



788846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2015	.	
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The Committee on Environmental Preservation and Conservation (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (f) and (g) of subsection (3), paragraphs (b), (c), and (d) of subsection (4), and subsection (10) of section 70.001, Florida Statutes, are amended, and a new paragraph (b) is added to subsection (4) of that section, to read:

70.001 Private property rights protection.-



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11 (3) For purposes of this section:

12 (f) The term "property owner" means the person who holds
13 legal title to the real property that is the subject of and
14 directly impacted by the action of a governmental entity ~~at~~
15 ~~issue~~. The term does not include a governmental entity.

16 (g) The term "real property" means land and includes any
17 appurtenances and improvements to the land, including any other
18 relevant real property in which the property owner has ~~had~~ a
19 relevant interest. The term includes only parcels that are the
20 subject of and directly impacted by the action of a governmental
21 entity.

22 (4)

23 (b) Upon receipt of a written claim, a governmental entity
24 may treat the claim as pending litigation for purposes of s.
25 286.011(8).

26 (c) ~~(b)~~ The governmental entity shall provide written notice
27 of the claim to all parties to any administrative action that
28 gave rise to the claim, and to owners of real property
29 contiguous to the owner's property at the addresses listed on
30 the most recent county tax rolls. Within 15 days after the claim
31 is being presented, the governmental entity shall report the
32 claim in writing to the Department of Legal Affairs, and shall
33 provide the department with the name, address, and telephone
34 number of the employee of the governmental entity from whom
35 additional information may be obtained about the claim during
36 the pendency of the claim and any subsequent judicial action.

37 (d) ~~(e)~~ During the 90-day-notice period or the 150-day-
38 notice period, unless extended by agreement of the parties, the
39 governmental entity shall make a written settlement offer to



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40 effectuate:

41 1. An adjustment of land development or permit standards or
42 other provisions controlling the development or use of land.

43 2. Increases or modifications in the density, intensity, or
44 use of areas of development.

45 3. The transfer of developmental rights.

46 4. Land swaps or exchanges.

47 5. Mitigation, including payments in lieu of onsite
48 mitigation.

49 6. Location on the least sensitive portion of the property.

50 7. Conditioning the amount of development or use permitted.

51 8. A requirement that issues be addressed on a more
52 comprehensive basis than a single proposed use or development.

53 9. Issuance of the development order, a variance, special
54 exception, or other extraordinary relief.

55 10. Purchase of the real property, or an interest therein,
56 by an appropriate governmental entity or payment of
57 compensation.

58 11. No changes to the action of the governmental entity.

59

60 If the property owner accepts a ~~the~~ settlement offer either
61 before or after filing an action, the governmental entity may
62 implement the settlement offer by appropriate development
63 agreement; by issuing a variance, special exception, or other
64 extraordinary relief; or by other appropriate method, subject to
65 paragraph (e) ~~(d)~~.

66 (e) ~~(d)~~1. When ~~Whenever~~ a governmental entity enters into a
67 settlement agreement under this section which would have the
68 effect of a modification, variance, or a special exception to



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69 the application of a rule, regulation, or ordinance as it would
70 otherwise apply to the subject real property, the relief granted
71 shall protect the public interest served by the regulations at
72 issue and be the appropriate relief necessary to prevent the
73 governmental regulatory effort from inordinately burdening the
74 real property.

75 2. When ~~Whenever~~ a governmental entity enters into a
76 settlement agreement under this section which would have the
77 effect of contravening the application of a statute as it would
78 otherwise apply to the subject real property, the governmental
79 entity and the property owner shall jointly file an action in
80 the circuit court where the real property is located for
81 approval of the settlement agreement by the court to ensure that
82 the relief granted protects the public interest served by the
83 statute at issue and is the appropriate relief necessary to
84 prevent the governmental regulatory effort from inordinately
85 burdening the real property.

86
87 This paragraph applies to any settlement agreement reached
88 between a property owner and a governmental entity regardless of
89 when the settlement agreement was entered into so long as the
90 agreement fully resolves all claims asserted under this section.

91 (10) (a) This section does not apply to any actions taken by
92 a governmental entity which relate to the operation,
93 maintenance, or expansion of transportation facilities, and this
94 section does not affect existing law regarding eminent domain
95 relating to transportation.

96 (b) This section does not apply to any actions taken by a
97 county with respect to the adoption of a Flood Insurance Rate



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98 Map issued by the Federal Emergency Management Agency for the
99 purpose of participating in the National Flood Insurance
100 Program, unless such adoption incorrectly applies an aspect of
101 the Flood Insurance Rate Map to the property in such a way as
102 to, but not limited to, incorrectly assess the elevation of the
103 property.

