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1
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

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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:

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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

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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

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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.

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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.