

By the Committee on Judiciary; and Senator Albritton

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1 A bill to be entitled
2 An act relating to relief from burdens on real
3 property rights; amending s. 70.001, F.S.; revising
4 the definitions of the terms "action of a governmental
5 entity" and "real property"; revising notice of claim
6 requirements for property owners; creating a
7 presumption that certain settlement offers protect the
8 public interest; specifying that property owners
9 retain the option to have a court determine awards of
10 compensation; authorizing property owners to bring
11 claims against governmental entities in certain
12 circumstances; providing that property owners are not
13 required to submit formal development applications or
14 proceed through formal application processes to bring
15 claims in specified circumstances; amending s. 70.45,
16 F.S.; defining the terms "imposed" or "imposition";
17 authorizing property owners to bring actions to
18 declare prohibited exactions invalid; providing
19 applicability; amending s. 70.51, F.S.; revising the
20 definition of the terms "land" or "real property";
21 providing an effective date.

22
23 WHEREAS, the Legislature enacted the Bert J. Harris, Jr.,
24 Private Property Rights Protection Act in 1995 to create a new
25 cause of action to protect private property rights, and

26 WHEREAS, this state has historically defined and recognized
27 property rights to include subsurface estates consistent with
28 *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and

29 WHEREAS, this bill clarifies the definition of property in

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30 the act so that the original intent of the act is preserved and
31 the act protects the property rights of all landowners in this
32 state, and

33 WHEREAS, this state has an additional interest in the
34 timely resolution of claims which are brought under the act, and

35 WHEREAS, landowners and governmental entities benefit
36 equally by knowing when a claim under the act may be asserted so
37 as to avoid unnecessary future litigation, NOW, THEREFORE,

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Paragraphs (d) and (g) of subsection (3),
42 subsections (4), (5), and (6), and paragraph (a) of subsection
43 (11) of section 70.001, Florida Statutes, are amended to read:

44 70.001 Private property rights protection.-

45 (3) For purposes of this section:

46 (d) The term "action of a governmental entity" means a
47 specific action of a governmental entity which affects real
48 property, including acting action on an application or permit or
49 adopting or enforcing any ordinance, resolution, regulation,
50 rule, or policy.

51 (g) The term "real property" means land and includes any
52 surface, subsurface, or mineral estates and any appurtenances
53 and improvements to the land, including any other relevant
54 interest in the real property in which the property owner has a
55 relevant interest. The term includes only parcels that are the
56 subject of and directly impacted by the action of a governmental
57 entity.

58 (4) (a) Not fewer ~~less~~ than 90 ~~150~~ days before ~~prior to~~

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59 filing an action under this section against a governmental
60 entity, a property owner who seeks compensation under this
61 section must present the claim in writing to the head of the
62 governmental entity, ~~except that if the property is classified~~
63 ~~as agricultural pursuant to s. 193.461, the notice period is 90~~
64 ~~days~~. The property owner must submit, along with the claim, a
65 bona fide, valid appraisal that supports the claim and
66 demonstrates the loss in fair market value to the real property.
67 If the action of government is the culmination of a process that
68 involves more than one governmental entity, or if a complete
69 resolution of all relevant issues, in the view of the property
70 owner or in the view of a governmental entity to whom a claim is
71 presented, requires the active participation of more than one
72 governmental entity, the property owner shall present the claim
73 as provided in this section to each of the governmental
74 entities.

75 (b) The governmental entity shall provide written notice of
76 the claim to all parties to any administrative action that gave
77 rise to the claim, and to owners of real property contiguous to
78 the owner's property at the addresses listed on the most recent
79 county tax rolls. Within 15 days after the claim is presented,
80 the governmental entity shall report the claim in writing to the
81 Department of Legal Affairs, and shall provide the department
82 with the name, address, and telephone number of the employee of
83 the governmental entity from whom additional information may be
84 obtained about the claim during the pendency of the claim and
85 any subsequent judicial action.

