

By the Committee on Judiciary; and Senators Lee and Perry

590-03113-20

20201766c1

1 A bill to be entitled
2 An act relating to growth management; amending s.
3 70.001, F.S.; revising notice of claim requirements
4 for property owners; creating a presumption that
5 certain settlement offers protect the public interest;
6 specifying that property owners retain the option to
7 have a court determine awards of compensation;
8 authorizing property owners to bring claims against
9 governmental entities in certain circumstances;
10 providing that property owners are not required to
11 submit formal development applications or proceed
12 through formal application processes to bring claims
13 in specified circumstances; amending s. 70.45, F.S.;
14 defining the terms "imposed" and "imposition";
15 authorizing property owners to bring actions to
16 declare prohibited exactions invalid; providing
17 applicability; amending s. 337.25, F.S.; requiring the
18 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 requirements relating to such rights of
22 first refusal; providing an effective date.

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

25
26 Section 1. Subsections (4), (5), and (6) and paragraph (a)
27 of subsection (11) of section 70.001, Florida Statutes, are
28 amended to read:

29 70.001 Private property rights protection.-

590-03113-20

20201766c1

30 (4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an
31 action under this section against a governmental entity, a
32 property owner who seeks compensation under this section must
33 present the claim in writing to the head of the governmental
34 entity, ~~except that if the property is classified as~~
35 ~~agricultural pursuant to s. 193.461, the notice period is 90~~
36 ~~days~~. The property owner must submit, along with the claim, a
37 bona fide, valid appraisal that supports the claim and
38 demonstrates the loss in fair market value to the real property.
39 If the action of government is the culmination of a process that
40 involves more than one governmental entity, or if a complete
41 resolution of all relevant issues, in the view of the property
42 owner or in the view of a governmental entity to whom a claim is
43 presented, requires the active participation of more than one
44 governmental entity, the property owner shall present the claim
45 as provided in this section to each of the governmental
46 entities.

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

58 (c) During the 90-day-notice period ~~or the 150-day notice~~

590-03113-20

20201766c1

59 ~~period~~, unless extended by agreement of the parties, the
60 governmental entity shall make a written settlement offer to
61 effectuate:

62 1. An adjustment of land development or permit standards or
63 other provisions controlling the development or use of land.

64 2. Increases or modifications in the density, intensity, or
65 use of areas of development.

66 3. The transfer of developmental rights.

67 4. Land swaps or exchanges.

68 5. Mitigation, including payments in lieu of onsite
69 mitigation.

70 6. Location on the least sensitive portion of the property.

71 7. Conditioning the amount of development or use permitted.

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

74 9. Issuance of the development order, a variance, a special
75 exception, or any other extraordinary relief.

76 10. Purchase of the real property, or an interest therein,
77 by an appropriate governmental entity or payment of
78 compensation.

79 11. No changes to the action of the governmental entity.
80

81 If the property owner accepts a settlement offer, ~~either~~ before
82 or after filing an action, the governmental entity may implement
83 the settlement offer by appropriate development agreement; by
84 issuing a variance, a special exception, or any other
85 extraordinary relief; or by any other appropriate method,
86 subject to paragraph (d).

87 (d)1. When a governmental entity enters into a settlement

590-03113-20

20201766c1

88 agreement under this section which would have the effect of a
89 modification, variance, or a special exception to the
90 application of a rule, regulation, or ordinance as it would
91 otherwise apply to the subject real property, the relief granted
92 shall protect the public interest served by the regulations at
93 issue and be the appropriate relief necessary to prevent the
94 governmental regulatory effort from inordinately burdening the
95 real property. Settlement offers made pursuant to paragraph (c)
96 shall be presumed to protect the public interest.

97 2. When a governmental entity enters into a settlement
98 agreement under this section which would have the effect of
99 contravening the application of a statute as it would otherwise
100 apply to the subject real property, the governmental entity and
101 the property owner shall jointly file an action in the circuit
102 court where the real property is located for approval of the
103 settlement agreement by the court to ensure that the relief
104 granted protects the public interest served by the statute at
105 issue and is the appropriate relief necessary to prevent the
106 governmental regulatory effort from inordinately burdening the
107 real property.

