

Local Ordinances SB 170 & Local Government Actions SB 1628
August 8, 2024

Section 1 -- Prevailing plaintiff attorney fees authorized (modifies s. 57.112, F.S.)

- I. Courts may award attorney fees, costs, and damages to a prevailing plaintiff who challenges an ordinance for being arbitrary or unreasonable. Fees, costs, and damages are capped at \$50,000.¹ No recovery of fees for litigating amount of fees. No double recoveries for claims involving the same ordinance. This section applies only to ordinances adopted on or after October 1, 2023. Amendments to existing ordinances are subject to this section only to the extent the amendatory language gives rise to the claim.
- Does not change standing requirements for challenging ordinances enacted pursuant to a local government’s police powers. *See Boucher v. Novotny*, 102 So. 2d 132, 134-35 (Fla. 1958) (requiring special damages differing in kind from damages suffered by the community as a whole); *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972); *Jack Eckerd Corp. v. Michels Island Village Pharmacy, Inc.*, 322 So. 2d 57 (Fla. 2d DCA 1975).
 - Does not change the standard of judicial review or burden of proof
 - Ordinances are presumed valid and constitutional. An ordinance that is within the legislative power of a county or municipality is presumed to be valid. *See Panama City Bch. Community Redvmt. Agency v. State*, 831 So. 2d 662, 669 (Fla. 2002); *Orange County v. Costco Wholesale Corp.*, 823 So. 2d 732, 736 (Fla. 2002); *Lowe v. Broward Cty.*, 766 So. 2d 1199, 1203-04 (Fla. 4th DCA 2000). A court is required to indulge every reasonable presumption in favor of an ordinance’s constitutionality. *Miami Dade Cty. v. Malibu Lodging Investments, LLC*, 64 So 3d 716, 719 (Fla. 3d DCA 2011); *Hoesch v. Broward Cty.*, 53 So. 3d 1177, 1180 (Fla. 4th DCA 2011); *City of Kissimmee v. Florida Retail Fed’n*, 915 So. 2d 205, 209 (Fla. 5th DCA 2005).
 - Where an ordinance is challenged on the grounds of unreasonableness or unconstitutionality, the burden is on the person alleging its invalidity to establish that fact. *Orange County v. Costco Wholesale Corp.*, 823 So. 2d 732, 736 (Fla. 2002).
 - Fee award is discretionary (“may”)
- II. What does “Arbitrary or Unreasonable” mean?

This phrase does not introduce anything new. All ordinances enacted pursuant to an exercise of the police power must be reasonable and not arbitrary. *Classy Cycles, Inc. v. Panama City Beach*, 301 So. 3d 1046, 1051 (Fla. 1st DCA 2019) (“The modern test [of the validity of an ordinance] is an application of the rational basis test, which requires that the ordinance in question be reasonable and not arbitrary.”); *Bal Harbour Village v. Welsh*, 879 So. 2d 1265, 1267 (Fla. 3d DCA 2004). Courts use the “fairly debatable” test in determining the reasonableness of an ordinance. *D.R. Horton, Inc.-Jacksonville v. Peyton*, 959 So. 2d 390, 398 (Fla. 1st DCA 2007); *Martin County v. Section 28 Partnership, Ltd.*, 772 So. 2d 616, 619 (Fla. 4th DCA 2000), *cert. denied*, 534 U.S. 1114 (2002). This is a highly deferential standard because citizens of a municipality should be able to determine through the city’s proper officials “what rules are

¹ This \$50,000 cap is also found in Section 120.57(3), F.S., relating to challenges to state agency rules.

necessary for their own local government.” *State v. Sawyer*, 346 So. 2d 1071, 1072 (Fla. 3d DCA 1977), *cert. denied*, 436 U.S. 914 (1978); *Sarasota County v. Walker*, 144 So. 2d 345, 348 (Fla. 2d DCA 1962). If the object of an ordinance is one that reasonable people would find fairly debatable as to its reasonableness, the ordinance will be upheld. *Id.*; *Hardage v. City of Jacksonville Beach*, 399 So. 2d 1077, 1079 (Fla. 1st DCA 1981). The Florida Supreme Court has said:

Where an ordinance is within the police power of the municipality to enact it is presumed to be reasonable, unless its unreasonable character appears on its face. And when the authority to enact the ordinance does fairly appear, wide latitude is allowed in its exercise, where it does not appear there has been, in action taken, an abuse of authority or a violation of organic or fundamental rights. If reasonable argument exists on the question of whether an ordinance is arbitrary or unreasonable, the legislative will must prevail.

City of Miami v. Kayfetz, 92 So. 2d 798 (Fla. 1957) (citations omitted).

