HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1515 Local Ordinances
SPONSOR(S): Brackett
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	13 Y, 4 N	Roy	Darden
2) Civil Justice Subcommittee	10 Y, 5 N	Mawn	Jones
3) State Affairs Committee	14 Y, 6 N	Roy	Williamson

SUMMARY ANALYSIS

Local governments have broad authority to legislate on any matter not inconsistent with federal or state law. If the Legislature preempts an area of regulation to the state, local governments are prohibited from exercising authority in that area. If a local government enacts an ordinance on a matter preempted to the state, a person may file a lawsuit asking the court to declare the ordinance void. A person may also challenge a local ordinance on the grounds that it is unreasonable; in such a challenge, the court will uphold the ordinance if a rational relationship exists between the regulation and a legitimate governmental purpose.

Florida law generally authorizes the award of attorney fees and costs to a prevailing party challenging an ordinance adopted or enforced by a local government that is expressly preempted by the Florida Constitution or state law. However, attorney fees and costs may not be awarded against a local government if it:

- Receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws the proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.

The bill:

- Provides that a court may award attorney fees, costs, and damages to a complainant who successfully challenges a local ordinance on the grounds that the ordinance is arbitrary or unreasonable, unless an exception applies or the local government cures the issue.
- Caps at $50,000 the amount of attorney fees, costs, and damages awardable to a prevailing plaintiff challenging a local ordinance on the grounds that it is arbitrary or unreasonable and prohibits double recovery.
- Authorizes consideration of an ordinance to continue to a subsequent meeting without need for additional notice under specified circumstances.
- Requires local governments to prepare a "business impact estimate" before adopting certain local ordinances.
- Requires that a challenged local ordinance's enforcement be suspended in certain situations.
- Provides for expedited court review of a challenged ordinance suspended under the bill.
- Provides signature requirements and related sanctions for documents filed in a local ordinance challenge under the bill.
- States that the legislature finds that the act fulfills an important state interest.

The bill does not appear to have a fiscal impact on state government, but may have an indeterminate negative fiscal impact on local governments. The bill provides an effective date of October 1, 2023, except as otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ordinances

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.[3] A local government enactment may be inconsistent with state law if the:

- State Constitution preempts the subject area;
- Legislature preempts the subject area; or
- Local enactment conflicts with a state statute.

Local governments exercise these powers by adopting ordinances. The adoption or amendment of a regular ordinance, other than an ordinance making certain changes to zoning, may be considered at any regular or special meeting of the local governing body.[4] Notice of the proposed ordinance must be published at least 10 days before the meeting in a newspaper of general circulation in the area; state the date, time, and location of the meeting, the title of the proposed ordinance, and locations where the proposed ordinance may be inspected by the public; and advise that interested parties may appear and speak at the meeting.[5] Municipal ordinances must also be read by title or in full on at least two separate days.[6] Ordinances may only encompass a single subject and may not be revised or amended solely by reference to the title.[7]

A county may adopt an emergency ordinance that bypasses the notice requirement if the governing body declares that an emergency exists requiring the immediate enactment of the ordinance and the ordinance is approved by a four-fifths vote.[8] A municipality may adopt an emergency ordinance by two-thirds vote.[9] An emergency ordinance may not be used to adopt zoning changes.[10]

Reasonableness

The legislature may not constitutionally delegate to a local government the power to enact an unreasonable ordinance; thus, a local ordinance must be reasonable and may be challenged on the grounds of unreasonableness.[11] A court determining whether a challenged ordinance is reasonable applies the "rational basis" review standard, under which the court will uphold the ordinance if it is at

[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] Art. VIII, s. 2(b); *see also* s. 166.021(1), F.S.
[4] *See* ss. 125.66(2)(a) and 166.041, F.S. In addition to general notice requirements, a local government must provide written notice by mail to all property owners before adopting a zoning change involving less than 10 contiguous acres. Ss. 125.66(4)(a) and 166.041(3)(c)1., F.S. If a zoning change involves 10 or more contiguous acres, the local government must conduct two public hearings, advertised in a newspaper, before adopting the ordinance. Ss. 125.66(4)(b) and 166.041(3)(c)2., F.S.
[5] Historically, local governments have continued considerations of ordinances to subsequent meetings without further published notice; however, recent litigation has suggested this practice may not be valid. *Testa v. Town of Jupiter Island*, No. 4D22-432 (Fla. 4th DCA Feb. 8, 2023).
[6] S. 166.041(3)(a), F.S.
[7] Ss. 125.67 and 166.041(2), F.S.
[8] S. 125.66(3), F.S.
[9] S. 166.041(3)(b), F.S.
[10] Ss. 125.66(3) and 166.041(3)(b), F.S.
[11] *State ex rel. Harkow v. McCarthy,* 126 Fla. 433 (Fla. 1936); *Gates v. City of Sanford*, 566 So. 2d 47 (Fla. 5th DCA 1990); *Gustafson v. City of Ocala*, 53 So. 2d 658 (Fla. 1951); 12A Fla. Jur. 2d Counties, Etc, § 224.

