

HB 1361

2009

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),

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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 in this
55 paragraph.

56 (4) (a) Not less than 120 ~~180~~ days prior to filing an
 57 action under this section against a governmental entity, a
 58 property owner who seeks compensation under this section must
 59 present the claim in writing to the head of the governmental
 60 entity, except that if the property is classified as
 61 agricultural pursuant to s. 193.461, the notice period is 90
 62 days. The property owner must submit, along with the claim, a
 63 bona fide, valid appraisal that supports the claim and
 64 demonstrates the loss in fair market value to the real property.
 65 If the action of government is the culmination of a process that
 66 involves more than one governmental entity, or if a complete
 67 resolution of all relevant issues, in the view of the property
 68 owner or in the view of a governmental entity to whom a claim is
 69 presented, requires the active participation of more than one
 70 governmental entity, the property owner shall present the claim
 71 as provided in this section to each of the governmental
 72 entities.

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

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

84 mitigation.

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

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

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

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

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

96 11. No changes to the action of the governmental entity.
97

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

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

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

126 | (6)

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

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140 period.

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

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

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

168 or adopting a regulation does not constitute applying the law or
 169 regulation to a property; however, in determining whether an
 170 inordinate burden has been imposed on the real property as
 171 provided for in this section, consideration may be given to the
 172 length of time that has elapsed since the enactment of a law or
 173 the adoption of a rule, regulation, or ordinance and its
 174 application. If an owner seeks relief from the governmental
 175 action through lawfully available administrative or judicial
 176 proceedings, the time for bringing an action under this section
 177 is tolled until the conclusion of such proceedings.

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

185 Section 2. The amendments to s. 70.001, Florida Statutes,
 186 made by this act apply prospectively only and do not apply to
 187 any claim or action filed under s. 70.001, Florida Statutes,
 188 which is pending on the effective date of this act.

189 Section 3. This act shall take effect July 1, 2009.