

1 A bill to be entitled
2 An act relating to local ordinances; amending s.
3 57.112, F.S.; authorizing courts to assess and award
4 attorney fees and costs and damages in certain civil
5 actions filed against local governments; providing
6 construction; amending s. 125.66, F.S.; requiring a
7 board of county commissioners to prepare a business
8 impact statement before the adoption of a proposed
9 ordinance; specifying requirements for the posting and
10 content of the statement; providing applicability;
11 creating s. 125.675, F.S.; requiring a county to
12 suspend enforcement of an ordinance that is the
13 subject of a certain legal action if certain
14 conditions are met; requiring courts to give priority
15 to certain cases; specifying factors a court must
16 consider in determining whether an ordinance is
17 arbitrary or unreasonable; providing applicability;
18 authorizing courts to award attorney fees and costs
19 under certain circumstances; amending s. 166.041,
20 F.S.; requiring a governing body of a municipality to
21 prepare a business impact statement before the
22 adoption of a proposed ordinance; specifying
23 requirements for the posting and content of the
24 statement; providing applicability; creating s.
25 166.0411, F.S.; requiring a municipality to suspend

26 enforcement of an ordinance that is the subject of a
 27 certain legal action if certain conditions are met;
 28 requiring courts to give priority to certain cases;
 29 specifying factors a court must consider in
 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.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 57.112, Florida Statutes, is amended to
 42 read:

43 57.112 Attorney fees and costs and damages; preempted
 44 local 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

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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
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
 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
 94 follows: The board of county commissioners at any regular or
 95 special meeting may enact or amend any ordinance, except as
 96 provided in subsection (5) ~~(4)~~, if notice of intent to consider
 97 such 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;

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
124 likely 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
 135 reduce 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
 141 to 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
 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
 154 complaint 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
 169 as 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
 174 provided in s. 57.112.

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
 197 likely 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
 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
 210 determines 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
 218 ordinance that is the subject of an action, including appeals,
 219 challenging the ordinance's validity on the grounds that it is
 220 preempted by the State Constitution or by state law, is
 221 arbitrary or unreasonable, or is otherwise prohibited by law,
 222 if:

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

225 (b) The plaintiff or petitioner requests suspension in the

226 initial complaint or petition, citing this section; and

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

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

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

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

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

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

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

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

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

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

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

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

259 Section 7. Paragraph (a) of subsection (3) of section
 260 163.3181, Florida Statutes, is amended to read:

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

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

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

276 | 166.041(3)(c)2.b. for a municipality.

277 | Section 8. Paragraph (a) of subsection (4) of section
 278 | 163.3215, Florida Statutes, is amended to read:

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

281 | (4) If a local government elects to adopt or has adopted
 282 | an ordinance establishing, at a minimum, the requirements listed
 283 | in this subsection, the sole method by which an aggrieved and
 284 | adversely affected party may challenge any decision of local
 285 | government granting or denying an application for a development
 286 | order, as defined in s. 163.3164, which materially alters the
 287 | use or density or intensity of use on a particular piece of
 288 | property, on the basis that it is not consistent with the
 289 | comprehensive plan adopted under this part, is by an appeal
 290 | filed by a petition for writ of certiorari filed in circuit
 291 | court no later than 30 days following rendition of a development
 292 | order or other written decision of the local government, or when
 293 | all local administrative appeals, if any, are exhausted,
 294 | whichever occurs later. An action for injunctive or other relief
 295 | may be joined with the petition for certiorari. Principles of
 296 | judicial or administrative res judicata and collateral estoppel
 297 | apply to these proceedings. Minimum components of the local
 298 | process are as follows:

299 | (a) The local process must make provision for notice of an
 300 | application for a development order that materially alters the

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

322 Section 9. Paragraph (c) of subsection (1) of section
 323 376.80, Florida Statutes, is amended to read:

324 376.80 Brownfield program administration process.—

325 (1) The following general procedures apply to brownfield

326 designations:

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

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

339 2. Resolution adoption.—The brownfield area designation
340 must be carried out by a resolution adopted by the
341 jurisdictional local government, which includes a map adequate
342 to clearly delineate exactly which parcels are to be included in
343 the brownfield area or alternatively a less-detailed map
344 accompanied by a detailed legal description of the brownfield
345 area. For municipalities, the governing body shall adopt the
346 resolution in accordance with the procedures outlined in s.
347 166.041, except that the procedures for the public hearings on
348 the proposed resolution must be in the form established in s.
349 166.041(3)(c)2. For counties, the governing body shall adopt the
350 resolution in accordance with the procedures outlined in s.

