

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Sorensen offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause, and insert:

Section 1. Paragraph (d) of subsection (3), paragraph (b) of subsection (4), paragraph (a) of subsection (5), and subsections (11) and (13) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.--

(3) For purposes of this section:

(d) The term "action of a governmental entity" means a specific action of a governmental entity which affects real property, including action on an application or permit. The term does not include action to enforce compliance with uniform laws enacted or regulations adopted to protect public safety, such as building codes and fire codes. In addition, the term does not

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27 include action involving the construction, expansion, or  
28 maintenance of capital facilities.

29 (4)

30 (b) The governmental entity shall provide written notice  
31 of the claim to all parties to any administrative action that  
32 gave rise to the claim, and to owners of real property  
33 contiguous to the owner's property at the addresses listed on  
34 the most recent county tax rolls. Within 15 days after the claim  
35 is being presented, the governmental entity shall report the  
36 claim in writing to the state land planning agency ~~Department of~~  
37 ~~Legal Affairs,~~ and shall provide the agency department with the  
38 name, address, and telephone number of the employee of the  
39 governmental entity from whom additional information may be  
40 obtained about the claim during the pendency of the claim and  
41 any subsequent judicial action.

42 (5)(a) During the 180-day-notice period, unless a  
43 settlement offer is accepted by the property owner, each of the  
44 governmental entities provided notice pursuant to paragraph  
45 (4)(a) shall issue a written ~~ripeness~~ decision identifying the  
46 allowable uses to which the subject property may be put. The  
47 failure of the governmental entity to issue such a written  
48 ~~ripeness~~ decision during the 180-day-notice period shall cause  
49 ~~be deemed to ripen~~ the prior action of the governmental entity  
50 to become its final decision identifying the uses for the  
51 subject property. Whether rendered by submission of a written  
52 decision during the 180-day-notice period or by failure to  
53 submit such a written decision, the final decision of a  
54 governmental entity produced under this paragraph operates as a  
55 final decision that has been rejected by the property owner.

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56 ~~This final decision, and shall operate as a ripeness decision~~  
57 ~~that has been rejected by the property owner. The ripeness~~  
58 ~~decision,~~ as a matter of law, constitutes the last prerequisite  
59 to judicial review of the merits, ~~and the matter shall be deemed~~  
60 ~~ripe or final~~ for the purposes of the judicial proceeding  
61 created by this section, notwithstanding the availability of  
62 other administrative remedies.

63 (11) A cause of action may not be commenced under this  
64 section if the claim is presented more than 1 year after a law  
65 or regulation is first applied by the governmental entity to the  
66 property at issue. Enacting a law or adopting a regulation does  
67 not constitute applying the law or regulation to a property. If  
68 an owner seeks relief from the governmental action through  
69 lawfully available administrative or judicial proceedings, the  
70 time for bringing an action under this section is tolled until  
71 the conclusion of such proceedings.

72 (13) In accordance with s. 13, Art. X of the State  
73 Constitution, the state, for itself and for its agencies or  
74 subdivisions, prospectively waives sovereign immunity for  
75 liability for actions subject to this section, but only to the  
76 extent specified in this section. ~~This section does not affect~~  
77 ~~the sovereign immunity of government.~~

78 Section 2. Private property rights and regional  
79 reservoirs.--

80 (1) The Legislature finds that construction of a regional  
81 reservoir designed to store more than 10 billion gallons of  
82 water may inordinately burden nearby real property because of  
83 the proximity of the reservoir and may result in a loss of value  
84 for the property owner. Therefore, a regional water supply

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85 authority, serving three or fewer counties, that is authorized  
86 to construct, operate, and maintain such a regional reservoir  
87 shall be deemed a governmental entity under s. 70.001, Florida  
88 Statutes, the Bert J. Harris, Jr., Private Property Rights  
89 Protection Act, for purposes of this section.

