

Committee on Environmental Preservation and Conservation

CS/CS/CS/HB 383 — Private Property Rights

by Judiciary Committee; Local Government Affairs Subcommittee; Civil Justice Subcommittee; and Reps. Edwards, Perry, and others (CS/CS/SB 284 by Appropriations Committee; Environmental Preservation and Conservation Committee; and Senator Diaz de la Portilla)

This bill authorizes a property owner to recover damages against a governmental entity that imposes a prohibited exaction as a final condition of approval for a requested use of real property. Under the bill, an exaction is prohibited if it does not have an essential nexus to a legitimate public purpose or if the exaction is not roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. In effect, the bill provides remedies for violations of the unconstitutional conditions doctrine, as described by the U.S. Supreme Court in *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586 (2013).

Under the procedures provided in the bill, a property owner must provide advance notice of the intent to file a lawsuit seeking damages for a prohibited exaction along with an estimate of the owner's damages. The governmental entity must then explain why the exaction is proportionate or offer to remove or reduce the exaction.

At trial, the governmental entity has the burden of proving that the exaction has a nexus to a legitimate public purpose and is proportionate. The property owner has the burden of proving the damages that result from a prohibited exaction. A court may award attorney fees and costs to the governmental entity. However, the court must award attorney fees and costs to the property owner if the exaction has no nexus to a legitimate public purpose.

Among other related changes, the bill:

- Clarifies the terms “property owner” and “real property” for purposes of private property rights protection and provides definitions for the terms “damages,” “governmental entity,” “prohibited exaction,” “property owner,” and “real property” for new provisions related to governmental exactions;
- Applies protection from contrary statutes and local regulations under the Private Property Rights Protection Act, which authorizes compensation to persons whose property is inordinately burdened by government conduct, to settlement agreements reached between property owners and governmental entities regardless of when the settlement agreement is entered into if the agreement fully resolves all claims;
- Provides that the Private Property Rights Protection Act does not apply to actions taken by a county regarding the adoption of a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program, unless the map incorrectly applies an aspect of the map to the property in such a way, but not limited to, incorrectly assessing the elevation of the property;
- Waives sovereign immunity for causes of action brought under new provisions created for governmental exactions created by the bill; and

- Clarifies that provisions related to governmental exactions, may not be construed in pari materia with provisions of the Private Property Rights Protection Act or the Florida Land Use and Environmental Dispute Resolution Act.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 36-1; House 113-1