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

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88 governmental entity shall make a written settlement offer to
89 effectuate:

90 1. An adjustment of land development or permit standards or
91 other provisions controlling the development or use of land.

92 2. Increases or modifications in the density, intensity, or
93 use of areas of development.

94 3. The transfer of developmental rights.

95 4. Land swaps or exchanges.

96 5. Mitigation, including payments in lieu of onsite
97 mitigation.

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

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

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

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

104 10. Purchase of the real property, or an interest therein,
105 by an appropriate governmental entity or payment of
106 compensation.

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

108
109 If the property owner accepts a settlement offer, ~~either~~ before
110 or after filing an action, the governmental entity may implement
111 the settlement offer by appropriate development agreement; by
112 issuing a variance, a special exception, or any other
113 extraordinary relief; or by any other appropriate method,
114 subject to paragraph (d).

115 (d)1. When a governmental entity enters into a settlement
116 agreement under this section which would have the effect of a

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117 modification, variance, or a special exception to the
118 application of a rule, regulation, or ordinance as it would
119 otherwise apply to the subject real property, the relief granted
120 shall protect the public interest served by the regulations at
121 issue and be the appropriate relief necessary to prevent the
122 governmental regulatory effort from inordinately burdening the
123 real property. Settlement offers made pursuant to paragraph (c)
124 shall be presumed to protect the public interest.

125 2. When a governmental entity enters into a settlement
126 agreement under this section which would have the effect of
127 contravening the application of a statute as it would otherwise
128 apply to the subject real property, the governmental entity and
129 the property owner shall jointly file an action in the circuit
130 court where the real property is located for approval of the
131 settlement agreement by the court to ensure that the relief
132 granted protects the public interest served by the statute at
133 issue and is the appropriate relief necessary to prevent the
134 governmental regulatory effort from inordinately burdening the
135 real property.

136
137 This paragraph applies to any settlement reached between a
138 property owner and a governmental entity regardless of when the
139 settlement agreement was entered so long as the agreement fully
140 resolves all claims asserted under this section.

141 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
142 ~~notice period~~, unless a settlement offer is accepted by the
143 property owner, each of the governmental entities provided
144 notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a
145 written statement of allowable uses identifying the allowable

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146 uses to which the subject property may be put. The failure of
147 the governmental entity to issue a statement of allowable uses
148 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~
149 ~~period~~ shall be deemed a denial for purposes of allowing a
150 property owner to file an action in the circuit court under this
151 section. If a written statement of allowable uses is issued, it
152 constitutes the last prerequisite to judicial review for the
153 purposes of the judicial proceeding created by this section,
154 notwithstanding the availability of other administrative
155 remedies.

156 (b) If the property owner rejects the settlement offer and
157 the statement of allowable uses of the governmental entity or
158 entities, the property owner may file a claim for compensation
159 in the circuit court, a copy of which shall be served
160 contemporaneously on the head of each of the governmental
161 entities that made a settlement offer and a statement of
162 allowable uses that was rejected by the property owner. Actions
163 under this section shall be brought only in the county where the
164 real property is located.

165 (6) (a) The circuit court shall determine whether an
166 existing use of the real property or a vested right to a
167 specific use of the real property existed and, if so, whether,
168 considering the settlement offer and statement of allowable
169 uses, the governmental entity or entities have inordinately
170 burdened the real property. If the actions of more than one
171 governmental entity, considering any settlement offers and
172 statement of allowable uses, are responsible for the action that
173 imposed the inordinate burden on the real property of the
174 property owner, the court shall determine the percentage of

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175 responsibility each such governmental entity bears with respect
176 to the inordinate burden. A governmental entity may take an
177 interlocutory appeal of the court's determination that the
178 action of the governmental entity has resulted in an inordinate
179 burden. An interlocutory appeal does not automatically stay the
180 proceedings; however, the court may stay the proceedings during
181 the pendency of the interlocutory appeal. If the governmental
182 entity does not prevail in the interlocutory appeal, the court
183 shall award to the prevailing property owner the costs and a
184 reasonable attorney fee incurred by the property owner in the
185 interlocutory appeal.

