

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 431 CS

Local Government Land Development Regulation

SPONSOR(S): Littlefield

TIED BILLS:

IDEN./SIM. BILLS: SB 980

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	14 Y, 1 N, w/CS	Cater	Holt
2) Growth Management Committee		Strickland	Grayson
3) Local Government Council			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

The zoning districts for electrical substation siting are determined by individual local governments. As a result, varying regulations for substation siting have been established. Currently, electrical substations for distribution lines are sited as a special use or a conditional use through the local government planning and zoning processes. Likewise, land development regulations and ordinances for vegetation maintenance vary among local governments.

HB 431 creates ss. 163.3208, 163.3209, and 186.0201, F.S., relating to electrical transmission and distribution. The bill provides consistency among the regulations for substation siting and in the vegetation management within electric power line rights-of-way. The bill additionally establishes a role for utilities to submit their 3-year plans for siting substations and to have that advisory information included in the regional planning councils' annual reports.

Generally, the bill establishes new substations as a permissible use in all land use categories and zoning districts within a utility's service territory. If a local government does not adopt reasonable standards for setback, landscaping, buffering, or screening substations, provisions are provided in the bill for default standards. The bill also provides a timeframe for a local government to grant or deny an application for an electrical substation, or the application is deemed approved, and provisions are included to provide for public input.

The bill prohibits local governments from requiring permits or other approvals for vegetation maintenance in an established electrical transmission or distribution line right-of-way, but it requires the utility to provide the local government with five days advance notice before conducting vegetation management activities. These activities shall conform to ANSI standards, and they must be supervised by qualified utility personnel, licensed contractors under the utility's control, or by certified arborists. Further, the bill specifies vegetation height limits within an established right-of-way.

The bill appears to have a minimal fiscal impact on individual local governments due to the loss of tree trimming permit fees paid by electric utilities.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill provides that electrical substations are a permissible use in all land use categories and zoning districts, except for preservation and conservation areas. The bill provides default requirements in case the local government does not adopt reasonable standards for substation siting. The bill provides that a local government shall not require permits or other approval for vegetation management and tree trimming within an electric utility's established right-of-way. The bill provides minimum standards for vegetation maintenance by electric utilities. The bill requires electric utilities to submit their three-year plan for siting electrical substations to the regional planning councils for inclusion in their annual reports.

Maintain Public Security- The bill may increase electric reliability by making electrical substations permissible in all land use categories and zoning districts, thereby placing them closer to the loads they serve, and by making it easier for electric utilities to manage intrusive vegetation within their rights-of-way.

B. EFFECT OF PROPOSED CHANGES:

Background

Comprehensive Planning and Zoning

The Local Government Comprehensive Planning and Land Development Regulation Act, ss. 163.3161 – 163.3217, F.S., requires local governments to plan for future development and growth through the adoption and amendment of their comprehensive plans. Local governments have broad constitutional and statutory powers to plan for and regulate land use. A local government's comprehensive plan and land use classifications dictate the allowable land uses for each parcel.

Each local government is required to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.¹ Section 163.3164(23), F.S., defines the term "land development regulations" as "ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, . . ." A substantially affected person, as defined in ch. 120, F.S., may challenge a land development regulation on the basis that it is inconsistent with the local government's comprehensive plan.² Citizens have standing to enforce a local comprehensive plan through challenging the consistency of a development order with that plan.³

Electrical Power Plant and Transmission Line Siting

Part II of ch. 403, F.S., governs electrical power plant and transmission line siting. It sets forth a process for applying for electrical power plant site certification with the Department of Environmental Protection. Within 90 days after the department receives a complete application, a designated administrative law judge holds a land use hearing in the county of the proposed site.⁴ The sole issue for determination at the hearing is whether the proposed site is consistent, and in compliance, with the jurisdiction's existing land use plan and zoning ordinances.⁵ For purposes of this application process,

¹ S. 163.3202(1), Fla. Stat. (2005).

² S. 163.3213, Fla. Stat. (2005).

³ S. 163.3215, Fla. Stat. (2005).

⁴ S. 403.508(1), Fla. Stat. (2005).

⁵ S. 403.508(2), Fla. Stat. (2005).

an associated transmission line may include any proposed terminal or intermediate substations or substation expansions at the applicant's option.⁶

Electrical substations for distribution lines are typically sited as a special use or conditional use through the local government planning and zoning process. The terms "special use" or "conditional use" refer to those land uses that are not permitted outright under a local government's zoning code, but may be approved by the zoning board.

Vegetation Management and Tree Trimming in a Utility Right-of-Way

Based on a compilation of the 2004 Electric Reliability Reports⁷ submitted by the investor-owned electric utilities, 17 percent of all electrical outages are vegetation related, making it second only to equipment failures. Moreover, this statistic does exclude events such as hurricanes and tornados since pursuant to Rule 25-6.0455(2), F.A.C., outages related to these events may be excluded from the report.