104 Section 2. Section 70.45, Florida Statutes, is created to
105 read:

106 70.45 Governmental exactions.—

107 (1) As used in this section, the term:

108 (a) "Damages" means the monetary amount necessary to fully
109 and fairly compensate the property owner for harm caused by an
110 exaction prohibited by this section. The term includes a
111 reduction in the fair market value of the real property, a
112 refund of excessive fees charged or infrastructure costs
113 incurred, or such other actual damages as may be proven at
114 trial.

115 (b) "Governmental entity" has the same meaning as in s.
116 70.001(3)(c).

117 (c) "Prohibited exaction" means any condition imposed by a
118 governmental entity on a property owner's proposed use of real
119 property which lacks an essential nexus to a legitimate public
120 purpose and is not roughly proportionate to the impacts of the
121 proposed use that the governmental entity is seeking to avoid,
122 minimize, or mitigate.

123 (d) "Property owner" has the same meaning as in s.
124 70.001(3)(f).

125 (e) "Real property" has the same meaning as in s.
126 70.001(3)(g).



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127 (2) In addition to other remedies available in law or
128 equity, a property owner may bring an action in a court of
129 competent jurisdiction under this section for injunctive relief
130 or to recover damages caused by a prohibited exaction. Such
131 action may not be brought until a prohibited exaction is
132 actually imposed or required in written form as a final
133 condition of approval for the requested use of real property.
134 The right to bring an action under this section may not be
135 waived.

136 (3) At least 90 days before filing an action under this
137 section, a property owner shall provide to the relevant
138 governmental entity written notice of the action. This written
139 notice must identify the exaction that the property owner
140 believes is prohibited and include a brief explanation of why
141 the property owner believes the exaction is prohibited and an
142 estimate of the damages. Upon receipt of the property owner's
143 written notice, the governmental entity may treat the claim as
144 pending litigation for purposes of s. 286.011(8).

145 (4) For each claim filed under this section, the
146 governmental entity has the burden of proving that the exaction
147 at issue has an essential nexus to a legitimate public purpose
148 and is roughly proportionate to the impacts of the proposed use
149 that the governmental entity is seeking to avoid, minimize or
150 mitigate. The property owner has the burden of proving damages
151 that result from a prohibited exaction.

152 (5) In addition to the damages provided for in this
153 section, the court shall award prejudgment interest and
154 reasonable attorney fees and costs to a property owner who
155 prevails in an action under this section. The court may award



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156 reasonable attorney fees and costs to the governmental entity if
157 the court finds that the property owner filed the action in bad
158 faith and absent a colorable basis for relief.

159 (6) To ensure that courts may assess damages for claims
160 filed under this section, in accordance with s. 13, Art. X of
161 the State Constitution, the state for itself and for its
162 agencies or political subdivisions waives sovereign immunity for
163 causes of action based upon the application of this section. The
164 waiver is limited only to claims brought under this section.

165 Section 3. Section 70.80, Florida Statutes, is amended to
166 read:

167 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
168 the express declaration of the Legislature that ss. 70.001,
169 70.45, and 70.51 have separate and distinct bases, objectives,
170 applications, and processes. It is therefore the intent of the
171 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
172 construed in pari materia.

173 Section 4. This act shall take effect October 1, 2015.

174
175 ===== T I T L E A M E N D M E N T =====

176 And the title is amended as follows:

177 Delete everything before the enacting clause
178 and insert:

179 A bill to be entitled
180 An act relating to private property rights; amending
181 s. 70.001, F.S.; revising the terms "property owner"
182 and "real property"; authorizing a governmental entity
183 to treat a written claim as pending litigation for
184 purposes of holding certain meetings privately;



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185 providing that any settlement agreement reached
186 between an owner and a governmental entity applies so
187 long as the agreement resolves all issues; providing
188 exceptions to the applicability of the Bert J. Harris,
189 Jr., Private Property Rights Protection Act; creating
190 s. 70.45, F.S.; defining terms; authorizing a property
191 owner to bring an action for injunctive relief or the
192 recovery of damages caused by a prohibited exaction;
193 requiring a property owner to provide written notice
194 of such action to the relevant governmental entity;
195 authorizing the governmental entity to treat such
196 claim as pending litigation for purposes of holding
197 certain meetings privately; specifying the burdens of
198 proof imposed on the governmental entity and the
199 property owner in such action; authorizing the award
200 of prejudgment interest and reasonable attorney fees
201 and costs under specified circumstances; waiving the
202 state's sovereign immunity for certain causes of
203 action; amending s. 70.80, F.S.; specifying that an
204 action for a prohibited exaction is not to be
205 construed in pari materia with certain other actions;
206 providing an effective date.