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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
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) The court shall give cases in which the enforcement of



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127 an ordinance is suspended under this section priority over other
128 pending cases and shall render a preliminary or final decision
129 on the validity of the ordinance as expeditiously as possible.

130 (3) In determining whether an ordinance is arbitrary or
131 unreasonable, the court shall consider, but is not limited to,
132 the following factors:

133 (a) The extent to which the ordinance protects the health,
134 welfare, safety, and quality of life of the residents of the
135 county;

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

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

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

141 (4) This section does not apply to local ordinances enacted
142 to implement the following:

143 (a) Part II of chapter 163;

144 (b) Section 553.73;

145 (c) Section 633.202;

146 (d) Ordinances required to comply with federal or state law
147 or regulation;

148 (e) Ordinances related to the issuance or refinancing of
149 debt;

150 (f) Ordinances related to the adoption of budgets or budget
151 amendments; or

152 (g) Ordinances required to implement a contract or an
153 agreement, including, but not limited to, any federal, state,
154 local, or private grant, or other financial assistance accepted
155 by a county government.



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156 (5) The court may award attorney fees and costs as provided
157 in s. 57.112.

158 Section 4. Present subsections (4) through (8) of section
159 166.041, Florida Statutes, are redesignated as subsections (5)
160 through (9), respectively, and a new subsection (4) is added to
161 that section, to read:

162 166.041 Procedures for adoption of ordinances and
163 resolutions.—

164 (4) (a) Before the enactment of a proposed ordinance, the
165 governing body of a municipality shall prepare a business impact
166 estimate in accordance with this subsection. The business impact
167 estimate must be posted on the municipality's website on the
168 same day the notice of proposed enactment is published pursuant
169 to paragraph (3) (a) and must include all of the following:

170 1. A summary of the proposed ordinance, including a
171 statement of the public purpose to be served by the proposed
172 ordinance, such as serving the public health, safety, morals,
173 and welfare of the municipality.

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

177 a. An estimate of direct compliance costs businesses may
178 reasonably incur if the ordinance is enacted;

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

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



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

187 4. Any additional information the governing body determines
188 may be useful.

189 (b) This subsection may not be construed to require a
190 municipality to procure an accountant or other financial
191 consultant to prepare the business impact estimate required by
192 this subsection.

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

195 Section 5. Section 166.0411, Florida Statutes, is created
196 to read:

197 166.0411 Legal challenges to certain recently enacted
198 ordinances.—

199 (1) A municipality must suspend enforcement of an ordinance
200 that is the subject of an action, including appeals, challenging
201 the ordinance's validity on the grounds that it is expressly
202 preempted by the State Constitution or by state law or is
203 arbitrary or unreasonable if:

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

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

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

210 (2) The court shall give cases in which the enforcement of
211 an ordinance is suspended under this section priority over other
212 pending cases and shall render a preliminary or final decision
213 on the validity of the ordinance as expeditiously as possible.



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214 (3) In determining whether an ordinance is arbitrary or
215 unreasonable, the court shall consider, but is not limited to,
216 the following factors:

217 (a) The extent to which the ordinance protects the health,
218 welfare, safety, and quality of life of the residents of the
219 municipality;

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

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

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

225 (4) This section does not apply to local ordinances enacted
226 to implement the following:

227 (a) Part II of chapter 163;

228 (b) Section 553.73;

229 (c) Section 633.202;

230 (d) Ordinances required to comply with federal or state law
231 or regulation;

232 (e) Ordinances related to the issuance or refinancing of
233 debt;

234 (f) Ordinances related to the adoption of budgets or budget
235 amendments; or

236 (g) Ordinances required to implement a contract or
237 agreement, including, but not limited to, any federal, state,
238 local, or private grant, or other financial assistance accepted
239 by a municipal government.

240 (5) The court may award attorney fees and costs as provided
241 in s. 57.112.

