

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Grant, J. offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsections (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.-

(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~~

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14 ~~agricultural pursuant to s. 193.461, the notice period is 90~~  
15 ~~days.~~ The property owner must submit, along with the claim, a  
16 bona fide, valid appraisal that supports the claim and  
17 demonstrates the loss in fair market value to the real property.  
18 If the action of government is the culmination of a process that  
19 involves more than one governmental entity, or if a complete  
20 resolution of all relevant issues, in the view of the property  
21 owner or in the view of a governmental entity to whom a claim is  
22 presented, requires the active participation of more than one  
23 governmental entity, the property owner shall present the claim  
24 as provided in this section to each of the governmental  
25 entities.

26 (b) The governmental entity shall provide written notice  
27 of the claim to all parties to any administrative action that  
28 gave rise to the claim, and to owners of real property  
29 contiguous to the owner's property at the addresses listed on  
30 the most recent county tax rolls. Within 15 days after the claim  
31 is presented, the governmental entity shall report the claim in  
32 writing to the Department of Legal Affairs, and shall provide  
33 the department with the name, address, and telephone number of  
34 the employee of the governmental entity from whom additional  
35 information may be obtained about the claim during the pendency  
36 of the claim and any subsequent judicial action.

37 (c) During the 90-day-notice period ~~or the 150-day-notice~~  
38 ~~period,~~ unless extended by agreement of the parties, the

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39 governmental entity shall make a written settlement offer to  
40 effectuate:

41 1. An adjustment of land development or permit standards  
42 or other provisions controlling the development or use of land.

43 2. Increases or modifications in the density, intensity,  
44 or use of areas of development.

45 3. The transfer of developmental rights.

46 4. Land swaps or exchanges.

47 5. Mitigation, including payments in lieu of onsite  
48 mitigation.

49 6. Location on the least sensitive portion of the  
50 property.

51 7. Conditioning the amount of development or use  
52 permitted.

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

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

57 10. Purchase of the real property, or an interest therein,  
58 by an appropriate governmental entity or payment of  
59 compensation.

60 11. No changes to the action of the governmental entity.

61  
62 If the property owner accepts a settlement offer, ~~either~~ before  
63 or after filing an action, the governmental entity may implement

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64 the settlement offer by appropriate development agreement; by  
65 issuing a variance, a special exception, or any other  
66 extraordinary relief; or by any other appropriate method,  
67 subject to paragraph (d).

68 (d)1. When a governmental entity enters into a settlement  
69 agreement under this section which would have the effect of a  
70 modification, variance, or ~~a~~ special exception to the  
71 application of a rule, regulation, or ordinance as it would  
72 otherwise apply to the subject real property, the relief granted  
73 shall protect the public interest served by the regulations at  
74 issue and be the appropriate relief necessary to prevent the  
75 governmental regulatory effort from inordinately burdening the  
76 real property. Settlement offers made pursuant to paragraph (c)  
77 shall be presumed to protect the public interest.

78 2. When a governmental entity enters into a settlement  
79 agreement under this section which would have the effect of  
80 contravening the application of a statute as it would otherwise  
81 apply to the subject real property, the governmental entity and  
82 the property owner shall jointly file an action in the circuit  
83 court where the real property is located for approval of the  
84 settlement agreement by the court to ensure that the relief  
85 granted protects the public interest served by the statute at  
86 issue and is the appropriate relief necessary to prevent the  
87 governmental regulatory effort from inordinately burdening the  
88 real property.

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89  
90 This paragraph applies to any settlement reached between a  
91 property owner and a governmental entity regardless of when the  
92 settlement agreement was entered so long as the agreement fully  
93 resolves all claims asserted under this section.

94 (5) (a) During the 90-day-notice period ~~or the 150-day-~~  
95 ~~notice period~~, unless a settlement offer is accepted by the  
96 property owner, each of the governmental entities provided  
97 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a  
98 written statement of allowable uses identifying the allowable  
99 uses to which the subject property may be put. The failure of  
100 the governmental entity to issue a statement of allowable uses  
101 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~  
102 ~~period~~ shall be deemed a denial for purposes of allowing a  
103 property owner to file an action in the circuit court under this  
104 section. If a written statement of allowable uses is issued, it  
105 constitutes the last prerequisite to judicial review for the  
106 purposes of the judicial proceeding created by this section,  
107 notwithstanding the availability of other administrative  
108 remedies.

