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CS/CS/HB 701

2011 Legislature

1                                   A bill to be entitled  
2           An act relating to property rights; amending s. 70.001,  
3           F.S.; revising definitions; shortening a notice period for  
4           certain actions; revising procedures for determining a  
5           governmental entity's final decision identifying the  
6           allowable uses for a property; defining what constitutes  
7           first application of a law or regulation; clarifying the  
8           waiver of sovereign immunity for liability; providing for  
9           prospective application; providing an effective date.

10

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

12

13           Section 1. Paragraphs (b) and (e) of subsection (3),  
14           paragraphs (a) and (c) of subsection (4), and subsections (5),  
15           (6), (11), and (13) of section 70.001, Florida Statutes, are  
16           amended to read:

17           70.001 Private property rights protection.—

18           (3) For purposes of this section:

19           (b) The term "existing use" means:

20           1. An actual, present use or activity on the real  
21           property, including periods of inactivity which are normally  
22           associated with, or are incidental to, the nature or type of  
23           use; or

24           2. Activity or such reasonably foreseeable, nonspeculative  
25           land uses which are suitable for the subject real property and  
26           compatible with adjacent land uses and which have created an  
27           existing fair market value in the property greater than the fair

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28 market value of the actual, present use or activity on the real  
29 property.

30 (e) The terms "inordinate burden" and ~~or~~ "inordinately  
31 burdened":

32 1. Mean that an action of one or more governmental  
33 entities has directly restricted or limited the use of real  
34 property such that the property owner is permanently unable to  
35 attain the reasonable, investment-backed expectation for the  
36 existing use of the real property or a vested right to a  
37 specific use of the real property with respect to the real  
38 property as a whole, or that the property owner is left with  
39 existing or vested uses that are unreasonable such that the  
40 property owner bears permanently a disproportionate share of a  
41 burden imposed for the good of the public, which in fairness  
42 should be borne by the public at large.

43 2. ~~The terms "inordinate burden" or "inordinately~~  
44 ~~burdened"~~ Do not include temporary impacts to real property;  
45 impacts to real property occasioned by governmental abatement,  
46 prohibition, prevention, or remediation of a public nuisance at  
47 common law or a noxious use of private property; or impacts to  
48 real property caused by an action of a governmental entity taken  
49 to grant relief to a property owner under this section However,  
50 a temporary impact on development, as defined in s. 380.04, that  
51 is in effect for longer than 1 year may, depending upon the  
52 circumstances, constitute an "inordinate burden" as provided in  
53 this paragraph.

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55 In determining whether reasonable, investment-backed  
 56 expectations are inordinately burdened, consideration may be  
 57 given to the factual circumstances leading to the time elapsed  
 58 between enactment of the law or regulation and its first  
 59 application to the subject property.

60 (4) (a) Not less than 150 ~~180~~ days prior to filing an  
 61 action under this section against a governmental entity, a  
 62 property owner who seeks compensation under this section must  
 63 present the claim in writing to the head of the governmental  
 64 entity, except that if the property is classified as  
 65 agricultural pursuant to s. 193.461, the notice period is 90  
 66 days. The property owner must submit, along with the claim, a  
 67 bona fide, valid appraisal that supports the claim and  
 68 demonstrates the loss in fair market value to the real property.  
 69 If the action of government is the culmination of a process that  
 70 involves more than one governmental entity, or if a complete  
 71 resolution of all relevant issues, in the view of the property  
 72 owner or in the view of a governmental entity to whom a claim is  
 73 presented, requires the active participation of more than one  
 74 governmental entity, the property owner shall present the claim  
 75 as provided in this section to each of the governmental  
 76 entities.

77 (c) During the 90-day-notice period or the 150-day-notice  
 78 ~~180-day-notice~~ period, unless extended by agreement of the  
 79 parties, the governmental entity shall make a written settlement  
 80 offer to effectuate:

81 1. An adjustment of land development or permit standards  
 82 or other provisions controlling the development or use of land.

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83           2. Increases or modifications in the density, intensity,  
84 or use of areas of development.

85           3. The transfer of developmental rights.

86           4. Land swaps or exchanges.

87           5. Mitigation, including payments in lieu of onsite  
88 mitigation.

89           6. Location on the least sensitive portion of the  
90 property.

91           7. Conditioning the amount of development or use  
92 permitted.

93           8. A requirement that issues be addressed on a more  
94 comprehensive basis than a single proposed use or development.

95           9. Issuance of the development order, a variance, special  
96 exception, or other extraordinary relief.

