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LEGISLATIVE ACTION

Senate . House

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Senator Brandes moved the following:

Senate Amendment to Amendment (626004) (with title amendment)

Between lines 4 and 5
insert:

Section 1. Section 163.3215, Florida Statutes, is amended to read:

163.3215 Challenging ~~Standing to enforce~~ local ~~comprehensive plans through~~ development orders or local comprehensive plans; procedures; attorney fees.—

(1) Subsections (3) and (4) provide the exclusive methods

for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan adopted under this part. The local government that issues the development order is to be named as a respondent in all proceedings under this section. Subsection (3) does ~~shall~~ not apply to development orders for which a local government has established a process consistent with the requirements of subsection (4). A local government may decide which types of development orders will proceed under subsection (4). Subsection (3) shall apply to all other development orders that are not subject to subsection (4).

(2) As used in this section, the term "aggrieved or adversely affected party" means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order.

(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, which materially alters the use or density or intensity of use on a particular piece of property 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.

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(d) The local process must provide, at a minimum, an opportunity for the disclosure of witnesses and exhibits before ~~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.

(5) Venue in any cases brought under this section shall lie in the county or counties where the actions or inactions giving rise to the cause of action are alleged to have occurred.

(6)(a) The signature of an attorney or party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or for economic advantage, competitive

reasons or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the court, upon motion or its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including ~~a~~ reasonable attorney fees ~~attorney's fee~~.

(b) The prevailing party in a challenge to a development order or a local comprehensive plan amendment is entitled to recover reasonable attorney fees and costs against a nonprevailing party that is not a local government where such fees and costs are incurred in challenging or defending the approval of the development order or plan amendment, including reasonable appellate attorney fees and costs.

(7) In any proceeding under subsection (3) or subsection (4), no settlement shall be entered into by the local government unless the terms of the settlement have been the subject of a public hearing after notice as required by this part.

(8) In any proceeding under subsection (3) or subsection (4), the Department of Legal Affairs may intervene to represent the interests of the state.

(9) Neither subsection (3) nor subsection (4) relieves the local government of its obligations to hold public hearings as required by law.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 90

and insert:

An act relating to community development; amending s. 163.3215, F.S.; providing for attorney fees and cost for prevailing parties in an action challenging a development order or local comprehensive plan under certain circumstances;