109 (b) If the property owner rejects the settlement offer and  
110 the statement of allowable uses of the governmental entity or  
111 entities, the property owner may file a claim for compensation  
112 in the circuit court, a copy of which shall be served  
113 contemporaneously on the head of each of the governmental

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114 entities that made a settlement offer and a statement of  
115 allowable uses that was rejected by the property owner. Actions  
116 under this section shall be brought only in the county where the  
117 real property is located.

118 (6) (a) The circuit court shall determine whether an  
119 existing use of the real property or a vested right to a  
120 specific use of the real property existed and, if so, whether,  
121 considering the settlement offer and statement of allowable  
122 uses, the governmental entity or entities have inordinately  
123 burdened the real property. If the actions of more than one  
124 governmental entity, considering any settlement offers and  
125 statement of allowable uses, are responsible for the action that  
126 imposed the inordinate burden on the real property of the  
127 property owner, the court shall determine the percentage of  
128 responsibility each such governmental entity bears with respect  
129 to the inordinate burden. A governmental entity may take an  
130 interlocutory appeal of the court's determination that the  
131 action of the governmental entity has resulted in an inordinate  
132 burden. An interlocutory appeal does not automatically stay the  
133 proceedings; however, the court may stay the proceedings during  
134 the pendency of the interlocutory appeal. If the governmental  
135 entity does not prevail in the interlocutory appeal, the court  
136 shall award to the prevailing property owner the costs and a  
137 reasonable attorney fee incurred by the property owner in the  
138 interlocutory appeal.

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139 (b) Following its determination of the percentage of  
140 responsibility of each governmental entity, and following the  
141 resolution of any interlocutory appeal, the court shall impanel  
142 a jury to determine the total amount of compensation to the  
143 property owner for the loss in value due to the inordinate  
144 burden to the real property. The property owner retains the  
145 option to forego a jury and elect to have the court determine  
146 the award of compensation. The award of compensation shall be  
147 determined by calculating the difference in the fair market  
148 value of the real property, as it existed at the time of the  
149 governmental action at issue, as though the owner had the  
150 ability to attain the reasonable investment-backed expectation  
151 or was not left with uses that are unreasonable, whichever the  
152 case may be, and the fair market value of the real property, as  
153 it existed at the time of the governmental action at issue, as  
154 inordinately burdened, considering the settlement offer together  
155 with the statement of allowable uses, of the governmental entity  
156 or entities. In determining the award of compensation,  
157 consideration may not be given to business damages relative to  
158 any development, activity, or use that the action of the  
159 governmental entity or entities, considering the settlement  
160 offer together with the statement of allowable uses has  
161 restricted, limited, or prohibited. The award of compensation  
162 shall include a reasonable award of prejudgment interest from

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163 the date the claim was presented to the governmental entity or  
164 entities as provided in subsection (4).

165 (c)1. In any action filed pursuant to this section, the  
166 property owner is entitled to recover reasonable costs and  
167 attorney fees incurred by the property owner, from the  
168 governmental entity or entities, according to their  
169 proportionate share as determined by the court, from the date of  
170 the presentation of the claim to the head of the governmental  
171 entity pursuant to paragraph (4) (a) ~~the filing of the circuit~~  
172 ~~court action~~, if the property owner prevails in the action ~~and~~  
173 ~~the court determines that the settlement offer, including the~~  
174 ~~statement of allowable uses, of the governmental entity or~~  
175 ~~entities did not constitute a bona fide offer to the property~~  
176 ~~owner which reasonably would have resolved the claim, based upon~~  
177 ~~the knowledge available to the governmental entity or entities~~  
178 ~~and the property owner during the 90-day notice period or the~~  
179 ~~150-day notice period.~~

180 2. In any action filed pursuant to this section, the  
181 governmental entity or entities are entitled to recover  
182 reasonable costs and attorney fees incurred by the governmental  
183 entity or entities from the date of the filing of the circuit  
184 court action, if the governmental entity or entities prevail in  
185 the action and the court determines that the property owner did  
186 not accept a bona fide settlement offer, including the statement  
187 of allowable uses, which reasonably would have resolved the

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188 claim fairly to the property owner if the settlement offer had  
189 been accepted by the property owner, based upon the knowledge  
190 available to the governmental entity or entities and the  
191 property owner during the 90-day-notice period ~~or the 150-day-~~  
192 ~~notice period.~~

193 3. The determination of total reasonable costs and  
194 attorney fees pursuant to this paragraph shall be made by the  
195 court and not by the jury. Any proposed settlement offer or any  
196 proposed decision, except for the final written settlement offer  
197 or the final written statement of allowable uses, and any  
198 negotiations or rejections in regard to the formulation either  
199 of the settlement offer or the statement of allowable uses, are  
200 inadmissible in the subsequent proceeding established by this  
201 section except for the purposes of the determination pursuant to  
202 this paragraph.

