

By the Committees on Appropriations; and Environmental Preservation and Conservation; and Senator Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to private property rights; amending
3 s. 70.001, F.S.; revising the terms "property owner"
4 and "real property"; authorizing a governmental entity
5 to treat a written claim as pending litigation for
6 purposes of holding certain meetings privately;
7 providing that any settlement agreement reached
8 between an owner and a governmental entity applies so
9 long as the agreement resolves all issues; providing
10 exceptions to the applicability of the Bert J. Harris,
11 Jr., Private Property Rights Protection Act; creating
12 s. 70.45, F.S.; defining terms; authorizing a property
13 owner to bring an action to recover damages caused by
14 a prohibited exaction; requiring a property owner to
15 provide written notice of such action to the relevant
16 governmental entity; authorizing the governmental
17 entity to treat such a claim as pending litigation for
18 purposes of holding certain meetings privately;
19 specifying the burden of proof imposed on the
20 governmental entity and the property owner,
21 respectively, in such an action; authorizing the award
22 of reasonable attorney fees and costs under specified
23 circumstances; waiving the state's sovereign immunity
24 for certain causes of action; providing applicability;
25 amending s. 70.80, F.S.; specifying that an action for
26 a prohibited exaction is not to be construed in pari
27 materia with certain other actions; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Present paragraphs (b), (c), and (d) of
33 subsection (4) of section 70.001, Florida Statutes, are
34 redesignated as paragraphs (c), (d), and (e), respectively, and
35 amended, paragraphs (f) and (g) of subsection (3) and subsection
36 (10) are amended, and a new paragraph (b) is added to subsection
37 (4) of that section, to read:

38 70.001 Private property rights protection.—

39 (3) For purposes of this section:

40 (f) The term "property owner" means the person who holds
41 legal title to the real property that is the subject of and
42 directly impacted by the action of a governmental entity at
43 issue. The term does not include a governmental entity.

44 (g) The term "real property" means land and includes any
45 appurtenances and improvements to the land, including any other
46 relevant real property in which the property owner has had a
47 relevant interest. The term includes only parcels that are the
48 subject of and directly impacted by the action of a governmental
49 entity.

50 (4)

51 (b) Upon receipt of a written claim, a governmental entity
52 may treat the claim as pending litigation for purposes of s.
53 286.011(8).

54 (c) ~~(b)~~ The governmental entity shall provide written notice
55 of the claim to all parties to any administrative action that
56 gave rise to the claim, and to owners of real property
57 contiguous to the owner's property at the addresses listed on
58 the most recent county tax rolls. Within 15 days after the claim

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59 is being presented, the governmental entity shall report the
60 claim in writing to the Department of Legal Affairs, and shall
61 provide the department with the name, address, and telephone
62 number of the employee of the governmental entity from whom
63 additional information may be obtained about the claim during
64 the pendency of the claim and any subsequent judicial action.

65 (d)~~(e)~~ During the 90-day-notice period or the 150-day-
66 notice period, unless extended by agreement of the parties, the
67 governmental entity shall make a written settlement offer to
68 effectuate:

69 1. An adjustment of land development or permit standards or
70 other provisions controlling the development or use of land.

71 2. Increases or modifications in the density, intensity, or
72 use of areas of development.

73 3. The transfer of developmental rights.

74 4. Land swaps or exchanges.

75 5. Mitigation, including payments in lieu of onsite
76 mitigation.

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

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

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

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

83 10. Purchase of the real property, or an interest therein,
84 by an appropriate governmental entity or payment of
85 compensation.

86 11. No changes to the action of the governmental entity.
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88 If the property owner accepts a ~~the~~ settlement offer, either
89 before or after filing an action, the governmental entity may
90 implement the settlement offer by appropriate development
91 agreement; by issuing a variance, special exception, or other
92 extraordinary relief; or by other appropriate method, subject to
93 paragraph (e) ~~(d)~~.

94 (e) ~~(d)~~1. When ~~Whenever~~ a governmental entity enters into a
95 settlement agreement under this section which would have the
96 effect of a modification, variance, or a special exception to
97 the application of a rule, regulation, or ordinance as it would
98 otherwise apply to the subject real property, the relief granted
99 shall protect the public interest served by the regulations at
100 issue and be the appropriate relief necessary to prevent the
101 governmental regulatory effort from inordinately burdening the
102 real property.

