

By Senator Baker

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1 A bill to be entitled

2 An act relating to property rights; amending s. 70.001,
3 F.S.; revising a definition; shortening a notice period
4 for certain actions; providing for the state land planning
5 agency to receive notice of claims; revising procedures
6 for determining a governmental entity's final decision
7 identifying the allowable uses for a property; extending a
8 period of time for bringing an action; providing that
9 enactment of a law or adoption of a regulation does not
10 constitute applying the law or regulation; providing for a
11 waiver of sovereign immunity for liability; providing for
12 prospective application; providing an effective date.

13
14 WHEREAS, the Legislature wishes to clarify its original
15 intent with respect to allowing appropriate compensation for
16 unduly burdened real property and to provide a waiver of
17 sovereign immunity under s. 70.001, Florida Statutes, the Bert J.
18 Harris, Jr., Private Property Rights Protection Act, and

19 WHEREAS, the Legislature wishes to make other changes to
20 clarify provisions of this act, NOW, THEREFORE,

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (e) of subsection (3), paragraphs (a)
25 and (c) of subsection (4), paragraph (a) of subsection (5),
26 paragraph (c) of subsection (6), and subsections (11) and (13) of
27 section 70.001, Florida Statutes, are amended to read:

28 70.001 Private property rights protection.--

29 (3) For purposes of this section:

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

52 (4) (a) Not less than 120 ~~180~~ days prior to filing an action
53 under this section against a governmental entity, a property
54 owner who seeks compensation under this section must present the
55 claim in writing to the head of the governmental entity, except
56 that if the property is classified as agricultural pursuant to s.
57 193.461, the notice period is 90 days. The property owner must
58 submit, along with the claim, a bona fide, valid appraisal that

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59 supports the claim and demonstrates the loss in fair market value
60 to the real property. If the action of government is the
61 culmination of a process that involves more than one governmental
62 entity, or if a complete resolution of all relevant issues, in
63 the view of the property owner or in the view of a governmental
64 entity to whom a claim is presented, requires the active
65 participation of more than one governmental entity, the property
66 owner shall present the claim as provided in this section to each
67 of the governmental entities.

68 (c) During the 90-day-notice period or the 120-day-notice
69 ~~180-day-notice~~ period, unless extended by agreement of the
70 parties, the governmental entity shall make a written settlement
71 offer to effectuate:

72 1. An adjustment of land development or permit standards or
73 other provisions controlling the development or use of land.

74 2. Increases or modifications in the density, intensity, or
75 use of areas of development.

76 3. The transfer of developmental rights.

77 4. Land swaps or exchanges.

78 5. Mitigation, including payments in lieu of onsite
79 mitigation.

80 6. Location on the least sensitive portion of the property.

81 7. Conditioning the amount of development or use permitted.

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

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

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86 10. Purchase of the real property, or an interest therein,
87 by an appropriate governmental entity, or payment of
88 compensation.

89 11. No changes to the action of the governmental entity.
90

91 If the property owner accepts the settlement offer, the
92 governmental entity may implement the settlement offer by
93 appropriate development agreement; by issuing a variance, special
94 exception, or other extraordinary relief; or by other appropriate
95 method, subject to paragraph (d).

96 (5) (a) During the 90-day-notice period or the 120-day-
97 notice ~~180-day-notice~~ period, unless a settlement offer is
98 accepted by the property owner, each of the governmental entities
99 provided notice pursuant to paragraph (4) (a) shall issue a
100 written ripeness decision identifying the allowable uses to which
101 the subject property may be put. The failure of the governmental
102 entity to issue such a written ~~ripeness~~ decision during the
103 applicable 90-day-notice period or 120-day-notice ~~180-day-notice~~
104 period shall cause ~~be deemed to ripen~~ the prior action of the
105 governmental entity to become its final decision, for purposes of
106 this section, identifying the uses for the subject property, and
107 ~~shall operate as a ripeness decision that has been rejected by~~
108 ~~the property owner. Whether rendered by submission of a written~~
109 decision during the 120-day-notice period or by failure to submit
110 such a written decision, the final decision of the governmental
111 entity produced under this paragraph operates as a final decision
112 that has been rejected by the property owner. This final ~~The~~
113 ~~ripeness~~ decision, as a matter of law, constitutes the last
114 prerequisite to judicial review on the merits, ~~and the matter~~

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115 ~~shall be deemed ripe or final~~ for the purposes of the judicial
116 proceeding created by this section, notwithstanding the
117 availability of other administrative remedies.

118 (6)

119 (c)1. In any action filed pursuant to this section, the
120 property owner is entitled to recover reasonable costs and
121 attorney fees incurred by the property owner, from the
122 governmental entity or entities, according to their proportionate
123 share as determined by the court, from the date of the filing of
124 the circuit court action, if the property owner prevails in the
125 action and the court determines that the settlement offer,
126 including the ripeness decision, of the governmental entity or
127 entities did not constitute a bona fide offer to the property
128 owner which reasonably would have resolved the claim, based upon
129 the knowledge available to the governmental entity or entities
130 and the property owner during the 90-day-notice period or the
131 120-day-notice ~~180-day-notice~~ period.

132 2. In any action filed pursuant to this section, the
133 governmental entity or entities are entitled to recover
134 reasonable costs and attorney fees incurred by the governmental
135 entity or entities from the date of the filing of the circuit
136 court action, if the governmental entity or entities prevail in
137 the action and the court determines that the property owner did
138 not accept a bona fide settlement offer, including the ripeness
139 decision, which reasonably would have resolved the claim fairly
140 to the property owner if the settlement offer had been accepted
141 by the property owner, based upon the knowledge available to the
142 governmental entity or entities and the property owner during the
143 90-day-notice period or the 120-day-notice ~~180-day-notice~~ period.

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144 3. The determination of total reasonable costs and attorney
145 fees pursuant to this paragraph shall be made by the court and
146 not by the jury. Any proposed settlement offer or any proposed
147 ripeness decision, except for the final written settlement offer
148 or the final written ripeness decision, and any negotiations or
149 rejections in regard to the formulation either of the settlement
150 offer or the ripeness decision, are inadmissible in the
151 subsequent proceeding established by this section except for the
152 purposes of the determination pursuant to this paragraph.

153 (11) A cause of action may not be commenced under this
154 section if the claim is presented more than 2 years ~~1-year~~ after
155 a law or regulation is first applied by the governmental entity
156 to the property at issue. For purposes of this section, enacting
157 a law or adopting a regulation does not constitute applying the
158 law or regulation to a property. If an owner seeks relief from
159 the governmental action through lawfully available administrative
160 or judicial proceedings, the time for bringing an action under
161 this section is tolled until the conclusion of such proceedings.

162 (13) In accordance with s. 13, Art. X of the State
163 Constitution, the state, for itself and for its agencies or
164 political subdivisions, waives sovereign immunity for liability
165 for actions subject to this section, but only to the extent
166 specified in this section ~~This section does not affect the~~
167 ~~sovereign immunity of government.~~

168 Section 2. The amendments to s. 70.001, Florida Statutes,
169 by this act shall apply prospectively only, and shall not apply
170 to any claim or action filed under s. 70.001, Florida Statutes,
171 which is pending upon the effective date of this act.

172 Section 3. This act shall take effect July 1, 2008.