

By the Committee on Appropriations; and 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; limiting the amount of business
8 damages that may be recovered; specifying ordinances
9 and charter provisions that do not result in liability
10 for business damages; requiring businesses and
11 counties or municipalities to follow certain presuit
12 procedures before businesses file an action for
13 business damages; authorizing businesses to recover
14 costs and fees in a specified manner and if certain
15 requirements are met; specifying that certain evidence
16 relating to mediations and negotiations is
17 inadmissible as evidence in certain proceedings;
18 specifying that counties and municipalities are not
19 liable for damages if they take certain actions within
20 a specified timeframe; requiring courts to consider
21 certain factors and follow specified guidance when
22 assessing costs; defining the term "benefits";
23 specifying requirements for the courts in determining
24 and awarding attorney fees; requiring attorneys and
25 businesses to submit certain documentation relating to
26 attorney fees; requiring businesses claiming the right
27 to recover business damages to state the nature and
28 extent of the damages; requiring a jury to determine
29 whether a business is entitled to business damages and

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30 the amount of such damages unless the business elects
31 to have the business damages determined by the court;
32 providing applicability and construction; providing an
33 effective date.

34
35 WHEREAS, the Legislature recognizes that the continued
36 economic growth and economic prosperity of this state are tied
37 to the protection of private property rights and the stability
38 of laws, ordinances, and charter provisions, and

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

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

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

50 WHEREAS, the Legislature intends to require counties and
51 municipalities to compensate businesses for business damages
52 when an ordinance or a charter provision causes a business
53 significant economic harm, NOW, THEREFORE,

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Section 70.91, Florida Statutes, is created to
58 read:

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59 70.91 Compensation for business damages caused by county or
60 municipal ordinances or charter provisions.-

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

70 (2) CLAIMS FOR BUSINESS DAMAGES.-

71 (a) Except as provided in paragraph (c), a business may
72 claim business damages from a county or municipality if:

73 1. The county or municipality enacts or amends an ordinance
74 or a charter that has or will cause a reduction of at least 15
75 percent of the business' profit as applied on a per location
76 basis of a business operated within the jurisdiction; and

77 2. The business has engaged in lawful business in this
78 state for the 3 years preceding the enactment of or amendment to
79 the ordinance or charter.

80 (b) The amount of business damages may be established by
81 any reasonable method, but the amount of business damages that
82 may be recovered by a business may not exceed:

83 1. The present value of 7 years' lost profits; or

84 2. An amount equal to the business' gross receipts for the
85 60 months preceding the date of enactment of or amendment to the
86 ordinance or charter provision. This subparagraph applies if the
87 ordinance or charter will cause a total loss of profit.

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

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

92 2. Emergency ordinances, declarations, or orders adopted by
93 a county or municipality under ss. 252.31-252.60, the State
94 Emergency Management Act;

95 3. A temporary emergency ordinance enacted pursuant to s.
96 125.66 or s. 166.041 which remains in effect for no more than 90
97 days;

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

99 a. Part II of chapter 163, relating to growth policy,
100 county and municipal planning, and land development regulation;

101 b. Section 553.73, relating to the Florida Building Code;

102 or

103 c. Section 633.202, relating to the Florida Fire Prevention
104 Code;

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

109 6. An ordinance or charter provision relating to the
110 issuance or refinancing of debt; or

111 7. An ordinance or charter provision relating to the
112 adoption of a budget or budget amendment.

113 (3) PRESUIT PROCEDURES.—

114 (a) At least 180 days before a business files an action
115 under this section against a county or municipality and within
116 180 days after the effective date of the relevant ordinance or

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117 charter provision, the business must present a written offer to
118 settle the business' claim for business damages to the head of
119 the county or municipality enacting or amending the ordinance.
120 The settlement offer must be made in good faith and include an
121 explanation of the nature, extent, and monetary amount of
122 damages and must be prepared by the owner, a certified public
123 accountant, or a business damage expert familiar with the nature
124 of the operations of the business. The business must also
125 provide copies of the business' records that substantiate the
126 offer to settle the business damage claim. If additional
127 information is needed beyond the data that may be obtained from
128 business records existing at the time of the offer, the business
129 and county or municipality may agree on a schedule for the
130 submission of that information.

