

26 recognizes that some laws, regulations, and ordinances of the
27 state and political entities in the state, as applied, may
28 inordinately burden, restrict, or limit private property rights
29 without amounting to a taking under the State Constitution or
30 the United States Constitution. The Legislature determines that
31 there is an important state interest in protecting the interests
32 of private property owners from such inordinate burdens. The
33 Legislature further recognizes that it is in the public interest
34 to ensure that all similarly situated residential properties are
35 subject to the same rules and regulations. Therefore, it is the
36 intent of the Legislature that, as a separate and distinct cause
37 of action from the law of takings, the Legislature herein
38 provides for relief, or payment of compensation, when a new law,
39 rule, regulation, or ordinance of the state or a political
40 entity in the state, as applied, unfairly affects real property.

41 (4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an
42 action under this section against a governmental entity, a
43 property owner who seeks compensation under this section must
44 present the claim in writing to the head of the governmental
45 entity, ~~except that if the property is classified as~~
46 ~~agricultural pursuant to s. 193.461, the notice period is 90~~
47 ~~days.~~ The property owner must submit, along with the claim, a
48 bona fide, valid appraisal that supports the claim and
49 demonstrates the loss in fair market value to the real property.
50 If the action of government is the culmination of a process that

51 involves more than one governmental entity, or if a complete
52 resolution of all relevant issues, in the view of the property
53 owner or in the view of a governmental entity to whom a claim is
54 presented, requires the active participation of more than one
55 governmental entity, the property owner shall present the claim
56 as provided in this section to each of the governmental
57 entities.

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

69 (c) During the 90-day-notice period ~~or the 150-day-notice~~
70 ~~period~~, unless extended by agreement of the parties, the
71 governmental entity shall make a written settlement offer to
72 effectuate:

- 73 1. An adjustment of land development or permit standards
74 or other provisions controlling the development or use of land.
- 75 2. Increases or modifications in the density, intensity,

76 | or use of areas of development.

77 | 3. The transfer of developmental rights.

78 | 4. Land swaps or exchanges.

79 | 5. Mitigation, including payments in lieu of onsite
80 | mitigation.

81 | 6. Location on the least sensitive portion of the
82 | property.

83 | 7. Conditioning the amount of development or use
84 | permitted.

85 | 8. A requirement that issues be addressed on a more
86 | comprehensive basis than a single proposed use or development.

87 | 9. Issuance of the development order, a variance, a
88 | special exception, or any other extraordinary relief.

89 | 10. Purchase of the real property, or an interest therein,
90 | by an appropriate governmental entity or payment of
91 | compensation.

92 | 11. No changes to the action of the governmental entity.

93 |

94 | If the property owner accepts a settlement offer, ~~either~~ before
95 | or after filing an action, the governmental entity may implement
96 | the settlement offer by appropriate development agreement; by
97 | issuing a variance, a special exception, or any other
98 | extraordinary relief; or by any other appropriate method,
99 | subject to paragraphs ~~paragraph~~ (d) and (e).

100 | (d) When the claim involves one or more residential

101 properties and is brought as a result of the enactment, or
102 proposed enactment, of a political subdivision's regulation or
103 ordinance that applies to residential property, any settlement
104 offer that includes a modification or variance to the regulation
105 or ordinance shall apply to all similarly situated residential
106 properties within the political subdivision.

107 (e)1.(d)1. When a governmental entity enters into a
108 settlement agreement under this section which would have the
109 effect of a modification, variance, or a special exception to
110 the application of a rule, regulation, or ordinance as it would
111 otherwise apply to the subject real property, the relief granted
112 shall protect the public interest served by the regulations at
113 issue and be the appropriate relief necessary to prevent the
114 governmental regulatory effort from inordinately burdening the
115 real property. Settlement offers made pursuant to paragraph (c)
116 shall be presumed to protect the public interest.

117 2. When a governmental entity enters into a settlement
118 agreement under this section which would have the effect of
119 contravening the application of a statute as it would otherwise
120 apply to the subject real property, the governmental entity and
121 the property owner shall jointly file an action in the circuit
122 court where the real property is located for approval of the
123 settlement agreement by the court to ensure that the relief
124 granted protects the public interest served by the statute at
125 issue and is the appropriate relief necessary to prevent the

126 governmental regulatory effort from inordinately burdening the
127 real property.

