

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.; awarding attorney  
 7           fees and costs, including reasonable appellate  
 8           attorney fees and costs, to the prevailing party in a  
 9           challenge to the compliance of a small scale  
 10          development amendment; amending s. 163.3215, F.S.;  
 11          making technical changes; providing an effective date.

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

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

17           163.3184 Process for adoption of comprehensive plan or  
 18           plan 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  
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. Subsections (3) and (4) of section 163.3215,  
50 | Florida Statutes, are amended to read:

51 163.3215 Standing to enforce local comprehensive plans  
 52 through development orders.—

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

66 (4) If a local government elects to adopt or has adopted  
 67 an ordinance establishing, at a minimum, the requirements listed  
 68 in this subsection, the sole method by which an aggrieved and  
 69 adversely affected party may challenge any decision of local  
 70 government granting or denying an application for a development  
 71 order, as defined in s. 163.3164, which materially alters the  
 72 use or density or intensity of use on a particular piece of  
 73 property, ~~on the basis that it is not consistent with the~~  
 74 ~~comprehensive plan adopted under this part,~~ is by an appeal  
 75 filed by a petition for writ of certiorari filed in circuit

76 | court no later than 30 days following rendition of a development  
77 | order or other written decision of the local government, or when  
78 | all local administrative appeals, if any, are exhausted,  
79 | whichever occurs later. An action for injunctive or other relief  
80 | may be joined with the petition for certiorari. Principles of  
81 | judicial or administrative res judicata and collateral estoppel  
82 | apply to these proceedings. Minimum components of the local  
83 | process are as follows:

84 |       (a) The local process must make provision for notice of an  
85 | application for a development order that materially alters the  
86 | use or density or intensity of use on a particular piece of  
87 | property, including notice by publication or mailed notice  
88 | consistent with the provisions of ss. 125.66(4)(b)2. and 3. and  
89 | 166.041(3)(c)2.b. and c., and must require prominent posting at  
90 | the job site. The notice must be given within 10 days after the  
91 | filing of an application for a development order; however,  
92 | notice under this subsection is not required for an application  
93 | for a building permit or any other official action of local  
94 | government which does not materially alter the use or density or  
95 | intensity of use on a particular piece of property. The notice  
96 | must clearly delineate that an aggrieved or adversely affected  
97 | person has the right to request a quasi-judicial hearing before  
98 | the local government for which the application is made, must  
99 | explain the conditions precedent to the appeal of any  
100 | development order ultimately rendered upon the application, and

101 must specify the location where written procedures can be  
102 obtained that describe the process, including how to initiate  
103 the quasi-judicial process, the timeframes for initiating the  
104 process, and the location of the hearing. The process may  
105 include an opportunity for an alternative dispute resolution.

106 (b) The local process must provide a clear point of entry  
107 consisting of a written preliminary decision, at a time and in a  
108 manner to be established in the local ordinance, with the time  
109 to request a quasi-judicial hearing running from the issuance of  
110 the written preliminary decision; the local government, however,  
111 is not bound by the preliminary decision. A party may request a  
112 hearing to challenge or support a preliminary decision.

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

117 (d) The local process must provide, at a minimum, an  
118 opportunity for the disclosure of witnesses and exhibits prior  
119 to hearing and an opportunity for the depositions of witnesses  
120 to be taken.

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

123 (f) The local process must provide for a quasi-judicial  
124 hearing before an impartial special master who is an attorney  
125 who has at least 5 years' experience and who shall, at the

126 conclusion of the hearing, recommend written findings of fact  
127 and conclusions of law. The special master shall have the power  
128 to swear witnesses and take their testimony under oath, to issue  
129 subpoenas and other orders regarding the conduct of the  
130 proceedings, and to compel entry upon the land. The standard of  
131 review applied by the special master in determining whether a  
132 proposed development order is consistent with the comprehensive  
133 plan shall be strict scrutiny in accordance with Florida law.

134 (g) At the quasi-judicial hearing, all parties must have  
135 the opportunity to respond, to present evidence and argument on  
136 all issues involved which are related to the development order,  
137 and to conduct cross-examination and submit rebuttal evidence.  
138 Public testimony must be allowed.

139 (h) The local process must provide for a duly noticed  
140 public hearing before the local government at which public  
141 testimony is allowed. At the quasi-judicial hearing, the local  
142 government is bound by the special master's findings of fact  
143 unless the findings of fact are not supported by competent  
144 substantial evidence. The governing body may modify the  
145 conclusions of law if it finds that the special master's  
146 application or interpretation of law is erroneous. The governing  
147 body may make reasonable legal interpretations of its  
148 comprehensive plan and land development regulations without  
149 regard to whether the special master's interpretation is labeled  
150 as a finding of fact or a conclusion of law. The local

151 government's final decision must be reduced to writing,  
152 including the findings of fact and conclusions of law, and is  
153 not considered rendered or final until officially date-stamped  
154 by the city or county clerk.

155 (i) An ex parte communication relating to the merits of  
156 the matter under review may not be made to the special master.  
157 An ex parte communication relating to the merits of the matter  
158 under review may not be made to the governing body after a time  
159 to be established by the local ordinance, which time must be no  
160 later than receipt of the special master's recommended order by  
161 the governing body.

162 (j) At the option of the local government, the process may  
163 require actions to challenge the consistency of a development  
164 order with land development regulations to be brought in the  
165 same proceeding.

166 Section 4. This act shall take effect July 1, 2023.