



486704

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/12/2022	.	
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The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 57.112, Florida Statutes, is amended to
read:

57.112 Attorney fees and costs and damages; preempted local
actions.—

(1) As used in this section, the term "attorney fees and
costs" means the reasonable and necessary attorney fees and



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11 costs incurred for all preparations, motions, hearings, trials,
12 and appeals in a proceeding.

13 (2) If a civil action is filed against a local government
14 to challenge the adoption or enforcement of a local ordinance on
15 the grounds that it is expressly preempted by the State
16 Constitution or by state law, the court shall assess and award
17 reasonable attorney fees and costs and damages to the prevailing
18 party.

19 (3) If a civil action is filed against a local government
20 to challenge the adoption of a local ordinance on the grounds
21 that the ordinance is arbitrary or unreasonable, the court may
22 assess and award reasonable attorney fees and costs and damages
23 to the complainant if successful. An award of reasonable
24 attorney fees or costs and damages pursuant to this subsection
25 may not exceed \$50,000. In addition, a prevailing party may not
26 recover any attorney fees or costs directly incurred or
27 associated with litigation to determine an award of reasonable
28 attorney fees or costs.

29 (4) Attorney fees and costs may not be awarded pursuant to
30 this section if:

31 (a) The governing body of a local governmental entity
32 receives written notice that an ordinance that has been publicly
33 noticed or adopted is expressly preempted by the State
34 Constitution or state law or is arbitrary or unreasonable; and

35 (b) The governing body of the local governmental entity
36 withdraws the proposed ordinance within 30 days; or, in the case
37 of an adopted ordinance, the governing body of a local
38 government notices an intent to repeal the ordinance within 30
39 days of receipt of the notice and repeals the ordinance within



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40 30 days thereafter.

41 (5)~~(4)~~ The provisions in this section are supplemental to
42 all other sanctions or remedies available under law or court
43 rule. However, this section may not be construed to authorize
44 double recovery if an affected person prevails on a damages
45 claim brought against a local government pursuant to other
46 applicable law involving the same ordinance, operative acts, or
47 transactions.

48 (6)~~(5)~~ This section does not apply to local ordinances
49 adopted pursuant to part II of chapter 163, s. 553.73, or s.
50 633.202.

51 (7) (a)~~(6)~~ Except as provided in paragraph (b), this section
52 is intended to be prospective in nature and applies ~~shall apply~~
53 only to cases commenced on or after July 1, 2019.

54 (b) The amendments to this section effective October 1,
55 2022, are prospective in nature and apply only to ordinances
56 adopted on or after October 1, 2022.

57 Section 2. Present subsections (3) through (6) of section
58 125.66, Florida Statutes, are redesignated as subsections (4)
59 through (7), respectively, a new subsection (3) is added to that
60 section, and paragraph (a) of subsection (2) of that section is
61 amended, to read:

62 125.66 Ordinances; enactment procedure; emergency
63 ordinances; rezoning or change of land use ordinances or
64 resolutions.-

65 (2) (a) The regular enactment procedure shall be as follows:
66 The board of county commissioners at any regular or special
67 meeting may enact or amend any ordinance, except as provided in
68 subsection (5) ~~(4)~~, if notice of intent to consider such



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69 ordinance is given at least 10 days before such meeting by
70 publication as provided in chapter 50. A copy of such notice
71 shall be kept available for public inspection during the regular
72 business hours of the office of the clerk of the board of county
73 commissioners. The notice of proposed enactment shall state the
74 date, time, and place of the meeting; the title or titles of
75 proposed ordinances; and the place or places within the county
76 where such proposed ordinances may be inspected by the public.
77 The notice shall also advise that interested parties may appear
78 at the meeting and be heard with respect to the proposed
79 ordinance.

80 (3) (a) Before the enactment of a proposed ordinance, the
81 board of county commissioners shall prepare a business impact
82 estimate in accordance with this subsection. The business impact
83 estimate must be posted on the county's website on the same day
84 the notice of proposed enactment is published pursuant to
85 paragraph (2) (a) and must include all of the following:

86 1. A summary of the proposed ordinance, including a
87 statement of the public purpose to be served by the proposed
88 ordinance, such as serving the public health, safety, morals,
89 and welfare of the county.

