

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Local Government Affairs
 2 Subcommittee

3 Representative Edwards offered the following:

4
 5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (f) and (g) of subsection (3),
 8 paragraphs (c) and (d) of subsection (4), and subsection (10) of
 9 section 70.001, Florida Statutes, are amended to read:

10 70.001 Private property rights protection.—

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

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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), F.S.

26 (c) ~~(b)~~ The governmental entity shall provide written
27 notice of the claim to all parties to any administrative action
28 that 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 being presented, the governmental entity shall report the claim
32 in writing to the Department of Legal Affairs, and shall provide
33 the department with the name, address, and telephone number of
34 the employee of the governmental entity from whom additional
35 information may be obtained about the claim during the pendency
36 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
40 effectuate:

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

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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
67 a 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 reached between a
88 property owner and a governmental entity regardless of when the
89 settlement agreement was entered so long as the agreement fully
90 resolves all claims asserted under this section.

91 (10) (a) This section does not apply to any actions taken
92 by a governmental entity which relate to the operation,
93 maintenance, or expansion of transportation facilities, and this

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

110 (b) "Property owner" has the same meaning as provided in s.
111 70.001(3)(f).

112 (c) "Real property" has the same meaning as provided in s.
113 70.001(3)(g).

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

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120 (e) "Damages" means the monetary amount necessary to fully
121 and fairly compensate the property owner for harm caused by an
122 exaction prohibited by this section. Damages may include a
123 reduction in the fair market value of the real property, a
124 refund of excessive fees charged or infrastructure costs
125 incurred, or such other actual damages as may be proven at
126 trial.

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) In any action under this section, the governmental
137 entity shall have the burden of proving that the exaction at
138 issue has an essential nexus to a legitimate public purpose and
139 is roughly proportionate to the impacts of the proposed use that
140 the governmental entity is seeking to avoid, minimize or
141 mitigate. The property owner shall have the burden of proving
142 damages that result from a prohibited exaction.

143 (4) Not less than 90 days prior to filing an action under
144 this section, the property owner shall provide to the relevant
145 governmental entity written notice of the action. This written

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146 notice shall identify the exaction that the property owner
147 believes to be prohibited, include a brief explanation of why
148 the property owner believes the exaction to be prohibited, and
149 provide an estimate of the damages. Upon receipt of the
150 property owner's written notice, the governmental entity may
151 treat the claim as pending litigation for purposes of s.
152 286.011(8), F.S.

153 (5) In addition to the damages provided for in this
154 section, the court shall award prejudgment interest, costs, and
155 reasonable attorney fees to a property owner who prevails in an
156 action under this section. The court may award attorney fees and
157 costs to the governmental entity if the court finds that the
158 property owner filed the action in bad faith and absent a
159 colorable basis for relief.

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

167 Section 3. Section 70.80, Florida Statutes, is amended to
168 read:

169 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
170 the express declaration of the Legislature that ss. 70.001,
171 70.45, and 70.51 have separate and distinct bases, objectives,

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172 applications, and processes. It is therefore the intent of the
173 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
174 construed in pari materia.

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

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