203 (d) Within 15 days after the execution of any settlement  
204 pursuant to this section, or the issuance of any judgment  
205 pursuant to this section, the governmental entity shall provide  
206 a copy of the settlement or judgment to the Department of Legal  
207 Affairs.

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

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

214 1.a. A law or regulation is first applied upon enactment  
215 and notice as provided for in this sub-subparagraph ~~subparagraph~~  
216 if the impact of the law or regulation on the real property is  
217 clear and unequivocal in its terms and notice is provided by  
218 mail to the affected property owner or registered agent at the  
219 address referenced in the jurisdiction's most current ad valorem  
220 tax records. The fact that the law or regulation could be  
221 modified, varied, or altered under any other process or  
222 procedure does not preclude the impact of the law or regulation  
223 on a property from being clear or unequivocal pursuant to this  
224 sub-subparagraph ~~subparagraph~~. Any notice under this sub-  
225 subparagraph ~~subparagraph~~ shall be provided after the enactment  
226 of the law or regulation and shall inform the property owner or  
227 registered agent that the law or regulation may impact the  
228 property owner's existing property rights and that the property  
229 owner may have only 1 year from receipt of the notice to pursue  
230 any rights established under this section.

231 b. If the notice required in sub-subparagraph a. is not  
232 provided to the property owner, the property owner may at any  
233 time after enactment notify the head of the governmental entity  
234 in writing via certified mail and, if available, e-mail that the  
235 property owner deems the impact of the law or regulation on the  
236 property owner's real property to be clear and unequivocal in

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237 its terms and, as such, restrictive of uses allowed on the  
238 property before the enactment. Within 45 days after receipt of a  
239 notice under this sub-subparagraph, the governmental entity in  
240 receipt of the notice must respond in writing via certified mail  
241 and, if available, e-mail to describe the limitations imposed on  
242 the property by the law or regulation. The property owner is not  
243 required to formally pursue an application for a development  
244 order, development permit, or building permit, as such will be  
245 deemed a waste of resources and shall not be a prerequisite to  
246 bringing a claim pursuant to paragraph (4) (a). However, any such  
247 claim must be filed within 1 year after the date of the property  
248 owner's receipt of the notice from the governmental entity of  
249 the limitations on use imposed on the real property.

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

253 Section 2. Paragraphs (c) through (e) of subsection (1) of  
254 section 70.45, Florida Statutes, are redesignated as paragraphs  
255 (d) through (f), respectively, a new paragraph (c) is added to  
256 that subsection, and present paragraph (c) of that subsection  
257 and subsections (2), (4), and (5) of that section are amended,  
258 to read:

259 70.45 Governmental exactions.—

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

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261           (c) "Imposed" or "imposition" as it relates to a  
262 prohibited exaction or condition of approval refers to the time  
263 at which the property owner must comply with the prohibited  
264 exaction or condition of approval.

265           (d)(e) "Prohibited exaction" means any condition imposed  
266 by a governmental entity on a property owner's proposed use of  
267 real property that lacks an essential nexus to a legitimate  
268 public purpose and is not roughly proportionate to the impacts  
269 of the proposed use that the governmental entity seeks to avoid,  
270 minimize, or mitigate.

271           (2) In addition to other remedies available in law or  
272 equity, a property owner may bring an action in a court of  
273 competent jurisdiction under this section to declare a  
274 prohibited exaction invalid and recover damages caused by a  
275 prohibited exaction. Such action may ~~not~~ be brought by a  
276 property owner at the property owner's discretion, either when  
277 until a prohibited exaction is actually imposed or when it is  
278 required in writing as a final condition of approval for the  
279 requested use of real property. The right to bring an action  
280 under this section may not be waived. This section does not  
281 apply to impact fees adopted under s. 163.31801 or non-ad  
282 valorem assessments as defined in s. 197.3632.

283           (4) For each claim filed under this section, the  
284 governmental entity has the burden of proving that the  
285 challenged exaction has an essential nexus to a legitimate

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286 public purpose and is roughly proportionate to the impacts of  
287 the proposed use that the governmental entity is seeking to  
288 avoid, minimize, or mitigate. The property owner has the burden  
289 of proving damages that result from a prohibited exaction.