97           10. Purchase of the real property, or an interest therein,  
98 by an appropriate governmental entity or payment of  
99 compensation.

100           11. No changes to the action of the governmental entity.

101  
102 If the property owner accepts the settlement offer, the  
103 governmental entity may implement the settlement offer by  
104 appropriate development agreement; by issuing a variance,  
105 special exception, or other extraordinary relief; or by other  
106 appropriate method, subject to paragraph (d).

107           (5) (a) During the 90-day-notice period or the 150-day-  
108 notice ~~180-day-notice~~ period, unless a settlement offer is  
109 accepted by the property owner, each of the governmental  
110 entities provided notice pursuant to paragraph (4) (a) shall

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111 issue a written statement of allowable uses ~~ripeness decision~~  
 112 identifying the allowable uses to which the subject property may  
 113 be put. The failure of the governmental entity to issue a  
 114 statement of allowable uses ~~written ripeness decision~~ during the  
 115 applicable 90-day-notice period or 150-day-notice ~~180-day-notice~~  
 116 period shall be deemed a denial for purposes of allowing a  
 117 property owner to file an action in the circuit court under this  
 118 section. If a written statement of allowable uses is issued, it  
 119 ~~to ripen the prior action of the governmental entity, and shall~~  
 120 ~~operate as a ripeness decision that has been rejected by the~~  
 121 ~~property owner. The ripeness decision, as a matter of law,~~  
 122 constitutes the last prerequisite to judicial review, ~~and the~~  
 123 ~~matter shall be deemed ripe or final~~ for the purposes of the  
 124 judicial proceeding created by this section, notwithstanding the  
 125 availability of other administrative remedies.

126 (b) If the property owner rejects the settlement offer and  
 127 the statement of allowable uses ~~ripeness decision~~ of the  
 128 governmental entity or entities, the property owner may file a  
 129 claim for compensation in the circuit court, a copy of which  
 130 shall be served contemporaneously on the head of each of the  
 131 governmental entities that made a settlement offer and a  
 132 statement of allowable uses ~~ripeness decision~~ that was rejected  
 133 by the property owner. Actions under this section shall be  
 134 brought only in the county where the real property is located.

135 (6) (a) The circuit court shall determine whether an  
 136 existing use of the real property or a vested right to a  
 137 specific use of the real property existed and, if so, whether,  
 138 considering the settlement offer and statement of allowable uses

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139 | ~~ripeness decision~~, the governmental entity or entities have  
140 | inordinately burdened the real property. If the actions of more  
141 | than one governmental entity, considering any settlement offers  
142 | and statement of allowable uses ~~ripeness decisions~~, are  
143 | responsible for the action that imposed the inordinate burden on  
144 | the real property of the property owner, the court shall  
145 | determine the percentage of responsibility each such  
146 | governmental entity bears with respect to the inordinate burden.  
147 | A governmental entity may take an interlocutory appeal of the  
148 | court's determination that the action of the governmental entity  
149 | has resulted in an inordinate burden. An interlocutory appeal  
150 | does not automatically stay the proceedings; however, the court  
151 | may stay the proceedings during the pendency of the  
152 | interlocutory appeal. If the governmental entity does not  
153 | prevail in the interlocutory appeal, the court shall award to  
154 | the prevailing property owner the costs and a reasonable  
155 | attorney fee incurred by the property owner in the interlocutory  
156 | appeal.

157 |       (b) Following its determination of the percentage of  
158 | responsibility of each governmental entity, and following the  
159 | resolution of any interlocutory appeal, the court shall impanel  
160 | a jury to determine the total amount of compensation to the  
161 | property owner for the loss in value due to the inordinate  
162 | burden to the real property. The award of compensation shall be  
163 | determined by calculating the difference in the fair market  
164 | value of the real property, as it existed at the time of the  
165 | governmental action at issue, as though the owner had the  
166 | ability to attain the reasonable investment-backed expectation

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167 or was not left with uses that are unreasonable, whichever the  
168 case may be, and the fair market value of the real property, as  
169 it existed at the time of the governmental action at issue, as  
170 inordinately burdened, considering the settlement offer together  
171 with the statement of allowable uses ~~ripeness decision~~, of the  
172 governmental entity or entities. In determining the award of  
173 compensation, consideration may not be given to business damages  
174 relative to any development, activity, or use that the action of  
175 the governmental entity or entities, considering the settlement  
176 offer together with the statement of allowable uses ~~ripeness~~  
177 ~~decision~~ has restricted, limited, or prohibited. The award of  
178 compensation shall include a reasonable award of prejudgment  
179 interest from the date the claim was presented to the  
180 governmental entity or entities as provided in subsection (4).

