Local Ordinances SB 170

Rebecca O'Hara
Deputy General Counsel, Florida League of Cities
rohara@flcities.com

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.*

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

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 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

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: 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.

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.

An act relating to local ordinances; amending s. 57.112, F.S.; authorizing courts to assess and award reasonable attorney fees and costs and damages in certain civil actions filed against local governments; specifying a limitation on awards and a restriction on fees and costs of certain litigation; providing construction and applicability; amending s. 125.66, F.S.; providing certain procedures for continued meetings on proposed ordinances and resolutions for counties; providing for construction and retroactive application; requiring a board of county commissioners to prepare or cause to be prepared a business impact estimate before the enactment of a proposed ordinance; specifying requirements for the posting and content of the estimate; providing construction and applicability; creating s. 125.675, F.S.; requiring a county to suspend enforcement of an ordinance that is the subject of a certain legal action if certain conditions are met; authorizing a prevailing county to enforce the ordinance after a specified period, except under certain circumstances; requiring courts to give priority to certain cases; providing construction relating to an attorney's or a party's signature; requiring a court to impose sanctions under certain circumstances; providing applicability; authorizing courts to award attorney fees and costs and damages if certain conditions are met; amending s. 166.041, F.S.; providing certain procedures for continued meetings on

proposed ordinances for municipalities; providing for construction and retroactive application; requiring a governing body of a municipality to prepare or cause to be prepared a business impact estimate before the enactment of a proposed ordinance; specifying requirements for the posting and content of the estimate; providing construction and applicability; creating s. 166.0411, F.S.; requiring a municipality to suspend enforcement of an ordinance that is the subject of a certain legal action if certain conditions are met; authorizing a prevailing municipality to enforce the ordinance after a specified period, except under certain circumstances; requiring courts to give priority to certain cases; providing construction relating to an attorney's or a party's signature; requiring a court to impose sanctions under certain circumstances; providing applicability; authorizing courts to award attorney fees and costs and damages if certain conditions are met; amending ss. 163.2517, 163.3181, 163.3215, 376.80, 497.270, 562.45, and 847.0134, F.S.; conforming cross-references and making technical changes; providing a declaration of important state interest; providing effective dates.

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

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

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

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

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

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

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

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

(b) The governing body of the local governmental entity

withdraws the proposed ordinance within 30 days; or, in the case of an adopted ordinance, the governing body of a local government notices an intent to repeal the ordinance within 30 days after ~~of~~ receipt of the notice and repeals the ordinance within 30 days thereafter.

(5) ~~(4)~~ The provisions in this section are supplemental to all other sanctions or remedies available under law or court rule. However, this section may not be construed to authorize double recovery if an affected person prevails on a claim brought against a local government pursuant to other applicable law involving the same ordinance, operative acts, or transactions.

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

(7)(a) ~~(6)~~ Except as provided in paragraph (b), this section is intended to be prospective in nature and applies ~~shall apply~~ only to cases commenced on or after July 1, 2019.

(b) The amendments to this section effective October 1, 2023, are prospective in nature and apply only to ordinances adopted on or after October 1, 2023.

(c) An amendment to an ordinance enacted after October 1, 2023, gives rise to a claim under this section only to the extent that the application of the amendatory language is the cause of the claim apart from the ordinance being amended.

Section 2. Effective upon becoming a law, subsection (7) is added to section 125.66, Florida Statutes, to read:

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

resolutions.—

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

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

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

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

or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice must ~~shall~~ also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3)(a) Before the enactment of a proposed ordinance, the board of county commissioners shall prepare or cause to be prepared a business impact estimate in accordance with this subsection. The business impact estimate must be posted on the county's website no later than the date the notice of proposed enactment is published pursuant to paragraph (2)(a) and must include all of the following:

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

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

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

b. Identification of any new charge or fee on businesses subject to the proposed ordinance or for which businesses will be financially responsible.

c. An estimate of the county's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs.

3. A good faith estimate of the number of businesses likely to be impacted by the ordinance.

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

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

(c) This subsection does not apply to:

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

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

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

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

5. Emergency ordinances;

6. Ordinances relating to procurement; or

7. Ordinances enacted to implement the following:

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

b. Sections 190.005 and 190.046;

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

d. Section 633.202, relating to the Florida Fire Prevention

Code.

Section 4. Section 125.675, Florida Statutes, is created to read:

125.675 Legal challenges to certain recently enacted ordinances.—

(1) A county must suspend enforcement of an ordinance that is the subject of an action challenging the ordinance's validity on the grounds that it is expressly preempted by the State Constitution or by state law or is arbitrary or unreasonable if:

(a) The action was filed with the court no later than 90 days after the adoption of the ordinance;

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

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

(2) When the plaintiff appeals a final judgment finding that an ordinance is valid and enforceable, the county may enforce the ordinance 45 days after the entry of the order unless the plaintiff obtains a stay of the lower court's order.