108
109 This paragraph applies to any settlement reached between a
110 property owner and a governmental entity regardless of when the
111 settlement agreement was entered so long as the agreement fully
112 resolves all claims asserted under this section.

113 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
114 ~~notice period~~, unless a settlement offer is accepted by the
115 property owner, each of the governmental entities provided
116 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a

590-03113-20

20201766c1

117 written statement of allowable uses identifying the allowable
118 uses to which the subject property may be put. The failure of
119 the governmental entity to issue a statement of allowable uses
120 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~
121 ~~period~~ shall be deemed a denial for purposes of allowing a
122 property owner to file an action in the circuit court under this
123 section. If a written statement of allowable uses is issued, it
124 constitutes the last prerequisite to judicial review for the
125 purposes of the judicial proceeding created by this section,
126 notwithstanding the availability of other administrative
127 remedies.

128 (b) If the property owner rejects the settlement offer and
129 the statement of allowable uses of the governmental entity or
130 entities, the property owner may file a claim for compensation
131 in the circuit court, a copy of which shall be served
132 contemporaneously on the head of each of the governmental
133 entities that made a settlement offer and a statement of
134 allowable uses that was rejected by the property owner. Actions
135 under this section shall be brought only in the county where the
136 real property is located.

137 (6) (a) The circuit court shall determine whether an
138 existing use of the real property or a vested right to a
139 specific use of the real property existed and, if so, whether,
140 considering the settlement offer and statement of allowable
141 uses, the governmental entity or entities have inordinately
142 burdened the real property. If the actions of more than one
143 governmental entity, considering any settlement offers and
144 statement of allowable uses, are responsible for the action that
145 imposed the inordinate burden on the real property of the

590-03113-20

20201766c1

146 property owner, the court shall determine the percentage of
147 responsibility each such governmental entity bears with respect
148 to the inordinate burden. A governmental entity may take an
149 interlocutory appeal of the court's determination that the
150 action of the governmental entity has resulted in an inordinate
151 burden. An interlocutory appeal does not automatically stay the
152 proceedings; however, the court may stay the proceedings during
153 the pendency of the interlocutory appeal. If the governmental
154 entity does not prevail in the interlocutory appeal, the court
155 shall award to the prevailing property owner the costs and a
156 reasonable attorney fee incurred by the property owner in the
157 interlocutory appeal.

158 (b) Following its determination of the percentage of
159 responsibility of each governmental entity, and following the
160 resolution of any interlocutory appeal, the court shall impanel
161 a jury to determine the total amount of compensation to the
162 property owner for the loss in value due to the inordinate
163 burden to the real property. The property owner retains the
164 option to forego a jury and elect to have the court determine
165 the award of compensation. The award of compensation shall be
166 determined by calculating the difference in the fair market
167 value of the real property, as it existed at the time of the
168 governmental action at issue, as though the owner had the
169 ability to attain the reasonable investment-backed expectation
170 or was not left with uses that are unreasonable, whichever the
171 case may be, and the fair market value of the real property, as
172 it existed at the time of the governmental action at issue, as
173 inordinately burdened, considering the settlement offer together
174 with the statement of allowable uses, of the governmental entity

590-03113-20

20201766c1

175 or entities. In determining the award of compensation,
176 consideration may not be given to business damages relative to
177 any development, activity, or use that the action of the
178 governmental entity or entities, considering the settlement
179 offer together with the statement of allowable uses has
180 restricted, limited, or prohibited. The award of compensation
181 shall include a reasonable award of prejudgment interest from
182 the date the claim was presented to the governmental entity or
183 entities as provided in subsection (4).

184 (c)1. In any action filed pursuant to this section, the
185 property owner is entitled to recover reasonable costs and
186 attorney fees incurred by the property owner, from the
187 governmental entity or entities, according to their
188 proportionate share as determined by the court, from the date of
189 the filing of the circuit court action, if the property owner
190 prevails in the action and the court determines that the
191 settlement offer, including the statement of allowable uses, of
192 the governmental entity or entities did not constitute a bona
193 fide offer to the property owner which reasonably would have
194 resolved the claim, based upon the knowledge available to the
195 governmental entity or entities and the property owner during
196 the 90-day-notice period or the 150-day-notice period.