186 (b) Following its determination of the percentage of
187 responsibility of each governmental entity, and following the
188 resolution of any interlocutory appeal, the court shall impanel
189 a jury to determine the total amount of compensation to the
190 property owner for the loss in value due to the inordinate
191 burden to the real property. The property owner retains the
192 option to forego a jury and elect to have the court determine
193 the award of compensation. The award of compensation shall be
194 determined by calculating the difference in the fair market
195 value of the real property, as it existed at the time of the
196 governmental action at issue, as though the owner had the
197 ability to attain the reasonable investment-backed expectation
198 or was not left with uses that are unreasonable, whichever the
199 case may be, and the fair market value of the real property, as
200 it existed at the time of the governmental action at issue, as
201 inordinately burdened, considering the settlement offer together
202 with the statement of allowable uses, of the governmental entity
203 or entities. In determining the award of compensation,

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204 consideration may not be given to business damages relative to
205 any development, activity, or use that the action of the
206 governmental entity or entities, considering the settlement
207 offer together with the statement of allowable uses has
208 restricted, limited, or prohibited. The award of compensation
209 shall include a reasonable award of prejudgment interest from
210 the date the claim was presented to the governmental entity or
211 entities as provided in subsection (4).

212 (c)1. In any action filed pursuant to this section, the
213 property owner is entitled to recover reasonable costs and
214 attorney fees incurred by the property owner, from the
215 governmental entity or entities, according to their
216 proportionate share as determined by the court, from the date of
217 the presentation of the claim to the head of the governmental
218 entity pursuant to paragraph (4) (a) ~~the filing of the circuit~~
219 ~~court action~~, if the property owner prevails in the action ~~and~~
220 ~~the court determines that the settlement offer, including the~~
221 ~~statement of allowable uses, of the governmental entity or~~
222 ~~entities did not constitute a bona fide offer to the property~~
223 ~~owner which reasonably would have resolved the claim, based upon~~
224 ~~the knowledge available to the governmental entity or entities~~
225 ~~and the property owner during the 90-day notice period or the~~
226 ~~150-day notice period.~~

227 2. In any action filed pursuant to this section, the
228 governmental entity or entities are entitled to recover
229 reasonable costs and attorney fees incurred by the governmental
230 entity or entities from the date of the filing of the circuit
231 court action, if the governmental entity or entities prevail in
232 the action and the court determines that the property owner did

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233 not accept a bona fide settlement offer, including the statement
234 of allowable uses, which reasonably would have resolved the
235 claim fairly to the property owner if the settlement offer had
236 been accepted by the property owner, based upon the knowledge
237 available to the governmental entity or entities and the
238 property owner during the 90-day-notice period ~~or the 150-day-~~
239 ~~notice period.~~

240 3. The determination of total reasonable costs and attorney
241 fees pursuant to this paragraph shall be made by the court and
242 not by the jury. Any proposed settlement offer or any proposed
243 decision, except for the final written settlement offer or the
244 final written statement of allowable uses, and any negotiations
245 or rejections in regard to the formulation either of the
246 settlement offer or the statement of allowable uses, are
247 inadmissible in the subsequent proceeding established by this
248 section except for the purposes of the determination pursuant to
249 this paragraph.

250 (d) Within 15 days after the execution of any settlement
251 pursuant to this section, or the issuance of any judgment
252 pursuant to this section, the governmental entity shall provide
253 a copy of the settlement or judgment to the Department of Legal
254 Affairs.

