

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 620

INTRODUCER: Appropriations Committee and Senator Hutson

SUBJECT: Local Government

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Atchley</u>	<u>Sadberry</u>	<u>AP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 620 creates a cause of action for an established business to recover loss of business damages from a county or municipality whose regulatory action has caused a significant impact on the business.

Currently, landowners have a cause of action under the Bert J. Harris Act to compensate them for the lost value of their land caused by certain local government actions; landowners have a cause of action for onerous local regulation in the form of exactions; and business landowners have a cause of action under eminent domain law for business damages related to a taking of real property. Similarly, this bill creates a cause of action for a business to sue a local government when the enactment or amendment of an ordinance or charter provision causes at least a 15 percent loss of profits to the business. The business must have been in operation for at least 3 years to qualify. Business damages recoverable are the probable damages to such business which the application of the enactment or amendment of the ordinance or charter provision may reasonably cause. Local government can cure by amending or repealing the local government actions causing business damages. Compliance with a 180-day presuit notice and settlement period is required. A prevailing business may also be awarded costs and attorney fees payable by the county or municipality. If the parties settle the matter pre-trial, attorney fees are limited to a reasonable rate. If the business prevails after the presuit process, attorney fees are a percentage of the difference between the county or municipality's counteroffer and the final award.

The bill may have an indeterminate negative fiscal impact on local governments. The bill does not appear to have a fiscal impact on state government.

The bill is effective upon becoming a law, and applies to enactment or amendment of an ordinance or charter provision on or after becoming a law.

## II. Present Situation:

### Home Rule Powers

#### *The Florida Constitution*

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, sections 1 and 2 of the Florida Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with federal law and the State Constitution and state laws.

#### *Counties*

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.<sup>1</sup> Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.<sup>2</sup> General law authorizes counties “the power to carry on county government”<sup>3</sup> and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”<sup>4</sup>

#### *Municipalities*

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.<sup>5</sup> Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,<sup>6</sup> acknowledges these constitutional grants of police power and better defines municipal powers of self-government.<sup>7</sup> Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and a charter for the county in which the municipality is located.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art. VIII, s. (1)(g).

<sup>3</sup> Section 125.01(1), F.S.

<sup>4</sup> Section 125.01(1)(w), F.S.

<sup>5</sup> FLA. CONST. art. VIII, s. 2.

<sup>6</sup> Section 166.011, F.S.

<sup>7</sup> Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last visited Nov. 23, 2021).

<sup>8</sup> Section 166.021(4), F.S.

**Current Laws Providing Compensation for County and Municipal Governmental Actions**

***Eminent Domain***

Both the Federal Constitution and State Constitution guarantee that a person’s private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall “be taken for public use without just compensation.” Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.<sup>9</sup> Florida eminent domain law compensates a landowner for the value of real property taken for a public purpose. If the taking impacts an ongoing business, the law also provides for payment of business damages related to the eminent domain taking. The term business damages refers to “the probable damages to such business which the denial of the use of the property so taken may reasonably cause.”<sup>10</sup>

State eminent domain law also provides an affected landowner the right to attorney fees.<sup>11</sup> Where the parties settle, the state or local government must pay a reasonable attorney fee, but where the issue is litigated the fee is based on benefit to the landowner. Examples of how this works in the context of business damages payable to a landowner in an eminent domain case:

<b>Business Damages in Eminent Domain Attorney Fee Examples</b>	
<b>Description</b>	<b>Attorney Fee Calculation</b>
Business owner’s offer is \$500,000. The government accepts the offer.	Attorney’s fees would be based on a reasonable amount of time at a reasonable rate.
Business owner’s offer is \$500,000. The government’s counteroffer is \$400,000, which is accepted by the business owner.	Attorney’s fees would be based on a reasonable amount of time at a reasonable rate.
Business owner’s offer is \$500,000. The government’s counteroffer is \$100,000. Business owner rejects the counteroffer. At trial, the jury awards \$200,000. The “benefit” is \$100,000	Attorney’s fees, based on that benefit, would be $\$100,000 \times 33\% = \$33,000$ .
Business owner’s offer is \$50,000. The government’s counteroffer is \$10,000. The claim does not go to trial and is settled for \$20,000.	Attorney’s fees based on the \$10,000 benefit would be $\$10,000 \times 33\% = \$3,300$ .

<sup>9</sup> FLA. CONST. Art. X, s. 6.

