

1                                   A bill to be entitled  
 2           An act relating to private property rights protection;  
 3           amending s. 70.001, F.S.; revising legislative intent;  
 4           revising notice of claim requirements for property  
 5           owners; revising procedures for determination of  
 6           compensation; creating a presumption that certain  
 7           settlements of claims apply to all similarly situated  
 8           residential properties within a political subdivision  
 9           under certain circumstances; authorizing property  
 10          owners to bring claims against governmental entities  
 11          in certain circumstances; providing that property  
 12          owners are not required to submit formal development  
 13          applications or proceed through formal application  
 14          processes to bring claims in specified circumstances;  
 15          amending s. 70.45, F.S.; providing a definition;  
 16          authorizing property owners to bring actions to  
 17          declare prohibited exactions invalid; amending s.  
 18          337.25, F.S.; requiring the Department of  
 19          Transportation to afford a right of first refusal to  
 20          the previous property owner before disposing of  
 21          property in certain circumstances; providing an  
 22          effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:  
 25

26 Section 1. Subsections (1), (4), (5), (6), and (11) of  
27 section 70.001, Florida Statutes, are amended to read:

28 70.001 Private property rights protection.—

29 (1) This act may be cited as the "Bert J. Harris, Jr.,  
30 Private Property Rights Protection Act." The Legislature  
31 recognizes that some laws, regulations, and ordinances of the  
32 state and political entities in the state, as applied, may  
33 inordinately burden, restrict, or limit private property rights  
34 without amounting to a taking under the State Constitution or  
35 the United States Constitution. The Legislature determines that  
36 there is an important state interest in protecting the interests  
37 of private property owners from such inordinate burdens. The  
38 Legislature further recognizes that it is in the public interest  
39 to ensure that all similarly situated residential properties are  
40 subject to the same rules and regulations. Therefore, it is the  
41 intent of the Legislature that, as a separate and distinct cause  
42 of action from the law of takings, the Legislature herein  
43 provides for relief, or payment of compensation, when a new law,  
44 rule, regulation, or ordinance of the state or a political  
45 entity in the state, as applied, unfairly affects real property.

46 (4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an  
47 action under this section against a governmental entity, a  
48 property owner who seeks compensation under this section must  
49 present the claim in writing to the head of the governmental  
50 entity, ~~except that if the property is classified as~~

51 ~~agricultural pursuant to s. 193.461, the notice period is 90~~  
52 ~~days.~~ The property owner must submit, along with the claim, a  
53 bona fide, valid appraisal that supports the claim and  
54 demonstrates the loss in fair market value to the real property.  
55 If the action of government is the culmination of a process that  
56 involves more than one governmental entity, or if a complete  
57 resolution of all relevant issues, in the view of the property  
58 owner or in the view of a governmental entity to whom a claim is  
59 presented, requires the active participation of more than one  
60 governmental entity, the property owner shall present the claim  
61 as provided in this section to each of the governmental  
62 entities.

63 (b) The governmental entity shall provide written notice  
64 of the claim to all parties to any administrative action that  
65 gave rise to the claim, and to owners of real property  
66 contiguous to the owner's property at the addresses listed on  
67 the most recent county tax rolls. Within 15 days after the claim  
68 is presented, the governmental entity shall report the claim in  
69 writing to the Department of Legal Affairs, and shall provide  
70 the department with the name, address, and telephone number of  
71 the employee of the governmental entity from whom additional  
72 information may be obtained about the claim during the pendency  
73 of the claim and any subsequent judicial action.

74 (c) During the 90-day-notice period ~~or the 150-day-notice~~  
75 ~~period,~~ unless extended by agreement of the parties, the

76 governmental entity shall make a written settlement offer to  
 77 effectuate:

78 1. An adjustment of land development or permit standards  
 79 or other provisions controlling the development or use of land.

80 2. Increases or modifications in the density, intensity,  
 81 or use of areas of development.

82 3. The transfer of developmental rights.

83 4. Land swaps or exchanges.

