

By Senator Lee

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1 A bill to be entitled  
2 An act relating to property rights; amending s.  
3 70.001, F.S.; revising legislative findings; providing  
4 applicability relating to claims that involve one or  
5 more residential properties which are brought as a  
6 result of certain regulations or ordinances;  
7 authorizing a property owner to waive a jury and  
8 request that the court make a determination of  
9 compensation; revising the calculation for costs a  
10 property owner is entitled to recover; authorizing a  
11 property owner to bring a claim under certain  
12 circumstances when he or she is not provided certain  
13 notice; amending s. 70.45, F.S.; authorizing a  
14 property owner to bring an action to declare a  
15 prohibited exaction invalid; making clarifying  
16 changes; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Present paragraph (d) of subsection (4) of  
21 section 70.001, Florida Statutes, is redesignated as paragraph  
22 (e), a new paragraph (d) is added to that subsection, and  
23 subsections (1) and (6) and paragraph (a) of subsection (11) of  
24 that section are amended, to read:

25 70.001 Private property rights protection.—

26 (1) This act may be cited as the "Bert J. Harris, Jr.,  
27 Private Property Rights Protection Act." The Legislature  
28 recognizes that some laws, regulations, and ordinances of the  
29 state and political entities in the state, as applied, may

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

43 (4)

44 (d) When the claim involves one or more residential  
45 properties and is brought as a result of the enactment of a  
46 governmental entity's regulation or ordinance that applies to  
47 residential property, any settlement offer that includes a  
48 modification or variance to such regulation or ordinance applies  
49 to all similarly situated residential properties subject to  
50 regulation by the governmental entity.

51 (6) (a) The circuit court shall determine whether an  
52 existing use of the real property or a vested right to a  
53 specific use of the real property existed and, if so, whether,  
54 considering the settlement offer and statement of allowable  
55 uses, the governmental entity or entities have inordinately  
56 burdened the real property. If the actions of more than one  
57 governmental entity, considering any settlement offers and  
58 statement of allowable uses, are responsible for the action that

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59 imposed the inordinate burden on the real property of the  
60 property owner, the court shall determine the percentage of  
61 responsibility each such governmental entity bears with respect  
62 to the inordinate burden. A governmental entity may take an  
63 interlocutory appeal of the court's determination that the  
64 action of the governmental entity has resulted in an inordinate  
65 burden. An interlocutory appeal does not automatically stay the  
66 proceedings; however, the court may stay the proceedings during  
67 the pendency of the interlocutory appeal. If the governmental  
68 entity does not prevail in the interlocutory appeal, the court  
69 shall award to the prevailing property owner the costs and a  
70 reasonable attorney fee incurred by the property owner in the  
71 interlocutory appeal.

72 (b) Following its determination of the percentage of  
73 responsibility of each governmental entity, and following the  
74 resolution of any interlocutory appeal, the court shall impanel  
75 a jury to determine the total amount of compensation to the  
76 property owner for the loss in value due to the inordinate  
77 burden to the real property. The property owner may waive a jury  
78 and request that the court make such determination. The award of  
79 compensation shall be determined by calculating the difference  
80 in the fair market value of the real property, as it existed at  
81 the time of the governmental action at issue, as though the  
82 owner had the ability to attain the reasonable investment-backed  
83 expectation or was not left with uses that are unreasonable,  
84 whichever the case may be, and the fair market value of the real  
85 property, as it existed at the time of the governmental action  
86 at issue, as inordinately burdened, considering the settlement  
87 offer together with the statement of allowable uses, of the

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88 governmental entity or entities. In determining the award of  
89 compensation, consideration may not be given to business damages  
90 relative to any development, activity, or use that the action of  
91 the governmental entity or entities, considering the settlement  
92 offer together with the statement of allowable uses has  
93 restricted, limited, or prohibited. The award of compensation  
94 shall include a reasonable award of prejudgment interest from  
95 the date the claim was presented to the governmental entity or  
96 entities as provided in subsection (4).

