

1 A bill to be entitled
2 An act relating to private property rights protection;
3 amending s. 70.001, F.S.; revising legislative intent;
4 revising notice of claim requirements for property
5 owners; revising procedures for determination of
6 compensation; creating a presumption that certain
7 settlements of claims apply to all similarly situated
8 residential properties within a political subdivision
9 under certain circumstances; authorizing property
10 owners to bring claims against governmental entities
11 in certain circumstances; providing that property
12 owners are not required to submit formal development
13 applications or proceed through formal application
14 processes to bring such claims; amending s. 70.45,
15 F.S.; providing a definition; authorizing property
16 owners to bring actions to declare prohibited
17 exactions invalid; amending s. 337.25, F.S.; requiring
18 the Department of Transportation to afford a right of
19 first refusal to the previous property owner before
20 disposing of property in certain circumstances;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsections (1), (4), (5), (6), and (11) of

26 | section 70.001, Florida Statutes, are amended to read:

27 | 70.001 Private property rights protection.—

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

45 | (4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an
46 | action under this section against a governmental entity, a
47 | property owner who seeks compensation under this section must
48 | present the claim in writing to the head of the governmental
49 | entity, ~~except that if the property is classified as~~
50 | ~~agricultural pursuant to s. 193.461, the notice period is 90~~

51 ~~days~~. The property owner must submit, along with the claim, a
52 bona fide, valid appraisal that supports the claim and
53 demonstrates the loss in fair market value to the real property.
54 If the action of government is the culmination of a process that
55 involves more than one governmental entity, or if a complete
56 resolution of all relevant issues, in the view of the property
57 owner or in the view of a governmental entity to whom a claim is
58 presented, requires the active participation of more than one
59 governmental entity, the property owner shall present the claim
60 as provided in this section to each of the governmental
61 entities.

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

73 (c) During the 90-day-notice period ~~or the 150-day-notice~~
74 ~~period~~, unless extended by agreement of the parties, the
75 governmental entity shall make a written settlement offer to

76 | effectuate:

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

79 | 2. Increases or modifications in the density, intensity,
80 | or use of areas of development.

81 | 3. The transfer of developmental rights.

82 | 4. Land swaps or exchanges.

83 | 5. Mitigation, including payments in lieu of onsite
84 | mitigation.

85 | 6. Location on the least sensitive portion of the
86 | property.

87 | 7. Conditioning the amount of development or use
88 | permitted.

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

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

93 | 10. Purchase of the real property, or an interest therein,
94 | by an appropriate governmental entity or payment of
95 | compensation.

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

97 |
98 | If the property owner accepts a settlement offer, ~~either~~ before
99 | or after filing an action, the governmental entity may implement
100 | the settlement offer by appropriate development agreement; by

101 issuing a variance, a special exception, or any other
 102 extraordinary relief; or by any other appropriate method,
 103 subject to paragraph (d).

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

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

125 3. When a residential property owner submits a claim under

126 this section which is based on a governmental entity's
127 application of a regulation or ordinance to more than one
128 residential parcel, and the governmental entity reaches a
129 settlement of such claim or the property owner secures a
130 judgment declaring an inordinate burden under paragraph (6) (a),
131 there shall be a presumption, rebuttable only by clear and
132 convincing evidence, that similarly situated residential
133 parcels, as evaluated on a parcel-by-parcel basis, have been
134 inordinately burdened and are entitled to equivalent terms of
135 settlement or a judicial determination of an inordinate burden.
136 In such cases, the similarly situated residential property
137 owners must submit the appraisal specified in paragraph (a) not
138 less than 120 days before a trial on the merits of the damages
139 portion of the proceedings pursuant to paragraph (6) (b). During
140 the 90-day-notice period of such claims, the governmental entity
141 is encouraged to negotiate terms of settlement consistent with
142 settlement agreements for similarly situated residential
143 parcels.

