



2020 Legislative Issue Background



Private Property Rights “Bert Harris Act”

Statement:

The Florida League of Cities OPPOSES changes to the Bert J. Harris Jr. Private Property Rights Protection Act that do not consider everyone’s property rights or that create one-sided lawsuits that shift inordinate financial burdens onto local taxpayers and limit the ability of cities to quickly resolve claims.

Background:

Florida is one of the strongest states in the country when it comes to protecting private property owners from government regulations or takings. From requiring county property appraiser offices to provide a Property Owner Bill of Rights on their websites, to having strong laws against eminent domain, Florida has multiple levels of protections for private property owners.

Florida is the only state that provides private property owner protections for government regulations that do not amount to a taking under the U.S. Constitution. The State of Florida enacted the Bert J. Harris, Jr., Private Property Rights Protection Act (Harris Act) in 1995, which provides a specific process for landowners to seek relief when their property is unfairly affected by government action. Specifically, the Harris Act provides a civil cause of action for private property owners whose current use or vested right in a specific use of real property is “inordinately burdened” by the actions of a governmental entity. The Harris Act has been subsequently amended in 2008, 2011 and 2015 by the Florida Legislature.

The Harris Act authorizes relief, including compensation, to the private property owner for the actual loss to the fair market value of the real property. The burden of proof is on the property owner to show that a governmental entity has inordinately burdened his or her real property. Any Harris claim must be brought within one year of governmental action. The Harris Act defines an inordinate burden as one in which an action of one or more governmental entities has restricted or limited the use of property such that the owner is unable to attain reasonable, investment-backed expectations for the existing use or a vested right in the existing use of the property as a whole, or if the owner is left with uses that are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good, which should be borne by the public at large.

During the 2019 session, legislation was introduced to amend the Harris Act that would have had a serious impact on local government operations and could have exposed cities and counties to substantial liability. When faced with a Harris Act claim, cities and counties often choose to settle the claim by offering the aggrieved property owner a variance to the rule or regulation that is inordinately burdening the property. Settling claims in this method saves taxpayers the expense of paying monetary damages and is encouraged in the Harris Act. Legislation that failed to pass last session would have required government entities that settle Harris Act claims on residential

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properties by the use of variance to automatically apply the variance granted to one residential property to all “similarly situated properties.” The bills did not define what a “similarly situated property” was, leaving room for potentially broad problematic applications of the variance without taking into consideration size or density of the residential property, any historical designations or other zoning overlays differing residential properties may have. The legislation also failed to consider that there are legal due process procedures in place to protect the property rights of property owners who may be harmed by the issuance of a variance. The legislative attempts have also sought to remove the current attorney fee provisions from the Harris Act, amending it to prevent a government entity from collecting attorney fees even if they prevail. During the 2020 session, the League will protect against additional legislative attempts to craft a one-sided Harris Act that do not consider everyone’s property rights.

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