

1 A bill to be entitled
2 An act relating to business damages caused by local
3 governments; creating s. 70.91, F.S.; defining the
4 term "business records"; authorizing certain
5 businesses to claim business damages from a county or
6 municipality if the county or municipality enacts or
7 amends certain ordinances or charter provisions;
8 providing exceptions; requiring businesses and
9 counties or municipalities to follow certain presuit
10 procedures before businesses file an action for
11 business damages; authorizing businesses to recover
12 costs and fees in a specified manner and if certain
13 requirements are met; specifying that certain evidence
14 relating to mediations and negotiations is
15 inadmissible as evidence in certain proceedings;
16 requiring courts to consider certain factors and
17 follow specified guidance when assessing costs;
18 defining the term "benefits"; specifying requirements
19 for the courts in determining and awarding attorney
20 fees; requiring attorneys and businesses to submit
21 certain documentation relating to attorney fees;
22 requiring businesses claiming the right to recover
23 business damages to state the nature and extent of the
24 damages; requiring a jury to determine whether a
25 business is entitled to business damages and the

26 amount of such damages unless the business elects to
 27 have the business damages determined by the court;
 28 providing applicability and construction; providing an
 29 effective date.

30
 31 WHEREAS, the Legislature recognizes that the continued
 32 economic growth and economic prosperity of this state are tied
 33 to the protection of private property rights and the stability
 34 of laws, ordinances, and charter provisions, and

35 WHEREAS, the Legislature recognizes that the protection of
 36 private property rights and the stability of laws and local
 37 rules and regulations affecting business activities encourage
 38 investments by businesses in their real property, facilities,
 39 operations, and workforces, and

40 WHEREAS, investments by businesses drive the economic
 41 growth of a community, and

42 WHEREAS, the economic costs of local rules and regulations
 43 that are primarily for the benefit of a county or municipality
 44 as a whole should be borne by the county or municipality as a
 45 whole, and

46 WHEREAS, the Legislature intends to require counties and
 47 municipalities to compensate businesses for business damages
 48 when an ordinance or a charter provision causes a business
 49 significant economic harm, NOW, THEREFORE,

50

51 Be It Enacted by the Legislature of the State of Florida:

52

53 Section 1. Section 70.91, Florida Statutes, is created to
54 read:

55 70.91 Compensation for business damages caused by county
56 or municipal ordinances or charter provisions.-

57 (1) DEFINITION.-For purposes of this section, the term
58 "business records" includes, but is not limited to, copies of
59 federal income tax returns, federal income tax withholding
60 statements, federal miscellaneous income tax statements, state
61 sales tax returns, balance sheets, profit and loss statements,
62 state corporate income tax returns for the 3 years preceding the
63 enactment of or amendment to an ordinance or a charter, and
64 other records relied upon by a business to substantiate a claim
65 for business damages.

66 (2) CLAIMS FOR BUSINESS DAMAGES.-

67 (a) Except as provided in paragraph (b), a business that
68 has engaged in a lawful business in this state for at least 3
69 years may claim business damages from a county or municipality
70 if the county or municipality enacts or amends an ordinance or a
71 charter that will cause a reduction of at least 15 percent of
72 the business' revenue or profit.

73 (b) A county or municipality is not liable for business
74 damages caused by:

75 1. An ordinance or a charter provision that is required to

76 comply with state or federal law;

77 2. Emergency ordinances, declarations, or orders adopted
 78 by a county or municipality under ss. 252.31-252.60, the State
 79 Emergency Management Act;

80 3. A temporary emergency ordinance enacted pursuant to s.
 81 125.66 or s. 166.041 which remains in effect for no more than 90
 82 days; or

83 4. An ordinance or a charter provision that increases
 84 economic freedom.

85 (3) PRESUIT PROCEDURES.—

86 (a) At least 180 days before a business files an action
 87 under this section against a county or municipality and within
 88 180 days after the effective date of the relevant ordinance or
 89 charter provision, the business must present a written offer to
 90 settle the business' claim for business damages to the head of
 91 the county or municipality enacting or amending the ordinance.
 92 The settlement offer must be made in good faith and include an
 93 explanation of the nature, extent, and monetary amount of
 94 damages and must be prepared by the owner, a certified public
 95 accountant, or a business damage expert familiar with the nature
 96 of the operations of the business. The business must also
 97 provide copies of the business' records that substantiate the
 98 offer to settle the business damage claim. If additional
 99 information is needed beyond the data that may be obtained from
 100 business records existing at the time of the offer, the business

101 and county or municipality may agree on a schedule for the
102 submission of that information.