144
145 This paragraph applies to any settlement reached between a
146 property owner and a governmental entity regardless of when the
147 settlement agreement was entered so long as the agreement fully
148 resolves all claims asserted under this section.

149 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
150 ~~notice period~~, unless a settlement offer is accepted by the

151 property owner, each of the governmental entities provided
152 notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a
153 written statement of allowable uses identifying the allowable
154 uses to which the subject property may be put. The failure of
155 the governmental entity to issue a statement of allowable uses
156 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~
157 ~~period~~ shall be deemed a denial for purposes of allowing a
158 property owner to file an action in the circuit court under this
159 section. If a written statement of allowable uses is issued, it
160 constitutes the last prerequisite to judicial review for the
161 purposes of the judicial proceeding created by this section,
162 notwithstanding the availability of other administrative
163 remedies.

164 (b) If the property owner rejects the settlement offer and
165 the statement of allowable uses of the governmental entity or
166 entities, the property owner may file a claim for compensation
167 in the circuit court, a copy of which shall be served
168 contemporaneously on the head of each of the governmental
169 entities that made a settlement offer and a statement of
170 allowable uses that was rejected by the property owner. Actions
171 under this section shall be brought only in the county where the
172 real property is located.

173 (6) (a) The circuit court shall determine whether an
174 existing use of the real property or a vested right to a
175 specific use of the real property existed and, if so, whether,

176 | considering the settlement offer and statement of allowable
177 | uses, the governmental entity or entities have inordinately
178 | burdened the real property. If the actions of more than one
179 | governmental entity, considering any settlement offers and
180 | statement of allowable uses, are responsible for the action that
181 | imposed the inordinate burden on the real property of the
182 | property owner, the court shall determine the percentage of
183 | responsibility each such governmental entity bears with respect
184 | to the inordinate burden. A governmental entity may take an
185 | interlocutory appeal of the court's determination that the
186 | action of the governmental entity has resulted in an inordinate
187 | burden. An interlocutory appeal does not automatically stay the
188 | proceedings; however, the court may stay the proceedings during
189 | the pendency of the interlocutory appeal. If the governmental
190 | entity does not prevail in the interlocutory appeal, the court
191 | shall award to the prevailing property owner the costs and a
192 | reasonable attorney fee incurred by the property owner in the
193 | interlocutory appeal.

194 | (b) Following its determination of the percentage of
195 | responsibility of each governmental entity, and following the
196 | resolution of any interlocutory appeal, the court shall impanel
197 | a jury to determine the total amount of compensation to the
198 | property owner for the loss in value due to the inordinate
199 | burden to the real property. The property owner retains the
200 | option to forego a jury and elect to have the court determine

201 the compensation. The award of compensation shall be determined
202 by calculating the difference in the fair market value of the
203 real property, as it existed at the time of the governmental
204 action at issue, as though the owner had the ability to attain
205 the reasonable investment-backed expectation or was not left
206 with uses that are unreasonable, whichever the case may be, and
207 the fair market value of the real property, as it existed at the
208 time of the governmental action at issue, as inordinately
209 burdened, considering the settlement offer together with the
210 statement of allowable uses, of the governmental entity or
211 entities. ~~In determining the award of compensation,~~
212 ~~consideration may not be given to business damages relative to~~
213 ~~any development, activity, or use that the action of the~~
214 ~~governmental entity or entities, considering the settlement~~
215 ~~offer together with the statement of allowable uses has~~
216 ~~restricted, limited, or prohibited.~~ The award of compensation
217 shall include a reasonable award of prejudgment interest from
218 the date the claim was presented to the governmental entity or
219 entities as provided in subsection (4).

