By Senator Lee

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A bill to be entitled

An act relating to property rights; amending s. 70.001, F.S.; revising legislative findings; providing applicability relating to claims that involve one or more residential properties which are brought as a result of certain regulations or ordinances; authorizing a property owner to waive a jury and request that the court make a determination of compensation; revising the calculation for costs a property owner is entitled to recover; authorizing a property owner to bring a claim under certain circumstances when he or she is not provided certain notice; amending s. 70.45, F.S.; authorizing a property owner to bring an action to declare a prohibited exaction invalid; making clarifying changes; providing an effective date.

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

Section 1. Present paragraph (d) of subsection (4) of section 70.001, Florida Statutes, is redesignated as paragraph (e), a new paragraph (d) is added to that subsection, and subsections (1) and (6) and paragraph (a) of subsection (11) of that section are amended, to read:

70.001 Private property rights protection.—

(1) This act may be cited as the "Bert J. Harris, Jr., Private Property Rights Protection Act." The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may

inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. <u>The Legislature further recognizes that it is in the public interest to ensure that similarly situated properties are subject to the same rules and regulations.</u> Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(4)

<u>(d) When the claim involves one or more residential properties and is brought as a result of the enactment of a governmental entity’s regulation or ordinance that applies to residential property, any settlement offer that includes a modification or variance to such regulation or ordinance applies to all similarly situated residential properties subject to regulation by the governmental entity.</u>

(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. <u>The property owner may waive a jury and request that the court make such determination.</u> 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 presenting the claim to the governmental entity pursuant to 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 from receipt of the notice to pursue any rights established under this section.

b. If a property owner is not provided notice pursuant to sub-subparagraph a., the property owner may bring a claim against the governmental entity after the enactment of the law or regulation if the law or regulation's effect on the real property is clear and unequivocal in its terms. In such cases, a property owner is not required to submit a formal application for development or to proceed through any formal application process if such action would be futile and a waste of resources.

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. Subsections (2), (4), and (5) of section 70.45, Florida Statutes, are amended to read:

70.45 Governmental exactions.—

(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 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.

(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. This act shall take effect July 1, 2019.