

By the Committee on Agriculture; and Senator Calatayud

575-02964-24

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1 A bill to be entitled
2 An act relating to the Everglades Protection Area;
3 amending s. 163.3184, F.S.; requiring that proposed
4 plans and plan amendments that apply to certain lands
5 within or near the Everglades Protection Area follow
6 the state coordinated review process; conforming
7 provisions to changes made by the act; authorizing
8 local governments to consider an application for a
9 development permit or development order contingent
10 upon adoption of such plans and amendments; providing
11 duties of the Department of Environmental Protection
12 relating to such plans and plan amendments; providing
13 a condition for the adoption of such plans and plan
14 amendments upon a certain determination by the
15 department; specifying a requirement for the
16 transmittal of certain comprehensive plan amendments
17 to the department; making technical changes; providing
18 construction; amending s. 163.3187, F.S.; authorizing
19 site-specific text changes for small-scale future land
20 use map amendments; prohibiting the adoption of small-
21 scale development amendments for properties located
22 within or near the Everglades Protection Area;
23 requiring local governments whose boundaries include
24 any portion of the Everglades Protection Area to
25 transmit copies of adopted small-scale development
26 amendments to the state land planning agency within a
27 specified timeframe; making technical changes;
28 providing construction; amending s. 420.615, F.S.;
29 conforming a cross-reference; providing an effective

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30 date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Paragraph (a) of subsection (2), paragraph (a)
35 of subsection (3), subsection (4), paragraph (b) of subsection
36 (5), and paragraph (a) of subsection (11) of section 163.3184,
37 Florida Statutes, are amended, and paragraph (d) is added to
38 subsection (2) and subsection (14) is added to that section, to
39 read:

40 163.3184 Process for adoption of comprehensive plan or plan
41 amendment.—

42 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

43 (a) Plan amendments adopted by local governments must ~~shall~~
44 follow the expedited state review process in subsection (3),
45 except as set forth in paragraphs (b), ~~and~~ (c), and (d).

46 (d) Proposed plans and plan amendments by a county as defined in
47 s. 125.011(1) or any municipality located therein which apply to
48 land within, or within 2 miles of, the Everglades Protection
49 Area as defined in s. 373.4592(2) must follow the state
50 coordinated review process as provided in subsection (4).

51 (3) EXPEDITED STATE REVIEW PROCESS FOR ADOPTION OF
52 COMPREHENSIVE PLAN AMENDMENTS.—

53 (a) The process for amending a comprehensive plan described
54 in this subsection applies ~~shall apply~~ to all amendments except
55 as provided in paragraphs (2)(b), ~~and~~ (c), and (d) and is ~~shall~~
56 ~~be~~ applicable statewide.

57 (4) STATE COORDINATED REVIEW PROCESS.—

58 (a) *Coordination.*—The state land planning agency shall only

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59 use the state coordinated review process described in this
60 subsection for review of comprehensive plans and plan amendments
61 described in paragraphs (2) (c) and (d) ~~paragraph (2) (e)~~. Each
62 comprehensive plan or plan amendment proposed to be adopted
63 pursuant to this subsection must ~~shall~~ be transmitted, adopted,
64 and reviewed in the manner prescribed in this subsection. The
65 state land planning agency shall have responsibility for plan
66 review, coordination, and the preparation and transmission of
67 comments, pursuant to this subsection, to the local governing
68 body responsible for the comprehensive plan or plan amendment.

69 (b) *Local government transmittal of proposed plan or*
70 *amendment.*—Each local governing body proposing a plan or plan
71 amendment specified in paragraph (2) (c) or paragraph (2) (d)
72 shall transmit the complete proposed comprehensive plan or plan
73 amendment to the reviewing agencies within 10 working days after
74 the first public hearing pursuant to subsection (11). The
75 transmitted document must ~~shall~~ clearly indicate on the cover
76 sheet that this plan amendment is subject to the state
77 coordinated review process of this subsection. The local
78 governing body shall also transmit a copy of the complete
79 proposed comprehensive plan or plan amendment to any other unit
80 of local government or government agency in the state that has
81 filed a written request with the governing body for the plan or
82 plan amendment.

