HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 701 Property Rights
SPONSOR(S): Community & Military Affairs, Eisnaugle and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	10 Y, 4 N, As CS	Gibson	Hoagland
2) Judiciary Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act (act), to provide that a moratorium on "development," that is in effect for longer than one year is not a temporary impact to real property for purposes of the act, and therefore, may constitute an "inordinate burden."

The bill separates the definition of "existing use" into two separate parts.

The bill provides that a property owner seeking compensation must present, at least 120 days (rather than the present requirement of 180 days) prior to filing an action under the act, a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.

The bill adds the "payment of compensation" to the list of remedies that may be offered by a governmental entity in a written settlement offer.

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. The issuance or failure to issue a written decision operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

The bill clarifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property.

The bill specifically states that the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for purposes of the act.

The fiscal impact of the bill on state and local governments is indeterminate.

The bill has an effective date of July 1, 2011, and applies prospectively only.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private Property Rights

Current Situation

The Fifth Amendment to the United States Constitution guarantees that a citizen's private property may not be taken for public use without just compensation. The "takings" clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

Article I, section 2 of the Florida Constitution also guarantees all natural persons the right to "acquire, possess and protect property" and further provides that no person will be deprived of property without due process of law. Article X, section 6 of the Florida Constitution is complimentary to the Fifth and Fourteenth Amendments to the United States Constitution and prohibits the government's ability to take private property through the power of eminent domain, except for a public purpose and provided that the property owners are fully compensated.[1]

Where a governmental regulation results in permanent physical occupation of a property or deprives an owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred, thereby requiring full compensation for the property.[2] Regulations that do not substantially advance a legitimate state interest are invalid,[3] and the property owner may recover compensation for the period during which the invalid regulation deprived the owner of complete use of the property.[4]

In other "takings" cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. The factors considered by the courts include:

- the economic impact of the regulation on the property owner;
- the extent to which the regulation interferes with the property owner's investment-backed expectations;
- whether the regulation confers a public benefit or prevents a public harm (the nature of the regulation);
- whether the regulation is arbitrarily and capriciously applied; and
- the history of the property, history of the development, and history of the zoning and regulation.[5]

Bert J. Harris, Jr., Private Property Rights Protection Act

Current Situation

In 1995,[6] the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act[7] (act) to provide a new cause of action for private property owners whose property has been inordinately burdened by a specific action[8] of a governmental entity[9] that may not rise to the level of a "taking" under

[1] Chapters 73 and 74, F.S.; Art. X, s. 6, FLA. CONST.

[2] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

[3] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

[4] *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

[5] *Reahard v. Lee County*, 968 F.2d 1131, 1136 (11th Cir. 1992); *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Graham v. Estuary Properties*, 399 So.2d 1374 (Fla. 1981).

[6] Ch. 95-181, L.O.F.; codified as s. 70.001, F.S.

[7] Ch. 95-181, L.O.F.; codified as s. 70.001, F.S.

[8] S. 70.001(3)(d), F.S., provides that the "term 'action of a governmental entity' means a specific action of a governmental entity which affects real property, including action on an application or permit."

the State or Federal Constitutions.[10] The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[11]

The act provides[12]:

> "When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section" (emphasis added).

Prior to the act's adoption, Florida landowners had two judicial remedies available when a property's value or usefulness was destroyed or severely diminished by government regulation. A property owner could proceed against the governmental entity under the doctrine of equitable estoppel to enjoin the government from revoking a permit or attempting to apply a new regulation.[13] This doctrine applies when a property owner, in good faith reliance on a governmental act or omission with respect to governmental regulations, has made a substantial change in position or incurred substantial expenses.[14]

Alternatively, if a regulation directly caused a substantial diminution in value, one which reached the level of a taking of the property, the property owner could file an inverse condemnation claim under the Fifth Amendment of the United States Constitution or Article X, section 6 of the Florida Constitution. However, a property owner would not be entitled to any relief if the government action was not a "taking" or the property owner did not satisfy the equitable estoppel requirements.[15]

Inordinate Burden

Current Situation

The act defines the terms "inordinate burden" or "inordinately burdened" as a government action that has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

The act specifically states that the terms "inordinate burden" or "inordinately burdened" do not include:

- temporary impacts to real property;
- impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.

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[9] S. 70.001(3)(c), F.S., provides that the "term 'governmental entity' includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority."

[10] Ss. 70.001(1) and (9), F.S.

