FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/CS/HB 655	**COMPANION BILL:** CS/SB 332 (Bradley)
TITLE: Pub. Rec. and Pub. Meetings/Attorney Meetings to Discuss Private Property Rights Claims	**LINKED BILLS:** None
SPONSOR(S): Duggan and Daley	**RELATED BILLS:** None

Committee References

Civil Justice & Claims	➤	Government Operations	➤	Judiciary
17 Y, 0 N, As CS		16 Y, 0 N, As CS		

SUMMARY

Effect of the Bill:
The bill creates a public meeting exemption authorizing a state or local agency, or the chief administrative or executive officer of the agency, to meet in private with the agency's attorney during the 90-day notice period specified in the Bert Harris Act to discuss Bert Harris claims submitted in accordance with the Act. In order for such a private meeting to occur, certain conditions must be met to advise the public of the meeting's occurrence and to create and preserve a record thereof for eventual disclosure. Any transcripts, recordings, minutes, and records generated during an exempt portion of a meeting are exempt from public record requirements until the claim is settled or until the statute of limitations has expired.

The bill specifies that the public meeting and public record exemptions created by the bill are subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2031, unless reviewed and saved from repeal through Legislative reenactment.

Fiscal or Economic Impact:
None.

Extraordinary Vote Required for Passage:
The bill requires a two-thirds vote of the members present and voting in both houses of the Legislature for final passage.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill creates s. 70.90, F.S., to exempt from public meeting requirements any portion of a meeting between an agency—state or local—or the chief administrative or executive officer thereof and the agency's attorney during the 90-day notice period specified in the Bert Harris Act to discuss claims submitted in accordance with the Act. However, the bill provides that, in order for such a private meeting to occur, the following conditions must be met:

- The agency's attorney must advise the agency at a public meeting that he or she desires advice concerning a Bert Harris claim.
- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions relating to the Bert Harris claim.
- The entire session must be recorded by a certified court reporter, and additionally:
  - The reporter must record the session's times of commencement and termination, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking.
  - No portion of the session may be off the record.

    - The court reporter's notes must be fully transcribed and filed with the agency's clerk within a reasonable time after the meeting.
- The agency must give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must commence at an open meeting at which the persons chairing the meeting must announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting must be reopened, and the person chairing the meeting shall announce the session's termination.
- The transcript is exempt from public record requirements until:
    - The settlement of the Bert Harris claim; or
    - Upon the expiration of the Bert Harris claim's statute of limitations in the event that no litigation is filed and there is no Bert Harris claim settlement. (Section 1)

Practically speaking, the bill gives a governmental entity the same authority to privately discuss Bert Harris claim issues with its attorney during the statutory 90-day notice period—that is, during the pre-litigation phase of a Bert Harris claim—as it has to privately discuss pending litigation with its attorney. The bill also makes the conditions under which a governmental entity may exercise such authority identical. (Section 1)

The exemptions are subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2031, unless reviewed and saved from repeal through Legislative reenactment. (Section 1)

Further, pursuant to requirements of the State Constitution, the bill provides a public necessity statement, which finds that requiring public hearings relating to a Bert Harris claim defeats the purpose of having a pre-suit claim process, namely, to foster settlement quickly while limiting attorney fees of all parties. (Section 2)

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage.

The bill provides an effective date of July 1, 2026. (Section 3)

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Bert Harris Act

The U.S. Constitution prohibits the government from depriving a person of his or her private property for public use "without just compensation."[1] However, some government actions restrict the use of private property without amounting to a "taking" as contemplated by the U.S. Constitution. In 1995, the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act ("Bert Harris Act"), now codified in s. 70.001, F.S., to create a new cause of action for private property owners whose real property is "inordinately burdened" by a government action[2] not rising to the level of a taking.[3]

Inordinate Burdens

Under the Bert Harris Act, an "inordinate burden" generally exists when:

- A governmental entity's action has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the

[1] U.S. Const. amend. 5; *see also* art. I, ss. 2 and 9, Fla. Const. (restricting the deprivation of private property).
[2] "Action of a governmental entity" means a specific action of a governmental entity which affects real property, including acting on an application or a permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy. S. 70.001, F.S.
[3] Ch. 95-181, Laws of Fla., now codified as s. 70.001, F.S.

existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.[4]

However, the term does not include:
- Temporary impacts to real property;[5]
- Impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- Impacts to real property caused by a governmental entity action taken to grant relief to a property owner under the Bert Harris Act.[6]

Notice Period

Before filing a lawsuit under the Bert Harris Act, a property owner seeking compensation under the Act ("claimant") must give 90 days' written notice of his or her claim to the governmental entity responsible for action, along with a valid appraisal showing the loss in the affected property's fair market value.[7] The governmental entity must then notify all parties to any administrative action giving rise to the claim and all persons owning property adjacent to the claimant's property of the pending Bert Harris Act claim and, within 15 days after a claim's presentation, report the claim to the Department of Legal Affairs within the Office of the Attorney General.[8]