83 (c) *Reviewing agency comments.*—The agencies specified in
84 paragraph (b) may provide comments regarding the plan or plan
85 amendments in accordance with subparagraphs (3) (b) 2.-4. However,
86 comments on plans or plan amendments required to be reviewed
87 under the state coordinated review process must ~~shall~~ be sent to

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88 the state land planning agency within 30 days after receipt by
89 the state land planning agency of the complete proposed plan or
90 plan amendment from the local government. If the state land
91 planning agency comments on a plan or plan amendment adopted
92 under the state coordinated review process, it must ~~shall~~
93 provide comments according to paragraph (e) ~~(d)~~. Any other unit
94 of local government or government agency specified in paragraph
95 (b) may provide comments to the state land planning agency in
96 accordance with subparagraphs (3)(b)2.-4. within 30 days after
97 receipt by the state land planning agency of the complete
98 proposed plan or plan amendment. Written comments submitted by
99 the public must ~~shall~~ be sent directly to the local government.

100 (d) Everglades Protection Area determinations.—A proposed
101 plan or plan amendment by a county as defined in s. 125.011(1)
102 or any municipality located therein which applies to any land
103 within, or within 2 miles of, the Everglades Protection Area as
104 defined in s. 373.4592(2) must be reviewed pursuant to this
105 paragraph by the Department of Environmental Protection. The
106 department shall determine whether the proposed plan or plan
107 amendment, or any portion thereof, adversely impacts the
108 Everglades Protection Area or the Everglades restoration and
109 protection objectives identified in s. 373.4592. The department
110 shall issue a written determination to the state land planning
111 agency and the local government within 30 days after receipt of
112 the proposed plan or plan amendment. The determination must
113 identify any adverse impacts and may be provided as part of the
114 agency's comments pursuant to paragraph (c). Before the adoption
115 of the proposed plan or plan amendment, the department shall
116 work in coordination with the state land planning agency and the

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117 local government to identify any planning strategies or measures
118 that the local government could include in the proposed plan or
119 plan amendment to eliminate or mitigate any adverse impacts to
120 the Everglades Protection Area or the Everglades restoration and
121 protection objectives identified in s. 373.4592. If the
122 department determines that any portion of the proposed plan or
123 plan amendment will adversely impact the Everglades Protection
124 Area or the Everglades restoration and protection objectives
125 identified in s. 373.4592, the local government must modify that
126 portion of the proposed plan or plan amendment to include
127 planning strategies or measures to eliminate or mitigate such
128 adverse impacts before adopting the proposed plan or plan
129 amendment or that portion of the proposed plan or plan amendment
130 may not be adopted.

131 (e) State land planning agency review.-

132 1. If the state land planning agency elects to review a
133 plan or plan amendment specified in paragraph (2)(c), the agency
134 shall issue a report giving its objections, recommendations, and
135 comments regarding the proposed plan or plan amendment within 60
136 days after receipt of the proposed plan or plan amendment.
137 Notwithstanding the limitation on comments in sub-subparagraph
138 (3)(b)4.g., the state land planning agency may make objections,
139 recommendations, and comments in its report regarding whether
140 the plan or plan amendment is in compliance and whether the plan
141 or plan amendment will adversely impact important state
142 resources and facilities. Any objection regarding an important
143 state resource or facility that will be adversely impacted by
144 the adopted plan or plan amendment shall also state with
145 specificity how the plan or plan amendment will adversely impact

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146 the important state resource or facility and shall identify
147 measures the local government may take to eliminate, reduce, or
148 mitigate the adverse impacts. When a federal, state, or regional
149 agency has implemented a permitting program, a local government
150 is not required to duplicate or exceed that permitting program
151 in its comprehensive plan or to implement such a permitting
152 program in its land development regulations. This subparagraph
153 does not prohibit the state land planning agency in conducting
154 its review of local plans or plan amendments from making
155 objections, recommendations, and comments regarding densities
156 and intensities consistent with this part. In preparing its
157 comments, the state land planning agency shall only base its
158 considerations on written, and not oral, comments.

159 2. The state land planning agency review shall identify all
160 written communications with the agency regarding the proposed
161 plan amendment. The written identification must include a list
162 of all documents received or generated by the agency, which list
163 must be of sufficient specificity to enable the documents to be
164 identified and copies requested, if desired, and the name of the
165 person to be contacted to request copies of any identified
166 document.