242 Section 6. Subsection (5) of section 163.2517, Florida



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243 Statutes, is amended to read:

244 163.2517 Designation of urban infill and redevelopment
245 area.—

246 (5) After the preparation of an urban infill and
247 redevelopment plan or designation of an existing plan, the local
248 government shall adopt the plan by ordinance. Notice for the
249 public hearing on the ordinance must be in the form established
250 in s. 166.041(3)(c)2. for municipalities, and s. 125.66(5)(b)2.
251 ~~s. 125.66(4)(b)2.~~ for counties.

252 Section 7. Paragraph (a) of subsection (3) of section
253 163.3181, Florida Statutes, is amended to read:

254 163.3181 Public participation in the comprehensive planning
255 process; intent; alternative dispute resolution.—

256 (3) A local government considering undertaking a publicly
257 financed capital improvement project may elect to use the
258 procedures set forth in this subsection for the purpose of
259 allowing public participation in the decision and resolution of
260 disputes. For purposes of this subsection, a publicly financed
261 capital improvement project is a physical structure or
262 structures, the funding for construction, operation, and
263 maintenance of which is financed entirely from public funds.

264 (a) Prior to the date of a public hearing on the decision
265 on whether to proceed with the proposed project, the local
266 government shall publish public notice of its intent to decide
267 the issue according to the notice procedures described by s.
268 125.66(5)(b)2. ~~s. 125.66(4)(b)2.~~ for a county or s.
269 166.041(3)(c)2.b. for a municipality.

270 Section 8. Paragraph (a) of subsection (4) of section
271 163.3215, Florida Statutes, is amended to read:



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272 163.3215 Standing to enforce local comprehensive plans
273 through development orders.—

274 (4) If a local government elects to adopt or has adopted an
275 ordinance establishing, at a minimum, the requirements listed in
276 this subsection, the sole method by which an aggrieved and
277 adversely affected party may challenge any decision of local
278 government granting or denying an application for a development
279 order, as defined in s. 163.3164, which materially alters the
280 use or density or intensity of use on a particular piece of
281 property, on the basis that it is not consistent with the
282 comprehensive plan adopted under this part, is by an appeal
283 filed by a petition for writ of certiorari filed in circuit
284 court no later than 30 days following rendition of a development
285 order or other written decision of the local government, or when
286 all local administrative appeals, if any, are exhausted,
287 whichever occurs later. An action for injunctive or other relief
288 may be joined with the petition for certiorari. Principles of
289 judicial or administrative res judicata and collateral estoppel
290 apply to these proceedings. Minimum components of the local
291 process are as follows:

292 (a) The local process must make provision for notice of an
293 application for a development order that materially alters the
294 use or density or intensity of use on a particular piece of
295 property, including notice by publication or mailed notice
296 consistent with the provisions of ss. 125.66(5)(b)2. and 3. and
297 166.041(3)(c)2.b. and c. ~~ss. 125.66(4)(b)2. and 3. and~~
298 166.041(3)(c)2.b. and c., and must require prominent posting at
299 the job site. The notice must be given within 10 days after the
300 filing of an application for a development order; however,



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301 notice under this subsection is not required for an application
302 for a building permit or any other official action of local
303 government which does not materially alter the use or density or
304 intensity of use on a particular piece of property. The notice
305 must clearly delineate that an aggrieved or adversely affected
306 person has the right to request a quasi-judicial hearing before
307 the local government for which the application is made, must
308 explain the conditions precedent to the appeal of any
309 development order ultimately rendered upon the application, and
310 must specify the location where written procedures can be
311 obtained that describe the process, including how to initiate
312 the quasi-judicial process, the timeframes for initiating the
313 process, and the location of the hearing. The process may
314 include an opportunity for an alternative dispute resolution.