[11] S. 70.001(2), F.S.

[12] S. 70.001(2), F.S.

[13] *See* Vivien J. Monaco, Comment, *The Harris Act: What Relief From Government Regulation Does It Provide For Private Property Owners,* 26 Stetson Law Review 861, 867 (1997).

[14] *See id*., *citing Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15-16 (Fla. 1976).

[15] *See id.*

Effect of the Bill

The bill specifies that a moratorium on development[16] that is in effect for longer than a year is not a temporary impact to real property, and thus, depending upon the particular circumstances, may constitute an "inordinate burden" under the act. The bill clarifies that both "inordinate burden" *and* "inordinately burdened" have the same meaning.

Existing Use

Current Situation

The act provides relief for an existing use that has been inordinately burdened. "Existing use" under the act means:

> "an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property."[17]

In *City of Jacksonville v. Coffield*, a property owner signed a contract and made a deposit to purchase a property that with the intention to develop it into eight residential, single family lots.[18] Soon thereafter, the property owner learned that an application had been submitted to the City for closure of a public roadway that was necessary for the property owner's development plans to be feasible.[19] Despite the pending application, the property owner proceeded with his development plans based on what the First District Court of Appeal said was the mistaken belief that the City would not grant the application for road closure.[20] The appellate court held that the city's closure of the public road did not inordinately burden the property owner's existing use or a vested right to use of the property.[21] Further, it was held that the trial court erred, as a matter of law, in finding that the property owner "ever had a vested right to develop the property as eight single-family homes, that development as eight single family lots was an existing use of the property, and that the City took any action which constituted an inordinate burden or precluded attaining any reasonable, investment-backed expectation." [22]

Effect of the Bill

The bill separates the current language in s. 70.001(3)(b), F.S., into two subparagraphs to clarify that an analysis of whether there is an "existing use" is a dual prong test. An "existing use" can mean either an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, that nature or type of use; or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

Vested Right

Current Situation

The existence of a "vested right" is determined by applying the principles of equitable estoppel or substantive due process under statutory or common law.[23] The common law doctrine of equitable estoppel may be invoked against the government when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to

[16] As defined in s. 380.04, F.S.
[17] S. 70.001(3)(b), F.S.
[18] *Id.* at 591.
[19] *Id.*
[20]
[21] 18 So. 3d 589 (Fla. 1st DCA 2009).
[22] *Id. at* 599.
[23] S. 70.001(3)(a), F.S.

destroy the rights that the owner has acquired.[24] The First DCA analogized equitable estoppel to the government through an act or omission inviting a citizen "onto a welcome mat" and then "snatch[ing] the mat away to the detriment of the party induced or permitted to stand thereon."[25]

Effect of the Bill
The bill does not change how the existence of a vested right is determined.

Notice Period and Written Settlement
Current Situation
A property owner seeking compensation under the act must present, at least 180 days prior to filing an action under the act (90 days prior to filing an action for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.), a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.[26]

The governmental entity must provide notice of the claim to parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property. The governmental entity shall report the claim to the Department of Legal Affairs within 15 days after the claim is filed.

During the 180-day-notice period (or the 90-day-notice period for land classified as agricultural property), unless extended by agreement of the parties, the governmental entity must make a written settlement offer that may include:

- an adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- increases or modifications in the density, intensity, or use of areas of development;
- the transfer of development rights;
- land swaps or exchanges;
- mitigation, including payments in lieu of on-site mitigation;
- location of the least sensitive portion of the property;
- conditioning the amount of development use permitted;
- a requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- issuance of the development order, a variance, special exception, or other extraordinary relief;
- purchase of the real property, or an interest therein, by an appropriate governmental entity; or
- no changes to the action of the governmental entity.[27]

Effect of the Bill
The bill changes the notice period from 180 days to 120 days for a property owner seeking compensation to present, prior to filing an action under the act, a written claim to the head of the governmental entity and a valid appraisal that demonstrates the loss in fair market value to the real property. The bill does not change the 90-day-notice period for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.

The bill also adds "payment of compensation" to the list of items that a government's written settlement offer may include.