167 (f)~~(e)~~ *Local government review of comments; adoption of*
168 *plan or amendments and transmittal.*—

169 1. The local government shall review the report submitted
170 to it by the state land planning agency, if any, and written
171 comments submitted to it by any other person, agency, or
172 government. The local government, upon receipt of the report
173 from the state land planning agency, shall hold a ~~its~~ second
174 public hearing, ~~which shall be a hearing~~ to determine whether to

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175 adopt the comprehensive plan or one or more comprehensive plan
176 amendments pursuant to subsection (11). If the local government
177 fails to hold the second hearing within 180 days after receipt
178 of the state land planning agency's report, the amendments are
179 ~~shall be~~ deemed withdrawn unless extended by agreement with
180 notice to the state land planning agency and any affected person
181 who that provided comments on the amendment. The 180-day
182 limitation does not apply to amendments processed pursuant to s.
183 380.06.

184 2. All comprehensive plan amendments adopted by the
185 governing body, along with the supporting data and analysis,
186 must shall be transmitted within 10 working days after the
187 second public hearing to the state land planning agency and any
188 other agency or local government that provided timely comments
189 under paragraph (c). Comprehensive plan amendments by a county
190 as defined in s. 125.011(1) or any municipality located therein
191 which apply to land within, or within 2 miles of, the Everglades
192 Protection Area as defined in s. 373.4592(2) must also be
193 transmitted within 10 working days after the second public
194 hearing to the Department of Environmental Protection.

195 3. The state land planning agency shall notify the local
196 government of any deficiencies within 5 working days after
197 receipt of a plan or plan amendment package. For purposes of
198 completeness, a plan or plan amendment is shall be deemed
199 complete if it contains a full, executed copy of the adoption
200 ordinance or ordinances; in the case of a text amendment, a full
201 copy of the amended language in legislative format with new
202 words inserted in the text underlined, and words deleted
203 stricken with hyphens; in the case of a future land use map

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204 amendment, a copy of the future land use map clearly depicting
205 the parcel, its existing future land use designation, and its
206 adopted designation; and a copy of any data and analyses the
207 local government deems appropriate.

208 4. After the state land planning agency makes a
209 determination of completeness regarding the adopted plan or plan
210 amendment, the state land planning agency has ~~shall have~~ 45 days
211 to determine if the plan or plan amendment is in compliance with
212 this act. Unless the plan or plan amendment is substantially
213 changed from the one commented on, the state land planning
214 agency's compliance determination is ~~shall be~~ limited to
215 objections raised in the objections, recommendations, and
216 comments report. During the period provided for in this
217 subparagraph, the state land planning agency shall issue,
218 through a senior administrator or the secretary, a notice of
219 intent to find that the plan or plan amendment is in compliance
220 or not in compliance. The state land planning agency shall post
221 a copy of the notice of intent on the agency's ~~Internet~~ website.
222 Publication by the state land planning agency of the notice of
223 intent on the state land planning agency's website is ~~Internet~~
224 ~~site shall be~~ prima facie evidence of compliance with the
225 publication requirements of this subparagraph.

226 5. A plan or plan amendment adopted under the state
227 coordinated review process must ~~shall~~ go into effect pursuant to
228 the state land planning agency's notice of intent. If timely
229 challenged, an amendment does not become effective until the
230 state land planning agency or the Administration Commission
231 enters a final order determining the adopted amendment to be in
232 compliance.

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

235 (b) The state land planning agency may file a petition with
236 the Division of Administrative Hearings pursuant to ss. 120.569
237 and 120.57, with a copy served on the affected local government,
238 to request a formal hearing to challenge whether the plan or
239 plan amendment is in compliance as defined in paragraph (1)(b).
240 The state land planning agency's petition must clearly state the
241 reasons for the challenge. Under the expedited state review
242 process, this petition must be filed with the division within 30
243 days after the state land planning agency notifies the local
244 government that the plan amendment package is complete according
245 to subparagraph (3)(c)3. Under the state coordinated review
246 process, this petition must be filed with the division within 45
247 days after the state land planning agency notifies the local
248 government that the plan amendment package is complete according
249 to subparagraph (4)(f)3. ~~(4)(e)3.~~

