

1 A bill to be entitled
2 An act relating to property rights; amending s.
3 70.001, F.S., the "Bert J. Harris, Jr., Private
4 Property Rights Protection Act"; providing for
5 the state land planning agency to receive
6 notice of claims; amending procedures for
7 determining a governmental entity's final
8 decision identifying the allowable uses for a
9 property; providing that enactment of a law or
10 adoption of a regulation does not constitute
11 applying the law or regulation; providing for a
12 waiver of sovereign immunity for liability;
13 providing legislative findings with respect to
14 loss of property values due to the proximity of
15 a regional water reservoir; authorizing a cause
16 of action for a property owner; specifying a
17 period during which a property owner may
18 present a claim for compensation to the
19 governmental entity that constructs, operates,
20 and maintains the reservoir; providing for
21 future repeal of the act; providing
22 requirements for the offer of compensation by a
23 governmental entity; providing for judicial
24 review under the Bert J. Harris, Jr., Private
25 Property Rights Protection Act; providing for
26 an award of costs and attorney's fees;
27 providing an effective date.

28
29 WHEREAS, the Legislature wishes to clarify its original
30 intent with respect to allowing appropriate compensation for
31 unduly burdened real property and to provide a waiver of

1 sovereign immunity under section 70.001, Florida Statutes, the
2 Bert J. Harris, Jr., Private Property Rights Protection Act,
3 and

4 WHEREAS, the Legislature wishes to make other changes
5 to clarify provisions of this act and to improve the reporting
6 of cases filed under the act, NOW, THEREFORE,

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

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

13 70.001 Private property rights protection.--

14 (4)

15 (b) The governmental entity shall provide written
16 notice of the claim to all parties to any administrative
17 action that gave rise to the claim, and to owners of real
18 property contiguous to the owner's property at the addresses
19 listed on the most recent county tax rolls. Within 15 days
20 after the claim is ~~being~~ presented, the governmental entity
21 shall report the claim in writing to the state land planning
22 agency ~~Department of Legal Affairs~~, and shall provide the
23 agency ~~department~~ with the name, address, and telephone number
24 of the employee of the governmental entity from whom
25 additional information may be obtained about the claim during
26 the pendency of the claim and any subsequent judicial action.

27 (5)(a) During the 180-day-notice period, unless a
28 settlement offer is accepted by the property owner, each of
29 the governmental entities provided notice pursuant to
30 paragraph (4)(a) shall issue a written ~~ripeness~~
31 identifying the allowable uses to which the subject property

1 may be put. The failure of the governmental entity to issue
2 such a written ~~ripeness~~ decision during the 180-day-notice
3 period shall ~~cause be deemed to ripen~~ the prior action of the
4 governmental entity to become its final decision, for purposes
5 of the act, identifying the uses for the subject property, and
6 ~~shall operate as a ripeness decision that has been rejected by~~
7 ~~the property owner. Whether rendered by submission of a~~
8 ~~written decision during the 180-day-notice period or by~~
9 ~~failure to submit such a written decision, the final decision~~
10 of a governmental entity produced under this paragraph
11 operates as a final decision that has been rejected by the
12 property owner. This final decision ~~The ripeness decision~~, as
13 a matter of law, constitutes the last prerequisite to judicial
14 review of the merits, ~~and the matter shall be deemed ripe or~~
15 ~~final~~ for the purposes of the judicial proceeding created by
16 this section, notwithstanding the availability of other
17 administrative remedies.

18 (11) A cause of action may not be commenced under this
19 section if the claim is presented more than 1 year after a law
20 or regulation is first applied by the governmental entity to
21 the property at issue. Enacting a law or adopting a regulation
22 does not constitute applying the law or regulation to a
23 property. If an owner seeks relief from the governmental
24 action through lawfully available administrative or judicial
25 proceedings, the time for bringing an action under this
26 section is tolled until the conclusion of such proceedings.

27 (13) In accordance with s. 13, Art. X of the State
28 Constitution, the state, for itself and for its agencies or
29 subdivisions, waives sovereign immunity for liability for
30 actions subject to this section, but only to the extent
31

1 specified in this section.~~This section does not affect the~~
2 ~~sovereign immunity of government.~~

3 Section 2. Private property rights and regional
4 reservoirs.--

5 (1) The Legislature finds that construction of a
6 regional reservoir designed to store more than 10 billion
7 gallons of water may inordinately burden nearby real property
8 because of the proximity of the reservoir and may result in a
9 loss of value for the property owner. Therefore, a special
10 district or regional water supply authority that is authorized
11 to construct, operate, and maintain such a regional reservoir
12 shall be deemed a governmental entity for purposes of section
13 70.001, Florida Statutes, the Bert J. Harris, Jr., Private
14 Property Rights Protection Act.

