

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1547 Local Government Actions

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, McClure

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1628

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|---------------------------------------|
| 1) Local Administration, Federal Affairs & Special Districts Subcommittee | 11 Y, 5 N, As CS | Darden | Darden |
| 2) State Affairs Committee | | Darden | Williamson |

SUMMARY ANALYSIS

Local governments have broad authority to legislate on any matter not inconsistent with federal or state law. If the Legislature preempts an area of regulation to the state, local governments are prohibited from exercising authority in that area. If a local government enacts an ordinance on a matter preempted to the state, a person may file a lawsuit asking the court to declare the ordinance void. A person may also challenge a local ordinance on the grounds that it is unreasonable; in such a challenge, the court will uphold the ordinance if a rational relationship exists between the regulation and a legitimate governmental purpose.

Before enactment of a proposed ordinance, a county or municipality must prepare a business impact estimate. The estimate must be published on the county or municipality’s website no later than the date the notice of proposed enactment is published in the newspaper and include information estimating the impact of the proposed ordinance on businesses operating in the jurisdiction. Certain types of ordinances are exempt from this requirement, including ordinances enacted to implement part II of ch. 163, F.S., relating to growth policy, county and municipal planning, and land development regulation, including zoning.

Counties and municipalities are prohibited from enforcing any ordinance that is the subject of legal action challenging the ordinance’s validity on the grounds that it is preempted by the Florida Constitution or state law or is arbitrary or unreasonable if certain conditions are met. Certain types of ordinances are exempt from this requirement, including ordinances enacted to implement part II of ch. 163, F.S., relating to growth policy, county and municipal planning, and land development regulation, including zoning.

The bill revises exemptions for both the business impact estimate and the suspension of county or municipal ordinances subject to legal challenge to limit the exception for challenges to land use related ordinances to development orders, permits, and agreements.

The bill may have a fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ordinances

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.³ A local government enactment may be inconsistent with state law if the State Constitution preempts the subject area, the Legislature preempts the subject area, or the local enactment conflicts with a state statute.

Local governments exercise their powers by adopting ordinances. The adoption or amendment of a regular ordinance, other than an ordinance making certain changes to zoning, may be considered at any regular or special meeting of the local governing body.⁴ Notice of the proposed ordinance must be published at least 10 days before the meeting in a newspaper of general circulation in the area; state the date, time, and location of the meeting, the title of the proposed ordinance, and locations where the proposed ordinance may be inspected by the public; and advise that interested parties may appear and speak at the meeting. Municipal ordinances must also be read by title or in full on at least two separate days.⁵ Ordinances may only encompass a single subject and may not be revised or amended solely by reference to the title.⁶

A county may adopt an emergency ordinance that bypasses the notice requirement if the governing body declares that an emergency exists requiring the immediate enactment of the ordinance and the ordinance is approved by a four-fifths vote.⁷ A municipality may adopt an emergency ordinance by two-thirds vote of the municipal governing body.⁸ An emergency ordinance may not be used to adopt zoning changes.⁹

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ Art. VIII, s. 2(b); *see also* s. 166.021(1), F.S.

⁴ *See* ss. 125.66(2)(a) and 166.041, F.S. In addition to general notice requirements, a local government must provide written notice by mail to all property owners before adopting a zoning change involving less than 10 contiguous acres. Ss. 125.66(4)(a) and 166.041(3)(c)1., F.S. If a zoning change involves 10 or more contiguous acres, the local government must conduct two public hearings, advertised in a newspaper, before adopting the ordinance. Ss. 125.66(4)(b) and 166.041(3)(c)2., F.S.

⁵ S. 166.041(3)(a), F.S.

⁶ Ss. 125.67 and 166.041(2), F.S.

⁷ S. 125.66(3), F.S.

⁸ S. 166.041(3)(b), F.S.

⁹ Ss. 125.66(3) and 166.041(3)(b), F.S.