84 5. Mitigation, including payments in lieu of onsite  
 85 mitigation.

86 6. Location on the least sensitive portion of the  
 87 property.

88 7. Conditioning the amount of development or use  
 89 permitted.

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

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

94 10. Purchase of the real property, or an interest therein,  
 95 by an appropriate governmental entity or payment of  
 96 compensation.

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

98  
 99 If the property owner accepts a settlement offer, ~~either~~ before  
 100 or after filing an action, the governmental entity may implement

101 the settlement offer by appropriate development agreement; by  
102 issuing a variance, a special exception, or any other  
103 extraordinary relief; or by any other appropriate method,  
104 subject to paragraph (d).

105 (d)1. When a governmental entity enters into a settlement  
106 agreement under this section which would have the effect of a  
107 modification, variance, or ~~a~~ special exception to the  
108 application of a rule, regulation, or ordinance as it would  
109 otherwise apply to the subject real property, the relief granted  
110 shall protect the public interest served by the regulations at  
111 issue and be the appropriate relief necessary to prevent the  
112 governmental regulatory effort from inordinately burdening the  
113 real property. Settlement offers made pursuant to paragraph (c)  
114 shall be presumed to protect the public interest.

115 2. When a governmental entity enters into a settlement  
116 agreement under this section which would have the effect of  
117 contravening the application of a statute as it would otherwise  
118 apply to the subject real property, the governmental entity and  
119 the property owner shall jointly file an action in the circuit  
120 court where the real property is located for approval of the  
121 settlement agreement by the court to ensure that the relief  
122 granted protects the public interest served by the statute at  
123 issue and is the appropriate relief necessary to prevent the  
124 governmental regulatory effort from inordinately burdening the  
125 real property.

126        3. When a residential property owner submits a claim under  
127 this section which is based on a governmental entity's  
128 application of a regulation or ordinance to more than one  
129 residential parcel, and the governmental entity reaches a  
130 settlement of such claim or the property owner secures a  
131 judgment declaring an inordinate burden under paragraph (6) (a),  
132 there shall be a presumption, rebuttable only by clear and  
133 convincing evidence, that similarly situated residential  
134 parcels, as evaluated on a parcel-by-parcel basis, have been  
135 inordinately burdened and are entitled to equivalent terms of  
136 settlement or a judicial determination of an inordinate burden.  
137 In such cases, the similarly situated residential property  
138 owners must submit the appraisal specified in paragraph (a) not  
139 less than 120 days before a trial on the merits of the damages  
140 portion of the proceedings pursuant to paragraph (6) (b). During  
141 the 90-day-notice period of such claims, the governmental entity  
142 is encouraged to negotiate terms of settlement consistent with  
143 settlement agreements for similarly situated residential  
144 parcels.

145  
146 This paragraph applies to any settlement reached between a  
147 property owner and a governmental entity regardless of when the  
148 settlement agreement was entered so long as the agreement fully  
149 resolves all claims asserted under this section.

150        (5) (a) During the 90-day-notice period ~~or the 150-day-~~

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

165 (b) If the property owner rejects the settlement offer and  
166 the statement of allowable uses of the governmental entity or  
167 entities, the property owner may file a claim for compensation  
168 in the circuit court, a copy of which shall be served  
169 contemporaneously on the head of each of the governmental  
170 entities that made a settlement offer and a statement of  
171 allowable uses that was rejected by the property owner. Actions  
172 under this section shall be brought only in the county where the  
173 real property is located.