Sections 2 (counties) & 5 (municipalities) -- Continuance of properly noticed ordinance to a subsequent meeting

Creates a new subsection 7 in s. 125.66 and new paragraph (d) in subsection 166.041(3), F.S., to clarify that consideration of a proposed ordinance at a meeting properly noticed under section 125.66 and subsection 166.041 may be continued to a subsequent meeting if, at the meeting, the date, time, and place of the subsequent meeting is publicly stated. No further publication, mailing, or posted notice is required but the continued consideration must be listed in an agenda or similar communication produced for the subsequent meeting. The bill specifies this clarification is remedial in nature. This revision was prompted by a recent decision by the Fourth District Court of Appeal in *Testa v. Town of Jupiter Island*, 2023 WL 1808293 (Fla. 4th DCA Feb. 8, 2023).

Sections 3 (counties) & 6 (municipalities) -- Requires counties and municipalities to prepare a “Business Impact Estimate” prior to enacting certain ordinances. *NOTE: This was modified by SB 1628, codified as Ch. 2024-145, Laws of Florida (effective date October 1, 2024). The revised language is denoted in italicized text, below.*

- I. Requires cities and counties to prepare a “business impact estimate” before adoption of an ordinance. The use of an accountant or other financial professional is not required. The estimate must be posted on the local government’s website no later than the date the ordinance is published. The estimate must include:
 - A summary of ordinance and its public purpose;
 - A reasonable estimate of the direct economic impact of ordinance on private, for-profit businesses in the local government, including any direct compliance costs the businesses may incur;
 - Identification of any new charge or fee on the businesses;
 - An estimate of the local government’s regulatory costs including any revenues associated with any new charges or fees;
 - The estimated number of businesses impacted; and
 - Any additional information the local government deems useful.

II. Exemptions:

- Ordinances required to comply with federal or state laws or regulations
- Ordinances relating to the issuance or refinancing of debt
- Ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget
- Ordinances required to implement a contract or agreement, including grants or financial assistance
- Emergency ordinances
- Ordinances relating to procurement
- Ordinances enacted to implement: *a development order or development permit, as defined in s. 163.3164, F.S.; a development agreement as authorized by ss. 163.3220-163.3243, F.S.; or a comprehensive plan amendment or land development regulation amendment initiated by an application by a private party other than the municipality;* Sections 190.005 and 190.046 (CDDs); the Florida Building Code; the Florida Fire Prevention Code.

III. How onerous is this new requirement?

The bill does not provide a mechanism for any person to challenge the sufficiency of the business impact estimate. The bill uses the term “reasonable” as a modifier in several places, suggesting the local government simply make a reasonable effort to address the law’s minimum criteria.

IV. Are there consequences for failing to prepare the business impact estimate?

The bill does not specify consequences for failure to prepare the estimate. The requirement to prepare the estimate is established as a new Paragraph (4) in section 166.041 -- Procedures for adoption of ordinances and resolutions, and Paragraph (3) in section 125.66 - Ordinances; enactment procedure. Thus, preparation and posting of the business impact estimate should be treated as a mandatory procedural requirement that is essential to the validity of the ordinance. *See Parsons v. City of Jacksonville*, 295 So. 2d 892 (Fla. 1st DCA 2020); *Coleman v. City of Key West*, 807 So. 2d 84 (Fla. 3d DCA 2001); *Healthsouth Doctors’ Hospital, Inc. v. Hartnett*, 622 So. 2d 146 (Fla. 3d DCA 1993).

V. Are there any examples of a business impact estimate?

The bill does not require use of a specific form or method (other than stating minimum requirements to be included) and it does not specify the level of detail that must be provided for each criterion. Also, the bill does not prevent local governments from providing additional information in the business impact estimate, such as potential positive fiscal impacts on other constituent groups. The attached examples show how other governmental entities approach similar requirements, such as the Florida Legislature

(Attachment A), the State of Nevada and its municipalities (Attachment B), and Florida state agencies (Attachment C).

Sections 4 (counties) and 7 (municipalities) – Suspension of ordinance enforcement

- I. The local government must suspend enforcement of an ordinance that is the subject of an action alleging the ordinance is expressly preempted, arbitrary, or unreasonable if:
 - The action is filed no later than 90 days after ordinance adoption;
 - The plaintiff requests suspension in the initial complaint or petition; and
 - The local government has been served a copy of the complaint or petition.

- II. If the local government prevails in the action and the plaintiff appeals, the local government may begin enforcing the ordinance 45 days after entry of the lower court order unless the plaintiff obtains a stay.

- III. Directs courts to “prioritize” cases in which ordinance enforcement has been suspended.

- IV. Authorizes a court, on its own or upon motion of a party, to impose sanctions if a pleading, motion, or other paper is signed or filed for an improper purpose.

- V. Exemptions:
 - Ordinances required to comply with federal or state laws or regulations
 - Ordinances relating to the issuance or refinancing of debt
 - Ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget
 - Ordinances required to implement a contract or agreement, including grants or financial assistance
 - Emergency ordinances
 - Ordinances relating to procurement
 - Ordinances enacted to implement: Part II, Ch. 163, including land development regulations, zoning, development orders, development agreements, and development permits; Sections 190.005 and 190.046 (CDDs); the Florida Building Code; the Florida Fire Prevention Code.

