

By Senator Hutson

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1 A bill to be entitled
2 An act relating to local ordinances; amending s.
3 57.112, F.S.; authorizing courts to assess and award
4 attorney fees and costs and damages in certain civil
5 actions filed against local governments; providing
6 construction; amending s. 125.66, F.S.; requiring a
7 board of county commissioners to prepare a business
8 impact statement before the adoption of a proposed
9 ordinance; specifying requirements for the posting and
10 content of the statement; providing applicability;
11 creating s. 125.675, F.S.; requiring a county to
12 suspend enforcement of an ordinance that is the
13 subject of a certain legal action if certain
14 conditions are met; requiring courts to give priority
15 to certain cases; specifying factors a court must
16 consider in determining whether an ordinance is
17 arbitrary or unreasonable; providing applicability;
18 authorizing courts to award attorney fees and costs
19 under certain circumstances; amending s. 166.041,
20 F.S.; requiring a governing body of a municipality to
21 prepare a business impact statement before the
22 adoption of a proposed ordinance; specifying
23 requirements for the posting and content of the
24 statement; providing applicability; creating s.
25 166.0411, F.S.; requiring a municipality to suspend
26 enforcement of an ordinance that is the subject of a
27 certain legal action if certain conditions are met;
28 requiring courts to give priority to certain cases;
29 specifying factors a court must consider in

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30 determining whether an ordinance is arbitrary or
31 unreasonable; providing applicability; authorizing
32 courts to award attorney fees and costs under certain
33 circumstances; amending ss. 163.2517, 163.3181,
34 163.3215, 376.80, 497.270, 562.45, and 847.0134, F.S.;
35 conforming cross-references; providing a declaration
36 of important state interest; providing an effective
37 date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 57.112, Florida Statutes, is amended to
42 read:

43 57.112 Attorney fees and costs and damages; preempted local
44 actions.—

45 (1) As used in this section, the term "attorney fees and
46 costs" means the reasonable and necessary attorney fees and
47 costs incurred for all preparations, motions, hearings, trials,
48 and appeals in a proceeding.

49 (2) If a civil action is filed against a local government
50 to challenge the adoption or enforcement of a local ordinance on
51 the grounds that it is expressly preempted by the State
52 Constitution or by state law, the court shall assess and award
53 reasonable attorney fees and costs and damages to the prevailing
54 party.

55 (3) If a civil action is filed against a local government
56 to challenge the adoption or enforcement of a local ordinance on
57 the grounds that the ordinance is arbitrary or unreasonable, or
58 is prohibited by law other than via express preemption, the

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59 court may assess and award reasonable attorney fees and costs
60 and damages to the complainant if successful.

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

63 (a) The governing body of a local governmental entity
64 receives written notice that an ordinance that has been publicly
65 noticed or adopted is ~~expressly~~ preempted by the State
66 Constitution or state law, is arbitrary or unreasonable, or is
67 otherwise prohibited by law; and

68 (b) The governing body of the local governmental entity
69 withdraws the proposed ordinance within 30 days; or, in the case
70 of an adopted ordinance, the governing body of a local
71 government notices an intent to repeal the ordinance within 30
72 days of receipt of the notice and repeals the ordinance within
73 30 days thereafter.

74 (5)~~(4)~~ The provisions in this section are supplemental to
75 all other sanctions or remedies available under law or court
76 rule.

77 (6)~~(5)~~ This section does not apply to local ordinances
78 adopted pursuant to part II of chapter 163, s. 553.73, or s.
79 633.202.

80 (7)~~(6)~~ Subsections (1), (2), (4), (5), and (6) are This
81 ~~section is~~ intended to be prospective in nature and ~~shall~~ apply
82 only to cases commenced on or after July 1, 2019. Subsection (3)
83 is intended to be prospective in nature and applies only to
84 cases commenced on or after October 1, 2022.

85 Section 2. Present subsections (3) through (6) of section
86 125.66, Florida Statutes, are redesignated as subsections (4)
87 through (7), respectively, a new subsection (3) is added to that

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88 section, and paragraph (a) of subsection (2) of that section is
89 amended, to read:

90 125.66 Ordinances; enactment procedure; emergency
91 ordinances; rezoning or change of land use ordinances or
92 resolutions.-

93 (2) (a) The regular enactment procedure shall be as follows:
94 The board of county commissioners at any regular or special
95 meeting may enact or amend any ordinance, except as provided in
96 subsection (5) ~~(4)~~, if notice of intent to consider such
97 ordinance is given at least 10 days before such meeting by
98 publication as provided in chapter 50. A copy of such notice
99 shall be kept available for public inspection during the regular
100 business hours of the office of the clerk of the board of county
101 commissioners. The notice of proposed enactment shall state the
102 date, time, and place of the meeting; the title or titles of
103 proposed ordinances; and the place or places within the county
104 where such proposed ordinances may be inspected by the public.
105 The notice shall also advise that interested parties may appear
106 at the meeting and be heard with respect to the proposed
107 ordinance.