174 (6) (a) The circuit court shall determine whether an  
175 existing use of the real property or a vested right to a

176 specific use of the real property existed and, if so, whether,  
177 considering the settlement offer and statement of allowable  
178 uses, the governmental entity or entities have inordinately  
179 burdened the real property. If the actions of more than one  
180 governmental entity, considering any settlement offers and  
181 statement of allowable uses, are responsible for the action that  
182 imposed the inordinate burden on the real property of the  
183 property owner, the court shall determine the percentage of  
184 responsibility each such governmental entity bears with respect  
185 to the inordinate burden. A governmental entity may take an  
186 interlocutory appeal of the court's determination that the  
187 action of the governmental entity has resulted in an inordinate  
188 burden. An interlocutory appeal does not automatically stay the  
189 proceedings; however, the court may stay the proceedings during  
190 the pendency of the interlocutory appeal. If the governmental  
191 entity does not prevail in the interlocutory appeal, the court  
192 shall award to the prevailing property owner the costs and a  
193 reasonable attorney fee incurred by the property owner in the  
194 interlocutory appeal.

195 (b) Following its determination of the percentage of  
196 responsibility of each governmental entity, and following the  
197 resolution of any interlocutory appeal, the court shall impanel  
198 a jury to determine the total amount of compensation to the  
199 property owner for the loss in value due to the inordinate  
200 burden to the real property. The property owner retains the

201 option to forego a jury and elect to have the court determine  
202 the award of compensation. The award of compensation shall be  
203 determined by calculating the difference in the fair market  
204 value of the real property, as it existed at the time of the  
205 governmental action at issue, as though the owner had the  
206 ability to attain the reasonable investment-backed expectation  
207 or was not left with uses that are unreasonable, whichever the  
208 case may be, and the fair market value of the real property, as  
209 it existed at the time of the governmental action at issue, as  
210 inordinately burdened, considering the settlement offer together  
211 with the statement of allowable uses, of the governmental entity  
212 or entities. ~~In determining the award of compensation,~~  
213 ~~consideration may not be given to business damages relative to~~  
214 ~~any development, activity, or use that the action of the~~  
215 ~~governmental entity or entities, considering the settlement~~  
216 ~~offer together with the statement of allowable uses has~~  
217 ~~restricted, limited, or prohibited.~~ The award of compensation  
218 shall include a reasonable award of prejudgment interest from  
219 the date the claim was presented to the governmental entity or  
220 entities as provided in subsection (4).

221 (c)1. In any action filed pursuant to this section, the  
222 property owner is entitled to recover reasonable costs and  
223 attorney fees incurred by the property owner, from the  
224 governmental entity or entities, according to their  
225 proportionate share as determined by the court, from the date of

226 | the claim with the governmental entity pursuant to paragraph  
227 | (4) (a) filing of the circuit court action, if the property owner  
228 | prevails in the action and ~~the court determines that the~~  
229 | ~~settlement offer, including the statement of allowable uses, of~~  
230 | ~~the governmental entity or entities did not constitute a bona~~  
231 | ~~fide offer to the property owner which reasonably would have~~  
232 | ~~resolved the claim, based upon the knowledge available to the~~  
233 | ~~governmental entity or entities and the property owner during~~  
234 | ~~the 90-day-notice period or the 150-day-notice period.~~

235 |       ~~2. In any action filed pursuant to this section, the~~  
236 | ~~governmental entity or entities are entitled to recover~~  
237 | ~~reasonable costs and attorney fees incurred by the governmental~~  
238 | ~~entity or entities from the date of the filing of the circuit~~  
239 | ~~court action, if the governmental entity or entities prevail in~~  
240 | ~~the action and the court determines that the property owner did~~  
241 | ~~not accept a bona fide settlement offer, including the statement~~  
242 | ~~of allowable uses, which reasonably would have resolved the~~  
243 | ~~claim fairly to the property owner if the settlement offer had~~  
244 | ~~been accepted by the property owner, based upon the knowledge~~  
245 | ~~available to the governmental entity or entities and the~~  
246 | ~~property owner during the 90-day-notice period or the 150-day-~~  
247 | ~~notice period.~~

248 |       ~~2.3.~~ The determination of total reasonable costs and  
249 | attorney fees pursuant to this paragraph shall be made by the  
250 | court and not by the jury. Any proposed settlement offer or any

251 | proposed decision, except for the final written settlement offer  
 252 | or the final written statement of allowable uses, and any  
 253 | negotiations or rejections in regard to the formulation ~~either~~  
 254 | of the settlement offer or the statement of allowable uses, are  
 255 | inadmissible in the subsequent proceeding established by this  
 256 | section except for the purposes of the determination pursuant to  
 257 | this paragraph.

