



609228

LEGISLATIVE ACTION

Senate

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House

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Senator Hutson moved the following:

1 **Senate Substitute for Amendment (184698) (with title**
2 **amendment)**

3
4 Delete lines 71 - 290

5 and insert:

6 (a) Except as provided in paragraph (c), a private, for-
7 profit business may claim business damages from a county or
8 municipality if:

9 1. The county or municipality enacts or amends an ordinance
10 or a charter provision that has or will cause a reduction of at
11 least 15 percent of the business' profit as applied on a per



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12 location basis of a business operated within the jurisdiction;
13 and

14 2. The business has engaged in lawful business in the
15 jurisdiction for the 3 years preceding the enactment of or
16 amendment to the ordinance or charter.

17 (b) The amount of business damages may be established by
18 any reasonable method, but the amount of business damages that
19 may be recovered by a business may not exceed the present value
20 of the business' future lost profits for the lesser of 7 years
21 or the number of years the business had been in operation in the
22 jurisdiction before the ordinance or charter provision was
23 enacted.

24 (c) A county or municipality is not liable for business
25 damages caused by:

26 1. An ordinance or charter provision that is required to
27 comply with, or is expressly authorized by, state or federal
28 law;

29 2. Emergency ordinances, declarations, or orders adopted by
30 a county or municipality under ss. 252.31-252.60, the State
31 Emergency Management Act;

32 3. A temporary emergency ordinance enacted pursuant to s.
33 125.66 or s. 166.041 which remains in effect for no more than 90
34 days;

35 4. An ordinance or charter provision enacted to implement:
36 a. Part II of chapter 163, relating to growth policy,
37 county and municipal planning, and land development regulation,
38 including zoning, development orders, and development permits;

39 b. Section 553.73, relating to the Florida Building Code;
40 or



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41 c. Section 633.202, relating to the Florida Fire Prevention
42 Code;

43 5. An ordinance or charter provision required to implement
44 a contract or agreement, including, but not limited to, any
45 federal, state, local, or private grant, or other financial
46 assistance accepted by a county or municipal government;

47 6. An ordinance or charter provision relating to the
48 issuance or refinancing of debt;

49 7. An ordinance or charter provision relating to the
50 adoption of a budget or budget amendment, including revenue
51 sources necessary to fund the budget;

52 8. An ordinance or charter provision relating to
53 procurement; or

54 9. An ordinance or charter provision intended to promote,
55 enable, or facilitate economic competition.

56 (d) An amendment to an ordinance or charter provision after
57 the effective date of this act gives rise to a claim under this
58 section only to the extent that the application of the
59 amendatory language is the cause of the claimed impact on a
60 business apart from the ordinance or charter provision being
61 amended.

62 (3) PRESUIT PROCEDURES; ATTORNEY FEES AND COSTS.—

63 (a) At least 180 days before a business files an action
64 under this section against a county or municipality and within
65 180 days after the effective date of the relevant ordinance or
66 charter provision, the business must present a written offer to
67 settle the business' claim for business damages to the head of
68 the county or municipality enacting or amending the ordinance.
69 The settlement offer must be made in good faith and include an



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70 explanation of the nature, extent, and monetary amount of
71 damages and must be prepared by the owner, a certified public
72 accountant, or a business damage expert familiar with the nature
73 of the operations of the business. The business must also
74 provide copies of the business' records that substantiate the
75 offer to settle the business damage claim. If additional
76 information is needed beyond the data that may be obtained from
77 business records existing at the time of the offer, the business
78 and county or municipality may agree on a schedule for the
79 submission of that information.

80 (b) Within 120 days after receipt of the good faith
81 business damage offer and accompanying business records, the
82 county or municipality must, by certified mail, accept or reject
83 the business' offer or make a counteroffer, which may include an
84 offer to grant a waiver to the application of the ordinance or
85 charter provision.

86 (c) If a business files an action for business damages, it
87 must be filed within 1 year after the effective date of the
88 relevant ordinance, ordinance amendment, or charter provision.

89 (d) Evidence of negotiations or of any written or oral
90 statements used in mediation or negotiations between the parties
91 under this section is inadmissible in any proceeding for
92 business damages, except in a proceeding to determine reasonable
93 costs and attorney fees.

94 (e) In an action for business damages, the court may award
95 reasonable attorney fees and costs to the prevailing party.

96 (4) OPPORTUNITY TO CURE.—There is no liability under this
97 section for a county or municipality that, within the 120-day
98 timeframe provided for in paragraph (3)(b):



99 (a) Repeals the ordinance or charter provision that gave
100 rise to the business' claim;

101 (b) Amends the ordinance or charter provision that gave
102 rise to the business' claim in a manner that returns the
103 ordinance or charter provision to its form in existence before
104 the business' claim arose or in a manner that avoids causing a
105 reduction of at least 15 percent of the business' profit as
106 applied on a per location basis within the jurisdiction;

107 (c) Publishes notice of its intent to repeal or amend the
108 ordinance that gave rise to the business' claim and, within 30
109 days after publication of the notice, amends the ordinance in a
110 manner that returns the ordinance to its form in existence
111 before the business' claim arose or repeals the ordinance;

112 (d) Grants a waiver of the ordinance or charter provision
113 to a business submitting a claim for business damages; or

114 (e) With respect to a charter provision, the county
115 provides notice of its intent to amend or repeal the charter
116 provision that is the basis of the business damage claim and the
117 charter provision is amended or repealed by the voters at an
118 election or special election that occurs within 90 days after
119 publication of the notice.

120
121 The governing body of a municipality may provide relief under
122 this subsection notwithstanding any ordinance or charter
123 provision to the contrary.

124 (5) APPLICATION; CONSTRUCTION.—This section does not apply
125

126 ===== T I T L E A M E N D M E N T =====

127 And the title is amended as follows:



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128 Delete lines 13 - 31
129 and insert:
130 business damages; authorizing courts to award
131 reasonable attorney fees and costs to prevailing
132 parties; specifying that counties and municipalities
133 are not liable for damages if they take certain
134 actions within a specified timeframe; authorizing
135 governing bodies of municipalities to provide
136 specified relief, notwithstanding certain ordinances
137 and charter provisions;