least debatable that a rational relationship exists between the regulation and a legitimate governmental purpose.[12] Where such an ordinance's reasonableness is fairly debatable, a court will not substitute its judgment for that of the local governing body, "there being a peculiar propriety in permitting inhabitants of a [jurisdiction] through its proper officials to determine what rules are necessary for their own local government."[13] The fact that opinions may differ as to a local ordinance's reasonableness is insufficient to void the ordinance, even if the policy's wisdom is debatable and its effects are uncertain.[14]

Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[15] To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.[16] Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[17]

Where state preemption applies, a local government may not exercise authority in that area.[18] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the government may declare the preempted ordinance void.[19]

Attorney Fees, Costs, and Interest

In Florida, a party generally may recover attorney fees only if authorized by statute or agreement of the parties. This is known as the "American Rule."[20] Attorney fees as a sanction, however, generally may be levied only where an action was taken primarily for the purpose of causing an unreasonable delay or a party brings an unsupported claim or defense, such as a claim or defense unsupported by the:

- Material facts necessary to establish the claim or defense; or
- Application of then-existing law to the material facts.[21]

Attorney fees as a sanction may not be imposed:

- Where a party reasonably presented a claim or defense as a good faith argument for the extension, modification, or reversal of existing law;
- Against the culpable party's attorney, if the attorney acted in good faith based on his or her client's representations as to material fact; or
- Against a represented party whose attorney raised an unsupported legal claim or defense.[22]

[12] *Martin County v. Section 28 Partnership Ltd.*, 772 So. 2d 616 (Fla. 4th DCA 2000); *City of Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957); *City of Miami Beach v. Lachman*, 71 So. 2d 148 (Fla. 1953); *Dennis v. City of Key West*, 381 So. 2d 1980 (Fla. 3d DCA 1980); 12A Fla. Jur. 2d Counties, Etc, s. 224.
[13] *Lachman*, 71 So. 2d at 152; *Kayfetz*, 92 So. 2d at 801; *Dennis*, 381 so. 2d at 314; *State v. Sawyer*, 346 So. 2d 1071 (Fla. 3d DCA 1977).
[14] *Silvio Membreno and Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13 (Fla. 3d DCA 2016).
[15] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).
[16] *Mulligan*, 934 So. 2d at 1243.
[17] *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[18] *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[19] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).
[20] *Dade County v. Peña*, 664 So. 2d 959, 960 (Fla. 1995); *Reiterer v. Monteil*, 98 So. 3d 586, 587 (Fla. 2d DCA 2012).
[21] S. 57.105, F.S.
[22] S. 57.105(3), F.S.

A party may appeal a court's ruling on sanctions, and the appellate court must review the award or denial of sanctions under the abuse of discretion standard, meaning that the appellate court must uphold the lower court's decision unless it was "arbitrary, fanciful, or unreasonable."[23]

Under Florida law, the prevailing party in any civil action is entitled to an award of litigation costs,[24] including those for which account is kept by the clerk of the court[25] and other specified expenses such as amounts for posting and maintaining bonds, court reporter fees, taxes on legal services, if applicable, and expert witness fees under certain conditions.[26]

The holder of a judgment for money damages is entitled to interest on the entire judgment amount at the specified statutory rate.[27] If the judgment has the practical effect of determining the specific amount of damages on the claim, or "liquidating" the claim, as of a date before the judgment, the plaintiff is entitled to prejudgment interest at the applicable statutory rate from the date of that loss.[28] The prejudgment interest amount is added to the remaining amounts awarded by the court for damages in the judgment.

