

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 providing and revising definitions; authorizing
15 property owners to bring actions to declare prohibited
16 exactions invalid; providing applicability; amending
17 s. 337.25, F.S.; requiring the Department of
18 Transportation to afford a right of first refusal to
19 the previous property owner before disposing of
20 property in certain circumstances; providing
21 requirements relating to such rights of first refusal;
22 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.—

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
 48 of the claim to all parties to any administrative action that
 49 gave rise to the claim, and to owners of real property
 50 contiguous to the owner's property at the addresses listed on

51 the most recent county tax rolls. Within 15 days after the claim
52 is presented, the governmental entity shall report the claim in
53 writing to the Department of Legal Affairs, and shall provide
54 the department with the name, address, and telephone number of
55 the employee of the governmental entity from whom additional
56 information may be obtained about the claim during the pendency
57 of the claim and any subsequent judicial action.

58 (c) During the 90-day-notice period ~~or the 150-day-notice~~
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
63 or other provisions controlling the development or use of land.

64 2. Increases or modifications in the density, intensity,
65 or 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
71 property.

72 7. Conditioning the amount of development or use
73 permitted.

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

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

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

81 11. No changes to the action of the governmental entity.
 82

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

89 (d)1. When a governmental entity enters into a settlement
 90 agreement under this section which would have the effect of a
 91 modification, variance, or ~~a~~ special exception to the
 92 application of a rule, regulation, or ordinance as it would
 93 otherwise apply to the subject real property, the relief granted
 94 shall protect the public interest served by the regulations at
 95 issue and be the appropriate relief necessary to prevent the
 96 governmental regulatory effort from inordinately burdening the
 97 real property. Settlement offers made pursuant to paragraph (c)
 98 shall be presumed to protect the public interest.

99 2. When a governmental entity enters into a settlement
 100 agreement under this section which would have the effect of

101 | contravening the application of a statute as it would otherwise
102 | apply to the subject real property, the governmental entity and
103 | the property owner shall jointly file an action in the circuit
104 | court where the real property is located for approval of the
105 | settlement agreement by the court to ensure that the relief
106 | granted protects the public interest served by the statute at
107 | issue and is the appropriate relief necessary to prevent the
108 | governmental regulatory effort from inordinately burdening the
109 | real property.

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

115 | (5) (a) During the 90-day-notice period ~~or the 150-day-~~
116 | ~~notice period~~, unless a settlement offer is accepted by the
117 | property owner, each of the governmental entities provided
118 | notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a
119 | written statement of allowable uses identifying the allowable
120 | uses to which the subject property may be put. The failure of
121 | the governmental entity to issue a statement of allowable uses
122 | during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~
123 | ~~period~~ shall be deemed a denial for purposes of allowing a
124 | property owner to file an action in the circuit court under this
125 | section. If a written statement of allowable uses is issued, it

126 | constitutes the last prerequisite to judicial review for the
127 | purposes of the judicial proceeding created by this section,
128 | notwithstanding the availability of other administrative
129 | remedies.

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

139 | (6) (a) The circuit court shall determine whether an
140 | existing use of the real property or a vested right to a
141 | specific use of the real property existed and, if so, whether,
142 | considering the settlement offer and statement of allowable
143 | uses, the governmental entity or entities have inordinately
144 | burdened the real property. If the actions of more than one
145 | governmental entity, considering any settlement offers and
146 | statement of allowable uses, are responsible for the action that
147 | imposed the inordinate burden on the real property of the
148 | property owner, the court shall determine the percentage of
149 | responsibility each such governmental entity bears with respect
150 | to the inordinate burden. A governmental entity may take an

151 interlocutory appeal of the court's determination that the
152 action of the governmental entity has resulted in an inordinate
153 burden. An interlocutory appeal does not automatically stay the
154 proceedings; however, the court may stay the proceedings during
155 the pendency of the interlocutory appeal. If the governmental
156 entity does not prevail in the interlocutory appeal, the court
157 shall award to the prevailing property owner the costs and a
158 reasonable attorney fee incurred by the property owner in the
159 interlocutory appeal.

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

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

186 (c)1. In any action filed pursuant to this section, the
187 property owner is entitled to recover reasonable costs and
188 attorney fees incurred by the property owner, from the
189 governmental entity or entities, according to their
190 proportionate share as determined by the court, from the date of
191 the presentation of the claim to the head of the governmental
192 entity pursuant to paragraph (4) (a) ~~the filing of the circuit~~
193 ~~court action~~, if the property owner prevails in the action ~~and~~
194 ~~the court determines that the settlement offer, including the~~
195 ~~statement of allowable uses, of the governmental entity or~~
196 ~~entities did not constitute a bona fide offer to the property~~
197 ~~owner which reasonably would have resolved the claim, based upon~~
198 ~~the knowledge available to the governmental entity or entities~~
199 ~~and the property owner during the 90-day-notice period or the~~
200 ~~150-day-notice period.~~

201 2. In any action filed pursuant to this section, the
202 governmental entity or entities are entitled to recover
203 reasonable costs and attorney fees incurred by the governmental
204 entity or entities from the date of the filing of the circuit
205 court action, if the governmental entity or entities prevail in
206 the action and the court determines that the property owner did
207 not accept a bona fide settlement offer, including the statement
208 of allowable uses, which reasonably would have resolved the
209 claim fairly to the property owner if the settlement offer had
210 been accepted by the property owner, based upon the knowledge
211 available to the governmental entity or entities and the
212 property owner during the 90-day-notice period ~~or the 150-day-~~
213 ~~notice period.~~

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

224 (d) Within 15 days after the execution of any settlement
225 pursuant to this section, or the issuance of any judgment

226 | pursuant to this section, the governmental entity shall provide
227 | a copy of the settlement or judgment to the Department of Legal
228 | Affairs.