108 (3) (a) Before the adoption of each proposed ordinance, the
109 board of county commissioners shall prepare a business impact
110 statement in accordance with this subsection. The business
111 impact statement must be posted on the county's website on the
112 same day the notice of proposed enactment is published pursuant
113 to paragraph (2) (a) and must include:

114 1. A statement of the public purpose to be served by the
115 proposed ordinance, such as serving the public health, safety,
116 or welfare of the county;

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117 2. A statement of the reasonable connection between the
118 public purpose and the expected effects of the ordinance;

119 3. The estimated economic effect of the proposed ordinance
120 on businesses both within and outside the county, including both
121 adverse and beneficial effects and both direct and indirect
122 effects;

123 4. A good faith estimate of the number of businesses likely
124 to be affected by the ordinance;

125 5. An analysis of the extent to which the proposed
126 ordinance is likely to deter or encourage the formation of new
127 businesses within the county's jurisdiction;

128 6. An analysis of the extent to which the proposed
129 ordinance will impede the ability of businesses within the
130 county to compete with other businesses in other areas of this
131 state or other domestic markets;

132 7. If applicable, the scientific basis for the proposed
133 ordinance;

134 8. Alternatives considered by the county which would reduce
135 the impact of the proposed ordinance on businesses; and

136 9. Any additional information the board determines may be
137 useful.

138 (b) This subsection does not apply to an emergency
139 ordinance enacted pursuant to this section.

140 Section 3. Section 125.675, Florida Statutes, is created to
141 read:

142 125.675 Legal challenges to certain recently enacted
143 ordinances.—

144 (1) A county must suspend enforcement of an ordinance that
145 is the subject of an action, including appeals, challenging the

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146 ordinance's validity on the grounds that it is preempted by the
147 State Constitution or by state law, is arbitrary or
148 unreasonable, or is otherwise prohibited by law, if:

149 (a) The action was filed with the court no later than 20
150 days after the effective date of the ordinance;

151 (b) The plaintiff or petitioner requests suspension in the
152 initial complaint or petition, citing this section; and

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

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

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

162 (a) The extent to which the ordinance protects the health,
163 welfare, safety, and quality of life of the residents of the
164 county;

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

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

168 (d) The business impact statement prepared by the county as
169 required by s. 125.66(3).

170 (4) This section does not apply to an emergency ordinance
171 or an ordinance governed by part II of chapter 163, s. 553.73,
172 or s. 633.202.

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

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175 Section 4. Present subsections (4) through (8) of section
176 166.041, Florida Statutes, are redesignated as subsections (5)
177 through (9), respectively, and a new subsection (4) is added to
178 that section, to read:

179 166.041 Procedures for adoption of ordinances and
180 resolutions.—

181 (4) (a) Before the adoption of each proposed ordinance, the
182 governing body of a municipality shall prepare a business impact
183 statement in accordance with this subsection. The business
184 impact statement must be posted on the municipality's website on
185 the same day the notice of proposed enactment is published
186 pursuant to paragraph (3) (a) and must include:

187 1. A statement of the public purpose to be served by the
188 proposed ordinance, such as serving the public health, safety,
189 or welfare of the municipality;

190 2. A statement of the reasonable connection between the
191 public purpose and the expected effects of the ordinance;

192 3. The estimated economic effect of the proposed ordinance
193 on businesses both within and outside the municipality,
194 including both adverse and beneficial effects and both direct
195 and indirect effects;

196 4. A good faith estimate of the number of businesses likely
197 to be affected by the ordinance;

198 5. An analysis of the extent to which the proposed
199 ordinance is likely to deter or encourage the formation of new
200 businesses within the municipality's jurisdiction;

201 6. An analysis of the extent to which the proposed
202 ordinance will impede the ability of businesses within the
203 municipality to compete with other businesses in other areas of

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204 this state or other domestic markets;

205 7. If applicable, the scientific basis for the proposed
206 ordinance;

207 8. Alternatives considered by the municipality which would
208 reduce the impact of the proposed ordinance on businesses; and

209 9. Any additional information the governing body determines
210 may be useful.

211 (b) This subsection does not apply to an emergency
212 ordinance enacted pursuant to this section.