Additionally, Florida law provides that the prevailing party in an action challenging a local government ordinance expressly preempted by the Florida Constitution or state law is entitled to attorney fees and costs.[29] For the purpose of this provision, costs are defined as all reasonable and necessary fees and costs incurred for preparation, motions, hearings, trials, and appeals.[30] However, attorney fees and costs may not be awarded against a local government if it:

- Receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws the proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.[31]

The award of attorney fees under this provision is supplemental to other sanctions or remedies available under law or court rule and does not apply to ordinances relating to growth management, building codes, fire prevention codes, or biosolids.[32]

Economic Analysis of Business Impacts

Some governmental entities conduct economic analyses of business impacts. For example, before adopting an administrative rule, state agencies may prepare a statement of estimated regulatory costs (SERC), estimating the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[33] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.[34] However, a SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[35] If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.[36]

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[23] *MC Liberty Express, Inc. v. All Points Servs., Inc.*, 252 So. 3d 397 (3d DCA 2018) (quoting *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980)); *Ferere v. Shure*, 65 So. 3d 1141 (Fla. 4th DCA 2011).
[24] S. 57.041, F.S.
[25] S. 57.021, F.S.
[26] S. 57.071, F.S.
[27] S. 55.03, F.S. The Chief Financial Officer determines the applicable interest rate on a quarterly basis. S. 55.03(1), F.S. The initial interest rate for a judgment is that in effect at the time the judgment is awarded. The judgment interest rate is then adjusted annually on January 1 to the rate in effect on that date. S. 5.03(3), F.S.
[28] *Argonaut Ins. Co. v. May Plumbing Company*, 474 So. 2d 212, 215 (Fla. 1985).
[29] S. 57.112(2), F.S.
[30] S. 57.112(1), F.S.
[31] S. 57.112(3), F.S.
[32] S. 57.112(4)-(5), F.S.
[33] S. 120.541(2), F.S.
[34] S. 120.54(3)(b)1., F.S.
[35] *Id.*
[36] S. 120.541(1)(c), F.S.

A SERC must include:

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and municipalities.[37]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[38]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within five years after implementation of the rule, then the rule must be ratified by the Legislature to take effect.[39]

An agency's failure to prepare a SERC may be raised in a Division of Administrative Hearings proceeding to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within one year of the effective date of the rule by a person whose substantial interests are affected by the regulatory costs of the rule.[40]

Effect of Proposed Changes

Attorney Fees, Costs, and Damages

The bill provides that a court may award attorney fees and costs and damages to a plaintiff who successfully challenges a local ordinance on the grounds that the ordinance is arbitrary or unreasonable. However, the bill also:

- Caps an award of attorney fees, costs, and damages in such an action at $50,000.
- Prohibits a plaintiff from recovering attorney fees and costs directly incurred or associated with litigation to determine an award of attorney fees or costs.
- Specifies that the bill does not authorize double recoveries if an affected person prevails on a claim brought against a local government pursuant to other applicable law involving the same ordinance.
- Extends the applicable statutory cure provision to actions involving an ordinance alleged to be arbitrary or unreasonable and to damages awards, so that attorney fees, costs, and damages may not be awarded in an action alleging preemption or that the bill is arbitrary or unreasonable where a county or municipality cures the issue.
- Provides that an amendment to an existing ordinance enacted after October 1, 2023, only gives rise to a claim if the amendatory language is the cause of the claim.

These provisions relating to attorney fees, costs, and damages are prospective in nature and only apply to cases commenced on or after October 1, 2023, except that they do not apply to local ordinances adopted pursuant to part II of ch. 163, F.S., relating to growth management; s., 552.73, F.S., relating to the Florida Building Code; or s. 633.202, F.S., relating to the Florida Fire Prevention Code. Further, an amendment to an ordinance enacted after October 1, 2023, gives rise to a claim under this section only to the extent that the application of the amendatory language is the cause of the claim.

Ordinances

[37] S. 120.541(2)(b)-(e), F.S.
[38] S. 120.541(2)(a), F.S.
[39] S. 120.541(3), F.S.
[40] S. 120.541(1)(f), F.S.

The bill provides that consideration of a properly noticed proposed ordinance may be continued to a subsequent meeting without need of additional notice if, at the initial meeting, the date, time, and location of the subsequent meeting is publicly stated and the continuation of the proposed ordinance is included on the agenda or similar communication produced for the subsequent meeting. The bill states that this provision is remedial in nature, intended to clarify existing law, and applies retroactively.

