



918134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2015	.	
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Appropriations Subcommittee on General Government (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (b), (c), and (d) of subsection (4)  
of section 70.001, Florida Statutes, are redesignated as  
paragraphs (c), (d), and (e), respectively, and amended,  
paragraphs (f) and (g) of subsection (3) and subsection (10) are  
amended, and a new paragraph (b) is added to subsection (4) of



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10 that section, to read:

11 70.001 Private property rights protection.—

12 (3) For purposes of this section:

13 (f) The term “property owner” means the person who holds  
14 legal title to the real property that is the subject of and  
15 directly impacted by the action of a governmental entity at  
16 issue. The term does not include a governmental entity.

17 (g) The term “real property” means land and includes any  
18 appurtenances and improvements to the land, including any other  
19 relevant real property in which the property owner has had a  
20 relevant interest. The term includes only parcels that are the  
21 subject of and directly impacted by the action of a governmental  
22 entity.

23 (4)

24 (b) Upon receipt of a written claim, a governmental entity  
25 may treat the claim as pending litigation for purposes of s.  
26 286.011(8).

27 (c) ~~(b)~~ The governmental entity shall provide written notice  
28 of the claim to all parties to any administrative action that  
29 gave rise to the claim, and to owners of real property  
30 contiguous to the owner’s property at the addresses listed on  
31 the most recent county tax rolls. Within 15 days after the claim  
32 is being presented, the governmental entity shall report the  
33 claim in writing to the Department of Legal Affairs, and shall  
34 provide the department with the name, address, and telephone  
35 number of the employee of the governmental entity from whom  
36 additional information may be obtained about the claim during  
37 the pendency of the claim and any subsequent judicial action.

38 (d) ~~(e)~~ During the 90-day-notice period or the 150-day-



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39 notice period, unless extended by agreement of the parties, the  
40 governmental entity shall make a written settlement offer to  
41 effectuate:

42 1. An adjustment of land development or permit standards or  
43 other provisions controlling the development or use of land.

44 2. Increases or modifications in the density, intensity, or  
45 use of areas of development.

46 3. The transfer of developmental rights.

47 4. Land swaps or exchanges.

48 5. Mitigation, including payments in lieu of onsite  
49 mitigation.

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

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

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

54 9. Issuance of the development order, a variance, special  
55 exception, or other extraordinary relief.

56 10. Purchase of the real property, or an interest therein,  
57 by an appropriate governmental entity or payment of  
58 compensation.

59 11. No changes to the action of the governmental entity.

60

61 If the property owner accepts a the settlement offer, either  
62 before or after filing an action, the governmental entity may  
63 implement the settlement offer by appropriate development  
64 agreement; by issuing a variance, special exception, or other  
65 extraordinary relief; or by other appropriate method, subject to  
66 paragraph (e) ~~(d)~~.

67 (e) ~~(d)~~ 1. When ~~Whenever~~ a governmental entity enters into a



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68 settlement agreement under this section which would have the  
69 effect of a modification, variance, or a special exception to  
70 the application of a rule, regulation, or ordinance as it would  
71 otherwise apply to the subject real property, the relief granted  
72 shall protect the public interest served by the regulations at  
73 issue and be the appropriate relief necessary to prevent the  
74 governmental regulatory effort from inordinately burdening the  
75 real property.

76 2. When ~~Whenever~~ a governmental entity enters into a  
77 settlement agreement under this section which would have the  
78 effect of contravening the application of a statute as it would  
79 otherwise apply to the subject real property, the governmental  
80 entity and the property owner shall jointly file an action in  
81 the circuit court where the real property is located for  
82 approval of the settlement agreement by the court to ensure that  
83 the relief granted protects the public interest served by the  
84 statute at issue and is the appropriate relief necessary to  
85 prevent the governmental regulatory effort from inordinately  
86 burdening the real property.

87  
88 This paragraph applies to any settlement reached between a  
89 property owner and a governmental entity regardless of when the  
90 settlement agreement was entered so long as the agreement fully  
91 resolves all claims asserted under this section.

92 (10) (a) This section does not apply to any actions taken by  
93 a governmental entity which relate to the operation,  
94 maintenance, or expansion of transportation facilities, and this  
95 section does not affect existing law regarding eminent domain  
96 relating to transportation.



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97        (b) This section does not apply to any actions taken by a  
98 county with respect to the adoption of a Flood Insurance Rate  
99 Map issued by the Federal Emergency Management Agency for the  
100 purpose of participating in the National Flood Insurance  
101 Program, unless such adoption incorrectly applies an aspect of  
102 the Flood Insurance Rate Map to the property, in such a way as  
103 to, but not limited to, incorrectly assess the elevation of the  
104 property.

105        Section 2. Section 70.45, Florida Statutes, is created to  
106 read:

107        70.45 Governmental exactions.-

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

109        (a) "Damages" means, in addition to the right to injunctive  
110 relief, the reduction in fair market value of the real property  
111 or the amount of the fee or infrastructure cost that exceeds  
112 what would be permitted under this section.

113        (b) "Governmental entity" has the same meaning as provided  
114 in s. 70.001(3)(c).