197 2. In any action filed pursuant to this section, the
198 governmental entity or entities are entitled to recover
199 reasonable costs and attorney fees incurred by the governmental
200 entity or entities from the date of the filing of the circuit
201 court action, if the governmental entity or entities prevail in
202 the action and the court determines that the property owner did
203 not accept a bona fide settlement offer, including the statement

590-03113-20

20201766c1

204 of allowable uses, which reasonably would have resolved the
205 claim fairly to the property owner if the settlement offer had
206 been accepted by the property owner, based upon the knowledge
207 available to the governmental entity or entities and the
208 property owner during the 90-day-notice period or the 150-day-
209 notice period.

210 3. The determination of total reasonable costs and attorney
211 fees pursuant to this paragraph shall be made by the court and
212 not by the jury. Any proposed settlement offer or any proposed
213 decision, except for the final written settlement offer or the
214 final written statement of allowable uses, and any negotiations
215 or rejections in regard to the formulation either of the
216 settlement offer or the statement of allowable uses, are
217 inadmissible in the subsequent proceeding established by this
218 section except for the purposes of the determination pursuant to
219 this paragraph.

220 (d) Within 15 days after the execution of any settlement
221 pursuant to this section, or the issuance of any judgment
222 pursuant to this section, the governmental entity shall provide
223 a copy of the settlement or judgment to the Department of Legal
224 Affairs.

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

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

231 1.a. A law or regulation is first applied upon enactment
232 and notice as provided for in this sub-subparagraph ~~subparagraph~~

590-03113-20

20201766c1

233 if the impact of the law or regulation on the real property is
234 clear and unequivocal in its terms and notice is provided by
235 mail to the affected property owner or registered agent at the
236 address referenced in the jurisdiction's most current ad valorem
237 tax records. The fact that the law or regulation could be
238 modified, varied, or altered under any other process or
239 procedure does not preclude the impact of the law or regulation
240 on a property from being clear or unequivocal pursuant to this
241 sub-subparagraph ~~subparagraph~~. Any notice under this sub-
242 subparagraph ~~subparagraph~~ shall be provided after the enactment
243 of the law or regulation and shall inform the property owner or
244 registered agent that the law or regulation may impact the
245 property owner's existing property rights and that the property
246 owner may have only 1 year from receipt of the notice to pursue
247 any rights established under this section.

248 b. If the notice required in sub-subparagraph a. is not
249 provided to the property owner, the property owner may at any
250 time after enactment notify the governmental entity in writing
251 that the property owner deems the impact of the law or
252 regulation on the property owner's real property to be clear and
253 unequivocal in its terms and, as such, restrictive of uses
254 allowed on the property before the enactment. Within 45 days
255 after receipt of a notice under this sub-subparagraph, the
256 governmental entity in receipt of the notice must respond in
257 writing to state whether the law or regulation is applicable to
258 the real property in question and provide a description of the
259 limitations imposed on the property by the law or regulation. If
260 the governmental entity concludes that the law or regulation is
261 applicable by imposing new limitations on the uses of the

590-03113-20

20201766c1

262 property, the property owner is not required to formally pursue
263 an application for a development order, development permit, or
264 building permit, as such will be deemed a waste of resources and
265 shall not be a prerequisite to bringing a claim pursuant to
266 paragraph (4) (a). However, any such claim must be filed within 1
267 year after the date of the property owner's receipt of the
268 notice from the governmental entity of the limitations on use
269 imposed on the real property.

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

273 Section 2. Paragraphs (c) through (e) of subsection (1) of
274 section 70.45, Florida Statutes, are redesignated as paragraphs
275 (d) through (f), respectively, a new paragraph (c) is added to
276 that subsection, and subsections (2), (4), and (5) of that
277 section are amended, to read:

278 70.45 Governmental exactions.—

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

280 (c) "Imposed" or "imposition" as it relates to a prohibited
281 exaction or condition of approval refers to the time at which
282 the property owner must comply with the prohibited exaction or
283 condition of approval.

