

THE BERT J. HARRIS, JR., PRIVATE PROPERTY RIGHTS PROTECTION ACT

Florida's Landmark Property Rights Legislation

2015 Amendments to the Harris Act

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The Florida Legislature enacted landmark legislation in 1995 that affords property owners new remedies against government entities that reduce the value of privately owned real property through regulatory decisions. The law – enacted as Chapter 95-181, Laws of Florida, and codified at Chapter 70, Florida Statutes – provides relief for a landowner when State or local government seeks to restrict certain existing or future uses of land, and by doing so diminishes the fair market value of that land. The new law became effective on October 1, 1995.

This session, Reps. Katie Edwards and Keith Perry sponsored House Bill 383 that makes several substantive changes to the Harris Act and created a new statutory cause of action for unlawful exactions which is independent of the Harris Act.

Private Property Rights CS/CS/CS/HB 383

HB 383 makes several changes to the Harris Act which includes:

- Clarifies that the law is not to be used as a “NIMBY” act and is limited to property owners filing claims for action directly taken upon that claimant’s land rather than to complain of negative value consequences based off of government actions on an adjacent parcel.
- It allows parties to a Harris Act claim to settle the claim either before or after an actual lawsuit under the Act is filed.
- The Amendments become effective on October 1, 2015.



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2015 Legislature

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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 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.