<sup>10</sup> Section 73.071(2)(b), F.S.

<sup>11</sup> Section 73.092, F.S.

***The Bert J. Harris, Jr., Private Property Rights Protection Act***

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Protection Act” in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- “As-applied” challenges for specific government actions, not to broad, facial challenges of government regulations; and
- Challenges that are not based on temporary impacts.<sup>12</sup>

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights *without* amounting to a taking<sup>13</sup> under either the State Constitution or the United States Constitution. The Legislature declared that there is “an important state interest in protecting the interests of private property owners from those inordinate burdens.” Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.<sup>14</sup>

The phrases “inordinate burden” and “inordinately burdened” mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.<sup>15</sup>

Before a property owner files an action for compensation under the Bert Harris Act, he or she must present a written claim to the head of the government entity at least 90 days before filing an action. In addition to the claim, the property owner must submit a valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.<sup>16,17</sup> If other parties are

<sup>12</sup> W. Thomas Hawkins, *Land Use Law in Florida*, 17-3 (Routledge, 2021).

<sup>13</sup> A “taking” is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner’s rights. BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>14</sup> Section 70.001(1), F.S.

<sup>15</sup> Section 70.001(3)(e)1., F.S. The definition further explains in s. 70.001(3)(e)2., F.S., what the terms do not include with regard to other impacts.

<sup>16</sup> Section 70.001(4)(a), F.S.

<sup>17</sup> The appraisal should contain valuations of the property both before and after the government’s restriction was imposed. This will enable the government to adequately evaluate the property owner’s potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6, *The Florida Bar*, 2018 *Florida Real Property Litigation* (2018), <https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingD>

involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner's property.<sup>18</sup>

During the 90-day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.<sup>19</sup>

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.<sup>20</sup> A cause of action may not be filed more than 1 year after a law or regulation is "first applied" by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for a development order or variance, unless under the terms of the regulation at issue, such requests would be a waste of resources.<sup>21</sup>

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner's property. If the court determines that an inordinate burden was imposed, the court must also determine the percentage of responsibility each governmental entity must bear.<sup>22</sup> The property owner may decide whether the amount of compensation is to be determined by the court or jury.<sup>23</sup>

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.<sup>24</sup>

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[oc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem](https://www.flsenate.gov/legislation/bills/2019/oc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem).

<sup>18</sup> Section 70.001(4)(b), F.S.

<sup>19</sup> Section 70.001(4)(c), F.S.

<sup>20</sup> Section 70.001(5)(b), F.S.

<sup>21</sup> Section 70.001(11), F.S.

<sup>22</sup> Section 70.001(6)(a), F.S.

<sup>23</sup> Section 70.001(6)(b), F.S.

<sup>24</sup> Section 70.001(6)(c)3., F.S.

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

- The property owner prevails; and
- The court determines that the government’s settlement offer did not constitute a bona fide offer that reasonably would have resolved the claim during the 90-day notice period.<sup>25</sup>

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 day notice period.<sup>26</sup>

### ***Governmental Exactions***

In response to a 2013 U.S. Supreme Court case, *Koontz v. St. John’s River Water Management District*,<sup>27</sup> the Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a “prohibited exaction.”<sup>28</sup> Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner’s proposed use of real property that does not have “an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity” is seeking to avoid, minimize, or mitigate.<sup>29</sup>

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.<sup>30</sup>

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.<sup>31</sup>

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid.

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<sup>25</sup> Section 70.001(6)(c)1., F.S.

<sup>26</sup> Section 70.001(6)(c)2., F.S.

<sup>27</sup> *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

<sup>28</sup> Chapter 2015-142, s. 2, Laws of Fla.

<sup>29</sup> Section 70.45(1)(c), F.S.

<sup>30</sup> Section 70.45(2), F.S.

<sup>31</sup> Section 70.45(3), F.S.

The burden of proving damages that result from the prohibited exaction rests upon the property owner.<sup>32</sup>

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.<sup>33</sup>

### **III. Effect of Proposed Changes:**

This bill creates s. 70.91, F.S., to create a cause of action for a business that has been operating for at least 3 years to recover business damages from a county or municipality who enacts or amends an ordinance or charter provision that causes a 15 percent or greater loss of profit as applied on a per location basis of a business operated within the jurisdiction. The amount of business damages can be established by any reasonable method, but the amount of business damages that may be recovered by a business may not exceed the present value of seven years' lost profits or an amount equal to the business' gross receipts for the 60 months preceding the date of enactment of or amendment to the ordinance or charter provision if the ordinance or charter will cause a total loss of profit. Unlike the three forms of recovery for government actions described above, this new cause of action is not tied to real property ownership.

