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

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

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

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

1. An ordinance or a charter provision that is required to comply with state or federal law;
2. Emergency ordinances, declarations, or orders adopted by a county or municipality under ss. 252.31-252.60, the State Emergency Management Act;
3. A temporary emergency ordinance enacted pursuant to s. 125.66 or s. 166.041 which remains in effect for no more than 90 days;
4. An ordinance or charter provision enacted to implement:
   a. Part II of chapter 163, relating to growth policy, county and municipal planning, and land development regulation;
   b. Section 553.73, relating to the Florida Building Code;
   or
   c. Section 633.202, relating to the Florida Fire Prevention Code;
5. An ordinance or charter provision required to implement
a contract or agreement, including, but not limited to, any federal, state, local, or private grant, or other financial assistance accepted by a county government;

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

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

(3) PRESUIT PROCEDURES.—

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

(b) Within 120 days after receipt of the good faith business damage offer and accompanying business records, the county or municipality must, by certified mail, accept or reject the business' offer or make a counteroffer. Failure of the
county or municipality to respond to or reject the business damage offer must be deemed to be a counteroffer of zero dollars for purposes of calculating attorney fees under subsection (6) solely based upon the benefits achieved for the business.

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

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

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

3. If the parties cannot agree on the amount of costs and attorney fees to be paid by the county or municipality, the
business owner may file a complaint in the circuit court in the county in which the business is located to recover attorney fees and costs. If a business files a complaint for business damages, it must be filed within 1 year after the effective date of the relevant ordinance, ordinance amendment, or charter provision.

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

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

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

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

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

(5) COSTS.—

(a) If a business recovers business damages, the county or municipality must pay the business’ reasonable costs, including a reasonable accountant’s fee. Prejudgment interest may not be paid on costs or attorney fees.
(b) At least 30 days before a hearing to assess costs under this subsection, the attorney for the business shall submit to the county or municipality for each expert witness the expert witness’ complete time records and a detailed statement of services rendered by date, nature of services performed, time spent performing the services, and costs incurred and a copy of any fee agreement that may exist between the expert witness and the business or the business’ attorney.

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

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

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

(6) ATTORNEY FEES.—
(a) As used in this subsection, the term “benefits” means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the county or municipality before the business hires an attorney. If the county or municipality does not make a written settlement offer before the business hires an attorney, benefits must be measured from the first written offer after the attorney is
(b) 1. In determining attorney fees, if business records kept by the owner in the ordinary course of business were provided to the county or municipality to substantiate the business damage offer made by the business, benefits for amounts awarded for business damages must be based upon the difference between the final judgment or settlement and the written counteroffer made by the county or municipality.

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

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

4. Attorney fees based upon benefits achieved shall be awarded in accordance with the following schedule:
   a. Thirty-three percent of any benefit up to $250,000; plus
   b. Twenty-five percent of any portion of the benefit between $250,000 and $1 million; plus
c. Twenty percent of any portion of the benefit exceeding $1 million.

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

1. The novelty, difficulty, and importance of the questions involved.
2. The skill employed by the attorney in conducting the case.
3. The amount of money involved.
4. The responsibility incurred and fulfilled by the attorney.
5. The attorney’s time and labor reasonably required to adequately represent the client in relation to the benefits resulting to the client.
6. The fee, or rate of fee, customarily charged for legal services of a comparable or similar nature.

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

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

(f) The business shall provide to the court a copy of any
fee agreement that may exist between the business and its
attorney, and the court must reduce the amount of attorney fees
to be paid by the business by the amount of any attorney fees
awarded by the court.

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

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

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

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

============ T I T L E A M E N D M E N T ==============
And the title is amended as follows:
Delete lines 7 - 14
and insert:
charter provisions; limiting the amount of business
damages that may be recovered; specifying ordinances
and charter provisions that do not result in liability
for business damages; requiring businesses and
counties or municipalities to follow certain presuit
procedures before businesses file an action for
business damages; authorizing businesses to recover
costs and fees in a specified manner and if certain requirements are met; specifying that certain evidence relating to mediations and negotiations is inadmissible as evidence in certain proceedings; specifying that counties and municipalities are not liable for damages if they take certain actions within a specified timeframe;