250 1. The state land planning agency's challenge to plan
251 amendments adopted under the expedited state review process is
252 ~~shall be~~ limited to the comments provided by the reviewing
253 agencies pursuant to subparagraphs (3)(b)2.-4., upon a
254 determination by the state land planning agency that an
255 important state resource or facility will be adversely impacted
256 by the adopted plan amendment. The state land planning agency's
257 petition must ~~shall~~ state with specificity how the plan
258 amendment will adversely impact the important state resource or
259 facility. The state land planning agency may challenge a plan
260 amendment that has substantially changed from the version on
261 which the agencies provided comments but only upon a

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262 determination by the state land planning agency that an
263 important state resource or facility will be adversely impacted.

264 2. If the state land planning agency issues a notice of
265 intent to find the comprehensive plan or plan amendment not in
266 compliance with this act, the notice of intent must ~~shall~~ be
267 forwarded to the Division of Administrative Hearings of the
268 Department of Management Services, which shall conduct a
269 proceeding under ss. 120.569 and 120.57 in the county of and
270 convenient to the affected local jurisdiction. The parties to
271 the proceeding must ~~shall~~ be the state land planning agency, the
272 affected local government, and any affected person who
273 intervenes. A ~~No~~ new issue may not be alleged as a reason to
274 find a plan or plan amendment not in compliance in an
275 administrative pleading filed more than 21 days after
276 publication of notice unless the party seeking that issue
277 establishes good cause for not alleging the issue within that
278 time period. Good cause does not include excusable neglect.

279 (11) PUBLIC HEARINGS.—

280 (a) The procedure for transmittal of a complete proposed
281 comprehensive plan or plan amendment pursuant to subparagraph
282 (3) (b) 1. and paragraph (4) (b) and for adoption of a
283 comprehensive plan or plan amendment pursuant to subparagraphs
284 (3) (c) 1. and (4) (e) 1. is ~~shall be~~ by affirmative vote of not
285 less than a majority of the members of the governing body
286 present at the hearing. The adoption of a comprehensive plan or
287 plan amendment is ~~shall be~~ by ordinance. For the purposes of
288 transmitting or adopting a comprehensive plan or plan amendment,
289 the notice requirements in chapters 125 and 166 are superseded
290 by this subsection, except as provided in this part.

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291 (14) This act may not be construed to limit the rights and
292 protections granted by s. 823.14.

293 Section 2. Subsections (1), (2), (3), and (5) of section
294 163.3187, Florida Statutes, are amended, and subsection (6) is
295 added to that section, to read:

296 163.3187 Process for adoption of small-scale ~~small-scale~~
297 comprehensive plan amendment.—

298 (1) A small-scale ~~small-scale~~ development amendment may be
299 adopted if all of ~~under~~ the following conditions are met:

300 (a) The proposed amendment involves a use of 50 acres or
301 fewer. ~~and:~~

302 (b) The proposed amendment does not involve a text change
303 to the goals, policies, and objectives of the local government's
304 comprehensive plan, but only proposes a land use change to the
305 future land use map for a site-specific small-scale ~~small-scale~~
306 development activity. However, site-specific text changes that
307 relate directly to, and are adopted simultaneously with, the
308 small-scale ~~small-scale~~ future land use map amendment are shall
309 ~~be~~ permissible under this section.

310 (c) The property that is the subject of the proposed
311 amendment is not located within an area of critical state
312 concern, unless the project subject to the proposed amendment
313 involves the construction of affordable housing units meeting
314 the criteria of s. 420.0004(3), and is located within an area of
315 critical state concern designated by s. 380.0552 or by the
316 Administration Commission pursuant to s. 380.05(1).

317 (d) The property located in Miami-Dade, Broward, or Monroe
318 County which is the subject of the proposed amendment by a
319 county as defined in s. 125.011(1) or any municipality located

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320 therein is not located in whole or in part within, or within 2
321 miles of, the Everglades Protection Area as defined in s.
322 373.4592(2).

