

HB 1333

2007

1 A bill to be entitled
2 An act relating to property rights; amending s. 70.001,
3 F.S., the "Bert J. Harris, Jr., Private Property Rights
4 Protection Act"; revising a definition; shortening a
5 period of notice for certain actions; providing for the
6 state land planning agency to receive notice of claims;
7 revising procedures for determining a governmental
8 entity's final decision identifying the allowable uses for
9 a property; extending a period of time for bringing a
10 cause of action; providing that enactment of a law or
11 adoption of a regulation does not constitute applying the
12 law or regulation; providing for a waiver of sovereign
13 immunity for liability; providing an effective date.

14
15 WHEREAS, the Legislature wishes to clarify its original
16 intent with respect to allowing appropriate compensation for
17 unduly burdened real property and to provide a waiver of
18 sovereign immunity under section 70.001, Florida Statutes, the
19 Bert J. Harris, Jr., Private Property Rights Protection Act, and

20 WHEREAS, the Legislature wishes to make other changes to
21 clarify provisions of this act and to improve the reporting of
22 cases filed under the act, NOW, THEREFORE,

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (e) of subsection (3), paragraphs
27 (a), (b), and (c) of subsection (4), paragraph (a) of subsection

28 (5), paragraph (c) of subsection (6), and subsections (11) and
 29 (13) of section 70.001, Florida Statutes, are amended to read:

30 70.001 Private property rights protection.--

31 (3) For purposes of this section:

32 (e) The terms "inordinate burden" or "inordinately
 33 burdened" mean that an action of one or more governmental
 34 entities has directly restricted or limited the use of real
 35 property such that the property owner is permanently unable to
 36 attain the reasonable, investment-backed expectation for the
 37 existing use of the real property or a vested right to a
 38 specific use of the real property with respect to the real
 39 property as a whole, or that the property owner is left with
 40 existing or vested uses that are unreasonable such that the
 41 property owner bears permanently a disproportionate share of a
 42 burden imposed for the good of the public, which in fairness
 43 should be borne by the public at large. The terms "inordinate
 44 burden" or "inordinately burdened" do not include temporary
 45 impacts to real property; impacts to real property occasioned by
 46 governmental abatement, prohibition, prevention, or remediation
 47 of a public nuisance at common law or a noxious use of private
 48 property; or impacts to real property caused by an action of a
 49 governmental entity taken to grant relief to a property owner
 50 under this section; however, a moratorium on development, as
 51 defined in s. 380.04, which is in effect for longer than 1 year
 52 is not a temporary impact to real property and is included
 53 within the terms "inordinate burden" or "inordinately burdened".

54 (4) (a) Not less than 120 ~~180~~ days prior to filing an
 55 action under this section against a governmental entity, a

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56 | property owner who seeks compensation under this section must
57 | present the claim in writing to the head of the governmental
58 | entity, except that if the property is classified as
59 | agricultural pursuant to s. 193.461, the notice period is 90
60 | days. The property owner must submit, along with the claim, a
61 | bona fide, valid appraisal that supports the claim and
62 | demonstrates the loss in fair market value to the real property.
63 | If the action of government is the culmination of a process that
64 | involves more than one governmental entity, or if a complete
65 | resolution of all relevant issues, in the view of the property
66 | owner or in the view of a governmental entity to whom a claim is
67 | presented, requires the active participation of more than one
68 | governmental entity, the property owner shall present the claim
69 | as provided in this section to each of the governmental
70 | entities.

71 | (b) The governmental entity shall provide written notice
72 | of the claim to all parties to any administrative action that
73 | gave rise to the claim, and to owners of real property
74 | contiguous to the owner's property at the addresses listed on
75 | the most recent county tax rolls. Within 15 days after the claim
76 | is being presented, the governmental entity shall report the
77 | claim in writing to the state land planning agency ~~Department of~~
78 | ~~Legal Affairs,~~ and shall provide the agency ~~department~~ with the
79 | name, address, and telephone number of the employee of the
80 | governmental entity from whom additional information may be
81 | obtained about the claim during the pendency of the claim and
82 | any subsequent judicial action.

83 (c) During the 90-day-notice period or the 120-day-notice
 84 ~~180-day-notice~~ period, unless extended by agreement of the
 85 parties, the governmental entity shall make a written settlement
 86 offer to effectuate:

87 1. An adjustment of land development or permit standards
 88 or other provisions controlling the development or use of land.

89 2. Increases or modifications in the density, intensity,
 90 or use of areas of development.

91 3. The transfer of developmental rights.

92 4. Land swaps or exchanges.