#### **Legislative Statements of Need for the Bill**

The bill provides the following statements:

WHEREAS, the Legislature recognizes that the continued economic growth and economic prosperity of this state are tied to the protection of private property rights and the stability of laws, ordinances, and charter provisions, and

WHEREAS, the Legislature recognizes that the protection of private property rights and the stability of laws and local rules and regulations affecting business activities encourage investments by businesses in their real property, facilities, operations, and workforces, and

WHEREAS, investments by businesses drive the economic growth of a community, and

WHEREAS, the economic costs of local rules and regulations that are primarily for the benefit of a county or municipality as a whole should be borne by the county or municipality as a whole, and

WHEREAS, the Legislature intends to require counties and municipalities to compensate businesses for business damages when an ordinance or a charter provision causes a business significant economic harm.

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<sup>32</sup> Section 70.45(4), F.S.

<sup>33</sup> Section 70.45(5), F.S.

### Exceptions to Application of the Bill

A county or city is not liable for business damages for any enactment or amendment of an ordinance or charter provision that is:

- Required to comply with state or federal law;
- An emergency ordinance, declaration or order enacted pursuant to the State Emergency Act;<sup>34</sup>
- A temporary emergency ordinance that remains in effect no more than 90 days;
- An ordinance or charter provision enacted to implement:
  - Part II of chapter 163, relating to growth policy, county and municipal planning, and land regulation;
  - Section 553.73, relating to the Florida Building Code; or
  - Section 663.202, relating to the Florida Fire Prevention Code;
- An ordinance or charter provision required to implement a contract or agreement, including, but not limited to, any federal, state, local, or private grant, or other financial assistance;
- An ordinance or charter provision relating to the issuance or refinancing of debt; or
- An ordinance or charter provision relating to the adoption of a budget or budget amendment.

Additionally, a business may not claim damages under the bill if:

- The business has been in operation for fewer than 3 years;
- The business may claim damages under eminent domain law; or<sup>35</sup>
- Recovery under another legal theory would lead to a double recovery by the business.

### Presuit Requirements

Similar to eminent domain actions and claims under the Bert J. Harris, Jr. Act or the law on exactions, the bill requires the parties to engage in a presuit process before litigation ensues. The presuit process starts with a demand letter from the business followed by an opportunity for negotiation and settlement before a lawsuit may be filed. Specifically, the following procedures are required:

An initial demand letter from the business must be presented to the county or city within 180 days after the effective date of the enactment or amendment to the ordinance or charter provision. The initial demand letter must include a written offer to settle the claim. It must be made in good faith, and must include an explanation of the nature, extent, and amount of business damages. The initial demand letter must be prepared by the business owner, a certified public accountant, or a business damages expert. Copies of relevant business records that substantiate the claim must be attached to the demand. The county or city may request additional information that the owner may agree to provide. The business records that may be attached include, but are not limited to:

- Federal income tax returns.
- Federal income tax withholding statements.
- Federal miscellaneous income tax statements.

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<sup>34</sup> Sections 252.31-.60, F.S.

<sup>35</sup> Chapter 73, F.S.



- State sales tax returns.
- Balance sheets.
- Profit and loss statements.
- State corporate income tax returns for the 3 years preceding the enactment of or amendment to an ordinance or a charter.
- Other records relied upon by the business to substantiate a claim for business damages.

The county or city has 120 days to review the demand letter and furnish a response to it by certified mail. The response must be either acceptance, rejection, or rejection with a counteroffer. A failure to respond is considered a counteroffer of zero.<sup>36</sup> If the parties agree on the amount of business damages, the business may in addition collect costs and attorney fees. Costs and attorney fees may be litigated separately, even though the amount of business damages is agreed upon.

If the parties cannot agree on the amount of business damages, and if 180 days has elapsed since service of the initial demand letter, the business may file a lawsuit.

### **Opportunity to Cure**

A county or municipality can avoid liability if, during the 120-day time to reply, the county or municipality:

- Repeals the ordinance or charter provision that gave rise to the business' claim;
- Amends the ordinance or charter provision that gave rise to the business' claim in a manner that returns the ordinance or charter provision to its form in existence before the business' claim arose; or
- Publishes notice of its intent to repeal or amend the ordinance that gave rise to the business' claim and, within 30 days after publication of the notice, amends the ordinance in a manner that returns the ordinance to its form in existence before the business' claim arose or repeals the ordinance.

