

By Senator DiCeglie

18-01110-23

2023540__

1 A bill to be entitled
2 An act relating to local government comprehensive
3 plans; amending s. 163.3177, F.S.; authorizing certain
4 administrative modifications to capital improvement
5 schedules; amending s. 163.3184, F.S.; providing that
6 the prevailing party in a challenge to a plan or plan
7 amendment is entitled to recover attorney fees and
8 costs; amending s. 163.3187, F.S.; awarding attorney
9 fees and costs, including reasonable appellate
10 attorney fees and costs, to the prevailing party in a
11 challenge to the compliance of a small scale
12 development amendment; amending s. 163.3215, F.S.;
13 making technical changes; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraph (b) of subsection (3) of section
18 163.3177, Florida Statutes, is amended to read:

19 163.3177 Required and optional elements of comprehensive
20 plan; studies and surveys.—

21 (3)

22 (b) The capital improvements element must be reviewed by
23 the local government on an annual basis. Modifications to update
24 the 5-year capital improvement schedule may be accomplished by
25 ordinance, or administratively if all the projects have been
26 adopted by the projects' appropriate board, and may not be
27 deemed to be amendments to the local comprehensive plan.

28 Section 2. Paragraph (g) is added to subsection (5) of
29 section 163.3184, Florida Statutes, to read:

18-01110-23

2023540__

30 163.3184 Process for adoption of comprehensive plan or plan
31 amendment.—

32 (5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN
33 AMENDMENTS.—

34 (g) The prevailing party in a challenge filed under this
35 subsection is entitled to recover attorney fees and costs in
36 challenging or defending a plan or plan amendment, including
37 reasonable appellate attorney fees and costs.

38 Section 3. Paragraph (a) of subsection (5) of section
39 163.3187, Florida Statutes, is amended to read:

40 163.3187 Process for adoption of small scale comprehensive
41 plan amendment.—

42 (5) (a) Any affected person may file a petition with the
43 Division of Administrative Hearings pursuant to ss. 120.569 and
44 120.57 to request a hearing to challenge the compliance of a
45 small scale development amendment with this act within 30 days
46 following the local government's adoption of the amendment and
47 shall serve a copy of the petition on the local government. An
48 administrative law judge shall hold a hearing in the affected
49 jurisdiction not less than 30 days nor more than 60 days
50 following the filing of a petition and the assignment of an
51 administrative law judge. The parties to a hearing held pursuant
52 to this subsection shall be the petitioner, the local
53 government, and any intervenor. In the proceeding, the plan
54 amendment shall be determined to be in compliance if the local
55 government's determination that the small scale development
56 amendment is in compliance is fairly debatable. The state land
57 planning agency may not intervene in any proceeding initiated
58 pursuant to this section. The prevailing party in a challenge

18-01110-23

2023540__

59 filed under this paragraph is entitled to recover attorney fees
60 and costs in challenging or defending the order, including
61 reasonable appellate attorney fees and costs.

62 Section 4. Subsections (3) and (4) of section 163.3215,
63 Florida Statutes, are amended to read:

64 163.3215 Standing to enforce local comprehensive plans
65 through development orders.—

66 (3) Any aggrieved or adversely affected party may maintain
67 a de novo action for declaratory, injunctive, or other relief
68 against any local government to challenge any decision of such
69 local government granting or denying an application for, or to
70 prevent such local government from taking any action on, a
71 development order, as defined in s. 163.3164, on the basis that
72 the development order ~~which~~ materially alters the use or density
73 or intensity of use on a particular piece of property, rendering
74 it ~~which is~~ not consistent with the comprehensive plan adopted
75 under this part. The de novo action must be filed no later than
76 30 days following rendition of a development order or other
77 written decision, or when all local administrative appeals, if
78 any, are exhausted, whichever occurs later.