Effective date: October 1, 2023.

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1
2 An act relating to local government actions; amending
3 s. 100.261, F.S.; requiring that certain bond
4 referenda called by a county, district, or
5 municipality be held at a general election; amending
6 ss. 125.66 and 166.041, F.S.; revising applicability
7 provisions for the enactment or adoption of county and
8 municipal ordinances, respectively; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 100.261, Florida Statutes, is amended to
14 read:

15 100.261 Holding bond referenda with other elections.-
16 Whenever any bond referendum is called, it shall be lawful for
17 any county, district, or municipality to hold such bond
18 referendum on the day of any state, county, or municipal primary
19 or general election, or on the day of any election of such
20 county, district, or municipality for any purpose other than the
21 purpose of voting on such bonds. If such bond referendum is held
22 concurrently with a regularly scheduled election, the county,
23 district, or municipality must ~~shall~~ pay only its pro rata share
24 of election costs directly related to the bond referendum.
25 However, ~~nothing in this section~~ does not shall prohibit the
26 holding of a special or separate bond referendum, except that if
27 the bond issue amount is greater than \$500 million, the bond
28 referendum must be held at a general election.

29 Section 2. Paragraph (c) of subsection (3) of section

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30 125.66, Florida Statutes, is amended to read:

31 125.66 Ordinances; enactment procedure; emergency
32 ordinances; rezoning or change of land use ordinances or
33 resolutions.—

34 (3)

35 (c) This subsection does not apply to:

36 1. Ordinances required for compliance with federal or state
37 law or regulation;

38 2. Ordinances relating to the issuance or refinancing of
39 debt;

40 3. Ordinances relating to the adoption of budgets or budget
41 amendments, including revenue sources necessary to fund the
42 budget;

43 4. Ordinances required to implement a contract or an
44 agreement, including, but not limited to, any federal, state,
45 local, or private grant, or other financial assistance accepted
46 by a county government;

47 5. Emergency ordinances;

48 6. Ordinances relating to procurement; or

49 7. Ordinances enacted to implement the following:

50 a. ~~Part II of chapter 163, relating to growth policy,~~
51 ~~county and municipal planning, and land development regulation,~~
52 ~~including zoning,~~ Development orders and development permits, as
53 those terms are defined in s. 163.3164, and, ~~development~~
54 agreements, as authorized by the Florida Local Government
55 Development Agreement Act under ss. 163.3220-163.3243 and
56 ~~development permits;~~

57 b. Comprehensive plan amendments and land development
58 regulation amendments initiated by an application by a private

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59 party other than the county;

60 ~~c.b.~~ Sections 190.005 and 190.046;

61 ~~d.e.~~ Section 553.73, relating to the Florida Building Code;

62 or

63 ~~e.d.~~ Section 633.202, relating to the Florida Fire
64 Prevention Code.

65 Section 3. Paragraph (c) of subsection (4) of section
66 166.041, Florida Statutes, is amended to read:

67 166.041 Procedures for adoption of ordinances and
68 resolutions.—

69 (4)

70 (c) This subsection does not apply to:

71 1. Ordinances required for compliance with federal or state
72 law or regulation;

73 2. Ordinances relating to the issuance or refinancing of
74 debt;

75 3. Ordinances relating to the adoption of budgets or budget
76 amendments, including revenue sources necessary to fund the
77 budget;

78 4. Ordinances required to implement a contract or an
79 agreement, including, but not limited to, any federal, state,
80 local, or private grant, or other financial assistance accepted
81 by a municipal government;

82 5. Emergency ordinances;

83 6. Ordinances relating to procurement; or

84 7. Ordinances enacted to implement the following:

85 a. ~~Part II of chapter 163, relating to growth policy,~~

86 ~~county and municipal planning, and land development regulation,~~

87 ~~including zoning,~~ Development orders and development permits, as

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88 those terms are defined in s. 163.3164, and development
89 agreements, as authorized by the Florida Local Government
90 Development Agreement Act under ss. 163.3220-163.3243 and
91 ~~development permits;~~

92 b. Comprehensive plan amendments and land development
93 regulation amendments initiated by an application by a private
94 party other than the municipality;

95 ~~c.b.~~ Sections 190.005 and 190.046;

96 ~~d.e.~~ Section 553.73, relating to the Florida Building Code;

97 or

98 ~~e.d.~~ Section 633.202, relating to the Florida Fire
99 Prevention Code.