315 Section 9. Paragraph (c) of subsection (1) of section
316 376.80, Florida Statutes, is amended to read:

317 376.80 Brownfield program administration process.—

318 (1) The following general procedures apply to brownfield
319 designations:

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

322 1. Notification to department following adoption.—A local
323 government with jurisdiction over the brownfield area must
324 notify the department, and, if applicable, the local pollution
325 control program under s. 403.182, of its decision to designate a
326 brownfield area for rehabilitation for the purposes of ss.
327 376.77–376.86. The notification must include a resolution
328 adopted by the local government body. The local government shall
329 notify the department, and, if applicable, the local pollution



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330 control program under s. 403.182, of the designation within 30
331 days after adoption of the resolution.

332 2. Resolution adoption.—The brownfield area designation
333 must be carried out by a resolution adopted by the
334 jurisdictional local government, which includes a map adequate
335 to clearly delineate exactly which parcels are to be included in
336 the brownfield area or alternatively a less-detailed map
337 accompanied by a detailed legal description of the brownfield
338 area. For municipalities, the governing body shall adopt the
339 resolution in accordance with the procedures outlined in s.
340 166.041, except that the procedures for the public hearings on
341 the proposed resolution must be in the form established in s.
342 166.041(3)(c)2. For counties, the governing body shall adopt the
343 resolution in accordance with the procedures outlined in s.
344 125.66, except that the procedures for the public hearings on
345 the proposed resolution shall be in the form established in s.
346 125.66(5)(b) ~~s. 125.66(4)(b)~~.

347 3. Right to be removed from proposed brownfield area.—If a
348 property owner within the area proposed for designation by the
349 local government requests in writing to have his or her property
350 removed from the proposed designation, the local government
351 shall grant the request.

352 4. Notice and public hearing requirements for designation
353 of a proposed brownfield area outside a redevelopment area or by
354 a nongovernmental entity. Compliance with the following
355 provisions is required before designation of a proposed
356 brownfield area under paragraph (2)(a) or paragraph (2)(c):

357 a. At least one of the required public hearings shall be
358 conducted as closely as is reasonably practicable to the area to



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359 be designated to provide an opportunity for public input on the
360 size of the area, the objectives for rehabilitation, job
361 opportunities and economic developments anticipated,
362 neighborhood residents' considerations, and other relevant local
363 concerns.

364 b. Notice of a public hearing must be made in a newspaper
365 of general circulation in the area, must be made in ethnic
366 newspapers or local community bulletins, must be posted in the
367 affected area, and must be announced at a scheduled meeting of
368 the local governing body before the actual public hearing.

369 Section 10. Paragraph (a) of subsection (3) of section
370 497.270, Florida Statutes, is amended to read:

371 497.270 Minimum acreage; sale or disposition of cemetery
372 lands.—

373 (3) (a) If the property to be sold, conveyed, or disposed of
374 under subsection (2) has been or is being used for the permanent
375 interment of human remains, the applicant for approval of such
376 sale, conveyance, or disposition shall cause to be published, at
377 least once a week for 4 consecutive weeks, a notice meeting the
378 standards of publication set forth in s. 125.66(5)(b)2. ~~s.~~
379 ~~125.66(4)(b)2.~~ The notice shall describe the property in
380 question and the proposed noncemetery use and shall advise
381 substantially affected persons that they may file a written
382 request for a hearing pursuant to chapter 120, within 14 days
383 after the date of last publication of the notice, with the
384 department if they object to granting the applicant's request to
385 sell, convey, or dispose of the subject property for noncemetery
386 uses.

387 Section 11. Paragraph (a) of subsection (2) of section



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388 562.45, Florida Statutes, is amended to read:

389 562.45 Penalties for violating Beverage Law; local
390 ordinances; prohibiting regulation of certain activities or
391 business transactions; requiring nondiscriminatory treatment;
392 providing exceptions.—

