

By the Committee on Community Affairs; and Senator Hutson

578-01973-22

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

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30 conditions are met; requiring courts to give priority
31 to certain cases; specifying factors a court must
32 consider in determining whether an ordinance is
33 arbitrary or unreasonable; providing applicability;
34 authorizing courts to award attorney fees and costs
35 under certain circumstances; amending ss. 163.2517,
36 163.3181, 163.3215, 376.80, 497.270, 562.45, and
37 847.0134, F.S.; conforming cross-references; providing
38 a declaration of important state interest; providing
39 an effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Section 57.112, Florida Statutes, is amended to
44 read:

45 57.112 Attorney fees and costs and damages; preempted local
46 actions.—

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

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

57 (3) If a civil action is filed against a local government
58 to challenge the adoption of a local ordinance on the grounds

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59 that the ordinance is arbitrary or unreasonable, the court may
60 assess and award reasonable attorney fees and costs and damages
61 to the complainant if successful. An award of reasonable
62 attorney fees or costs and damages pursuant to this subsection
63 may not exceed \$50,000. In addition, a prevailing party may not
64 recover any attorney fees or costs directly incurred or
65 associated with litigation to determine an award of reasonable
66 attorney fees or costs.

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

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

73 (b) The governing body of the local governmental entity
74 withdraws the proposed ordinance within 30 days; or, in the case
75 of an adopted ordinance, the governing body of a local
76 government notices an intent to repeal the ordinance within 30
77 days of receipt of the notice and repeals the ordinance within
78 30 days thereafter.

79 (5)~~(4)~~ The provisions in this section are supplemental to
80 all other sanctions or remedies available under law or court
81 rule. However, this section may not be construed to authorize
82 double recovery if an affected person prevails on a damages
83 claim brought against a local government pursuant to other
84 applicable law involving the same ordinance, operative acts, or
85 transactions.

86 (6)~~(5)~~ This section does not apply to local ordinances
87 adopted pursuant to part II of chapter 163, s. 553.73, or s.

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88 633.202.

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

92 (b) The amendments to this section effective October 1,
93 2022, are prospective in nature and apply only to ordinances
94 adopted on or after October 1, 2022.

95 Section 2. Present subsections (3) through (6) of section
96 125.66, Florida Statutes, are redesignated as subsections (4)
97 through (7), respectively, a new subsection (3) is added to that
98 section, and paragraph (a) of subsection (2) of that section is
99 amended, to read:

100 125.66 Ordinances; enactment procedure; emergency
101 ordinances; rezoning or change of land use ordinances or
102 resolutions.—

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

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117 ordinance.

118 (3) (a) Before the enactment of a proposed ordinance, the
119 board of county commissioners shall prepare a business impact
120 estimate in accordance with this subsection. The business impact
121 estimate must be posted on the county's website on the same day
122 the notice of proposed enactment is published pursuant to
123 paragraph (2) (a) and must include all of the following:

124 1. A summary of the proposed ordinance, including a
125 statement of the public purpose to be served by the proposed
126 ordinance, such as serving the public health, safety, morals,
127 and welfare of the county.

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

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

133 b. Identification of any new charge or fee on businesses
134 subject to the proposed ordinance or for which businesses will
135 be financially responsible.

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

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

141 4. Any additional information the board determines may be
142 useful.

143 (b) This subsection may not be construed to require a
144 county to procure an accountant or other financial consultant to
145 prepare the business impact estimate required by this

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146 subsection.

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

149 Section 3. Section 125.675, Florida Statutes, is created to
150 read:

151 125.675 Legal challenges to certain recently enacted
152 ordinances.—

153 (1) A county must suspend enforcement of an ordinance that
154 is the subject of an action, including appeals, challenging the
155 ordinance's validity on the grounds that it is expressly
156 preempted by the State Constitution or by state law or is
157 arbitrary or unreasonable if:

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

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

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

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

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

171 (a) The extent to which the ordinance protects the health,
172 welfare, safety, and quality of life of the residents of the
173 county;

