

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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204 this state or other domestic markets;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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320 include an opportunity for an alternative dispute resolution.

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

323 376.80 Brownfield program administration process.—

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

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

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

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

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

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

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

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

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

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

377 497.270 Minimum acreage; sale or disposition of cemetery

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

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

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

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

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

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

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