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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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03/08/2018 08:35 PM

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Senator Brandes moved the following:

1 **Senate Amendment to Amendment (333236) (with title**
2 **amendment)**

3
4 Before line 5

5 insert:

6 Section 1. Section 163.3215, Florida Statutes, is amended
7 to read:

8 163.3215 Challenging Standing to enforce local
9 comprehensive plans through development orders or local
10 comprehensive plans; procedures; attorney fees.-

11 (1) Subsections (3) and (4) provide the exclusive methods



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12 for an aggrieved or adversely affected party to appeal and
13 challenge the consistency of a development order with a
14 comprehensive plan adopted under this part. The local government
15 that issues the development order is to be named as a respondent
16 in all proceedings under this section. Subsection (3) does ~~shall~~
17 not apply to development orders for which a local government has
18 established a process consistent with the requirements of
19 subsection (4). A local government may decide which types of
20 development orders will proceed under subsection (4). Subsection
21 (3) shall apply to all other development orders that are not
22 subject to subsection (4).

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

36 (3) Any aggrieved or adversely affected party may maintain
37 a de novo action for declaratory, injunctive, or other relief
38 against any local government to challenge any decision of such
39 local government granting or denying an application for, or to
40 prevent such local government from taking any action on, a



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41 development order, as defined in s. 163.3164, which materially
42 alters the use or density or intensity of use on a particular
43 piece of property which is not consistent with the comprehensive
44 plan adopted under this part. The de novo action must be filed
45 no later than 30 days following rendition of a development order
46 or other written decision, or when all local administrative
47 appeals, if any, are exhausted, whichever occurs later.

48 (4) If a local government elects to adopt or has adopted an
49 ordinance establishing, at a minimum, the requirements listed in
50 this subsection, the sole method by which an aggrieved and
51 adversely affected party may challenge any decision of local
52 government granting or denying an application for a development
53 order, as defined in s. 163.3164, which materially alters the
54 use or density or intensity of use on a particular piece of
55 property, on the basis that it is not consistent with the
56 comprehensive plan adopted under this part, is by an appeal
57 filed by a petition for writ of certiorari filed in circuit
58 court no later than 30 days following rendition of a development
59 order or other written decision of the local government, or when
60 all local administrative appeals, if any, are exhausted,
61 whichever occurs later. An action for injunctive or other relief
62 may be joined with the petition for certiorari. Principles of
63 judicial or administrative res judicata and collateral estoppel
64 apply to these proceedings. Minimum components of the local
65 process are as follows:

66 (a) The local process must make provision for notice of an
67 application for a development order that materially alters the
68 use or density or intensity of use on a particular piece of
69 property, including notice by publication or mailed notice



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70 consistent with the provisions of ss. 125.66(4)(b)2. and 3. and
71 166.041(3)(c)2.b. and c., and must require prominent posting at
72 the job site. The notice must be given within 10 days after the
73 filing of an application for a development order; however,
74 notice under this subsection is not required for an application
75 for a building permit or any other official action of local
76 government which does not materially alter the use or density or
77 intensity of use on a particular piece of property. The notice
78 must clearly delineate that an aggrieved or adversely affected
79 person has the right to request a quasi-judicial hearing before
80 the local government for which the application is made, must
81 explain the conditions precedent to the appeal of any
82 development order ultimately rendered upon the application, and
83 must specify the location where written procedures can be
84 obtained that describe the process, including how to initiate
85 the quasi-judicial process, the timeframes for initiating the
86 process, and the location of the hearing. The process may
87 include an opportunity for an alternative dispute resolution.

88 (b) The local process must provide a clear point of entry
89 consisting of a written preliminary decision, at a time and in a
90 manner to be established in the local ordinance, with the time
91 to request a quasi-judicial hearing running from the issuance of
92 the written preliminary decision; the local government, however,
93 is not bound by the preliminary decision. A party may request a
94 hearing to challenge or support a preliminary decision.