174 (b) The impact of the ordinance on the personal rights and

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175 privileges of the residents of the county;
176 (c) The total economic impact of the ordinance; and
177 (d) The business impact estimate prepared by the county as
178 required by s. 125.66(3).
179 (4) This section does not apply to local ordinances enacted
180 to implement the following:
181 (a) Part II of chapter 163;
182 (b) Section 553.73;
183 (c) Section 633.202;
184 (d) Ordinances required to comply with federal or state law
185 or regulation;
186 (e) Ordinances related to the issuance or refinancing of
187 debt;
188 (f) Ordinances related to the adoption of budgets or budget
189 amendments; or
190 (g) Ordinances required to implement a contract or an
191 agreement, including, but not limited to, any federal, state,
192 local, or private grant, or other financial assistance accepted
193 by a county government.
194 (5) The court may award attorney fees and costs as provided
195 in s. 57.112.
196 Section 4. Present subsections (4) through (8) of section
197 166.041, Florida Statutes, are redesignated as subsections (5)
198 through (9), respectively, and a new subsection (4) is added to
199 that section, to read:
200 166.041 Procedures for adoption of ordinances and
201 resolutions.—
202 (4) (a) Before the enactment of a proposed ordinance, the
203 governing body of a municipality shall prepare a business impact

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204 estimate in accordance with this subsection. The business impact
205 estimate must be posted on the municipality's website on the
206 same day the notice of proposed enactment is published pursuant
207 to paragraph (3)(a) and must include all of the following:

208 1. A summary of the proposed ordinance, including a
209 statement of the public purpose to be served by the proposed
210 ordinance, such as serving the public health, safety, morals,
211 and welfare of the municipality.

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

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

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

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

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

225 4. Any additional information the governing body determines
226 may be useful.

227 (b) This subsection may not be construed to require a
228 municipality to procure an accountant or other financial
229 consultant to prepare the business impact estimate required by
230 this subsection.

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

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233 Section 5. Section 166.0411, Florida Statutes, is created
234 to read:

235 166.0411 Legal challenges to certain recently enacted
236 ordinances.-

237 (1) A municipality must suspend enforcement of an ordinance
238 that is the subject of an action, including appeals, challenging
239 the ordinance's validity on the grounds that it is expressly
240 preempted by the State Constitution or by state law or is
241 arbitrary or unreasonable if:

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

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

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

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

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

255 (a) The extent to which the ordinance protects the health,
256 welfare, safety, and quality of life of the residents of the
257 municipality;

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

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

261 (d) The business impact estimate prepared by the

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262 municipality as required by s. 166.041(4).

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

265 (a) Part II of chapter 163;

266 (b) Section 553.73;

267 (c) Section 633.202;

268 (d) Ordinances required to comply with federal or state law
269 or regulation;

270 (e) Ordinances related to the issuance or refinancing of
271 debt;

272 (f) Ordinances related to the adoption of budgets or budget
273 amendments; or

274 (g) Ordinances required to implement a contract or
275 agreement, including, but not limited to, any federal, state,
276 local, or private grant, or other financial assistance accepted
277 by a municipal government.

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

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

282 163.2517 Designation of urban infill and redevelopment
283 area.—

284 (5) After the preparation of an urban infill and
285 redevelopment plan or designation of an existing plan, the local
286 government shall adopt the plan by ordinance. Notice for the
287 public hearing on the ordinance must be in the form established
288 in s. 166.041(3)(c)2. for municipalities, and s. 125.66(5)(b)2.
289 ~~s. 125.66(4)(b)2.~~ for counties.

290 Section 7. Paragraph (a) of subsection (3) of section

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291 163.3181, Florida Statutes, is amended to read:

292 163.3181 Public participation in the comprehensive planning
293 process; intent; alternative dispute resolution.-

294 (3) A local government considering undertaking a publicly
295 financed capital improvement project may elect to use the
296 procedures set forth in this subsection for the purpose of
297 allowing public participation in the decision and resolution of
298 disputes. For purposes of this subsection, a publicly financed
299 capital improvement project is a physical structure or
300 structures, the funding for construction, operation, and
301 maintenance of which is financed entirely from public funds.

302 (a) Prior to the date of a public hearing on the decision
303 on whether to proceed with the proposed project, the local
304 government shall publish public notice of its intent to decide
305 the issue according to the notice procedures described by s.
306 125.66(5)(b)2. ~~s. 125.66(4)(b)2.~~ for a county or s.
307 166.041(3)(c)2.b. for a municipality.

