

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 1628

INTRODUCER: Community Affairs Committee and Senator Collins

SUBJECT: Local Government Actions

DATE: February 20, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1628 revises the categories of local ordinances exempt from statutes related to the production of business impact estimates and subject to certain conditions on lawsuits brought by any party to challenge the legal validity of local ordinances as preempted by state law, arbitrary, or unreasonable.

The bill takes effect October 1, 2024.

II. Present Situation:

Local Ordinances

The governing body of a county or municipality has broad legislative powers to enact ordinances, local laws, to perform governmental functions and exercise power to promote the health, welfare, safety, and quality of life of a local government's residents. Ordinances address a wide variety of local issues, from government structure and zoning laws to speed limits and noise ordinances. Procedures for passing local ordinances are prescribed by the Legislature and differ only slightly between counties and municipalities.

Procedures for Enacting Ordinances

A board of county commissioners must notice its intent to consider an ordinance or amendment to an ordinance 10 days before the meeting at which the ordinance will be considered. The notice, placed in a newspaper of general circulation, should include the date, time, and place of

the meeting, the proposed ordinance title, and instructions for how to view the language. The board may then vote to pass the ordinance at the meeting, and upon passage, must send a certified copy of the ordinance to the Florida Department of State (DOS).¹ County ordinances take effect upon filing with the DOS, unless otherwise prescribed in the ordinance.²

Similarly, municipalities must notice intent to consider an ordinance 10 days before adoption. However, municipalities must also read the ordinance by title or in full on at least 2 separate days before adoption by vote.³ An ordinance passed by a municipality becomes effective 10 days after passage, unless otherwise prescribed in the ordinance.⁴

Emergency Ordinances

A board of county commissioners may adopt an emergency ordinance that bypasses the notice requirements 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 of the membership.⁵ A municipality may bypass reading and notice requirements to pass an emergency ordinance by a two-thirds vote of the governing body.⁶ An emergency ordinance may not be used to adopt zoning and land use changes.⁷

Business Impact Estimate

A local government must also produce a business impact estimate prior to passing an ordinance.⁸ The business impact estimate must include the following:⁹

- A summary of the proposed ordinance, including a estimate of the public purpose to be served by the proposed ordinance;
- An estimate of the direct economic impact of the proposed ordinance on private for-profit businesses in the county or city, including:
 - An estimate of direct compliance costs for businesses;
 - Identification of new charges and fees; and
 - An estimate of the county's or city's regulatory costs.
- A good faith estimate of the number of businesses likely impacted; and
- Any additional information deemed useful.

A business impact estimate is not required for the following types of ordinances:¹⁰

- Emergency ordinances;
- Growth policy, county and municipal planning, and land development regulations under part II of ch. 163, F.S.;
- Building code ordinances under s. 553.73, F.S.;

¹ Section 125.66(2), F.S.

² *Id.*

³ Section 166.041(3)(a), F.S.

⁴ Section 166.041(4), F.S.

⁵ Section 125.66(4), F.S.

⁶ Section 166.041(3)(b), F.S.

⁷ *Supra* notes 5 and 6.

⁸ Sections 125.66(3) and 166.041(4), F.S.

⁹ Sections 125.66(3)(a) and 166.041(4)(a), F.S.

¹⁰ Sections 125.66(3)(c) and 166.041(4)(c), F.S.

- Fire prevention code ordinances under s. 633.202, F.S.;
- Ordinances establishing or terminating Community Development Districts under ss. 190.005 and 190.046, F.S.;
- Ordinances required to comply with federal or state law or regulation;
- Ordinances relating to financial obligations or issuance and refinancing of debt;
- Ordinances related to the adoption of county or municipal budgets or budget amendments; or
- Ordinances required to implement a contract or agreement, to include federal, state, local, or private grants and other financial assistance.

Local Government Authority

The Florida Constitution grants local governments broad authority to take actions furthering citizens' health, welfare, safety, and quality of life. This "home rule" authority includes regulatory powers to issue authorizations and permits, and legislative powers to enact local laws. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.¹² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.¹³

This authority, under the umbrella of governmental or municipal purpose, extends broadly to any ordinance necessary to promote the health, welfare, safety, and quality of life of a local government's residents.¹⁴ Local governments' authority has been liberally construed when reviewed by courts. For example, courts have found the following to meet the standards for what constitutes a "municipal purpose," and therefore were valid local government actions:

- Acquisition and maintenance of a golf course;¹⁵
- Sale of souvenir photographs;¹⁶ and
- Prohibiting the rental of motorized scooters.¹⁷

In general, this broad home rule authority is limited by two guideposts: preemption, where a higher level of government such as the State has already legislated on a topic, and standards of reasonableness. Local governments may not pass ordinances which are apparently unreasonable

¹¹ FLA. CONST. art. VIII, s. 1(f).

¹² FLA. CONST. art. VIII, s. 1(g).

¹³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

¹⁴ Art. VIII, § 2(b), Fla. Const.; Section 125.86, F.S.; for municipalities see *Quiles v. City of Boynton Beach*, 802 So. 2d 397, 398 (Fla. 4th DCA 2001); § 166.021, Fla. Stat.

