

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  
13          property owner to bring an action for injunctive  
14          relief or the recovery of damages caused by a  
15          prohibited exaction; requiring a property owner to  
16          provide written notice of such action to the relevant  
17          governmental entity; authorizing the governmental  
18          entity to treat such claim as pending litigation for  
19          purposes of holding certain meetings privately;  
20          specifying the burdens of proof imposed on the  
21          governmental entity and the property owner in such  
22          action; authorizing the award of prejudgment interest  
23          and reasonable attorney fees and costs under specified  
24          circumstances; waiving the state's sovereign immunity  
25          for certain causes of action; amending s. 70.80, F.S.;  
26          specifying that an action for a prohibited exaction is

27 | not to be construed in pari materia with certain other  
 28 | actions; providing an effective date.

29 |

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

31 |

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

38 | 70.001 Private property rights protection.—

39 | (3) For purposes of this section:

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

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

50 | (4)

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

53 | 286.011(8).

54 |        (c)~~(b)~~ The governmental entity shall provide written  
 55 | notice of the claim to all parties to any administrative action  
 56 | that gave rise to the claim, and to owners of real property  
 57 | contiguous to the owner's property at the addresses listed on  
 58 | the most recent county tax rolls. Within 15 days after the claim  
 59 | is being presented, the governmental entity shall report the  
 60 | claim in writing to the Department of Legal Affairs, and shall  
 61 | provide the department with the name, address, and telephone  
 62 | number of the employee of the governmental entity from whom  
 63 | additional information may be obtained about the claim during  
 64 | the pendency of the claim and any subsequent judicial action.

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

- 69 |           1. An adjustment of land development or permit standards
- 70 |           or other provisions controlling the development or use of land.
- 71 |           2. Increases or modifications in the density, intensity,
- 72 |           or use of areas of development.
- 73 |           3. The transfer of developmental rights.
- 74 |           4. Land swaps or exchanges.
- 75 |           5. Mitigation, including payments in lieu of onsite
- 76 |           mitigation.
- 77 |           6. Location on the least sensitive portion of the
- 78 |           property.

79           7. Conditioning the amount of development or use  
80 permitted.

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

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

85           10. Purchase of the real property, or an interest therein,  
86 by an appropriate governmental entity or payment of  
87 compensation.

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

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

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

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

116  
117 This paragraph applies to any settlement reached between a  
118 property owner and a governmental entity regardless of when the  
119 settlement agreement was entered so long as the agreement fully  
120 resolves all claims asserted under this section.

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

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

131 the Flood Insurance Rate Map to the property, in such a way as  
132 to, but not limited to, incorrectly assess the elevation of the  
133 property.

134 Section 2. Section 70.45, Florida Statutes, is created to  
135 read:

136 70.45 Governmental exactions.—

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

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

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

147 (c) "Prohibited exaction" means any condition imposed by a  
148 governmental entity on a property owner's proposed use of real  
149 property that lacks an essential nexus to a legitimate public  
150 purpose and is not roughly proportionate to the impacts of the  
151 proposed use that the governmental entity seeks to avoid,  
152 minimize, or mitigate.

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

155 (e) "Real property" has the same meaning as provided in s.  
156 70.001(3)(g).

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

165 (3) At least 90 days before filing an action under this  
166 section, the property owner shall provide to the relevant  
167 governmental entity written notice of the action. This written  
168 notice shall identify the exaction that the property owner  
169 believes to be prohibited, include a brief explanation of why  
170 the property owner believes the exaction is prohibited, and  
171 provide an estimate of the damages. Upon receipt of the property  
172 owner's written notice, the governmental entity may treat the  
173 claim as pending litigation for purposes of s. 286.011(8).

174 (4) For each claim filed under this section, the  
175 governmental entity has the burden of proving that the exaction  
176 at issue has an essential nexus to a legitimate public purpose  
177 and is roughly proportionate to the impacts of the proposed use  
178 that the governmental entity is seeking to avoid, minimize, or  
179 mitigate. The property owner has the burden of proving damages  
180 that result from a prohibited exaction.

181 (5) In addition to the damages provided in this section,  
182 the court shall award prejudgment interest and reasonable

183 attorney fees and costs to a property owner who prevails in an  
 184 action filed under this section. The court may award reasonable  
 185 attorney fees and costs to the governmental entity if the court  
 186 finds that the property owner filed the action in bad faith and  
 187 absent a colorable basis for relief.

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

194 Section 3. Section 70.80, Florida Statutes, is amended to  
 195 read:

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

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