

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.; specifying  
4           that a property owner entitled to certain relief  
5           retains such entitlement after relinquishing title  
6           under certain circumstances; revising the definitions  
7           of the terms "action of a governmental entity" and  
8           "real property"; revising notice of claim requirements  
9           for property owners; creating a presumption that  
10          certain settlement offers protect the public interest;  
11          specifying that property owners retain the option to  
12          have a court determine awards of compensation;  
13          authorizing property owners to bring claims against  
14          governmental entities in certain circumstances;  
15          providing that property owners are not required to  
16          submit formal development applications or proceed  
17          through formal application processes to bring claims  
18          in specified circumstances; amending s. 70.45, F.S.;  
19          defining the terms "imposed" or "imposition";  
20          authorizing property owners to bring actions to  
21          declare prohibited exactions invalid; providing  
22          applicability; amending s. 70.51, F.S.; revising the  
23          definition of the terms "land" or "real property";  
24          providing an effective date.  
25

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

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

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

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

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

41

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

43

44 Section 1. Subsection (2), paragraphs (d) and (g) of  
 45 subsection (3), subsections (4), (5), and (6), and paragraph (a)  
 46 of subsection (11) of section 70.001, Florida Statutes, are  
 47 amended to read:

48 70.001 Private property rights protection.—

49 (2) When a specific action of a governmental entity has  
 50 inordinately burdened an existing use of real property or a

51 vested right to a specific use of real property, the property  
 52 owner of that real property is entitled to relief, which may  
 53 include compensation for the actual loss to the fair market  
 54 value of the real property caused by the action of government,  
 55 as provided in this section. A property owner entitled to relief  
 56 under this section retains such entitlement to pursue the claim  
 57 if the property owner filed a claim under subsection (4) but  
 58 subsequently relinquishes title to the subject real property  
 59 before the claim reaches a final resolution.

60 (3) For purposes of this section:

61 (d) The term "action of a governmental entity" means a  
 62 specific action of a governmental entity which affects real  
 63 property, including acting ~~action~~ on an application or a permit  
 64 or adopting or enforcing any ordinance, resolution, regulation,  
 65 rule, or policy.

66 (g) The term "real property" means land and includes any  
 67 surface, subsurface, or mineral estates and any appurtenances  
 68 and improvements to the land, including any other relevant  
 69 interest in the real property in which the property owner has a  
 70 relevant interest. The term includes only parcels that are the  
 71 subject of and directly impacted by the action of a governmental  
 72 entity.

73 (4) (a) Not fewer ~~less~~ than 90 ~~150~~ days before ~~prior to~~  
 74 filing an action under this section against a governmental  
 75 entity, a property owner who seeks compensation under this

76 | section must present the claim in writing to the head of the  
77 | governmental entity, ~~except that if the property is classified~~  
78 | ~~as agricultural pursuant to s. 193.461, the notice period is 90~~  
79 | ~~days.~~ The property owner must submit, along with the claim, a  
80 | written bona fide, valid appraisal report as defined in s.  
81 | 475.611(1)(e) that supports the claim and demonstrates the loss  
82 | in fair market value to the real property. If the action of  
83 | government is the culmination of a process that involves more  
84 | than one governmental entity, or if a complete resolution of all  
85 | relevant issues, in the view of the property owner or in the  
86 | view of a governmental entity to whom a claim is presented,  
87 | requires the active participation of more than one governmental  
88 | entity, the property owner shall present the claim as provided  
89 | in this section to each of the governmental entities.

90 | (b) The governmental entity shall provide written notice  
91 | of the claim to all parties to any administrative action that  
92 | gave rise to the claim, and to owners of real property  
93 | contiguous to the owner's property at the addresses listed on  
94 | the most recent county tax rolls. Within 15 days after the claim  
95 | is presented, the governmental entity shall report the claim in  
96 | writing to the Department of Legal Affairs, and shall provide  
97 | the department with the name, address, and telephone number of  
98 | the employee of the governmental entity from whom additional  
99 | information may be obtained about the claim during the pendency  
100 | of the claim and any subsequent judicial action.

