

By Senator Lee

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1                   A bill to be entitled  
2       An act relating to growth management; amending s.  
3       70.001, F.S.; revising legislative intent; revising  
4       notice of claim requirements for property owners;  
5       creating a presumption that certain settlement offers  
6       protect the public interest; creating a presumption  
7       that certain settlements of claims apply to all  
8       similarly situated residential properties within a  
9       political subdivision under certain circumstances;  
10      specifying when properties are considered similarly  
11      situated; specifying that property owners retain the  
12      option to have a court determine awards of  
13      compensation; authorizing property owners to bring  
14      claims against governmental entities in certain  
15      circumstances; providing that property owners are not  
16      required to submit formal development applications or  
17      proceed through formal application processes to bring  
18      claims in specified circumstances; amending s. 70.45,  
19      F.S.; defining the terms "imposed" and "imposition";  
20      authorizing property owners to bring actions to  
21      declare prohibited exactions invalid; providing  
22      applicability; amending s. 337.25, F.S.; requiring the  
23      Department of Transportation to afford a right of  
24      first refusal to the previous property owner before  
25      disposing of property in certain circumstances;  
26      providing requirements relating to such rights of  
27      first refusal; providing an effective date.

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

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Section 1. Subsections (1), (4), (5), and (6) and paragraph (a) of subsection (11) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

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

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

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59 bona fide, valid appraisal that supports the claim and  
60 demonstrates the loss in fair market value to the real property.  
61 If the action of government is the culmination of a process that  
62 involves more than one governmental entity, or if a complete  
63 resolution of all relevant issues, in the view of the property  
64 owner or in the view of a governmental entity to whom a claim is  
65 presented, requires the active participation of more than one  
66 governmental entity, the property owner shall present the claim  
67 as provided in this section to each of the governmental  
68 entities.

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

80 (c) During the 90-day-notice period ~~or the 150-day-notice~~  
81 ~~period~~, unless extended by agreement of the parties, the  
82 governmental entity shall make a written settlement offer to  
83 effectuate:

84 1. An adjustment of land development or permit standards or  
85 other provisions controlling the development or use of land.

86 2. Increases or modifications in the density, intensity, or  
87 use of areas of development.

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- 88           3. The transfer of developmental rights.  
89           4. Land swaps or exchanges.  
90           5. Mitigation, including payments in lieu of onsite  
91 mitigation.  
92           6. Location on the least sensitive portion of the property.  
93           7. Conditioning the amount of development or use permitted.  
94           8. A requirement that issues be addressed on a more  
95 comprehensive basis than a single proposed use or development.  
96           9. Issuance of the development order, a variance, a special  
97 exception, or any other extraordinary relief.  
98           10. Purchase of the real property, or an interest therein,  
99 by an appropriate governmental entity or payment of  
100 compensation.  
101           11. No changes to the action of the governmental entity.

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103 If the property owner accepts a settlement offer, ~~either~~ before  
104 or after filing an action, the governmental entity may implement  
105 the settlement offer by appropriate development agreement; by  
106 issuing a variance, a special exception, or any other  
107 extraordinary relief; or by any other appropriate method,  
108 subject to paragraph (d).

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

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117 real property. Settlement offers made pursuant to paragraph (c)  
118 shall be presumed to protect the public interest.

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

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

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146 shall negotiate terms of settlement consistent with settlement  
147 agreements for similarly situated residential parcels. For the  
148 purposes of this subparagraph, properties are similarly situated  
149 only if improvements authorized under zoning code and use  
150 restrictions have been constructed on the property and the  
151 governing body has issued a certificate of occupancy and if the  
152 properties are proximate in location and are subject to  
153 identical zoning code and use restrictions.

154  
155 This paragraph applies to any settlement reached between a  
156 property owner and a governmental entity regardless of when the  
157 settlement agreement was entered so long as the agreement fully  
158 resolves all claims asserted under this section.