213 Section 5. Section 166.0411, Florida Statutes, is created
214 to read:

215 166.0411 Legal challenges to certain recently enacted
216 ordinances.-

217 (1) A municipality must suspend enforcement of an ordinance
218 that is the subject of an action, including appeals, challenging
219 the ordinance's validity on the grounds that it is preempted by
220 the State Constitution or by state law, is arbitrary or
221 unreasonable, or is otherwise prohibited by law, if:

222 (a) The action was filed with the court no later than 20
223 days after the effective date of the ordinance;

224 (b) The plaintiff or petitioner requests suspension in the
225 initial complaint or petition, citing this section; and

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

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

232 (3) In determining whether an ordinance is arbitrary or

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233 unreasonable, the court shall consider, but is not limited to,
234 the following factors:

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

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

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

241 (d) The business impact statement prepared by the
242 municipality as required by s. 166.041(4).

243 (4) This section does not apply to an emergency ordinance
244 or an ordinance governed by part II of chapter 163, s. 553.73,
245 or s. 633.202.

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

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

250 163.2517 Designation of urban infill and redevelopment
251 area.—

252 (5) After the preparation of an urban infill and
253 redevelopment plan or designation of an existing plan, the local
254 government shall adopt the plan by ordinance. Notice for the
255 public hearing on the ordinance must be in the form established
256 in s. 166.041(3)(c)2. for municipalities, and s. 125.66(5)(b)2.
257 ~~s. 125.66(4)(b)2.~~ for counties.

258 Section 7. Paragraph (a) of subsection (3) of section
259 163.3181, Florida Statutes, is amended to read:

260 163.3181 Public participation in the comprehensive planning
261 process; intent; alternative dispute resolution.—

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

270 (a) Prior to the date of a public hearing on the decision
271 on whether to proceed with the proposed project, the local
272 government shall publish public notice of its intent to decide
273 the issue according to the notice procedures described by s.
274 125.66(5)(b)2. ~~s. 125.66(4)(b)2.~~ for a county or s.
275 166.041(3)(c)2.b. for a municipality.

276 Section 8. Paragraph (a) of subsection (4) of section
277 163.3215, Florida Statutes, is amended to read:

278 163.3215 Standing to enforce local comprehensive plans
279 through development orders.—

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

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291 order or other written decision of the local government, or when
292 all local administrative appeals, if any, are exhausted,
293 whichever occurs later. An action for injunctive or other relief
294 may be joined with the petition for certiorari. Principles of
295 judicial or administrative res judicata and collateral estoppel
296 apply to these proceedings. Minimum components of the local
297 process are as follows:

298 (a) The local process must make provision for notice of an
299 application for a development order that materially alters the
300 use or density or intensity of use on a particular piece of
301 property, including notice by publication or mailed notice
302 consistent with the provisions of ss. 125.66(5) (b)2. and 3. and
303 166.041(3) (c)2.b. and c. ~~ss. 125.66(4) (b)2. and 3. and~~
304 ~~166.041(3) (c)2.b. and c.,~~ and must require prominent posting at
305 the job site. The notice must be given within 10 days after the
306 filing of an application for a development order; however,
307 notice under this subsection is not required for an application
308 for a building permit or any other official action of local
309 government which does not materially alter the use or density or
310 intensity of use on a particular piece of property. The notice
311 must clearly delineate that an aggrieved or adversely affected
312 person has the right to request a quasi-judicial hearing before
313 the local government for which the application is made, must
314 explain the conditions precedent to the appeal of any
315 development order ultimately rendered upon the application, and
316 must specify the location where written procedures can be
317 obtained that describe the process, including how to initiate
318 the quasi-judicial process, the timeframes for initiating the
319 process, and the location of the hearing. The process may

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320 include an opportunity for an alternative dispute resolution.

321 Section 9. Paragraph (c) of subsection (1) of section
322 376.80, Florida Statutes, is amended to read:

323 376.80 Brownfield program administration process.—

324 (1) The following general procedures apply to brownfield
325 designations:

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

328 1. Notification to department following adoption.—A local
329 government with jurisdiction over the brownfield area must
330 notify the department, and, if applicable, the local pollution
331 control program under s. 403.182, of its decision to designate a
332 brownfield area for rehabilitation for the purposes of ss.
333 376.77-376.86. The notification must include a resolution
334 adopted by the local government body. The local government shall
335 notify the department, and, if applicable, the local pollution
336 control program under s. 403.182, of the designation within 30
337 days after adoption of the resolution.