181 (c)1. In any action filed pursuant to this section, the  
182 property owner is entitled to recover reasonable costs and  
183 attorney fees incurred by the property owner, from the  
184 governmental entity or entities, according to their  
185 proportionate share as determined by the court, from the date of  
186 the filing of the circuit court action, if the property owner  
187 prevails in the action and the court determines that the  
188 settlement offer, including the statement of allowable uses  
189 ~~ripeness decision~~, of the governmental entity or entities did  
190 not constitute a bona fide offer to the property owner which  
191 reasonably would have resolved the claim, based upon the  
192 knowledge available to the governmental entity or entities and  
193 the property owner during the 90-day-notice period or the 150-  
194 day-notice ~~180-day-notice~~ period.

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195           2. In any action filed pursuant to this section, the  
196 governmental entity or entities are entitled to recover  
197 reasonable costs and attorney fees incurred by the governmental  
198 entity or entities from the date of the filing of the circuit  
199 court action, if the governmental entity or entities prevail in  
200 the action and the court determines that the property owner did  
201 not accept a bona fide settlement offer, including the statement  
202 of allowable uses ~~ripeness decision~~, which reasonably would have  
203 resolved the claim fairly to the property owner if the  
204 settlement offer had been accepted by the property owner, based  
205 upon the knowledge available to the governmental entity or  
206 entities and the property owner during the 90-day-notice period  
207 or the 150-day-notice ~~180-day-notice~~ period.

208           3. The determination of total reasonable costs and  
209 attorney fees pursuant to this paragraph shall be made by the  
210 court and not by the jury. Any proposed settlement offer or any  
211 proposed ~~ripeness~~ decision, except for the final written  
212 settlement offer or the final written statement of allowable  
213 uses ~~ripeness decision~~, and any negotiations or rejections in  
214 regard to the formulation either of the settlement offer or the  
215 statement of allowable uses ~~ripeness decision~~, are inadmissible  
216 in the subsequent proceeding established by this section except  
217 for the purposes of the determination pursuant to this  
218 paragraph.

219           (d) Within 15 days after the execution of any settlement  
220 pursuant to this section, or the issuance of any judgment  
221 pursuant to this section, the governmental entity shall provide



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222 a copy of the settlement or judgment to the Department of Legal  
223 Affairs.

224 (11) A cause of action may not be commenced under this  
225 section if the claim is presented more than 1 year after a law  
226 or regulation is first applied by the governmental entity to the  
227 property at issue.

228 (a) For purposes of determining when this 1-year claim  
229 period accrues:

230 1. A law or regulation is first applied upon enactment and  
231 notice as provided for in this subparagraph, if the impact of  
232 the law or regulation on the real property is clear and  
233 unequivocal in its terms and notice is provided by mail to the  
234 affected property owner or registered agent at the address  
235 referenced in the jurisdiction's most current ad valorem tax  
236 records. The fact that the law or regulation could be modified,  
237 varied, or altered under any other process or procedure does not  
238 preclude the impact of the law or regulation on a property from  
239 being clear or unequivocal pursuant to this subparagraph. Any  
240 notice under this subparagraph shall be provided after the  
241 enactment of the law or regulation and shall inform the property  
242 owner or registered agent that the law or regulation may impact  
243 the property owner's existing property rights and that the  
244 property owner may have only 1 year from receipt of the notice  
245 to pursue any rights established under this section.

246 2. Otherwise, the law or regulation is first applied to  
247 the property when there is a formal denial of a written request  
248 for development or variance.

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249        (b) If an owner seeks relief from the governmental action  
250 through lawfully available administrative or judicial  
251 proceedings, the time for bringing an action under this section  
252 is tolled until the conclusion of such proceedings.

253        (13) In accordance with s. 13, Art. X of the State  
254 Constitution, the state, for itself and for its agencies or  
255 political subdivisions, waives sovereign immunity for causes of  
256 action based upon the application of any law, regulation, or  
257 ordinance subject to this section, but only to the extent  
258 specified in this section ~~This section does not affect the~~  
259 ~~sovereign immunity of government.~~

260        Section 2. The amendments to s. 70.001, Florida Statutes,  
261 made by this act apply prospectively only and do not apply to  
262 any claim or action filed under s. 70.001, Florida Statutes,  
263 which is pending on the effective date of this act.

264        Section 3. This act shall take effect July 1, 2011.