100 Section 4. This act shall take effect October 1, 2024.

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1
2 An act relating to local ordinances; amending s.
3 57.112, F.S.; authorizing courts to assess and award
4 reasonable attorney fees and costs and damages in
5 certain civil actions filed against local governments;
6 specifying a limitation on awards and a restriction on
7 fees and costs of certain litigation; providing
8 construction and applicability; amending s. 125.66,
9 F.S.; providing certain procedures for continued
10 meetings on proposed ordinances and resolutions for
11 counties; providing for construction and retroactive
12 application; requiring a board of county commissioners
13 to prepare or cause to be prepared a business impact
14 estimate before the enactment of a proposed ordinance;
15 specifying requirements for the posting and content of
16 the estimate; providing construction and
17 applicability; creating s. 125.675, F.S.; requiring a
18 county to suspend enforcement of an ordinance that is
19 the subject of a certain legal action if certain
20 conditions are met; authorizing a prevailing county to
21 enforce the ordinance after a specified period, except
22 under certain circumstances; requiring courts to give
23 priority to certain cases; providing construction
24 relating to an attorney's or a party's signature;
25 requiring a court to impose sanctions under certain
26 circumstances; providing applicability; authorizing
27 courts to award attorney fees and costs and damages if
28 certain conditions are met; amending s. 166.041, F.S.;
29 providing certain procedures for continued meetings on

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59 57.112 Attorney fees and costs and damages; arbitrary,
60 unreasonable, or expressly preempted local ordinances ~~actions.~~-

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

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

71 (3) If a civil action is filed against a local government
72 to challenge the adoption of a local ordinance on the grounds
73 that the ordinance is arbitrary or unreasonable, the court may
74 assess and award reasonable attorney fees and costs and damages
75 to a prevailing plaintiff. An award of reasonable attorney fees
76 or costs and damages pursuant to this subsection may not exceed
77 \$50,000. In addition, a prevailing plaintiff may not recover any
78 attorney fees or costs directly incurred by or associated with
79 litigation to determine an award of reasonable attorney fees or
80 costs.

81 (4) Attorney fees and costs and damages may not be awarded
82 pursuant to this section if:

83 (a) The governing body of a local governmental entity
84 receives written notice that an ordinance that has been publicly
85 noticed or adopted is expressly preempted by the State
86 Constitution or state law or is arbitrary or unreasonable; and

87 (b) The governing body of the local governmental entity

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117 resolutions.-

118 (7) Consideration of the proposed county ordinance or
119 county resolution at a properly noticed meeting may be continued
120 to a subsequent meeting if, at the scheduled meeting, the date,
121 time, and place of the subsequent meeting is publicly stated. No
122 further publication, mailing, or posted notice as required under
123 this section is required, except that the continued
124 consideration must be listed in an agenda or similar
125 communication produced for the subsequent meeting. This
126 subsection is remedial in nature, is intended to clarify
127 existing law, and shall apply retroactively.

128 Section 3. Present subsections (3) through (7) of section
129 125.66, Florida Statutes, as amended by this act, are
130 redesignated as subsections (4) through (8), respectively, a new
131 subsection (3) is added to that section, and paragraph (a) of
132 subsection (2) of that section is amended, to read:

133 125.66 Ordinances; enactment procedure; emergency
134 ordinances; rezoning or change of land use ordinances or
135 resolutions.-

136 (2) (a) The regular enactment procedure is ~~shall be~~ as
137 follows: The board of county commissioners at any regular or
138 special meeting may enact or amend any ordinance, except as
139 provided in subsection (5) ~~(4)~~, if notice of intent to consider
140 such ordinance is given at least 10 days before such meeting by
141 publication as provided in chapter 50. A copy of such notice
142 must ~~shall~~ be kept available for public inspection during the
143 regular business hours of the office of the clerk of the board
144 of county commissioners. The notice of proposed enactment must
145 ~~shall~~ state the date, time, and place of the meeting; the title

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175 4. Any additional information the board determines may be
176 useful.

177 (b) This subsection may not be construed to require a
178 county to procure an accountant or other financial consultant to
179 prepare the business impact estimate required by this
180 subsection.

181 (c) This subsection does not apply to:

182 1. Ordinances required for compliance with federal or state
183 law or regulation;

184 2. Ordinances relating to the issuance or refinancing of
185 debt;

186 3. Ordinances relating to the adoption of budgets or budget
187 amendments, including revenue sources necessary to fund the
188 budget;

189 4. Ordinances required to implement a contract or an
190 agreement, including, but not limited to, any federal, state,
191 local, or private grant, or other financial assistance accepted
192 by a county government;

193 5. Emergency ordinances;

194 6. Ordinances relating to procurement; or

195 7. Ordinances enacted to implement the following:

196 a. Part II of chapter 163, relating to growth policy,
197 county and municipal planning, and land development regulation,
198 including zoning, development orders, development agreements,
199 and development permits;

200 b. Sections 190.005 and 190.046;

201 c. Section 553.73, relating to the Florida Building Code;

202 or

203 d. Section 633.202, relating to the Florida Fire Prevention

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233 reasons, or frivolous purposes or needless increase in the cost
234 of litigation. If a pleading, motion, or other paper is signed
235 in violation of these requirements, the court, upon its own
236 initiative or upon favorably ruling on a party's motion for
237 sanctions, must impose upon the person who signed it, a
238 represented party, or both, an appropriate sanction, which may
239 include an order to pay to the other party or parties the amount
240 of reasonable expenses incurred because of the filing of the
241 pleading, motion, or other paper, including reasonable attorney
242 fees.

