



264124

LEGISLATIVE ACTION

Senate

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House

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Floor: NC/2R

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Senator Diaz de la Portilla moved the following:

Senate Amendment (with directory and title amendments)

Delete lines 51 - 171

and insert:

(b) The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim ~~is being~~ presented, the governmental entity shall report the claim in writing to the Department of Legal Affairs, and shall provide



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12 the department with the name, address, and telephone number of
13 the employee of the governmental entity from whom additional
14 information may be obtained about the claim during the pendency
15 of the claim and any subsequent judicial action.

16 (c) During the 90-day-notice period or the 150-day-notice
17 period, unless extended by agreement of the parties, the
18 governmental entity shall make a written settlement offer to
19 effectuate:

20 1. An adjustment of land development or permit standards or
21 other provisions controlling the development or use of land.

22 2. Increases or modifications in the density, intensity, or
23 use of areas of development.

24 3. The transfer of developmental rights.

25 4. Land swaps or exchanges.

26 5. Mitigation, including payments in lieu of onsite
27 mitigation.

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

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

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

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

34 10. Purchase of the real property, or an interest therein,
35 by an appropriate governmental entity or payment of
36 compensation.

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

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39 If the property owner accepts a ~~the~~ settlement offer, either
40 before or after filing an action, the governmental entity may



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41 implement the settlement offer by appropriate development
42 agreement; by issuing a variance, special exception, or other
43 extraordinary relief; or by other appropriate method, subject to
44 paragraph (d).

45 (d)1. When ~~Whenever~~ a governmental entity enters into a
46 settlement agreement under this section which would have the
47 effect of a modification, variance, or a special exception to
48 the application of a rule, regulation, or ordinance as it would
49 otherwise apply to the subject real property, the relief granted
50 shall protect the public interest served by the regulations at
51 issue and be the appropriate relief necessary to prevent the
52 governmental regulatory effort from inordinately burdening the
53 real property.

54 2. When ~~Whenever~~ a governmental entity enters into a
55 settlement agreement under this section which would have the
56 effect of contravening the application of a statute as it would
57 otherwise apply to the subject real property, the governmental
58 entity and the property owner shall jointly file an action in
59 the circuit court where the real property is located for
60 approval of the settlement agreement by the court to ensure that
61 the relief granted protects the public interest served by the
62 statute at issue and is the appropriate relief necessary to
63 prevent the governmental regulatory effort from inordinately
64 burdening the real property.

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66 This paragraph applies to any settlement reached between a
67 property owner and a governmental entity regardless of when the
68 settlement agreement was entered into so long as the agreement
69 fully resolves all claims asserted under this section.



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70 (10) (a) This section does not apply to any actions taken by
71 a governmental entity which relate to the operation,
72 maintenance, or expansion of transportation facilities, and this
73 section does not affect existing law regarding eminent domain
74 relating to transportation.

75 (b) This section does not apply to any actions taken by a
76 county with respect to the adoption of a Flood Insurance Rate
77 Map issued by the Federal Emergency Management Agency for the
78 purpose of participating in the National Flood Insurance
79 Program, unless such adoption incorrectly applies an aspect of
80 the Flood Insurance Rate Map to the property in such a way as
81 to, but not limited to, incorrectly assess the elevation of the
82 property.

83 Section 2. Section 70.45, Florida Statutes, is created to
84 read:

85 70.45 Governmental exactions.—

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

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

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

93 (c) "Prohibited exaction" means any condition imposed by a
94 governmental entity on a property owner's proposed use of real
95 property that lacks an essential nexus to a legitimate public
96 purpose and is not roughly proportionate to the impacts of the
97 proposed use that the governmental entity seeks to avoid,
98 minimize, or mitigate.



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99 (d) "Property owner" has the same meaning as provided in s.
100 70.001(3)(f).

101 (e) "Real property" has the same meaning as provided in s.
102 70.001(3)(g).

103 (2) In addition to other remedies available in law or
104 equity, a property owner may bring an action in a court of
105 competent jurisdiction under this section to recover damages
106 caused by a prohibited exaction. Such action may not be brought
107 until a prohibited exaction is actually imposed or required in
108 writing as a final condition of approval for the requested use
109 of real property. The right to bring an action under this
110 section may not be waived. This section does not apply to impact
111 fees adopted under s. 163.31801 or non-ad valorem assessments as
112 defined in s. 197.3632.

113 (3) At least 90 days before filing an action under this
114 section, but no later than 180 days after imposition of the
115 prohibited exaction, the property owner shall provide to the
116 relevant governmental entity written notice of the proposed
117 action. This written notice shall identify the exaction that the
118 property owner believes is prohibited, briefly explain why the
119 property owner believes the exaction is prohibited, and provide
120 an estimate of the damages.

121
122 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

123 And the directory clause is amended as follows:

124 Delete lines 32 - 37

125 and insert:

126 Section 1. Paragraphs (f) and (g) of subsection (3),
127 paragraphs (b), (c), and (d) of subsection (4), and subsection



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128 (10) of section 70.001, Florida Statutes, are amended to read:

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

131 And the title is amended as follows:

132 Delete lines 4 - 18

133 and insert:

134 and "real property"; providing that any settlement
135 agreement reached between an owner and a governmental
136 entity applies so long as the agreement resolves
137 certain claims; providing exceptions to the
138 applicability of the Bert J. Harris, Jr., Private
139 Property Rights Protection Act; creating s. 70.45,
140 F.S.; defining terms; authorizing a property owner to
141 bring an action to recover damages caused by a
142 prohibited exaction; requiring a property owner to
143 provide written notice of such proposed action to the
144 relevant governmental entity;