

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Nixon offered the following:

Amendment (with title amendment)

Remove lines 50-187 and insert:

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 loss statements, state corporate income tax returns for the 3 years preceding the enactment of or amendment to an ordinance or

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14 a charter, and other records relied upon by a business to
15 substantiate a claim for business damages.

16 (b) "State law" includes a regulation adopted by a state
17 agency.

18 (2) CLAIMS FOR BUSINESS DAMAGES.—

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

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

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

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

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

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

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

45 3. A temporary emergency ordinance enacted pursuant to s.
46 125.66 or s. 166.041 which remains in effect for no more than 90
47 days;

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

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

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

53 or

54 c. Section 633.202, relating to the Florida Fire
55 Prevention Code;

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

60 6. An ordinance or charter provision relating to the
61 issuance or refinancing of debt;

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

65 8. An ordinance or charter provision relating to
66 procurement; or

67 9. An ordinance or charter provision intended to promote,
68 enable, or facilitate economic competition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

141
142 The governing body of a municipality may provide relief under
143 this subsection notwithstanding any ordinance or charter
144 provision to the contrary.

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

148 Section 3. This act applies to county and municipal
149 ordinances or charter provisions or state laws enacted or
150 amended on or after

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152 -----

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

154 Remove lines 4-41 and insert:
155 defining terms; authorizing certain businesses to
156 claim business damages from a governmental entity if
157 the governmental entity enacts or amends certain
158 ordinances, charter provisions, or laws; limiting the
159 amount of business damages that may be recovered;
160 specifying ordinances, charter provisions, and laws
161 that do not result in liability for business damages;

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162 requiring businesses and governmental entities to
163 follow certain presuit procedures before businesses
164 file an action for business damages; authorizing
165 courts to award reasonable attorney fees and costs to
166 prevailing parties; specifying that there is no
167 liability for damages if certain actions are taken
168 within a specified timeframe; authorizing governing
169 bodies of municipalities to provide specified relief,
170 notwithstanding certain ordinances and charter
171 provisions; providing applicability and construction;
172 providing an effective date.

173
174 WHEREAS, the Legislature recognizes that the continued
175 economic growth and economic prosperity of this state are tied
176 to the protection of private property rights and the stability
177 of laws, ordinances, and charter provisions, and

178 WHEREAS, the Legislature recognizes that the protection of
179 private property rights and the stability of state laws and
180 local rules and regulations affecting business activities
181 encourage investments by businesses in their real property,
182 facilities, operations, and workforces, and

183 WHEREAS, investments by businesses drive the economic
184 growth of a community, and

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185 WHEREAS, the economic costs of rules and regulations that
186 are primarily for the benefit of a governmental entity as a
187 whole should be borne by the governmental entity as a whole, and

188 WHEREAS, the Legislature intends to require governmental
189 entities to compensate businesses for business damages when an
190 ordinance, charter provision, or state law causes a business

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