

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 also 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. Further, the bill provides that electric infrastructure should be constructed, to the maximum extent practicable, to achieve compatibility with adjacent and surrounding land uses.

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) defines the term “distribution electric substation” as an “electrical substation which takes electricity from the transmission grid and converts it to 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.”

Section 163.3208(3), F.S., clarifies that electrical substations are a critical component of electric 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.

Section 163.3208 (4), F.S., provides that 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, conservation or historic preservation. 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 of less than 50 feet*-eight foot buffer wall or eight foot fence with native landscaping installed around the substation;

The bill provides that if a proposed electric substation that is consistent with the local government’s applicable setback, landscaping, buffering, screening and other aesthetic compatibility – based standards, the application shall be approved.

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(7) 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 90 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 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.

¹⁰ Currently, there are varying timeframes for this process.

The bill provides that the timeframes may be waived if voluntarily agreed to by the utility applicant and the utility applicant. The bill further provides that 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. The bill also provides that local government may establish a reasonable timeframe by which the required information to cure an application deficiency must be provided or the application will be considered withdrawn or closed.

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 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. The bill also defines the term “vegetation maintenance and tree pruning or trimming” as the “mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the 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 an advance notice requirement of five business days before conducting vegetation maintenance activities within the right-of-way. An exception applies for emergencies, service restoration, avoidance of imminent vegetation caused outage, or when performed that the request of the property owner adjacent to the right-of-way, provided that the owner has approval of the local government, if needed.

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-or-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.

Further, none of the provisions of s. 163.3209, F.S., shall apply if a local government has adopted a written plan, with concurrence from the applicable utility provider, specifically for vegetation maintenance, tree pruning, tree removal, and tree trimming within established rights-of-way.

Section 3.

Electrical Substation Planning

¹¹ American National Standards Institute

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 five year period, within the local governments contained in each region. This notification shall include an identification of whether each electric substation planned within a general area is a distribution or transmission electric substation, a listing of the proposed substations' site acreage needs and anticipated capacity, and maps showing general locations of the planned electric substations. This information is advisory but must be included in the regional planning council's annual report, and will be supplied directly to local governments requesting the information.

Section 4.

This provides that nothing in this act is intended to supersede the provision of Chapter 403, Part II (**ELECTRICAL POWER PLANT AND TRANSMISSION LINE SITING**).

Section 5.

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."

The bill amends 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.

Section 6.

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:

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.

On March 14, 2006, the Growth Management Committee adopted a strike-all amendment. The strike-all does the following:

- Provides a definition of "distribution electric substation."
- Adds historical preservation land use classifications to the area excluded from the application of this bill.
- Provides new timeframes to be set by local governments with respect to the provision of additional information on the substation siting application.
- Provides a definition for "vegetation maintenance and tree pruning or trimming."
- Clarifies the notification requirements for vegetation maintenance.
- Limits the maintenance activities that can impact specimens or historical trees or trees located in a canopy road protection area.
- Authorizes local governments to adopt a written maintenance plan for vegetation located within its rights-of-way with the concurrence from the applicable utility provider.
- Authorizes local governments to request a copy of electrical utilities' annual substation siting plans, which were previously forwarded only to regional planning councils.
- Corrects a reference to the state land planning agency.