

CHAPTER 2023-31

Committee Substitute for Committee Substitute for Senate Bill No. 1604

An act relating to land use and development regulations; amending s. 163.3177, F.S.; revising the planning periods that must be included in a comprehensive plan; amending s. 163.3191, F.S.; requiring local governments to determine if plan amendments are necessary to reflect a certain minimum planning period; specifying requirements for a certain notification; requiring, rather than encouraging, a local government to comprehensively evaluate and update its comprehensive plan to reflect changes in local conditions; requiring that updates to certain elements of the comprehensive plan be processed in the same plan amendment cycle; prohibiting a local government from initiating or adopting any publicly initiated plan amendments to its comprehensive plan under certain circumstances; providing applicability; prohibiting a certain denial of plan amendments from being based on the failure of a local government to update its comprehensive plan; requiring the state land planning agency to provide population projections if a local government fails to update its comprehensive plan; requiring the local government to update its comprehensive plan within a specified timeframe after receiving the population projections and to transmit the update within a specified timeframe; requiring the state land planning agency to establish a certain timeline if such update is not in compliance; authorizing the local government to seek approval from the state land planning agency to process publicly initiated plan amendments under certain circumstances; authorizing the local government to provide certain alternative population projections under certain circumstances; amending s. 163.3202, F.S.; revising exceptions to applicability of land development regulations relating to single-family or two-family dwelling building design elements; amending s. 163.3208, F.S.; revising the definition of the term “distribution electric substation”; revising the substation approval process to include applications for changes to existing electric substations; amending s. 189.031, F.S.; precluding an independent special district from complying with the terms of certain development agreements under certain circumstances; requiring a newly elected or appointed governing body to review, within a certain timeframe, certain agreements and vote on whether to seek readoption of such agreement; providing retroactive applicability; providing for future expiration; amending s. 189.08, F.S.; conforming a cross-reference; providing effective dates.

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

Section 1. Paragraph (a) of subsection (5) of section 163.3177, Florida Statutes, is amended to read:

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

(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first ~~10-year~~ 5-year period occurring after the plan's adoption and one covering at least a ~~20-year~~ 10-year period. Additional planning periods for specific components, elements, land use amendments, or projects shall be permissible and accepted as part of the planning process.

Section 2. Section 163.3191, Florida Statutes, is amended to read:

163.3191 Evaluation and appraisal of comprehensive plan.—

(1) At least once every 7 years, each local government shall evaluate its comprehensive plan to determine if plan amendments are necessary to reflect a minimum planning period of at least 10 years as provided in s. 163.3177(5) or to reflect changes in state requirements in this part since the last update of the comprehensive plan, and notify the state land planning agency as to its determination. The notification must include a separate affidavit, signed by the chair of the governing body of the county or the mayor of the municipality, attesting that all elements of its comprehensive plan comply with this subsection. The affidavit must also include a certification that the adopted comprehensive plan contains the minimum planning period of 10 years, as provided in s. 163.3177(5), and must cite the source and date of the population projections used in establishing the 10-year planning period.

(2) If the local government determines amendments to its comprehensive plan are necessary to reflect changes in state requirements, the local government ~~must~~ shall prepare and transmit within 1 year such plan amendment or amendments for review pursuant to s. 163.3184.

(3) Local governments ~~shall be encouraged to~~ comprehensively evaluate and, as necessary, update comprehensive plans to reflect changes in local conditions. Plan amendments transmitted pursuant to this section must shall be reviewed pursuant to s. 163.3184(4). Updates to the required elements and optional elements of the comprehensive plan must be processed in the same plan amendment cycle.

(4) If a local government fails to submit ~~the~~ its letter and affidavit prescribed by subsection (1) or to transmit the update to its plan pursuant to subsection (3) within 1 year after the date the letter was transmitted to the state land planning agency (2), it may not initiate or adopt any publicly initiated plan amendments to amend its comprehensive plan until such time as it complies with this section, unless otherwise required by general law. This prohibition on plan amendments does not apply to privately initiated plan amendments. The failure of the local government to timely update its plan may not be the basis for the denial of privately initiated comprehensive plan amendments.

(5) If it is determined that a local government has failed to update its comprehensive plan pursuant to this section, the state land planning agency must provide the required population projections that must be used by the local government to update the comprehensive plan. The local government shall initiate an update to its comprehensive plan within 3 months following the receipt of the population projections and must transmit the update within 12 months. If the state land planning agency finds the update is not in compliance, it must establish the timeline to address the deficiencies, not to exceed an additional 12-month period. If the update is challenged by a third party, the local government may seek approval from the state land planning agency to process publicly initiated plan amendments that are necessary to accommodate population growth during the pendency of the litigation. During the update process, the local government may provide alternative population projections based on professionally accepted methodologies, but only if those population projections exceed the population projections provided by the state land planning agency and only if the update is completed within the timeframe set forth in this subsection.

