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LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 66 - 253

and insert:

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

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



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11 2. The business has engaged in lawful business in this
12 state for the 3 years preceding the enactment of or amendment to
13 the ordinance or charter.

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

- 17 1. The present value of 7 years' lost profits; or
18 2. An amount equal to the business' gross receipts for the
19 60 months preceding the date of enactment of or amendment to the
20 ordinance or charter provision. This subparagraph applies if the
21 ordinance or charter will cause a total loss of profit.

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

- 24 1. An ordinance or a charter provision that is required to
25 comply with state or federal law;
26 2. Emergency ordinances, declarations, or orders adopted by
27 a county or municipality under ss. 252.31-252.60, the State
28 Emergency Management Act;
29 3. A temporary emergency ordinance enacted pursuant to s.
30 125.66 or s. 166.041 which remains in effect for no more than 90
31 days;
32 4. An ordinance or charter provision enacted to implement:
33 a. Part II of chapter 163, relating to growth policy,
34 county and municipal planning, and land development regulation;
35 b. Section 553.73, relating to the Florida Building Code;
36 or
37 c. Section 633.202, relating to the Florida Fire Prevention
38 Code;
39 5. An ordinance or charter provision required to implement



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40 a contract or agreement, including, but not limited to, any
41 federal, state, local, or private grant, or other financial
42 assistance accepted by a county government;

43 6. An ordinance or charter provision relating to the
44 issuance or refinancing of debt; or

45 7. An ordinance or charter provision relating to the
46 adoption of a budget or budget amendment.

47 (3) PRESUIT PROCEDURES.—

48 (a) At least 180 days before a business files an action
49 under this section against a county or municipality and within
50 180 days after the effective date of the relevant ordinance or
51 charter provision, the business must present a written offer to
52 settle the business' claim for business damages to the head of
53 the county or municipality enacting or amending the ordinance.
54 The settlement offer must be made in good faith and include an
55 explanation of the nature, extent, and monetary amount of
56 damages and must be prepared by the owner, a certified public
57 accountant, or a business damage expert familiar with the nature
58 of the operations of the business. The business must also
59 provide copies of the business' records that substantiate the
60 offer to settle the business damage claim. If additional
61 information is needed beyond the data that may be obtained from
62 business records existing at the time of the offer, the business
63 and county or municipality may agree on a schedule for the
64 submission of that information.

65 (b) Within 120 days after receipt of the good faith
66 business damage offer and accompanying business records, the
67 county or municipality must, by certified mail, accept or reject
68 the business' offer or make a counteroffer. Failure of the



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69 county or municipality to respond to or reject the business
70 damage offer must be deemed to be a counteroffer of zero dollars
71 for purposes of calculating attorney fees under subsection (6)
72 solely based upon the benefits achieved for the business.

73 (c) If the business and the county or municipality reach a
74 settlement before a lawsuit is filed, the business that settles
75 the claim for business damages in lieu of litigation is entitled
76 to recover costs in the same manner as provided in subsection
77 (5) and attorney fees in the same manner as provided in
78 subsection (6), more specifically as follows:

79 1. If the business recovers business damages based upon the
80 county or municipality accepting the business' initial offer or
81 the business accepting the county's or municipality's initial
82 counteroffer, attorney fees must be calculated in accordance
83 with paragraphs (6)(c), (d), (e), and (f) for the attorney's
84 time required to present the business' good faith offer.
85 Otherwise, attorney fees for the award of business damages must
86 be calculated as provided in paragraphs (6)(a) and (b), based
87 upon the difference between the final judgment or settlement of
88 business damages and the county's or municipality's counteroffer
89 to the business owner's offer.

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

96 3. If the parties cannot agree on the amount of costs and
97 attorney fees to be paid by the county or municipality, the



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98 business owner may file a complaint in the circuit court in the
99 county in which the business is located to recover attorney fees
100 and costs. If a business files a complaint for business damages,
101 it must be filed within 1 year after the effective date of the
102 relevant ordinance, ordinance amendment, or charter provision.

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

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

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

113 (b) Amends the ordinance or charter provision that gave
114 rise to the business' claim in a manner that returns the
115 ordinance or charter provision to its form in existence before
116 the business' claim arose; or

117 (c) Publishes notice of its intent to repeal or amend the
118 ordinance that gave rise to the business' claim and, within 30
119 days after publication of the notice, amends the ordinance in a
120 manner that returns the ordinance to its form in existence
121 before the business' claim arose or repeals the ordinance.

122 (5) COSTS.—

123 (a) If a business recovers business damages, the county or
124 municipality must pay the business' reasonable costs, including
125 a reasonable accountant's fee. Prejudgment interest may not be
126 paid on costs or attorney fees.



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127 (b) At least 30 days before a hearing to assess costs under
128 this subsection, the attorney for the business shall submit to
129 the county or municipality for each expert witness the expert
130 witness' complete time records and a detailed statement of
131 services rendered by date, nature of services performed, time
132 spent performing the services, and costs incurred and a copy of
133 any fee agreement that may exist between the expert witness and
134 the business or the business' attorney.