Ripeness
Current Situation
Under the ripeness doctrine, a claimant must exhaust administrative remedies prior to seeking judicial relief. Florida courts have adopted the federal ripeness policy that requires a final determination from a

[24] *Verizon Wireless Pers. Commc'ns L.P. v. Sanctuary at Wulfert Point Cmty. Ass'n,* 916 So. 2d 850, 856 (Fla. 2d DCA 2002).
[25] *Equity Res. Inc. v. County of Leon,* 643 So. 2d 1112, 1120 (Fla. 1st DCA 1994) (quoting *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975).
[26] S. 70.001(4)(a), F.S.
[27] S. 70.001(4)(c), F.S.

governmental entity as to the permissible uses of a property after the adoption of the regulation at issue.[28] The ripeness doctrine has operated to preclude a takings claim when a regulatory agency denies a project application and the landowner fails to resubmit the application with a less intensive use.[29] However, a takings claim becomes ripe when the regulatory agency lacks the discretion to permit any development and the permissible uses of the property are known.[30] The futility exception to the ripeness doctrine, although limited, provides that a takings claim is ripe where the past history of the regulatory agency shows that repeated submissions of an application would be futile and where the agency effectively concedes that any development would be an impermissible use.[31]

The Fourth District Court of Appeal has held that a landowner's failure to request a plan amendment to permit other uses or to submit a meaningful application is fatal to a takings claim.[32] According to the court, the requirement of ripeness serves two important purposes. First, the doctrine requires at least one "meaningful application" which necessitates discussion and possible resolution in an administrative or political forum. Second, the doctrine's final determination requirement enables a court to ascertain if a taking has occurred and, if so, the extent of the taking.[33] Although the plaintiff in *Taylor* alleged a regulatory taking and did not file a claim under the act, the court recognized in dicta that the recently enacted Harris Act "altered the ripeness requirement for cases involving governmental regulation of land use."[34]

Under the act, if the property owner accepts the written settlement offer, then the governmental entity may implement the settlement by appropriate development agreement.[35] If the property owner rejects the settlement offer, the governmental entities involved must issue within the 180 day period (or the 90-day-notice period for land classified as agricultural property) a written ripeness decision that identifies the allowable uses to which the affected property may be put.[36] Failure to issue the ripeness decision during the applicable time period is deemed to ripen the prior action of the governmental entity and operates as a ripeness decision that has been rejected by the property owner.[37] The ripeness decision serves as the last prerequisite to judicial review, thereby allowing the landowner to file a claim in circuit court pursuant to the act.[38]

The circuit court is charged with determining if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property.[39] If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved[40] and will impanel a jury to decide the monetary value based upon the loss in fair market value attributable to the governmental action.[41] The prevailing party is entitled to reasonable costs and attorney's fees.[42]

Effect of the Bill

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. This final decision then operates as

[28] *Glisson v. Alachua County*, 558 So. 2d 1030, 1034 (Fla. 1st DCA 1990).
[29] *Lost Tree Village Corp. v. City of Vero Beach*, 838 So. 2d 561 (Fla. 4th DCA 2002).
[30] *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001).
[31] *City of Riviera Beach v. Shillingburg*, 659 So.2d 1174, 1180 (Fla. 4th DCA 1995); *Palazzolo*, 533 U.S. at 622.
[32] *Taylor v. Village of North Palm Beach*, 659 So.2d 1167, 1173 (Fla. 4th DCA 1995).
[33] *Taylor*, 659 So.2d at 1173, *citing Tinnerman v. Palm Beach County*, 641 So.2d 523 (Fla. 4th DCA 1994) (stating "[r]ipeness requires a firm delineation of permitted uses so that the extent of the taking can be analyzed").
[34] 659 So.2d at 1173.
[35] S. 70.001(4)(c), F.S.
[36] S. 70.001(5)(a), F.S.
[37] *Id.*
[38] *Id.*
[39] S. 70.001(6)(a), F.S.
[40] *Id.*
[41] S. 70.001(6)(b), F.S.
[42] S. 70.001(6)(c), F.S.

a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

Application of Law or Regulation

Current Situation

A cause of action cannot be brought under the act more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. The First and Fifth District Courts of Appeal have both issued recent opinions characterized by some as contrary interpretations of the same provision within the act.[43]

In *Citrus County v. Halls River Development*,[44] a parcel of property was purchased in 2001, with the intent to develop a multifamily condominium project. The county land development code (LDC) designated the property "Mixed Use" ("MXU"), which permitted a multifamily condominium among other uses. The local government's comprehensive plan is similar to a constitution for future development within the jurisdiction, and the land development regulations (or in this case the LDC) by law must implement and be consistent with the comprehensive plan.[45]

Citrus County, as a result of its evaluation and appraisal report (EAR) conducted in 1996,[46] made changes to its comprehensive plan in 1997 that included changing the property, at issue in the case, from MXU to Low Intensity Coastal and Lakes ("CL") in its plan and on its future land use map. The CL classification did not permit the building of a multifamily condominium. Citrus County never updated its LDC to reflect the 1997 change in its comprehensive plan.