128

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

133 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
134 ~~notice period~~, unless a settlement offer is accepted by the
135 property owner, each of the governmental entities provided
136 notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a
137 written statement of allowable uses identifying the allowable
138 uses to which the subject property may be put. The failure of
139 the governmental entity to issue a statement of allowable uses
140 during the applicable 90-day-notice period ~~or 150-day-notice~~
141 ~~period~~ shall be deemed a denial for purposes of allowing a
142 property owner to file an action in the circuit court under this
143 section. If a written statement of allowable uses is issued, it
144 constitutes the last prerequisite to judicial review for the
145 purposes of the judicial proceeding created by this section,
146 notwithstanding the availability of other administrative
147 remedies.

148 (b) If the property owner rejects the settlement offer and
149 the statement of allowable uses of the governmental entity or
150 entities, the property owner may file a claim for compensation

151 in the circuit court, a copy of which shall be served
152 contemporaneously on the head of each of the governmental
153 entities that made a settlement offer and a statement of
154 allowable uses that was rejected by the property owner. Actions
155 under this section shall be brought only in the county where the
156 real property is located.

157 (6) (a) The circuit court shall determine whether an
158 existing use of the real property or a vested right to a
159 specific use of the real property existed and, if so, whether,
160 considering the settlement offer and statement of allowable
161 uses, the governmental entity or entities have inordinately
162 burdened the real property. If the actions of more than one
163 governmental entity, considering any settlement offers and
164 statement of allowable uses, are responsible for the action that
165 imposed the inordinate burden on the real property of the
166 property owner, the court shall determine the percentage of
167 responsibility each such governmental entity bears with respect
168 to the inordinate burden. A governmental entity may take an
169 interlocutory appeal of the court's determination that the
170 action of the governmental entity has resulted in an inordinate
171 burden. An interlocutory appeal does not automatically stay the
172 proceedings; however, the court may stay the proceedings during
173 the pendency of the interlocutory appeal. If the governmental
174 entity does not prevail in the interlocutory appeal, the court
175 shall award to the prevailing property owner the costs and a

176 reasonable attorney fee incurred by the property owner in the
177 interlocutory appeal.

178 (b) Following its determination of the percentage of
179 responsibility of each governmental entity, and following the
180 resolution of any interlocutory appeal, the court shall impanel
181 a jury to determine the total amount of compensation to the
182 property owner for the loss in value due to the inordinate
183 burden to the real property. The property owner retains the
184 option to forego a jury and elect to have the court determine
185 the compensation. The award of compensation shall be determined
186 by calculating the difference in the fair market value of the
187 real property, as it existed at the time of the governmental
188 action at issue, as though the owner had the ability to attain
189 the reasonable investment-backed expectation or was not left
190 with uses that are unreasonable, whichever the case may be, and
191 the fair market value of the real property, as it existed at the
192 time of the governmental action at issue, as inordinately
193 burdened, considering the settlement offer together with the
194 statement of allowable uses, of the governmental entity or
195 entities. ~~In determining the award of compensation,~~
196 ~~consideration may not be given to business damages relative to~~
197 ~~any development, activity, or use that the action of the~~
198 ~~governmental entity or entities, considering the settlement~~
199 ~~offer together with the statement of allowable uses has~~
200 ~~restricted, limited, or prohibited.~~ The award of compensation

201 shall include a reasonable award of prejudgment interest from
202 the date the claim was presented to the governmental entity or
203 entities as provided in subsection (4).

204 (c) When the claim involves one or more residential
205 properties and is brought as a result of the enactment, or
206 proposed enactment, of a political subdivision's regulation or
207 ordinance that applies to residential property, if the court
208 finds that a modification or variance is the appropriate remedy,
209 that finding shall apply to all similarly situated residential
210 properties within the political subdivision.

211 (d)1.~~(e)1.~~ In any action filed pursuant to this section,
212 the property owner is entitled to recover reasonable costs and
213 attorney fees incurred by the property owner, from the
214 governmental entity or entities, according to their
215 proportionate share as determined by the court, from the date of
216 the claim with the governmental entity pursuant to paragraph
217 (4) (a) filing of the circuit court action, if the property owner
218 prevails in the action and ~~the court determines that the~~
219 ~~settlement offer, including the statement of allowable uses, of~~
220 ~~the governmental entity or entities did not constitute a bona~~
221 ~~fide offer to the property owner which reasonably would have~~
222 ~~resolved the claim, based upon the knowledge available to the~~
223 ~~governmental entity or entities and the property owner during~~
224 ~~the 90-day-notice period or the 150-day-notice period.~~

