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CS/CS/CS/HB 383, Engrossed 1

2015 Legislature

1  
2 An act relating to private property rights; amending  
3 s. 70.001, F.S.; revising the terms "property owner"  
4 and "real property"; providing that any settlement  
5 agreement reached between an owner and a governmental  
6 entity applies so long as the agreement resolves all  
7 issues; providing exceptions to the applicability of  
8 the Bert J. Harris, Jr., Private Property Rights  
9 Protection Act; creating s. 70.45, F.S.,; defining  
10 terms; authorizing a property owner to bring an action  
11 to recover damages caused by a prohibited exaction;  
12 requiring a property owner to provide written notice  
13 of such action to the relevant governmental entity;  
14 specifying the burdens of proof imposed on the  
15 governmental entity and the property owner in such  
16 action; authorizing the award of reasonable attorney  
17 fees and costs under specified circumstances; waiving  
18 the state's sovereign immunity for certain causes of  
19 action; providing applicability; amending s. 70.80,  
20 F.S.; specifying that an action for a prohibited  
21 exaction is not to be construed in pari materia with  
22 certain other actions; providing an effective date.

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

25  
26 Section 1. Paragraphs (b), (c), and (d) of subsection (4),



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27 paragraphs (f) and (g) of subsection (3), and subsection (10) of  
 28 section 70.001, Florida Statutes, are amended to read:

29 70.001 Private property rights protection.—

30 (3) For purposes of this section:

31 (f) The term "property owner" means the person who holds  
 32 legal title to the real property that is the subject of and  
 33 directly impacted by the action of a governmental entity ~~at~~  
 34 ~~issue~~. The term does not include a governmental entity.

35 (g) The term "real property" means land and includes any  
 36 appurtenances and improvements to the land, including any other  
 37 relevant real property in which the property owner has ~~had~~ a  
 38 relevant interest. The term includes only parcels that are the  
 39 subject of and directly impacted by the action of a governmental  
 40 entity.

41 (4)

42 (b) The governmental entity shall provide written notice  
 43 of the claim to all parties to any administrative action that  
 44 gave rise to the claim, and to owners of real property  
 45 contiguous to the owner's property at the addresses listed on  
 46 the most recent county tax rolls. Within 15 days after the claim  
 47 is being ~~is being~~ presented, the governmental entity shall report the  
 48 claim in writing to the Department of Legal Affairs, and shall  
 49 provide the department with the name, address, and telephone  
 50 number of the employee of the governmental entity from whom  
 51 additional information may be obtained about the claim during  
 52 the pendency of the claim and any subsequent judicial action.



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53 (c) During the 90-day-notice period or the 150-day-notice  
 54 period, unless extended by agreement of the parties, the  
 55 governmental entity shall make a written settlement offer to  
 56 effectuate:

57 1. An adjustment of land development or permit standards  
 58 or other provisions controlling the development or use of land.

59 2. Increases or modifications in the density, intensity,  
 60 or use of areas of development.

61 3. The transfer of developmental rights.

62 4. Land swaps or exchanges.

63 5. Mitigation, including payments in lieu of onsite  
 64 mitigation.

65 6. Location on the least sensitive portion of the  
 66 property.

67 7. Conditioning the amount of development or use  
 68 permitted.

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

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

73 10. Purchase of the real property, or an interest therein,  
 74 by an appropriate governmental entity or payment of  
 75 compensation.

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

77  
 78 If the property owner accepts a ~~the~~ settlement offer, either



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79 | before or after filing an action, the governmental entity may  
80 | implement the settlement offer by appropriate development  
81 | agreement; by issuing a variance, special exception, or other  
82 | extraordinary relief; or by other appropriate method, subject to  
83 | paragraph (d).

84 | (d)1. When ~~Whenever~~ a governmental entity enters into a  
85 | settlement agreement under this section which would have the  
86 | effect of a modification, variance, or a special exception to  
87 | the application of a rule, regulation, or ordinance as it would  
88 | otherwise apply to the subject real property, the relief granted  
89 | shall protect the public interest served by the regulations at  
90 | issue and be the appropriate relief necessary to prevent the  
91 | governmental regulatory effort from inordinately burdening the  
92 | real property.

93 | 2. When ~~Whenever~~ a governmental entity enters into a  
94 | settlement agreement under this section which would have the  
95 | effect of contravening the application of a statute as it would  
96 | otherwise apply to the subject real property, the governmental  
97 | entity and the property owner shall jointly file an action in  
98 | the circuit court where the real property is located for  
99 | approval of the settlement agreement by the court to ensure that  
100 | the relief granted protects the public interest served by the  
101 | statute at issue and is the appropriate relief necessary to  
102 | prevent the governmental regulatory effort from inordinately  
103 | burdening the real property.