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

(4) The signature of an attorney or a party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive

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

(5) This section does not apply to:

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

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

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

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

(e) Emergency ordinances;

(f) Ordinances relating to procurement; or

(g) Ordinances enacted to implement the following:

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

2. Sections 190.005 and 190.046;

3. Section 553.73, relating to the Florida Building Code; or

4. Section 633.202, relating to the Florida Fire Prevention Code.

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

Section 5. Effective upon becoming a law, paragraph (d) is added to subsection (3) of section 166.041, Florida Statutes, and paragraph (a) of that subsection is amended, to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)(a) Except as provided in paragraphs ~~paragraph~~ (c) and (d), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(d) Consideration of the proposed municipal ordinance at a meeting properly noticed pursuant to this subsection 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 as required under this subsection is required, except that the continued

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

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

166.041 Procedures for adoption of ordinances and resolutions.—

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

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

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

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

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

c. An estimate of the municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs.

3. A good faith estimate of the number of businesses likely to be impacted by the ordinance.

4. Any additional information the governing body determines may be useful.

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

(c) This subsection does not apply to:

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

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

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

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

5. Emergency ordinances;

6. Ordinances relating to procurement; or

7. Ordinances enacted to implement the following:

a. Part II of chapter 163, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements,

and development permits;

b. Sections 190.005 and 190.046;

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

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

Section 7. Section 166.0411, Florida Statutes, is created to read:

166.0411 Legal challenges to certain recently enacted ordinances.—

(1) A municipality must suspend enforcement of an ordinance that is the subject of an action challenging the ordinance's validity on the grounds that it is expressly preempted by the State Constitution or by state law or is arbitrary or unreasonable if:

(a) The action was filed with the court no later than 90 days after the adoption of the ordinance;

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

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

(2) When the plaintiff appeals a final judgment finding that an ordinance is valid and enforceable, the municipality may enforce the ordinance 45 days after the entry of the order unless the plaintiff obtains a stay of the lower court's order.

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

(4) The signature of an attorney or a party constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or for economic advantage, competitive reasons, or frivolous purposes or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the court, upon its own initiative or upon favorably ruling on a party's motion for sanctions, must impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney fees.

(5) This section does not apply to:

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

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

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

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

(e) Emergency ordinances;

(f) Ordinances relating to procurement; or

(g) Ordinances enacted to implement the following:

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

2. Sections 190.005 and 190.046;

3. Section 553.73, relating to the Florida Building Code; or

4. Section 633.202, relating to the Florida Fire Prevention Code.

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

Section 8. Subsection (5) of section 163.2517, Florida Statutes, is amended to read:

163.2517 Designation of urban infill and redevelopment area.—

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

Section 9. Paragraph (a) of subsection (3) of section 163.3181, Florida Statutes, is amended to read:

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

(3) A local government considering undertaking a publicly financed capital improvement project may elect to use the

procedures set forth in this subsection for the purpose of allowing public participation in the decision and resolution of disputes. For purposes of this subsection, a publicly financed capital improvement project is a physical structure or structures, the funding for construction, operation, and maintenance of which is financed entirely from public funds.

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

Section 10. Paragraph (a) of subsection (4) of section 163.3215, Florida Statutes, is amended to read:

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

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

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

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

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

376.80, Florida Statutes, is amended to read:

376.80 Brownfield program administration process.—

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

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

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

2. Resolution adoption.—The brownfield area designation must be carried out by a resolution adopted by the jurisdictional local government, which includes a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 166.041, except that the procedures for the public hearings on the proposed resolution must be in the form established in s. 166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 125.66, except that the procedures for the public hearings on

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

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

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

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

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

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

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

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

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

Section 13. Paragraph (a) of subsection (2) of section 562.45, Florida Statutes, is amended to read:

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

(2)(a) Nothing contained in the Beverage Law may ~~shall~~ be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. However, except for premises licensed on or before July 1, 1999, and except for locations ~~that are~~ licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and

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

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

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

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

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

Section 15. The Legislature finds and declares that this act fulfills an important state interest.

Section 16. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect October 1, 2023.

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).

C. Government Sector Impact:

Business impact estimates will require staffing time and resources for each ordinance passed by a local government. The negative economic impact is indeterminate at this time.

Courts may see indeterminate economic impact as suspensions may reduce hearings sought for temporary injunctive relief, while priority docketing may increase workload for clerks of court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 57.112, 125.66, 166.041, 163.2517, 163.3181, 163.3215, 376.80, 497.270, 562.45, and 847.0134.

