

West's Florida Statutes Annotated

Title VI. Civil Practice and Procedure (Chapters 45-89) (Refs & Annos)

Chapter 70. Relief from Burdens on Real Property Rights (Refs & Annos)

West's F.S.A. § 70.45

70.45. Governmental exactions

Effective: October 1, 2015

[Currentness](#)

(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.

Credits

Added by [Laws 2015, c. 2015-142, § 2, eff. Oct. 1, 2015](#).

West's F. S. A. § 70.45, FL ST § 70.45

Current through the 2018 Second Regular Session of the 25th Legislature.
