

By the Committee on Judiciary; and Senators Simmons, Hays, Thrasher, Wise, Bennett, Alexander, Dean, Gaetz, Evers, Haridopolos, and Siplin

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1 A bill to be entitled
2 An act relating to property rights; amending s.
3 70.001, F.S.; redefining the terms "inordinate burden"
4 and "inordinately burdened" as they relate to the Bert
5 J. Harris, Jr., Private Property Rights Protection
6 Act" to specify that a moratorium on development in
7 effect for longer than a specified period constitutes
8 an inordinate burden; revising the time within which a
9 property owner who seeks compensation must present the
10 claim in writing to the head of the governmental
11 entity; revising the time within which a governmental
12 entity must make a written settlement offer to a
13 claimant; revising the time within which a
14 governmental entity that has provided notice must
15 issue a written statement of allowable uses, rather
16 than a ripeness decision, which identifies the
17 allowable uses to which the subject property may be
18 put; providing that the failure of the governmental
19 entity to issue a written statement of allowable uses
20 during the applicable revised notice requirement is
21 deemed a denial for purposes of allowing a property
22 owner to file an action in the circuit court;
23 providing that if a written statement of allowable
24 uses is issued, it constitutes the last prerequisite
25 to judicial review; conforming terminology to changes
26 made by the act; providing that enacting a law or
27 adopting a regulation does not constitute the
28 application of the law or regulation to a property;
29 providing for application of sovereign immunity;

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30 providing for application of the act; providing an
31 effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsections (3), (4), (5), (6), (11), and (13)
36 of section 70.001, Florida Statutes, are amended to read:

37 70.001 Private property rights protection.-

38 (3) For purposes of this section:

39 (a) The existence of a "vested right" is to be determined
40 by applying the principles of equitable estoppel or substantive
41 due process under the common law or by applying the statutory
42 law of this state.

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

44 1. An actual, present use or activity on the real property,
45 including periods of inactivity which are normally associated
46 with, or are incidental to, the nature or type of use; or

47 2. An activity or such reasonably foreseeable,
48 nonspeculative land uses which are suitable for the subject real
49 property and compatible with adjacent land uses and which have
50 created an existing fair market value in the property greater
51 than the fair market value of the actual, present use or
52 activity on the real property.

53 (c) The term "governmental entity" includes an agency of
54 the state, a regional or a local government created by the State
55 Constitution or by general or special act, any county or
56 municipality, or any other entity that independently exercises
57 governmental authority. The term does not include the United
58 States or any of its agencies, or an agency of the state, a

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59 regional or a local government created by the State Constitution
60 or by general or special act, any county or municipality, or any
61 other entity that independently exercises governmental
62 authority, when exercising the powers of the United States or
63 any of its agencies through a formal delegation of federal
64 authority.

65 (d) The term "action of a governmental entity" means a
66 specific action of a governmental entity which affects real
67 property, including action on an application or permit.

68 (e) The terms "inordinate burden" and ~~or~~ "inordinately
69 burdened" mean that an action of one or more governmental
70 entities has directly restricted or limited the use of real
71 property such that the property owner is permanently unable to
72 attain the reasonable, investment-backed expectation for the
73 existing use of the real property or a vested right to a
74 specific use of the real property with respect to the real
75 property as a whole, or that the property owner is left with
76 existing or vested uses that are unreasonable such that the
77 property owner bears permanently a disproportionate share of a
78 burden imposed for the good of the public, which in fairness
79 should be borne by the public at large. The terms "inordinate
80 burden" and ~~or~~ "inordinately burdened" do not include temporary
81 impacts to real property; impacts to real property occasioned by
82 governmental abatement, prohibition, prevention, or remediation
83 of a public nuisance at common law or a noxious use of private
84 property; or impacts to real property caused by an action of a
85 governmental entity taken to grant relief to a property owner
86 under this section. However, a moratorium on development, as
87 defined in s. 380.04, which is in effect for longer than 1 year

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88 may, depending upon the circumstances, constitute an inordinate
89 burden as provided in this paragraph.

90 (f) The term "property owner" means the person who holds
91 legal title to the real property at issue. The term does not
92 include a governmental entity.

93 (g) The term "real property" means land and includes any
94 appurtenances and improvements to the land, including any other
95 relevant real property in which the property owner had a
96 relevant interest.

97 (4) (a) Not less than 120 ~~180~~ days before ~~prior to~~ filing an
98 action under this section against a governmental entity, a
99 property owner who seeks compensation under this section must
100 present the claim in writing to the head of the governmental
101 entity, except that if the property is classified as
102 agricultural pursuant to s. 193.461, the notice period is 90
103 days. The property owner must submit, along with the claim, a
104 bona fide, valid appraisal that supports the claim and
105 demonstrates the loss in fair market value to the real property.
106 If the action of government is the culmination of a process that
107 involves more than one governmental entity, or if a complete
108 resolution of all relevant issues, in the view of the property
109 owner or in the view of a governmental entity to whom a claim is
110 presented, requires the active participation of more than one
111 governmental entity, the property owner shall present the claim
112 as provided in this section to each of the governmental
113 entities.