338 2. Resolution adoption.—The brownfield area designation
339 must be carried out by a resolution adopted by the
340 jurisdictional local government, which includes a map adequate
341 to clearly delineate exactly which parcels are to be included in
342 the brownfield area or alternatively a less-detailed map
343 accompanied by a detailed legal description of the brownfield
344 area. For municipalities, the governing body shall adopt the
345 resolution in accordance with the procedures outlined in s.
346 166.041, except that the procedures for the public hearings on
347 the proposed resolution must be in the form established in s.
348 166.041(3)(c)2. For counties, the governing body shall adopt the

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349 resolution in accordance with the procedures outlined in s.
350 125.66, except that the procedures for the public hearings on
351 the proposed resolution shall be in the form established in s.
352 125.66(5)(b) ~~s. 125.66(4)(b)~~.

353 3. Right to be removed from proposed brownfield area.—If a
354 property owner within the area proposed for designation by the
355 local government requests in writing to have his or her property
356 removed from the proposed designation, the local government
357 shall grant the request.

358 4. Notice and public hearing requirements for designation
359 of a proposed brownfield area outside a redevelopment area or by
360 a nongovernmental entity. Compliance with the following
361 provisions is required before designation of a proposed
362 brownfield area under paragraph (2)(a) or paragraph (2)(c):

363 a. At least one of the required public hearings shall be
364 conducted as closely as is reasonably practicable to the area to
365 be designated to provide an opportunity for public input on the
366 size of the area, the objectives for rehabilitation, job
367 opportunities and economic developments anticipated,
368 neighborhood residents' considerations, and other relevant local
369 concerns.

370 b. Notice of a public hearing must be made in a newspaper
371 of general circulation in the area, must be made in ethnic
372 newspapers or local community bulletins, must be posted in the
373 affected area, and must be announced at a scheduled meeting of
374 the local governing body before the actual public hearing.

375 Section 10. Paragraph (a) of subsection (3) of section
376 497.270, Florida Statutes, is amended to read:

377 497.270 Minimum acreage; sale or disposition of cemetery

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378 lands.-

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

393 Section 11. Paragraph (a) of subsection (2) of section
394 562.45, Florida Statutes, is amended to read:

395 562.45 Penalties for violating Beverage Law; local
396 ordinances; prohibiting regulation of certain activities or
397 business transactions; requiring nondiscriminatory treatment;
398 providing exceptions.-

399 (2) (a) Nothing contained in the Beverage Law shall be
400 construed to affect or impair the power or right of any county
401 or incorporated municipality of the state to enact ordinances
402 regulating the hours of business and location of place of
403 business, and prescribing sanitary regulations therefor, of any
404 licensee under the Beverage Law within the county or corporate
405 limits of such municipality. However, except for premises
406 licensed on or before July 1, 1999, and except for locations

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407 that are licensed as restaurants, which derive at least 51
408 percent of their gross revenues from the sale of food and
409 nonalcoholic beverages, pursuant to chapter 509, a location for
410 on-premises consumption of alcoholic beverages may not be
411 located within 500 feet of the real property that comprises a
412 public or private elementary school, middle school, or secondary
413 school unless the county or municipality approves the location
414 as promoting the public health, safety, and general welfare of
415 the community under proceedings as provided in s. 125.66(5) ~~s.~~
416 ~~125.66(4)~~, for counties, and s. 166.041(3)(c), for
417 municipalities. This restriction shall not, however, be
418 construed to prohibit the issuance of temporary permits to
419 certain nonprofit organizations as provided for in s. 561.422.
420 The division may not issue a change in the series of a license
421 or approve a change of a licensee's location unless the licensee
422 provides documentation of proper zoning from the appropriate
423 county or municipal zoning authorities.

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

426 847.0134 Prohibition of adult entertainment establishment
427 that displays, sells, or distributes materials harmful to minors
428 within 2,500 feet of a school.—

429 (1) Except for those establishments that are legally
430 operating or have been granted a permit from a local government
431 to operate as adult entertainment establishments on or before
432 July 1, 2001, an adult entertainment establishment that sells,
433 rents, loans, distributes, transmits, shows, or exhibits any
434 obscene material, as described in s. 847.0133, or presents live
435 entertainment or a motion picture, slide, or other exhibit that,

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436 in whole or in part, depicts nudity, sexual conduct, sexual
437 excitement, sexual battery, sexual bestiality, or
438 sadomasochistic abuse and that is harmful to minors, as
439 described in s. 847.001, may not be located within 2,500 feet of
440 the real property that comprises a public or private elementary
441 school, middle school, or secondary school unless the county or
442 municipality approves the location under proceedings as provided
443 in s. 125.66(5) ~~s. 125.66(4)~~ for counties or s. 166.041(3)(c)
444 for municipalities.

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

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