258 |         (d) Within 15 days after the execution of any settlement  
 259 | pursuant to this section, or the issuance of any judgment  
 260 | pursuant to this section, the governmental entity shall provide  
 261 | a copy of the settlement or judgment to the Department of Legal  
 262 | Affairs.

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

267 |         (a) For purposes of determining when this 1-year claim  
 268 | period accrues:

269 |             1.a. A law or regulation is first applied upon enactment  
 270 | and notice as provided for in this sub-subparagraph ~~subparagraph~~  
 271 | if the impact of the law or regulation on the real property is  
 272 | clear and unequivocal in its terms and notice is provided by  
 273 | mail to the affected property owner or registered agent at the  
 274 | address referenced in the jurisdiction's most current ad valorem  
 275 | tax records. The fact that the law or regulation could be

276 modified, varied, or altered under any other process or  
277 procedure does not preclude the impact of the law or regulation  
278 on a property from being clear or unequivocal pursuant to this  
279 sub-subparagraph ~~subparagraph~~. Any notice under this sub-  
280 subparagraph ~~subparagraph~~ shall be provided after the enactment  
281 of the law or regulation and shall inform the property owner or  
282 registered agent that the law or regulation may impact the  
283 property owner's existing property rights and that the property  
284 owner may have only 1 year from receipt of the notice to pursue  
285 any rights established under this section.

286 b. If the notice required in sub-subparagraph a. is not  
287 provided to the property owner, the property owner may at any  
288 time after enactment notify the governmental entity in writing  
289 that the property owner deems the impact of the law or  
290 regulation on the property owner's real property to be clear and  
291 unequivocal in its terms and, as such, restrictive of uses  
292 allowed on the property before the enactment. Within 45 days  
293 after receipt of a notice under this sub-subparagraph, the  
294 governmental entity in receipt of the notice must respond in  
295 writing to state whether the law or regulation is applicable to  
296 the real property in question and provide a description of the  
297 limitations imposed on the property by the law or regulation. If  
298 the governmental entity concludes that the law or regulation is  
299 applicable by imposing new limitations on the uses of the  
300 property, the property owner is not required to formally pursue

301 an application for a development order, development permit, or  
302 building permit as such will be deemed a waste of resources and  
303 shall not be a prerequisite to bringing a claim pursuant to  
304 paragraph (4) (a). However, any such claim must be filed within 1  
305 year after the date of the property owner's receipt of the  
306 notice from the governmental entity of the limitations on use  
307 imposed on the real property.

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

311 Section 2. Paragraphs (c) through (e) of subsection (1) of  
312 section 70.45, Florida Statutes, are redesignated as paragraphs  
313 (d) through (f), respectively, a new paragraph (c) is added to  
314 that subsection, and subsections (2), (4), and (5) of that  
315 section are amended, to read:

316 70.45 Governmental exactions.—

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

318 (c) "Imposed" or "imposition" as it relates to a  
319 prohibited exaction or condition of approval refers to the time  
320 at which the property owner must comply with the prohibited  
321 exaction or condition of approval.

322 (2) In addition to other remedies available in law or  
323 equity, a property owner may bring an action in a court of  
324 competent jurisdiction under this section to declare a  
325 prohibited exaction invalid and recover damages caused by a

326 prohibited exaction. Such action may not be brought until a  
327 prohibited exaction is actually imposed or required in writing  
328 as a final condition of approval for the requested use of real  
329 property. The right to bring an action under this section may  
330 not be waived. This section does not apply to impact fees  
331 adopted under s. 163.31801 or non-ad valorem assessments as  
332 defined in s. 197.3632.

