

1 A bill to be entitled
2 An act relating to relief from burdens on real
3 property rights; amending s. 70.001, F.S.; revising
4 the definitions of the terms "action of a governmental
5 entity" and "real property"; revising notice of claim
6 requirements for property owners; creating a
7 presumption that certain settlement offers protect the
8 public interest; specifying that property owners
9 retain the option to have a court determine awards of
10 compensation; authorizing property owners to bring
11 claims against governmental entities in certain
12 circumstances; providing that property owners are not
13 required to submit formal development applications or
14 proceed through formal application processes to bring
15 claims in specified circumstances; amending s. 70.45,
16 F.S.; defining the terms "imposed" or "imposition";
17 authorizing property owners to bring actions to
18 declare prohibited exactions invalid; providing
19 applicability; amending s. 70.51, F.S.; revising the
20 definition of the terms "land" or "real property";
21 providing an effective date.

22
23 WHEREAS, the Legislature enacted the Bert J. Harris, Jr.,
24 Private Property Rights Protection Act in 1995 to create a new
25 cause of action to protect private property rights, and

26 WHEREAS, the state has historically defined and recognized
 27 property rights to include subsurface estates consistent with
 28 *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and

29 WHEREAS, the state has an additional interest in the timely
 30 resolution of claims which are brought under the act, and

31 WHEREAS, landowners and governmental entities benefit
 32 equally by knowing when a claim under the act may be asserted so
 33 as to avoid unnecessary future litigation, and

34 WHEREAS, this act clarifies the definition of property so
 35 that the original intent of the act is preserved and the act
 36 protects the property rights of all landowners in the state,
 37 NOW, THEREFORE,

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

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 41 Section 1. Paragraphs (d) and (g) of subsection (3),
 42 subsections (4), (5), and (6), and paragraph (a) of subsection
 43 (11) of section 70.001, Florida Statutes, are amended to read:

44 70.001 Private property rights protection.—

45 (3) For purposes of this section:

46 (d) The term "action of a governmental entity" means a
 47 specific action of a governmental entity which affects real
 48 property, including acting ~~action~~ on an application or a permit
 49 or adopting or enforcing any ordinance, resolution, regulation,
 50 rule, or policy.

51 (g) The term "real property" means land and includes any
52 surface, subsurface, or mineral estates and any appurtenances
53 and improvements to the land, including any other relevant
54 interest in the real property in which the property owner has a
55 relevant interest. The term includes only parcels that are the
56 subject of and directly impacted by the action of a governmental
57 entity.

58 (4) (a) Not fewer ~~less~~ than 90 ~~150~~ days before ~~prior to~~
59 filing an action under this section against a governmental
60 entity, a property owner who seeks compensation under this
61 section must present the claim in writing to the head of the
62 governmental entity, ~~except that if the property is classified~~
63 ~~as agricultural pursuant to s. 193.461, the notice period is 90~~
64 ~~days~~. The property owner must submit, along with the claim, a
65 written bona fide, valid appraisal report as defined in s.
66 475.611(1)(e) that supports the claim and demonstrates the loss
67 in fair market value to the real property. If the action of
68 government is the culmination of a process that involves more
69 than one governmental entity, or if a complete resolution of all
70 relevant issues, in the view of the property owner or in the
71 view of a governmental entity to whom a claim is presented,
72 requires the active participation of more than one governmental
73 entity, the property owner shall present the claim as provided
74 in this section to each of the governmental entities.

75 (b) The governmental entity shall provide written notice

76 | of the claim to all parties to any administrative action that
77 | gave rise to the claim, and to owners of real property
78 | contiguous to the owner's property at the addresses listed on
79 | the most recent county tax rolls. Within 15 days after the claim
80 | is presented, the governmental entity shall report the claim in
81 | writing to the Department of Legal Affairs, and shall provide
82 | the department with the name, address, and telephone number of
83 | the employee of the governmental entity from whom additional
84 | information may be obtained about the claim during the pendency
85 | of the claim and any subsequent judicial action.

