

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
 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

51 or 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
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
66 ordinance or a charter provision that has or will cause a
67 reduction of at least 15 percent of the business' profit as
68 applied on a per location basis of a business operated within
69 the jurisdiction; 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
86 by a county or municipality under ss. 252.31-252.60, the State
87 Emergency Management Act;

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
98 Prevention 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
 113 after the effective date of this act gives rise to a claim under
 114 this 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
 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
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
 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.