

1 A bill to be entitled
2 An act relating to business damages caused by local
3 governments; creating s. 70.91, F.S.; defining the
4 term "business records"; authorizing certain
5 businesses to claim business damages from a county or
6 municipality if the county or municipality enacts or
7 amends certain ordinances or charter provisions;
8 providing exceptions; requiring businesses and
9 counties or municipalities to follow certain presuit
10 procedures before businesses file an action for
11 business damages; authorizing businesses to recover
12 costs and fees in a specified manner and if certain
13 requirements are met; specifying that certain evidence
14 relating to mediations and negotiations is
15 inadmissible as evidence in certain proceedings;
16 requiring courts to consider certain factors and
17 follow specified guidance when assessing costs;
18 defining the term "benefits"; specifying requirements
19 for the courts in determining and awarding attorney
20 fees; requiring attorneys and businesses to submit
21 certain documentation relating to attorney fees;
22 requiring businesses claiming the right to recover
23 business damages to state the nature and extent of the
24 damages; requiring a jury to determine whether a
25 business is entitled to business damages and the

26 amount of such damages unless the business elects to
 27 have the business damages determined by the court;
 28 providing applicability and construction; providing an
 29 effective date.

30
 31 WHEREAS, the Legislature recognizes that the continued
 32 economic growth and economic prosperity of this state are tied
 33 to the protection of private property rights and the stability
 34 of laws, ordinances, and charter provisions, and

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

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

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

46 WHEREAS, the Legislature intends to require counties and
 47 municipalities to compensate businesses for business damages
 48 when an ordinance or a charter provision causes a business
 49 significant economic harm, NOW, THEREFORE,

50

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

52

53 Section 1. Section 70.91, Florida Statutes, is created to
54 read:

55 70.91 Compensation for business damages caused by county
56 or municipal ordinances or charter provisions.-

57 (1) DEFINITION.-For purposes of this section, the term
58 "business records" includes, but is not limited to, copies of
59 federal income tax returns, federal income tax withholding
60 statements, federal miscellaneous income tax statements, state
61 sales tax returns, balance sheets, profit and loss statements,
62 state corporate income tax returns for the 3 years preceding the
63 enactment of or amendment to an ordinance or a charter, and
64 other records relied upon by a business to substantiate a claim
65 for business damages.

66 (2) CLAIMS FOR BUSINESS DAMAGES.-

67 (a) Except as provided in paragraph (b), a business may
68 claim business damages from a county or municipality if:

69 1. The county or municipality enacts or amends an
70 ordinance or a charter that has or will cause a reduction of at
71 least 15 percent of the business' profit; and

72 2. The business has engaged in lawful business in this
73 state for the 3 years preceding the enactment of or amendment to
74 the ordinance or charter.

75 (b) A county or municipality is not liable for business

76 damages caused by:

77 1. An ordinance or a charter provision that is required to
 78 comply with state or federal law;

79 2. Emergency ordinances, declarations, or orders adopted
 80 by a county or municipality under ss. 252.31-252.60, the State
 81 Emergency Management Act;

82 3. A temporary emergency ordinance enacted pursuant to s.
 83 125.66 or s. 166.041 which remains in effect for no more than 90
 84 days;

85 4. An ordinance or charter provision enacted to implement:

86 a. Part II of chapter 163, which relates to growth policy,
 87 county and municipal planning, and land development regulation;

88 b. Section 553.73, which relates to the Florida Building
 89 Code; or

90 c. Section 633.202, which relates to the Florida Fire
 91 Prevention Code;

92 5. An ordinance or charter provision required to implement
 93 a contract or agreement, including, but not limited to, any
 94 federal, state, local or private grant, or other financial
 95 assistance accepted by a county government;

96 6. An ordinance or charter provision relating to the
 97 issuance or refinancing of debt; or

98 7. An ordinance or charter provision related to the
 99 adoption of a budget or budget amendment.