90 (2) This section provides a cause of action for the  
91 actions of a regional water supply authority, in siting and  
92 constructing a reservoir as described in subsection (1), that  
93 may not rise to the level of a taking under the State  
94 Constitution or the United States Constitution. This section may  
95 not necessarily be construed under the case law regarding  
96 takings if the action of a regional water supply authority does  
97 not rise to the level of a taking. The provisions of this  
98 section are cumulative and do not abrogate any other remedy  
99 lawfully available, including any remedy lawfully available for  
100 the actions of a regional water supply authority that rise to  
101 the level of a taking. However, a regional water supply  
102 authority may not be liable more than once for compensation due  
103 to an action of the regional water supply authority that results  
104 in a loss of value for a subject real property.

105 (3) Each owner of real property located within 10,000 feet  
106 of the center of the footprint of a regional reservoir, as  
107 described in subsection (1), or 5,500 feet from the exterior of  
108 the berm of such reservoir, may present a claim for compensation  
109 in writing to the head of the regional water supply authority on  
110 or before December 31, 2004, for a loss in property value  
111 resulting from the proximity of the reservoir. For each claim  
112 presented under this section, s. 70.001, Florida Statutes,

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113 applies, except that when there is conflict with this section,  
114 the provisions of this section shall govern.

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

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

121 (4) The Legislature recognizes that construction and  
122 maintenance of a regional reservoir may not necessarily  
123 interfere with allowable uses of real property near the  
124 reservoir. However, the siting and construction of the reservoir  
125 may result in an actual loss to the fair market value of real  
126 property located within 10,000 feet of the center of the  
127 footprint of the reservoir, or 5,500 feet from the exterior of  
128 the berm, because of the proximity of the reservoir. Therefore,  
129 any offer of compensation by the regional water supply authority  
130 shall be based solely on the loss of value for the property  
131 owner as a result of the proximity of the reservoir and not on  
132 the effects the reservoir has on existing uses or on a vested  
133 right to a specific use of real property.

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

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

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

145 3. Terminate negotiations.

146 (b) An offer by the regional water supply authority to  
147 purchase the property in fee or purchase an interest in rights  
148 of use under this section shall cover the cost of the appraisal  
149 required in subsection (3).

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

154 (a) The real property has a loss in value due to an  
155 inordinate burden on the property resulting from the proximity  
156 of the reservoir and the regional water supply authority and  
157 property owner cannot reach an agreement on the amount of  
158 compensation; or

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

162  
163 Failure of the regional water supply authority to issue a final  
164 decision as required by this subsection shall cause the written  
165 offer or termination of negotiations required in subsection (4)  
166 to operate as a final decision. As a matter of law, this final  
167 decision constitutes the last prerequisite to judicial review of  
168 the merits for the purposes of the judicial proceeding provided  
169 for in s. 70.001, Florida Statutes.

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170       (6) The circuit court, for purposes of this section, shall  
 171 determine whether, considering the written offer and final  
 172 decision, the regional water supply authority has inordinately  
 173 burdened the subject real property. Following a determination  
 174 that the regional water supply authority has inordinately  
 175 burdened the real property, the court shall impanel a jury to  
 176 determine the total amount of compensation to the property owner  
 177 for the loss in value due to the inordinate burden to the  
 178 subject real property.

179       (7) Pursuant to s. 70.001, Florida Statutes, the court may  
 180 award reasonable costs and attorney's fees and the court shall  
 181 determine the amount. If the court awards the property owner  
 182 reasonable costs and attorney's fees, the costs shall include  
 183 the cost of the appraisal required in subsection (3).

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

187       Section 3. If any provision of this act or the application  
 188 thereof to any person or circumstance is held invalid, the  
 189 invalidity does not affect other provisions or applications of  
 190 this act which can be given effect without the invalid provision  
 191 or application, and to this end the provisions of this act are  
 192 declared severable.

193       Section 4. This act shall take effect January 1, 2004.

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 196 ===== T I T L E   A M E N D M E N T =====

197       On page 1, lines 2-28,  
 198 Remove all of said lines

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and insert:

An act relating to private property rights; amending s. 70.001, F.S., the "Bert J. Harris, Jr., Private Property Rights Protection Act"; limiting the definition of the term "action of a governmental entity"; providing that the state land planning agency rather than the Department of Legal Affairs shall 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 application of the law or regulation; providing for a prospective limited 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, Jr., Private Property Rights Protection Act; providing for an award of costs and attorney's fees; providing for future repeal of the section; providing an effective date.