



296194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2021	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Albritton) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (d) and (g) of subsection (3),  
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.—

(3) For purposes of this section:

(d) The term "action of a governmental entity" means a



11 specific action of a governmental entity which affects real  
12 property, including acting ~~action~~ on an application or permit or  
13 adopting or enforcing any ordinance, resolution, regulation,  
14 rule, or policy.

15 (g) The term "real property" means land and includes any  
16 surface, subsurface, or mineral estates and any appurtenances  
17 and improvements to the land, including any other relevant  
18 interest in the real property in which the property owner has a  
19 relevant interest. The term includes only parcels that are the  
20 subject of and directly impacted by the action of a governmental  
21 entity.

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

39 (b) The governmental entity shall provide written notice of



296194

40 the claim to all parties to any administrative action that gave  
41 rise to the claim, and to owners of real property contiguous to  
42 the owner's property at the addresses listed on the most recent  
43 county tax rolls. Within 15 days after the claim is presented,  
44 the governmental entity shall report the claim in writing to the  
45 Department of Legal Affairs, and shall provide the department  
46 with the name, address, and telephone number of the employee of  
47 the governmental entity from whom additional information may be  
48 obtained about the claim during the pendency of the claim and  
49 any subsequent judicial action.

50 (c) During the 90-day-notice period ~~or the 150-day-notice~~  
51 ~~period~~, unless extended by agreement of the parties, the  
52 governmental entity shall make a written settlement offer to  
53 effectuate:

54 1. An adjustment of land development or permit standards or  
55 other provisions controlling the development or use of land.

56 2. Increases or modifications in the density, intensity, or  
57 use of areas of development.

58 3. The transfer of developmental rights.

59 4. Land swaps or exchanges.

60 5. Mitigation, including payments in lieu of onsite  
61 mitigation.

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

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

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

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

68 10. Purchase of the real property, or an interest therein,



69 by an appropriate governmental entity or payment of  
70 compensation.

71 11. No changes to the action of the governmental entity.  
72

73 If the property owner accepts a settlement offer, ~~either~~ before  
74 or after filing an action, the governmental entity may implement  
75 the settlement offer by appropriate development agreement; by  
76 issuing a variance, a special exception, or any other  
77 extraordinary relief; or by any other appropriate method,  
78 subject to paragraph (d).

79 (d)1. When a governmental entity enters into a settlement  
80 agreement under this section which would have the effect of a  
81 modification, variance, or a special exception to the  
82 application of a rule, regulation, or ordinance as it would  
83 otherwise apply to the subject real property, the relief granted  
84 shall protect the public interest served by the regulations at  
85 issue and be the appropriate relief necessary to prevent the  
86 governmental regulatory effort from inordinately burdening the  
87 real property. Settlement offers made pursuant to paragraph (c)  
88 shall be presumed to protect the public interest.

89 2. When a governmental entity enters into a settlement  
90 agreement under this section which would have the effect of  
91 contravening the application of a statute as it would otherwise  
92 apply to the subject real property, the governmental entity and  
93 the property owner shall jointly file an action in the circuit  
94 court where the real property is located for approval of the  
95 settlement agreement by the court to ensure that the relief  
96 granted protects the public interest served by the statute at  
97 issue and is the appropriate relief necessary to prevent the



296194

98 governmental regulatory effort from inordinately burdening the  
99 real property.

100

101 This paragraph applies to any settlement reached between a  
102 property owner and a governmental entity regardless of when the  
103 settlement agreement was entered so long as the agreement fully  
104 resolves all claims asserted under this section.

105 (5) (a) During the 90-day-notice period ~~or the 150-day-~~  
106 ~~notice period~~, unless a settlement offer is accepted by the  
107 property owner, each of the governmental entities provided  
108 notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a  
109 written statement of allowable uses identifying the allowable  
110 uses to which the subject property may be put. The failure of  
111 the governmental entity to issue a statement of allowable uses  
112 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~  
113 ~~period~~ shall be deemed a denial for purposes of allowing a  
114 property owner to file an action in the circuit court under this  
115 section. If a written statement of allowable uses is issued, it  
116 constitutes the last prerequisite to judicial review for the  
117 purposes of the judicial proceeding created by this section,  
118 notwithstanding the availability of other administrative  
119 remedies.

120 (b) If the property owner rejects the settlement offer and  
121 the statement of allowable uses of the governmental entity or  
122 entities, the property owner may file a claim for compensation  
123 in the circuit court, a copy of which shall be served  
124 contemporaneously on the head of each of the governmental  
125 entities that made a settlement offer and a statement of  
126 allowable uses that was rejected by the property owner. Actions



296194

127 under this section shall be brought only in the county where the  
128 real property is located.

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

150 (b) Following its determination of the percentage of  
151 responsibility of each governmental entity, and following the  
152 resolution of any interlocutory appeal, the court shall impanel  
153 a jury to determine the total amount of compensation to the  
154 property owner for the loss in value due to the inordinate  
155 burden to the real property. The property owner retains the



156 option to forego a jury and elect to have the court determine  
157 the award of compensation. The award of compensation shall be  
158 determined by calculating the difference in the fair market  
159 value of the real property, as it existed at the time of the  
160 governmental action at issue, as though the owner had the  
161 ability to attain the reasonable investment-backed expectation  
162 or was not left with uses that are unreasonable, whichever the  
163 case may be, and the fair market value of the real property, as  
164 it existed at the time of the governmental action at issue, as  
165 inordinately burdened, considering the settlement offer together  
166 with the statement of allowable uses, of the governmental entity  
167 or entities. In determining the award of compensation,  
168 consideration may not be given to business damages relative to  
169 any development, activity, or use that the action of the  
170 governmental entity or entities, considering the settlement  
171 offer together with the statement of allowable uses has  
172 restricted, limited, or prohibited. The award of compensation  
173 shall include a reasonable award of prejudgment interest from  
174 the date the claim was presented to the governmental entity or  
175 entities as provided in subsection (4).