323 (2) Small-scale ~~Small-scale~~ development amendments adopted
324 pursuant to this section require only one public hearing before
325 the governing board, which must ~~shall~~ be an adoption hearing as
326 described in s. 163.3184(11). Within 10 days after the adoption
327 of a small-scale development amendment by a county whose
328 boundaries include any portion of the Everglades Protection Area
329 as defined in s. 373.4592(2), a county and the municipalities
330 within that county shall transmit a copy of the amendment to the
331 state land planning agency for recordkeeping purposes.

332 (3) If the small-scale ~~small-scale~~ development amendment
333 involves a site within a rural area of opportunity as defined
334 under s. 288.0656(2)(d) for the duration of such designation,
335 the acreage limit listed in subsection (1) shall be increased by
336 100 percent. The local government approving the small-scale
337 ~~small-scale~~ plan amendment shall certify to the state land
338 planning agency that the plan amendment furthers the economic
339 objectives set forth in the executive order issued under s.
340 288.0656(7), and the property subject to the plan amendment
341 shall undergo public review to ensure that all concurrency
342 requirements and federal, state, and local environmental permit
343 requirements are met.

344 (5)(a) Any affected person may file a petition with the
345 Division of Administrative Hearings pursuant to ss. 120.569 and
346 120.57 to request a hearing to challenge the compliance of a
347 small-scale ~~small-scale~~ development amendment with this act
348 within 30 days following the local government's adoption of the

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349 amendment and shall serve a copy of the petition on the local
350 government. An administrative law judge shall hold a hearing in
351 the affected jurisdiction not less than 30 days nor more than 60
352 days following the filing of a petition and the assignment of an
353 administrative law judge. The parties to a hearing held pursuant
354 to this subsection shall be the petitioner, the local
355 government, and any intervenor. In the proceeding, the plan
356 amendment shall be determined to be in compliance if the local
357 government's determination that the small-scale ~~small-scale~~
358 development amendment is in compliance is fairly debatable. The
359 state land planning agency may not intervene in any proceeding
360 initiated pursuant to this section. The prevailing party in a
361 challenge filed under this paragraph is entitled to recover
362 attorney fees and costs in challenging or defending the order,
363 including reasonable appellate attorney fees and costs.

364 (b)1. If the administrative law judge recommends that the
365 small-scale ~~small-scale~~ development amendment be found not in
366 compliance, the administrative law judge shall submit the
367 recommended order to the Administration Commission for final
368 agency action. If the administrative law judge recommends that
369 the small-scale ~~small-scale~~ development amendment be found in
370 compliance, the administrative law judge shall submit the
371 recommended order to the state land planning agency.

372 2. If the state land planning agency determines that the
373 plan amendment is not in compliance, the agency shall submit,
374 within 30 days following its receipt, the recommended order to
375 the Administration Commission for final agency action. If the
376 state land planning agency determines that the plan amendment is
377 in compliance, the agency shall enter a final order within 30

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378 days following its receipt of the recommended order.

379 (c) Small-scale ~~small-scale~~ development amendments may not
380 become effective until 31 days after adoption. If challenged
381 within 30 days after adoption, small-scale ~~small-scale~~
382 development amendments may not become effective until the state
383 land planning agency or the Administration Commission,
384 respectively, issues a final order determining that the adopted
385 small-scale ~~small-scale~~ development amendment is in compliance.

386 (d) In all challenges under this subsection, when a
387 determination of compliance as defined in s. 163.3184(1)(b) is
388 made, consideration shall be given to the plan amendment as a
389 whole and whether the plan amendment furthers the intent of this
390 part.

391 (6) This section may not be construed to limit the rights
392 and protections granted by s. 823.14.

393 Section 3. Subsection (5) of section 420.615, Florida
394 Statutes, is amended to read:

395 420.615 Affordable housing land donation density bonus
396 incentives.—

397 (5) The local government, as part of the approval process,
398 shall adopt a comprehensive plan amendment, pursuant to part II
399 of chapter 163, for the receiving land that incorporates the
400 density bonus. Such amendment shall be adopted in the manner as
401 required for small-scale amendments pursuant to s. 163.3187 and
402 is not subject to the requirements of s. 163.3184(4)(b), (c), or
403 (e) s. 163.3184(4)(b)-(d).

404 Section 4. This act shall take effect July 1, 2024.