Business Impact Estimates

Before enactment of a proposed ordinance, a county or municipality must prepare a business impact estimate.¹⁰ The estimate must be published on the county or municipality's website no later than the date the notice of proposed enactment is published in the newspaper and must include:

- A summary of the proposed ordinance, including a statement of the public purpose it serves.
- An estimate of the direct economic impact of the proposed ordinance on private for-profit businesses in the county's or municipality's jurisdiction, including the following, if any:
 - An estimate of direct compliance costs businesses may reasonably incur if the ordinance is enacted.
 - Identification of any new charge or fee on businesses subject to the proposed ordinance or for which businesses will be financially responsible.
 - An estimate of the county's or municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed to cover such costs.
- A good faith estimate of the number of businesses likely to be impacted by the ordinance.
- Any additional information that the county or municipality determines may be useful.¹¹

A county or municipality is not required to procure an accountant or other financial consultant to prepare the estimate.¹²

The following types of ordinances are exempt from the requirement to prepare a business impact estimate:

- Ordinances enacted to implement part II of ch. 163, F.S., relating to growth policy, local planning, or land development regulation; s. 553.73, F.S., relating to the Florida Building Code; s. 633.202, F.S., relating to the Florida Fire Prevention Code; or ss. 190.005 and 190.046, F.S., relating to creating, dissolving, or adjusting the boundaries of a community development district.
- Ordinances related to the issuance or refinancing of debt.
- Ordinances required to comply with a federal or state law or regulation.
- Ordinances related to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget.
- Ordinances required to implement a contract or an agreement.
- Ordinances related to procurement.
- Emergency ordinances.¹³

Reasonableness

The Legislature may not constitutionally delegate to a local government the power to enact an unreasonable ordinance; thus, a local ordinance must be reasonable and may be challenged on the grounds of unreasonableness.¹⁴ A court determining whether a challenged ordinance is reasonable applies the "rational basis" review standard, under which the court will uphold the ordinance if it is at least debatable that a rational relationship exists between the regulation and a legitimate governmental purpose.¹⁵ Where such an ordinance's reasonableness is fairly debatable, a court will not substitute its judgment for that of the local governing body, "there being a peculiar propriety in permitting inhabitants of a [jurisdiction] through its proper officials to determine what rules are necessary for their own local government."¹⁶ The fact that opinions may differ as to a local ordinance's reasonableness is insufficient to void the ordinance, even if the policy's wisdom is debatable and its effects are uncertain.¹⁷

¹⁰ Ss. 125.66(3)(a) and 166.041(4)(a), F.S.

¹¹ *Id.*

¹² Ss. 125.66(3)(b) and 166.041(4)(b), F.S.

¹³ Ss. 125.66(3)(c) and 166.041(4)(c), F.S.

¹⁴ *State ex rel. Harkow v. McCarthy*, 126 Fla. 433 (Fla. 1936); *Gates v. City of Sanford*, 566 So. 2d 47 (Fla. 5th DCA 1990); *Gustafson v. City of Ocala*, 53 So. 2d 658 (Fla. 1951); 12A Fla. Jur. 2d Counties, Etc., § 224.

¹⁵ *Martin County v. Section 28 Partnership Ltd.*, 772 So. 2d 616 (Fla. 4th DCA 2000); *City of Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957); *City of Miami Beach v. Lachman*, 71 So. 2d 148 (Fla. 1953); *Dennis v. City of Key West*, 381 So. 2d 1980 (Fla. 3d DCA 1980); 12A Fla. Jur. 2d Counties, Etc., s. 224.

¹⁶ *Lachman*, 71 So. 2d at 152; *Kayfetz*, 92 So. 2d at 801; *Dennis*, 381 so. 2d at 314; *State v. Sawyer*, 346 So. 2d 1071 (Fla. 3d DCA 1977).

¹⁷ *Silvio Membreno and Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13 (Fla. 3d DCA 2016).

Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁸ To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.¹⁹ Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”²⁰

Where state preemption applies, a local government may not exercise authority in that area.²¹ Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the government may declare the preempted ordinance void.²²

Ordinance Challenges

A county or municipality is prohibited from enforcing any ordinance that is the subject of legal action challenging the ordinance’s validity on the grounds that it is preempted by the Florida Constitution or state law or is arbitrary or unreasonable if:

- The legal action is filed no later than 90 days after the ordinance’s adoption.
- The complainant requests suspension in the initial complaint or petition.
- The county or municipality has been served with a copy of the complaint or petition.²³

If the county or municipality receives a final judgment that the ordinance is valid and the plaintiff appeals the judgement, the local government may enforce the ordinance 45 days after the entry of the final judgment unless the plaintiff obtains a stay of lower court’s order.²⁴

Courts are required to give cases involving suspended ordinances priority over other pending cases and must render a preliminary or final decision as expeditiously as possible.²⁵ The signature of any attorney or a party on a document filed in an ordinance challenge certifies that the signatory has read the document and that, to the best of his or her knowledge, it is not filed for any improper purpose.²⁶ If a document is signed in violation of this signature requirement, the court must impose upon the signatory, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party the amount of reasonable expenses the other party incurred due to the filing of the document, including attorney fees.

The ordinance suspension provision does not apply to:

- Ordinances enacted to implement part II of ch. 163, F.S. relating to growth policy, local planning, or land development regulation; s. 553.73, F.S., relating to the Florida Building Code; s. 633.202, F.S., relating to the Florida Fire Prevention Code; or ss. 190.005 and 190.046, F.S., relating to creating, dissolving, or adjusting the boundaries of a community development district.
- Ordinances required for compliance with a federal or state law or regulation.
- Ordinances related to the issuance or refinancing of debt.

¹⁸ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).

¹⁹ *Mulligan*, 934 So. 2d at 1243.

²⁰ *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

²¹ *D’Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

²² See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

²³ Ss. 125.675(1) and 164.0411(1), F.S.

²⁴ Ss. 125.675(2) and 164.0411(2), F.S.

²⁵ Ss. 125.675(3) and 164.0411(3), F.S.

²⁶ Ss. 125.675(4) and 164.0411(4), F.S. This provision is similar to the professional requirement imposed on members of The Florida Bar and foreign attorneys admitted *pro haec vice*. See Fla. R. Gen. Prac. & Jud. Admin. 2.515(a).

- Ordinances related to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget.
- Ordinances required to implement a contract or an agreement.
- Ordinances related to procurement.
- Emergency ordinances.²⁷

Effect of Proposed Changes

The bill revises exemptions to the requirement that counties and municipality produce or have produced a business impact estimate prior to passing an ordinance. Whereas current law exempts the entirety of growth policy, county and municipal planning, and land development regulations under part II of ch. 163, F.S., the bill limits this exemption to development orders, permits, and agreements.

The bill also revises exemptions to provisions that require suspension of a county or municipality ordinance pending a legal challenge on the grounds the ordinance is expressly preempted, arbitrary, or unreasonable. Whereas current law exempts the entirety of growth policy, county and municipal planning, and land development regulations under part II of ch. 163, F.S., the bill limits this exemption to development orders, permits, and agreements.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.66, F.S., relating to county ordinances.

Section 2: Amends s. 125.675, F.S., relating to legal challenges to certain recently enacted county ordinances.

Section 3: Amends s. 166.041, F.S., relating to procedures for adoption of municipal ordinances and resolutions.

Section 4: Amends s. 166.0411, F.S., relating to legal challenges to certain recently enacted municipal ordinances.

Section 5: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate economic impact on court expenditures due to provisions concerning challenges to land use related ordinances.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may increase county and municipal expenditures to the extent additional staff time and resources are necessary to produce business impact estimates for land use related ordinances that are exempt from this requirement under current law.

²⁷ Ss. 125.675(5) and 165.0411(5), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to prepare business impact statements before the adoption of any ordinance; however, an exemption may apply if the bill has an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for, nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 7, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in that it removed provisions relating to state agency review of local government ordinances and charter provisions that impact food, energy, and supply chain security

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.