103 (b) Within 120 days after receipt of the good faith
104 business damage offer and accompanying business records, the
105 county or municipality must, by certified mail, accept or reject
106 the business' offer or make a counteroffer. Failure of the
107 county or municipality to respond to or reject the business
108 damage offer must be deemed to be a counteroffer of zero dollars
109 for purposes of calculating attorney fees under subsection (5)
110 solely based upon the benefits achieved for the business.

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

117 1. If the business recovers business damages based upon
118 the county or municipality accepting the business' initial offer
119 or the business accepting the county's or municipality's initial
120 counteroffer, attorney fees must be calculated in accordance
121 with paragraphs (5)(c), (d), (e), and (f) for the attorney's
122 time required to present the business' good faith offer.
123 Otherwise, attorney fees for the award of business damages must
124 be calculated as provided in paragraphs (5)(a) and (b), based
125 upon the difference between the final judgment or settlement of

126 business damages and the county's or municipality's counteroffer
127 to the business owner's offer.

128 2. Presuit costs must be presented, calculated, and
129 awarded in the same manner as provided in subsection (4), after
130 the business owner submits to the county or municipality all
131 business damage reports or other work products for which
132 recovery is sought and upon the county or municipality paying
133 any amounts due for business damages or upon final judgment.

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

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

146 (4) COSTS.—

147 (a) If a business recovers business damages, the county or
148 municipality must pay the business' reasonable costs, including
149 a reasonable accountant's fee. Prejudgment interest may not be
150 paid on costs or attorney fees.

151 (b) At least 30 days before a hearing to assess costs
 152 under this subsection, the attorney for the business shall
 153 submit to the county or municipality for each expert witness the
 154 expert witness' complete time records and a detailed statement
 155 of services rendered by date, nature of services performed, time
 156 spent performing the services, and costs incurred and a copy of
 157 any fee agreement that may exist between the expert witness and
 158 the business or the business' attorney.

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

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

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

172 (5) ATTORNEY FEES.—

173 (a) As used in this subsection, the term "benefits" means
 174 the difference, exclusive of interest, between the final
 175 judgment or settlement and the last written offer made by the

176 county or municipality before the business hires an attorney. If
177 the county or municipality does not make a written settlement
178 offer before the business hires an attorney, benefits must be
179 measured from the first written offer after the attorney is
180 hired.

181 (b)1. In determining attorney fees, if business records
182 kept by the owner in the ordinary course of business were
183 provided to the county or municipality to substantiate the
184 business damage offer made by the business, benefits for amounts
185 awarded for business damages must be based upon the difference
186 between the final judgment or settlement and the written
187 counteroffer made by the county or municipality.

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

199 3. The court may also consider nonmonetary benefits
200 obtained for the business through the efforts of the attorney,

201 to the extent such nonmonetary benefits are specifically
 202 identified by the court and can, within a reasonable degree of
 203 certainty, be quantified.

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

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

208 b. Twenty-five percent of any portion of the benefit
 209 between \$250,000 and \$1 million; plus

210 c. Twenty percent of any portion of the benefit exceeding
 211 \$1 million.

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

215 1. The novelty, difficulty, and importance of the
 216 questions involved.

217 2. The skill employed by the attorney in conducting the
 218 case.

219 3. The amount of money involved.

220 4. The responsibility incurred and fulfilled by the
 221 attorney.

222 5. The attorney's time and labor reasonably required to
 223 adequately represent the client in relation to the benefits
 224 resulting to the client.

225 6. The fee, or rate of fee, customarily charged for legal

226 services of a comparable or similar nature.

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

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

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

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

249 (7) APPLICATION; CONSTRUCTION.—This section does not apply
250 to a business that may claim business damages under chapter 73

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251 | and may not be construed to authorize double recoveries.

252 | Section 2. This act applies to county and municipal
253 | ordinances or charter provisions enacted or amended on or after
254 | July 1, 2022.

255 | Section 3. This act shall take effect July 1, 2022.