

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WITHDRAWN	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: Judiciary Committee  
 2 Representative Wood offered the following:

**Amendment (with title amendment)**

5 Remove lines 138-193 and insert:

6 (a) "Damages" means, in addition to the right to  
 7 injunctive relief, the reduction in fair market value of the  
 8 real property or the amount of the fee or infrastructure cost  
 9 that is in excess of what would be permitted in accordance with  
 10 this section.

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

13 (c) "Prohibited exaction" means any condition imposed by a  
 14 governmental entity on a property owner's proposed use of real  
 15 property that lacks an essential nexus to a legitimate public  
 16 purpose and is not roughly proportionate to the impacts of the  
 17 proposed use that the governmental entity seeks to avoid,

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18 minimize, or mitigate.

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

21 (e) "Real property" has the same meaning as provided in s.  
22 70.001(3)(g).

23 (2) In addition to other remedies available in law or  
24 equity, a property owner may bring an action in a court of  
25 competent jurisdiction under this section to recover damages  
26 caused by a prohibited exaction. Such action may not be brought  
27 until a prohibited exaction is actually imposed or required in  
28 writing as a final condition of approval for the requested use  
29 of real property. The right to bring an action under this  
30 section may not be waived. This section does not apply to impact  
31 fees adopted in accordance with s. 163.31801, F.S., nor does it  
32 apply to non-ad valorem assessments as defined in s. 197.3632.

33 (3) At least 90 days before filing an action under this  
34 section, but no later than 180 days after imposition of the  
35 prohibited exaction, the property owner shall provide to the  
36 relevant governmental entity written notice of the action. This  
37 written notice shall identify the exaction that the property  
38 owner believes to be prohibited, include a brief explanation of  
39 why the property owner believes the exaction to be prohibited  
40 and provide an estimate of the damages. Upon receipt of the  
41 property owner's written notice, the governmental entity may  
42 treat the claim as pending litigation for purposes of s.  
43 286.011(8), F.S. Upon receipt of the written notice:

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44 (a) The governmental entity shall review the notice of  
45 claim and respond in writing to the property owner by  
46 identifying the basis for the exaction and why the governmental  
47 entity maintains that the exaction is proportionate to the harm  
48 created by the proposed use of real property, or by proposing to  
49 remove all or a portion of the exaction.

50 (b) This written response may not be used against the  
51 governmental entity in subsequent litigation other than for  
52 purposes of assessing attorney's fees and costs under subsection  
53 (5).

54 (4) For each claim filed under this section, the  
55 governmental entity has the burden of proving that the exaction  
56 at issue has an essential nexus to a legitimate public purpose  
57 and is roughly proportionate to the impacts of the proposed use  
58 that the governmental entity is seeking to avoid, minimize, or  
59 mitigate. The property owner has the burden of proving damages  
60 that result from a prohibited exaction.

61 (5) The court may award attorney's fees and costs to the  
62 prevailing party; however, if the court determines that the  
63 complained of exaction lacks an essential nexus, then the court  
64 shall award attorney's fees and costs to the property owner.

65 (6) To ensure that courts may assess damages for claims  
66 filed under this section in accordance with s. 13, Art. X of the  
67 State Constitution, the state, for itself and its agencies or  
68 political subdivisions, waives sovereign immunity for causes of

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69 action based upon the application of this section. Such waiver  
70 is limited only to actions brought under this section.

71 (7) This section applies to any prohibited exaction  
72 imposed or required in writing as a final condition of approval  
73 for the requested use of real property on or after October 1,  
74 2015.

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76  
77 **T I T L E A M E N D M E N T**

78 Remove lines 13-25 and insert:

79 property owner to bring an action for the recovery of damages  
80 caused by a prohibited exaction; requiring a property owner to  
81 provide written notice of such action to the relevant  
82 governmental entity; authorizing the governmental entity to  
83 treat such claim as pending litigation for purposes of holding  
84 certain meetings privately; specifying the burdens of proof  
85 imposed on the governmental entity and the property owner in  
86 such action; authorizing the award of reasonable attorney fees  
87 and costs under specifiedEnter Amending Text Here