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105 This paragraph applies to any settlement reached between a  
 106 property owner and a governmental entity regardless of when the  
 107 settlement agreement was entered so long as the agreement fully  
 108 resolves all claims asserted under this section.

109 (10) (a) This section does not apply to any actions taken  
 110 by a governmental entity which relate to the operation,  
 111 maintenance, or expansion of transportation facilities, and this  
 112 section does not affect existing law regarding eminent domain  
 113 relating to transportation.

114 (b) This section does not apply to any actions taken by a  
 115 county with respect to the adoption of a Flood Insurance Rate  
 116 Map issued by the Federal Emergency Management Agency for the  
 117 purpose of participating in the National Flood Insurance  
 118 Program, unless such adoption incorrectly applies an aspect of  
 119 the Flood Insurance Rate Map to the property, in such a way as  
 120 to, but not limited to, incorrectly assess the elevation of the  
 121 property.

122 Section 2. Section 70.45, Florida Statutes, is created to  
 123 read:

124 70.45 Governmental exactions.—

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

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

130 (b) "Governmental entity" has the same meaning as provided



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131 in s. 70.001(3)(c).

132 (c) "Prohibited exaction" means any condition imposed by a  
133 governmental entity on a property owner's proposed use of real  
134 property that lacks an essential nexus to a legitimate public  
135 purpose and is not roughly proportionate to the impacts of the  
136 proposed use that the governmental entity seeks to avoid,  
137 minimize, or mitigate.

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

140 (e) "Real property" has the same meaning as provided in s.  
141 70.001(3)(g).

142 (2) In addition to other remedies available in law or  
143 equity, a property owner may bring an action in a court of  
144 competent jurisdiction under this section to recover damages  
145 caused by a prohibited exaction. Such action may not be brought  
146 until a prohibited exaction is actually imposed or required in  
147 writing as a final condition of approval for the requested use  
148 of real property. The right to bring an action under this  
149 section may not be waived. This section does not apply to impact  
150 fees adopted under s. 163.31801 or non-ad valorem assessments as  
151 defined in s. 197.3632.

152 (3) At least 90 days before filing an action under this  
153 section, but no later than 180 days after imposition of the  
154 prohibited exaction, the property owner shall provide to the  
155 relevant governmental entity written notice of the proposed  
156 action. This written notice shall identify the exaction that the



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157 property owner believes is prohibited, briefly explain why the  
158 property owner believes the exaction is prohibited, and provide  
159 an estimate of the damages. Upon receipt of the written notice:

160 (a) The governmental entity shall review the notice of  
161 claim and respond in writing to the property owner by  
162 identifying the basis for the exaction and explaining why the  
163 governmental entity maintains that the exaction is proportionate  
164 to the harm created by the proposed use of real property, or by  
165 proposing to remove all or a portion of the exaction.

166 (b) The written response may not be used against the  
167 governmental entity in subsequent litigation other than for  
168 purposes of assessing attorney fees and costs under subsection  
169 (5).

170 (4) For each claim filed under this section, the  
171 governmental entity has the burden of proving that the exaction  
172 has an essential nexus to a legitimate public purpose and is  
173 roughly proportionate to the impacts of the proposed use that  
174 the governmental entity is seeking to avoid, minimize, or  
175 mitigate. The property owner has the burden of proving damages  
176 that result from a prohibited exaction.

177 (5) The court may award attorney fees and costs to the  
178 prevailing party; however, if the court determines that the  
179 exaction which is the subject of the claim lacks an essential  
180 nexus to a legitimate public purpose, the court shall award  
181 attorney fees and costs to the property owner.

182 (6) To ensure that courts may assess damages for claims



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183 filed under this section in accordance with s. 13, Art. X of the  
184 State Constitution, the state, for itself and its agencies or  
185 political subdivisions, waives sovereign immunity for causes of  
186 action based upon the application of this section. Such waiver  
187 is limited only to actions brought under this section.

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

192 Section 3. Section 70.80, Florida Statutes, is amended to  
193 read:

194 70.80 Construction of ss. 70.001, 70.45, and 70.51.—It is  
195 the express declaration of the Legislature that ss. 70.001,  
196 70.45, and 70.51 have separate and distinct bases, objectives,  
197 applications, and processes. It is therefore the intent of the  
198 Legislature that ss. 70.001, 70.45, and 70.51 are not to be  
199 construed in pari materia.

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