

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 section 70.001, Florida Statutes, the
 18 Bert J. 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)
 27 of section 70.001, Florida Statutes, are amended to read:

28 70.001 Private property rights protection.--

29 (3) For purposes of this section:

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

53 (4) (a) Not less than 120 ~~180~~ days prior to filing an
 54 action under this section against a governmental entity, a
 55 property owner who seeks compensation under this section must
 56 present the claim in writing to the head of the governmental

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

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

- 74 | 1. An adjustment of land development or permit standards
75 | or other provisions controlling the development or use of land.
76 | 2. Increases or modifications in the density, intensity,
77 | or use of areas of development.
78 | 3. The transfer of developmental rights.
79 | 4. Land swaps or exchanges.
80 | 5. Mitigation, including payments in lieu of onsite
81 | mitigation.
82 | 6. Location on the least sensitive portion of the
83 | property.

84 7. Conditioning the amount of development or use
85 permitted.

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

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

90 10. Purchase of the real property, or an interest therein,
91 by an appropriate governmental entity, or payment of
92 compensation.

93 11. No changes to the action of the governmental entity.

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

100 (5) (a) During the 90-day-notice period or the 120-day-
101 notice ~~180-day notice~~ period, unless a settlement offer is
102 accepted by the property owner, each of the governmental
103 entities provided notice pursuant to paragraph (4) (a) shall
104 issue a written ripeness decision identifying the allowable uses
105 to which the subject property may be put. The failure of the
106 governmental entity to issue such a written ~~ripeness~~ decision
107 during the applicable 90-day-notice period or 120-day-notice
108 ~~180-day notice~~ period shall cause ~~be deemed to ripen~~ the prior
109 action of the governmental entity to become its final decision,
110 for purposes of this section, identifying the uses for the
111 subject property, ~~and shall operate as a ripeness decision that~~

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112 ~~has been rejected by the property owner.~~ Whether rendered by
113 submission of a written decision during the 120-day-notice
114 period or by failure to submit such a written decision, the
115 final decision of the governmental entity produced under this
116 paragraph operates as a final decision that has been rejected by
117 the property owner. This final ~~The ripeness~~ decision, as a
118 matter of law, constitutes the last prerequisite to judicial
119 review on the merits, ~~and the matter shall be deemed ripe or~~
120 ~~final~~ for the purposes of the judicial proceeding created by
121 this section, notwithstanding the availability of other
122 administrative remedies.

123 (6)

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

138 2. In any action filed pursuant to this section, the
139 governmental entity or entities are entitled to recover

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140 reasonable costs and attorney fees incurred by the governmental
141 entity or entities from the date of the filing of the circuit
142 court action, if the governmental entity or entities prevail in
143 the action and the court determines that the property owner did
144 not accept a bona fide settlement offer, including the ripeness
145 decision, which reasonably would have resolved the claim fairly
146 to the property owner if the settlement offer had been accepted
147 by the property owner, 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 3. The determination of total reasonable costs and
152 attorney fees pursuant to this paragraph shall be made by the
153 court and not by the jury. Any proposed settlement offer or any
154 proposed ripeness decision, except for the final written
155 settlement offer or the final written ripeness decision, and any
156 negotiations or rejections in regard to the formulation either
157 of the settlement offer or the ripeness decision, are
158 inadmissible in the subsequent proceeding established by this
159 section except for the purposes of the determination pursuant to
160 this paragraph.

161 (11) A cause of action may not be commenced under this
162 section if the claim is presented more than 2 years ~~1-year~~ after
163 a law or regulation is first applied by the governmental entity
164 to the property at issue. For purposes of this section, enacting
165 a law or adopting a regulation does not constitute applying the
166 law or regulation to a property. If an owner seeks relief from
167 the governmental action through lawfully available

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168 administrative or judicial proceedings, the time for bringing an
169 action under this section is tolled until the conclusion of such
170 proceedings.

171 (13) In accordance with s. 13, Art. X of the State
172 Constitution, the state, for itself and for its agencies or
173 political subdivisions, waives sovereign immunity for liability
174 for actions subject to this section, but only to the extent
175 specified in this section ~~This section does not affect the~~
176 ~~sovereign immunity of government.~~

177 Section 2. The amendments to s. 70.001, Florida Statutes,
178 by this act shall apply prospectively only, and shall not apply
179 to any claim or action filed under s. 70.001, Florida Statutes,
180 that is pending upon the effective date of this act.

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