86 | (c) During the 90-day-notice period ~~or the 150-day-notice~~
87 | ~~period~~, unless extended by agreement of the parties, the
88 | governmental entity shall make a written settlement offer to
89 | effectuate:

90 | 1. An adjustment of land development or permit standards
91 | or other provisions controlling the development or use of land.

92 | 2. Increases or modifications in the density, intensity,
93 | or use of areas of development.

94 | 3. The transfer of developmental rights.

95 | 4. Land swaps or exchanges.

96 | 5. Mitigation, including payments in lieu of onsite
97 | mitigation.

98 | 6. Location on the least sensitive portion of the
99 | property.

100 | 7. Conditioning the amount of development or use

101 permitted.

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

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

106 10. Purchase of the real property, or an interest therein,
107 by an appropriate governmental entity or payment of
108 compensation.

109 11. No changes to the action of the governmental entity.
110

111 If the property owner accepts a settlement offer, ~~either~~ before
112 or after filing an action, the governmental entity may implement
113 the settlement offer by appropriate development agreement; by
114 issuing a variance, a special exception, or any other
115 extraordinary relief; or by any other appropriate method,
116 subject to paragraph (d).

117 (d)1. When a governmental entity enters into a settlement
118 agreement under this section which would have the effect of a
119 modification, variance, or a special exception to the
120 application of a rule, regulation, or ordinance as it would
121 otherwise apply to the subject real property, the relief granted
122 shall protect the public interest served by the regulations at
123 issue and be the appropriate relief necessary to prevent the
124 governmental regulatory effort from inordinately burdening the
125 real property. Settlement offers made under paragraph (c) shall

126 | be presumed to protect the public interest.

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

138 |
 139 | This paragraph applies to any settlement reached between a
 140 | property owner and a governmental entity regardless of when the
 141 | settlement agreement was entered so long as the agreement fully
 142 | resolves all claims asserted under this section.

143 | (5) (a) During the 90-day-notice period ~~or the 150-day-~~
 144 | ~~notice period~~, unless a settlement offer is accepted by the
 145 | property owner, each of the governmental entities provided
 146 | notice under subsection (4) ~~pursuant to paragraph (4) (a)~~ shall
 147 | issue a written statement of allowable uses identifying the
 148 | allowable uses to which the subject property may be put. The
 149 | failure of the governmental entity to issue a statement of
 150 | allowable uses during the ~~applicable~~ 90-day-notice period ~~or~~

151 ~~150-day-notice period~~ shall be deemed a denial for purposes of
152 allowing a property owner to file an action in the circuit court
153 under this section. If a written statement of allowable uses is
154 issued, it constitutes the last prerequisite to judicial review
155 for the purposes of the judicial proceeding created by this
156 section, notwithstanding the availability of other
157 administrative remedies.

158 (b) If the property owner rejects the settlement offer and
159 the statement of allowable uses of the governmental entity or
160 entities, the property owner may file a claim for compensation
161 in the circuit court, a copy of which shall be served
162 contemporaneously on the head of each of the governmental
163 entities that made a settlement offer and a statement of
164 allowable uses that was rejected by the property owner. Actions
165 under this section shall be brought only in the county where the
166 real property is located.

167 (6) (a) The circuit court shall determine whether an
168 existing use of the real property or a vested right to a
169 specific use of the real property existed and, if so, whether,
170 considering the settlement offer and statement of allowable
171 uses, the governmental entity or entities have inordinately
172 burdened the real property. If the actions of more than one
173 governmental entity, considering any settlement offers and
174 statement of allowable uses, are responsible for the action that
175 imposed the inordinate burden on the real property of the

176 property owner, the court shall determine the percentage of
177 responsibility each such governmental entity bears with respect
178 to the inordinate burden. A governmental entity may take an
179 interlocutory appeal of the court's determination that the
180 action of the governmental entity has resulted in an inordinate
181 burden. An interlocutory appeal does not automatically stay the
182 proceedings; however, the court may stay the proceedings during
183 the pendency of the interlocutory appeal. If the governmental
184 entity does not prevail in the interlocutory appeal, the court
185 shall award to the prevailing property owner the costs and a
186 reasonable attorney fee incurred by the property owner in the
187 interlocutory appeal.