243 (5) This section does not apply to:

244 (a) Ordinances required for compliance with federal or
245 state law or regulation;

246 (b) Ordinances relating to the issuance or refinancing of
247 debt;

248 (c) Ordinances relating to the adoption of budgets or
249 budget amendments, including revenue sources necessary to fund
250 the budget;

251 (d) Ordinances required to implement a contract or an
252 agreement, including, but not limited to, any federal, state,
253 local, or private grant, or other financial assistance accepted
254 by a county government;

255 (e) Emergency ordinances;

256 (f) Ordinances relating to procurement; or

257 (g) Ordinances enacted to implement the following:

258 1. Part II of chapter 163, relating to growth policy,
259 county and municipal planning, and land development regulation,
260 including zoning, development orders, development agreements,
261 and development permits;

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291 consideration must be listed in an agenda or similar
292 communication produced for the subsequent meeting. This
293 paragraph is remedial in nature, is intended to clarify existing
294 law, and shall apply retroactively.

295 Section 6. Present subsections (4) through (8) of section
296 166.041, Florida Statutes, are redesignated as subsections (5)
297 through (9), respectively, and a new subsection (4) is added to
298 that section, to read:

299 166.041 Procedures for adoption of ordinances and
300 resolutions.—

301 (4) (a) Before the enactment of a proposed ordinance, the
302 governing body of a municipality shall prepare or cause to be
303 prepared a business impact estimate in accordance with this
304 subsection. The business impact estimate must be posted on the
305 municipality's website no later than the date the notice of
306 proposed enactment is published pursuant to paragraph (3) (a) and
307 must include all of the following:

308 1. A summary of the proposed ordinance, including a
309 statement of the public purpose to be served by the proposed
310 ordinance, such as serving the public health, safety, morals,
311 and welfare of the municipality.

312 2. An estimate of the direct economic impact of the
313 proposed ordinance on private, for-profit businesses in the
314 municipality, including the following, if any:

315 a. An estimate of direct compliance costs that businesses
316 may reasonably incur if the ordinance is enacted;

317 b. Identification of any new charge or fee on businesses
318 subject to the proposed ordinance, or for which businesses will
319 be financially responsible; and

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349 and development permits;
350 b. Sections 190.005 and 190.046;
351 c. Section 553.73, relating to the Florida Building Code;
352 or
353 d. Section 633.202, relating to the Florida Fire Prevention
354 Code.
355 Section 7. Section 166.0411, Florida Statutes, is created
356 to read:
357 166.0411 Legal challenges to certain recently enacted
358 ordinances.—
359 (1) A municipality must suspend enforcement of an ordinance
360 that is the subject of an action challenging the ordinance's
361 validity on the grounds that it is expressly preempted by the
362 State Constitution or by state law or is arbitrary or
363 unreasonable if:
364 (a) The action was filed with the court no later than 90
365 days after the adoption of the ordinance;
366 (b) The plaintiff requests suspension in the initial
367 complaint or petition, citing this section; and
368 (c) The municipality has been served with a copy of the
369 complaint or petition.
370 (2) When the plaintiff appeals a final judgment finding
371 that an ordinance is valid and enforceable, the municipality may
372 enforce the ordinance 45 days after the entry of the order
373 unless the plaintiff obtains a stay of the lower court's order.
374 (3) The court shall give cases in which the enforcement of
375 an ordinance is suspended under this section priority over other
376 pending cases and shall render a preliminary or final decision
377 on the validity of the ordinance as expeditiously as possible.

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407 (f) Ordinances relating to procurement; or
408 (g) Ordinances enacted to implement the following:
409 1. Part II of chapter 163, relating to growth policy,
410 county and municipal planning, and land development regulation,
411 including zoning, development orders, development agreements,
412 and development permits;
413 2. Sections 190.005 and 190.046;
414 3. Section 553.73, relating to the Florida Building Code;
415 or
416 4. Section 633.202, relating to the Florida Fire Prevention
417 Code.
418 (6) The court may award attorney fees and costs and damages
419 as provided in s. 57.112.
420 Section 8. Subsection (5) of section 163.2517, Florida
421 Statutes, is amended to read:
422 163.2517 Designation of urban infill and redevelopment
423 area.—
424 (5) After the preparation of an urban infill and
425 redevelopment plan or designation of an existing plan, the local
426 government shall adopt the plan by ordinance. Notice for the
427 public hearing on the ordinance must be in the form established
428 in s. 166.041(3)(c)2. for municipalities, and s. 125.66(5)(b)2.
429 ~~s. 125.66(4)(b)2.~~ for counties.
430 Section 9. Paragraph (a) of subsection (3) of section
431 163.3181, Florida Statutes, is amended to read:
432 163.3181 Public participation in the comprehensive planning
433 process; intent; alternative dispute resolution.—
434 (3) A local government considering undertaking a publicly
435 financed capital improvement project may elect to use the