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

259 (a) For purposes of determining when this 1-year claim
260 period accrues:

261 1.a. A law or regulation is first applied upon enactment

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262 and notice as provided for in this sub-subparagraph ~~subparagraph~~
263 if the impact of the law or regulation on the real property is
264 clear and unequivocal in its terms and notice is provided by
265 mail to the affected property owner or registered agent at the
266 address referenced in the jurisdiction's most current ad valorem
267 tax records. The fact that the law or regulation could be
268 modified, varied, or altered under any other process or
269 procedure does not preclude the impact of the law or regulation
270 on a property from being clear or unequivocal pursuant to this
271 sub-subparagraph ~~subparagraph~~. Any notice under this sub-
272 subparagraph ~~subparagraph~~ shall be provided after the enactment
273 of the law or regulation and shall inform the property owner or
274 registered agent that the law or regulation may impact the
275 property owner's existing property rights and that the property
276 owner may have only 1 year after ~~from~~ receipt of the notice to
277 pursue any rights established under this section.

278 b. If the notice required in sub-subparagraph a. is not
279 provided to the property owner, the property owner may at any
280 time after enactment notify the head of the governmental entity
281 in writing via certified mail and, if available, e-mail that the
282 property owner deems the impact of the law or regulation on the
283 property owner's real property to be clear and unequivocal in
284 its terms and, as such, restrictive of uses allowed on the
285 property before the enactment. Within 45 days after receipt of a
286 notice under this sub-subparagraph, the governmental entity in
287 receipt of the notice must respond in writing via certified mail
288 and, if available, e-mail to describe the limitations imposed on
289 the property by the law or regulation. The property owner is not
290 required to formally pursue an application for a development

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291 order, development permit, or building permit, as such will be
292 deemed a waste of resources and shall not be a prerequisite to
293 bringing a claim pursuant to paragraph (4) (a). However, any such
294 claim must be filed within 1 year after the date of the property
295 owner's receipt of the notice from the governmental entity of
296 the limitations on use imposed on the real property.

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

300 Section 2. Present paragraphs (c), (d), and (e) of
301 subsection (1) of section 70.45, Florida Statutes, are
302 redesignated as paragraphs (d), (e), and (f), respectively, a
303 new paragraph (c) is added to that subsection, and subsections
304 (2), (4), and (5) of that section are amended, to read:

305 70.45 Governmental exactions.—

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

307 (c) "Imposed" or "imposition" as it relates to a prohibited
308 exaction or condition of approval refers to the time at which
309 the property owner must comply with the prohibited exaction or
310 condition of approval.

311 (2) In addition to other remedies available in law or
312 equity, a property owner may bring an action in a court of
313 competent jurisdiction under this section to declare a
314 prohibited exaction invalid and recover damages caused by a
315 prohibited exaction. Such action may ~~not~~ be brought by a
316 property owner at the property owner's discretion when until a
317 prohibited exaction is actually imposed or when it is required
318 in writing as a final condition of approval for the requested
319 use of real property. The right to bring an action under this

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320 section may not be waived. This section does not apply to impact
321 fees adopted under s. 163.31801 or non-ad valorem assessments as
322 defined in s. 197.3632.

323 (4) For each claim filed under this section, the
324 governmental entity has the burden of proving that the
325 challenged exaction has an essential nexus to a legitimate
326 public purpose and is roughly proportionate to the impacts of
327 the proposed use that the governmental entity is seeking to
328 avoid, minimize, or mitigate. The property owner has the burden
329 of proving damages that result from a prohibited exaction.

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

335 Section 3. The amendments made by this act to ss.
336 70.001(4), (5), (6) and (11) and 70.45, Florida Statutes, apply
337 only to claims made in response to actions taken by governmental
338 entities on or after July 1, 2021.

339 Section 4. Paragraph (g) of subsection (2) of section
340 70.51, Florida Statutes, is amended to read:

341 70.51 Land use and environmental dispute resolution.-

342 (2) As used in this section, the term:

343 (g) "Land" or "real property" has the same meaning as in s.
344 70.001(3)(g) means land and includes any appurtenances and
345 improvements to the land, including any other relevant real
346 property in which the owner had a relevant interest.

347 Section 5. This act shall take effect July 1, 2021.