### **Calculation of Business Damages**

The bill does not specify criteria calculating business damages. The term is used in eminent domain litigation, is a familiar concept in that area of the law, and will likely be interpreted by the courts in a similar fashion. Thus, business damages are the probable damages to such business which application of the enacted or amended ordinance or charter provision may reasonably cause.<sup>37</sup> Business damages include lost profits attributable to the reduced profit-making capacity of the business caused by the enactment of amendment of an ordinance or charter provision.<sup>38</sup>

The business must state in its complaint the nature and extent of the business damages believed to be owed. If contested, the amount is set by the jury, unless the business waives the right to a jury and elects trial by a judge.

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<sup>36</sup> A counteroffer of zero is significant when calculating attorney fees based on the results of the litigation.

<sup>37</sup> See, s. 73.071(3)(b), F.S.

<sup>38</sup> See, *LeSuer v. State Rd. Dep't*, 231 So. 2d 265, 268 (Fla. 1st DCA 1970)

At trial, due to the similarities with the business damages under eminent domain law, each party will likely be “entitled to approach the ‘inherently fact-intensive’ task of business-damage valuation by presenting the opinions of qualified experts ‘based upon generally accepted accounting principles as to what should be included in the jury’s calculation.’”<sup>39</sup> These experts in calculating damages, depending upon the specific circumstances would seem to be authorized to rely on various valuation methods including an:

...income-based approach (i.e., value based on current and future revenue stream discounted to a total present value), market-based approach (i.e., value based on comparison to comparable businesses existing in the particular market adjusted for the individual characteristics and risks associated with the specific business), or asset-based approach (i.e., value based on total assets net liabilities; typically used when the business is not profitable).<sup>40</sup>

### **Costs and Attorney Fees**

The initial offer only includes business damages; the issue of costs and attorney fees only arises upon settlement of, or judgment for, the business damages. A business is entitled to an additional award of costs and attorney fees if the parties reach a settlement on business damages or if the business prevails in court. The calculation of attorney fees differs based on when the business damages matter was resolved. Prejudgment interest for costs and attorney fees is not allowed.

### ***Calculation of Costs***

In general, a statutory reference to costs is interpreted by the courts by reference to the *Statewide Uniform Guidelines for Taxation of Costs in Civil Actions*, promulgated by the Florida Supreme Court.<sup>41</sup> Those uniform guidelines include payment of the reasonable costs of experts and professionals who assist the court. The bill provides procedural requirements and makes the following changes or clarifications to the uniform guidelines:

- Accountant fees are specifically named as a cost.
- At least 30 days prior to the hearing on costs, the business must submit to the county or municipality billing records of any expert witness. Billing records must include details of the expert’s time and services by date, the nature of the services performed, the time spent performing the services, and costs incurred. The business must also submit a copy of the fee agreement.
- The court must consider all factors relevant to the reasonableness of the costs, including, but not limited to, the fees paid to similar experts retained in the case by the county or municipality or other parties and the reasonable costs of similar services by similarly qualified persons.

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<sup>39</sup> *System Components Corp. V. Florida Dept. of Transp.*, 14 So. 3d 967, 980 (Fla. 2009).

<sup>40</sup> *Id.* (citing s. 73.071(3)(b), Fla. Stat. (2004); Jeffrey M. Risius, *Business Valuation: A Primer For The Legal Professional* chs. 8, 10, 12 (2007); American Society of Appraisers, *Business Valuation Standards Glossary*, available at [www.bvappraisers.org/glossary/glossary.pdf](http://www.bvappraisers.org/glossary/glossary.pdf)).

<sup>41</sup> *Statewide Uniform Guidelines for Taxation of Costs in Civil Actions*, Fla.R.Civ.Pro., Appendix II.

- The court must consider the amount the business would ordinarily have been expected to pay for the services rendered if the county or municipality was not responsible for the costs.
- The court must make specific findings that justify each sum awarded as an expert witness fee.

#### ***Attorney Fees when Business Damages are Settled in Pre-Suit Initial Phase***

If the county or municipality accepts the initial offer from the business, or if the business accepts the initial counteroffer of the county or municipality, the business is entitled to an award for attorney fees.