This bill creates sections 125.675 and 166.0411, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 23, 2023:
The CS provides that properly noticed consideration of a proposed ordinance may be continued to a subsequent meeting under certain circumstances without further publication, mailing, or posted notice.

CS by Community Affairs on February 8, 2023:
The CS makes a technical change to correct two references to municipal government.

B. Amendments:

None.

"B"

NEVADA DEPARTMENT OF TAXATION

Division of Local Government Services

BUSINESS IMPACT STATEMENTS

GUIDELINES AND REFERENCES

BUSINESS IMPACT STATEMENTS

This package is to be utilized as a guide to assist local governments in the procedures for preparing business impact statements. It was prepared for the Committee on Local Government Finance (the Committee), pursuant to NRS 237.030 through 237.150. It has been updated to reflect amended language added by SB 488 (2005). The package also includes a checklist for the use by local governmental entities to ensure compliance with statute and regulations.

The goals of the legislation were to require that a Business Impact Statement must be prepared and businesses must have an opportunity to review the statement before a local government takes certain action that has a significant economic burden on a business.

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 ad 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: $ _____.

6. The money generated by the new fee or increase in existing fee will be used by the local government to:

7. (If applicable, provide the following:) The proposed rule includes provisions that duplicate or are more stringent that federal, state or local standards regulating the same activity. The following explains when such duplicative or more stringent provisions are necessary:

Exhibit E

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 businesses, 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.

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is: *The proposed change in the residential construction tax presents no significant foreseeable or anticipated cost or decrease in the costs related to collection.*

5. (If applicable, provide the following:) The proposed rule provides for a new fee or increase in an existing fee and the total amount the local government expects to collect is: *$400,000*.

6. The money generated by the new fee or increase in existing fee will be used by the local government for *processing building permits and making related reviews and inspections.*

7. (If applicable, provide the following:) The proposed rule includes provisions, which duplicate or are more stringent than federal, state or local standards regulating the same activity. The following explains why such duplicative or more stringent provisions are necessary.

The proposed change is not duplicative, or more stringent that existing federal, state or local standards.

"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.

Under the proposed rule, some portion of currently land-applied Class B biosolids are expected to then be disposed of in landfills or be converted to Class AA biosolids. The reduction in land application rates, loss of land application sites, and shift away from land application could result in:

- **Loss of biosolids hauling contracts**
- **Loss of jobs with biosolids hauling companies.**
- **Loss of grass production and income for land owners.**
- **Increased operational expenses for biosolids haulers, and;**
- **Loss of cost savings and production for cattle ranchers and hay farmers.**

Under the revised rule, biosolids land application rates will drop by an average of 75%. Some farmers indicate an economic value of about $60 per acre in fertilizer savings though biosolids land application. In 2018, approximately 84,000 acres were utilized for the land application of biosolids, which would represent a current fertilizer cost savings of approximately $5,040,000. This would be a loss of $3,780,000 in cost savings annually if 75% less biosolids can be applied per acre. Not all 84,000 acres may receive sufficient quantities of biosolids to represent the $60 per acre savings. However, the $60 savings is conservative when compared to past EPA estimates of $160 value per acre, which included the costs to spread the material and not just the cost of fertilizer itself. Any loss of production is not included in this SERC, as it is unknown. Industry comments suggested an annual $3,000,000 loss in cost savings based on the quantity of Class B biosolids, and a $40 fertilizer value per acre based on a complete loss of Class B biosolids.

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.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

   ☒ Yes ☐ No

2. Is the rule likely to add regulation that is not present in other states or markets?

   ☒ Yes ☐ No

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**

4.	Current recurring costs	**$36,000,000**
5.	New recurring costs	**$30,000,000 - $60,000,000**
	Continuing Class B	**$60,000,000 + $36,000,000**
	Convert to Class AA	**$30,000,000 – $40,000,000**
6.	Subtract 4 from 5	**$60,000,000 to continue Class B** **$30,000,000 - $40,000,000 to shift to Class AA**
7.	Number of times costs will recur in 5 years	**5**
8.	Multiply 6 times 7	**$300,000,000 to continue Class B** **$150,000,000 - $200,000,000 to shift to Class AA**
9.	Add 3 to 8	**$310,000,000 to continue Class B** **$450.000.000 - $600,000,000 to shift to Class AA**

If 9. is greater than $1 million, there is likely an increase of regulatory costs in excess of $1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*
   - **Approximately 125 site permittees (number is slightly less because some permittees have multiple sites)**
   - **125 agricultural land owners (ranches, farms, etc.)**
   - **127 domestic wastewater treatment facilities**
   - **9 biosolids treatment facilities**
   - **46 septage management facilities**
   - **Unknown number of biosolids haulers (approximately 6 – 12, as there is some duplication with the site permittees). DEP does not permit haulers.**

2. A general description of the types of individuals likely to be affected by the rule.

   Entities currently involved with the land application of biosolids will be directly affected by the new rule - site permittees, the land owners of sites, facilities and utilities currently sending biosolids for land application, and biosolids transporters.