In order to avoid tree-related outages, the electric utilities have established vegetation management plans. Depending on the species of tree, the management plan will establish a schedule and an allowable distance for trimming. Vegetation management may also include the removal of nuisance trees, the use of growth retardants, and selective directional trimming to maintain a balanced canopy. There are national standards for tree trimming that have been developed by the International Society of Arboriculture and the National Arborist Association. A primary vegetation management concern is that fast-growing invasive species can make contact with facilities in rights-of-way which may contribute to power outages.

Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Electric utility providers may be subject to these tree ordinances or permit requirements.

Regional Planning Councils' Annual Report

Florida has 11 regional planning councils that serve as a link between the state and local governments that share mutual resources, characteristics, and issues within an area. Each regional planning council includes members from counties and municipalities located in the region's planning district and gubernatorial appointees. Section 186.513, F.S., requires each regional planning council to provide an annual report on its activities to the department⁸ and the local general-purpose governments within its jurisdiction. Interested persons may also obtain a copy of the report for a fee.

Proposed Changes

Section 1.

Electric Substation Siting

The bill creates s. 163.3208, F.S., relating to substation approval process.⁹ The bill provides legislative intent that conveys a correlation between reliability and the construction and maintenance of electrical infrastructure in various locations, in order to ensure efficient and reliable delivery of electric service.

⁶ S. 403.503(12), Fla. Stat. (2005).

⁷ The 2005 reports are due to be filed early March 2006.

⁸ Existing law does not identify to which "department" the regional planning councils are directed to provide their annual report. Historically, the term "department" was identified as the Department of Community Affairs [See s. 160.03(6), F.S. (1980), which revisers changed to s. 160.003, F.S. (See Table of Section Changes By 1980 Legislative Sessions)]. The sections comprising former chapter 160 were transferred to chapter 186 by the editors incident to compiling the 1984 supplement to the Florida Statutes 1983. Then, ch. 84-257, s. 18, L.O.F., deleted s. 186.503(6), F.S., which provided: "'Department' means the department of community affairs."

⁹ Electric utilities use substations to "step-down" voltage so it is usable by end users.

Section 163.3208(2), F.S., clarifies that electrical substations are a critical component of transmission and distribution. Further, local government may enact reasonable land development regulations for setback, landscape buffering, or other aesthetic compatibility standards for electrical substations. The bill provides that vegetation buffer height, beneath aerial access points to substation equipment, may not exceed 14 feet. Within a utility service territory, new substation siting shall be a permissible use in all land use categories in the applicable comprehensive plan and zoning districts. An exception is provided for new substation siting on any future land use map or adopted ordinance designated preservation or conservation. Default standards are provided if a local government has not adopted reasonable standards for substation siting in accordance with applicable adoption procedures as follows:

- *Nonresidential Areas*-the same setback and buffer criteria for similar uses in that district;
- *Residential Areas*-a setback up to 100 feet between the property boundary of the substation and permanent equipment structures must be maintained as follows:
 - *Setbacks between 50 and 100 feet*-landscaped area with native trees and shrub material with a security fence around the equipment, creating open green-space;
 - *Setbacks between 25 and 49 feet*-eight foot buffer wall or eight foot fence with native landscaping installed around the substation;
 - *Setbacks less than 25 feet*-decorative wall or facade at least 10 feet in height with exterior native landscaping installed around the substation.

The bill provides that standards for substation siting adopted after the act's effective date are not applicable to applications that were submitted prior to the local government's notice of adoption hearing.

Pursuant to s. 163.3208(3), F.S., if a local government has adopted substation siting standards within any land use category or zoning district, it shall grant or deny a properly completed application within 60 business days after the application is declared complete¹⁰. This process does not create a situation whereby an applicant can be non-compliant with applicable federal or state laws or rules and applicable local land and development or building rules. If the local government does not grant or deny a properly completed application within the required timeframe, the application is deemed automatically approved, and without penalty or interference, the construction may proceed consistent with the application.

The bill establishes, for administrative purposes only, time frames for determining if an application is complete as follows:

- Local government notifies permit applicant within 30 business days after application is submitted as to proper completeness and proper submission.
- Further determination of completeness shall be provided within 15 days after the receipt of additional information. Such determination is not a conveyance of application approval.

For existing local regulatory land use procedures for conditional use or special exception, that provide for public input, the bill does not prohibit the applicability or enforcement of those procedures in effect as of the act's effective date. However, for land use, conditional use, or special-exception review of an electrical substation, the local government is limited to imposing standards and conditions standards adopted under s. 163.3208(2), and public input may be provided in a workshop or informational format.

Section 2. Electrical Transmission and Distribution Line Right-of-Way Maintenance

Sections 337.401-337.404, F.S., provide that the Department of Transportation and local governmental entities that have jurisdiction and control of public roads or publicly owned rail corridors are authorized

¹⁰ Currently, there are varying timeframes for this process.

to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors, under their respective jurisdictions, any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures hereinafter referred to as the "utility."