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



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99 (d) The local process must provide, at a minimum, an
100 opportunity for the disclosure of witnesses and exhibits before
101 ~~prior to~~ hearing and an opportunity for the depositions of
102 witnesses to be taken.

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

105 (f) The local process must provide for a quasi-judicial
106 hearing before an impartial special master who is an attorney
107 who has at least 5 years' experience and who shall, at the
108 conclusion of the hearing, recommend written findings of fact
109 and conclusions of law. The special master shall have the power
110 to swear witnesses and take their testimony under oath, to issue
111 subpoenas and other orders regarding the conduct of the
112 proceedings, and to compel entry upon the land. The standard of
113 review applied by the special master in determining whether a
114 proposed development order is consistent with the comprehensive
115 plan shall be strict scrutiny in accordance with Florida law.

116 (g) At the quasi-judicial hearing, all parties must have
117 the opportunity to respond, to present evidence and argument on
118 all issues involved which are related to the development order,
119 and to conduct cross-examination and submit rebuttal evidence.
120 Public testimony must be allowed.

121 (h) The local process must provide for a duly noticed
122 public hearing before the local government at which public
123 testimony is allowed. At the quasi-judicial hearing, the local
124 government is bound by the special master's findings of fact
125 unless the findings of fact are not supported by competent
126 substantial evidence. The governing body may modify the
127 conclusions of law if it finds that the special master's



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128 application or interpretation of law is erroneous. The governing
129 body may make reasonable legal interpretations of its
130 comprehensive plan and land development regulations without
131 regard to whether the special master's interpretation is labeled
132 as a finding of fact or a conclusion of law. The local
133 government's final decision must be reduced to writing,
134 including the findings of fact and conclusions of law, and is
135 not considered rendered or final until officially date-stamped
136 by the city or county clerk.

137 (i) An ex parte communication relating to the merits of the
138 matter under review may not be made to the special master. An ex
139 parte communication relating to the merits of the matter under
140 review may not be made to the governing body after a time to be
141 established by the local ordinance, which time must be no later
142 than receipt of the special master's recommended order by the
143 governing body.

144 (j) At the option of the local government, the process may
145 require actions to challenge the consistency of a development
146 order with land development regulations to be brought in the
147 same proceeding.

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

151 (6) (a) The signature of an attorney or party constitutes a
152 certificate that he or she has read the pleading, motion, or
153 other paper and that, to the best of his or her knowledge,
154 information, and belief formed after reasonable inquiry, it is
155 not interposed for any improper purpose, such as to harass or to
156 cause unnecessary delay or for economic advantage, competitive



157 reasons or frivolous purposes or needless increase in the cost
158 of litigation. If a pleading, motion, or other paper is signed
159 in violation of these requirements, the court, upon motion or
160 its own initiative, shall impose upon the person who signed it,
161 a represented party, or both, an appropriate sanction, which may
162 include an order to pay to the other party or parties the amount
163 of reasonable expenses incurred because of the filing of the
164 pleading, motion, or other paper, including a reasonable
165 attorney's fee.

166 (b) The prevailing party in a challenge to a development
167 order or a local comprehensive plan is entitled to recover
168 reasonable attorney fees and costs incurred in challenging or
169 defending the order, including reasonable appellate attorney
170 fees and costs.

171 (7) In any proceeding under subsection (3) or subsection
172 (4), no settlement shall be entered into by the local government
173 unless the terms of the settlement have been the subject of a
174 public hearing after notice as required by this part.

175 (8) In any proceeding under subsection (3) or subsection
176 (4), the Department of Legal Affairs may intervene to represent
177 the interests of the state.

178 (9) Neither subsection (3) nor subsection (4) relieves the
179 local government of its obligations to hold public hearings as
180 required by law.

181
182 ===== T I T L E A M E N D M E N T =====

183 And the title is amended as follows:

184 Between lines 123 and 124
185 insert:



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186 | 163.3215, F.S.; providing for attorney fees for
187 | prevailing parties in an action challenging a
188 | development order or local comprehensive plan;
189 | amending s.