

CHAPTER 2015-142

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 383

An act relating to private property rights; amending s. 70.001, F.S.; revising the terms “property owner” and “real property”; providing that any settlement agreement reached between an owner and a governmental entity applies so long as the agreement resolves all issues; providing exceptions to the applicability of the Bert J. Harris, Jr., Private Property Rights Protection Act; creating s. 70.45, F.S.; defining terms; authorizing a property owner to bring an action to recover damages caused by a prohibited exaction; requiring a property owner to provide written notice of such action to the relevant governmental entity; specifying the burdens of proof imposed on the governmental entity and the property owner in such action; authorizing the award of reasonable attorney fees and costs under specified circumstances; waiving the state’s sovereign immunity for certain causes of action; providing applicability; amending s. 70.80, F.S.; specifying that an action for a prohibited exaction is not to be construed in pari materia with certain other actions; providing an effective date.

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

Section 1. Paragraphs (b), (c), and (d) of subsection (4), paragraphs (f) and (g) of subsection (3), and subsection (10) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

(3) For purposes of this section:

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

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

(4)

(b) The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner’s property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is being presented, the governmental entity shall report the claim in writing to

the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

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

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.
11. No changes to the action of the governmental entity.

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

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

2. When ~~Whenever~~ a governmental entity enters into a settlement agreement under this section which would have the effect of contravening

the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

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

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

(b) This section does not apply to any actions taken by a county with respect to 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 such adoption incorrectly applies an aspect of the Flood Insurance Rate Map to the property, in such a way as to, but not limited to, incorrectly assess the elevation of the property.

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

70.45 Governmental exactions.—

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

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

(b) “Governmental entity” has the same meaning as provided in s. 70.001(3)(c).

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

(d) “Property owner” has the same meaning as provided in s. 70.001(3)(f).

(e) “Real property” has the same meaning as provided in s. 70.001(3)(g).

(2) In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section to recover damages caused by a prohibited exaction. Such action may

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

(3) At least 90 days before filing an action under this section, but no later than 180 days after imposition of the prohibited exaction, the property owner shall provide to the relevant governmental entity written notice of the proposed action. This written notice shall identify the exaction that the property owner believes is prohibited, briefly explain why the property owner believes the exaction is prohibited, and provide an estimate of the damages. Upon receipt of the written notice:

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

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

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

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

(6) To ensure that courts may assess damages for claims filed under this section in accordance with s. 13, Art. X of the State Constitution, the state, for itself and its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of this section. Such waiver is limited only to actions brought under this section.

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

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

70.80 Construction of ss. 70.001, ~~70.45~~, and 70.51.—It is the express declaration of the Legislature that ss. 70.001, ~~70.45~~, and 70.51 have separate and distinct bases, objectives, applications, and processes. It is therefore the

intent of the Legislature that ss. 70.001, 70.45, and 70.51 are not to be construed in pari materia.

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

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.