159 (5) (a) During the 90-day-notice period ~~or the 150-day-~~  
160 ~~notice period~~, unless a settlement offer is accepted by the  
161 property owner, each of the governmental entities provided  
162 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a  
163 written statement of allowable uses identifying the allowable  
164 uses to which the subject property may be put. The failure of  
165 the governmental entity to issue a statement of allowable uses  
166 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~  
167 ~~period~~ shall be deemed a denial for purposes of allowing a  
168 property owner to file an action in the circuit court under this  
169 section. If a written statement of allowable uses is issued, it  
170 constitutes the last prerequisite to judicial review for the  
171 purposes of the judicial proceeding created by this section,  
172 notwithstanding the availability of other administrative  
173 remedies.

174 (b) If the property owner rejects the settlement offer and

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175 the statement of allowable uses of the governmental entity or  
176 entities, the property owner may file a claim for compensation  
177 in the circuit court, a copy of which shall be served  
178 contemporaneously on the head of each of the governmental  
179 entities that made a settlement offer and a statement of  
180 allowable uses that was rejected by the property owner. Actions  
181 under this section shall be brought only in the county where the  
182 real property is located.

183 (6) (a) The circuit court shall determine whether an  
184 existing use of the real property or a vested right to a  
185 specific use of the real property existed and, if so, whether,  
186 considering the settlement offer and statement of allowable  
187 uses, the governmental entity or entities have inordinately  
188 burdened the real property. If the actions of more than one  
189 governmental entity, considering any settlement offers and  
190 statement of allowable uses, are responsible for the action that  
191 imposed the inordinate burden on the real property of the  
192 property owner, the court shall determine the percentage of  
193 responsibility each such governmental entity bears with respect  
194 to the inordinate burden. A governmental entity may take an  
195 interlocutory appeal of the court's determination that the  
196 action of the governmental entity has resulted in an inordinate  
197 burden. An interlocutory appeal does not automatically stay the  
198 proceedings; however, the court may stay the proceedings during  
199 the pendency of the interlocutory appeal. If the governmental  
200 entity does not prevail in the interlocutory appeal, the court  
201 shall award to the prevailing property owner the costs and a  
202 reasonable attorney fee incurred by the property owner in the  
203 interlocutory appeal.

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204 (b) Following its determination of the percentage of  
205 responsibility of each governmental entity, and following the  
206 resolution of any interlocutory appeal, the court shall impanel  
207 a jury to determine the total amount of compensation to the  
208 property owner for the loss in value due to the inordinate  
209 burden to the real property. The property owner retains the  
210 option to forego a jury and elect to have the court determine  
211 the award of compensation. The award of compensation shall be  
212 determined by calculating the difference in the fair market  
213 value of the real property, as it existed at the time of the  
214 governmental action at issue, as though the owner had the  
215 ability to attain the reasonable investment-backed expectation  
216 or was not left with uses that are unreasonable, whichever the  
217 case may be, and the fair market value of the real property, as  
218 it existed at the time of the governmental action at issue, as  
219 inordinately burdened, considering the settlement offer together  
220 with the statement of allowable uses, of the governmental entity  
221 or entities. In determining the award of compensation,  
222 consideration may not be given to business damages relative to  
223 any development, activity, or use that the action of the  
224 governmental entity or entities, considering the settlement  
225 offer together with the statement of allowable uses has  
226 restricted, limited, or prohibited. The award of compensation  
227 shall include a reasonable award of prejudgment interest from  
228 the date the claim was presented to the governmental entity or  
229 entities as provided in subsection (4).

230 (c)1. In any action filed pursuant to this section, the  
231 property owner is entitled to recover reasonable costs and  
232 attorney fees incurred by the property owner, from the



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233 governmental entity or entities, according to their  
234 proportionate share as determined by the court, from the date of  
235 the filing of the circuit court action, if the property owner  
236 prevails in the action and the court determines that the  
237 settlement offer, including the statement of allowable uses, of  
238 the governmental entity or entities did not constitute a bona  
239 fide offer to the property owner which reasonably would have  
240 resolved the claim, based upon the knowledge available to the  
241 governmental entity or entities and the property owner during  
242 the 90-day-notice period or the 150-day-notice period.