In 2002, the property owner applied and received approval from the county to build the project with assurance that the development was permissible for the property. The county mistakenly approved the project based upon the LDC and not the comprehensive plan.[47] Later, a citizen challenge was brought against the project's approval as being inconsistent with the comprehensive plan. Litigation proceeded and the property owner as a result was not permitted to proceed with the development. As a result of its reliance on the local government's assurances, the property owner spent $1.5 million readying the property for development.[48]

A Harris Act suit resulted and the Fifth District Court of Appeal held that the property owner's suit was not timely under the act, which requires claims to be brought within one year after a law or regulation is first applied by the governmental entity to the property.[49] The property owner argued that "the mere enactment of a statute, ordinance, or plan of general application such as the Plan and the EAR amendments, should not trigger the accrual of the Harris Act claim."[50] The court stated that if the property owner was correct the claim might be timely; however, in a footnote it stated that the court "cannot construe the statute to create rights of action not within the intent of the lawmakers, as reflected by the language employed in the statute."[51]

The court said:

> "We recognize that almost universally, the result of this case will be seen as unduly harsh…. However, by its express terms, the Harris Act requires the court to determine when the new law or regulation, as first applied, unfairly affected the property and requires a claim to be asserted within one year thereafter…. We are not at liberty to modify the statutory scheme of the Legislature created to

[43] *See Citrus County v. Halls River Dev.*, 8 So. 3d 413 (Fla. 5th DCA 2009) and *M & H Profit, Inc. v. Panama City*, 28 So. 3d 71 (Fla. 1st DCA 2009).
[44] 8 So. 3d 413 (Fla. 5th DCA 2009).
[45] *See* s. 163.3202(1), F.S.
[46] *See* s. 163.3191, F.S.
[47] 8 So. 3d 413 (Fla. 5th DCA 2009).
[48] *Id. at* 419.
[49] S. 70.001(11), F.S.
[50] 8 So. 3d 413, 422 (Fla. 5th DCA 2009).
[51] *Id. at* FN3.

remediate an unfair regulatory burden, though we recognize the equities clearly favor [the property owner]."

In *M & H Profit, Inc. v. Panama City*,[52] a property owner purchased land with the intention of developing a condominium project, and six weeks later, Panama City passed height and setback ordinances that the intended development could not meet. The property owner brought a Harris Act challenge claiming the enactment of an ordinance imposing height restrictions and additional setbacks on structures in a general commercial zone had created a significant loss of value to the property. The First District Court of Appeal held that the Harris Act was limited to "as-applied" challenges and not facial challenges.[53] Because the property owner had only engaged in informal discussions with the city, statements made by the city about the general restrictions imposed in the zoning district could not constitute an application or an action as to the owner's specific piece of property.[54] The First District declined to comment on the merits of the Fifth District's decision in *Citrus County* and distinguished the facts in its case with the facts in the *Citrus County* case.[55]

Effect of the Bill

The bill clarifies that under the act, "enacting a law or adopting a regulation does not constitute applying the law or regulation to a property."

Sovereign Immunity

Current Situation

The doctrine of sovereign immunity, as derived from the English common law, provides that the government cannot be sued in tort without its consent.[56] This blanket of immunity applies to all subdivisions of the state including its agencies, counties, municipalities, and school boards; however, Article X, section 13 of the Florida Constitution, provides that sovereign immunity may be waived through an enactment of general law.