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

233 | (a) For purposes of determining when this 1-year claim
234 | period accrues:

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

251 any rights established under this section.

252 b. If the notice required in sub-subparagraph a. is not
253 provided to the property owner, the property owner may at any
254 time after enactment notify the head of the governmental entity
255 in writing via certified mail and, if available, e-mail that the
256 property owner deems the impact of the law or regulation on the
257 property owner's real property to be clear and unequivocal in
258 its terms and, as such, restrictive of uses allowed on the
259 property before the enactment. Within 45 days after receipt of a
260 notice under this sub-subparagraph, the governmental entity in
261 receipt of the notice must respond in writing via certified mail
262 and, if available, e-mail to describe the limitations imposed on
263 the property by the law or regulation. The property owner is not
264 required to formally pursue an application for a development
265 order, development permit, or building permit, as such will be
266 deemed a waste of resources and shall not be a prerequisite to
267 bringing a claim pursuant to paragraph (4) (a). However, any such
268 claim must be filed within 1 year after the date of the property
269 owner's receipt of the notice from the governmental entity of
270 the limitations on use imposed on the real property.

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

274 Section 2. Paragraphs (c) through (e) of subsection (1) of
275 section 70.45, Florida Statutes, are redesignated as paragraphs

276 (d) through (f), respectively, a new paragraph (c) is added to
277 that subsection, and present paragraph (c) of that subsection
278 and subsections (2), (4), and (5) of that section are amended,
279 to read:

280 70.45 Governmental exactions.—

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

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

286 (d)-(e) "Prohibited exaction" means any condition imposed
287 by a governmental entity on a property owner's proposed use of
288 real property that lacks an essential nexus to a legitimate
289 public purpose and is not roughly proportionate to the impacts
290 of the proposed use that the governmental entity seeks to avoid,
291 minimize, or mitigate.

292 (2) In addition to other remedies available in law or
293 equity, a property owner may bring an action in a court of
294 competent jurisdiction under this section to declare a
295 prohibited exaction invalid and recover damages caused by a
296 prohibited exaction. Such action may ~~not~~ be brought by a
297 property owner at the property owner's discretion, either when
298 ~~until~~ a prohibited exaction is actually imposed or when it is
299 required in writing as a final condition of approval for the
300 requested use of real property. The right to bring an action

301 under this section may not be waived. This section does not
302 apply to impact fees adopted under s. 163.31801 or non-ad
303 valorem assessments as defined in s. 197.3632.

304 (4) For each claim filed under this section, the
305 governmental entity has the burden of proving that the
306 challenged exaction has an essential nexus to a legitimate
307 public purpose and is roughly proportionate to the impacts of
308 the proposed use that the governmental entity is seeking to
309 avoid, minimize, or mitigate. The property owner has the burden
310 of proving damages that result from a prohibited exaction.

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

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

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

321 337.25 Acquisition, lease, and disposal of real and
322 personal property.—

323 (4) The department may convey, in the name of the state,
324 any land, building, or other property, real or personal, which
325 was acquired under subsection (1) and which the department has

326 | determined is not needed for the construction, operation, and
327 | maintenance of a transportation facility. When such a
328 | determination has been made, property may be disposed of through
329 | negotiations, sealed competitive bids, auctions, or any other
330 | means the department deems to be in its best interest, with due
331 | advertisement for property valued by the department at greater
332 | than \$10,000. A sale may not occur at a price less than the
333 | department's current estimate of value, except as provided in
334 | paragraphs (a)-(d). The department may afford a right of first
335 | refusal to the local government or other political subdivision
336 | in the jurisdiction in which the parcel is situated, except in a
337 | conveyance transacted under paragraph (a), paragraph (c), or
338 | paragraph (e). Notwithstanding any provision of this section to
339 | the contrary, before any conveyance under this subsection may be
340 | made, except a conveyance under paragraph (a) or paragraph (c),
341 | the department shall first afford a right of first refusal to
342 | the previous property owner for the department's current
343 | estimate of value of the property. The right of first refusal
344 | shall be made in writing and sent to the previous owner via
345 | certified mail or hand delivery, effective upon receipt. The
346 | right of first refusal shall provide the previous owner with a
347 | minimum of 15 days to exercise the right in writing and be sent
348 | to the originator of the offer via certified mail or hand
349 | delivery, effective upon dispatch. The previous owner shall have
350 | a minimum of 60 days after exercising its right of first refusal

351 to close. If the previous owner does not exercise its right of
352 first refusal, the department may not deviate in any material
353 respect from the offer made to the previous owner unless it
354 first provides the previous owner with the right of first
355 refusal under the new terms. The same procedure shall apply to
356 any subsequent iterations of the sale terms.

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

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

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

376 | to any other person must be for at least the department's
377 | current estimate of value.

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

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

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