

CHAPTER 2018-34

House Bill No. 405

An act relating to linear facilities; amending s. 163.3221, F.S.; revising the definition of the term “development” to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 380.04, F.S.; revising the definition of the term “development” to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 403.511, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; amending s. 403.531, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of a proposed transmission line corridor; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 163.3221, Florida Statutes, is amended to read:

163.3221 Florida Local Government Development Agreement Act; definitions.—As used in ss. 163.3220-163.3243:

(4) “Development” means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(b) The following operations or uses shall not be taken for the purpose of this act to involve “development”:

1. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

2. Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

3. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

4. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

5. The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

6. A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

7. A change in the ownership or form of ownership of any parcel or structure.

8. The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

Section 2. Paragraphs (b) and (h) of subsection (3) of section 380.04, Florida Statutes, are amended to read:

380.04 Definition of development.—

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve “development” as defined in this section:

(b) Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(h) The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

Section 3. Paragraph (b) of subsection (2) and subsection (4) of section 403.511, Florida Statutes, are amended to read:

403.511 Effect of certification.—

(2)

(b)1. Except as provided in subsection (4), and in consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which

were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order that the public interests set forth in s. 403.509(3) in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

(4) This act shall not affect in any way the Public Service Commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground of the ~~Public Service Commission~~ under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

Section 4. Paragraph (b) of subsection (2) and subsection (4) of section 403.531, Florida Statutes, are amended to read:

403.531 Effect of certification.—

(2)

(b) In consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions that constitute variances and exemptions from nonprocedural standards or rules of the department or any other agency which were expressly considered during the certification review unless waived by the agency as provided in s. 403.526 and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines.

(4) This act does not in any way affect the commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground of the ~~commission~~ under chapter 366. This act does not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the commission.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor March 19, 2018.

Filed in Office Secretary of State March 19, 2018.