(6) The state land planning agency may not adopt rules to implement this section, other than procedural rules or a schedule indicating when local governments must comply with the requirements of this section.

Section 3. Paragraphs (a) and (b) of subsection (5) of section 163.3202, Florida Statutes, are amended to read:

163.3202 Land development regulations.—

(5)(a) Land development regulations relating to building design elements may not be applied to a single-family or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021(5); is located in a National Register Historic District; or is designated as a historic property or located in a historic district, under the terms of a local preservation ordinance;

2. The regulations are adopted in order to implement the National Flood Insurance Program;

3. The regulations are adopted pursuant to and in compliance with chapter 553;

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10);

5. The regulations are required to ensure protection of coastal wildlife in compliance with s. 161.052, s. 161.053, s. 161.0531, s. 161.085, s. 161.163, or chapter 373;

6. The dwelling is located in a planned unit development or master planned community created pursuant to a local ordinance, resolution, or

other final action approved by the local governing body before July 1, 2023;
or

7. The dwelling is located within the jurisdiction of a local government that has a design review board or an architectural review board created before January 1, 2020.

(b) For purposes of this subsection, the term:

1. “Building design elements” means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a dwelling on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors.

2. “Planned unit development” or “master planned community” means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

Section 4. Section 163.3208, Florida Statutes, is amended to read:

163.3208 Substation approval process.—

(1) It is the intent of the Legislature to maintain, encourage, and ensure adequate and reliable electric infrastructure in the state. It is essential that electric infrastructure be constructed and maintained in various locations in order to ensure the efficient and reliable delivery of electric service. Electric infrastructure should be constructed, to the maximum extent practicable, to achieve compatibility with adjacent and surrounding land uses, and the criteria included in this section are intended to balance the need for electricity with land use compatibility.

(2) The term “~~distribution~~ electric substation” means an electric substation, including accessory administration or maintenance buildings and related accessory uses and structures, which takes electricity from the transmission grid and converts it to another voltage or a lower voltage so it can be distributed to customers ~~in the local area on the local distribution grid~~ through one or more ~~distribution~~ lines ~~less than 69 kilovolts in size~~.

(3) Electric substations are a critical component of electric transmission and distribution. Except for substations in s. 163.3205(2)(c), local governments may adopt and enforce reasonable land development regulations for new and existing ~~distribution~~ electric substations, addressing only setback, landscaping, buffering, screening, lighting, and other aesthetic

compatibility-based standards. Vegetated buffers or screening beneath aerial access points to the substation equipment shall not be required to have a mature height in excess of 14 feet.

(4) New and existing distribution electric substations shall be a permitted use in all land use categories in the applicable local government comprehensive plan and zoning districts within a utility's service territory except those designated as preservation, conservation, or historic preservation on the future land use map or duly adopted ordinance. If a local government has not adopted reasonable standards for substation siting in accordance with subsection (3), the following standards shall apply to new ~~distribution~~ electric substations:

(a) In nonresidential areas, the substation must comply with the setback and landscaped buffer area criteria applicable to other similar uses in that district, if any.

(b) Unless the local government approves a lesser setback or landscape requirement, in residential areas, a setback of up to 100 feet between the substation property boundary and permanent equipment structures shall be maintained as follows:

1. For setbacks between 100 feet and 50 feet, an open green space shall be formed by installing native landscaping, including trees and shrub material, consistent with the relevant local government's land development regulations. Substation equipment shall be protected by a security fence consistent with the relevant local government's land development regulations.

2. For setbacks of less than 50 feet, a buffer wall 8 feet high or a fence 8 feet high with native landscaping consistent with the relevant local government's regulations shall be installed around the substation.

(5) If the application for a proposed ~~distribution~~ electric substation or for changes to an existing electric substation demonstrates that the substation design is consistent with the local government's applicable setback, landscaping, buffering, screening, and other aesthetic compatibility-based standards, the application for development approval for or changes to the substation shall be approved.

