FLC Comments on Proposed Amendment to SB 620

Opportunity to Cure is too narrow – only option is to repeal entire ordinance, even if only one part of a lengthy ordinance causes damages. The fix: adding more options: issue a financial hardship waiver from compliance with ordinance; amend the ordinance to remove the offending provision.

No realistic opportunity to cure charter amendments initiated by voters – local governments have no legal power to remove a voter initiative from the ballot based on potential damages or fiscal impact. The only ability to rescind or undo the charter provision is another voter referendum – with no guarantee it would pass. The fix: add language authorizing courts to strike a charter proposal from ballot upon petition by local government showing will cause 15% losses to businesses, or allowing court to invalidate a charter provision that would cause such damages (this not only limits damages from current claimant but would help avoid recurring damage claims brought by others).

Applies to amendments to ordinances – this would open door for claims against existing, longstanding ordinances that may be amended purely for technical reasons, which negates the prospective nature of bill. The fix: require that future amendments to existing ordinances give rise to a claim only to the extent the application of the amendatory language is the proximate cause of the alleged business damage, apart from the underlying ordinance.

Proof and calculation of damages – business does not have to prove the ordinance was the proximate cause of the loss; does not limit calculation of damages to those directly caused by the ordinance – allows for speculative, remote, and collateral damages. The fix: add language defining business damages as "those damages that directly and immediately result from enforcement of the ordinance or charter against the business, and do not include losses that are collateral to, or that result indirectly, from enforcement of the ordinance. Business damages may not be speculative, remote or the result of other intervening causes, but must be reasonably certain and directly traceable to the ordinance."

Allows sandbagging -- Nothing in bill requires business to express concerns about an ordinance prior to it being adopted, which is the most efficient and cost-effective way for local governments to avoid potential claims and costs and for businesses to resolve problems faster. The fix: A requirement to at least notify the local government of potential claims if ordinance is adopted would provide opportunity for the local government to modify the ordinance prior to adoption and remove the potential impact.

Hardship on small, economically challenged towns -- The bill adds needless costs to taxpayers because local governments WILL incur costs for assessing claims – especially small towns with few employees equipped to assess claims. Assessment of claims will have to be outsourced. The fix: exempt fiscally constrained governments; governments in rural areas of economic concern.

Encourages predatory lawsuits -- The bill and amendment encourage drive-by claims by attorneys seeking fees from quick settlements. This has been epidemic in small towns with ADA claims, etc. The fix: remove provision requiring local gov't to pay fees and costs if a claim is settled prior to legal action being filed. This will VASTLY reduce the potential for legal fishing expeditions and cut taxpayer losses.

Will Negatively Impact Actions Overwhelmingly Supported by Voters – The bill and amendment will limit local government's ability to address the following types of ordinances: strip clubs; urban fertilizer; open container; liquor hours of sale; vape shops; sex trafficking; animal cruelty/puppy mills; fracking limitations/bans; medical marijuana treatment centers; tree protection; public nudity/indecent exposure; panhandling; public procurement/P3.