115        (c) "Prohibited exaction" means any condition imposed by a  
116 governmental entity on a property owner's proposed use of real  
117 property that lacks an essential nexus to a legitimate public  
118 purpose and is not roughly proportionate to the impacts of the  
119 proposed use that the governmental entity seeks to avoid,  
120 minimize, or mitigate.

121        (d) "Property owner" has the same meaning as provided in s.  
122 70.001(3)(f).

123        (e) "Real property" has the same meaning as provided in s.  
124 70.001(3)(g).

125        (2) In addition to other remedies available in law or



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126 equity, a property owner may bring an action in a court of  
127 competent jurisdiction under this section to recover damages  
128 caused by a prohibited exaction. Such action may not be brought  
129 until a prohibited exaction is actually imposed or required in  
130 writing as a final condition of approval for the requested use  
131 of real property. The right to bring an action under this  
132 section may not be waived. This section does not apply to impact  
133 fees adopted under s. 163.31801 or non-ad valorem assessments as  
134 defined in s. 197.3632.

135 (3) At least 90 days before filing an action under this  
136 section, but no later than 180 days after imposition of the  
137 prohibited exaction, the property owner shall provide to the  
138 relevant governmental entity written notice of the proposed  
139 action. This written notice shall identify the exaction that the  
140 property owner believes is prohibited, briefly explain why the  
141 property owner believes the exaction is prohibited, and provide  
142 an estimate of the damages. Upon receipt of the property owner's  
143 written notice, the governmental entity may treat the claim as  
144 pending litigation for purposes of s. 286.011(8). Upon receipt  
145 of the written notice:

146 (a) The governmental entity shall review the notice of  
147 claim and respond in writing to the property owner by  
148 identifying the basis for the exaction and explaining why the  
149 governmental entity maintains that the exaction is proportionate  
150 to the harm created by the proposed use of real property, or by  
151 proposing to remove all or a portion of the exaction.

152 (b) The written response may not be used against the  
153 governmental entity in subsequent litigation other than for  
154 purposes of assessing attorney fees and costs under subsection



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155 (5).

156 (4) For each claim filed under this section, the  
157 governmental entity has the burden of proving that the exaction  
158 has an essential nexus to a legitimate public purpose and is  
159 roughly proportionate to the impacts of the proposed use that  
160 the governmental entity is seeking to avoid, minimize, or  
161 mitigate. The property owner has the burden of proving damages  
162 that result from a prohibited exaction.

163 (5) The court may award attorney fees and costs to the  
164 prevailing party; however, if the court determines that the  
165 exaction which is the subject of the claim lacks an essential  
166 nexus to a legitimate public purpose and is not roughly  
167 proportionate to the impacts of the proposed use, the court  
168 shall award attorney fees and costs to the property owner.

169 (6) To ensure that courts may assess damages for claims  
170 filed under this section in accordance with s. 13, Art. X of the  
171 State Constitution, the state, for itself and its agencies or  
172 political subdivisions, waives sovereign immunity for causes of  
173 action based upon the application of this section. Such waiver  
174 is limited only to actions brought under this section.

175 (7) This section applies to any prohibited exaction imposed  
176 or required in writing on or after October 1, 2015, as a final  
177 condition of approval for the requested use of real property.

178 Section 3. Section 70.80, Florida Statutes, is amended to  
179 read:

180 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is  
181 the express declaration of the Legislature that ss. 70.001,  
182 70.45, and 70.51 have separate and distinct bases, objectives,  
183 applications, and processes. It is therefore the intent of the



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184 Legislature that ss. 70.001, 70.45, and 70.51 are not to be  
185 construed in pari materia.

186 Section 4. This act shall take effect October 1, 2015.

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

189 And the title is amended as follows:

190 Delete everything before the enacting clause

191 and insert:

192 A bill to be entitled

193 An act relating to private property rights; amending  
194 s. 70.001, F.S.; revising the terms "property owner"  
195 and "real property"; authorizing a governmental entity  
196 to treat a written claim as pending litigation for  
197 purposes of holding certain meetings privately;  
198 providing that any settlement agreement reached  
199 between an owner and a governmental entity applies so  
200 long as the agreement resolves all issues; providing  
201 exceptions to the applicability of the Bert J. Harris,  
202 Jr., Private Property Rights Protection Act; creating  
203 s. 70.45, F.S.; defining terms; authorizing a property  
204 owner to bring an action to recover damages caused by  
205 a prohibited exaction; requiring a property owner to  
206 provide written notice of such action to the relevant  
207 governmental entity; authorizing the governmental  
208 entity to treat such a claim as pending litigation for  
209 purposes of holding certain meetings privately;  
210 specifying the burden of proof imposed on the  
211 governmental entity and the property owner,  
212 respectively, in such an action; authorizing the award





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213 of reasonable attorney fees and costs under specified  
214 circumstances; waiving the state's sovereign immunity  
215 for certain causes of action; providing applicability;  
216 amending s. 70.80, F.S.; specifying that an action for  
217 a prohibited exaction is not to be construed in pari  
218 materia with certain other actions; providing an  
219 effective date.