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

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

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

300 337.25 Acquisition, lease, and disposal of real and  
301 personal property.—

302 (4) The department may convey, in the name of the state,  
303 any land, building, or other property, real or personal, which  
304 was acquired under subsection (1) and which the department has  
305 determined is not needed for the construction, operation, and  
306 maintenance of a transportation facility. When such a  
307 determination has been made, property may be disposed of through  
308 negotiations, sealed competitive bids, auctions, or any other  
309 means the department deems to be in its best interest, with due  
310 advertisement for property valued by the department at greater

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311 than \$10,000. A sale may not occur at a price less than the  
312 department's current estimate of value, except as provided in  
313 paragraphs (a)-(d). The department may afford a right of first  
314 refusal to the local government or other political subdivision  
315 in the jurisdiction in which the parcel is situated, except in a  
316 conveyance transacted under paragraph (a), paragraph (c), or  
317 paragraph (e). Notwithstanding any provision of this section to  
318 the contrary, before any conveyance under this subsection may be  
319 made, except a conveyance under paragraph (a) or paragraph (c),  
320 the department shall first afford a right of first refusal to  
321 the previous property owner for the department's current  
322 estimate of value of the property. The right of first refusal  
323 shall be made in writing and sent to the previous owner via  
324 certified mail or hand delivery, effective upon receipt. The  
325 right of first refusal shall provide the previous owner with a  
326 minimum of 15 days to exercise the right in writing and be sent  
327 to the originator of the offer via certified mail or hand  
328 delivery, effective upon dispatch. The previous owner shall have  
329 a minimum of 60 days after exercising its right of first refusal  
330 to close. If the previous owner does not exercise its right of  
331 first refusal, the department may not deviate in any material  
332 respect from the offer made to the previous owner unless it  
333 first provides the previous owner with the right of first  
334 refusal under the new terms. The same procedure shall apply to  
335 any subsequent iterations of the sale terms.

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336 (a) If the property has been donated to the state for  
337 transportation purposes and a transportation facility has not  
338 been constructed for at least 5 years, plans have not been  
339 prepared for the construction of such facility, and the property  
340 is not located in a transportation corridor, the governmental  
341 entity may authorize reconveyance of the donated property for no  
342 consideration to the original donor or the donor's heirs,  
343 successors, assigns, or representatives.

344 (b) If the property is to be used for a public purpose,  
345 the property may be conveyed without consideration to a  
346 governmental entity.

347 (c) If the property was originally acquired specifically  
348 to provide replacement housing for persons displaced by  
349 transportation projects, the department may negotiate for the  
350 sale of such property as replacement housing. As compensation,  
351 the state shall receive at least its investment in such property  
352 or the department's current estimate of value, whichever is  
353 lower. It is expressly intended that this benefit be extended  
354 only to persons actually displaced by the project. Dispositions  
355 to any other person must be for at least the department's  
356 current estimate of value.

357 (d) If the department determines that the property  
358 requires significant costs to be incurred or that continued  
359 ownership of the property exposes the department to significant  
360 liability risks, the department may use the projected

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361 maintenance costs over the next 10 years to offset the  
362 property's value in establishing a value for disposal of the  
363 property, even if that value is zero.

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

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

369 -----

370 **T I T L E A M E N D M E N T**

371 Remove everything before the enacting clause and insert:

372  
373 A bill to be entitled  
374 An act relating to growth management; amending s.  
375 70.001, F.S.; revising notice of claim requirements  
376 for property owners; creating a presumption that  
377 certain settlement offers protect the public interest;  
378 specifying that property owners retain the option to  
379 have a court determine awards of compensation;  
380 authorizing property owners to bring claims against  
381 governmental entities in certain circumstances;  
382 providing that property owners are not required to  
383 submit formal development applications or proceed  
384 through formal application processes to bring claims  
385 in specified circumstances; amending s. 70.45, F.S.;

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386 providing and revising definitions; authorizing  
387 property owners to bring actions to declare prohibited  
388 exactions invalid; providing applicability; amending  
389 s. 337.25, F.S.; requiring the Department of  
390 Transportation to afford a right of first refusal to  
391 the previous property owner before disposing of  
392 property in certain circumstances; providing  
393 requirements relating to such rights of first refusal;  
394 providing an effective date.

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