100 (3) PRESUIT PROCEDURES.—

101 (a) At least 180 days before a business files an action
102 under this section against a county or municipality and within
103 180 days after the effective date of the relevant ordinance or
104 charter provision, the business must present a written offer to
105 settle the business' claim for business damages to the head of
106 the county or municipality enacting or amending the ordinance.
107 The settlement offer must be made in good faith and include an
108 explanation of the nature, extent, and monetary amount of
109 damages and must be prepared by the owner, a certified public
110 accountant, or a business damage expert familiar with the nature
111 of the operations of the business. The business must also
112 provide copies of the business' records that substantiate the
113 offer to settle the business damage claim. If additional
114 information is needed beyond the data that may be obtained from
115 business records existing at the time of the offer, the business
116 and county or municipality may agree on a schedule for the
117 submission of that information.

118 (b) Within 120 days after receipt of the good faith
119 business damage offer and accompanying business records, the
120 county or municipality must, by certified mail, accept or reject
121 the business' offer or make a counteroffer. Failure of the
122 county or municipality to respond to or reject the business
123 damage offer must be deemed to be a counteroffer of zero dollars
124 for purposes of calculating attorney fees under subsection (5)
125 solely based upon the benefits achieved for the business.

126 (c) If the business and the county or municipality reach a
 127 settlement before a lawsuit is filed, the business that settles
 128 the claim for business damages in lieu of litigation is entitled
 129 to recover costs in the same manner as provided in subsection
 130 (4) and attorney fees in the same manner as provided in
 131 subsection (5), more specifically as follows:

132 1. If the business recovers business damages based upon
 133 the county or municipality accepting the business' initial offer
 134 or the business accepting the county's or municipality's initial
 135 counteroffer, attorney fees must be calculated in accordance
 136 with paragraphs (5)(c), (d), (e), and (f) for the attorney's
 137 time required to present the business' good faith offer.
 138 Otherwise, attorney fees for the award of business damages must
 139 be calculated as provided in paragraphs (5)(a) and (b), based
 140 upon the difference between the final judgment or settlement of
 141 business damages and the county's or municipality's counteroffer
 142 to the business owner's offer.

143 2. Presuit costs must be presented, calculated, and
 144 awarded in the same manner as provided in subsection (4), after
 145 the business owner submits to the county or municipality all
 146 business damage reports or other work products for which
 147 recovery is sought and upon the county or municipality paying
 148 any amounts due for business damages or upon final judgment.

149 3. If the parties cannot agree on the amount of costs and
 150 attorney fees to be paid by the county or municipality, the

151 business owner may file a complaint in the circuit court in the
 152 county in which the business is located to recover attorney fees
 153 and costs. If a business files a complaint for business damages,
 154 it must be filed within 1 year after the effective date of the
 155 relevant ordinance, ordinance amendment, or charter provision.

156 (d) Evidence of negotiations or of any written or oral
 157 statements used in mediation or negotiations between the parties
 158 under this section is inadmissible in any proceeding for
 159 business damages, except in a proceeding to determine reasonable
 160 costs and attorney fees.

161 (4) COSTS.—

162 (a) If a business recovers business damages, the county or
 163 municipality must pay the business' reasonable costs, including
 164 a reasonable accountant's fee. Prejudgment interest may not be
 165 paid on costs or attorney fees.

166 (b) At least 30 days before a hearing to assess costs
 167 under this subsection, the attorney for the business shall
 168 submit to the county or municipality for each expert witness the
 169 expert witness' complete time records and a detailed statement
 170 of services rendered by date, nature of services performed, time
 171 spent performing the services, and costs incurred and a copy of
 172 any fee agreement that may exist between the expert witness and
 173 the business or the business' attorney.

174 (c) In assessing costs, the court shall consider all
 175 factors relevant to the reasonableness of the costs, including,

176 but not limited to, the fees paid to similar experts retained in
177 the case by the county or municipality or other parties and the
178 reasonable costs of similar services by similarly qualified
179 persons.