90 2. An estimate of the direct economic impact of the
91 proposed ordinance on private for-profit businesses in the
92 county, including the following, if any:

93 a. An estimate of direct compliance costs businesses may
94 reasonably incur if the ordinance is enacted.

95 b. Identification of any new charge or fee on businesses
96 subject to the proposed ordinance, or for which businesses will
97 be financially responsible.



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98 c. An estimate of the county's regulatory costs, including
99 an estimate of revenues from any new charges or fees that will
100 be imposed on businesses to cover such costs.

101 3. A good faith estimate of the number of businesses likely
102 to be impacted by the ordinance.

103 4. Any additional information the board determines may be
104 useful.

105 (b) This subsection may not be construed to require a
106 county to procure an accountant or other financial consultant to
107 prepare the business impact estimate required by this
108 subsection.

109 (c) This subsection does not apply to an emergency
110 ordinance enacted pursuant to this section.

111 Section 3. Section 125.675, Florida Statutes, is created to
112 read:

113 125.675 Legal challenges to certain recently enacted
114 ordinances.-

115 (1) A county must suspend enforcement of an ordinance that
116 is the subject of an action, including appeals, challenging the
117 ordinance's validity on the grounds that it is expressly
118 preempted by the State Constitution or by state law or is
119 arbitrary or unreasonable, if:

120 (a) The action was filed with the court no later than 90
121 days after the adoption of the ordinance;

122 (b) The complainant requests suspension in the initial
123 complaint or petition, citing this section; and

124 (c) The county has been served with a copy of the complaint
125 or petition.

126 (2) In order to request the suspension of a challenged



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127 ordinance, the complainant must have submitted, before the
128 enactment of the challenged ordinance, verbal or written
129 comments, recommendations, or objections to the county about the
130 proposed ordinance at any workshop or public hearing held by the
131 county or by certified mail or e-mail to the person designated
132 by the county to receive such comments, recommendations, or
133 objections.

134 (3) The court shall give cases in which the enforcement of
135 an ordinance is suspended under this section priority over other
136 pending cases and shall render a preliminary or final decision
137 on the validity of the ordinance as expeditiously as possible.

138 (4) In determining whether an ordinance is arbitrary or
139 unreasonable, the court shall consider, but is not limited to,
140 the following factors:

141 (a) The extent to which the ordinance protects the health,
142 welfare, safety, and quality of life of the residents of the
143 county;

144 (b) The impact of the ordinance on the personal rights and
145 privileges of the residents of the county;

146 (c) The total economic impact of the ordinance; and

147 (d) The business impact estimate prepared by the county as
148 required by s. 125.66(3).

149 (5) This section does not apply to local ordinances enacted
150 to implement the following:

151 (a) Part II of chapter 163;

152 (b) Section 553.73;

153 (c) Section 633.202;

154 (d) Ordinances required to comply with federal or state law
155 or regulation;



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156 (e) Ordinances related to the issuance or refinancing of
157 debt;

158 (f) Ordinances related to the adoption of budgets or budget
159 amendments; or

160 (g) Ordinances required to implement a contract or an
161 agreement, including, but not limited to, any federal, state,
162 local, or private grant, or other financial assistance accepted
163 by a county government.

164 (6) The court may award attorney fees and costs as provided
165 in s. 57.112.

166 Section 4. Present subsections (4) through (8) of section
167 166.041, Florida Statutes, are redesignated as subsections (5)
168 through (9), respectively, and a new subsection (4) is added to
169 that section, to read:

170 166.041 Procedures for adoption of ordinances and
171 resolutions.—

172 (4) (a) Before the enactment of a proposed ordinance, the
173 governing body of a municipality shall prepare a business impact
174 estimate in accordance with this subsection. The business impact
175 estimate must be posted on the municipality's website on the
176 same day the notice of proposed enactment is published pursuant
177 to paragraph (3) (a) and must include all of the following:

178 1. A summary of the proposed ordinance, including a
179 statement of the public purpose to be served by the proposed
180 ordinance, such as serving the public health, safety, morals,
181 and welfare of the municipality.

