

CHAPTER 2021-203

Committee Substitute for Committee Substitute for House Bill Nos. 421 and 1101

An act relating to relief from burdens on real property rights; amending s. 70.001, F.S.; specifying that a property owner entitled to certain relief retains such entitlement after relinquishing title under certain circumstances; revising the definitions of the terms “action of a governmental entity” and “real property”; revising notice of claim requirements for property owners; creating a presumption that certain settlement offers protect the public interest; specifying that property owners retain the option to have a court determine awards of compensation; authorizing property owners to bring claims against governmental entities in certain circumstances; providing that property owners are not required to submit formal development applications or proceed through formal application processes to bring claims in specified circumstances; amending s. 70.45, F.S.; defining the terms “imposed” or “imposition”; authorizing property owners to bring actions to declare prohibited exactions invalid; providing applicability; amending s. 70.51, F.S.; revising the definition of the terms “land” or “real property”; providing an effective date.

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

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

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

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

WHEREAS, this act clarifies the definition of property so that the original intent of the act is preserved and the act protects the property rights of all landowners in the state, NOW, THEREFORE,

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

Section 1. Subsection (2), paragraphs (d) and (g) of subsection (3), subsections (4), (5), and (6), and paragraph (a) of subsection (11) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section. A property owner entitled to relief under this section retains such entitlement to pursue the claim if the property owner filed a claim under subsection (4) but subsequently relinquishes title to the subject real property before the claim reaches a final resolution.

(3) For purposes of this section:

(d) The term “action of a governmental entity” means a specific action of a governmental entity which affects real property, including acting ~~action~~ on an application or a permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.

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

(4)(a) Not ~~fewer~~ less than 90 ~~150~~ days before ~~prior to~~ filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, ~~except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days.~~ The property owner must submit, along with the claim, a written bona fide, valid appraisal report as defined in s. 475.611(1)(e) that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(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 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, a special exception, or any 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 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, a special exception, or any other extraordinary relief; or by any other appropriate method, subject to paragraph (d).

(d)1. When 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. Settlement offers made under paragraph (c) shall be presumed to protect the public interest.

2. When 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.

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

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

(6)(a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that imposed the inordinate burden on the real property of the property owner, the court shall determine the percentage of responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The property owner retains the option to forego a jury and elect to have the court determine the award of compensation. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the statement of allowable uses, of the governmental entity or entities. In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement offer together with the statement of allowable uses has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity or entities as provided in subsection (4).

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

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

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed decision, except for the

final written settlement offer or the final written statement of allowable uses, and any negotiations or rejections in regard to the formulation either of the settlement offer or the statement of allowable uses, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

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

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

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

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

b. If the notice required in sub-subparagraph a. is not provided to the property owner, the property owner may at any time after enactment notify the head of the governmental entity in writing via certified mail and, if available, e-mail that the property owner deems the impact of the law or regulation on the property owner's real property to be clear and unequivocal in its terms and, as such, restrictive of uses allowed on the property before the enactment. Within 45 days after receipt of a notice under this sub-subparagraph, the governmental entity in receipt of the notice must respond in writing via certified mail and, if available, e-mail to describe the limitations imposed on the property by the law or regulation. The property owner is not required to formally pursue an application for a development order, development permit, or building permit, as such will be deemed a waste of resources and shall not be a prerequisite to bringing a claim under paragraph (4)(a). However, any such claim must be filed within 1 year after the date of the property owner's receipt of the notice from the governmental entity of the limitations on use imposed on the real property.

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

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

70.45 Governmental exactions.—

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

(c) “Imposed” or “imposition” as it relates to a prohibited exaction or condition of approval refers to the time at which the property owner must comply with the prohibited exaction or condition of approval.

(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 declare a prohibited exaction invalid and recover damages caused by a prohibited exaction. Such action may ~~not~~ be brought by a property owner at the property owner’s discretion when until a prohibited exaction is actually imposed or when it is 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.

(4) For each claim filed under this section, the governmental entity has the burden of proving that the challenged 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 challenged 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.

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

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

70.51 Land use and environmental dispute resolution.—

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

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

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

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.