131 (b) Within 120 days after receipt of the good faith
132 business damage offer and accompanying business records, the
133 county or municipality must, by certified mail, accept or reject
134 the business' offer or make a counteroffer. Failure of the
135 county or municipality to respond to or reject the business
136 damage offer must be deemed to be a counteroffer of zero dollars
137 for purposes of calculating attorney fees under subsection (6)
138 solely based upon the benefits achieved for the business.

139 (c) If the business and the county or municipality reach a
140 settlement before a lawsuit is filed, the business that settles
141 the claim for business damages in lieu of litigation is entitled
142 to recover costs in the same manner as provided in subsection
143 (5) and attorney fees in the same manner as provided in
144 subsection (6), more specifically as follows:

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

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146 county or municipality accepting the business' initial offer or
147 the business accepting the county's or municipality's initial
148 counteroffer, attorney fees must be calculated in accordance
149 with paragraphs (6) (c)-(f) for the attorney's time required to
150 present the business' good faith offer. Otherwise, attorney fees
151 for the award of business damages must be calculated as provided
152 in paragraphs (6) (a) and (b), based upon the difference between
153 the final judgment or settlement of business damages and the
154 county's or municipality's counteroffer to the business owner's
155 offer.

156 2. Presuit costs must be presented, calculated, and awarded
157 in the same manner as provided in subsection (5), after the
158 business owner submits to the county or municipality all
159 business damage reports or other work products for which
160 recovery is sought and upon the county or municipality paying
161 any amounts due for business damages or upon final judgment.

162 3. If the parties cannot agree on the amount of costs and
163 attorney fees to be paid by the county or municipality, the
164 business owner may file a complaint in the circuit court in the
165 county in which the business is located to recover attorney fees
166 and costs. If a business files a complaint for business damages,
167 it must be filed within 1 year after the effective date of the
168 relevant ordinance, ordinance amendment, or charter provision.

169 (d) Evidence of negotiations or of any written or oral
170 statements used in mediation or negotiations between the parties
171 under this section is inadmissible in any proceeding for
172 business damages, except in a proceeding to determine reasonable
173 costs and attorney fees.

174 (4) OPPORTUNITY TO CURE.—There is no liability under this

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175 section for a county or municipality that, within the 120-day
176 timeframe provided for in subsection (3) (b):

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

179 (b) Amends the ordinance or charter provision that gave
180 rise to the business' claim in a manner that returns the
181 ordinance or charter provision to its form in existence before
182 the business' claim arose; or

183 (c) Publishes notice of its intent to repeal or amend the
184 ordinance that gave rise to the business' claim and, within 30
185 days after publication of the notice, amends the ordinance in a
186 manner that returns the ordinance to its form in existence
187 before the business' claim arose or repeals the ordinance.

188 (5) COSTS.—

189 (a) If a business recovers business damages, the county or
190 municipality must pay the business' reasonable costs, including
191 a reasonable accountant's fee. Prejudgment interest may not be
192 paid on costs or attorney fees.

193 (b) At least 30 days before a hearing to assess costs under
194 this subsection, the attorney for the business shall submit to
195 the county or municipality for each expert witness the expert
196 witness' complete time records and a detailed statement of
197 services rendered by date, nature of services performed, time
198 spent performing the services, and costs incurred and a copy of
199 any fee agreement that may exist between the expert witness and
200 the business or the business' attorney.

201 (c) In assessing costs, the court shall consider all
202 factors relevant to the reasonableness of the costs, including,
203 but not limited to, the fees paid to similar experts retained in

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204 the case by the county or municipality or other parties and the
205 reasonable costs of similar services by similarly qualified
206 persons.

