

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"; providing that any settlement
 5 agreement reached between an owner and a governmental
 6 entity applies so long as the agreement resolves all
 7 issues; creating s. 70.45, F.S.; providing legislative
 8 intent regarding unconstitutional exactions by
 9 governmental entities; defining terms; creating a
 10 cause of action for damages caused by unconstitutional
 11 exaction of property; authorizing the award of
 12 prejudgment interest and attorney fees and costs, and
 13 compensatory damages under certain circumstances;
 14 amending s. 70.80, F.S.; specifying that an action for
 15 unconstitutional exaction is not to be construed in
 16 pari materia with certain other actions; providing an
 17 effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Paragraphs (f) and (g) of subsection (3) and
 22 paragraphs (c) and (d) of subsection (4) of section 70.001,
 23 Florida Statutes, are amended to read:

- 24 70.001 Private property rights protection.—
 25 (3) For purposes of this section:
 26 (f) The term "property owner" means the person who holds

27 | legal title to the real property that is the subject of the
 28 | action by a governmental entity ~~at issue~~. The term does not
 29 | include a governmental entity.

30 | (g) The term "real property" means land and includes any
 31 | appurtenances and improvements to the land, including any other
 32 | relevant real property in which the property owner has ~~had~~ a
 33 | relevant interest. The term includes only parcels that are
 34 | subject to the action by a governmental entity.

35 | (4)

36 | (c) During the 90-day-notice period or the 150-day-notice
 37 | period, unless extended by agreement of the parties, the
 38 | governmental entity shall make a written settlement offer to
 39 | effectuate:

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

42 | 2. Increases or modifications in the density, intensity,
 43 | or use of areas of development.

44 | 3. The transfer of developmental rights.

45 | 4. Land swaps or exchanges.

46 | 5. Mitigation, including payments in lieu of onsite
 47 | mitigation.

48 | 6. Location on the least sensitive portion of the
 49 | property.

50 | 7. Conditioning the amount of development or use
 51 | permitted.

52 | 8. A requirement that issues be addressed on a more

53 comprehensive basis than a single proposed use or development.

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

56 10. Purchase of the real property, or an interest therein,
57 by an appropriate governmental entity or payment of
58 compensation.

59 11. No changes to the action of the governmental entity.
60

61 If the property owner accepts a ~~the~~ settlement offer, either
62 before or after filing an action, the governmental entity may
63 implement the settlement offer by appropriate development
64 agreement; by issuing a variance, special exception, or other
65 extraordinary relief; or by other appropriate method, subject to
66 paragraph (d).

67 (d)1. When ~~Whenever~~ a governmental entity enters into a
68 settlement agreement under this section which would have the
69 effect of a modification, variance, or a special exception to
70 the application of a rule, regulation, or ordinance as it would
71 otherwise apply to the subject real property, the relief granted
72 shall protect the public interest served by the regulations at
73 issue and be the appropriate relief necessary to prevent the
74 governmental regulatory effort from inordinately burdening the
75 real property.

76 2. When ~~Whenever~~ a governmental entity enters into a
77 settlement agreement under this section which would have the
78 effect of contravening the application of a statute as it would

79 otherwise apply to the subject real property, the governmental
 80 entity and the property owner shall jointly file an action in
 81 the circuit court where the real property is located for
 82 approval of the settlement agreement by the court to ensure that
 83 the relief granted protects the public interest served by the
 84 statute at issue and is the appropriate relief necessary to
 85 prevent the governmental regulatory effort from inordinately
 86 burdening the real property.

87
 88 This paragraph applies to any settlement reached between a
 89 property owner and a governmental entity regardless of when the
 90 settlement agreement was entered so long as the agreement fully
 91 resolves all claims asserted under this section.

92 Section 2. Section 70.45, Florida Statutes, is created to
 93 read:

94 70.45 Governmental exactions.—

95 (1) The Legislature recognizes that governmental entities
 96 may circumstantially impose conditions on private property which
 97 are unrelated and disproportionate to the harm caused by the use
 98 requested by the property owner. The Legislature further
 99 recognizes that such conditions may rise to a level constituting
 100 an unconstitutional exaction in contradiction of the State
 101 Constitution and United States Constitution unless the relevant
 102 governmental entity can demonstrate that the conditions imposed
 103 have an essential nexus to a legitimate state interest and rough
 104 proportionality to the harm of the proposed use that the

105 governmental entity is seeking to avoid, minimize, or mitigate.

106 (2) As used in this section, the term:

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

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

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

113 (d) "Unconstitutional exaction" means a permitting
 114 condition imposed by a governmental entity on a property owner's
 115 proposed use of real property that lacks an essential nexus to a
 116 legitimate state interest and is not roughly proportionate to
 117 the harm the governmental entity seeks to avoid, minimize, or
 118 mitigate.

119 (3) In addition to other remedies available in law or
 120 equity, a property owner may bring an action under this section
 121 to recover damages caused by an unconstitutional exaction.

122 (4) A property owner who prevails in an action under this
 123 section is entitled to an award of prejudgment interest and
 124 reasonable attorney fees and costs, in addition to other
 125 compensatory damages.

126 Section 3. Section 70.80, Florida Statutes, is amended to
 127 read:

128 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
 129 the express declaration of the Legislature that ss. 70.001,
 130 70.45, and 70.51 have separate and distinct bases, objectives,

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

134 Section 4. This act shall take effect July 1, 2015.