101 (c) During the 90-day-notice period ~~or the 150-day-notice~~  
 102 ~~period~~, unless extended by agreement of the parties, the  
 103 governmental entity shall make a written settlement offer to  
 104 effectuate:

105 1. An adjustment of land development or permit standards  
 106 or other provisions controlling the development or use of land.

107 2. Increases or modifications in the density, intensity,  
 108 or use of areas of development.

109 3. The transfer of developmental rights.

110 4. Land swaps or exchanges.

111 5. Mitigation, including payments in lieu of onsite  
 112 mitigation.

113 6. Location on the least sensitive portion of the  
 114 property.

115 7. Conditioning the amount of development or use  
 116 permitted.

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

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

121 10. Purchase of the real property, or an interest therein,  
 122 by an appropriate governmental entity or payment of  
 123 compensation.

124 11. No changes to the action of the governmental entity.  
 125

126 If the property owner accepts a settlement offer, ~~either~~ before  
 127 or after filing an action, the governmental entity may implement  
 128 the settlement offer by appropriate development agreement; by  
 129 issuing a variance, a special exception, or any other  
 130 extraordinary relief; or by any other appropriate method,  
 131 subject to paragraph (d).

132 (d)1. When a governmental entity enters into a settlement  
 133 agreement under this section which would have the effect of a  
 134 modification, variance, or a special exception to the  
 135 application of a rule, regulation, or ordinance as it would  
 136 otherwise apply to the subject real property, the relief granted  
 137 shall protect the public interest served by the regulations at  
 138 issue and be the appropriate relief necessary to prevent the  
 139 governmental regulatory effort from inordinately burdening the  
 140 real property. Settlement offers made under paragraph (c) shall  
 141 be presumed to protect the public interest.

142 2. When a governmental entity enters into a settlement  
 143 agreement under this section which would have the effect of  
 144 contravening the application of a statute as it would otherwise  
 145 apply to the subject real property, the governmental entity and  
 146 the property owner shall jointly file an action in the circuit  
 147 court where the real property is located for approval of the  
 148 settlement agreement by the court to ensure that the relief  
 149 granted protects the public interest served by the statute at  
 150 issue and is the appropriate relief necessary to prevent the

151 governmental regulatory effort from inordinately burdening the  
152 real property.

153

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

158 (5) (a) During the 90-day-notice period ~~or the 150-day-~~  
159 ~~notice period~~, unless a settlement offer is accepted by the  
160 property owner, each of the governmental entities provided  
161 notice under subsection (4) ~~pursuant to paragraph (4) (a)~~ shall  
162 issue a written statement of allowable uses identifying the  
163 allowable uses to which the subject property may be put. The  
164 failure of the governmental entity to issue a statement of  
165 allowable uses during the ~~applicable~~ 90-day-notice period ~~or~~  
166 ~~150-day-notice period~~ shall be deemed a denial for purposes of  
167 allowing a property owner to file an action in the circuit court  
168 under this section. If a written statement of allowable uses is  
169 issued, it constitutes the last prerequisite to judicial review  
170 for the purposes of the judicial proceeding created by this  
171 section, notwithstanding the availability of other  
172 administrative remedies.

173 (b) If the property owner rejects the settlement offer and  
174 the statement of allowable uses of the governmental entity or  
175 entities, the property owner may file a claim for compensation

176 | in the circuit court, a copy of which shall be served  
177 | contemporaneously on the head of each of the governmental  
178 | entities that made a settlement offer and a statement of  
179 | allowable uses that was rejected by the property owner. Actions  
180 | under this section shall be brought only in the county where the  
181 | real property is located.

182 |       (6) (a) The circuit court shall determine whether an  
183 | existing use of the real property or a vested right to a  
184 | specific use of the real property existed and, if so, whether,  
185 | considering the settlement offer and statement of allowable  
186 | uses, the governmental entity or entities have inordinately  
187 | burdened the real property. If the actions of more than one  
188 | governmental entity, considering any settlement offers and  
189 | statement of allowable uses, are responsible for the action that  
190 | imposed the inordinate burden on the real property of the  
191 | property owner, the court shall determine the percentage of  
192 | responsibility each such governmental entity bears with respect  
193 | to the inordinate burden. A governmental entity may take an  
194 | interlocutory appeal of the court's determination that the  
195 | action of the governmental entity has resulted in an inordinate  
196 | burden. An interlocutory appeal does not automatically stay the  
197 | proceedings; however, the court may stay the proceedings during  
198 | the pendency of the interlocutory appeal. If the governmental  
199 | entity does not prevail in the interlocutory appeal, the court  
200 | shall award to the prevailing property owner the costs and a



201 reasonable attorney fee incurred by the property owner in the  
202 interlocutory appeal.