220 (c)1. In any action filed pursuant to this section, the
221 property owner is entitled to recover reasonable costs and
222 attorney fees incurred by the property owner, from the
223 governmental entity or entities, according to their
224 proportionate share as determined by the court, from the date of
225 the claim with the governmental entity pursuant to paragraph

226 ~~(4) (a) filing of the circuit court action, if the property owner~~
227 ~~prevails in the action and the court determines that the~~
228 ~~settlement offer, including the statement of allowable uses, of~~
229 ~~the governmental entity or entities did not constitute a bona~~
230 ~~fide offer to the property owner which reasonably would have~~
231 ~~resolved the claim, based upon the knowledge available to the~~
232 ~~governmental entity or entities and the property owner during~~
233 ~~the 90-day notice period or the 150-day notice period.~~

234 ~~2. In any action filed pursuant to this section, the~~
235 ~~governmental entity or entities are entitled to recover~~
236 ~~reasonable costs and attorney fees incurred by the governmental~~
237 ~~entity or entities from the date of the filing of the circuit~~
238 ~~court action, if the governmental entity or entities prevail in~~
239 ~~the action and the court determines that the property owner did~~
240 ~~not accept a bona fide settlement offer, including the statement~~
241 ~~of allowable uses, which reasonably would have resolved the~~
242 ~~claim fairly to the property owner if the settlement offer had~~
243 ~~been accepted by the property owner, based upon the knowledge~~
244 ~~available to the governmental entity or entities and the~~
245 ~~property owner during the 90-day notice period or the 150-day~~
246 ~~notice period.~~

247 ~~2.3.~~ The determination of total reasonable costs and
248 attorney fees pursuant to this paragraph shall be made by the
249 court and not by the jury. Any proposed settlement offer or any
250 proposed decision, except for the final written settlement offer

251 or the final written statement of allowable uses, and any
 252 negotiations or rejections in regard to the formulation ~~either~~
 253 of the settlement offer or the statement of allowable uses, are
 254 inadmissible in the subsequent proceeding established by this
 255 section except for the purposes of the determination pursuant to
 256 this paragraph.

257 (d) Within 15 days after the execution of any settlement
 258 pursuant to this section, or the issuance of any judgment
 259 pursuant to this section, the governmental entity shall provide
 260 a copy of the settlement or judgment to the Department of Legal
 261 Affairs.

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

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

268 1.a. A law or regulation is first applied upon enactment
 269 and notice as provided for in this sub-subparagraph ~~subparagraph~~
 270 if the impact of the law or regulation on the real property is
 271 clear and unequivocal in its terms and notice is provided by
 272 mail to the affected property owner or registered agent at the
 273 address referenced in the jurisdiction's most current ad valorem
 274 tax records. The fact that the law or regulation could be
 275 modified, varied, or altered under any other process or

276 procedure does not preclude the impact of the law or regulation
277 on a property from being clear or unequivocal pursuant to this
278 sub-subparagraph ~~subparagraph~~. Any notice under this sub-
279 subparagraph ~~subparagraph~~ shall be provided after the enactment
280 of the law or regulation and shall inform the property owner or
281 registered agent that the law or regulation may impact the
282 property owner's existing property rights and that the property
283 owner may have only 1 year from receipt of the notice to pursue
284 any rights established under this section.

285 b. If the notice required in sub-subparagraph a. is not
286 provided to the property owner, the property owner may bring a
287 claim against the governmental entity after the enactment of the
288 law or regulation if the impact of the law or regulation on the
289 real property is clear and unequivocal in its terms. In such
290 cases, the property owner is not required to submit a formal
291 application for development or proceed through formal
292 application processes if such actions would be futile and a
293 waste of resources.

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

297 Section 2. Paragraphs (c) through (e) of subsection (1) of
298 section 70.45, Florida Statutes, are redesignated as paragraphs
299 (d) through (f), respectively, a new paragraph (c) is added to
300 that subsection, and subsections (2), (4), and (5) of that

301 section are amended, to read:

302 70.45 Governmental exactions.—

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

304 (c) "Imposition" or "imposed" means the time at which the
305 property owner must comply with the prohibited exaction or
306 condition of approval.