114 (b) The governmental entity shall provide written notice of
115 the claim to all parties to any administrative action that gave
116 rise to the claim, and to owners of real property contiguous to

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117 the owner's property at the addresses listed on the most recent
118 county tax rolls. Within 15 days after the claim being
119 presented, the governmental entity shall report the claim in
120 writing to the Department of Legal Affairs, and shall provide
121 the department with the name, address, and telephone number of
122 the employee of the governmental entity from whom additional
123 information may be obtained about the claim during the pendency
124 of the claim and any subsequent judicial action.

125 (c) During the 90-day-notice period or the 120-day-notice
126 ~~180-day-notice period~~, unless extended by agreement of the
127 parties, the governmental entity shall make a written settlement
128 offer to effectuate:

129 1. An adjustment of land development or permit standards or
130 other provisions controlling the development or use of land.

131 2. Increases or modifications in the density, intensity, or
132 use of areas of development.

133 3. The transfer of developmental rights.

134 4. Land swaps or exchanges.

135 5. Mitigation, including payments in lieu of onsite
136 mitigation.

137 6. Location on the least sensitive portion of the property.

138 7. Conditioning the amount of development or use permitted.

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

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

143 10. Purchase of the real property, or an interest therein,
144 by an appropriate governmental entity or by payment of
145 compensation.

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

147
148 If the property owner accepts the settlement offer, the
149 governmental entity may implement the settlement offer by
150 appropriate development agreement; by issuing a variance,
151 special exception, or other extraordinary relief; or by other
152 appropriate method, subject to paragraph (d).

153 (d)1. Whenever a governmental entity enters into a
154 settlement agreement under this section which would have the
155 effect of a modification, variance, or a special exception to
156 the application of a rule, regulation, or ordinance as it would
157 otherwise apply to the subject real property, the relief granted
158 shall protect the public interest served by the regulations at
159 issue and be the appropriate relief necessary to prevent the
160 governmental regulatory effort from inordinately burdening the
161 real property.

162 2. Whenever a governmental entity enters into a settlement
163 agreement under this section which would have the effect of
164 contravening the application of a statute as it would otherwise
165 apply to the subject real property, the governmental entity and
166 the property owner shall jointly file an action in the circuit
167 court where the real property is located for approval of the
168 settlement agreement by the court to ensure that the relief
169 granted protects the public interest served by the statute at
170 issue and is the appropriate relief necessary to prevent the
171 governmental regulatory effort from inordinately burdening the
172 real property.

173 (5) (a) During the 90-day-notice period or the 120-day-
174 notice ~~180-day-notice period~~, unless a settlement offer is

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175 accepted by the property owner, each of the governmental
176 entities provided notice pursuant to paragraph (4) (a) shall
177 issue a written statement of allowable uses ~~ripeness decision~~
178 identifying the allowable uses to which the subject property may
179 be put. The failure of the governmental entity to issue a
180 written statement of allowable uses ~~ripeness decision~~ during the
181 applicable 90-day-notice period or 120-day-notice ~~180-day-notice~~
182 period shall be deemed a denial for purposes of allowing a
183 property owner to file an action in the circuit court under this
184 section. If a written statement of allowable uses is issued, it
185 ~~to ripen the prior action of the governmental entity, and shall~~
186 ~~operate as a ripeness decision that has been rejected by the~~
187 ~~property owner. The ripeness decision, as a matter of law,~~
188 constitutes the last prerequisite to judicial review, ~~and the~~
189 ~~matter shall be deemed ripe or final~~ for the purposes of the
190 judicial proceeding created by this section, notwithstanding the
191 availability of other administrative remedies.

192 (b) If the property owner rejects the settlement offer and
193 the statement of allowable uses ~~ripeness decision~~ of the
194 governmental entity or entities, the property owner may file a
195 claim for compensation in the circuit court, a copy of which
196 shall be served contemporaneously on the head of each of the
197 governmental entities that made a settlement offer and a
198 ripeness decision that was rejected by the property owner.
199 Actions under this section shall be brought only in the county
200 where the real property is located.

