



918134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Dean)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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



918134

10 that section, to read:

11 70.001 Private property rights protection.—

12 (3) For purposes of this section:

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

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

23 (4)

24 (b) Upon receipt of a written claim, a governmental entity
25 may treat the claim as pending litigation for purposes of s.
26 286.011(8).

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

38 (d) ~~(e)~~ During the 90-day-notice period or the 150-day-



918134

39 notice period, unless extended by agreement of the parties, the
40 governmental entity shall make a written settlement offer to
41 effectuate:

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

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

46 3. The transfer of developmental rights.

47 4. Land swaps or exchanges.

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

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

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

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

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

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

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

60

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

67 (e) ~~(d)~~1. When ~~Whenever~~ a governmental entity enters into a



918134

68 settlement agreement under this section which would have the
69 effect of a modification, variance, or a special exception to
70 the application of a rule, regulation, or ordinance as it would
71 otherwise apply to the subject real property, the relief granted
72 shall protect the public interest served by the regulations at
73 issue and be the appropriate relief necessary to prevent the
74 governmental regulatory effort from inordinately burdening the
75 real property.

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

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

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



918134

97 (b) This section does not apply to any actions taken by a
98 county with respect to the adoption of a Flood Insurance Rate
99 Map issued by the Federal Emergency Management Agency for the
100 purpose of participating in the National Flood Insurance
101 Program, unless such adoption incorrectly applies an aspect of
102 the Flood Insurance Rate Map to the property, in such a way as
103 to, but not limited to, incorrectly assess the elevation of the
104 property.

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

107 70.45 Governmental exactions.-

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

109 (a) "Damages" means, in addition to the right to injunctive
110 relief, the reduction in fair market value of the real property
111 or the amount of the fee or infrastructure cost that exceeds
112 what would be permitted under this section.

113 (b) "Governmental entity" has the same meaning as provided
114 in s. 70.001(3)(c).

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

121 (d) "Property owner" has the same meaning as provided in s.
122 70.001(3)(f).

123 (e) "Real property" has the same meaning as provided in s.
124 70.001(3)(g).

125 (2) In addition to other remedies available in law or



918134

126 equity, a property owner may bring an action in a court of
127 competent jurisdiction under this section to recover damages
128 caused by a prohibited exaction. Such action may not be brought
129 until a prohibited exaction is actually imposed or required in
130 writing as a final condition of approval for the requested use
131 of real property. The right to bring an action under this
132 section may not be waived. This section does not apply to impact
133 fees adopted under s. 163.31801 or non-ad valorem assessments as
134 defined in s. 197.3632.

135 (3) At least 90 days before filing an action under this
136 section, but no later than 180 days after imposition of the
137 prohibited exaction, the property owner shall provide to the
138 relevant governmental entity written notice of the proposed
139 action. This written notice shall identify the exaction that the
140 property owner believes is prohibited, briefly explain why the
141 property owner believes the exaction is prohibited, and provide
142 an 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). Upon receipt
145 of the written notice:

146 (a) The governmental entity shall review the notice of
147 claim and respond in writing to the property owner by
148 identifying the basis for the exaction and explaining why the
149 governmental entity maintains that the exaction is proportionate
150 to the harm created by the proposed use of real property, or by
151 proposing to remove all or a portion of the exaction.

152 (b) The written response may not be used against the
153 governmental entity in subsequent litigation other than for
154 purposes of assessing attorney fees and costs under subsection



918134

155 (5).

156 (4) For each claim filed under this section, the
157 governmental entity has the burden of proving that the exaction
158 has an essential nexus to a legitimate public purpose and is
159 roughly proportionate to the impacts of the proposed use that
160 the governmental entity is seeking to avoid, minimize, or
161 mitigate. The property owner has the burden of proving damages
162 that result from a prohibited exaction.

163 (5) The court may award attorney fees and costs to the
164 prevailing party; however, if the court determines that the
165 exaction which is the subject of the claim lacks an essential
166 nexus to a legitimate public purpose and is not roughly
167 proportionate to the impacts of the proposed use, the court
168 shall award attorney fees and costs to the property owner.

169 (6) To ensure that courts may assess damages for claims
170 filed under this section in accordance with s. 13, Art. X of the
171 State Constitution, the state, for itself and its agencies or
172 political subdivisions, waives sovereign immunity for causes of
173 action based upon the application of this section. Such waiver
174 is limited only to actions brought under this section.

175 (7) This section applies to any prohibited exaction imposed
176 or required in writing on or after October 1, 2015, as a final
177 condition of approval for the requested use of real property.

178 Section 3. Section 70.80, Florida Statutes, is amended to
179 read:

180 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
181 the express declaration of the Legislature that ss. 70.001,
182 70.45, and 70.51 have separate and distinct bases, objectives,
183 applications, and processes. It is therefore the intent of the



918134

184 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
185 construed in pari materia.

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

187

188 ===== T I T L E A M E N D M E N T =====

189 And the title is amended as follows:

190 Delete everything before the enacting clause

191 and insert:

192 A bill to be entitled

193 An act relating to private property rights; amending
194 s. 70.001, F.S.; revising the terms "property owner"
195 and "real property"; authorizing a governmental entity
196 to treat a written claim as pending litigation for
197 purposes of holding certain meetings privately;
198 providing that any settlement agreement reached
199 between an owner and a governmental entity applies so
200 long as the agreement resolves all issues; providing
201 exceptions to the applicability of the Bert J. Harris,
202 Jr., Private Property Rights Protection Act; creating
203 s. 70.45, F.S.; defining terms; authorizing a property
204 owner to bring an action to recover damages caused by
205 a prohibited exaction; requiring a property owner to
206 provide written notice of such action to the relevant
207 governmental entity; authorizing the governmental
208 entity to treat such a claim as pending litigation for
209 purposes of holding certain meetings privately;
210 specifying the burden of proof imposed on the
211 governmental entity and the property owner,
212 respectively, in such an action; authorizing the award



918134

213 of reasonable attorney fees and costs under specified
214 circumstances; waiving the state's sovereign immunity
215 for certain causes of action; providing applicability;
216 amending s. 70.80, F.S.; specifying that an action for
217 a prohibited exaction is not to be construed in pari
218 materia with certain other actions; providing an
219 effective date.