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CS/CS for HB 421 & HB 1101, Engrossed 2

2021 Legislature

1
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.
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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

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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

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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.

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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.
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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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.