284 (2) In addition to other remedies available in law or
285 equity, a property owner may bring an action in a court of
286 competent jurisdiction under this section to declare a
287 prohibited exaction invalid and recover damages caused by a
288 prohibited exaction. Such action may not be brought until a
289 prohibited exaction is actually imposed or required in writing
290 as a final condition of approval for the requested use of real

590-03113-20

20201766c1

291 property. The right to bring an action under this section may
292 not be waived. This section does not apply to impact fees
293 adopted under s. 163.31801 or non-ad valorem assessments as
294 defined in s. 197.3632.

295 (4) For each claim filed under this section, the
296 governmental entity has the burden of proving that the
297 challenged exaction has an essential nexus to a legitimate
298 public purpose and is roughly proportionate to the impacts of
299 the proposed use that the governmental entity is seeking to
300 avoid, minimize, or mitigate. The property owner has the burden
301 of proving damages that result from a prohibited exaction.

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

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

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

312 337.25 Acquisition, lease, and disposal of real and
313 personal property.—

314 (4) The department may convey, in the name of the state,
315 any land, building, or other property, real or personal, which
316 was acquired under subsection (1) and which the department has
317 determined is not needed for the construction, operation, and
318 maintenance of a transportation facility. When such a
319 determination has been made, property may be disposed of through

590-03113-20

20201766c1

320 negotiations, sealed competitive bids, auctions, or any other
321 means the department deems to be in its best interest, with due
322 advertisement for property valued by the department at greater
323 than \$10,000. A sale may not occur at a price less than the
324 department's current estimate of value, except as provided in
325 paragraphs (a)-(d). The department may afford a right of first
326 refusal to the local government or other political subdivision
327 in the jurisdiction in which the parcel is situated, except in a
328 conveyance transacted under paragraph (a), paragraph (c), or
329 paragraph (e). Notwithstanding any provision of this section to
330 the contrary, before any conveyance under this subsection may be
331 made, except a conveyance under paragraph (a) or paragraph (c),
332 the department shall first afford a right of first refusal to
333 the previous property owner for the department's current
334 estimate of value of the property. The right of first refusal
335 shall be made in writing and sent to the previous owner via
336 certified mail or hand delivery, effective upon receipt. The
337 right of first refusal shall provide the previous owner with a
338 minimum of 15 days to exercise the right in writing and be sent
339 to the originator of the offer via certified mail or hand
340 delivery, effective upon dispatch. The previous owner shall have
341 a minimum of 60 days after exercising its right of first refusal
342 to close. If the previous owner does not exercise its right of
343 first refusal, the department may not deviate in any material
344 respect from the offer made to the previous owner unless it
345 first provides the previous owner with the right of first
346 refusal under the new terms. The same procedure shall apply to
347 any subsequent iterations of the sale terms.

348 (a) If the property has been donated to the state for

590-03113-20

20201766c1

349 transportation purposes and a transportation facility has not
350 been constructed for at least 5 years, plans have not been
351 prepared for the construction of such facility, and the property
352 is not located in a transportation corridor, the governmental
353 entity may authorize reconveyance of the donated property for no
354 consideration to the original donor or the donor's heirs,
355 successors, assigns, or representatives.

356 (b) If the property is to be used for a public purpose, the
357 property may be conveyed without consideration to a governmental
358 entity.

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

369 (d) If the department determines that the property requires
370 significant costs to be incurred or that continued ownership of
371 the property exposes the department to significant liability
372 risks, the department may use the projected maintenance costs
373 over the next 10 years to offset the property's value in
374 establishing a value for disposal of the property, even if that
375 value is zero.

376 (e) If, at the discretion of the department, a sale to a
377 person other than an abutting property owner would be

590-03113-20

20201766c1

378 inequitable, the property may be sold to the abutting owner for
379 the department's current estimate of value.

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