97 (c)1. In any action filed pursuant to this section, the  
98 property owner is entitled to recover reasonable costs and  
99 attorney fees incurred by the property owner, from the  
100 governmental entity or entities, according to their  
101 proportionate share as determined by the court, from the date of  
102 presenting the claim to the governmental entity pursuant to  
103 paragraph (4) (a) ~~the filing of the circuit court action~~, if the  
104 property owner prevails in the action ~~and the court determines~~  
105 ~~that the settlement offer, including the statement of allowable~~  
106 ~~uses, of the governmental entity or entities did not constitute~~  
107 ~~a bona fide offer to the property owner which reasonably would~~  
108 ~~have resolved the claim, based upon the knowledge available to~~  
109 ~~the governmental entity or entities and the property owner~~  
110 ~~during the 90-day notice period or the 150-day notice period.~~

111 2. In any action filed pursuant to this section, the  
112 governmental entity or entities are entitled to recover  
113 reasonable costs and attorney fees incurred by the governmental  
114 entity or entities from the date of the filing of the circuit  
115 court action, if the governmental entity or entities prevail in  
116 the action and the court determines that the property owner did

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117 not accept a bona fide settlement offer, including the statement  
118 of allowable uses, which reasonably would have resolved the  
119 claim fairly to the property owner if the settlement offer had  
120 been accepted by the property owner, based upon the knowledge  
121 available to the governmental entity or entities and the  
122 property owner during the 90-day-notice period or the 150-day-  
123 notice period.

124 3. The determination of total reasonable costs and attorney  
125 fees pursuant to this paragraph shall be made by the court and  
126 not by the jury. Any proposed settlement offer or any proposed  
127 decision, except for the final written settlement offer or the  
128 final written statement of allowable uses, and any negotiations  
129 or rejections in regard to the formulation either of the  
130 settlement offer or the statement of allowable uses, are  
131 inadmissible in the subsequent proceeding established by this  
132 section except for the purposes of the determination pursuant to  
133 this paragraph.

134 (d) Within 15 days after the execution of any settlement  
135 pursuant to this section, or the issuance of any judgment  
136 pursuant to this section, the governmental entity shall provide  
137 a copy of the settlement or judgment to the Department of Legal  
138 Affairs.

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

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

145 1.a. A law or regulation is first applied upon enactment

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146 and notice as provided for in this sub-subparagraph ~~subparagraph~~  
147 if the impact of the law or regulation on the real property is  
148 clear and unequivocal in its terms and notice is provided by  
149 mail to the affected property owner or registered agent at the  
150 address referenced in the jurisdiction's most current ad valorem  
151 tax records. The fact that the law or regulation could be  
152 modified, varied, or altered under any other process or  
153 procedure does not preclude the impact of the law or regulation  
154 on a property from being clear or unequivocal pursuant to this  
155 sub-subparagraph ~~subparagraph~~. Any notice under this sub-  
156 subparagraph ~~subparagraph~~ shall be provided after the enactment  
157 of the law or regulation and shall inform the property owner or  
158 registered agent that the law or regulation may impact the  
159 property owner's existing property rights and that the property  
160 owner may have only 1 year from receipt of the notice to pursue  
161 any rights established under this section.

162 b. If a property owner is not provided notice pursuant to  
163 sub-subparagraph a., the property owner may bring a claim  
164 against the governmental entity after the enactment of the law  
165 or regulation if the law or regulation's effect on the real  
166 property is clear and unequivocal in its terms. In such cases, a  
167 property owner is not required to submit a formal application  
168 for development or to proceed through any formal application  
169 process if such action would be futile and a waste of resources.

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

173 Section 2. Subsections (2), (4), and (5) of section 70.45,  
174 Florida Statutes, are amended to read:

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175           70.45 Governmental exactions.—

176           (2) In addition to other remedies available in law or  
177 equity, a property owner may bring an action in a court of  
178 competent jurisdiction under this section to declare a  
179 prohibited exaction invalid and to recover damages caused by a  
180 prohibited exaction. Such action may not be brought until a  
181 prohibited exaction is actually imposed or required in writing  
182 as a final condition of approval for the requested use of real  
183 property. The right to bring an action under this section may  
184 not be waived. This section does not apply to impact fees  
185 adopted under s. 163.31801 or non-ad valorem assessments as  
186 defined in s. 197.3632.

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

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

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