Public policy concerns in support of sovereign immunity include: (a) protecting public funds from excessive encroachments; (b) insulating the Legislature's authority over budget expenditures from judicial directives to disburse funds; (c) enabling government officials to engage in decision making without risking liability; and (d) ensuring that the efficient administration of government is not jeopardized by the constant threat of suit. Public policy concerns against sovereign immunity include: (a) leaving those who have been injured by governmental negligence without remedy; (b) failing to deter wrongful government conduct; and (c) limiting public knowledge of governmental improprieties.[57]

The Legislature has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability.[58] A claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence. Notwithstanding this limited waiver of sovereign immunity, certain discretionary governmental functions remain immune from tort liability.[59]

[52] 28 So. 3d 71 (Fla. 1st DCA 2009).
[53] *Id.*
[54] *Id.*
[55] *Id.* at 78.
[56] Wetherington and Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 Fla. L. Rev. 1 (1992).
[57] House of Representatives Committee on Claims, *Sovereign Immunity: A Survey of Florida Law,* at 1-2, January 25, 2001.
[58] S. 768.28, F.S.
[59] *Commercial Carrier Corp., v. Indian River County,* 371 So.2d 1010, 1019 (Fla. 1979), *citing Evangelical United Brethren Church v. State*, 407 P.2d 440 (1965) (holding "legislative, judicial and purely executive processes" may not be characterized as tortious). *See generally Trianon Park Condominium Assoc., v. City of Hialeah*, 468 So.2d 912, 919 (Fla. 1985) (stating commissions, boards, and city councils, when enacting or failing to enact laws or regulations, are acting pursuant to the basic governmental actions performed by the Legislature).

The act specifically provides that it does not affect the sovereign immunity of government.[60] In 2003,[61] the Third District Court of Appeal reversed and remanded a trial court's decision[62] finding that the act provides that sovereign immunity still remains effective and serves as a viable defense against liability under the act. The Third District Court of Appeal in its decision found that the act instead:

> "evinces a sufficiently clear legislative intent to waive sovereign immunity as to a private property owner whose property rights are inordinately burdened, restricted, or limited by government actions where the governmental regulation does not rise to the level of a taking under the Florida and United States Constitutions. [citations omitted]. A literal reading of Section 13 [the sovereign immunity provision of the Harris Act] is inconsistent with the clear intent and purpose of the Act, as it would be absurd to interpret Section 13 to undo everything the Act is designed to achieve.
>
> Since it is impossible under the appropriate rules of statutory construction to give Section 13 literal effect within the meaning of the statute, its application must be construed consistent with the general purpose and intent of the Act. [citations omitted].
>
> We therefore hold that Section 13 does not bar a private property rights claim pursuant to the Harris Act, but merely preserves the sovereign immunity benefits the City in the instant case, and governmental entities in general, otherwise enjoy."[63]

Effect of the Bill

The bill clarifies that sovereign immunity is waived for purposes of the act. The bill strikes the provision in the current statute that states that the Act "does not affect the sovereign immunity of government" and replaces it with a provision that states:

> In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section.

This added provision is consistent with how the act was interpreted in *Royal World Metropolitan, Inc. v. City of Miami Beach.*[64]

Other Effects of the Bill

- The bill provides a number of whereas clauses stating the reasons for the amendments to the act.
- The bill provides that the amendments made to the act by this bill apply prospectively only and do not apply to any claim or action filed under section 70.001, F.S., which is pending on the effective date of the bill.
- The bill takes effect July 1, 2011.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S., relating to private property rights protection.

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[60] S. 70.001(13), F.S.
[61] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320 (Fla. 3d DCA 2004).
[62] *Royal World Metropolitan, Inc. v. City of Miami Beach*, 11th Judicial Circuit, Miami-Dade County, Case. No. 99-17243-CA-23.
[63] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320, 322 (Fla. 3d DCA 2004).
[64] *Id.*

Section 2: Provides that the bill will apply prospectively only.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
The bill is intended to provide expanded options for private property owners to obtain redress for a government action that unduly burdens real property by specifying that a moratorium on development, as defined in s. 380.04, F.S., that is in effect for more than 1 year is not a temporary impact to real property, and therefore may constitute an inordinate burden on the property.

D. FISCAL COMMENTS:
The fiscal impact of the bill is indeterminate. The act allows civil causes of action to be brought against all Florida governments, both state and local. Because, historically, actions have only been brought pursuant to the act against local governments, it appears the bill has a greater potential fiscal impact on local governments. The bill does not apply to existing claims under the act, therefore, it is unknown what impact this bill will have on future actions under the act.

While a court has already held that the act impliedly waives sovereign immunity, [65] by explicitly waiving sovereign immunity as this bill does for claims under the act, it is possible that governmental entities may be subject to additional damages.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
   Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:
   None.

B. RULE-MAKING AUTHORITY:

[65] *See Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320 (Fla. 3d DCA 2004).

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Wednesday, March 23, 2011, the Community & Military Affairs Subcommittee adopted a title amendment to further clarify changes in the law made by the bill.