351 125.66, except that the procedures for the public hearings on
352 the proposed resolution shall be in the form established in s.
353 125.66(5)(b) ~~s. 125.66(4)(b)~~.

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

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

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

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

376 Section 10. Paragraph (a) of subsection (3) of section
 377 497.270, Florida Statutes, is amended to read:

378 497.270 Minimum acreage; sale or disposition of cemetery
 379 lands.—

380 (3)(a) If the property to be sold, conveyed, or disposed
 381 of under subsection (2) has been or is being used for the
 382 permanent interment of human remains, the applicant for approval
 383 of such sale, conveyance, or disposition shall cause to be
 384 published, at least once a week for 4 consecutive weeks, a
 385 notice meeting the standards of publication set forth in s.
 386 125.66(5)(b)2. ~~s. 125.66(4)(b)2.~~ The notice shall describe the
 387 property in question and the proposed noncemetery use and shall
 388 advise substantially affected persons that they may file a
 389 written request for a hearing pursuant to chapter 120, within 14
 390 days after the date of last publication of the notice, with the
 391 department if they object to granting the applicant's request to
 392 sell, convey, or dispose of the subject property for noncemetery
 393 uses.

394 Section 11. Paragraph (a) of subsection (2) of section
 395 562.45, Florida Statutes, is amended to read:

396 562.45 Penalties for violating Beverage Law; local
 397 ordinances; prohibiting regulation of certain activities or
 398 business transactions; requiring nondiscriminatory treatment;
 399 providing exceptions.—

400 (2)(a) Nothing contained in the Beverage Law shall be

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401 construed to affect or impair the power or right of any county
402 or incorporated municipality of the state to enact ordinances
403 regulating the hours of business and location of place of
404 business, and prescribing sanitary regulations therefor, of any
405 licensee under the Beverage Law within the county or corporate
406 limits of such municipality. However, except for premises
407 licensed on or before July 1, 1999, and except for locations
408 that are licensed as restaurants, which derive at least 51
409 percent of their gross revenues from the sale of food and
410 nonalcoholic beverages, pursuant to chapter 509, a location for
411 on-premises consumption of alcoholic beverages may not be
412 located within 500 feet of the real property that comprises a
413 public or private elementary school, middle school, or secondary
414 school unless the county or municipality approves the location
415 as promoting the public health, safety, and general welfare of
416 the community under proceedings as provided in s. 125.66(5) ~~s.~~
417 ~~125.66(4)~~, for counties, and s. 166.041(3)(c), for
418 municipalities. This restriction shall not, however, be
419 construed to prohibit the issuance of temporary permits to
420 certain nonprofit organizations as provided for in s. 561.422.
421 The division may not issue a change in the series of a license
422 or approve a change of a licensee's location unless the licensee
423 provides documentation of proper zoning from the appropriate
424 county or municipal zoning authorities.

425 Section 12. Subsection (1) of section 847.0134, Florida

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426 Statutes, is amended to read:

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

430 (1) Except for those establishments that are legally
 431 operating or have been granted a permit from a local government
 432 to operate as adult entertainment establishments on or before
 433 July 1, 2001, an adult entertainment establishment that sells,
 434 rents, loans, distributes, transmits, shows, or exhibits any
 435 obscene material, as described in s. 847.0133, or presents live
 436 entertainment or a motion picture, slide, or other exhibit that,
 437 in whole or in part, depicts nudity, sexual conduct, sexual
 438 excitement, sexual battery, sexual bestiality, or
 439 sadomasochistic abuse and that is harmful to minors, as
 440 described in s. 847.001, may not be located within 2,500 feet of
 441 the real property that comprises a public or private elementary
 442 school, middle school, or secondary school unless the county or
 443 municipality approves the location under proceedings as provided
 444 in s. 125.66(5) ~~s. 125.66(4)~~ for counties or s. 166.041(3)(c)
 445 for municipalities.

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

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