

By the Committees on Rules; and 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 written bona fide, valid appraisal report, as that term is
66 described in s. 475.611(1)(e), that supports the claim and
67 demonstrates the loss in fair market value to the real property.
68 If the action of government is the culmination of a process that
69 involves more than one governmental entity, or if a complete
70 resolution of all relevant issues, in the view of the property
71 owner or in the view of a governmental entity to whom a claim is
72 presented, requires the active participation of more than one
73 governmental entity, the property owner shall present the claim
74 as provided in this section to each of the governmental
75 entities.

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

87 (c) During the 90-day-notice period ~~or the 150-day notice~~

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88 ~~period~~, unless extended by agreement of the parties, the
89 governmental entity shall make a written settlement offer to
90 effectuate:

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

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

95 3. The transfer of developmental rights.

96 4. Land swaps or exchanges.

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

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

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

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

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

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

108 11. No changes to the action of the governmental entity.
109

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

116 (d)1. When a governmental entity enters into a settlement

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

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

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

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

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

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

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

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

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

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

213 (c)1. In any action filed pursuant to this section, the
214 property owner is entitled to recover reasonable costs and
215 attorney fees incurred by the property owner, from the
216 governmental entity or entities, according to their
217 proportionate share as determined by the court, from the date of
218 the presentation of the claim to the head of the governmental
219 entity pursuant to paragraph (4) (a) ~~the filing of the circuit~~
220 ~~court action~~, if the property owner prevails in the action ~~and~~
221 ~~the court determines that the settlement offer, including the~~
222 ~~statement of allowable uses, of the governmental entity or~~
223 ~~entities did not constitute a bona fide offer to the property~~
224 ~~owner which reasonably would have resolved the claim, based upon~~
225 ~~the knowledge available to the governmental entity or entities~~
226 ~~and the property owner during the 90-day notice period or the~~
227 ~~150-day notice period.~~

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

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

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

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

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

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

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

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

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

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

301 Section 2. Present paragraphs (c), (d), and (e) of
302 subsection (1) of section 70.45, Florida Statutes, are
303 redesignated as paragraphs (d), (e), and (f), respectively, a
304 new paragraph (c) is added to that subsection, and subsections
305 (2), (4), and (5) of that section are amended, to read:

306 70.45 Governmental exactions.—

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

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

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

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320 use of real property. The right to bring an action under this
321 section may not be waived. This section does not apply to impact
322 fees adopted under s. 163.31801 or non-ad valorem assessments as
323 defined in s. 197.3632.

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

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

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

340 Section 4. Paragraph (g) of subsection (2) of section
341 70.51, Florida Statutes, is amended to read:

342 70.51 Land use and environmental dispute resolution.—

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

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

348 Section 5. This act shall take effect October 1, 2021.