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465 whichever occurs later. An action for injunctive or other relief
466 may be joined with the petition for certiorari. Principles of
467 judicial or administrative res judicata and collateral estoppel
468 apply to these proceedings. Minimum components of the local
469 process are as follows:

470 (a) The local process must make provision for notice of an
471 application for a development order that materially alters the
472 use or density or intensity of use on a particular piece of
473 property, including notice by publication or mailed notice
474 consistent with the provisions of ss. 125.66(5)(b)2. and 3. and
475 166.041(3)(c)2.b. and c. ~~ss. 125.66(4)(b)2. and 3. and~~
476 ~~166.041(3)(c)2.b. and c.,~~ and must require prominent posting at
477 the job site. The notice must be given within 10 days after the
478 filing of an application for a development order; however,
479 notice under this subsection is not required for an application
480 for a building permit or any other official action of local
481 government which does not materially alter the use or density or
482 intensity of use on a particular piece of property. The notice
483 must clearly delineate that an aggrieved or adversely affected
484 person has the right to request a quasi-judicial hearing before
485 the local government for which the application is made, must
486 explain the conditions precedent to the appeal of any
487 development order ultimately rendered upon the application, and
488 must specify the location where written procedures can be
489 obtained that describe the process, including how to initiate
490 the quasi-judicial process, the timeframes for initiating the
491 process, and the location of the hearing. The process may
492 include an opportunity for an alternative dispute resolution.

493 Section 11. Paragraph (c) of subsection (1) of section

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523 the proposed resolution must ~~shall~~ be in the form established in
524 s. 125.66(5)(b) ~~s. 125.66(4)(b)~~.

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

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

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

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

547 Section 12. Paragraph (a) of subsection (3) of section
548 497.270, Florida Statutes, is amended to read:

549 497.270 Minimum acreage; sale or disposition of cemetery
550 lands.—

551 (3)(a) If the property to be sold, conveyed, or disposed of

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581 nonalcoholic beverages, pursuant to chapter 509, a location for
582 on-premises consumption of alcoholic beverages may not be
583 located within 500 feet of the real property that comprises a
584 public or private elementary school, middle school, or secondary
585 school unless the county or municipality approves the location
586 as promoting the public health, safety, and general welfare of
587 the community under proceedings as provided in s. 125.66(5) ~~s.~~
588 ~~125.66(4)~~, for counties, and s. 166.041(3)(c), for
589 municipalities. This restriction may ~~shall~~ not, however, be
590 construed to prohibit the issuance of temporary permits to
591 certain nonprofit organizations as provided for in s. 561.422.
592 The division may not issue a change in the series of a license
593 or approve a change of a licensee's location unless the licensee
594 provides documentation of proper zoning from the appropriate
595 county or municipal zoning authorities.

596 Section 14. Subsection (1) of section 847.0134, Florida
597 Statutes, is amended to read:

598 847.0134 Prohibition of adult entertainment establishment
599 that displays, sells, or distributes materials harmful to minors
600 within 2,500 feet of a school.—

601 (1) Except for those establishments that are legally
602 operating or have been granted a permit from a local government
603 to operate as adult entertainment establishments on or before
604 July 1, 2001, an adult entertainment establishment that sells,
605 rents, loans, distributes, transmits, shows, or exhibits any
606 obscene material, as described in s. 847.0133, or presents live
607 entertainment or a motion picture, slide, or other exhibit that,
608 in whole or in part, depicts nudity, sexual conduct, sexual
609 excitement, sexual battery, sexual bestiality, or

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 2022-2023 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. The bill contains a legislative finding that its provisions fulfill an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill does not affect state or local revenue.

B. Private Sector Impact:

The bill may have an indeterminate positive impact on private parties who bring actions challenging the enactment or enforcement of an ordinance by a local government. Private parties may benefit from the automatic stay and priority docketing, which may reduce costs for legal action, and will benefit from recovering attorney fees for successful actions, if awarded.

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 Feb. 6, 2023).

"B"



NEVADA DEPARTMENT OF TAXATION
Division of Local Government Services

BUSINESS IMPACT STATEMENTS

GUIDELINES AND REFERENCES

Exhibit D

BUSINESS IMPACT STATEMENT (TEMPLATE)

The following business impact statement was prepared pursuant to NRS 237.090 to address the proposed impact of _____ (insert ordinance number, or description of proposed rule).

