

By Senator Hutson

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A bill to be entitled
An act relating to local ordinances; amending s.
57.112, F.S.; authorizing courts to assess and award
attorney fees and costs and damages in certain civil
actions filed against local governments; providing
construction; amending s. 125.66, F.S.; requiring a
board of county commissioners to prepare a business
impact statement before the adoption of a proposed
ordinance; specifying requirements for the posting and
content of the statement; providing applicability;
creating s. 125.675, F.S.; requiring a county to
suspend enforcement of an ordinance that is the
subject of a certain legal action if certain
conditions are met; requiring courts to give priority
to certain cases; specifying factors a court must
consider in determining whether an ordinance is
arbitrary or unreasonable; providing applicability;
authorizing courts to award attorney fees and costs
under certain circumstances; amending s. 166.041,
F.S.; requiring a governing body of a municipality to
prepare a business impact statement before the
adoption of a proposed ordinance; specifying
requirements for the posting and content of the
statement; providing applicability; creating s.
166.0411, F.S.; requiring a municipality to suspend
enforcement of an ordinance that is the subject of a
certain legal action if certain conditions are met;
requiring courts to give priority to certain cases;
specifying factors a court must consider in

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

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

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

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

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

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

(3) If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that the ordinance is arbitrary or unreasonable, or 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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section, and paragraph (a) of subsection (2) of that section is amended, to read:

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

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

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

1. A statement of the public purpose to be served by the proposed ordinance, such as serving the public health, safety, 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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ordinance's validity on the grounds that it is preempted by the State Constitution or by state law, is arbitrary or unreasonable, or is otherwise prohibited by law, if:

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

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

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

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

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

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

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

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

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

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

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

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

166.041 Procedures for adoption of ordinances and resolutions.—

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

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

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

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

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

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

6. An analysis of the extent to which the proposed ordinance will impede the ability of businesses within the 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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unreasonable, the court shall consider, but is not limited to,
the following factors:

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

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

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

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

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

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

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

163.2517 Designation of urban infill and redevelopment
area.—

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

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

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

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

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

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

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

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

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

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

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include an opportunity for an alternative dispute resolution.

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

376.80 Brownfield program administration process.—

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

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

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

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

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

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

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

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

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

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

497.270 Minimum acreage; sale or disposition of cemetery

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lands.—

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

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

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

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

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

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

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

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

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

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

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