176 (c)1. In any action filed pursuant to this section, the  
177 property owner is entitled to recover reasonable costs and  
178 attorney fees incurred by the property owner, from the  
179 governmental entity or entities, according to their  
180 proportionate share as determined by the court, from the date of  
181 the presentation of the claim to the head of the governmental  
182 entity pursuant to paragraph (4) (a) ~~the filing of the circuit~~  
183 ~~court action,~~ if the property owner prevails in the action ~~and~~  
184 ~~the court determines that the settlement offer, including the~~



296194

185 ~~statement of allowable uses, of the governmental entity or~~  
186 ~~entities did not constitute a bona fide offer to the property~~  
187 ~~owner which reasonably would have resolved the claim, based upon~~  
188 ~~the knowledge available to the governmental entity or entities~~  
189 ~~and the property owner during the 90-day-notice period or the~~  
190 ~~150-day-notice period.~~

191       2. In any action filed pursuant to this section, the  
192 governmental entity or entities are entitled to recover  
193 reasonable costs and attorney fees incurred by the governmental  
194 entity or entities from the date of the filing of the circuit  
195 court action, if the governmental entity or entities prevail in  
196 the action and the court determines that the property owner did  
197 not accept a bona fide settlement offer, including the statement  
198 of allowable uses, which reasonably would have resolved the  
199 claim fairly to the property owner if the settlement offer had  
200 been accepted by the property owner, based upon the knowledge  
201 available to the governmental entity or entities and the  
202 property owner during the 90-day-notice period ~~or the 150-day-~~  
203 ~~notice period.~~

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





296194

214 (d) Within 15 days after the execution of any settlement  
215 pursuant to this section, or the issuance of any judgment  
216 pursuant to this section, the governmental entity shall provide  
217 a copy of the settlement or judgment to the Department of Legal  
218 Affairs.

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

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

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

242 b. If the notice required in sub-subparagraph a. is not



296194

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

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

264 Section 2. Present paragraphs (c), (d), and (e) of  
265 subsection (1) of section 70.45, Florida Statutes, are  
266 redesignated as paragraphs (d), (e), and (f), respectively, a  
267 new paragraph (c) is added to that subsection, and subsections  
268 (2), (4), and (5) of that section are amended, to read:

269 70.45 Governmental exactions.—

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

271 (c) "Imposed" or "imposition" as it relates to a prohibited



296194

272 exaction or condition of approval refers to the time at which  
273 the property owner must comply with the prohibited exaction or  
274 condition of approval.

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

287 (4) For each claim filed under this section, the  
288 governmental entity has the burden of proving that the  
289 challenged exaction has an essential nexus to a legitimate  
290 public purpose and is roughly proportionate to the impacts of  
291 the proposed use that the governmental entity is seeking to  
292 avoid, minimize, or mitigate. The property owner has the burden  
293 of proving damages that result from a prohibited exaction.

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

299 Section 3. The amendments made by this act to ss.  
300 70.001(4), (5), (6) and (11) and 70.45, Florida Statutes, apply



296194

301 only to claims made in response to actions taken by governmental  
302 entities on or after July 1, 2021.

303 Section 4. Paragraph (g) of subsection (2) of section  
304 70.51, Florida Statutes, is amended to read:

305 70.51 Land use and environmental dispute resolution.-

306 (2) As used in this section, the term:

307 (g) "Land" or "real property" has the same meaning as in s.  
308 70.001(3)(g) means land and includes any appurtenances and  
309 improvements to the land, including any other relevant real  
310 property in which the owner had a relevant interest.

311 Section 5. This act shall take effect July 1, 2021.

312

313 ===== T I T L E A M E N D M E N T =====

314 And the title is amended as follows:

315 Delete everything before the enacting clause  
316 and insert:

317 A bill to be entitled  
318 An act relating to relief from burdens on real  
319 property rights; amending s. 70.001, F.S.; revising  
320 the definitions of the terms "action of a governmental  
321 entity" and "real property"; revising notice of claim  
322 requirements for property owners; creating a  
323 presumption that certain settlement offers protect the  
324 public interest; specifying that property owners  
325 retain the option to have a court determine awards of  
326 compensation; authorizing property owners to bring  
327 claims against governmental entities in certain  
328 circumstances; providing that property owners are not  
329 required to submit formal development applications or



296194

330 proceed through formal application processes to bring  
331 claims in specified circumstances; amending s. 70.45,  
332 F.S.; defining the terms "imposed" or "imposition";  
333 authorizing property owners to bring actions to  
334 declare prohibited exactions invalid; providing  
335 applicability; amending s. 70.51, F.S.; revising the  
336 definition of the terms "land" or "real property";  
337 providing an effective date.

338  
339 WHEREAS, the Legislature enacted the Bert J. Harris, Jr.,  
340 Private Property Rights Protection Act in 1995 to create a new  
341 cause of action to protect private property rights, and

342 WHEREAS, this state has historically defined and recognized  
343 property rights to include subsurface estates consistent with  
344 *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and

345 WHEREAS, this bill clarifies the definition of property in  
346 the act so that the original intent of the act is preserved and  
347 the act protects the property rights of all landowners in this  
348 state, and

349 WHEREAS, this state has an additional interest in the  
350 timely resolution of claims which are brought under the act, and

351 WHEREAS, landowners and governmental entities benefit  
352 equally by knowing when a claim under the act may be asserted so  
353 as to avoid unnecessary future litigation, NOW, THEREFORE,