

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., relating to
8 unconstitutional exactions by governmental entities;
9 creating a cause of action for damages caused by an
10 unconstitutional exaction of property in this state;
11 defining terms; authorizing the award of damages
12 caused by an unconstitutional taking; authorizing the
13 award of prejudgment interest and attorney fees and
14 costs; amending s. 70.80, F.S.; specifying that an
15 action for unconstitutional exaction is not to be
16 construed in pari materia with certain other actions;
17 providing an 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 and
 28 | directly impacted by the action of a governmental entity ~~at~~
 29 | ~~issue~~. The term does not 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 the
 34 | subject of and directly impacted by the action of a governmental
 35 | entity.

36 | (4)

37 | (c) During the 90-day-notice period or the 150-day-notice
 38 | 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
 42 | or other provisions controlling the development or use of land.

43 | 2. Increases or modifications in the density, intensity,
 44 | or 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
 50 | property.

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

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

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

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

60 11. No changes to the action of the governmental entity.
61

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

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

77 2. When ~~Whenever~~ a governmental entity enters into a
78 settlement agreement under this section which would have the

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

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

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

95 | 70.45 Governmental exactions.-

96 | (1) If governmental entities impose conditions on private
97 | property that are unrelated and disproportionate to the harm
98 | caused by the use requested by the property owner, such
99 | conditions may rise to a level constituting an unconstitutional
100 | exaction in contradiction of the State Constitution and United
101 | States Constitution unless the relevant governmental entity can
102 | demonstrate that the conditions imposed have an essential nexus
103 | to a legitimate public purpose and rough proportionality to the
104 | harm of the proposed use that the governmental entity is seeking

105 to avoid, minimize, or mitigate. A cause of action for damages
106 is created when an unconstitutional exaction exists in this
107 state.

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

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

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

113 (c) "Real property" has the same meaning as provided in s.
114 70.001(3)(g).

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

121 (3) In addition to other remedies available in law or
122 equity, a property owner may bring an action in a court of
123 competent jurisdiction under this section to recover damages
124 caused by an unconstitutional exaction.

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

129 Section 3. Section 70.80, Florida Statutes, is amended to
130 read:

131 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
132 the express declaration of the Legislature that ss. 70.001,
133 70.45, and 70.51 have separate and distinct bases, objectives,
134 applications, and processes. It is therefore the intent of the
135 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
136 construed in pari materia.

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