(6)(a) This paragraph ~~applies~~ may apply to the proposed placement or construction of a new ~~distribution~~ electric substation within a residential area. ~~Before~~ Prior to submitting an application for the location of a new ~~distribution~~ electric substation in residential areas, the utility shall consult with the local government regarding the selection of a site. The utility shall provide information regarding the utility's preferred site and as many as three alternative available sites, including sites within nonresidential areas, that are technically and electrically reasonable for the load to be served, if the local government deems that the siting of a new ~~distribution~~ electric substation warrants this additional review and consideration. The final

determination on the site application as to the preferred and alternative sites shall be made solely by the local government within 90 days of presentation of all the necessary and required information on the preferred site and on the alternative sites. In the event the utility and the local government are unable to reach agreement on an appropriate location, the substation site selection shall be submitted to mediation conducted pursuant to ss. 44.401-44.406, unless otherwise agreed to in writing by the parties, and the mediation shall be concluded within 30 days unless extended by written agreement of the parties. The 90-day time period for the local government to render a final decision on the site application is tolled from the date a notice of intent to mediate the site selection issue is served on the utility or local government, until the mediation is concluded, terminated, or an impasse is declared. The local government and utility may agree to waive or extend this 90-day time period. Upon rendition of a final decision of the local government, a person may pursue available legal remedies in accordance with law, and the matter shall be considered on an expedited basis.

(b) A local government's land development and construction regulations for new ~~distribution~~ electric substations or for changes to existing electric substations and the local government's review of an application for the placement or construction of a new ~~distribution~~ electric substation or for changes to an existing electric substation shall only address land development, zoning, or aesthetic compatibility-based issues. In such local government regulations or review, a local government may not require information or evaluate a utility's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the utility voluntarily offers this information to the local government.

(7) Substation siting standards adopted after the effective date of this act ~~does~~ shall not apply to applications for new ~~distribution~~ electric substations or for changes to existing electric substations which ~~substation applications that were submitted before~~ prior to the notice of the local government's adoption hearing.

(8)(a) If a local government has adopted standards for the siting of new ~~distribution~~ electric substations or for changes to existing electric substations within any of the local government's land use categories or zoning districts, the local government shall grant or deny a properly completed application for a permit to locate a new electric substation or change an existing ~~distribution~~ electric substation within the land use category or zoning district within 90 days after the date the properly completed application is declared complete in accordance with the applicable local government application procedures. If the local government fails to approve or deny a properly completed application for a new ~~distribution~~ electric substation or for changes to an existing electric substation within the timeframes set forth, the application ~~is~~ shall be deemed automatically approved, and the applicant may proceed with construction consistent with its application without interference or penalty. Issuance of such local permit does not relieve the applicant from complying with applicable federal or

state laws or regulations and other applicable local land development or building regulations, if any.

(b) The local government shall notify the permit applicant within 30 days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted. Further completeness determinations shall be provided within 15 days after the receipt of additional information. However, such determination ~~is not shall not be not deemed an~~ approval of the application.

(c) To be effective, a waiver of the timeframes set forth in this subsection must be voluntarily agreed to by the utility applicant and the local government. A local government may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

(d) The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided, or the application will be considered withdrawn or closed.

Section 5. Effective upon becoming a law, subsection (7) is added to section 189.031, Florida Statutes, to read:

189.031 Legislative intent for the creation of independent special districts; special act prohibitions; model elements and other requirements; local general-purpose government/Governor and Cabinet creation authorizations.—

(7) REVIEW OF DEVELOPMENT AGREEMENTS.—An independent special district is precluded from complying with the terms of any development agreement, or any other agreement for which the development agreement serves in whole or part as consideration, which is executed within 3 months preceding the effective date of a law modifying the manner of selecting members of the governing body of the independent special district from election to appointment or from appointment to election. The newly elected or appointed governing body of the independent special district shall review within 4 months of taking office any development agreement or any other agreement for which the development agreement serves in whole or part as consideration and shall, after such review, vote on whether to seek readoption of such agreement. This subsection shall apply to any development agreement that is in effect on, or is executed after, the effective date of this section. This subsection expires July 1, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. Paragraph (a) of subsection (2) of section 189.08, Florida Statutes, is amended to read:

189.08 Special district public facilities report.—

(2) Each independent special district shall submit to each local general-purpose government in which it is located a public facilities report and an annual notice of any changes. The public facilities report shall specify the following information:

(a) A description of existing public facilities owned or operated by the special district, and each public facility that is operated by another entity, except a local general-purpose government, through a lease or other agreement with the special district. This description shall include the current capacity of the facility, the current demands placed upon it, and its location. This information shall be required in the initial report and updated every 7 years at least 12 months before the submission date of the evaluation and appraisal notification letter of the appropriate local government required by s. 163.3191. The department shall post a schedule on its website, based on the evaluation and appraisal notification schedule prepared pursuant to s. 163.3191(6) ~~s. 163.3191(5)~~, for use by a special district to determine when its public facilities report and updates to that report are due to the local general-purpose governments in which the special district is located.

Section 7. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2023.

Approved by the Governor May 5, 2023.

Filed in Office Secretary of State May 5, 2023.