

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 regional water supply authority that
20 constructs, operates, and maintains the
21 reservoir; providing requirements for the offer
22 of compensation by a regional water supply
23 authority; providing for judicial review under
24 the Bert J. Harris, Jr., Private Property
25 Rights Protection Act; providing for an award
26 of costs and attorney's fees; providing for
27 future repeal of the section; providing
28 severability; providing an effective date.
29
30 WHEREAS, the Legislature wishes to clarify its original
31 intent with respect to allowing appropriate compensation for

1 unduly burdened real property and to provide a waiver of
2 sovereign immunity under section 70.001, Florida Statutes, the
3 Bert J. Harris, Jr., Private Property Rights Protection Act,
4 and

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

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

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

14 70.001 Private property rights protection.--

15 (4)

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

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

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

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

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

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 regional
10 water supply authority, serving three or fewer counties, that
11 is authorized to construct, operate, and maintain such a
12 regional reservoir shall be deemed a governmental entity under
13 section 70.001, Florida Statutes, the Bert J. Harris, Jr.,
14 Private Property Rights Protection Act, for purposes of this
15 section.

16 (2) This section provides a cause of action for the
17 actions of a regional water supply authority, in siting and
18 constructing a reservoir as described in subsection (1), that
19 may not rise to the level of a taking under the State
20 Constitution or the United States Constitution. This section
21 may not necessarily be construed under the case law regarding
22 takings if the action of a regional water supply authority
23 does not rise to the level of a taking. The provisions of this
24 section are cumulative and do not abrogate any other remedy
25 lawfully available, including any remedy lawfully available
26 for the actions of a regional water supply authority that rise
27 to the level of a taking. However, a regional water supply
28 authority may not be liable more than once for compensation
29 due to an action of the regional water supply authority that
30 results in a loss of value for a subject real property.

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1 (3) Each owner of real property located within 10,000
2 feet of the the center of the footprint of a regional
3 reservoir, as described in subsection (1), or 5,500 feet from
4 the exterior of the berm of such reservoir, may present a
5 claim for compensation in writing to the head of the regional
6 water supply authority on or before December 31, 2004, for a
7 loss in property value resulting from the proximity of the
8 reservoir. For each claim presented under this section,
9 section 70.001, Florida Statutes, applies, except when there
10 is conflict with this section, the provisions of this section
11 shall govern.

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

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

19 (4) The Legislature recognizes that construction and
20 maintenance of a regional reservoir may not necessarily
21 interfere with allowable uses of real property near the
22 reservoir. However, the siting and construction of the
23 reservoir may result in an actual loss to the fair market
24 value of real property located within 10,000 feet of the
25 center of the footprint of the reservoir, or 5,500 feet from
26 the exterior of the berm, because of the proximity of the
27 reservoir. Therefore, any offer of compensation by the
28 regional water supply authority shall be based solely on the
29 loss of value for the property owner as a result of the
30 proximity of the reservoir and not on the effects the
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1 reservoir has on existing uses or on a vested right to a
2 specific use of real property.

3 (a) Notwithstanding section 70.001, Florida Statutes,
4 the regional water supply authority to whom a claim is
5 presented shall, not later than 180 days after receiving such
6 claim:

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

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

15 3. Terminate negotiations.

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

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

24 (a) The real property has a loss in value due to an
25 inordinate burden on the property resulting from the proximity
26 of the reservoir and the regional water supply authority and
27 property owner cannot reach agreement on the amount of
28 compensation; or

29 (b) The property owner has failed to establish a basis
30 for relief under the provisions of this section and section
31 70.001, Florida Statutes.

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2 Failure of the regional water supply authority to issue a
3 final decision as required by this subsection shall cause the
4 written offer or termination of negotiations required in
5 subsection (4) to operate as a final decision. As a matter of
6 law, this final decision constitutes the last prerequisite to
7 judicial review of the merits for the purposes of the judicial
8 proceeding provided for in section 70.001, Florida Statutes.

9 (6) The circuit court, for purposes of this section,
10 shall determine whether, considering the written offer and
11 final decision, the regional water supply authority has
12 inordinately burdened the subject real property. Following a
13 determination that the regional water supply authority has
14 inordinately burdened the real property, the court shall
15 impanel a jury to determine the total amount of compensation
16 to the property owner for the loss in value due to the
17 inordinate burden to the subject real property.

18 (7) Pursuant to section 70.001, Florida Statutes, the
19 court may award reasonable costs and attorney's fees and the
20 court shall determine the amount. If the court awards the
21 property owner reasonable costs and attorney's fees, the costs
22 shall include the cost of the appraisal required in subsection
23 (3).

24 (8) This section is repealed effective January 1,
25 2005. However, the repeal of this section shall not affect a
26 claim filed on or before December 31, 2004.

27 Section 3. If any provision of this act or the
28 application thereof to any person or circumstance is held
29 invalid, the invalidity does not affect other provisions or
30 applications of this act which can be given effect without the
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1 invalid provision or application, and to this end the
2 provisions of this act are declared severable.

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