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

256 3. The determination of total reasonable costs and attorney  
257 fees pursuant to this paragraph shall be made by the court and  
258 not by the jury. Any proposed settlement offer or any proposed  
259 decision, except for the final written settlement offer or the  
260 final written statement of allowable uses, and any negotiations  
261 or rejections in regard to the formulation either of the

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262 settlement offer or the statement of allowable uses, are  
263 inadmissible in the subsequent proceeding established by this  
264 section except for the purposes of the determination pursuant to  
265 this paragraph.

266 (d) Within 15 days after the execution of any settlement  
267 pursuant to this section, or the issuance of any judgment  
268 pursuant to this section, the governmental entity shall provide  
269 a copy of the settlement or judgment to the Department of Legal  
270 Affairs.

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

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

277 1.a. A law or regulation is first applied upon enactment  
278 and notice as provided for in this sub-subparagraph ~~subparagraph~~  
279 if the impact of the law or regulation on the real property is  
280 clear and unequivocal in its terms and notice is provided by  
281 mail to the affected property owner or registered agent at the  
282 address referenced in the jurisdiction's most current ad valorem  
283 tax records. The fact that the law or regulation could be  
284 modified, varied, or altered under any other process or  
285 procedure does not preclude the impact of the law or regulation  
286 on a property from being clear or unequivocal pursuant to this  
287 sub-subparagraph ~~subparagraph~~. Any notice under this sub-  
288 subparagraph ~~subparagraph~~ shall be provided after the enactment  
289 of the law or regulation and shall inform the property owner or  
290 registered agent that the law or regulation may impact the

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291 property owner's existing property rights and that the property  
292 owner may have only 1 year from receipt of the notice to pursue  
293 any rights established under this section.

294 b. If the notice required in sub-subparagraph a. is not  
295 provided to the property owner, the property owner may at any  
296 time after enactment notify the governmental entity in writing  
297 that the property owner deems the impact of the law or  
298 regulation on the property owner's real property to be clear and  
299 unequivocal in its terms and, as such, restrictive of uses  
300 allowed on the property before the enactment. Within 45 days  
301 after receipt of a notice under this sub-subparagraph, the  
302 governmental entity in receipt of the notice must respond in  
303 writing to state whether the law or regulation is applicable to  
304 the real property in question and provide a description of the  
305 limitations imposed on the property by the law or regulation. If  
306 the governmental entity concludes that the law or regulation is  
307 applicable by imposing new limitations on the uses of the  
308 property, the property owner is not required to formally pursue  
309 an application for a development order, development permit, or  
310 building permit, as such will be deemed a waste of resources and  
311 shall not be a prerequisite to bringing a claim pursuant to  
312 paragraph (4) (a). However, any such claim must be filed within 1  
313 year after the date of the property owner's receipt of the  
314 notice from the governmental entity of the limitations on use  
315 imposed on the real property.

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

319 Section 2. Paragraphs (c) through (e) of subsection (1) of

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320 section 70.45, Florida Statutes, are redesignated as paragraphs  
321 (d) through (f), respectively, a new paragraph (c) is added to  
322 that subsection, and subsections (2), (4), and (5) of that  
323 section are amended, to read:

324 70.45 Governmental exactions.—

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

326 (c) "Imposed" or "imposition" as it relates to a prohibited  
327 exaction or condition of approval refers to the time at which  
328 the property owner must comply with the prohibited exaction or  
329 condition of approval.

330 (2) In addition to other remedies available in law or  
331 equity, a property owner may bring an action in a court of  
332 competent jurisdiction under this section to declare a  
333 prohibited exaction invalid and recover damages caused by a  
334 prohibited exaction. Such action may not be brought until a  
335 prohibited exaction is actually imposed or required in writing  
336 as a final condition of approval for the requested use of real  
337 property. The right to bring an action under this section may  
338 not be waived. This section does not apply to impact fees  
339 adopted under s. 163.31801 or non-ad valorem assessments as  
340 defined in s. 197.3632.