103 2. When ~~Whenever~~ a governmental entity enters into a
104 settlement agreement under this section which would have the
105 effect of contravening the application of a statute as it would
106 otherwise apply to the subject real property, the governmental
107 entity and the property owner shall jointly file an action in
108 the circuit court where the real property is located for
109 approval of the settlement agreement by the court to ensure that
110 the relief granted protects the public interest served by the
111 statute at issue and is the appropriate relief necessary to
112 prevent the governmental regulatory effort from inordinately
113 burdening the real property.

114

115 This paragraph applies to any settlement reached between a
116 property owner and a governmental entity regardless of when the

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117 settlement agreement was entered so long as the agreement fully
118 resolves all claims asserted under this section.

119 (10) (a) This section does not apply to any actions taken by
120 a governmental entity which relate to the operation,
121 maintenance, or expansion of transportation facilities, and this
122 section does not affect existing law regarding eminent domain
123 relating to transportation.

124 (b) This section does not apply to any actions taken by a
125 county with respect to the adoption of a Flood Insurance Rate
126 Map issued by the Federal Emergency Management Agency for the
127 purpose of participating in the National Flood Insurance
128 Program, unless such adoption incorrectly applies an aspect of
129 the Flood Insurance Rate Map to the property in such a way as
130 to, but not limited to, incorrectly assess the elevation of the
131 property.

132 Section 2. Section 70.45, Florida Statutes, is created to
133 read:

134 70.45 Governmental exactions.—

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

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

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

142 (c) "Prohibited exaction" means any condition imposed by a
143 governmental entity on a property owner's proposed use of real
144 property that lacks an essential nexus to a legitimate public
145 purpose and is not roughly proportionate to the impacts of the

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146 proposed use that the governmental entity seeks to avoid,
147 minimize, or mitigate.

148 (d) "Property owner" has the same meaning as provided in s.
149 70.001(3)(f).

150 (e) "Real property" has the same meaning as provided in s.
151 70.001(3)(g).

152 (2) In addition to other remedies available in law or
153 equity, a property owner may bring an action in a court of
154 competent jurisdiction under this section to recover damages
155 caused by a prohibited exaction. Such action may not be brought
156 until a prohibited exaction is actually imposed or required in
157 writing as a final condition of approval for the requested use
158 of real property. The right to bring an action under this
159 section may not be waived. This section does not apply to impact
160 fees adopted under s. 163.31801 or non-ad valorem assessments as
161 defined in s. 197.3632.

162 (3) At least 90 days before filing an action under this
163 section, but no later than 180 days after imposition of the
164 prohibited exaction, the property owner shall provide to the
165 relevant governmental entity written notice of the proposed
166 action. This written notice must identify the exaction that the
167 property owner believes is prohibited, briefly explain why the
168 property owner believes the exaction is prohibited, and provide
169 an estimate of the damages. Upon receipt of the property owner's
170 written notice, the governmental entity may treat the claim as
171 pending litigation for purposes of s. 286.011(8).

172 (a) Upon receipt of the written notice, the governmental
173 entity shall review the notice of claim and respond in writing
174 to the property owner by identifying the basis for the exaction

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175 and explaining why the governmental entity maintains that the
176 exaction is proportionate to the harm created by the proposed
177 use of real property, or by proposing to remove all or a portion
178 of the exaction.

179 (b) The written response may not be used against the
180 governmental entity in subsequent litigation other than for
181 purposes of assessing attorney fees and costs under subsection
182 (5).

183 (4) For each claim filed under this section, the
184 governmental entity has the burden of proving that the exaction
185 has an essential nexus to a legitimate public purpose and is
186 roughly proportionate to the impacts of the proposed use that
187 the governmental entity is seeking to avoid, minimize, or
188 mitigate. The property owner has the burden of proving damages
189 that result from a prohibited exaction.

190 (5) The court may award attorney fees and costs to the
191 prevailing party; however, if the court determines that the
192 exaction which is the subject of the claim lacks an essential
193 nexus to a legitimate public purpose and is not roughly
194 proportionate to the impacts of the proposed use, the court
195 shall award attorney fees and costs to the property owner.

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

202 (7) This section applies to any prohibited exaction imposed
203 or required in writing on or after October 1, 2015, as a final

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204 condition of approval for the requested use of real property.

205 Section 3. Section 70.80, Florida Statutes, is amended to
206 read:

207 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
208 the express declaration of the Legislature that ss. 70.001,
209 70.45, and 70.51 have separate and distinct bases, objectives,
210 applications, and processes. It is therefore the intent of the
211 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
212 construed in pari materia.

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