



CHAMBER ACTION

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The Committee on State Administration recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to property rights; amending s. 70.001, F.S., the "Bert J. Harris, Jr., Private Property Rights Protection Act"; providing for the state land planning agency to receive notice of claims; amending procedures for determining a governmental entity's final decision identifying the allowable uses for a property; providing that enactment of a law or adoption of a regulation does not constitute applying the law or regulation; providing for a waiver of sovereign immunity for liability; providing legislative findings with respect to loss of property values due to the proximity of a regional water reservoir; authorizing a cause of action for a property owner; specifying a period during which a property owner may present a claim for compensation to the regional water supply authority that constructs, operates, and maintains the reservoir; providing requirements for the offer of compensation by a regional water supply authority; providing for judicial review under the Bert J. Harris,



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29 | Jr., Private Property Rights Protection Act; providing for
30 | an award of costs and attorney's fees; providing for
31 | future repeal of the section; providing severability;
32 | providing an effective date.

33 |
34 | WHEREAS, the Legislature wishes to clarify its original
35 | intent with respect to allowing appropriate compensation for
36 | unduly burdened real property and to provide a waiver of
37 | sovereign immunity under section 70.001, Florida Statutes, the
38 | Bert J. Harris, Jr., Private Property Rights Protection Act, and

39 | WHEREAS, the Legislature wishes to make other changes to
40 | clarify provisions of this act and to improve the reporting of
41 | cases filed under the act, NOW, THEREFORE,

42 |
43 | Be It Enacted by the Legislature of the State of Florida:

44 |
45 | Section 1. Paragraph (b) of subsection (4), paragraph (a)
46 | of subsection (5), and subsections (11) and (13) of section
47 | 70.001, Florida Statutes, are amended to read:

48 | 70.001 Private property rights protection.--

49 | (4)

50 | (b) The governmental entity shall provide written notice
51 | of the claim to all parties to any administrative action that
52 | gave rise to the claim, and to owners of real property
53 | contiguous to the owner's property at the addresses listed on
54 | the most recent county tax rolls. Within 15 days after the claim
55 | is ~~being~~ presented, the governmental entity shall report the
56 | claim in writing to the state land planning agency ~~Department of~~



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57 | ~~Legal Affairs,~~ and shall provide the agency department with the
58 | name, address, and telephone number of the employee of the
59 | governmental entity from whom additional information may be
60 | obtained about the claim during the pendency of the claim and
61 | any subsequent judicial action.

62 | (5)(a) During the 180-day-notice period, unless a
63 | settlement offer is accepted by the property owner, each of the
64 | governmental entities provided notice pursuant to paragraph
65 | (4)(a) shall issue a written ~~ripeness~~ decision identifying the
66 | allowable uses to which the subject property may be put. The
67 | failure of the governmental entity to issue such a written
68 | ~~ripeness~~ decision during the 180-day-notice period shall cause
69 | ~~be deemed to ripen~~ the prior action of the governmental entity
70 | to become its final decision, for purposes of the act,
71 | identifying the uses for the subject property, and shall operate
72 | ~~as a ripeness decision that has been rejected by the property~~
73 | ~~owner.~~ Whether rendered by submission of a written decision
74 | during the 180-day-notice period or by failure to submit such a
75 | written decision, the final decision of a governmental entity
76 | produced under this paragraph operates as a final decision that
77 | has been rejected by the property owner. This final decision ~~The~~
78 | ~~ripeness decision,~~ as a matter of law, constitutes the last
79 | prerequisite to judicial review of the merits, and the matter
80 | ~~shall be deemed ripe or final~~ for the purposes of the judicial
81 | proceeding created by this section, notwithstanding the
82 | availability of other administrative remedies.

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



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85 or regulation is first applied by the governmental entity to the
 86 property at issue. Enacting a law or adopting a regulation does
 87 not constitute applying the law or regulation to a property. If
 88 an owner seeks relief from the governmental action through
 89 lawfully available administrative or judicial proceedings, the
 90 time for bringing an action under this section is tolled until
 91 the conclusion of such proceedings.

92 (13) In accordance with s. 13, Art. X of the State
 93 Constitution, the state, for itself and for its agencies or
 94 subdivisions, waives sovereign immunity for liability for
 95 actions subject to this section, but only to the extent
 96 specified in this section. ~~This section does not affect the~~
 97 ~~sovereign immunity of government.~~

98 Section 2. Private property rights and regional
 99 reservoirs.--

100 (1) The Legislature finds that construction of a regional
 101 reservoir designed to store more than 10 billion gallons of
 102 water may inordinately burden nearby real property because of
 103 the proximity of the reservoir and may result in a loss of value
 104 for the property owner. Therefore, a regional water supply
 105 authority, serving three or fewer counties, that is authorized
 106 to construct, operate, and maintain such a regional reservoir
 107 shall be deemed a governmental entity under s. 70.001, Florida
 108 Statutes, the Bert J. Harris, Jr., Private Property Rights
 109 Protection Act, for purposes of this section.