The bill creates s. 163.3209, F.S. providing that after a right-of-way for an electrical transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning or trimming within that right-of-way. Currently, the majority of local governments require utilities to obtain a permit every time routine vegetation maintenance is conducted in any established electric utility right-of-way. The bill provides a five day advance notice requirement before conducting vegetation maintenance activities within the right-of-way, with an exception for emergencies or service restoration.

By the bill provisions, local governments have the authority to request a meeting with the utility to discuss and submit the utility's vegetation-maintenance plan, including the utility's trimming specifications and maintenance practices. Section 163.3209, F.S., further requires that vegetation maintenance conform to ANSI¹¹ standards and that vegetation management activities be supervised by qualified utility personnel, licensed contractors under the utility's control or by certified arborists.

Consistent with the height provision in Section 1 of the bill, a local government may not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation in an established right-of-way that achieves a height greater than 14 feet.

None of the provisions in s. 163.3209, F.S., are intended to supersede or nullify the terms of specific franchise agreements between an electric utility and a local government, and may not be construed to limit the franchising authority of a local government. Nor, does this section supersede local government ordinances or rules governing removal of specimen trees, historical trees, or trees within canopy road protection areas.

Section 3. Electrical Substation Planning

The bill creates s. 186.0201, F.S., related to electrical substation planning. The bill clarifies that since electrical substations respond to development; their locations cannot be precisely planned years in advance. However annually on June 1, beginning the year after the effective date of this act, the electrical utilities are to notify the local regional planning councils of their current plans, over a three year period, within the local governments contained in each region. This information is advisory but must be included in the regional planning council's annual report.

Section 4.

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- Section 1. Creates s. 163.3208, F.S., relating to electrical substation approval process.
- Section 2. Creates s. 163.3209, F.S., relating to electrical transmission and distribution line right-of-way maintenance.
- Section 3. Creates s. 186.0201, F.S., relating to electrical substation planning.
- Section 4. Provides and effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill appears to have a minimal fiscal impact on individual local governments due to the loss of tree trimming permit fees paid by electric utilities.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that an electric utility is no longer required to obtain a permit or other approval from local government for vegetation management and tree trimming within an established right-of-way for an electric power line. There may also be some costs to the electric utilities for providing the regional planning councils with their substation siting plans.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

While some municipalities and counties may lose tree trimming permit fees paid by electric utilities, the amount of the permit fees paid to an individual municipality or county is expected to be negligible. Therefore, it appears that this bill likely qualifies for the "laws having an insignificant fiscal impact" exemption in Article VII, Section 18(d) of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 3 of the bill references the annual report of the regional planning councils prepared pursuant to s. 186.513, F.S. Section 186.513, F.S., requires the regional planning councils to submit an annual report to "the department" and the local general purpose governments within its boundaries.

Existing law does not identify to which “department” the regional planning councils are directed to provide their annual report. Historically, the term “department” was identified as the Department of Community Affairs [See s. 160.03(6), F.S. (1980), which revisers changed to s. 160.003, F.S. (See Table of Section Changes By 1980 Legislative Sessions)]. The sections comprising former chapter 160 were transferred to chapter 186 by the editors incident to compiling the 1984 supplement to the Florida Statutes 1983. Then, ch. 84-257, s. 18, L.O.F., deleted s. 186.503(6), F.S., which provided: “‘Department’ means the department of community affairs.”

This matter could be corrected by amending s. 186.513, F.S., to replace the word “department” with “state land planning agency as defined in s. 163.3164(20), F.S.” The state land planning agency is defined as the Department of Community Affairs which is the agency originally defined, and in fact the agency to which the report have historically been submitted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. The strike-all did the following:

- Provides a siting exception for historic preservation and conservation lands;
- Sets minimum setback requirements, if such requirements are not adopted by the local government;
- Provides that siting standards are on a going forward basis;
- Provides a deadline for approving a siting application;
- Provides that the bill does not affect the applicability and enforceability of any existing local regulatory land use procedures for conditional use or special exceptions which provide for public input if such procedures are in effect as of the act’s effective date. However, in land use, conditional use, or special-exception review, the local government is limited to the standards and conditions adopted under s. 163.3208(2), F.S.
- Requires five days notice to local government before an electric utility does vegetation management activities within a right-of-way;
- Provides standards for vegetation maintenance practices;
- Provides that local governments may not adopt ordinances to require planting vegetation on rights-of-way or below aerial access points to substations that will grow in excess of 14 feet;
- Provides side clearance standards;
- Provides that s. 163.3209, F.S., does not supersede current franchise agreements or limit franchise authority;
- Provides that s. 163.3209, F.S., does not supersede ordinances governing the removal of certain trees;
- Requires the electric utilities to file their current plans to site substations with regional planning councils, and that information is to be included in the regional planning council’s annual report.