¹⁵ *West v. Town of Lake Placid*, 97 Fla. 127, 120 So. 361 (1929).

¹⁶ *City of Winter Park v. Montesi*, 448 So. 2d 1242 (Fla. 5th DCA 1984).

¹⁷ *Classy Cycles, Inc. v. Panama City Beach*, 301 So. 3d 1046 (Fla. 1st DCA 2019).

or unreasonable, despite their wide-ranging powers.¹⁸ Anyone affected by an ordinance may challenge its validity in court by filing a civil action against the local government.¹⁹

Legal Challenges to Certain Recently Enacted Ordinances

Current law²⁰ requires the local government to suspend enforcement of an ordinance subject to such an action, including appeals, if:

- The action was filed with the court no later than 90 days after the adoption date of the ordinance;
- The plaintiff or petitioner requests suspension in the initial complaint or petition; and
- The county or city has been served with a copy of the complaint or petition.

Unless the plaintiff obtains a stay of the lower court's order pending appeal, the local government may enforce the ordinance 45 days after the entry of the lower court's order. In filing such an action, a party certifies that they do not file such a suit for frivolous or improper purposes, and may be subject to sanctions and fees if they do so. Additionally, the court must give those cases in which enforcement of the ordinance is suspended priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

The statutes regarding an ordinance's stay and priority docketing for challenges do not apply to the same set of decisions exempted from business impact estimates.

Comprehensive Plans

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The Community Planning Act intends that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.²¹

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other land use-related ordinances, which are consistent with and implement its adopted comprehensive plan.²²

Issuing Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special

¹⁸ *Dennis v. City of Key West*, 381 So. 2d 312 (Fla. 3d DCA 1980).

¹⁹ *Hardage v. City of Jacksonville Beach*, 399 So. 2d 1077 (Fla. 1 DCA 1981). There are statutory requirements for being allowed to bring suit in certain cases, such as those based on a technical deficiency in the ordinance, but the cases at issue in this analysis merely require being affected.

²⁰ Sections 125.675 and 166.0411, F.S.

²¹ Section 163.3161(4), F.S.

²² Section 163.3202, F.S.

exceptions, and variances.²³ A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.²⁴

After receiving an application for approval of a development permit or development order, a municipality or county must review the application for completeness and issue a letter indicating that all required information is submitted or specify any areas that are deficient. If the application is deficient, the applicant may address the deficiencies by submitting the required additional information.²⁵ After the municipality or county has deemed the application complete it must ultimately approve, approve with conditions, or deny the application for a development permit or development order.²⁶

Development Agreements

Local governments may enter into development agreements with developers.²⁷ A “development agreement” is a “contract between a local government and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.”²⁸

Any local government may, by ordinance, establish procedures and requirements to consider and enter into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.²⁹ A development agreement must include certain statutorily required elements describing the terms of the contract.³⁰

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 125.66 and 166.041, F.S., to amend the exemptions to the requirement that counties and cities, respectively, produce or have produced a “business impact estimate” prior to passing an ordinance. Whereas current law exempts the entirety of growth policy, county and municipal planning, and land development regulations under part II of ch. 163, F.S., the bill limits this exemption to development orders, permits, and agreements.

Sections 2 and 4 amend ss. 125.675 and 166.0411, F.S., to amend the exemptions to statutes regarding an ordinance’s stay and priority docketing pending legal challenge. Whereas current law exempts the entirety of growth policy, county and municipal planning, and land development regulations under part II of ch. 163, F.S., the bill limits this exemption to development orders, permits, and agreements

Section 5 provides that the act shall take effect October 1, 2024.

²³ Section 163.3164(16), F.S.

²⁴ See ss. 125.022, 163.3164(15), and 166.033, F.S.

²⁵ Sections 125.022(1) and 166.033(1), F.S.

²⁶ *Id.*

²⁷ Section 163.3220(4), F.S.; see also ss. 163.3220-163.3243, F.S., known as the “Florida Local Government Development Agreement Act.”

²⁸ *Morgan Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. 5th DCA 2002); 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

²⁹ Section 163.3223, F.S.; 7 Fla. Jur 2d Building, Zoning, and Land Controls § 168 (2019).

³⁰ Section 163.3227(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill expands the types of ordinances for which local governments must produce a business impact estimate, which will require additional staff work for local governments. Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. None of the constitutional exceptions appear to apply.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.^{31,32} However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies. If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³¹ FLA. CONST. art. VII, s. 18(d).

³² An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 24, 2024).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Producing business impact estimates for land use-related ordinances currently exempt under current law will have a negative impact county and municipality staffing time and resources.

Because the bill allows the stay and priority docketing provisions to apply to land use-related ordinances, courts may see indeterminate economic impact as suspensions may reduce hearings sought for temporary injunctive relief, while priority docketing may increase workload for clerks of court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 125.66, 125.675, 166.041, and 166.0411 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on February 6, 2024:

The committee substitute removes provisions of the bill relating to economic security analysis of local government actions by executive branch agencies.

B. Amendments:

None.