

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; providing  
8           that enactment of a law or adoption of a regulation does  
9           not constitute applying the law or regulation; provides a  
10          factor that may be considered in determining whether an  
11          inordinate burden has been imposed on the real property;  
12          providing for a waiver of sovereign immunity for  
13          liability; providing for prospective application;  
14          providing an effective date.

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

21          WHEREAS, the Legislature wishes to make other changes to  
22          clarify provisions of this 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 (a)  
27          and (c) of subsection (4), paragraph (a) of subsection (5),

28 paragraph (c) of subsection (6), and subsections (11) and (13)  
 29 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" and ~~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" and ~~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, that is in effect for longer than 1 year  
 52 does not necessarily constitute a temporary impact to real  
 53 property and, thus, depending upon the particular circumstances,  
 54 may constitute an "inordinate burden" as provided herein.

55 (4) (a) Not less than 120 ~~180~~ days prior to filing an

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

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

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

84           6. Location on the least sensitive portion of the  
85 property.

86           7. Conditioning the amount of development or use  
87 permitted.

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

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

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

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

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

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

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

125 (6)

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

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

153           3. The determination of total reasonable costs and  
154 attorney fees pursuant to this paragraph shall be made by the  
155 court and not by the jury. Any proposed settlement offer or any  
156 proposed ripeness decision, except for the final written  
157 settlement offer or the final written ripeness decision, and any  
158 negotiations or rejections in regard to the formulation either  
159 of the settlement offer or the ripeness decision, are  
160 inadmissible in the subsequent proceeding established by this  
161 section except for the purposes of the determination pursuant to  
162 this paragraph.

163           (11) A cause of action may not be commenced under this  
164 section if the claim is presented more than 1 year after a law  
165 or regulation is first applied by the governmental entity to the  
166 property at issue. For purposes of this section, enacting a law  
167 or adopting a regulation does not constitute applying the law or

168 regulation to a property; however, in determining whether an  
169 inordinate burden has been imposed on the real property as  
170 provided for in this section, consideration may be given to the  
171 length of time that has elapsed since the enactment of a law or  
172 the adoption of a rule, regulation, or ordinance and its  
173 application. If an owner seeks relief from the governmental  
174 action through lawfully available administrative or judicial  
175 proceedings, the time for bringing an action under this section  
176 is tolled until the conclusion of such proceedings.

177 (13) In accordance with s. 13, Art. X of the State  
178 Constitution, the state, for itself and for its agencies or  
179 political subdivisions, waives sovereign immunity for causes of  
180 action based upon the application of any law, regulation, or  
181 ordinance subject to this section, but only to the extent  
182 specified in this section ~~This section does not affect the~~  
183 ~~sovereign immunity of government.~~

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

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