182 2. An estimate of the direct economic impact of the
183 proposed ordinance on private for-profit businesses in the
184 municipality, including the following, if any:



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185 a. An estimate of direct compliance costs businesses may
186 reasonably incur if the ordinance is enacted.

187 b. Identification of any new charge or fee on businesses
188 subject to the proposed ordinance, or for which businesses will
189 be financially responsible; and

190 c. An estimate of the municipality's regulatory costs,
191 including an estimate of revenues from any new charges or fees
192 that will be imposed on businesses to cover such costs.

193 3. A good faith estimate of the number of businesses likely
194 to be impacted by the ordinance.

195 4. Any additional information the governing body determines
196 may be useful.

197 (b) This subsection may not be construed to require a
198 municipality to procure an accountant or other financial
199 consultant to prepare the business impact estimate required by
200 this subsection.

201 (c) This subsection does not apply to an emergency
202 ordinance enacted pursuant to this section.

203 Section 5. Section 166.0411, Florida Statutes, is created
204 to read:

205 166.0411 Legal challenges to certain recently enacted
206 ordinances.—

207 (1) A municipality must suspend enforcement of an ordinance
208 that is the subject of an action, including appeals, challenging
209 the ordinance's validity on the grounds that it is expressly
210 preempted by the State Constitution or by state law or is
211 arbitrary or unreasonable, if:

212 (a) The action was filed with the court no later than 90
213 days after the adoption of the ordinance;



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214 (b) The complainant requests suspension in the initial
215 complaint or petition, citing this section; and

216 (c) The municipality has been served with a copy of the
217 complaint or petition.

218 (2) In order to request the suspension of a challenged
219 ordinance, the complainant must have submitted, before the
220 enactment of the challenged ordinance, verbal or written
221 comments, recommendations, or objections to the municipality
222 about the proposed ordinance at any workshop or public hearing
223 held by the municipality or by certified mail or e-mail to the
224 person designated by the municipality to receive such comments,
225 recommendations, or objections.

226 (3) The court shall give cases in which the enforcement of
227 an ordinance is suspended under this section priority over other
228 pending cases and shall render a preliminary or final decision
229 on the validity of the ordinance as expeditiously as possible.

230 (4) In determining whether an ordinance is arbitrary or
231 unreasonable, the court shall consider, but is not limited to,
232 the following factors:

233 (a) The extent to which the ordinance protects the health,
234 welfare, safety, and quality of life of the residents of the
235 municipality;

236 (b) The impact of the ordinance on the personal rights and
237 privileges of the residents of the municipality;

238 (c) The total economic impact of the ordinance; and

239 (d) The business impact estimate prepared by the
240 municipality as required by s. 166.041(4).

241 (5) This section does not apply to local ordinances enacted
242 to implement the following:



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- 243 (a) Part II of chapter 163;
244 (b) Section 553.73;
245 (c) Section 633.202;
246 (d) Ordinances required to comply with federal or state law
247 or regulation;
248 (e) Ordinances related to the issuance or refinancing of
249 debt;
250 (f) Ordinances related to the adoption of budgets or budget
251 amendments; or
252 (g) Ordinances required to implement a contract or
253 agreement, including, but not limited to, any federal, state,
254 local, or private grant, or other financial assistance accepted
255 by a municipal government.
256 (6) The court may award attorney fees and costs as provided
257 in s. 57.112.

258 Section 6. Subsection (5) of section 163.2517, Florida
259 Statutes, is amended to read:

260 163.2517 Designation of urban infill and redevelopment
261 area.-

262 (5) After the preparation of an urban infill and
263 redevelopment plan or designation of an existing plan, the local
264 government shall adopt the plan by ordinance. Notice for the
265 public hearing on the ordinance must be in the form established
266 in s. 166.041(3)(c)2. for municipalities, and s. 125.66(5)(b)2.
267 ~~s. 125.66(4)(b)2.~~ for counties.

