

By Senator Hutson

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1 A bill to be entitled
2 An act relating to local government; creating s.
3 70.91, F.S.; defining the term "business records";
4 authorizing certain businesses to claim business
5 damages from a county or municipality if the county or
6 municipality enacts or amends certain ordinances or
7 charter provisions; providing exceptions; requiring
8 businesses and counties or municipalities to follow
9 certain presuit procedures before businesses file an
10 action for business damages; authorizing businesses to
11 recover costs and fees in a specified manner and if
12 certain requirements are met; specifying that certain
13 evidence relating to mediations and negotiations is
14 inadmissible as evidence in certain proceedings;
15 requiring courts to consider certain factors and
16 follow specified guidance when assessing costs;
17 defining the term "benefits"; specifying requirements
18 for the courts in determining and awarding attorney
19 fees; requiring attorneys and businesses to submit
20 certain documentation relating to attorney fees;
21 requiring businesses claiming the right to recover
22 business damages to state the nature and extent of the
23 damages; requiring a jury to determine whether a
24 business is entitled to business damages and the
25 amount of such damages unless the business elects to
26 have the business damages determined by the court;
27 providing applicability and construction; providing an
28 effective date.
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30 WHEREAS, the Legislature recognizes that the continued
31 economic growth and economic prosperity of this state are tied
32 to the protection of private property rights and the stability
33 of laws, ordinances, and charter provisions, and

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

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

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

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

49
50 Be It Enacted by the Legislature of the State of Florida:

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

54 70.91 Compensation for business damages caused by county or
55 municipal ordinances or charter provisions.-

56 (1) DEFINITION.-For purposes of this section, the term
57 "business records" includes, but is not limited to, copies of
58 federal income tax returns, federal income tax withholding

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59 statements, federal miscellaneous income tax statements, state
60 sales tax returns, balance sheets, profit and loss statements,
61 state corporate income tax returns for the 3 years preceding the
62 enactment of or amendment to an ordinance or a charter, and
63 other records relied upon by a business to substantiate a claim
64 for business damages.

65 (2) CLAIMS FOR BUSINESS DAMAGES.-

66 (a) Except as provided in paragraph (b), a business that
67 has engaged in a lawful business in this state for at least 3
68 years may claim business damages from a county or municipality
69 if the county or municipality enacts or amends an ordinance or a
70 charter that will cause a reduction of at least 15 percent of
71 the business' revenue or profit.

72 (b) A county or municipality is not liable for business
73 damages caused by:

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

76 2. Emergency ordinances, declarations, or orders adopted by
77 a county or municipality under ss. 252.31-252.60, the State
78 Emergency Management Act;

79 3. A temporary emergency ordinance enacted pursuant to s.
80 125.66 or s. 166.041 which remains in effect for no more than 90
81 days; or

82 4. An ordinance or a charter provision that increases
83 economic freedom.

84 (3) PRESUIT PROCEDURES.-

85 (a) At least 180 days before a business files an action
86 under this section against a county or municipality and within
87 180 days after the effective date of the relevant ordinance or

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88 charter provision, the business must present a written offer to
89 settle the business' claim for business damages to the head of
90 the county or municipality enacting or amending the ordinance.
91 The settlement offer must be made in good faith and include an
92 explanation of the nature, extent, and monetary amount of
93 damages and must be prepared by the owner, a certified public
94 accountant, or a business damage expert familiar with the nature
95 of the operations of the business. The business must also
96 provide copies of the business' records that substantiate the
97 offer to settle the business damage claim. If additional
98 information is needed beyond the data that may be obtained from
99 business records existing at the time of the offer, the business
100 and county or municipality may agree on a schedule for the
101 submission of that information.

102 (b) Within 120 days after receipt of the good faith
103 business damage offer and accompanying business records, the
104 county or municipality must, by certified mail, accept or reject
105 the business' offer or make a counteroffer. Failure of the
106 county or municipality to respond to or reject the business
107 damage offer must be deemed to be a counteroffer of zero dollars
108 for purposes of calculating attorney fees under subsection (5)
109 solely based upon the benefits achieved for the business.

110 (c) If the business and the county or municipality reach a
111 settlement before a lawsuit is filed, the business that settles
112 the claim for business damages in lieu of litigation is entitled
113 to recover costs in the same manner as provided in subsection
114 (4) and attorney fees in the same manner as provided in
115 subsection (5), more specifically as follows:

116 1. If the business recovers business damages based upon the

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117 county or municipality accepting the business' initial offer or
118 the business accepting the county's or municipality's initial
119 counteroffer, attorney fees must be calculated in accordance
120 with paragraphs (5) (c), (d), (e), and (f) for the attorney's
121 time required to present the business' good faith offer.
122 Otherwise, attorney fees for the award of business damages must
123 be calculated as provided in paragraphs (5) (a) and (b), based
124 upon the difference between the final judgment or settlement of
125 business damages and the county's or municipality's counteroffer
126 to the business owner's offer.

