

By the Committees on Rules; and Judiciary; and Senator DiCeglie

595-03702-23

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1 A bill to be entitled  
2 An act relating to local government comprehensive  
3 plans; amending s. 163.3184, F.S.; providing that the  
4 prevailing party in a challenge to a plan or plan  
5 amendment is entitled to recover attorney fees and  
6 costs; amending s. 163.3187, F.S.; providing that the  
7 prevailing party in a challenge to the compliance of a  
8 small scale development order is entitled to recover  
9 attorney fees and costs; amending s. 163.3202, F.S.;  
10 providing applicability; amending s. 163.3215, F.S.;  
11 making technical changes; providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Paragraph (g) is added to subsection (5) of  
16 section 163.3184, Florida Statutes, to read:

17 163.3184 Process for adoption of comprehensive plan or plan  
18 amendment.—

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

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

25 Section 2. Paragraph (a) of subsection (5) of section  
26 163.3187, Florida Statutes, is amended to read:

27 163.3187 Process for adoption of small scale comprehensive  
28 plan amendment.—

29 (5) (a) Any affected person may file a petition with the

595-03702-23

2023540c2

30 Division of Administrative Hearings pursuant to ss. 120.569 and  
31 120.57 to request a hearing to challenge the compliance of a  
32 small scale development amendment with this act within 30 days  
33 following the local government's adoption of the amendment and  
34 shall serve a copy of the petition on the local government. An  
35 administrative law judge shall hold a hearing in the affected  
36 jurisdiction not less than 30 days nor more than 60 days  
37 following the filing of a petition and the assignment of an  
38 administrative law judge. The parties to a hearing held pursuant  
39 to this subsection shall be the petitioner, the local  
40 government, and any intervenor. In the proceeding, the plan  
41 amendment shall be determined to be in compliance if the local  
42 government's determination that the small scale development  
43 amendment is in compliance is fairly debatable. The state land  
44 planning agency may not intervene in any proceeding initiated  
45 pursuant to this section. The prevailing party in a challenge  
46 filed under this paragraph is entitled to recover attorney fees  
47 and costs in challenging or defending the order, including  
48 reasonable appellate attorney fees and costs.

49 Section 3. Present subsection (6) of section 163.3202,  
50 Florida Statutes, is redesignated as subsection (7), and a new  
51 subsection (6) is added to that section to read:

52 163.3202 Land development regulations.—

53 (6) Land development regulations relating to any  
54 characteristic of development other than use, or intensity or  
55 density of use, do not apply to Florida College System  
56 institutions as defined in s. 1000.21(3).

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

595-03702-23

2023540c2

59 163.3215 Standing to enforce local comprehensive plans  
60 through development orders.—

61 (3) Any aggrieved or adversely affected party may maintain  
62 a de novo action for declaratory, injunctive, or other relief  
63 against any local government to challenge any decision of such  
64 local government granting or denying an application for, or to  
65 prevent such local government from taking any action on, a  
66 development order, as defined in s. 163.3164, on the basis that  
67 the development order ~~which~~ materially alters the use or density  
68 or intensity of use on a particular piece of property, rendering  
69 it ~~which is~~ not consistent with the comprehensive plan adopted  
70 under this part. The de novo action must be filed no later than  
71 30 days following rendition of a development order or other  
72 written decision, or when all local administrative appeals, if  
73 any, are exhausted, whichever occurs later.

74 (4) If a local government elects to adopt or has adopted an  
75 ordinance establishing, at a minimum, the requirements listed in  
76 this subsection, the sole method by which an aggrieved and  
77 adversely affected party may challenge any decision of local  
78 government granting or denying an application for a development  
79 order, as defined in s. 163.3164, which materially alters the  
80 use or density or intensity of use on a particular piece of  
81 property, ~~on the basis that it is not consistent with the~~  
82 ~~comprehensive plan adopted under this part,~~ is by an appeal  
83 filed by a petition for writ of certiorari filed in circuit  
84 court no later than 30 days following rendition of a development  
85 order or other written decision of the local government, or when  
86 all local administrative appeals, if any, are exhausted,  
87 whichever occurs later. An action for injunctive or other relief

595-03702-23

2023540c2

88 may be joined with the petition for certiorari. Principles of  
89 judicial or administrative res judicata and collateral estoppel  
90 apply to these proceedings. Minimum components of the local  
91 process are as follows:

92 (a) The local process must make provision for notice of an  
93 application for a development order that materially alters the  
94 use or density or intensity of use on a particular piece of  
95 property, including notice by publication or mailed notice  
96 consistent with the provisions of ss. 125.66(4)(b)2. and 3. and  
97 166.041(3)(c)2.b. and c., and must require prominent posting at  
98 the job site. The notice must be given within 10 days after the  
99 filing of an application for a development order; however,  
100 notice under this subsection is not required for an application  
101 for a building permit or any other official action of local  
102 government which does not materially alter the use or density or  
103 intensity of use on a particular piece of property. The notice  
104 must clearly delineate that an aggrieved or adversely affected  
105 person has the right to request a quasi-judicial hearing before  
106 the local government for which the application is made, must  
107 explain the conditions precedent to the appeal of any  
108 development order ultimately rendered upon the application, and  
109 must specify the location where written procedures can be  
110 obtained that describe the process, including how to initiate  
111 the quasi-judicial process, the timeframes for initiating the  
112 process, and the location of the hearing. The process may  
113 include an opportunity for an alternative dispute resolution.

114 (b) The local process must provide a clear point of entry  
115 consisting of a written preliminary decision, at a time and in a  
116 manner to be established in the local ordinance, with the time

595-03702-23

2023540c2

117 to request a quasi-judicial hearing running from the issuance of  
118 the written preliminary decision; the local government, however,  
119 is not bound by the preliminary decision. A party may request a  
120 hearing to challenge or support a preliminary decision.

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

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

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

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

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

595-03702-23

2023540c2

146 Public testimony must be allowed.

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

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

170 (j) At the option of the local government, the process may  
171 require actions to challenge the consistency of a development  
172 order with land development regulations to be brought in the  
173 same proceeding.

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