268 Section 7. Paragraph (a) of subsection (3) of section
269 163.3181, Florida Statutes, is amended to read:

270 163.3181 Public participation in the comprehensive planning
271 process; intent; alternative dispute resolution.-



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272 (3) A local government considering undertaking a publicly
273 financed capital improvement project may elect to use the
274 procedures set forth in this subsection for the purpose of
275 allowing public participation in the decision and resolution of
276 disputes. For purposes of this subsection, a publicly financed
277 capital improvement project is a physical structure or
278 structures, the funding for construction, operation, and
279 maintenance of which is financed entirely from public funds.

280 (a) Prior to the date of a public hearing on the decision
281 on whether to proceed with the proposed project, the local
282 government shall publish public notice of its intent to decide
283 the issue according to the notice procedures described by s.
284 125.66(5)(b)2. ~~s. 125.66(4)(b)2.~~ for a county or s.
285 166.041(3)(c)2.b. for a municipality.

286 Section 8. Paragraph (a) of subsection (4) of section
287 163.3215, Florida Statutes, is amended to read:

288 163.3215 Standing to enforce local comprehensive plans
289 through development orders.-

290 (4) If a local government elects to adopt or has adopted an
291 ordinance establishing, at a minimum, the requirements listed in
292 this subsection, the sole method by which an aggrieved and
293 adversely affected party may challenge any decision of local
294 government granting or denying an application for a development
295 order, as defined in s. 163.3164, which materially alters the
296 use or density or intensity of use on a particular piece of
297 property, on the basis that it is not consistent with the
298 comprehensive plan adopted under this part, is by an appeal
299 filed by a petition for writ of certiorari filed in circuit
300 court no later than 30 days following rendition of a development



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301 order or other written decision of the local government, or when
302 all local administrative appeals, if any, are exhausted,
303 whichever occurs later. An action for injunctive or other relief
304 may be joined with the petition for certiorari. Principles of
305 judicial or administrative res judicata and collateral estoppel
306 apply to these proceedings. Minimum components of the local
307 process are as follows:

308 (a) The local process must make provision for notice of an
309 application for a development order that materially alters the
310 use or density or intensity of use on a particular piece of
311 property, including notice by publication or mailed notice
312 consistent with the provisions of ss. 125.66(5)(b)2. and 3. and
313 166.041(3)(c)2.b. and c. ~~ss. 125.66(4)(b)2. and 3. and~~
314 ~~166.041(3)(c)2.b. and c.~~, and must require prominent posting at
315 the job site. The notice must be given within 10 days after the
316 filing of an application for a development order; however,
317 notice under this subsection is not required for an application
318 for a building permit or any other official action of local
319 government which does not materially alter the use or density or
320 intensity of use on a particular piece of property. The notice
321 must clearly delineate that an aggrieved or adversely affected
322 person has the right to request a quasi-judicial hearing before
323 the local government for which the application is made, must
324 explain the conditions precedent to the appeal of any
325 development order ultimately rendered upon the application, and
326 must specify the location where written procedures can be
327 obtained that describe the process, including how to initiate
328 the quasi-judicial process, the timeframes for initiating the
329 process, and the location of the hearing. The process may



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330 include an opportunity for an alternative dispute resolution.

331 Section 9. Paragraph (c) of subsection (1) of section
332 376.80, Florida Statutes, is amended to read:

333 376.80 Brownfield program administration process.—

334 (1) The following general procedures apply to brownfield
335 designations:

336 (c) Except as otherwise provided, the following provisions
337 apply to all proposed brownfield area designations:

338 1. Notification to department following adoption.—A local
339 government with jurisdiction over the brownfield area must
340 notify the department, and, if applicable, the local pollution
341 control program under s. 403.182, of its decision to designate a
342 brownfield area for rehabilitation for the purposes of ss.
343 376.77–376.86. The notification must include a resolution
344 adopted by the local government body. The local government shall
345 notify the department, and, if applicable, the local pollution
346 control program under s. 403.182, of the designation within 30
347 days after adoption of the resolution.

