A bill to be entitled

An act relating to local government comprehensive plans; amending s. 163.3177, F.S.; authorizing certain administrative modifications to capital improvement schedules; amending s. 163.3184, F.S.; providing that the prevailing party in a challenge to a plan or plan amendment is entitled to recover attorney fees and costs; amending s. 163.3187, F.S.; awarding attorney fees and costs, including reasonable appellate attorney fees and costs, to the prevailing party in a challenge to the compliance of a small scale development amendment; amending s. 163.3215, F.S.; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (3) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(3)

(b) The capital improvements element must be reviewed by the local government on an annual basis. Modifications to update the 5-year capital improvement schedule may be accomplished by ordinance, or administratively if all the projects have been

adopted by the project's appropriate board, and may not be deemed to be amendments to the local comprehensive plan.

Section 2. Paragraph (g) of subsection (5) of section 163.3184, Florida Statutes, is added to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN AMENDMENTS.—

(g) The prevailing party in a challenge filed under this subsection is entitled to recover attorney fees and costs in challenging or defending a plan or plan amendment, including reasonable appellate attorney fees and costs.

Section 3. Paragraph (a) of subsection (5) of section 163.3187, Florida Statutes, is amended to read:

163.3187 Process for adoption of small scale comprehensive plan amendment.—

(5)(a) Any affected person may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57 to request a hearing to challenge the compliance of a small scale development amendment with this act within 30 days following the local government's adoption of the amendment and shall serve a copy of the petition on the local government. An administrative law judge shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an

administrative law judge. The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the plan amendment shall be determined to be in compliance if the local government's determination that the small scale development amendment is in compliance is fairly debatable. The state land planning agency may not intervene in any proceeding initiated pursuant to this section. The prevailing party in a challenge filed under this paragraph is entitled to recover attorney fees and costs in challenging or defending the order, including reasonable appellate attorney fees and costs.

Section 4. Subsections (3) and (4) of section 163.3215, Florida Statutes, are amended to read:

163.3215 Standing to enforce local comprehensive plans through development orders.—

(3) Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, on the basis that the development order ~~which~~ materially alters the use or density or intensity of use on a particular piece of property rendering it ~~which is~~ not consistent with the comprehensive plan adopted under this part. The de novo action must be filed no later than

30 days following rendition of a development order or other written decision, or when all local administrative appeals, if any, are exhausted, whichever occurs later.

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

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

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

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

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

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

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

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

(g) At the quasi-judicial hearing, all parties must have the opportunity to respond, to present evidence and argument on all issues involved which are related to the development order, and to conduct cross-examination and submit rebuttal evidence.

Public testimony must be allowed.

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

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

(j) At the option of the local government, the process may

require actions to challenge the consistency of a development order with land development regulations to be brought in the same proceeding.

Section 5. This act shall take effect July 1, 2023.