

By the Committees on Rules; and Agriculture; and Senator Calatayud

595-03795-24

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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; providing
8 duties of the Department of Environmental Protection
9 relating to such plans and plan amendments; providing
10 a condition for the adoption of such plans and plan
11 amendments upon a certain determination by the
12 department; specifying a requirement for the
13 transmittal of certain comprehensive plan amendments
14 to the department; making technical changes; providing
15 construction; amending s. 163.3187, F.S.; authorizing
16 site-specific text changes for small-scale future land
17 use map amendments; prohibiting the adoption of small-
18 scale development amendments for properties located
19 within or near the Everglades Protection Area;
20 requiring local governments whose boundaries include
21 any portion of the Everglades Protection Area to
22 transmit copies of adopted small-scale development
23 amendments to the state land planning agency within a
24 specified timeframe; making technical changes;
25 providing construction; amending s. 420.615, F.S.;
26 conforming a cross-reference; providing an effective
27 date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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

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

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

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

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

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

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

(4) STATE COORDINATED REVIEW PROCESS.—

(a) *Coordination.*—The state land planning agency shall only use the state coordinated review process described in this subsection for review of comprehensive plans and plan amendments described in paragraphs (2)(c) and (d) ~~paragraph (2)(e)~~. Each

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59 comprehensive plan or plan amendment proposed to be adopted
60 pursuant to this subsection must ~~shall~~ be transmitted, adopted,
61 and reviewed in the manner prescribed in this subsection. The
62 state land planning agency shall have responsibility for plan
63 review, coordination, and the preparation and transmission of
64 comments, pursuant to this subsection, to the local governing
65 body responsible for the comprehensive plan or plan amendment.

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

80 (c) *Reviewing agency comments.*—The agencies specified in
81 paragraph (b) may provide comments regarding the plan or plan
82 amendments in accordance with subparagraphs (3)(b)2.-4. However,
83 comments on plans or plan amendments required to be reviewed
84 under the state coordinated review process must ~~shall~~ be sent to
85 the state land planning agency within 30 days after receipt by
86 the state land planning agency of the complete proposed plan or
87 plan amendment from the local government. If the state land

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

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

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

128 (e) State land planning agency review.—

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

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146 agency has implemented a permitting program, a local government
147 is not required to duplicate or exceed that permitting program
148 in its comprehensive plan or to implement such a permitting
149 program in its land development regulations. This subparagraph
150 does not prohibit the state land planning agency in conducting
151 its review of local plans or plan amendments from making
152 objections, recommendations, and comments regarding densities
153 and intensities consistent with this part. In preparing its
154 comments, the state land planning agency shall only base its
155 considerations on written, and not oral, comments.

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

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

166 1. The local government shall review the report submitted
167 to it by the state land planning agency, if any, and written
168 comments submitted to it by any other person, agency, or
169 government. The local government, upon receipt of the report
170 from the state land planning agency, shall hold a ~~its~~ second
171 public hearing, ~~which shall be a hearing~~ to determine whether to
172 adopt the comprehensive plan or one or more comprehensive plan
173 amendments pursuant to subsection (11). If the local government
174 fails to hold the second hearing within 180 days after receipt

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175 of the state land planning agency's report, the amendments are
176 ~~shall be~~ deemed withdrawn unless extended by agreement with
177 notice to the state land planning agency and any affected person
178 who ~~that~~ provided comments on the amendment. The 180-day
179 limitation does not apply to amendments processed pursuant to s.
180 380.06.

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

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

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204 local government deems appropriate.

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

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

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

232 (b) The state land planning agency may file a petition with

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

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

261 2. If the state land planning agency issues a notice of

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

276 (11) PUBLIC HEARINGS.—

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

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

290 Section 2. Subsections (1), (2), (3), and (5) of section

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291 163.3187, Florida Statutes, are amended, and subsection (6) is
292 added to that section, to read:

293 163.3187 Process for adoption of small-scale ~~small-scale~~
294 comprehensive plan amendment.—

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

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

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

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

314 (d) The property that is the subject of the proposed
315 amendment by a county as defined in s. 125.011(1) or any
316 municipality located therein is not located in whole or in part
317 within, or within 2 miles of, the Everglades Protection Area as
318 defined in s. 373.4592(2).

319 (2) Small-scale ~~Small-scale~~ development amendments adopted

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

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

340 (5)(a) Any affected person may file a petition with the
341 Division of Administrative Hearings pursuant to ss. 120.569 and
342 120.57 to request a hearing to challenge the compliance of a
343 small-scale ~~small-scale~~ development amendment with this act
344 within 30 days following the local government's adoption of the
345 amendment and shall serve a copy of the petition on the local
346 government. An administrative law judge shall hold a hearing in
347 the affected jurisdiction not less than 30 days nor more than 60
348 days following the filing of a petition and the assignment of an

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

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

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

375 (c) Small-scale ~~small-scale~~ development amendments may not
376 become effective until 31 days after adoption. If challenged
377 within 30 days after adoption, small-scale ~~small-scale~~

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378 development amendments may not become effective until the state
379 land planning agency or the Administration Commission,
380 respectively, issues a final order determining that the adopted
381 small-scale ~~small-scale~~ development amendment is in compliance.

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

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

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

391 420.615 Affordable housing land donation density bonus
392 incentives.—

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

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