188 (b) Following its determination of the percentage of
189 responsibility of each governmental entity, and following the
190 resolution of any interlocutory appeal, the court shall impanel
191 a jury to determine the total amount of compensation to the
192 property owner for the loss in value due to the inordinate
193 burden to the real property. The property owner retains the
194 option to forego a jury and elect to have the court determine
195 the award of compensation. The award of compensation shall be
196 determined by calculating the difference in the fair market
197 value of the real property, as it existed at the time of the
198 governmental action at issue, as though the owner had the
199 ability to attain the reasonable investment-backed expectation
200 or was not left with uses that are unreasonable, whichever the

201 case may be, and the fair market value of the real property, as
202 it existed at the time of the governmental action at issue, as
203 inordinately burdened, considering the settlement offer together
204 with the statement of allowable uses, of the governmental entity
205 or entities. In determining the award of compensation,
206 consideration may not be given to business damages relative to
207 any development, activity, or use that the action of the
208 governmental entity or entities, considering the settlement
209 offer together with the statement of allowable uses has
210 restricted, limited, or prohibited. The award of compensation
211 shall include a reasonable award of prejudgment interest from
212 the date the claim was presented to the governmental entity or
213 entities as provided in subsection (4).

214 (c)1. In any action filed pursuant to this section, the
215 property owner is entitled to recover reasonable costs and
216 attorney fees incurred by the property owner, from the
217 governmental entity or entities, according to their
218 proportionate share as determined by the court, from the date of
219 the presentation of the claim to the head of the governmental
220 entity under paragraph (4) (a) ~~the filing of the circuit court~~
221 ~~action~~, if the property owner prevails in the action ~~and the~~
222 ~~court determines that the settlement offer, including the~~
223 ~~statement of allowable uses, of the governmental entity or~~
224 ~~entities did not constitute a bona fide offer to the property~~
225 ~~owner which reasonably would have resolved the claim, based upon~~

226 ~~the knowledge available to the governmental entity or entities~~
227 ~~and the property owner during the 90-day notice period or the~~
228 ~~150-day notice period.~~

229 2. In any action filed pursuant to this section, the
230 governmental entity or entities are entitled to recover
231 reasonable costs and attorney fees incurred by the governmental
232 entity or entities from the date of the filing of the circuit
233 court action, if the governmental entity or entities prevail in
234 the action and the court determines that the property owner did
235 not accept a bona fide settlement offer, including the statement
236 of allowable uses, which reasonably would have resolved the
237 claim fairly to the property owner if the settlement offer had
238 been accepted by the property owner, based upon the knowledge
239 available to the governmental entity or entities and the
240 property owner during the 90-day notice period ~~or the 150-day~~
241 ~~notice period.~~

242 3. The determination of total reasonable costs and
243 attorney fees pursuant to this paragraph shall be made by the
244 court and not by the jury. Any proposed settlement offer or any
245 proposed decision, except for the final written settlement offer
246 or the final written statement of allowable uses, and any
247 negotiations or rejections in regard to the formulation either
248 of the settlement offer or the statement of allowable uses, are
249 inadmissible in the subsequent proceeding established by this
250 section except for the purposes of the determination pursuant to

251 | this paragraph.

252 | (d) Within 15 days after the execution of any settlement
253 | pursuant to this section, or the issuance of any judgment
254 | pursuant to this section, the governmental entity shall provide
255 | a copy of the settlement or judgment to the Department of Legal
256 | Affairs.