Settlement Offers

During the 90-day notice period, unless extended by agreement of the parties, the governmental entity must make a written settlement offer to the claimant, which may include an offer to:
- Adjust land development or permit standards or other provisions controlling land development;
- Increase or modify the density, intensity, or use of development areas;
- Transfer developmental rights;
- Conduct land swaps or exchanges;
- Mitigate, which may include payment instead of onsite mitigation;
- Locate development on the least-sensitive portion of the property;
- Require that issues be addressed on a more comprehensive basis than a single proposed use or development;
- Condition the amount of development or use permitted;
- Issue a development order, variance, special exception, or other extraordinary relief;
- Purchase the property, or an interest therein, or pay financial compensation; or
- Make no changes to the proposed government action.[9]

If the property owner accepts such a settlement offer, before or after filing a lawsuit, the governmental entity may generally implement the settlement offer by appropriate development agreement; by issuing a variance, a special exception, or any other extraordinary relief; or by any other appropriate method, subject to statutory conditions.[10]

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[4] S. 70.001, F.S.
[5] A temporary impact on "development," as defined in s. 380.04, F.S., that is in effect for longer than one year may, depending upon the circumstances, constitute an "inordinate burden." S. 70.001, F.S.
[6] S. 70.001, F.S.
[7] If the action at issue is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner must present the claim to each of the governmental entities. S. 70.001, F.S.
[8] *Id.*
[9] *Id.*
[10] *Id.*

Statement of Allowable Uses

During the 90-day-notice period, unless the claimant accepts the settlement offer, each of the governmental entities provided notice must issue a written statement of allowable uses identifying the allowable uses to which the subject property may be put.[11] The governmental entity's failure to issue a statement of allowable uses during the 90-day-notice period is deemed a denial for purposes of allowing a property owner to file a lawsuit under the Bert Harris Act.[12] However, if the governmental entity issues a written statement of allowable uses, such statement and the acceptance or rejection thereof constitutes the claimant's last pre-suit obligation, notwithstanding the availability of other administrative remedies.[13]

Litigation

If the claimant rejects the governmental entity's settlement offer and statement of allowable uses, the claimant may file a lawsuit in the circuit court serving the county where the property is located to seek compensation under the Bert Harris Act.[14] Upon the filing of such a lawsuit, the court must first determine whether the governmental entity inordinately burdened the subject property and, if so, calculate each involved governmental entity's percentage of responsibility.[15] The court must then impanel a jury to determine the total amount of compensation owed to the claimant for the loss in value due to the inordinate burden to the real property; however, the claimant retains the option to forego a jury and elect to have the court determine the compensation award instead.[16]

In any event, the compensation award must be determined by calculating the difference in the property's fair market value as though the property had not been inordinately burdened and the property's fair market value as inordinately burdened, considering in doing so the settlement offer together with the statement of allowable uses, made or provided by the governmental entity.[17] However, in determining the compensation award, consideration may not be given to business damages relative to any development, activity, or use that the governmental entity's action has restricted, limited, or prohibited.[18]

Attorney Fees

A prevailing plaintiff may recover his or her costs and attorney fees incurred from the date of the initial presentation of the claim under the Act—that is, from the start date of the 90-day notice period.[19] However, the governmental entity may recover its costs and attorney fees if:

- The governmental entity prevails in the lawsuit; and
- The court determines the claimant did not accept a bona fide settlement offer which reasonably would have resolved the claim fairly to the claimant had the claimant accepted the offer, based upon knowledge available to the claimant and the governmental entity during the 90-day notice period.[20]

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

Statute of Limitations

Pursuant to the applicable statute of limitations,[21] a Bert Harris claim cannot be filed more than one year after the governmental entity applies a law or regulation to the property at issue.[22] Under the Act, a law or regulation is generally first applied to the property when the law or regulation at issue unequivocally impacts the property and notice is mailed to the affected property owner.[23] However, if the required notice is not mailed, the property owner may notify the governmental entity's head in writing that the property owner deems the impact of the enacted law or regulation on his or her property to be clear and unequivocal and, as such, restrictive of uses allowed on the property before the enactment.[24] Within 45 days after receipt of such a notice, the governmental entity must respond in writing to describe the limitations imposed on the property by the law or regulation, and any Bert Harris claim which the property owner may have must then be filed within one year of the property owner's receipt of the limitations notice from the governmental entity.[25] Otherwise, the law or regulation is first applied to the property if and when there is a formal denial of a written request for development or variance.[26]

Public Meetings (Florida's "Sunshine Law")

Article I, section 24 of the State Constitution establishes the state's public policy regarding public meetings, generally requiring that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, must be open and noticed to the public.[27] Likewise, s. 286.011, F.S., part of the "Sunshine Law,"[28] provides that, except as otherwise provided in the State Constitution, all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken are public meetings open to the public at all times, and no resolution, rule, or formal action may be considered binding except as taken or made at such meeting. Under that section, a board or commission must provide reasonable notice to the public of all public meetings and the minutes of public meetings must be promptly recorded, with such records kept open to public inspection. The state circuit courts have jurisdiction to issue injunctions to enforce public meeting requirements upon application by any state citizen.