307 (2) In addition to other remedies available in law or
308 equity, a property owner may bring an action in a court of
309 competent jurisdiction under this section to declare a
310 prohibited exaction invalid and recover damages caused by a
311 prohibited exaction. Such action may not be brought until a
312 prohibited exaction is actually imposed or required in writing
313 as a final condition of approval for the requested use of real
314 property. The right to bring an action under this section may
315 not be waived. This section does not apply to impact fees
316 adopted under s. 163.31801 or non-ad valorem assessments as
317 defined in s. 197.3632.

318 (4) For each claim filed under this section, the
319 governmental entity has the burden of proving that the
320 challenged exaction has an essential nexus to a legitimate
321 public purpose and is roughly proportionate to the impacts of
322 the proposed use that the governmental entity is seeking to
323 avoid, minimize, or mitigate. The property owner has the burden
324 of proving damages that result from a prohibited exaction.

325 (5) The court may award attorney fees and costs to the

326 prevailing party; however, if the court determines that the
327 challenged exaction which is the subject of the claim lacks an
328 essential nexus to a legitimate public purpose, the court shall
329 award attorney fees and costs to the property owner.

330 Section 3. Subsection (4) of section 337.25, Florida
331 Statutes, is amended to read:

332 337.25 Acquisition, lease, and disposal of real and
333 personal property.—

334 (4) The department may convey, in the name of the state,
335 any land, building, or other property, real or personal, which
336 was acquired under subsection (1) and which the department has
337 determined is not needed for the construction, operation, and
338 maintenance of a transportation facility. When such a
339 determination has been made, property may be disposed of through
340 negotiations, sealed competitive bids, auctions, or any other
341 means the department deems to be in its best interest, with due
342 advertisement for property valued by the department at greater
343 than \$10,000. A sale may not occur at a price less than the
344 department's current estimate of value, except as provided in
345 paragraphs (a)-(d). Notwithstanding any provision of this
346 section to the contrary, the department shall afford a right of
347 first refusal to the previous property owner for the
348 department's current estimate of value of the property, except
349 in a conveyance transacted under paragraph (a), paragraph (c),
350 or paragraph (e). Subsequently, the department may afford a

351 right of first refusal to the local government or other
352 political subdivision in the jurisdiction in which the parcel is
353 situated, except in a conveyance transacted under paragraph (a),
354 paragraph (c), or paragraph (e).

355 (a) If the property has been donated to the state for
356 transportation purposes and a transportation facility has not
357 been constructed for at least 5 years, plans have not been
358 prepared for the construction of such facility, and the property
359 is not located in a transportation corridor, the governmental
360 entity may authorize reconveyance of the donated property for no
361 consideration to the original donor or the donor's heirs,
362 successors, assigns, or representatives.

363 (b) If the property is to be used for a public purpose,
364 the property may be conveyed without consideration to a
365 governmental entity.

366 (c) If the property was originally acquired specifically
367 to provide replacement housing for persons displaced by
368 transportation projects, the department may negotiate for the
369 sale of such property as replacement housing. As compensation,
370 the state shall receive at least its investment in such property
371 or the department's current estimate of value, whichever is
372 lower. It is expressly intended that this benefit be extended
373 only to persons actually displaced by the project. Dispositions
374 to any other person must be for at least the department's
375 current estimate of value.

376 (d) If the department determines that the property
377 requires significant costs to be incurred or that continued
378 ownership of the property exposes the department to significant
379 liability risks, the department may use the projected
380 maintenance costs over the next 10 years to offset the
381 property's value in establishing a value for disposal of the
382 property, even if that value is zero.

383 (e) If, at the discretion of the department, a sale to a
384 person other than an abutting property owner would be
385 inequitable, the property may be sold to the abutting owner for
386 the department's current estimate of value.

387 Section 4. This act shall take effect July 1, 2019.