201 (6) (a) The circuit court shall determine whether an
202 existing use of the real property or a vested right to a
203 specific use of the real property existed and, if so, whether,

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204 considering the settlement offer and statement of allowable uses
205 ~~ripeness decision~~, the governmental entity or entities have
206 inordinately burdened the real property. If the actions of more
207 than one governmental entity, considering any settlement offers
208 and statements of allowable uses ripeness decisions, are
209 responsible for the action that imposed the inordinate burden on
210 the real property of the property owner, the court shall
211 determine the percentage of responsibility each such
212 governmental entity bears with respect to the inordinate burden.
213 A governmental entity may take an interlocutory appeal of the
214 court's determination that the action of the governmental entity
215 has resulted in an inordinate burden. An interlocutory appeal
216 does not automatically stay the proceedings; however, the court
217 may stay the proceedings during the pendency of the
218 interlocutory appeal. If the governmental entity does not
219 prevail in the interlocutory appeal, the court shall award to
220 the prevailing property owner the costs and a reasonable
221 attorney fee incurred by the property owner in the interlocutory
222 appeal.

223 (b) Following its determination of the percentage of
224 responsibility of each governmental entity, and following the
225 resolution of any interlocutory appeal, the court shall impanel
226 a jury to determine the total amount of compensation to the
227 property owner for the loss in value due to the inordinate
228 burden to the real property. The award of compensation shall be
229 determined by calculating the difference in the fair market
230 value of the real property, as it existed at the time of the
231 governmental action at issue, as though the owner had the
232 ability to attain the reasonable investment-backed expectation

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233 or was not left with uses that are unreasonable, whichever the
234 case may be, and the fair market value of the real property, as
235 it existed at the time of the governmental action at issue, as
236 inordinately burdened, considering the settlement offer together
237 with the statement of allowable uses ~~ripeness decision~~, of the
238 governmental entity or entities. In determining the award of
239 compensation, consideration may not be given to business damages
240 relative to any development, activity, or use that the action of
241 the governmental entity or entities, considering the settlement
242 offer together with the statement of allowable uses ~~ripeness~~
243 ~~decision~~ has restricted, limited, or prohibited. The award of
244 compensation shall include a reasonable award of prejudgment
245 interest from the date the claim was presented to the
246 governmental entity or entities as provided in subsection (4).

247 (c)1. In any action filed pursuant to this section, the
248 property owner is entitled to recover reasonable costs and
249 attorney fees incurred by the property owner, from the
250 governmental entity or entities, according to their
251 proportionate share as determined by the court, from the date of
252 the filing of the circuit court action, if the property owner
253 prevails in the action and the court determines that the
254 settlement offer, including the statement of allowable uses
255 ~~ripeness decision~~, of the governmental entity or entities did
256 not constitute a bona fide offer to the property owner which
257 reasonably would have resolved the claim, based upon the
258 knowledge available to the governmental entity or entities and
259 the property owner during the 90-day-notice period or the 120-
260 day-notice ~~180-day-notice~~ period.

261 2. In any action filed pursuant to this section, the

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262 governmental entity or entities are entitled to recover
263 reasonable costs and attorney fees incurred by the governmental
264 entity or entities from the date of the filing of the circuit
265 court action, if the governmental entity or entities prevail in
266 the action and the court determines that the property owner did
267 not accept a bona fide settlement offer, including the statement
268 of allowable uses ~~ripeness decision~~, which reasonably would have
269 resolved the claim fairly to the property owner if the
270 settlement offer had been accepted by the property owner, based
271 upon the knowledge available to the governmental entity or
272 entities and the property owner during the 90-day-notice period
273 or the 120-day-notice ~~180-day-notice~~ period.

274 3. The determination of total reasonable costs and attorney
275 fees pursuant to this paragraph shall be made by the court and
276 not by the jury. Any proposed settlement offer or any proposed
277 statement of allowable uses ~~ripeness decision~~, except for the
278 final written settlement offer or the final written ripeness
279 decision, and any negotiations or rejections in regard to the
280 formulation either of the settlement offer or the statement of
281 allowable uses ~~ripeness decision~~, are inadmissible in the
282 subsequent proceeding established by this section except for the
283 purposes of the determination pursuant to this paragraph.

284 (d) Within 15 days after the execution of any settlement
285 pursuant to this section, or the issuance of any judgment
286 pursuant to this section, the governmental entity shall provide
287 a copy of the settlement or judgment to the Department of Legal
288 Affairs.

289 (11) A cause of action may not be commenced under this
290 section if the claim is presented more than 1 year after a law

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291 or regulation is first applied by the governmental entity to the
292 property at issue. For purposes of this section, enacting a law
293 or adopting a regulation does not constitute the application of
294 the law or regulation to a property. If an owner seeks relief
295 from the governmental action through lawfully available
296 administrative or judicial proceedings, the time for bringing an
297 action under this section is tolled until the conclusion of such
298 proceedings.

299 (13) This section waives sovereign immunity solely to the
300 extent provided herein; however, this section does not otherwise
301 affect the sovereign immunity of government.

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

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