333 (4) For each claim filed under this section, the  
334 governmental entity has the burden of proving that the  
335 challenged exaction has an essential nexus to a legitimate  
336 public purpose and is roughly proportionate to the impacts of  
337 the proposed use that the governmental entity is seeking to  
338 avoid, minimize, or mitigate. The property owner has the burden  
339 of proving damages that result from a prohibited exaction.

340 (5) The court may award attorney fees and costs to the  
341 prevailing party; however, if the court determines that the  
342 challenged exaction which is the subject of the claim lacks an  
343 essential nexus to a legitimate public purpose, the court shall  
344 award attorney fees and costs to the property owner.

345 Section 3. Subsection (4) of section 337.25, Florida  
346 Statutes, is amended to read:

347 337.25 Acquisition, lease, and disposal of real and  
348 personal property.—

349 (4) The department may convey, in the name of the state,  
350 any land, building, or other property, real or personal, which

351 was acquired under subsection (1) and which the department has  
352 determined is not needed for the construction, operation, and  
353 maintenance of a transportation facility. When such a  
354 determination has been made, property may be disposed of through  
355 negotiations, sealed competitive bids, auctions, or any other  
356 means the department deems to be in its best interest, with due  
357 advertisement for property valued by the department at greater  
358 than \$10,000. A sale may not occur at a price less than the  
359 department's current estimate of value, except as provided in  
360 paragraphs (a)-(d). The department may afford a right of first  
361 refusal to the local government or other political subdivision  
362 in the jurisdiction in which the parcel is situated, except in a  
363 conveyance transacted under paragraph (a), paragraph (c), or  
364 paragraph (e). Notwithstanding any provision of this section to  
365 the contrary, before any conveyance under this subsection may be  
366 made, except a conveyance under paragraph (a) or paragraph (c),  
367 the department shall first afford a right of first refusal to  
368 the previous property owner for the department's current  
369 estimate of value of the property. The right of first refusal  
370 shall be made in writing and sent to the previous owner via  
371 certified mail or hand delivery, effective upon receipt. The  
372 right of first refusal shall provide the previous owner with a  
373 minimum of 15 days to exercise the right in writing and sent to  
374 the originator of the offer via certified mail or hand delivery,  
375 effective upon dispatch. The previous owner shall have a minimum

376 of 60 days after exercising its right of first refusal to close.  
377 If the previous owner does not exercise its right of first  
378 refusal, the department may not deviate in any material respect  
379 from the offer made to the previous owner unless it first  
380 provides the previous owner with the right of first refusal  
381 under the new terms. The same procedure shall apply to any  
382 subsequent iterations of the sale terms.

383 (a) If the property has been donated to the state for  
384 transportation purposes and a transportation facility has not  
385 been constructed for at least 5 years, plans have not been  
386 prepared for the construction of such facility, and the property  
387 is not located in a transportation corridor, the governmental  
388 entity may authorize reconveyance of the donated property for no  
389 consideration to the original donor or the donor's heirs,  
390 successors, assigns, or representatives.

391 (b) If the property is to be used for a public purpose,  
392 the property may be conveyed without consideration to a  
393 governmental entity.

394 (c) If the property was originally acquired specifically  
395 to provide replacement housing for persons displaced by  
396 transportation projects, the department may negotiate for the  
397 sale of such property as replacement housing. As compensation,  
398 the state shall receive at least its investment in such property  
399 or the department's current estimate of value, whichever is  
400 lower. It is expressly intended that this benefit be extended

401 only to persons actually displaced by the project. Dispositions  
402 to any other person must be for at least the department's  
403 current estimate of value.

404 (d) If the department determines that the property  
405 requires significant costs to be incurred or that continued  
406 ownership of the property exposes the department to significant  
407 liability risks, the department may use the projected  
408 maintenance costs over the next 10 years to offset the  
409 property's value in establishing a value for disposal of the  
410 property, even if that value is zero.

411 (e) If, at the discretion of the department, a sale to a  
412 person other than an abutting property owner would be  
413 inequitable, the property may be sold to the abutting owner for  
414 the department's current estimate of value.

415 Section 4. This act shall take effect July 1, 2020.