203 (b) Following its determination of the percentage of  
204 responsibility of each governmental entity, and following the  
205 resolution of any interlocutory appeal, the court shall impanel  
206 a jury to determine the total amount of compensation to the  
207 property owner for the loss in value due to the inordinate  
208 burden to the real property. The property owner retains the  
209 option to forego a jury and elect to have the court determine  
210 the award of compensation. The award of compensation shall be  
211 determined by calculating the difference in the fair market  
212 value of the real property, as it existed at the time of the  
213 governmental action at issue, as though the owner had the  
214 ability to attain the reasonable investment-backed expectation  
215 or was not left with uses that are unreasonable, whichever the  
216 case may be, and the fair market value of the real property, as  
217 it existed at the time of the governmental action at issue, as  
218 inordinately burdened, considering the settlement offer together  
219 with the statement of allowable uses, of the governmental entity  
220 or entities. In determining the award of compensation,  
221 consideration may not be given to business damages relative to  
222 any development, activity, or use that the action of the  
223 governmental entity or entities, considering the settlement  
224 offer together with the statement of allowable uses has  
225 restricted, limited, or prohibited. The award of compensation

226 shall include a reasonable award of prejudgment interest from  
 227 the date the claim was presented to the governmental entity or  
 228 entities as provided in subsection (4).

229 (c)1. In any action filed pursuant to this section, the  
 230 property owner is entitled to recover reasonable costs and  
 231 attorney fees incurred by the property owner, from the  
 232 governmental entity or entities, according to their  
 233 proportionate share as determined by the court, from the date of  
 234 the presentation of the claim to the head of the governmental  
 235 entity under paragraph (4) (a) ~~the filing of the circuit court~~  
 236 ~~action~~, if the property owner prevails in the action ~~and the~~  
 237 ~~court determines that the settlement offer, including the~~  
 238 ~~statement of allowable uses, of the governmental entity or~~  
 239 ~~entities did not constitute a bona fide offer to the property~~  
 240 ~~owner which reasonably would have resolved the claim, based upon~~  
 241 ~~the knowledge available to the governmental entity or entities~~  
 242 ~~and the property owner during the 90-day notice period or the~~  
 243 ~~150-day notice period.~~

244 2. In any action filed pursuant to this section, the  
 245 governmental entity or entities are entitled to recover  
 246 reasonable costs and attorney fees incurred by the governmental  
 247 entity or entities from the date of the filing of the circuit  
 248 court action, if the governmental entity or entities prevail in  
 249 the action and the court determines that the property owner did  
 250 not accept a bona fide settlement offer, including the statement

251 of allowable uses, which reasonably would have resolved the  
252 claim fairly to the property owner if the settlement offer had  
253 been accepted by the property owner, based upon the knowledge  
254 available to the governmental entity or entities and the  
255 property owner during the 90-day-notice period ~~or the 150-day-~~  
256 ~~notice period.~~

257 3. The determination of total reasonable costs and  
258 attorney fees pursuant to this paragraph shall be made by the  
259 court and not by the jury. Any proposed settlement offer or any  
260 proposed decision, except for the final written settlement offer  
261 or the final written statement of allowable uses, and any  
262 negotiations or rejections in regard to the formulation either  
263 of the settlement offer or the statement of allowable uses, are  
264 inadmissible in the subsequent proceeding established by this  
265 section except for the purposes of the determination pursuant to  
266 this paragraph.

267 (d) Within 15 days after the execution of any settlement  
268 pursuant to this section, or the issuance of any judgment  
269 pursuant to this section, the governmental entity shall provide  
270 a copy of the settlement or judgment to the Department of Legal  
271 Affairs.