308 Section 8. Paragraph (a) of subsection (4) of section
309 163.3215, Florida Statutes, is amended to read:

310 163.3215 Standing to enforce local comprehensive plans
311 through development orders.-

312 (4) If a local government elects to adopt or has adopted an
313 ordinance establishing, at a minimum, the requirements listed in
314 this subsection, the sole method by which an aggrieved and
315 adversely affected party may challenge any decision of local
316 government granting or denying an application for a development
317 order, as defined in s. 163.3164, which materially alters the
318 use or density or intensity of use on a particular piece of
319 property, on the basis that it is not consistent with the

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320 comprehensive plan adopted under this part, is by an appeal
321 filed by a petition for writ of certiorari filed in circuit
322 court no later than 30 days following rendition of a development
323 order or other written decision of the local government, or when
324 all local administrative appeals, if any, are exhausted,
325 whichever occurs later. An action for injunctive or other relief
326 may be joined with the petition for certiorari. Principles of
327 judicial or administrative res judicata and collateral estoppel
328 apply to these proceedings. Minimum components of the local
329 process are as follows:

330 (a) The local process must make provision for notice of an
331 application for a development order that materially alters the
332 use or density or intensity of use on a particular piece of
333 property, including notice by publication or mailed notice
334 consistent with the provisions of ss. 125.66(5)(b)2. and 3. and
335 166.041(3)(c)2.b. and c. ~~ss. 125.66(4)(b)2. and 3. and~~
336 ~~166.041(3)(c)2.b. and c.~~, and must require prominent posting at
337 the job site. The notice must be given within 10 days after the
338 filing of an application for a development order; however,
339 notice under this subsection is not required for an application
340 for a building permit or any other official action of local
341 government which does not materially alter the use or density or
342 intensity of use on a particular piece of property. The notice
343 must clearly delineate that an aggrieved or adversely affected
344 person has the right to request a quasi-judicial hearing before
345 the local government for which the application is made, must
346 explain the conditions precedent to the appeal of any
347 development order ultimately rendered upon the application, and
348 must specify the location where written procedures can be

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349 obtained that describe the process, including how to initiate
350 the quasi-judicial process, the timeframes for initiating the
351 process, and the location of the hearing. The process may
352 include an opportunity for an alternative dispute resolution.

353 Section 9. Paragraph (c) of subsection (1) of section
354 376.80, Florida Statutes, is amended to read:

355 376.80 Brownfield program administration process.—

356 (1) The following general procedures apply to brownfield
357 designations:

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

360 1. Notification to department following adoption.—A local
361 government with jurisdiction over the brownfield area must
362 notify the department, and, if applicable, the local pollution
363 control program under s. 403.182, of its decision to designate a
364 brownfield area for rehabilitation for the purposes of ss.
365 376.77–376.86. The notification must include a resolution
366 adopted by the local government body. The local government shall
367 notify the department, and, if applicable, the local pollution
368 control program under s. 403.182, of the designation within 30
369 days after adoption of the resolution.

370 2. Resolution adoption.—The brownfield area designation
371 must be carried out by a resolution adopted by the
372 jurisdictional local government, which includes a map adequate
373 to clearly delineate exactly which parcels are to be included in
374 the brownfield area or alternatively a less-detailed map
375 accompanied by a detailed legal description of the brownfield
376 area. For municipalities, the governing body shall adopt the
377 resolution in accordance with the procedures outlined in s.

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378 166.041, except that the procedures for the public hearings on
379 the proposed resolution must be in the form established in s.
380 166.041(3)(c)2. For counties, the governing body shall adopt the
381 resolution in accordance with the procedures outlined in s.
382 125.66, except that the procedures for the public hearings on
383 the proposed resolution shall be in the form established in s.
384 125.66(5)(b) ~~s. 125.66(4)(b)~~.

385 3. Right to be removed from proposed brownfield area.—If a
386 property owner within the area proposed for designation by the
387 local government requests in writing to have his or her property
388 removed from the proposed designation, the local government
389 shall grant the request.