341 (4) For each claim filed under this section, the  
342 governmental entity has the burden of proving that the  
343 challenged exaction has an essential nexus to a legitimate  
344 public purpose and is roughly proportionate to the impacts of  
345 the proposed use that the governmental entity is seeking to  
346 avoid, minimize, or mitigate. The property owner has the burden  
347 of proving damages that result from a prohibited exaction.

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

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

353 Section 3. The amendments made by this act to ss. 70.001  
354 and 70.45, Florida Statutes, apply to claims made in response to  
355 actions taken by governmental entities on or after July 1, 2020.

356 Section 4. Subsection (4) of section 337.25, Florida  
357 Statutes, is amended to read:

358 337.25 Acquisition, lease, and disposal of real and  
359 personal property.—

360 (4) The department may convey, in the name of the state,  
361 any land, building, or other property, real or personal, which  
362 was acquired under subsection (1) and which the department has  
363 determined is not needed for the construction, operation, and  
364 maintenance of a transportation facility. When such a  
365 determination has been made, property may be disposed of through  
366 negotiations, sealed competitive bids, auctions, or any other  
367 means the department deems to be in its best interest, with due  
368 advertisement for property valued by the department at greater  
369 than \$10,000. A sale may not occur at a price less than the  
370 department's current estimate of value, except as provided in  
371 paragraphs (a)-(d). The department may afford a right of first  
372 refusal to the local government or other political subdivision  
373 in the jurisdiction in which the parcel is situated, except in a  
374 conveyance transacted under paragraph (a), paragraph (c), or  
375 paragraph (e). Notwithstanding any provision of this section to  
376 the contrary, before any conveyance under this subsection may be  
377 made, except a conveyance under paragraph (a) or paragraph (c),

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378 the department shall first afford a right of first refusal to  
379 the previous property owner for the department's current  
380 estimate of value of the property. The right of first refusal  
381 shall be made in writing and sent to the previous owner via  
382 certified mail or hand delivery, effective upon receipt. The  
383 right of first refusal shall provide the previous owner with a  
384 minimum of 15 days to exercise the right in writing and be sent  
385 to the originator of the offer via certified mail or hand  
386 delivery, effective upon dispatch. The previous owner shall have  
387 a minimum of 60 days after exercising its right of first refusal  
388 to close. If the previous owner does not exercise its right of  
389 first refusal, the department may not deviate in any material  
390 respect from the offer made to the previous owner unless it  
391 first provides the previous owner with the right of first  
392 refusal under the new terms. The same procedure shall apply to  
393 any subsequent iterations of the sale terms.

394 (a) If the property has been donated to the state for  
395 transportation purposes and a transportation facility has not  
396 been constructed for at least 5 years, plans have not been  
397 prepared for the construction of such facility, and the property  
398 is not located in a transportation corridor, the governmental  
399 entity may authorize reconveyance of the donated property for no  
400 consideration to the original donor or the donor's heirs,  
401 successors, assigns, or representatives.

402 (b) If the property is to be used for a public purpose, the  
403 property may be conveyed without consideration to a governmental  
404 entity.

405 (c) If the property was originally acquired specifically to  
406 provide replacement housing for persons displaced by

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407 transportation projects, the department may negotiate for the  
408 sale of such property as replacement housing. As compensation,  
409 the state shall receive at least its investment in such property  
410 or the department's current estimate of value, whichever is  
411 lower. It is expressly intended that this benefit be extended  
412 only to persons actually displaced by the project. Dispositions  
413 to any other person must be for at least the department's  
414 current estimate of value.

415 (d) If the department determines that the property requires  
416 significant costs to be incurred or that continued ownership of  
417 the property exposes the department to significant liability  
418 risks, the department may use the projected maintenance costs  
419 over the next 10 years to offset the property's value in  
420 establishing a value for disposal of the property, even if that  
421 value is zero.

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

426 Section 5. This act shall take effect July 1, 2020.