

By Senator Baker

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1 A bill to be entitled
2 An act relating to property rights; amending s.
3 70.001, F.S.; revising a definition; shortening a
4 notice period for certain actions; providing for the
5 state land planning agency to receive notice of
6 claims; revising procedures for determining a
7 governmental entity's final decision identifying the
8 allowable uses for a property; providing that
9 enactment of a law or adoption of a regulation does
10 not constitute applying the law or regulation;
11 provides a factor that may be considered in
12 determining whether an inordinate burden has been
13 imposed on the real property; providing for a waiver
14 of sovereign immunity for liability; providing for
15 prospective application; providing an effective date.

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

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

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

26
27 Section 1. Paragraph (e) of subsection (3), paragraphs (a)
28 and (c) of subsection (4), paragraph (a) of subsection (5),
29 paragraph (c) of subsection (6), and subsections (11) and (13)

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30 of section 70.001, Florida Statutes, are amended to read:

31 70.001 Private property rights protection.-

32 (3) For purposes of this section:

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

56 (4) (a) Not less than 120 ~~180~~ days prior to filing an action
57 under this section against a governmental entity, a property
58 owner who seeks compensation under this section must present the

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

78 2. Increases or modifications in the density, intensity, or
79 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 property.

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

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

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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
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

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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
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

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

160 (11) A cause of action may not be commenced under this
161 section if the claim is presented more than 1 year after a law
162 or regulation is first applied by the governmental entity to the
163 property at issue. For purposes of this section, enacting a law
164 or adopting a regulation does not constitute applying the law or
165 regulation to a property; however, in determining whether an
166 inordinate burden has been imposed on the real property as
167 provided for in this section, consideration may be given to the
168 length of time that has elapsed since the enactment of a law or
169 the adoption of a rule, regulation, or ordinance and its
170 application. If an owner seeks relief from the governmental
171 action through lawfully available administrative or judicial
172 proceedings, the time for bringing an action under this section
173 is tolled until the conclusion of such proceedings.

174 (13) In accordance with s. 13, Art. X of the State

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175 Constitution, the state, for itself and for its agencies or
176 political subdivisions, waives sovereign immunity for causes of
177 action based upon the application of any law, regulation, or
178 ordinance subject to this section, but only to the extent
179 specified in this section ~~This section does not affect the~~
180 ~~sovereign immunity of government.~~

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

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