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

133 3. If the parties cannot agree on the amount of costs and
134 attorney fees to be paid by the county or municipality, the
135 business owner may file a complaint in the circuit court in the
136 county in which the business is located to recover attorney fees
137 and costs. If a business files a complaint for business damages,
138 it must be filed within 1 year after the effective date of the
139 relevant ordinance, ordinance amendment, or charter provision.

140 (d) Evidence of negotiations or of any written or oral
141 statements used in mediation or negotiations between the parties
142 under this section is inadmissible in any proceeding for
143 business damages, except in a proceeding to determine reasonable
144 costs and attorney fees.

145 (4) COSTS.—

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146 (a) If a business recovers business damages, the county or
147 municipality must pay the business' reasonable costs, including
148 a reasonable accountant's fee. Prejudgment interest may not be
149 paid on costs or attorney fees.

150 (b) At least 30 days before a hearing to assess costs under
151 this subsection, the attorney for the business shall submit to
152 the county or municipality for each expert witness the expert
153 witness' complete time records and a detailed statement of
154 services rendered by date, nature of services performed, time
155 spent performing the services, and costs incurred and a copy of
156 any fee agreement that may exist between the expert witness and
157 the business or the business' attorney.

158 (c) In assessing costs, the court shall consider all
159 factors relevant to the reasonableness of the costs, including,
160 but not limited to, the fees paid to similar experts retained in
161 the case by the county or municipality or other parties and the
162 reasonable costs of similar services by similarly qualified
163 persons.

164 (d) In assessing costs to be paid by the county or
165 municipality, the court shall be guided by the amount the
166 business would ordinarily have been expected to pay for the
167 services rendered if the county or municipality was not
168 responsible for the costs.

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

171 (5) ATTORNEY FEES.—

172 (a) As used in this subsection, the term "benefits" means
173 the difference, exclusive of interest, between the final
174 judgment or settlement and the last written offer made by the

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175 county or municipality before the business hires an attorney. If
176 the county or municipality does not make a written settlement
177 offer before the business hires an attorney, benefits must be
178 measured from the first written offer after the attorney is
179 hired.

180 (b)1. In determining attorney fees, if business records
181 kept by the owner in the ordinary course of business were
182 provided to the county or municipality to substantiate the
183 business damage offer made by the business, benefits for amounts
184 awarded for business damages must be based upon the difference
185 between the final judgment or settlement and the written
186 counteroffer made by the county or municipality.

187 2. In determining attorney fees, if existing business
188 records kept by the owner in the ordinary course of business
189 were not provided to the county or municipality to substantiate
190 the business damage offer made by the business and those records
191 that were not provided are later deemed material to the
192 determination of business damages, benefits for amounts awarded
193 for business damages must be based upon the difference between
194 the final judgment or settlement and the first written
195 counteroffer made by the county or municipality within 90 days
196 after the receipt of the business records previously not
197 provided to the county or municipality.

198 3. The court may also consider nonmonetary benefits
199 obtained for the business through the efforts of the attorney,
200 to the extent such nonmonetary benefits are specifically
201 identified by the court and can, within a reasonable degree of
202 certainty, be quantified.

203 4. Attorney fees based upon benefits achieved shall be

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204 awarded in accordance with the following schedule:

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

206 b. Twenty-five percent of any portion of the benefit

207 between \$250,000 and \$1 million; plus

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

209 \$1 million.

210 (c) In assessing attorney fees in a claim for business

211 damages, when not otherwise provided for, the court shall

212 consider:

213 1. The novelty, difficulty, and importance of the questions

214 involved.

215 2. The skill employed by the attorney in conducting the

216 case.

217 3. The amount of money involved.

218 4. The responsibility incurred and fulfilled by the

219 attorney.

220 5. The attorney's time and labor reasonably required to

221 adequately represent the client in relation to the benefits

222 resulting to the client.

223 6. The fee, or rate of fee, customarily charged for legal

224 services of a comparable or similar nature.

225 (d) In determining the amount of attorney fees to be paid

226 by the county or municipality under paragraph (c), the court

227 shall be guided by the fees the business would ordinarily be

228 expected to pay for these services if the county or municipality

229 was not responsible for the payment of those fees.

230 (e) At least 30 days before a hearing to assess attorney

231 fees under paragraph (c), the attorney for the business shall

232 submit to the county or municipality and to the court complete

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233 time records and a detailed statement of services rendered by
234 date, nature of services performed, time spent performing the
235 services, and costs incurred.

236 (f) The business shall provide to the court a copy of any
237 fee agreement that may exist between the business and its
238 attorney, and the court must reduce the amount of attorney fees
239 to be paid by the business by the amount of any attorney fees
240 awarded by the court.

241 (6) TRIAL.—A business claiming the right to recover
242 business damages must state in its complaint the nature and
243 extent of those damages. At trial, a jury shall determine
244 whether a business is entitled to business damages and the
245 amount of damages, if any. However, the business may elect to
246 have business damages determined by the court.

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

250 Section 2. This act applies to county and municipal
251 ordinances or charter provisions enacted or amended on or after
252 July 1, 2022.

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