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1 A bill to be entitled
2 An act relating to the Local Business Protection Act;
3 providing a short title; creating s. 70.91, F.S.;
4 defining the term "business records"; authorizing
5 certain businesses to claim business damages from a
6 county or municipality if the county or municipality
7 enacts or amends certain ordinances or charter
8 provisions; limiting the amount of business damages
9 that may be recovered; specifying ordinances and
10 charter provisions that do not result in liability for
11 business damages; requiring businesses and counties or
12 municipalities to follow certain presuit procedures
13 before businesses file an action for business damages;
14 authorizing courts to award reasonable attorney fees
15 and costs to prevailing parties; specifying that
16 counties and municipalities are not liable for damages
17 if they take certain actions within a specified
18 timeframe; authorizing governing bodies of
19 municipalities to provide specified relief,
20 notwithstanding certain ordinances and charter
21 provisions; providing applicability and construction;
22 providing an effective date.

23
24 WHEREAS, the Legislature recognizes that the continued
25 economic growth and economic prosperity of this state are tied
26 to the protection of private property rights and the stability
27 of laws, ordinances, and charter provisions, and

28 WHEREAS, the Legislature recognizes that the protection of
29 private property rights and the stability of laws and local

2022620e1

30 rules and regulations affecting business activities encourage
31 investments by businesses in their real property, facilities,
32 operations, and workforces, and

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

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

39 WHEREAS, the Legislature intends to require counties and
40 municipalities to compensate businesses for business damages
41 when an ordinance or a charter provision causes a business
42 significant economic harm, NOW, THEREFORE,

43

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

45

46 Section 1. This act may be cited as the "Local Business
47 Protection Act."

48 Section 2. Section 70.91, Florida Statutes, is created to
49 read:

50 70.91 Compensation for business damages caused by county or
51 municipal ordinances or charter provisions.-

52 (1) DEFINITION.-For purposes of this section, the term
53 "business records" includes, but is not limited to, copies of
54 federal income tax returns, federal income tax withholding
55 statements, federal miscellaneous income tax statements, state
56 sales tax returns, balance sheets, profit and loss statements,
57 state corporate income tax returns for the 3 years preceding the
58 enactment of or amendment to an ordinance or a charter, and

2022620e1

59 other records relied upon by a business to substantiate a claim
60 for business damages.

61 (2) CLAIMS FOR BUSINESS DAMAGES.—

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

65 1. The county or municipality enacts or amends an ordinance
66 or a charter provision that has or will cause a reduction of at
67 least 15 percent of the business' profit as applied on a per
68 location basis of a business operated within the jurisdiction;
69 and

70 2. The business has engaged in lawful business in the
71 jurisdiction for the 3 years preceding the enactment of or
72 amendment to the ordinance or charter.

73 (b) The amount of business damages may be established by
74 any reasonable method, but the amount of business damages that
75 may be recovered by a business may not exceed the present value
76 of the business' future lost profits for the lesser of 7 years
77 or the number of years the business had been in operation in the
78 jurisdiction before the ordinance or charter provision was
79 enacted.

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

82 1. An ordinance or charter provision that is required to
83 comply with, or is expressly authorized by, state or federal
84 law;

85 2. Emergency ordinances, declarations, or orders adopted by
86 a county or municipality under ss. 252.31-252.60, the State
87 Emergency Management Act;

2022620e1

88 3. A temporary emergency ordinance enacted pursuant to s.
89 125.66 or s. 166.041 which remains in effect for no more than 90
90 days;

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

92 a. Part II of chapter 163, relating to growth policy,
93 county and municipal planning, and land development regulation,
94 including zoning, development orders, and development permits;

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

96 or

97 c. Section 633.202, relating to the Florida Fire Prevention
98 Code;

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

103 6. An ordinance or charter provision relating to the
104 issuance or refinancing of debt;

105 7. An ordinance or charter provision relating to the
106 adoption of a budget or budget amendment, including revenue
107 sources necessary to fund the budget;

108 8. An ordinance or charter provision relating to
109 procurement; or

110 9. An ordinance or charter provision intended to promote,
111 enable, or facilitate economic competition.

112 (d) An amendment to an ordinance or charter provision after
113 the effective date of this act gives rise to a claim under this
114 section only to the extent that the application of the
115 amendatory language is the cause of the claimed impact on a
116 business apart from the ordinance or charter provision being

2022620e1

117 amended.

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

119 (a) At least 180 days before a business files an action
120 under this section against a county or municipality and within
121 180 days after the effective date of the relevant ordinance or
122 charter provision, the business must present a written offer to
123 settle the business' claim for business damages to the head of
124 the county or municipality enacting or amending the ordinance or
125 charter provision. The settlement offer must be made in good
126 faith and include an explanation of the nature, extent, and
127 monetary amount of damages and must be prepared by the owner, a
128 certified public accountant, or a business damage expert
129 familiar with the nature of the operations of the business. The
130 business must also provide copies of the business' records that
131 substantiate the offer to settle the business damage claim. If
132 additional information is needed beyond the data that may be
133 obtained from business records existing at the time of the
134 offer, the business and county or municipality may agree on a
135 schedule for the submission of that information.

136 (b) Within 120 days after receipt of the good faith
137 business damage offer and accompanying business records, the
138 county or municipality must, by certified mail, accept or reject
139 the business' offer or make a counteroffer, which may include an
140 offer to grant a waiver to the application of the ordinance or
141 charter provision.

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

145 (d) Evidence of negotiations or of any written or oral

2022620e1

146 statements used in mediation or negotiations between the parties
147 under this section is inadmissible in any proceeding for
148 business damages, except in a proceeding to determine reasonable
149 costs and attorney fees.

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

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

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

157 (b) Amends the ordinance or charter provision that gave
158 rise to the business' claim in a manner that returns the
159 ordinance or charter provision to its form in existence before
160 the business' claim arose or in a manner that avoids causing a
161 reduction of at least 15 percent of the business' profit as
162 applied on a per location basis within the jurisdiction;

163 (c) Publishes notice of its intent to repeal or amend the
164 ordinance that gave rise to the business' claim and, within 30
165 days after publication of the notice, amends the ordinance in a
166 manner that returns the ordinance to its form in existence
167 before the business' claim arose or in a manner that avoids
168 causing a reduction of at least 15 percent of the business'
169 profit as applied on a per location basis within the
170 jurisdiction, or repeals the ordinance;

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

173 (e) With respect to a charter provision, the county
174 provides notice of its intent to amend or repeal the charter

2022620e1

175 provision that is the basis of the business damage claim and the
176 charter provision is amended or repealed by the voters at an
177 election or special election that occurs within 90 days after
178 publication of the notice.

179

180 The governing body of a municipality may provide relief under
181 this subsection notwithstanding any ordinance or charter
182 provision to the contrary.

183 (5) APPLICATION; CONSTRUCTION.—This section does not apply
184 to a business that may claim business damages under chapter 73
185 and may not be construed to authorize double recoveries.

186 Section 3. This act applies to county and municipal
187 ordinances or charter provisions enacted or amended on or after
188 the effective date of this act.

189 Section 4. This act shall take effect upon becoming a law.