225 ~~2. In any action filed pursuant to this section, the~~

226 ~~governmental entity or entities are entitled to recover~~
227 ~~reasonable costs and attorney fees incurred by the governmental~~
228 ~~entity or entities from the date of the filing of the circuit~~
229 ~~court action, if the governmental entity or entities prevail in~~
230 ~~the action and the court determines that the property owner did~~
231 ~~not accept a bona fide settlement offer, including the statement~~
232 ~~of allowable uses, which reasonably would have resolved the~~
233 ~~claim fairly to the property owner if the settlement offer had~~
234 ~~been accepted by the property owner, based upon the knowledge~~
235 ~~available to the governmental entity or entities and the~~
236 ~~property owner during the 90-day notice period or the 150-day~~
237 ~~notice period.~~

238 2.3. The determination of total reasonable costs and
239 attorney fees pursuant to this paragraph shall be made by the
240 court and not by the jury. Any proposed settlement offer or any
241 proposed decision, except for the final written settlement offer
242 or the final written statement of allowable uses, and any
243 negotiations or rejections in regard to the formulation ~~either~~
244 of the settlement offer or the statement of allowable uses, are
245 inadmissible in the subsequent proceeding established by this
246 section except for the purposes of the determination pursuant to
247 this paragraph.

248 (e) ~~(d)~~ Within 15 days after the execution of any
249 settlement pursuant to this section, or the issuance of any
250 judgment pursuant to this section, the governmental entity shall

251 provide a copy of the settlement or judgment to the Department
252 of Legal Affairs.

253 (11) A cause of action may not be commenced under this
254 section if the claim is presented more than 1 year after a law
255 or regulation is first applied by the governmental entity to the
256 property at issue.

257 (a) For purposes of determining when this 1-year claim
258 period accrues:

259 1.a. A law or regulation is first applied upon enactment
260 and notice as provided for in this sub-subparagraph ~~subparagraph~~
261 if the impact of the law or regulation on the real property is
262 clear and unequivocal in its terms and notice is provided by
263 mail to the affected property owner or registered agent at the
264 address referenced in the jurisdiction's most current ad valorem
265 tax records. The fact that the law or regulation could be
266 modified, varied, or altered under any other process or
267 procedure does not preclude the impact of the law or regulation
268 on a property from being clear or unequivocal pursuant to this
269 sub-subparagraph ~~subparagraph~~. Any notice under this sub-
270 subparagraph ~~subparagraph~~ shall be provided after the enactment
271 of the law or regulation and shall inform the property owner or
272 registered agent that the law or regulation may impact the
273 property owner's existing property rights and that the property
274 owner may have only 1 year from receipt of the notice to pursue
275 any rights established under this section.

276 b. If the notice required in sub-subparagraph a. is not
277 provided to the property owner, the property owner may bring a
278 claim against the governmental entity after the enactment of the
279 law or regulation if the impact of the law or regulation on the
280 real property is clear and unequivocal in its terms. In such
281 cases, the property owner is not required to submit a formal
282 application for development or proceed through formal
283 application processes if such actions would be futile and a
284 waste of resources.

285 2. Otherwise, the law or regulation is first applied to
286 the property when there is a formal denial of a written request
287 for development or variance.

288 Section 2. Paragraphs (c) through (e) of subsection (1) of
289 section 70.45, Florida Statutes, are redesignated as paragraphs
290 (d) through (f), respectively, a new paragraph (c) is added to
291 that subsection, and subsections (2), (4), and (5) of that
292 section are amended, to read:

293 70.45 Governmental exactions.—

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

295 (c) "Imposition" or "imposed" means the time at which the
296 property owner must comply with the prohibited exaction or
297 condition of approval.

298 (2) In addition to other remedies available in law or
299 equity, a property owner may bring an action in a court of
300 competent jurisdiction under this section to declare a

301 prohibited exaction invalid and recover damages caused by a
302 prohibited exaction. Such action may not be brought until a
303 prohibited exaction is actually imposed or required in writing
304 as a final condition of approval for the requested use of real
305 property. The right to bring an action under this section may
306 not be waived. This section does not apply to impact fees
307 adopted under s. 163.31801 or non-ad valorem assessments as
308 defined in s. 197.3632.

309 (4) For each claim filed under this section, the
310 governmental entity has the burden of proving that the
311 challenged exaction has an essential nexus to a legitimate
312 public purpose and is roughly proportionate to the impacts of
313 the proposed use that the governmental entity is seeking to
314 avoid, minimize, or mitigate. The property owner has the burden
315 of proving damages that result from a prohibited exaction.

316 (5) The court may award attorney fees and costs to the
317 prevailing party; however, if the court determines that the
318 challenged exaction which is the subject of the claim lacks an
319 essential nexus to a legitimate public purpose, the court shall
320 award attorney fees and costs to the property owner.

321 Section 3. This act shall take effect July 1, 2019.