Business Impact Estimates

The bill generally requires each county and municipality to prepare a "business impact estimate" before adopting certain proposed ordinances, which estimate must include:

- A summary of the proposed ordinance, including a statement of the public purpose it serves.
- An estimate of the direct economic impact of the proposed ordinance on private for-profit businesses in the county's or municipality's jurisdiction, including the following, if any:
    - An estimate of direct compliance costs businesses may reasonably incur if the ordinance is enacted;
    - Identification of any new charge or fee on businesses subject to the proposed ordinance or for which businesses will be financially responsible; and
    - An estimate of the county's or municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed to cover such costs.
- A good faith estimate of the number of businesses likely to be impacted by the ordinance.
- Any additional information that the county or municipality determines may be useful.

The estimate must be posted on the county's or municipality's website no later than the date the notice of proposed enactment is published. An accountant or other financial consultant does not need to prepare the estimate, and the requirement to prepare the estimate does not apply to:

- Ordinances enacted to implement part II of ch. 163, F.S.; s. 553.73, F.S., relating to the Florida Building Code; s. 633.202, F.S., relating to the Florida Fire Prevention Code; or laws creating, dissolving, or adjusting the boundaries of a community development district.
- Ordinances related to the issuance or refinancing of debt.
- Ordinances required to comply with a federal or state law or regulation.
- Ordinances related to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget.
- Ordinances required to implement a contract or an agreement.
- Ordinances related to procurement.
- Emergency ordinances.

Ordinance Challenges

The bill prohibits a county or municipality from enforcing any ordinance that is the subject of legal action challenging the ordinance's validity on the grounds that it is preempted by the Florida Constitution or state law or is arbitrary or unreasonable if:

- The legal action is filed no later than 90 days after the ordinance's adoption;
- The complainant requests suspension in the initial complaint or petition; and
- The county or municipality has been served with a copy of the complaint or petition.

The bill also:

- Provides that when a plaintiff appeals a final judgment finding that an ordinance is valid, the county or municipality may enforce the ordinance 45 days after the entry of the order unless the plaintiff obtains a stay of the order.
- Requires courts with a pending action in which an ordinance's enforcement is suspended to give such action priority over other pending cases and to render a preliminary or final decision as expeditiously as possible.

Further, the bill provides that the signature of any attorney or a party on a document filed in such an action certifies that the signatory has read the document and that, to the best of his or her knowledge, it

is not filed for any improper purpose.[41] If a document is signed in violation of this signature requirement, the court must impose upon the signatory, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party the amount of reasonable expenses the other party incurred due to the filing of the document, including attorney fees. However, the ordinance suspension provision does not apply to:

- Ordinances enacted to implement part II of ch. 163, F.S.; s. 553.73, relating to the Florida Building Code; s. 633.202, F.S., relating to the Florida Fire Prevention Code; or laws creating, dissolving, or adjusting the boundaries of a community development district.
- Ordinances required for compliance with a federal or state law or regulation.
- Ordinances related to the issuance or refinancing of debt.
- Ordinances related to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget.
- Ordinances required to implement a contract or an agreement.
- Ordinances related to procurement.
- Emergency ordinances.

Important State Interest

The bill states that the Legislature finds and declares the act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1: Amends s. 57.112, F.S., related to attorney fees and costs and damages; preempted local actions.
Section 2: Amends s. 125.66, F.S., related to ordinances; enactment procedures; emergency ordinances; rezoning or change of land use ordinances or resolutions.
Section 3: Amends s. 125.66, F.S., related to ordinances; enactment procedures; emergency ordinances; rezoning or change of land use ordinances or resolutions.
Section 4: Creates s. 125.675, F.S., related to legal challenges to certain recently enacted ordinances.
Section 5: Amends s. 166.041, F.S., related to procedures for adoption of ordinances and resolutions.
Section 6: Amends s. 166.041, F.S., related to procedures for adoption of ordinances and resolutions.
Section 7: Creates s. 166.0411, F.S., related to legal challenges to recently enacted ordinances.
Section 8: Amends s. 163.2517, F.S., related to designation of urban infill and redevelopment area.
Section 9: Amends s. 163.3181, F.S., related to public participation in the comprehensive planning process.
Section 10: Amends s. 163.3215, F.S., related to standing to enforce local comprehensive plans through development orders.
Section 11: Amends s. 376.80, F.S., related to Brownfield program administration process.
Section 12: Amends s. 497.270, F.S., related to minimum acreage; sale or disposition of cemetery lands.
Section 13: Amends s. 562.45, F.S., related to penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.
Section 14: Amends s. 847.0134, F.S., related to prohibition of adult entertainment establishment that displays, sells, or distributes materials harmful to minors within 2,500 feet of a school.
Section 15: Provides a statement of important state interest.
Section 16: Provides an effective date of October 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[41] This provision is similar to the professional requirement imposed on members of The Florida Bar and foreign attorneys admitted *pro haec vice*. *See* Fla. R. Gen. Prac. & Jud. Admin. 2.515(a).