Public Meeting Exemptions

The State Constitution authorizes the Legislature to provide by general law an exemption from public meeting requirements; in other words, the Legislature may provide that a specific meeting of a governmental entity is not subject to the open meeting requirements of s. 286.011, F.S., or article I, section 24, of the State Constitution.[29] However, the bill creating the exemption must pass by a two-thirds vote of each chamber and state with specificity the public necessity justifying the exemption.[30] Further, the exemption itself may be no broader than necessary to accomplish the law's stated public purpose.[31]

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[21] A statute of limitations bars the filing of a lawsuit or other civil claim after a certain period of time passes following an injury. Typically, a statute of limitations begins to run from the date the injury occurs, the date the injury is discovered, or the date on which the injury would have been discovered with reasonable effort. Legal Information Institute, *Statute of Limitations*, https://www.law.cornell.edu/wex/statute_of_limitations (last visited Jan. 23, 2026).
[22] S. 70.001(11), F.S.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] A property owner is not required to formally pursue an application for a development order, development permit, or building permit, as, under the Bert Harris Act, such will be deemed a waste of resources and shall not be a prerequisite to bringing a claim under the Act. *Id.*
[27] Meetings of the legislature must be open and noticed as provided in Article III, section 4(e) of the State Constitution, except with respect to meetings exempted pursuant to Article I, section 24 of the State Constitution or specifically closed by the State Constitution.
[28] *See Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22, 26 (Fla. 2d DCA 2021).
[29] Art. I, s. 24, Fla. Const.
[30] *Id.*
[31] *Id.*

Attorney-Client Sessions to Discuss Pending Litigation

Section 286.011(8), F.S., provides a public meetings exemption for certain discussions between a governmental entity and its attorney regarding pending litigation. This section generally authorizes a board or commission of any state agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, to meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency. However, this section also provides that, in order for such a private meeting to occur, the following conditions must be met:

- The entity's attorney must advise the entity at a public meeting that he or she desires advice concerning the litigation.
- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions relating to litigation expenditures.
- The entire session must be recorded by a certified court reporter, and additionally:
    - The reporter must record the session's times of commencement and termination, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking.
    - No portion of the session may be off the record.
    - The court reporter's notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- The entity must give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting must be reopened, and the person chairing the meeting shall announce the session's termination.
- The transcript must be made part of the public record upon the litigation's conclusion.

Attorney-Client Sessions to Discuss Bert Harris Claims

Although Florida law allows a discussion between an attorney and a local governmental entity to be held in private if it contemplates "pending litigation," there is no exception for pre-litigation Bert Harris claim discussions. Thus, such attorney-client discussions presumably must occur in an open meeting, despite the fact that the submitted claim serves as pre-suit notice of potential future litigation.[32]

Public Records

The State Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[33] The Legislature, however, may provide by general law an exemption from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[34]

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is confidential or exempt.[35] There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may

[32] *See* 09-25, Fla. Op. Att'y Gen. (2009), 2009 WL 1643401.
[33] Art. I, s. 24(a), FLA. CONST.
[34] Art. I, s. 24(c), FLA. CONST.
[35] S. 119.01(1), F.S.

be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released to anyone other than those specifically designated in statute.[36]

Open Government Sunset Review Act

The Open Government Sunset Review Act ("OGSR Act") provides that a public meeting or public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.[37] An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only information that would identity the individual may be exempted under this provision; or
- Protects trade or business secrets.[38]

Under the OGSR Act, a new public meeting or record exemption, or the expansion of an existing exemption, is repealed on October 2 of the fifth year after enactment, unless the Legislature reenacts the exemption.[39]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	17 Y, 0 N, As CS	1/14/2026	Jones	Mawn
THE CHANGES ADOPTED BY THE COMMITTEE:	Moved the bill's provisions from s. 286.011, F.S., to a new section of law created by the bill; specified that the bill is subject to the OGSR Act and will stand repealed on October 2, 2031, unless reviewed and saved from repeal through Legislative reenactment; and provided a public necessity statement.			
Government Operations Subcommittee	16 Y, 0 N, As CS	1/29/2026	Toliver	Villa
THE CHANGES ADOPTED BY THE COMMITTEE:	• Created a public record exemption for the transcript and recording required to be made during the exempt portion of a meeting. • Clarified that the meeting is exempt from applicable constitutional and statutory public meeting requirements. • Specified that the exemptions are applicable to all agencies subject to public meeting and public record requirements. • Updated the public necessity statement.			
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

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[36] *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991); Op. Att'y Gen. Fla. 04- 09 (2004).
[37] S. 119.15(6)(b), F.S.
[38] *Id.*
[39] S. 119.15(3), F.S.