The parties may negotiate the fee. If they cannot agree, the business has one year from the effective date of the enactment or amendment to the ordinance or charter provision to file suit in the circuit court to recover a reasonable attorney fee.

To make a claim for fees after agreement on the business damages amount, the attorney for the business must submit a claim for fees to the county or municipality at least 30 days prior to any hearing. The claim must include:

- Complete time records.
- A detailed statement of services rendered by date, the nature of the services rendered, and the time spent performing the services.
- A list of all costs incurred.
- A copy of the fee agreement.

The court must be guided by the attorney fees the business would ordinarily be expected to pay for these services if the county or municipality was not responsible for the payment of those fees, and must be based on the following factors:

- The novelty, difficulty, and importance of the questions involved.
- The skill employed by the attorney in conducting the case.
- The amount of money involved.
- The responsibility incurred and fulfilled by the attorney.
- The attorney's time and labor reasonably required to adequately represent the client in relation to the benefits resulting to the client.
- The fee, or rate of fee, customarily charged for legal services of a comparable or similar nature.

Evidence related to negotiations or mediation are admissible when determining the reasonable costs or attorney fee. Attorney fees awarded by the court must be used to reduce the amount owed or paid by the business.

#### ***Attorney Fees when Business Damages are not Determined in the Initial Phase***

If the county or municipality does not accept the initial good faith demand, the business does not accept the initial counteroffer of the county or municipality, and the business thereafter prevails by settlement or judgment, the court must award the prevailing business an attorney fee in addition to the business damage award. The attorney fee is based on the benefit to the business:

- 33 percent of the benefit up to \$250,000; plus

- 25 percent of the benefit between \$250,000 and \$1 million; plus
- 20 percent of the benefit above \$1 million.

The benefit to the business is calculated as follows:

- The term “benefits” means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the county or municipality before the business hires an attorney. If the county or municipality does not make a written settlement offer before the business hires an attorney, benefits must be measured from the first written offer after the attorney is hired.
- If business records kept by the owner in the ordinary course of business were provided to the county or municipality to substantiate the business damage offer made by the business, benefits for amounts awarded for business damages are based upon the difference between the final judgment or settlement and the written counteroffer made by the county or municipality.
- If existing business records kept by the owner in the ordinary course of business were not provided to the county or municipality to substantiate the business damage offer made by the business and those records that were not provided are later deemed material to the determination of business damages, benefits for amounts awarded for business damages are based upon the difference between the final judgment or settlement and the first written counteroffer made by the county or municipality within 90 days after the receipt of the business records previously not provided to the county or municipality.
- The court may also consider nonmonetary benefits obtained for the business through the efforts of the attorney, to the extent such nonmonetary benefits are specifically identified by the court and can, within a reasonable degree of certainty, be quantified.

### **Effective Date**

The bill takes effect upon becoming a law, and applies to an enactment or amendment of a county or municipal ordinance or charter provision that is enacted or amended on or after becoming a law.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. The private sector in general may be positively impacted by a more favorable regulatory climate created by CS/SB 620. Businesses harmed by certain county or municipality actions may recover business damages to compensate them for losses.

C. Government Sector Impact:

Indeterminate. The bill does not appear to have a fiscal impact on those counties and municipalities that refrain from substantially impacting businesses when enacting or amending an ordinance or charter provision. The bill may have a fiscal impact on counties and municipalities that elect to enact or amend ordinances or charter provisions in a manner that negatively and significantly impacts established businesses. The extent to which counties or municipalities may elect in the future to be impacted by this bill cannot be estimated.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 70.91 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Appropriations on January 20, 2022:**

The committee substitute:

- Limits the liability of a county or municipality for business damages to seven years' lost profits, or if an ordinance or charter provision will cause a total loss of a business profit, an amount equal to 60 months' gross receipts.
- Removes criteria authorizing a business to claim business damages due to a 15 percent reduction or revenue, but retain criteria authorizing business damages due to a 15 percent loss of profits.
- Provides for business damages to be calculated on a per location basis within offending jurisdiction.
- Lists additional types of local ordinances or charter provisions which do not give rise to a business damages claim.
- Recognizes that a local government can cure by amending or repealing the local ordinance or charter provision causing business damages.
- Advances the effective date to upon becoming law instead of July 1, 2022 and makes the bill apply prospectively to ordinance and charter provisions enacted on or after the effective date.

B. Amendments:

None.