348 2. Resolution adoption.—The brownfield area designation
349 must be carried out by a resolution adopted by the
350 jurisdictional local government, which includes a map adequate
351 to clearly delineate exactly which parcels are to be included in
352 the brownfield area or alternatively a less-detailed map
353 accompanied by a detailed legal description of the brownfield
354 area. For municipalities, the governing body shall adopt the
355 resolution in accordance with the procedures outlined in s.
356 166.041, except that the procedures for the public hearings on
357 the proposed resolution must be in the form established in s.
358 166.041(3)(c)2. For counties, the governing body shall adopt the



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359 resolution in accordance with the procedures outlined in s.
360 125.66, except that the procedures for the public hearings on
361 the proposed resolution shall be in the form established in s.
362 125.66(5)(b) ~~s. 125.66(4)(b)~~.

363 3. Right to be removed from proposed brownfield area.—If a
364 property owner within the area proposed for designation by the
365 local government requests in writing to have his or her property
366 removed from the proposed designation, the local government
367 shall grant the request.

368 4. Notice and public hearing requirements for designation
369 of a proposed brownfield area outside a redevelopment area or by
370 a nongovernmental entity. Compliance with the following
371 provisions is required before designation of a proposed
372 brownfield area under paragraph (2)(a) or paragraph (2)(c):

373 a. At least one of the required public hearings shall be
374 conducted as closely as is reasonably practicable to the area to
375 be designated to provide an opportunity for public input on the
376 size of the area, the objectives for rehabilitation, job
377 opportunities and economic developments anticipated,
378 neighborhood residents' considerations, and other relevant local
379 concerns.

380 b. Notice of a public hearing must be made in a newspaper
381 of general circulation in the area, must be made in ethnic
382 newspapers or local community bulletins, must be posted in the
383 affected area, and must be announced at a scheduled meeting of
384 the local governing body before the actual public hearing.

385 Section 10. Paragraph (a) of subsection (3) of section
386 497.270, Florida Statutes, is amended to read:

387 497.270 Minimum acreage; sale or disposition of cemetery



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388 lands.-

389 (3) (a) If the property to be sold, conveyed, or disposed of
390 under subsection (2) has been or is being used for the permanent
391 interment of human remains, the applicant for approval of such
392 sale, conveyance, or disposition shall cause to be published, at
393 least once a week for 4 consecutive weeks, a notice meeting the
394 standards of publication set forth in s. 125.66(5)(b)2. ~~s.~~
395 ~~125.66(4)(b)2.~~ The notice shall describe the property in
396 question and the proposed noncemetery use and shall advise
397 substantially affected persons that they may file a written
398 request for a hearing pursuant to chapter 120, within 14 days
399 after the date of last publication of the notice, with the
400 department if they object to granting the applicant's request to
401 sell, convey, or dispose of the subject property for noncemetery
402 uses.

403 Section 11. Paragraph (a) of subsection (2) of section
404 562.45, Florida Statutes, is amended to read:

405 562.45 Penalties for violating Beverage Law; local
406 ordinances; prohibiting regulation of certain activities or
407 business transactions; requiring nondiscriminatory treatment;
408 providing exceptions.-

409 (2) (a) Nothing contained in the Beverage Law shall be
410 construed to affect or impair the power or right of any county
411 or incorporated municipality of the state to enact ordinances
412 regulating the hours of business and location of place of
413 business, and prescribing sanitary regulations therefor, of any
414 licensee under the Beverage Law within the county or corporate
415 limits of such municipality. However, except for premises
416 licensed on or before July 1, 1999, and except for locations