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

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

278 1.a. A law or regulation is first applied upon enactment  
 279 and notice as provided for in this sub-subparagraph ~~subparagraph~~  
 280 if the impact of the law or regulation on the real property is  
 281 clear and unequivocal in its terms and notice is provided by  
 282 mail to the affected property owner or registered agent at the  
 283 address referenced in the jurisdiction's most current ad valorem  
 284 tax records. The fact that the law or regulation could be  
 285 modified, varied, or altered under any other process or  
 286 procedure does not preclude the impact of the law or regulation  
 287 on a property from being clear or unequivocal pursuant to this  
 288 sub-subparagraph ~~subparagraph~~. Any notice under this sub-  
 289 subparagraph ~~subparagraph~~ shall be provided after the enactment  
 290 of the law or regulation and shall inform the property owner or  
 291 registered agent that the law or regulation may impact the  
 292 property owner's existing property rights and that the property  
 293 owner may have only 1 year after ~~from~~ receipt of the notice to  
 294 pursue any rights established under this section.

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

301 its terms and, as such, restrictive of uses allowed on the  
302 property before the enactment. Within 45 days after receipt of a  
303 notice under this sub-subparagraph, the governmental entity in  
304 receipt of the notice must respond in writing via certified mail  
305 and, if available, e-mail to describe the limitations imposed on  
306 the property by the law or regulation. The property owner is not  
307 required to formally pursue an application for a development  
308 order, development permit, or building permit, as such will be  
309 deemed a waste of resources and shall not be a prerequisite to  
310 bringing a claim under paragraph (4) (a). However, any such claim  
311 must be filed within 1 year after the date of the property  
312 owner's receipt of the notice from the governmental entity of  
313 the limitations on use imposed on the real property.

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

317 Section 2. Paragraphs (c), (d), and (e) of subsection (1)  
318 of section 70.45, Florida Statutes, are redesignated as  
319 paragraphs (d), (e), and (f), respectively and subsections (2),  
320 (4), and (5) are amended, and a new paragraph (c) is added to  
321 subsection (1) of that section, to read:

322 70.45 Governmental exactions.—

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

324 (c) "Imposed" or "imposition" as it relates to a  
325 prohibited exaction or condition of approval refers to the time

326 | at which the property owner must comply with the prohibited  
327 | exaction or condition of approval.

328 |       (2) In addition to other remedies available in law or  
329 | equity, a property owner may bring an action in a court of  
330 | competent jurisdiction under this section to declare a  
331 | prohibited exaction invalid and recover damages caused by a  
332 | prohibited exaction. Such action may ~~not~~ be brought by a  
333 | property owner at the property owner's discretion when until a  
334 | prohibited exaction is actually imposed or when it is required  
335 | in writing as a final condition of approval for the requested  
336 | use of real property. The right to bring an action under this  
337 | section may not be waived. This section does not apply to impact  
338 | fees adopted under s. 163.31801 or non-ad valorem assessments as  
339 | defined in s. 197.3632.

340 |       (4) For each claim filed under this section, the  
341 | governmental entity has the burden of proving that the  
342 | challenged exaction has an essential nexus to a legitimate  
343 | public purpose and is roughly proportionate to the impacts of  
344 | the proposed use that the governmental entity is seeking to  
345 | avoid, minimize, or mitigate. The property owner has the burden  
346 | of proving damages that result from a prohibited exaction.

347 |       (5) The court may award attorney fees and costs to the  
348 | prevailing party; however, if the court determines that the  
349 | challenged exaction which is the subject of the claim lacks an  
350 | essential nexus to a legitimate public purpose, the court shall

351 | award attorney fees and costs to the property owner.

352 |       Section 3. The amendments made by this act to ss.  
 353 | 70.001(4), (5), (6), and (11) and 70.45, Florida Statutes, apply  
 354 | only to claims made in response to actions taken by governmental  
 355 | entities on or after July 1, 2021.

356 |       Section 4. Paragraph (g) of subsection (2) of section  
 357 | 70.51, Florida Statutes, is amended to read:

358 |       70.51 Land use and environmental dispute resolution.—

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

360 |       (g) "Land" or "real property" has the same meaning as in  
 361 | s. 70.001(3)(g) means land and includes any appurtenances and  
 362 | improvements to the land, including any other relevant real  
 363 | property in which the owner had a relevant interest.

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