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill provides that a court may award attorney fees and costs against a local government for adopting an ordinance found by the court to be arbitrary and unreasonable unless an exception applies or the local government cures the issue. The bill also requires each local government to prepare a business impact estimate before adopting a proposed ordinance, unless an exception applies. These provisions may have an indeterminate negative fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive economic impact on private parties who successfully bring actions challenging the adoption of a local ordinance on the grounds that it is arbitrary or unreasonable, in that the private parties may be able to recover their attorney fees and costs for such actions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to prepare business impact statements before the adoption of any ordinance; however, an exemption may apply if the bill has an insignificant fiscal impact. Additionally, an exception may apply because the bill provides a legislative finding that it fulfills an important state interest and it applies to all similarly situated entities that adopt ordinances. If the bill does qualify as a mandate and it is found that an exemption or exception do not apply, then the bill must be approved for final passage by a two-thirds vote of the membership of each house.

2. Other:

   Separation of Powers

   Article II, s. 3 of the Florida Constitution, known as the "separation of powers doctrine," provides that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [in the constitution]." The Florida Constitution vests legislative power in the legislative branch, executive power in the executive branch, and judicial power in the judicial branch.[42]

[42] Art. III, IV, and V, Fla. Const.

Generally, the Legislature has the power to enact substantive law, while the Supreme Court has the power to enact procedural law.[43] Substantive law is that which defines, creates, or regulates rights.[44] In contrast, procedural law is the form, manner, or means by which substantive law is implemented, including all rules governing the parties, their counsel and the court throughout the progress of the case from the time of its initiation until final judgment and its execution; it may be described as the "machinery of the judicial process as opposed to the product thereof."[45] The Legislature can repeal practice and procedural rules by general law enacted by a two-thirds vote of the members of each house, but the Legislature may not amend or supersede such rules.[46]

The bill requires a court with a pending action in which an ordinance's enforcement is suspended to give such action priority over other pending cases and to render a preliminary or final decision as expeditiously as possible. While it is unclear whether this requirement is a substantive or procedural law, several existing statutes require courts to give priority where critical interests are concerned.[47]

Retroactivity

In determining whether a law may be applied retroactively, a court first determines whether the law is procedural, remedial, or substantive in nature.[48] A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[49] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.[50] Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so "would attach new legal consequences to events completed before its enactment."[51]

The bill provides that consideration of a properly noticed proposed ordinance may be continued to a subsequent meeting without need of additional notice if, at the initial meeting, the date, time, and location of the subsequent meeting is publicly stated and the continuation of the proposed ordinance is included on the agenda or similar communication produced for the subsequent meeting. The bill states that this provision is remedial in nature, intended to clarify existing law, and applies retroactively.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

[43] Art. III and V, Fla. Const.; *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018).
[44] *DeLisle*, 259 So. 3d at 1224.
[45] *Id.* at 1224; *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65 (Fla. 1972).
[46] *In re Clarification of Fla. Rules of Practice and Procedure,* 281 So. 2d 204 (Fla. 1973).
[47] *See, e.g.,* ss. 97.012 (actions filed by the Secretary of State within 60 days of an election or during the time period between an election and certification of said election), 101.161 (cases involving a determination that one or more ballot statements embodied in a joint resolution are defective), 119.11 (cases involving public records), 193.1145 (implementing interim ad valorem assessment rolls), 213.732 (cases concerning the seizure of freezing of assets of a taxpayer in jeopardy), 447.507 (suits to enjoin strikes by public employees), and 921.141 (review of judgment of conviction and sentence of death for capital felonies), F.S.
[48] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).
[49] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).
[50] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).
[51] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).