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).*

4. Cost to any other state and local government of enforcing the proposed rule:

☐ None. This proposed rule will only affect the department.

☒ Minimal. *(Provide a brief explanation).*

One existing septage management facility and one biosolids land application site are currently regulated by a delegated local program. Although numerous small domestic wastewater treatment facilities are regulated by delegated local programs, the proposed change should not increase their enforcement costs, as biosolids disposal options are already addressed in facility permits. If more biosolids are transported to landfills or large biosolids treatment facilities producing Class AA biosolids, this may actually reduce the costs for compliance review by the delegated local programs for facilities choosing these biosolids management options over land application.

☐ Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. (Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the 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).*

Continuing Land Application of Class B Biosolids
Note: It is unlikely that all of the approximately 90,000 dry tons of Class B biosolids currently land applied in Florida will continue to be land applied.

Capital cost for permitting new land application sites: $10 million

- **Using industry estimate of 400,000 additional acres necessary, industry estimates $200 per acre, or a one-time cost of $80 million.**
- **Estimate of an average of $20,000 average cost per site to fulfill permitting requirements.**
- **Estimate of 4 times the number of sites or 125 x 4 = 500 new sites or $10 million.**

Recurring costs

- 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.

Innovative Technologies – These were not evaluated. DEP is not aware of a technology used at full scale for any extended time period, and so does not have enough information to make an analysis.

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
  This regulation is needed to reduce the quantities of nutrients, particularly phosphorus, that potentially impact Florida's waters. Degradation of water quality results in algae blooms and potentially reduced tourism and recreational activities. Although the implementation of the rule will adversely affect certain small businesses and counties, it will serve to protect the interests of other small businesses and counties.
- *The type of small businesses that would be subject to the rule;*
  Private biosolids treatment facilities, septage management facilities, biosolids transporters; and ranchers and farmers.
  - **Many biosolids land application sites (ranchers and farmers) may cease accepting biosolids which not only affect them financially, but also affect the biosolids treatment facilities and septage management facilities who use the sites.**
  - **Small biosolids treatment facilities may close if they cannot acquire land application sites or afford to permit new sites.**
  - **Septage management facilities may close, meaning septage would need to be transported long distances to other suitable facilities.**
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
  Because the revised rule could result in significantly reduced biosolids land application rates, significant amounts of additional land will need to be acquired. This could increase permitting costs and operational costs. Additionally, some sites may not comply with the seasonal high water table requirements or may stop accepting biosolids; as mentioned previously, it may be necessary to procure additional land, likely at farther distances than current sites. Additional monitoring requirements will increase operational costs. These costs may result in an untenable situation for some biosolids treatment facilities and septage management facilities, which could cause them to close. Lastly, the reduction in biosolids application rates, as well as the potential loss of biosolids, will result in the loss of a valuable fertilizer resource, cost savings, and crop production (hay/pasture) for ranchers and farmers.
- *The likely per-firm regulatory cost increase, if any).*
  This depends of the type of operation, the size of the site or facility, and the location of the facility.

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

permit non-local sites. While small volumes make the increased costs of landfilling or sending to a regional facility more manageable, these small facilities will face similar issues of not having reasonable options available if Class B land application is no longer feasible.

☐ Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

A phosphorus-based rate for land application (based on site-specific criteria) results in a significant reduction in the quantity of biosolids that can be applied per acre. DEP is not aware of a feasible alternative to this reduced application rate.

Reducing the application rate would require approximately 4-10 times the amount of acreage to land apply the current amount of biosolids. This would be costly to all parties involved, and it is likely that most biosolids currently land applied would shift to Class AA. Shifting to Class AA is extremely difficult in rural areas where small wastewater treatment facilities, biosolids treatment facilities, and septage management facilities do not have the benefit of economies of scale. Therefore, the likely alternative would be to landfill the biosolids, which would require dewatering and a willing landfill to dispose of the solids. These increased operational costs will result in substantial costs, especially if the biosolids or septage must be transported long distances for disposal. Ultimately, ratepayers and home owners will bear the additional costs.

Even if additional land for land application is obtained, other provisions related to continued land application will increase costs. These include but are not limited to: increased biosolids monitoring, ground water monitoring, and surface water monitoring.

H. Any additional information that the agency determines may be useful.

☐ None.

☒ Additional.

Although a few innovative technologies have been proposed as an alternative to biosolids land application, there is at best very limited evidence that these could successfully serve as alternative management options. Also, the costs for these innovative technologies appear to be at higher than current costs of Class AA technologies.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

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).*

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

# # #