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary. *(List all trade association or owners and officers of businesses likely to be affected by the proposed rule that have been consulted).*

2. The estimated economic effect of the proposed rule on businesses, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects:

Beneficial effects:

Direct effects:

Indirect effects:

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used: *(Include whether the following was considered: simplifying the proposed rule; establishing different standards of compliance for a business; and if applicable, modifying a fee or fine set forth in the rule so that business could pay a lower fee or fine).*

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is: \$ _____.

5. (If applicable, provide the following:) The proposed rule provides for a new fee or increases and existing fee and the total annual amount expected to be collected is: \$ _____.

BUSINESS IMPACT STATEMENT (COMPLETED)

The following business impact statement was prepared pursuant to NRS 237.090 to address the proposed impact of Proposed Rule Ordinance No. 02-099 which would increase the current basic building permit fee applicable to residential dwelling construction from \$32.00 dollars per 100 square feet to proposed \$36.00 dollars per 100 square feet.

1. The following constitutes a description of the number of the manner in which comment was solicited from affected businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary. *(List all trade association or owners and officers of businesses likely to be affected by the proposed rule that have been consulted).*

The draft of proposed Rule Ordinance No. 02-099 was mailed to the Home Builders Association, the Chamber of Commerce, the Nevada Taxpayers Association, the Nevada Retail Association, and other interested parties who are a part of the permanent mailing list. Of those interested parties, only the Home Builders responded. They did not oppose the increase.

2. The estimated economic effect of the proposed rule on the business's, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects: Currently the average levy is \$484.00 dollars, which represents an approximately 1,500 square foot-housing unit. The change from \$32 to \$36 represents a 12.5% increase. The adverse effect is anticipated to be an increase of \$60.00 dollars per average housing unit.

Beneficial effects: It is estimated that this increase in the residential tax will add an additional \$400,000 dollars per year to pay the costs of processing building permits, conducting related reviews and making related inspections.

Direct effects: The passage of this measure will directly increase the fees paid to construct new dwelling units and will result in additional money for building permit processing.

Indirect effects: The passing of this measure is sure to have indirect effects, however at this time, those effects cannot be quantified.

3. The following constitutes a description of the methods that the governing body of the local government considered to reduce the impact of the proposed rule on businesses and a statement regarding whether any, and if so which, of these methods were used: *(Include whether the following was considered: simplifying the proposed rule; establishing different standards of compliance for a business; and if applicable, modifying a fee or fine set forth in the rule so that a business could pay a lower fee or fine).*

The governing body of the local government considered raising the residential building permit fee approximately 1 year ago, but chose to postpone as the governing body felt that it should seek alternative means of financing costs of processing building permit and related reviews and inspections. It attempted to pass legislation during the 2001 session of the Nevada State Legislature to provide other sources of financing, however; the Legislature chose not to make this change. At this time, there does not appear to be any other reasonable method to achieve the funding increases that building permit processing requires.

" C "

Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)

Division:
Board:
Rule Number:
Rule Description:
Contact Person:

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?

- 1. Is the rule likely to reduce personal income? Yes No
- 2. Is the rule likely to reduce total non-farm employment? Yes No
- 3. Is the rule likely to reduce private housing starts? Yes No
- 4. Is the rule likely to reduce visitors to Florida? Yes No
- 5. Is the rule likely to reduce wages or salaries? Yes No
- 6. Is the rule likely to reduce property income? Yes No

Explanation:

The revised rule may significantly reduce biosolids land application rates (the amount applied per acre on an annual basis) by an estimated 75%. In 2018, just under 90,000 dry tons of Class B biosolids were applied to biosolids land application sites with about 84,000 acres of the currently permitted 100,000 acres in Florida. Reduced land application rates would necessitate the permitting about 4 to 10 times more land to accommodate the current quantity of land applied Class B biosolids.

As haulers have already permitted land application sites closer to the domestic wastewater facilities that generate biosolids, any additional sites are expected to be at greater distances from these facilities. This could result in longer hauling distances. Additionally, some existing sites may cease land application completely, either because the site may not be suitable for land application or because the land owner may not want to subject their property to ground water or surface water quality monitoring. The additional site monitoring requirements for ground water and surface water will also increase operational costs, so some biosolids site permittees, especially for smaller sites, may choose to cease operations.

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?
 Yes No
4. Is the rule likely to cause Florida businesses to reduce workforces?
 Yes No
5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
 Yes No
6. Is the rule likely to make illegal any product or service that is currently legal?
 Yes No

Explanation:

As the proposed rule revisions increase the cost of biosolids management, biosolids management companies will need to increase fees for their services. Also, as the demand for landfilling or transferring biosolids to Class AA biosolids treatment facilities increases, existing landfills and Class AA biosolids treatment facilities may increase fees for their services. Additionally, biosolids might be transferred out-of-state for management or disposal.

If more biosolids are transferred to landfills, (including out-of-state landfills), or transferred to Class AA biosolids treatment facilities, the workforce that currently manages biosolids land application programs could be reduced.