135 (c) In assessing costs, the court shall consider all
136 factors relevant to the reasonableness of the costs, including,
137 but not limited to, the fees paid to similar experts retained in
138 the case by the county or municipality or other parties and the
139 reasonable costs of similar services by similarly qualified
140 persons.

141 (d) In assessing costs to be paid by the county or
142 municipality, the court shall be guided by the amount the
143 business would ordinarily have been expected to pay for the
144 services rendered if the county or municipality was not
145 responsible for the costs.

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

148 (6) ATTORNEY FEES.—

149 (a) As used in this subsection, the term "benefits" means
150 the difference, exclusive of interest, between the final
151 judgment or settlement and the last written offer made by the
152 county or municipality before the business hires an attorney. If
153 the county or municipality does not make a written settlement
154 offer before the business hires an attorney, benefits must be
155 measured from the first written offer after the attorney is



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156 hired.

157 (b)1. In determining attorney fees, if business records
158 kept by the owner in the ordinary course of business were
159 provided to the county or municipality to substantiate the
160 business damage offer made by the business, benefits for amounts
161 awarded for business damages must be based upon the difference
162 between the final judgment or settlement and the written
163 counteroffer made by the county or municipality.

164 2. In determining attorney fees, if existing business
165 records kept by the owner in the ordinary course of business
166 were not provided to the county or municipality to substantiate
167 the business damage offer made by the business and those records
168 that were not provided are later deemed material to the
169 determination of business damages, benefits for amounts awarded
170 for business damages must be based upon the difference between
171 the final judgment or settlement and the first written
172 counteroffer made by the county or municipality within 90 days
173 after the receipt of the business records previously not
174 provided to the county or municipality.

175 3. The court may also consider nonmonetary benefits
176 obtained for the business through the efforts of the attorney,
177 to the extent such nonmonetary benefits are specifically
178 identified by the court and can, within a reasonable degree of
179 certainty, be quantified.

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

182 a. Thirty-three percent of any benefit up to \$250,000; plus

183 b. Twenty-five percent of any portion of the benefit

184 between \$250,000 and \$1 million; plus



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185 c. Twenty percent of any portion of the benefit exceeding
186 \$1 million.

187 (c) In assessing attorney fees in a claim for business
188 damages, when not otherwise provided for, the court shall
189 consider:

190 1. The novelty, difficulty, and importance of the questions
191 involved.

192 2. The skill employed by the attorney in conducting the
193 case.

194 3. The amount of money involved.

195 4. The responsibility incurred and fulfilled by the
196 attorney.

197 5. The attorney's time and labor reasonably required to
198 adequately represent the client in relation to the benefits
199 resulting to the client.

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

202 (d) In determining the amount of attorney fees to be paid
203 by the county or municipality under paragraph (c), the court
204 shall be guided by the fees the business would ordinarily be
205 expected to pay for these services if the county or municipality
206 was not responsible for the payment of those fees.

207 (e) At least 30 days before a hearing to assess attorney
208 fees under paragraph (c), the attorney for the business shall
209 submit to the county or municipality and to the court complete
210 time records and a detailed statement of services rendered by
211 date, nature of services performed, time spent performing the
212 services, and costs incurred.

213 (f) The business shall provide to the court a copy of any



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214 fee agreement that may exist between the business and its
215 attorney, and the court must reduce the amount of attorney fees
216 to be paid by the business by the amount of any attorney fees
217 awarded by the court.

218 (7) TRIAL.—A business claiming the right to recover
219 business damages must state in its complaint the nature and
220 extent of those damages. At trial, a jury shall determine
221 whether a business is entitled to business damages and the
222 amount of damages, if any. However, the business may elect to
223 have business damages determined by the court.

224 (8) APPLICATION; CONSTRUCTION.—This section does not apply
225 to a business that may claim business damages under chapter 73
226 and may not be construed to authorize double recoveries.

227 Section 2. This act applies to county and municipal
228 ordinances or charter provisions enacted or amended on or after
229 the effective date of this act.

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

231
232 ===== T I T L E A M E N D M E N T =====

233 And the title is amended as follows:

234 Delete lines 7 - 14

235 and insert:

236 charter provisions; limiting the amount of business
237 damages that may be recovered; specifying ordinances
238 and charter provisions that do not result in liability
239 for business damages; requiring businesses and
240 counties or municipalities to follow certain presuit
241 procedures before businesses file an action for
242 business damages; authorizing businesses to recover



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243 costs and fees in a specified manner and if certain
244 requirements are met; specifying that certain evidence
245 relating to mediations and negotiations is
246 inadmissible as evidence in certain proceedings;
247 specifying that counties and municipalities are not
248 liable for damages if they take certain actions within
249 a specified timeframe;