207 (d) In assessing costs to be paid by the county or
208 municipality, the court shall be guided by the amount the
209 business would ordinarily have been expected to pay for the
210 services rendered if the county or municipality was not
211 responsible for the costs.

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

214 (6) ATTORNEY FEES.—

215 (a) As used in this subsection, the term “benefits” means
216 the difference, exclusive of interest, between the final
217 judgment or settlement and the last written offer made by the
218 county or municipality before the business hires an attorney. If
219 the county or municipality does not make a written settlement
220 offer before the business hires an attorney, benefits must be
221 measured from the first written offer after the attorney is
222 hired.

223 (b)1. In determining attorney fees, if business records
224 kept by the owner in the ordinary course of business were
225 provided to the county or municipality to substantiate the
226 business damage offer made by the business, benefits for amounts
227 awarded for business damages must be based upon the difference
228 between the final judgment or settlement and the written
229 counteroffer made by the county or municipality.

230 2. In determining attorney fees, if existing business
231 records kept by the owner in the ordinary course of business
232 were not provided to the county or municipality to substantiate

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233 the business damage offer made by the business and those records
234 that were not provided are later deemed material to the
235 determination of business damages, benefits for amounts awarded
236 for business damages must be based upon the difference between
237 the final judgment or settlement and the first written
238 counteroffer made by the county or municipality within 90 days
239 after the receipt of the business records previously not
240 provided to the county or municipality.

241 3. The court may also consider nonmonetary benefits
242 obtained for the business through the efforts of the attorney,
243 to the extent such nonmonetary benefits are specifically
244 identified by the court and can, within a reasonable degree of
245 certainty, be quantified.

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

248 a. Thirty-three percent of any benefit up to \$250,000; plus
249 b. Twenty-five percent of any portion of the benefit
250 between \$250,000 and \$1 million; plus
251 c. Twenty percent of any portion of the benefit exceeding
252 \$1 million.

253 (c) In assessing attorney fees in a claim for business
254 damages, when not otherwise provided for, the court shall
255 consider:

256 1. The novelty, difficulty, and importance of the questions
257 involved.

258 2. The skill employed by the attorney in conducting the
259 case.

260 3. The amount of money involved.

261 4. The responsibility incurred and fulfilled by the

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262 attorney.

263 5. The attorney's time and labor reasonably required to
264 adequately represent the client in relation to the benefits
265 resulting to the client.

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

268 (d) In determining the amount of attorney fees to be paid
269 by the county or municipality under paragraph (c), the court
270 shall be guided by the fees the business would ordinarily be
271 expected to pay for these services if the county or municipality
272 was not responsible for the payment of those fees.

273 (e) At least 30 days before a hearing to assess attorney
274 fees under paragraph (c), the attorney for the business shall
275 submit to the county or municipality and to the court complete
276 time records and a detailed statement of services rendered by
277 date, nature of services performed, time spent performing the
278 services, and costs incurred.

279 (f) The business shall provide to the court a copy of any
280 fee agreement that may exist between the business and its
281 attorney, and the court must reduce the amount of attorney fees
282 to be paid by the business by the amount of any attorney fees
283 awarded by the court.

284 (7) TRIAL.—A business claiming the right to recover
285 business damages must state in its complaint the nature and
286 extent of those damages. At trial, a jury shall determine
287 whether a business is entitled to business damages and the
288 amount of damages, if any. However, the business may elect to
289 have business damages determined by the court.

290 (8) APPLICATION; CONSTRUCTION.—This section does not apply

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291 to a business that may claim business damages under chapter 73
292 and may not be construed to authorize double recoveries.

293 Section 2. This act applies to county and municipal
294 ordinances or charter provisions enacted or amended on or after
295 the effective date of this act.

296 Section 3. This act shall take effect upon becoming a law.