

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

592-02826-15

2015284c1

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 for injunctive relief or the
14 recovery of damages caused by a prohibited exaction;
15 requiring a property owner to provide written notice
16 of such action to the relevant governmental entity;
17 authorizing the governmental entity to treat such
18 claim as pending litigation for purposes of holding
19 certain meetings privately; specifying the burdens of
20 proof imposed on the governmental entity and the
21 property owner in such action; authorizing the award
22 of prejudgment interest and reasonable attorney fees
23 and costs under specified circumstances; waiving the
24 state's sovereign immunity for certain causes of
25 action; amending s. 70.80, F.S.; specifying that an
26 action for a prohibited exaction is not to be
27 construed in pari materia with certain other actions;
28 providing an effective date.

592-02826-15

2015284c1

30 Be It Enacted by the Legislature of the State of Florida:

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

37 70.001 Private property rights protection.—

38 (3) For purposes of this section:

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

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

49 (4)

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

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

592-02826-15

2015284c1

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

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

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

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

72 3. The transfer of developmental rights.

73 4. Land swaps or exchanges.

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

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

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

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

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

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

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

86
87 If the property owner accepts a ~~the~~ settlement offer either

592-02826-15

2015284c1

88 before or after filing an action, the governmental entity may
89 implement the settlement offer by appropriate development
90 agreement; by issuing a variance, special exception, or other
91 extraordinary relief; or by other appropriate method, subject to
92 paragraph (e) ~~(d)~~.

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

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

113
114 This paragraph applies to any settlement agreement reached
115 between a property owner and a governmental entity regardless of
116 when the settlement agreement was entered into so long as the

592-02826-15

2015284c1

117 agreement fully resolves all claims asserted under this section.

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

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

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

133 70.45 Governmental exactions.—

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

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

142 (b) "Governmental entity" has the same meaning as in s.
143 70.001(3)(c).

144 (c) "Prohibited exaction" means any condition imposed by a
145 governmental entity on a property owner's proposed use of real

592-02826-15

2015284c1

146 property which lacks an essential nexus to a legitimate public
147 purpose and is not roughly proportionate to the impacts of the
148 proposed use that the governmental entity is seeking to avoid,
149 minimize, or mitigate.

150 (d) "Property owner" has the same meaning as in s.
151 70.001(3)(f).

152 (e) "Real property" has the same meaning as in s.
153 70.001(3)(g).

154 (2) In addition to other remedies available in law or
155 equity, a property owner may bring an action in a court of
156 competent jurisdiction under this section for injunctive relief
157 or to recover damages caused by a prohibited exaction. Such
158 action may not be brought until a prohibited exaction is
159 actually imposed or required in written form as a final
160 condition of approval for the requested use of real property.
161 The right to bring an action under this section may not be
162 waived.

163 (3) At least 90 days before filing an action under this
164 section, a property owner shall provide to the relevant
165 governmental entity written notice of the action. This written
166 notice must identify the exaction that the property owner
167 believes is prohibited and include a brief explanation of why
168 the property owner believes the exaction is prohibited and an
169 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 (4) For each claim filed under this section, the
173 governmental entity has the burden of proving that the exaction
174 at issue has an essential nexus to a legitimate public purpose

592-02826-15

2015284c1

175 and is roughly proportionate to the impacts of the proposed use
176 that the governmental entity is seeking to avoid, minimize or
177 mitigate. The property owner has the burden of proving damages
178 that result from a prohibited exaction.

179 (5) In addition to the damages provided for in this
180 section, the court shall award prejudgment interest and
181 reasonable attorney fees and costs to a property owner who
182 prevails in an action under this section. The court may award
183 reasonable attorney fees and costs to the governmental entity if
184 the court finds that the property owner filed the action in bad
185 faith and absent a colorable basis for relief.

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

192 Section 3. Section 70.80, Florida Statutes, is amended to
193 read:

194 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
195 the express declaration of the Legislature that ss. 70.001,
196 70.45, and 70.51 have separate and distinct bases, objectives,
197 applications, and processes. It is therefore the intent of the
198 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
199 construed in pari materia.

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