

New Legislation Enacted to Protect the Use of Private Property

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In the 2015 session, the Legislature passed and the Governor signed House Bill 383 to address unconstitutional conditions by government agencies on the use of private property in Florida. This expands the existing Bert Harris Private Property Rights Protection Act by creating an entirely new cause of action for property owners who are affected by governmental regulation of their property. The motivation behind this legislation was *Koontz v. St. Johns River Water Management District*, a multi-year legal battle that started in 1994 when Mr. Coy Koontz applied to the District for permits to dredge and fill approximately 3.25 acres of wetlands on his property. Even though Mr. Koontz was willing to dedicate the remaining 80% of his property to conservation, the District was not satisfied with the proposal and attempted to pressure Mr. Koontz to perform an additional 50 acres of mitigation work in order to receive his permit, on District-owned lands up to 7 miles away. The U.S. Supreme Court ultimately held that these demands by the District were unconstitutional conditions on Mr. Koontz's use of his property because they amounted to "exactions" of money and other conditions that did not have a nexus to and were not proportionate to impacts to the environment that the District sought to offset. The Court then remanded the case to the Florida courts to determine whether

damages were available under Florida law. By enacting HB 383, the Legislature has made it clear that landowners have a legal remedy when state or local government make extortionate demands on property owners in exchange for permit approvals. This could apply to actions like a zoning order where a county overreaches in making conditions for issuance. The new law has a notice requirement to invoke the cause of action, specifically within 180 days of the agency's alleged exactions or the claim will be waived. After a claim is filed, the government agency then must prove that the permit condition has an essential nexus and is roughly proportional to the harm it seeks to redress. Claimants can seek damages under the law for things such as reduced property values or refunds of the illegal portion of the exaction, as well as potential attorney's fees. If a property owner experiences a potential unconstitutional exaction by a government agency and wishes to take action, it is important to consult an attorney promptly to evaluate whether the matter is covered under this new provision. The law will take effect on October 1, 2015.

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