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

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

263 | 1.a. A law or regulation is first applied upon enactment
264 | and notice as provided for in this sub-subparagraph ~~subparagraph~~
265 | if the impact of the law or regulation on the real property is
266 | clear and unequivocal in its terms and notice is provided by
267 | mail to the affected property owner or registered agent at the
268 | address referenced in the jurisdiction's most current ad valorem
269 | tax records. The fact that the law or regulation could be
270 | modified, varied, or altered under any other process or
271 | procedure does not preclude the impact of the law or regulation
272 | on a property from being clear or unequivocal pursuant to this
273 | sub-subparagraph ~~subparagraph~~. Any notice under this sub-
274 | subparagraph ~~subparagraph~~ shall be provided after the enactment
275 | of the law or regulation and shall inform the property owner or

276 registered agent that the law or regulation may impact the
277 property owner's existing property rights and that the property
278 owner may have only 1 year after ~~from~~ receipt of the notice to
279 pursue any rights established under this section.

280 b. If the notice required in sub-subparagraph a. is not
281 provided to the property owner, the property owner may at any
282 time after enactment notify the head of the governmental entity
283 in writing via certified mail and, if available, e-mail that the
284 property owner deems the impact of the law or regulation on the
285 property owner's real property to be clear and unequivocal in
286 its terms and, as such, restrictive of uses allowed on the
287 property before the enactment. Within 45 days after receipt of a
288 notice under this sub-subparagraph, the governmental entity in
289 receipt of the notice must respond in writing via certified mail
290 and, if available, e-mail to describe the limitations imposed on
291 the property by the law or regulation. The property owner is not
292 required to formally pursue an application for a development
293 order, development permit, or building permit, as such will be
294 deemed a waste of resources and shall not be a prerequisite to
295 bringing a claim under paragraph (4) (a). However, any such claim
296 must be filed within 1 year after the date of the property
297 owner's receipt of the notice from the governmental entity of
298 the limitations on use imposed on the real property.

299 2. Otherwise, the law or regulation is first applied to
300 the property when there is a formal denial of a written request

301 for development or variance.

302 Section 2. Paragraphs (c), (d), and (e) of subsection (1)
303 of section 70.45, Florida Statutes, are redesignated as
304 paragraphs (d), (e), and (f), respectively and subsections (2),
305 (4), and (5) are amended, and a new paragraph (c) is added to
306 subsection (1) of that section, to read:

307 70.45 Governmental exactions.—

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

309 (c) "Imposed" or "imposition" as it relates to a
310 prohibited exaction or condition of approval refers to the time
311 at which the property owner must comply with the prohibited
312 exaction or condition of approval.

313 (2) In addition to other remedies available in law or
314 equity, a property owner may bring an action in a court of
315 competent jurisdiction under this section to declare a
316 prohibited exaction invalid and recover damages caused by a
317 prohibited exaction. Such action may ~~not~~ be brought by a
318 property owner at the property owner's discretion when until a
319 prohibited exaction is actually imposed or when it is required
320 in writing as a final condition of approval for the requested
321 use of real property. The right to bring an action under this
322 section may not be waived. This section does not apply to impact
323 fees adopted under s. 163.31801 or non-ad valorem assessments as
324 defined in s. 197.3632.

325 (4) For each claim filed under this section, the

326 governmental entity has the burden of proving that the
 327 challenged exaction has an essential nexus to a legitimate
 328 public purpose and is roughly proportionate to the impacts of
 329 the proposed use that the governmental entity is seeking to
 330 avoid, minimize, or mitigate. The property owner has the burden
 331 of proving damages that result from a prohibited exaction.

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

337 Section 3. The amendments made by this act to ss.
 338 70.001(4), (5), (6), and (11) and 70.45, Florida Statutes, apply
 339 only to claims made in response to actions taken by governmental
 340 entities on or after July 1, 2021.

341 Section 4. Paragraph (g) of subsection (2) of section
 342 70.51, Florida Statutes, is amended to read:

343 70.51 Land use and environmental dispute resolution.—

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

345 (g) "Land" or "real property" has the same meaning as in
 346 s. 70.001(3)(g) means land and includes any appurtenances and
 347 ~~improvements to the land, including any other relevant real~~
 348 ~~property in which the owner had a relevant interest.~~

349 Section 5. This act shall take effect October 1, 2021.