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

- C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

1. Current one-time costs	\$0 (current existing conditions)
2. New one-time costs	\$10,000,000 – \$400,000,000
Continuing Class B	\$10,000,000
Class AA	\$300,000,000 - \$400,000,000
3. Subtract 1 from 2	\$10,000,000 - \$400,000,000

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

- None. The department intends to implement the proposed rule within its current workload, with existing staff.
- Minimal. *(Provide a brief explanation).*
- Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

- None. This proposed rule will only affect the department.
- Minimal. *(Provide a brief explanation).*
- Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

The majority of biosolids are generated by utilities owned and operated by local government entities. Therefore, estimates for one-time capital costs and recurring costs will primarily affect local governments entities. This includes 127 domestic wastewater treatment facilities that treat and land apply biosolids, 9 biosolids treatment facilities that land apply biosolids, an unknown but significant number of small wastewater treatment facilities that send biosolids to larger treatment facilities, and biosolids treatment facilities that treat and land apply biosolids. Not included are utilities potentially indirectly affected by the increasing costs of biosolids management resulting from increased demand on management options other than land application (e.g. landfill tipping fees, Class AA biosolids treatment facilities, etc.)

3. Cost to the department of enforcing the proposed rule:

- None. The department intends to enforce the proposed rule within its current workload with existing staff.
- Minimal. *(Provide a brief explanation).*
- Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

- Using industry estimates of \$8 per acre cost to land apply biosolids at 500,000 acres would equate to approximately \$4 million new recurring costs (industry estimates \$17 million.)
- Industry believes that the remaining land in Florida acceptable for this land application is limited; some of this area is within springs watersheds. Industry predicts having to use disposal sites in North Florida and South Georgia, adding 150-350 miles to biosolids transportation at a cost of \$3.00 per mile. Using 90,000 dry tons or 450,000 wet tons, each truck carrying 25 wet tons equals 18,000 loads at a round trip of 500 miles (250 mile trip). At a cost of approximately \$3 per mile, this equals \$27 million annually. Industry estimates \$42 million annually.

Additional monitoring (no new sites): \$1 million annually

- Ground water – if all 125 sites, (3 wells each), require quarterly monitoring of \$500 per quarter, this totals to \$750,000 annually.
- Surface water monitoring – This is not required for all sites, but there are likely multiple locations possible per site. An approximate estimation is 125 samples quarterly at \$500 per sample, which totals to \$250,000 annually.

Converting to Class AA (Fertilizer)

Estimated capital cost: \$300 million - \$400 million

- Miami-Dade County's estimate for Class AA: \$100,000,000
- Miami-Dade represents about 25-33% of Class B biosolids currently land applied.
- St. Petersburg reported spending approximately \$94 million for a Class AA project, which will treat a smaller quantity of biosolids. The facility may need modifications, which will add to the current expense.
- Smaller facilities do not have the scale to achieve the same capital cost per dry ton as Miami-Dade, so the Miami Dade estimate could be conservative.
- Private regional facilities serving small facilities would reduce capital costs, but would increase operational costs (e.g. transportation, and dewatering)

Estimated recurring cost: \$30 million - \$40 million

- Miami-Dade estimate is \$10 million Operation & Maintenance annually.
- Miami-Dade represents about 25-33% of Class B biosolids land applied.
- Smaller facilities do not have the scale to achieve as low a cost per dry ton as Miami-Dade.
- Regional facilities would also not have the same scale as Miami Dade, due to the county's dense population compared to the less dense area that a regional facility could serve. Regional facilities would also have higher transportation costs.

**Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)**

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

Analysis of the impact on small business:

Small businesses would likely include most of the nine biosolids treatment facilities and all 46 septage management facilities permitted by DEP. Also included would be some of the biosolids hauling/land application companies (DEP does not issue hauling permits).

The primary issue is the small volume of biosolids handled by these small businesses. The "unit cost" of managing a dry ton of biosolids will likely be much higher for these entities. As a result, the cost to build and treat to Class AA is probably not financially feasible. Additionally, these facilities operate on a local basis, and are unable to haul biosolids long distances or permit non-local sites. While small volumes can make the increased costs more manageable, these small businesses will not have reasonable options if Class B land application is no longer feasible (a current issue in the Panhandle where septage haulers have limited disposal options).

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Small counties and cities representing over 40 domestic wastewater treatment facilities could be significantly impacted by this proposed rule.

These facilities are primarily rural and handle a small volume of biosolids. Because of this, the "unit cost" of managing a dry ton of biosolids will likely be much higher for these entities, meaning the cost to build and treat to Class AA is probably not financially feasible. Additionally, these facilities operate on a local basis and are unable to haul biosolids long distances or

Department of Environmental Protection
Statement of Estimated Regulatory Costs (SERC)

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "B".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "C".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "D".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "E".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*