390 4. Notice and public hearing requirements for designation
391 of a proposed brownfield area outside a redevelopment area or by
392 a nongovernmental entity. Compliance with the following
393 provisions is required before designation of a proposed
394 brownfield area under paragraph (2)(a) or paragraph (2)(c):

395 a. At least one of the required public hearings shall be
396 conducted as closely as is reasonably practicable to the area to
397 be designated to provide an opportunity for public input on the
398 size of the area, the objectives for rehabilitation, job
399 opportunities and economic developments anticipated,
400 neighborhood residents' considerations, and other relevant local
401 concerns.

402 b. Notice of a public hearing must be made in a newspaper
403 of general circulation in the area, must be made in ethnic
404 newspapers or local community bulletins, must be posted in the
405 affected area, and must be announced at a scheduled meeting of
406 the local governing body before the actual public hearing.

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407 Section 10. Paragraph (a) of subsection (3) of section
408 497.270, Florida Statutes, is amended to read:

409 497.270 Minimum acreage; sale or disposition of cemetery
410 lands.—

411 (3) (a) If the property to be sold, conveyed, or disposed of
412 under subsection (2) has been or is being used for the permanent
413 interment of human remains, the applicant for approval of such
414 sale, conveyance, or disposition shall cause to be published, at
415 least once a week for 4 consecutive weeks, a notice meeting the
416 standards of publication set forth in s. 125.66(5)(b)2. ~~s.~~
417 ~~125.66(4)(b)2.~~ The notice shall describe the property in
418 question and the proposed noncemetery use and shall advise
419 substantially affected persons that they may file a written
420 request for a hearing pursuant to chapter 120, within 14 days
421 after the date of last publication of the notice, with the
422 department if they object to granting the applicant's request to
423 sell, convey, or dispose of the subject property for noncemetery
424 uses.

425 Section 11. Paragraph (a) of subsection (2) of section
426 562.45, Florida Statutes, is amended to read:

427 562.45 Penalties for violating Beverage Law; local
428 ordinances; prohibiting regulation of certain activities or
429 business transactions; requiring nondiscriminatory treatment;
430 providing exceptions.—

431 (2) (a) Nothing contained in the Beverage Law shall be
432 construed to affect or impair the power or right of any county
433 or incorporated municipality of the state to enact ordinances
434 regulating the hours of business and location of place of
435 business, and prescribing sanitary regulations therefor, of any

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436 licensee under the Beverage Law within the county or corporate
437 limits of such municipality. However, except for premises
438 licensed on or before July 1, 1999, and except for locations
439 that are licensed as restaurants, which derive at least 51
440 percent of their gross revenues from the sale of food and
441 nonalcoholic beverages, pursuant to chapter 509, a location for
442 on-premises consumption of alcoholic beverages may not be
443 located within 500 feet of the real property that comprises a
444 public or private elementary school, middle school, or secondary
445 school unless the county or municipality approves the location
446 as promoting the public health, safety, and general welfare of
447 the community under proceedings as provided in s. 125.66(5) ~~s.~~
448 ~~125.66(4)~~, for counties, and s. 166.041(3)(c), for
449 municipalities. This restriction shall not, however, be
450 construed to prohibit the issuance of temporary permits to
451 certain nonprofit organizations as provided for in s. 561.422.
452 The division may not issue a change in the series of a license
453 or approve a change of a licensee's location unless the licensee
454 provides documentation of proper zoning from the appropriate
455 county or municipal zoning authorities.

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

458 847.0134 Prohibition of adult entertainment establishment
459 that displays, sells, or distributes materials harmful to minors
460 within 2,500 feet of a school.—

461 (1) Except for those establishments that are legally
462 operating or have been granted a permit from a local government
463 to operate as adult entertainment establishments on or before
464 July 1, 2001, an adult entertainment establishment that sells,

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465 rents, loans, distributes, transmits, shows, or exhibits any
466 obscene material, as described in s. 847.0133, or presents live
467 entertainment or a motion picture, slide, or other exhibit that,
468 in whole or in part, depicts nudity, sexual conduct, sexual
469 excitement, sexual battery, sexual bestiality, or
470 sadomasochistic abuse and that is harmful to minors, as
471 described in s. 847.001, may not be located within 2,500 feet of
472 the real property that comprises a public or private elementary
473 school, middle school, or secondary school unless the county or
474 municipality approves the location under proceedings as provided
475 in s. 125.66(5) ~~s. 125.66(4)~~ for counties or s. 166.041(3)(c)
476 for municipalities.

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

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