15 (2) This section provides a cause of action for
16 governmental actions that may not rise to the level of a
17 taking under the State Constitution or the United States
18 Constitution. This section may not necessarily be construed
19 under the case law regarding takings if the governmental
20 action does not rise to the level of a taking. The provisions
21 of this section are cumulative and do not abrogate any other
22 remedy lawfully available, including any remedy lawfully
23 available for governmental actions that rise to the level of a
24 taking. However, a governmental entity shall not be liable
25 more than once for compensation due to an action of the
26 governmental entity that results in a loss of value for a
27 subject real property.

28 (3) Each owner of real property located within 10,000
29 feet of a site selected for the construction of a regional
30 reservoir as described in subsection (1) may present a claim
31 for compensation in writing to the head of the governmental

1 entity on or before December 31, 2004, for a loss in property
2 value resulting from the proximity of the reservoir. For each
3 claim presented under this section, section 70.001, Florida
4 Statutes, applies, except when there is conflict with this
5 act, the provisions of this act shall govern.

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

10 (b) A claim under this section shall be presented only
11 to the governmental entity that is authorized to construct,
12 operate, and maintain the reservoir.

13 (c) This act is repealed effective January 1, 2005.
14 However, the repeal of this act shall not affect a claim filed
15 on or before December 31, 2004.

16 (4) The Legislature recognizes that construction and
17 maintenance of the reservoir may not interfere with allowable
18 uses of real property located within 10,000 feet of the
19 reservoir. However, construction of the reservoir and its
20 proximity to certain real property may result in an actual
21 loss to the fair market value of the real property. Therefore,
22 any offer of compensation by the governmental entity shall be
23 based solely on the loss of value to the property owner as a
24 result of the proximity of the reservoir and not on the
25 effects the reservoir has on existing uses or on a vested
26 right to a specific use of real property.

27 (a) Notwithstanding section 70.001, Florida Statutes,
28 the governmental entity to whom a claim is presented shall,
29 not later than 180 days after receiving such claim:

30 1. Make a written offer to purchase the real property
31 if there is more than a 50-percent loss in value to the real

1 property as a result of the proximity of the reservoir and if
2 the property owner is a willing seller;

3 2. Make a written offer to purchase an interest in
4 rights of use which may become transferable development rights
5 to be held, sold, or otherwise disposed of by the governmental
6 entity; or

7 3. Terminate negotiations because there is no
8 measurable loss in value to the subject real property.

9 (b) An offer by the governmental entity to purchase
10 the property in fee or purchase an interest in rights of use
11 under this section shall cover the cost of the appraisal
12 required in subsection (3).

13 (5) During the 180-day period, unless the property
14 owner accepts a written offer for purchase pursuant to
15 subparagraph (4)(a)1. or 2., the governmental entity shall
16 issue a final decision stating that:

17 (a) The real property has a loss in value due to an
18 inordinate burden on the property resulting from the proximity
19 of the reservoir and the governmental entity and property
20 owner cannot reach agreement on the amount of compensation; or

21 (b) There is no measurable loss in value to the real
22 property resulting from the proximity of the reservoir.

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24 Failure of the governmental entity to issue a final decision
25 as required by this subsection shall cause the written offer
26 or termination of negotiations required in subsection (4) to
27 operate as a final decision. As a matter of law, this final
28 decision constitutes the last prerequisite to judicial review
29 of the merits for the purposes of the judicial proceeding
30 provided for in section 70.001, Florida Statutes.

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1 (6) The circuit court, for purposes of this section,
2 shall determine whether, considering the written offer and
3 final decision, the governmental entity has inordinately
4 burdened the subject real property. Following a determination
5 that the governmental entity has inordinately burdened the
6 real property, the court shall impanel a jury to determine the
7 total amount of compensation to the property owner for the
8 loss in value due to the inordinate burden to the subject real
9 property.

10 (7) Pursuant to section 70.001, Florida Statutes, the
11 court may award reasonable costs and attorney's fees and the
12 court shall determine the amount. If the court awards the
13 property owner reasonable costs and attorney's fees, the costs
14 shall include the cost of the appraisal required in subsection
15 (3).

16 Section 3. This act shall take effect July 1, 2003.
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