110 (2) This section provides a cause of action for the
 111 actions of a regional water supply authority, in siting and
 112 constructing a reservoir as described in subsection (1), that



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113 may not rise to the level of a taking under the State
114 Constitution or the United States Constitution. This section may
115 not necessarily be construed under the case law regarding
116 takings if the action of a regional water supply authority does
117 not rise to the level of a taking. The provisions of this
118 section are cumulative and do not abrogate any other remedy
119 lawfully available, including any remedy lawfully available for
120 the actions of a regional water supply authority that rise to
121 the level of a taking. However, a regional water supply
122 authority may not be liable more than once for compensation due
123 to an action of the regional water supply authority that results
124 in a loss of value for a subject real property.

125 (3) Each owner of real property located within 10,000 feet
126 of the center of the footprint of a regional reservoir, as
127 described in subsection (1), or 5,500 feet from the exterior of
128 the berm of such reservoir, may present a claim for compensation
129 in writing to the head of the regional water supply authority on
130 or before December 31, 2004, for a loss in property value
131 resulting from the proximity of the reservoir. For each claim
132 presented under this section, s. 70.001, Florida Statutes,
133 applies, except that when there is conflict with this section,
134 the provisions of this section shall govern.

135 (a) The property owner must submit along with the claim a
136 bona fide, valid appraisal that supports the claim and
137 demonstrates the loss in fair market value to the real property.

138 (b) A claim under this section shall be presented only to
139 the regional water supply authority that is authorized to
140 construct, operate, and maintain the reservoir.



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141 (4) The Legislature recognizes that construction and
142 maintenance of a regional reservoir may not necessarily
143 interfere with allowable uses of real property near the
144 reservoir. However, the siting and construction of the reservoir
145 may result in an actual loss to the fair market value of real
146 property located within 10,000 feet of the center of the
147 footprint of the reservoir, or 5,500 feet from the exterior of
148 the berm, because of the proximity of the reservoir. Therefore,
149 any offer of compensation by the regional water supply authority
150 shall be based solely on the loss of value for the property
151 owner as a result of the proximity of the reservoir and not on
152 the effects the reservoir has on existing uses or on a vested
153 right to a specific use of real property.

154 (a) Notwithstanding s. 70.001, Florida Statutes, the
155 regional water supply authority to whom a claim is presented
156 shall, not later than 180 days after receiving such claim:

157 1. Make a written offer to purchase the real property if
158 there is more than a 50-percent loss in value to the real
159 property as a result of the proximity of the reservoir and if
160 the property owner is a willing seller;

161 2. Make a written offer to purchase an interest in rights
162 of use which may become transferable development rights to be
163 held, sold, or otherwise disposed of by the regional water
164 supply authority; or

165 3. Terminate negotiations.

166 (b) An offer by the regional water supply authority to
167 purchase the property in fee or purchase an interest in rights



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168 of use under this section shall cover the cost of the appraisal
169 required in subsection (3).

170 (5) During the 180-day period, unless the property owner
171 accepts a written offer for purchase pursuant to subparagraph
172 (4)(a)1. or subparagraph (4)(a)2., the regional water supply
173 authority shall issue a final decision stating that:

174 (a) The real property has a loss in value due to an
175 inordinate burden on the property resulting from the proximity
176 of the reservoir and the regional water supply authority and
177 property owner cannot reach an agreement on the amount of
178 compensation; or

179 (b) The property owner has failed to establish a basis for
180 relief under the provisions of this section and s. 70.001,
181 Florida Statutes.

182
183 Failure of the regional water supply authority to issue a final
184 decision as required by this subsection shall cause the written
185 offer or termination of negotiations required in subsection (4)
186 to operate as a final decision. As a matter of law, this final
187 decision constitutes the last prerequisite to judicial review of
188 the merits for the purposes of the judicial proceeding provided
189 for in s. 70.001, Florida Statutes.

190 (6) The circuit court, for purposes of this section, shall
191 determine whether, considering the written offer and final
192 decision, the regional water supply authority has inordinately
193 burdened the subject real property. Following a determination
194 that the regional water supply authority has inordinately
195 burdened the real property, the court shall impanel a jury to



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196 determine the total amount of compensation to the property owner
 197 for the loss in value due to the inordinate burden to the
 198 subject real property.

199 (7) Pursuant to s. 70.001, Florida Statutes, the court may
 200 award reasonable costs and attorney's fees and the court shall
 201 determine the amount. If the court awards the property owner
 202 reasonable costs and attorney's fees, the costs shall include
 203 the cost of the appraisal required in subsection (3).

204 (8) This section is repealed effective January 1, 2005.
 205 However, the repeal of this section shall not affect a claim
 206 filed on or before December 31, 2004.

207 Section 3. If any provision of this act or the application
 208 thereof to any person or circumstance is held invalid, the
 209 invalidity does not affect other provisions or applications of
 210 this act which can be given effect without the invalid provision
 211 or application, and to this end the provisions of this act are
 212 declared severable.

213 Section 4. This act shall take effect July 1, 2003.
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