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417 that are licensed as restaurants, which derive at least 51
418 percent of their gross revenues from the sale of food and
419 nonalcoholic beverages, pursuant to chapter 509, a location for
420 on-premises consumption of alcoholic beverages may not be
421 located within 500 feet of the real property that comprises a
422 public or private elementary school, middle school, or secondary
423 school unless the county or municipality approves the location
424 as promoting the public health, safety, and general welfare of
425 the community under proceedings as provided in s. 125.66(5) ~~s.~~
426 ~~125.66(4)~~, for counties, and s. 166.041(3)(c), for
427 municipalities. This restriction shall not, however, be
428 construed to prohibit the issuance of temporary permits to
429 certain nonprofit organizations as provided for in s. 561.422.
430 The division may not issue a change in the series of a license
431 or approve a change of a licensee's location unless the licensee
432 provides documentation of proper zoning from the appropriate
433 county or municipal zoning authorities.

434 Section 12. Subsection (1) of section 847.0134, Florida
435 Statutes, is amended to read:

436 847.0134 Prohibition of adult entertainment establishment
437 that displays, sells, or distributes materials harmful to minors
438 within 2,500 feet of a school.—

439 (1) Except for those establishments that are legally
440 operating or have been granted a permit from a local government
441 to operate as adult entertainment establishments on or before
442 July 1, 2001, an adult entertainment establishment that sells,
443 rents, loans, distributes, transmits, shows, or exhibits any
444 obscene material, as described in s. 847.0133, or presents live
445 entertainment or a motion picture, slide, or other exhibit that,



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446 in whole or in part, depicts nudity, sexual conduct, sexual
447 excitement, sexual battery, sexual bestiality, or
448 sadomasochistic abuse and that is harmful to minors, as
449 described in s. 847.001, may not be located within 2,500 feet of
450 the real property that comprises a public or private elementary
451 school, middle school, or secondary school unless the county or
452 municipality approves the location under proceedings as provided
453 in s. 125.66(5) ~~s. 125.66(4)~~ for counties or s. 166.041(3)(c)
454 for municipalities.

455 Section 13. The Legislature finds and declares that this
456 act fulfills an important state interest.

457 Section 14. This act shall take effect October 1, 2022.

458
459 ===== T I T L E A M E N D M E N T =====

460 And the title is amended as follows:

461 Delete everything before the enacting clause
462 and insert:

463 A bill to be entitled
464 An act relating to local ordinances; amending s.
465 57.112, F.S.; authorizing courts to assess and award
466 attorney fees and costs and damages in certain civil
467 actions filed against local governments; specifying a
468 limitation on awards and a restriction; providing
469 construction and applicability; amending s. 125.66,
470 F.S.; requiring a board of county commissioners to
471 prepare a business impact estimate before the
472 enactment of a proposed ordinance; specifying
473 requirements for the posting and content of the
474 estimate; providing construction and applicability;



475 creating s. 125.675, F.S.; requiring a county to
476 suspend enforcement of an ordinance that is the
477 subject of a certain legal action if certain
478 conditions are met; specifying a precondition for the
479 suspension of an ordinance to be requested; requiring
480 courts to give priority to certain cases; specifying
481 factors a court must consider in determining whether
482 an ordinance is arbitrary or unreasonable; providing
483 applicability; authorizing courts to award attorney
484 fees and costs under certain circumstances; amending
485 s. 166.041, F.S.; requiring a governing body of a
486 municipality to prepare a business impact estimate
487 before the enactment of a proposed ordinance;
488 specifying requirements for the posting and content of
489 the estimate; providing construction and
490 applicability; creating s. 166.0411, F.S.; requiring a
491 municipality to suspend enforcement of an ordinance
492 that is the subject of a certain legal action if
493 certain conditions are met; specifying a precondition
494 for the suspension of an ordinance to be requested;
495 requiring courts to give priority to certain cases;
496 specifying factors a court must consider in
497 determining whether an ordinance is arbitrary or
498 unreasonable; providing applicability; authorizing
499 courts to award attorney fees and costs under certain
500 circumstances; amending ss. 163.2517, 163.3181,
501 163.3215, 376.80, 497.270, 562.45, and 847.0134, F.S.;
502 conforming cross-references; providing a declaration
503 of important state interest; providing an effective



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504

date.