93 5. Mitigation, including payments in lieu of onsite
 94 mitigation.

95 6. Location on the least sensitive portion of the
 96 property.

97 7. Conditioning the amount of development or use
 98 permitted.

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

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

103 10. Purchase of the real property, or an interest therein,
 104 by an appropriate governmental entity or payment of
 105 compensation.

106 11. No changes to the action of the governmental entity.
 107

108 If the property owner accepts the settlement offer, the
 109 governmental entity may implement the settlement offer by
 110 appropriate development agreement; by issuing a variance,

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111 special exception, or other extraordinary relief; or by other
112 appropriate method, subject to paragraph (d).

113 (5) (a) During the 90-day-notice period or the 120-day-
114 notice ~~180-day notice~~ period, unless a settlement offer is
115 accepted by the property owner, each of the governmental
116 entities provided notice pursuant to paragraph (4) (a) shall
117 issue a written ~~ripeness~~ decision identifying the allowable uses
118 to which the subject property may be put. The failure of the
119 governmental entity to issue such a written ~~ripeness~~ decision
120 during the applicable 90-day-notice period or 120-day-notice
121 ~~180-day notice~~ period shall cause ~~be deemed to ripen~~ the prior
122 action of the governmental entity to become its final decision,
123 for purposes of the act, identifying the uses for the subject
124 property, and shall operate as a ripeness decision that has been
125 ~~rejected by the property owner.~~ Whether rendered by submission
126 of a written decision during the 120-day-notice period or by
127 failure to submit such a written decision, the final decision of
128 the governmental entity produced under this paragraph operates
129 as a final decision that has been rejected by the property
130 owner. This final ~~The ripeness~~ decision, as a matter of law,
131 constitutes the last prerequisite to judicial review of the
132 merits, and the matter shall be deemed ripe or final for the
133 purposes of the judicial proceeding created by this section,
134 notwithstanding the availability of other administrative
135 remedies.

136 (6)

137 (c)1. In any action filed pursuant to this section, the
138 property owner is entitled to recover reasonable costs and

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139 attorney fees incurred by the property owner, from the
140 governmental entity or entities, according to their
141 proportionate share as determined by the court, from the date of
142 the filing of the circuit court action, if the property owner
143 prevails in the action and the court determines that the
144 settlement offer, including the ripeness decision, of the
145 governmental entity or entities did not constitute a bona fide
146 offer to the property owner which reasonably would have resolved
147 the claim, based upon the knowledge available to the
148 governmental entity or entities and the property owner during
149 the 90-day-notice period or the 120-day-notice ~~180-day-notice~~
150 period.

151 2. In any action filed pursuant to this section, the
152 governmental entity or entities are entitled to recover
153 reasonable costs and attorney fees incurred by the governmental
154 entity or entities from the date of the filing of the circuit
155 court action, if the governmental entity or entities prevail in
156 the action and the court determines that the property owner did
157 not accept a bona fide settlement offer, including the ripeness
158 decision, which reasonably would have resolved the claim fairly
159 to the property owner if the settlement offer had been accepted
160 by the property owner, based upon the knowledge available to the
161 governmental entity or entities and the property owner during
162 the 90-day-notice period or the 120-day-notice ~~180-day-notice~~
163 period.

164 3. The determination of total reasonable costs and
165 attorney fees pursuant to this paragraph shall be made by the
166 court and not by the jury. Any proposed settlement offer or any

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167 proposed ripeness decision, except for the final written
168 settlement offer or the final written ripeness decision, and any
169 negotiations or rejections in regard to the formulation either
170 of the settlement offer or the ripeness decision, are
171 inadmissible in the subsequent proceeding established by this
172 section except for the purposes of the determination pursuant to
173 this paragraph.

174 (11) A cause of action may not be commenced under this
175 section if the claim is presented more than 2 years ~~1 year~~ after
176 a law or regulation is first applied by the governmental entity
177 to the property at issue. Enacting a law or adopting a
178 regulation does not constitute applying the law or regulation to
179 a property. If an owner seeks relief from the governmental
180 action through lawfully available administrative or judicial
181 proceedings, the time for bringing an action under this section
182 is tolled until the conclusion of such proceedings.

183 (13) In accordance with s. 13, Art. X of the State
184 Constitution, the state, for itself and for its agencies or
185 political subdivisions, waives sovereign immunity for liability
186 for actions subject to this section, but only to the extent
187 specified in this section. ~~This section does not affect the~~
188 ~~sovereign immunity of government.~~

189 Section 2. This act shall take effect July 1, 2007.