

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Gantt offered the following:

Amendment (with title amendment)

Between lines 112 and 113, insert:

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

70.91 Compensation for business damages caused by county or municipal ordinances or charter provisions or state laws.-

(1) DEFINITIONS.-For purposes of this section, the term:

(a) "Business records" includes, but is not limited to, copies of federal income tax returns, federal income tax withholding statements, federal miscellaneous income tax statements, state sales tax returns, balance sheets, profit and

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14 loss statements, state corporate income tax returns for the 3
15 years preceding the enactment of or amendment to an ordinance or
16 a charter, and other records relied upon by a business to
17 substantiate a claim for business damages.

18 (b) "State law" includes a regulation adopted by a state
19 agency.

20 (2) CLAIMS FOR BUSINESS DAMAGES.—

21 (a) Except as provided in paragraph (c), a private, for-
22 profit business may claim business damages from a county,
23 municipality, or the state if:

24 1. The county, municipality, or the state enacts or amends
25 an ordinance or a charter provision or state law that has or
26 will cause a reduction of at least 15 percent of the business'
27 profit as applied on a per location basis of a business operated
28 within the jurisdiction; and

29 2. The business has engaged in lawful business in the
30 jurisdiction for the 3 years preceding the enactment of or
31 amendment to the ordinance or charter provision.

32 (b) The amount of business damages may be established by
33 any reasonable method, but the amount of business damages that
34 may be recovered by a business may not exceed the present value
35 of the business' future lost profits for the lesser of 7 years
36 or the number of years the business had been in operation in the
37 jurisdiction before the ordinance or charter provision was
38 enacted.

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39 (c) A county, municipality, or the state is not liable for
40 business damages caused by:

41 1. An ordinance or charter provision that is required to
42 comply with, or is expressly authorized by, state or federal law
43 or a state law that is required by federal law;

44 2. Emergency ordinances, declarations, or orders adopted
45 by a county or municipality under ss. 252.31-252.60, the State
46 Emergency Management Act;

47 3. A temporary emergency ordinance enacted pursuant to s.
48 125.66 or s. 166.041 which remains in effect for no more than 90
49 days;

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

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

54 b. Section 553.73, relating to the Florida Building Code;
55 or

56 c. Section 633.202, relating to the Florida Fire
57 Prevention Code;

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

62 6. An ordinance or charter provision relating to the
63 issuance or refinancing of debt;

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64 7. An ordinance or charter provision relating to the
65 adoption of a budget or budget amendment, including revenue
66 sources necessary to fund the budget;

67 8. An ordinance or charter provision relating to
68 procurement; or

69 9. An ordinance or charter provision intended to promote,
70 enable, or facilitate economic competition.

71 (d) An amendment to an ordinance or charter provision or a
72 state law after the effective date of this act gives rise to a
73 claim under this section only to the extent that the application
74 of the amendatory language is the cause of the claimed impact on
75 a business apart from the ordinance or charter provision being
76 amended.

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

78 (a) At least 180 days before a business files an action
79 under this section against a county, municipality, or the state
80 and within 180 days after the effective date of the relevant
81 ordinance, charter provision, or state law, the business must
82 present a written offer to settle the business' claim for
83 business damages to the head of the county or municipality
84 enacting or amending the ordinance or charter provision or, for
85 a state law, to the Governor. The settlement offer must be made
86 in good faith and include an explanation of the nature, extent,
87 and monetary amount of damages and must be prepared by the
88 owner, a certified public accountant, or a business damage

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89 expert familiar with the nature of the operations of the
90 business. The business must also provide copies of the business'
91 records that substantiate the offer to settle the business
92 damage claim. If additional information is needed beyond the
93 data that may be obtained from business records existing at the
94 time of the offer, the business and county, municipality, or the
95 state may agree on a schedule for the submission of that
96 information.

97 (b) Within 120 days after receipt of the good faith
98 business damage offer and accompanying business records, the
99 county, municipality, or the state must, by certified mail,
100 accept or reject the business' offer or make a counteroffer,
101 which may include an offer to grant a waiver to the application
102 of the ordinance, charter provision, or state law.

103 (c) If a business files an action for business damages, it
104 must be filed within 1 year after the effective date of the
105 relevant ordinance, ordinance amendment, charter provision, or
106 state law.

107 (d) Evidence of negotiations or of any written or oral
108 statements used in mediation or negotiations between the parties
109 under this section is inadmissible in any proceeding for
110 business damages, except in a proceeding to determine reasonable
111 costs and attorney fees.

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

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

117 (a) Repeals the ordinance, charter provision, or state law
118 that gave rise to the business' claim;

119 (b) Amends the ordinance, charter provision, or state law
120 that gave rise to the business' claim in a manner that returns
121 the ordinance, charter provision, or state law to its form in
122 existence before the business' claim arose or in a manner that
123 avoids causing a reduction of at least 15 percent of the
124 business' profit as applied on a per location basis within the
125 jurisdiction;

126 (c) Publishes notice of its intent to repeal or amend the
127 ordinance or state law that gave rise to the business' claim
128 and, within 30 days after publication of the notice, amends the
129 ordinance in a manner that returns the ordinance to its form in
130 existence before the business' claim arose or in a manner that
131 avoids causing a reduction of at least 15 percent of the
132 business' profit as applied on a per location basis within the
133 jurisdiction, or repeals the ordinance or state law;

134 (d) Grants a waiver of the ordinance, charter provision,
135 or state law to a business submitting a claim for business
136 damages; or

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

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139 provision that is the basis of the business damage claim and the
140 charter provision is amended or repealed by the voters at an
141 election or special election that occurs within 90 days after
142 publication of the notice.

143
144 The governing body of a municipality may provide relief under
145 this subsection, notwithstanding any ordinance or charter
146 provision to the contrary.

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

150 Section 3. Section 2 of this act applies to county and
151 municipal ordinances or charter provisions or state laws enacted
152 or amended on or after October 1, 2023.

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155 **T I T L E A M E N D M E N T**

156 Remove line 8 and insert:
157 construction and applicability; creating s. 70.91,
158 F.S.; defining terms; authorizing certain businesses
159 to claim business damages from a governmental entity
160 if the governmental entity enacts or amends certain
161 ordinances, charter provisions, or laws; limiting the
162 amount of business damages that may be recovered;
163 specifying ordinances, charter provisions, and laws

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164 that do not result in liability for business damages;
165 requiring businesses and governmental entities to
166 follow certain presuit procedures before businesses
167 file an action for business damages; authorizing
168 courts to award reasonable attorney fees and costs to
169 prevailing parties; specifying that there is no
170 liability for damages if certain actions are taken
171 within a specified timeframe; authorizing governing
172 bodies of municipalities to provide specified relief,
173 notwithstanding certain ordinances and charter
174 provisions; providing applicability and construction;
175 amending s. 125.66,

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