79 (4) If a local government elects to adopt or has adopted an
80 ordinance establishing, at a minimum, the requirements listed in
81 this subsection, the sole method by which an aggrieved and
82 adversely affected party may challenge any decision of local
83 government granting or denying an application for a development
84 order, as defined in s. 163.3164, which materially alters the
85 use or density or intensity of use on a particular piece of
86 property, ~~on the basis that it is not consistent with the~~
87 ~~comprehensive plan adopted under this part,~~ is by an appeal

18-01110-23

2023540__

88 filed by a petition for writ of certiorari filed in circuit
89 court no later than 30 days following rendition of a development
90 order or other written decision of the local government, or when
91 all local administrative appeals, if any, are exhausted,
92 whichever occurs later. An action for injunctive or other relief
93 may be joined with the petition for certiorari. Principles of
94 judicial or administrative res judicata and collateral estoppel
95 apply to these proceedings. Minimum components of the local
96 process are as follows:

97 (a) The local process must make provision for notice of an
98 application for a development order that materially alters the
99 use or density or intensity of use on a particular piece of
100 property, including notice by publication or mailed notice
101 consistent with the provisions of ss. 125.66(4)(b)2. and 3. and
102 166.041(3)(c)2.b. and c., and must require prominent posting at
103 the job site. The notice must be given within 10 days after the
104 filing of an application for a development order; however,
105 notice under this subsection is not required for an application
106 for a building permit or any other official action of local
107 government which does not materially alter the use or density or
108 intensity of use on a particular piece of property. The notice
109 must clearly delineate that an aggrieved or adversely affected
110 person has the right to request a quasi-judicial hearing before
111 the local government for which the application is made, must
112 explain the conditions precedent to the appeal of any
113 development order ultimately rendered upon the application, and
114 must specify the location where written procedures can be
115 obtained that describe the process, including how to initiate
116 the quasi-judicial process, the timeframes for initiating the

18-01110-23

2023540__

117 process, and the location of the hearing. The process may
118 include an opportunity for an alternative dispute resolution.

119 (b) The local process must provide a clear point of entry
120 consisting of a written preliminary decision, at a time and in a
121 manner to be established in the local ordinance, with the time
122 to request a quasi-judicial hearing running from the issuance of
123 the written preliminary decision; the local government, however,
124 is not bound by the preliminary decision. A party may request a
125 hearing to challenge or support a preliminary decision.

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

130 (d) The local process must provide, at a minimum, an
131 opportunity for the disclosure of witnesses and exhibits prior
132 to hearing and an opportunity for the depositions of witnesses
133 to be taken.

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

136 (f) The local process must provide for a quasi-judicial
137 hearing before an impartial special master who is an attorney
138 who has at least 5 years' experience and who shall, at the
139 conclusion of the hearing, recommend written findings of fact
140 and conclusions of law. The special master shall have the power
141 to swear witnesses and take their testimony under oath, to issue
142 subpoenas and other orders regarding the conduct of the
143 proceedings, and to compel entry upon the land. The standard of
144 review applied by the special master in determining whether a
145 proposed development order is consistent with the comprehensive

18-01110-23

2023540__

146 plan shall be strict scrutiny in accordance with Florida law.

147 (g) At the quasi-judicial hearing, all parties must have
148 the opportunity to respond, to present evidence and argument on
149 all issues involved which are related to the development order,
150 and to conduct cross-examination and submit rebuttal evidence.
151 Public testimony must be allowed.

152 (h) The local process must provide for a duly noticed
153 public hearing before the local government at which public
154 testimony is allowed. At the quasi-judicial hearing, the local
155 government is bound by the special master's findings of fact
156 unless the findings of fact are not supported by competent
157 substantial evidence. The governing body may modify the
158 conclusions of law if it finds that the special master's
159 application or interpretation of law is erroneous. The governing
160 body may make reasonable legal interpretations of its
161 comprehensive plan and land development regulations without
162 regard to whether the special master's interpretation is labeled
163 as a finding of fact or a conclusion of law. The local
164 government's final decision must be reduced to writing,
165 including the findings of fact and conclusions of law, and is
166 not considered rendered or final until officially date-stamped
167 by the city or county clerk.

168 (i) An ex parte communication relating to the merits of the
169 matter under review may not be made to the special master. An ex
170 parte communication relating to the merits of the matter under
171 review may not be made to the governing body after a time to be
172 established by the local ordinance, which time must be no later
173 than receipt of the special master's recommended order by the
174 governing body.

18-01110-23

2023540__

175 (j) At the option of the local government, the process may
176 require actions to challenge the consistency of a development
177 order with land development regulations to be brought in the
178 same proceeding.

179 Section 5. This act shall take effect July 1, 2023.