393 (2) (a) Nothing contained in the Beverage Law shall be
394 construed to affect or impair the power or right of any county
395 or incorporated municipality of the state to enact ordinances
396 regulating the hours of business and location of place of
397 business, and prescribing sanitary regulations therefor, of any
398 licensee under the Beverage Law within the county or corporate
399 limits of such municipality. However, except for premises
400 licensed on or before July 1, 1999, and except for locations
401 that are licensed as restaurants, which derive at least 51
402 percent of their gross revenues from the sale of food and
403 nonalcoholic beverages, pursuant to chapter 509, a location for
404 on-premises consumption of alcoholic beverages may not be
405 located within 500 feet of the real property that comprises a
406 public or private elementary school, middle school, or secondary
407 school unless the county or municipality approves the location
408 as promoting the public health, safety, and general welfare of
409 the community under proceedings as provided in s. 125.66(5) ~~s.~~
410 ~~125.66(4)~~, for counties, and s. 166.041(3)(c), for
411 municipalities. This restriction shall not, however, be
412 construed to prohibit the issuance of temporary permits to
413 certain nonprofit organizations as provided for in s. 561.422.
414 The division may not issue a change in the series of a license
415 or approve a change of a licensee's location unless the licensee
416 provides documentation of proper zoning from the appropriate



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417 county or municipal zoning authorities.

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

420 847.0134 Prohibition of adult entertainment establishment
421 that displays, sells, or distributes materials harmful to minors
422 within 2,500 feet of a school.—

423 (1) Except for those establishments that are legally
424 operating or have been granted a permit from a local government
425 to operate as adult entertainment establishments on or before
426 July 1, 2001, an adult entertainment establishment that sells,
427 rents, loans, distributes, transmits, shows, or exhibits any
428 obscene material, as described in s. 847.0133, or presents live
429 entertainment or a motion picture, slide, or other exhibit that,
430 in whole or in part, depicts nudity, sexual conduct, sexual
431 excitement, sexual battery, sexual bestiality, or
432 sadomasochistic abuse and that is harmful to minors, as
433 described in s. 847.001, may not be located within 2,500 feet of
434 the real property that comprises a public or private elementary
435 school, middle school, or secondary school unless the county or
436 municipality approves the location under proceedings as provided
437 in s. 125.66(5) ~~s. 125.66(4)~~ for counties or s. 166.041(3)(c)
438 for municipalities.

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

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

442
443 ===== T I T L E A M E N D M E N T =====

444 And the title is amended as follows:

445 Delete everything before the enacting clause



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446 and insert:

447 A bill to be entitled
448 An act relating to local ordinances; amending s.
449 57.112, F.S.; authorizing courts to assess and award
450 reasonable attorney fees and costs and damages in
451 certain civil actions filed against local governments;
452 specifying a limitation on awards and a restriction;
453 providing construction and applicability; amending s.
454 125.66, F.S.; requiring a board of county
455 commissioners to prepare a business impact estimate
456 before the enactment of a proposed ordinance;
457 specifying requirements for the posting and content of
458 the estimate; providing construction and
459 applicability; creating s. 125.675, F.S.; requiring a
460 county to suspend enforcement of an ordinance that is
461 the subject of a certain legal action if certain
462 conditions are met; requiring courts to give priority
463 to certain cases; specifying factors a court must
464 consider in determining whether an ordinance is
465 arbitrary or unreasonable; providing applicability;
466 authorizing courts to award attorney fees and costs
467 under certain circumstances; amending s. 166.041,
468 F.S.; requiring a governing body of a municipality to
469 prepare a business impact estimate before the
470 enactment of a proposed ordinance; specifying
471 requirements for the posting and content of the
472 estimate; providing construction and applicability;
473 creating s. 166.0411, F.S.; requiring a municipality
474 to suspend enforcement of an ordinance that is the



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475 subject of a certain legal action if certain
476 conditions are met; requiring courts to give priority
477 to certain cases; specifying factors a court must
478 consider in determining whether an ordinance is
479 arbitrary or unreasonable; providing applicability;
480 authorizing courts to award attorney fees and costs
481 under certain circumstances; amending ss. 163.2517,
482 163.3181, 163.3215, 376.80, 497.270, 562.45, and
483 847.0134, F.S.; conforming cross-references; providing
484 a declaration of important state interest; providing
485 an effective date.