

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 to recover damages
14 caused by a prohibited exaction; requiring a property
15 owner to provide written notice of such action to the
16 relevant governmental entity; authorizing the
17 governmental entity to treat such claim as pending
18 litigation for purposes of holding certain meetings
19 privately; specifying the burdens of proof imposed on
20 the governmental entity and the property owner in such
21 action; authorizing the award of reasonable attorney
22 fees and costs under specified circumstances; waiving
23 the state's sovereign immunity for certain causes of
24 action; providing applicability; amending s. 70.80,
25 F.S.; specifying that an action for a prohibited
26 exaction is not to be construed in pari materia with

27 | certain other actions; providing an effective date.

28 |

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

30 |

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

37 | 70.001 Private property rights protection.—

38 | (3) For purposes of this section:

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

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

49 | (4)

50 | (b) Upon receipt of a written claim, a governmental entity
 51 | may treat the claim as pending litigation for purposes of s.
 52 | 286.011(8).

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

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

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

79 permitted.

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

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

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

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

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

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

104 2. When ~~Whenever~~ a governmental entity enters into a

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

115

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

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

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

131 to, but not limited to, incorrectly assess the elevation of the
132 property.

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

135 70.45 Governmental exactions.—

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

137 (a) "Damages" means, in addition to the right to
138 injunctive relief, the reduction in fair market value of the
139 real property or the amount of the fee or infrastructure cost
140 that exceeds what would be permitted under this section.

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

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

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

151 (e) "Real property" has the same meaning as provided in s.
152 70.001(3)(g).

153 (2) In addition to other remedies available in law or
154 equity, a property owner may bring an action in a court of
155 competent jurisdiction under this section to recover damages
156 caused by a prohibited exaction. Such action may not be brought

157 until a prohibited exaction is actually imposed or required in
158 writing as a final condition of approval for the requested use
159 of real property. The right to bring an action under this
160 section may not be waived. This section does not apply to impact
161 fees adopted under s. 163.31801 or non-ad valorem assessments as
162 defined in s. 197.3632.

163 (3) At least 90 days before filing an action under this
164 section, but no later than 180 days after imposition of the
165 prohibited exaction, the property owner shall provide to the
166 relevant governmental entity written notice of the proposed
167 action. This written notice shall identify the exaction that the
168 property owner believes is prohibited, briefly explain why the
169 property owner believes the exaction is prohibited, and provide
170 an estimate of the damages. Upon receipt of the property owner's
171 written notice, the governmental entity may treat the claim as
172 pending litigation for purposes of s. 286.011(8). Upon receipt
173 of the written notice:

174 (a) The governmental entity shall review the notice of
175 claim and respond in writing to the property owner by
176 identifying the basis for the exaction and explaining why the
177 governmental entity maintains that the exaction is proportionate
178 to the harm created by the proposed use of real property, or by
179 proposing to remove all or a portion of the exaction.

180 (b) The written response may not be used against the
181 governmental entity in subsequent litigation other than for
182 purposes of assessing attorney fees and costs under subsection

183 (5).

184 (4) For each claim filed under this section, the
185 governmental entity has the burden of proving that the exaction
186 has an essential nexus to a legitimate public purpose and is
187 roughly proportionate to the impacts of the proposed use that
188 the governmental entity is seeking to avoid, minimize, or
189 mitigate. The property owner has the burden of proving damages
190 that result from a prohibited exaction.

191 (5) The court may award attorney fees and costs to the
192 prevailing party; however, if the court determines that the
193 exaction which is the subject of the claim lacks an essential
194 nexus to a legitimate public purpose and is not roughly
195 proportionate to the impacts of the proposed use, the court
196 shall award attorney fees and costs to the property owner.

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

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

207 Section 3. Section 70.80, Florida Statutes, is amended to
208 read:

209 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is
210 the express declaration of the Legislature that ss. 70.001,
211 70.45, and 70.51 have separate and distinct bases, objectives,
212 applications, and processes. It is therefore the intent of the
213 Legislature that ss. 70.001, 70.45, and 70.51 are not to be
214 construed in pari materia.

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