-of-way for an electrical transmission or distribution line. At the request of a local government, utility companies are required to meet with the local government to discuss and submit the utility's vegetation maintenance plan. The bill requires a utility to give the local government advance notice before conducting vegetation-maintenance activities in an established right-of-way, specifies standards for vegetation maintenance, and limits the types of trees or vegetation that may be planted in an established right-of-way for an electric utility.

Finally, the bill requires an electric utility to provide the applicable regional planning council with a report on the utility's 5-year plans for siting electrical substations and this information is to be included in the regional planning council's annual report.

The bill provides that vegetation maintenance costs are recoverable.

The bill creates sections 163.3208, 163.3209, and 186.0201 of the Florida Statutes.

The bill amends section 186.513 of the Florida Statutes.

II. Present Situation:

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3164 – 163.3247, 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.¹ Section 163.3164(23), F.S., defines the term "land development regulations" as ordinances enacted by local governments relating to any aspect of development, including zoning, rezoning, subdivision, building construction, sign regulations, or any other regulations controlling land development. 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 also enjoy 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. 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.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, an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant's option.⁶

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).

⁶ S. 403.503(12), Fla. Stat. (2005).

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

Vegetation management plans are important to electric utility providers in order to avoid tree-related outages. Depending on the species of trees, 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 care. For example, ANSI A300 Part 1 provides standards for tree, shrub, and other woody plant maintenance, including pruning. The ANSI Z133.1-2000 provides standards and safety requirements for pruning, trimming, repairing, maintaining and removing trees, and cutting brush.

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. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage, historic, landmark, legacy, special interest, significant, or specimen trees.

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 department and the local general-purpose governments within its jurisdiction. Interested persons may also obtain a copy of the report for a fee.

III. Effect of Proposed Changes:

Section 1 creates s. 163.3208, F.S., to provide approval of distribution electric substations. Under the bill, electrical substations are a permissible use in all land use categories and zoning districts except those designated as preservation, conservation, or historic preservation. Local governments may still enact reasonable setback and landscape buffer standards for distribution substations. If a local government has not adopted reasonable standards, the standards provided in the bill apply.

If the application for development of a distribution substation demonstrates that the substation design is consistent with the local government’s standards, the local government must approve the application.

Prior to submitting an application for a substation in a residential area, the utility is to consult the local government regarding site selection. The utility is to provide information on the proposed site and as many as three alternative sites. The local government is to make a determination on

the proposed sites within 90 days. If the local government and the utility are unable to agree upon a site, selection is to be submitted to mediation.

The bill provides timeframes for determining an application is complete. If a local government has adopted standards for siting an electrical substation, it must grant or deny an application to locate an electrical substation within 90 days after the date the properly completed application is declared complete. If the local government fails to take action within the specified timeframe, the application is deemed automatically approved. Issuance of a permit does not relieve the applicant from complying with applicable federal or state laws or rules or applicable local land development or building rules. To be effective, a waiver of these timeframes must be voluntarily agreed to by the utility and local government.

Section 2 creates s. 163.3209, F.S., to prohibit a local government from requiring a permit or other approval for vegetation management and tree pruning or trimming within an established right-of-way for any electrical transmission or distribution line. The utility must give the local government a minimum of 5 business days' advance notice before conducting vegetation-maintenance activities in an established right-of-way. At the request of a local government, the electric utility must meet with the local government to discuss and submit the utility's vegetation maintenance plan, including trimming specifications and management practices.

Vegetation maintenance and tree trimming must be conducted in accordance with specified national standards.⁷ Vegetation management must be supervised by the utility, licensed contractors, or certified arborists. The bill limits the types of trees or vegetation that may be planted in an established right-of-way for an electric utility. However, local government ordinances or rules governing the removal of specimen trees, historical trees, or trees within canopy road protection areas are still applicable to utilities. Franchise agreements between an electric utility and a local government are not affected by this section.

The bill provides that vegetation maintenance costs are recoverable.

Section 3 creates s. 186.0201, F.S., to require an electric utility to provide the applicable regional planning council with a report on the utility's 5-year plans for siting electrical substations within the local governments' jurisdictions. This information is to be included in the regional planning council's annual report to the department and local general-purpose governments within its boundaries.

Section 4 amends s. 186.513, F.S., which requires each regional planning council to furnish an annual report of its activities to the department. The bill changes this to require that the report be furnished to the state land planning agency, the Department of Community Affairs.

Section 5 provides that nothing in the bill is intended to supersede the provisions of the power plant siting act or transmission line siting act.

Section 6 provides the act takes effect upon becoming a law.

⁷ The utility must follow ANSI A300 (Part I) - 2001 Pruning Standards and also ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush – Safety Requirements.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that vegetation maintenance costs are recoverable. However, the general costs of vegetation maintenance are already included in base rates, and costs relating to vegetation during hurricane restoration are recoverable in hurricane restoration cost recovery. As such, it is uncertain what this provision adds.

The bill would streamline the process for siting an electrical substation by providing that new substations are a permissible land use in all land use categories and zoning districts. Also, 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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