180 (d) In assessing costs to be paid by the county or
181 municipality, the court shall be guided by the amount the
182 business would ordinarily have been expected to pay for the
183 services rendered if the county or municipality was not
184 responsible for the costs.

185 (e) The court shall make specific findings that justify
186 each sum awarded as an expert witness fee.

187 (5) ATTORNEY FEES.—

188 (a) As used in this subsection, the term "benefits" means
189 the difference, exclusive of interest, between the final
190 judgment or settlement and the last written offer made by the
191 county or municipality before the business hires an attorney. If
192 the county or municipality does not make a written settlement
193 offer before the business hires an attorney, benefits must be
194 measured from the first written offer after the attorney is
195 hired.

196 (b)1. In determining attorney fees, if business records
197 kept by the owner in the ordinary course of business were
198 provided to the county or municipality to substantiate the
199 business damage offer made by the business, benefits for amounts
200 awarded for business damages must be based upon the difference

201 between the final judgment or settlement and the written
202 counteroffer made by the county or municipality.

203 2. In determining attorney fees, if existing business
204 records kept by the owner in the ordinary course of business
205 were not provided to the county or municipality to substantiate
206 the business damage offer made by the business and those records
207 that were not provided are later deemed material to the
208 determination of business damages, benefits for amounts awarded
209 for business damages must be based upon the difference between
210 the final judgment or settlement and the first written
211 counteroffer made by the county or municipality within 90 days
212 after the receipt of the business records previously not
213 provided to the county or municipality.

214 3. The court may also consider nonmonetary benefits
215 obtained for the business through the efforts of the attorney,
216 to the extent such nonmonetary benefits are specifically
217 identified by the court and can, within a reasonable degree of
218 certainty, be quantified.

219 4. Attorney fees based upon benefits achieved shall be
220 awarded in accordance with the following schedule:

221 a. Thirty-three percent of any benefit up to \$250,000;
222 plus

223 b. Twenty-five percent of any portion of the benefit
224 between \$250,000 and \$1 million; plus

225 c. Twenty percent of any portion of the benefit exceeding

226 \$1 million.

227 (c) In assessing attorney fees in a claim for business
228 damages, when not otherwise provided for, the court shall
229 consider:

230 1. The novelty, difficulty, and importance of the
231 questions involved.

232 2. The skill employed by the attorney in conducting the
233 case.

234 3. The amount of money involved.

235 4. The responsibility incurred and fulfilled by the
236 attorney.

237 5. The attorney's time and labor reasonably required to
238 adequately represent the client in relation to the benefits
239 resulting to the client.

240 6. The fee, or rate of fee, customarily charged for legal
241 services of a comparable or similar nature.

242 (d) In determining the amount of attorney fees to be paid
243 by the county or municipality under paragraph (c), the court
244 shall be guided by the fees the business would ordinarily be
245 expected to pay for these services if the county or municipality
246 was not responsible for the payment of those fees.

247 (e) At least 30 days before a hearing to assess attorney
248 fees under paragraph (c), the attorney for the business shall
249 submit to the county or municipality and to the court complete
250 time records and a detailed statement of services rendered by

251 date, nature of services performed, time spent performing the
252 services, and costs incurred.

253 (f) The business shall provide to the court a copy of any
254 fee agreement that may exist between the business and its
255 attorney, and the court must reduce the amount of attorney fees
256 to be paid by the business by the amount of any attorney fees
257 awarded by the court.

258 (6) TRIAL.—A business claiming the right to recover
259 business damages must state in its complaint the nature and
260 extent of those damages. At trial, a jury shall determine
261 whether a business is entitled to business damages and the
262 amount of damages, if any. However, the business may elect to
263 have business damages determined by the court.

264 (7) APPLICATION; CONSTRUCTION.—This section does not apply
265 to a business that may claim business damages under chapter 73
266 and may not be construed to authorize double recoveries.

267 Section 2. This act applies to county and municipal
268 ordinances or charter provisions enacted or amended on or after
269 July 1, 2022.

270 Section 3. This act shall take effect July 1, 2022.