

1 A bill to be entitled
2 An act relating to property rights; amending s. 70.001,
3 F.S.; revising a definition; providing a factor that may
4 be considered in determining whether inordinate burden has
5 been imposed on real property; shortening a notice period
6 for certain actions; revising procedures for determining a
7 governmental entity's final decision identifying the
8 allowable uses for a property; providing that enactment of
9 a law or adoption of a regulation does not constitute
10 applying the law or regulation; providing for a waiver of
11 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, to
19 conform statutory language to *Royal World Metropolitan, Inc. v.*
20 *City of Miami Beach*, 863 So.2d 320 (Fla. 3rd D.C.A. 2003), and

21 WHEREAS, the Legislature wishes to emphasize the
22 alternative bases under this act for determining an existing
23 use, and to correct and to clarify that certain determinations
24 under this act are questions of law and fact, considered in *City*
25 *of Jacksonville v. Coffield*, 18 So.3d 589 (Fla. 1st D.C.A.
26 2009), and

27 WHEREAS, the Legislature wishes to correct and to clarify
28 its original intent with respect to what constitutes the first

CS/HB 701

2011

29 application of a law or regulation under the act, considered in
 30 Citrus County, Florida v. Halls River Development, Inc., 8 So.3d
 31 413 (Fla. 5th D.C.A. 2009), and M & H Profit, Inc. v. City of
 32 Panama City, 28 So.3d 71 (Fla. 1st D.C.A. 2010), and

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

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Paragraphs (b) and (e) of subsection (3),
 39 paragraphs (a) and (c) of subsection (4), and subsections (5),
 40 (6), (11), and (13) of section 70.001, Florida Statutes, are
 41 amended to read:

42 70.001 Private property rights protection.—

43 (3) For purposes of this section:

44 (b) The term "existing use" means:

45 1. An actual, present use or activity on the real
 46 property, including periods of inactivity which are normally
 47 associated with, or are incidental to, the nature or type of
 48 use; or

49 2. Activity or such reasonably foreseeable, nonspeculative
 50 land uses which are suitable for the subject real property and
 51 compatible with adjacent land uses and which have created an
 52 existing fair market value in the property greater than the fair
 53 market value of the actual, present use or activity on the real
 54 property.

55 (e) The terms "inordinate burden" and ~~or~~ "inordinately
 56 burdened" mean that an action of one or more governmental

57 | entities has directly restricted or limited the use of real
58 | property such that the property owner is permanently unable to
59 | attain the reasonable, investment-backed expectation for the
60 | existing use of the real property or a vested right to a
61 | specific use of the real property with respect to the real
62 | property as a whole, or that the property owner is left with
63 | existing or vested uses that are unreasonable such that the
64 | property owner bears permanently a disproportionate share of a
65 | burden imposed for the good of the public, which in fairness
66 | should be borne by the public at large. The terms "inordinate
67 | burden" and ~~or~~ "inordinately burdened" do not include temporary
68 | impacts to real property; impacts to real property occasioned by
69 | governmental abatement, prohibition, prevention, or remediation
70 | of a public nuisance at common law or a noxious use of private
71 | property; or impacts to real property caused by an action of a
72 | governmental entity taken to grant relief to a property owner
73 | under this section; however, a moratorium on development, as
74 | defined in s. 380.04, that is in effect for longer than 1 year
75 | is not a temporary impact to real property and, thus, depending
76 | upon the particular circumstances, may constitute an "inordinate
77 | burden" as provided in this paragraph.

78 | (4) (a) Not less than 120 ~~180~~ days prior to filing an
79 | action under this section against a governmental entity, a
80 | property owner who seeks compensation under this section must
81 | present the claim in writing to the head of the governmental
82 | entity, except that if the property is classified as
83 | agricultural pursuant to s. 193.461, the notice period is 90
84 | days. The property owner must submit, along with the claim, a

CS/HB 701

2011

85 bona fide, valid appraisal that supports the claim and
86 demonstrates the loss in fair market value to the real property.
87 If the action of government is the culmination of a process that
88 involves more than one governmental entity, or if a complete
89 resolution of all relevant issues, in the view of the property
90 owner or in the view of a governmental entity to whom a claim is
91 presented, requires the active participation of more than one
92 governmental entity, the property owner shall present the claim
93 as provided in this section to each of the governmental
94 entities.

95 (c) During the 90-day-notice period or the 120-day-notice
96 ~~180-day-notice~~ period, unless extended by agreement of the
97 parties, the governmental entity shall make a written settlement
98 offer to effectuate:

- 99 1. An adjustment of land development or permit standards
100 or other provisions controlling the development or use of land.
- 101 2. Increases or modifications in the density, intensity,
102 or use of areas of development.
- 103 3. The transfer of developmental rights.
- 104 4. Land swaps or exchanges.
- 105 5. Mitigation, including payments in lieu of onsite
106 mitigation.
- 107 6. Location on the least sensitive portion of the
108 property.
- 109 7. Conditioning the amount of development or use
110 permitted.
- 111 8. A requirement that issues be addressed on a more
112 comprehensive basis than a single proposed use or development.

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

115 10. Purchase of the real property, or an interest therein,
 116 by an appropriate governmental entity or payment of
 117 compensation.

118 11. No changes to the action of the governmental entity.
 119

120 If the property owner accepts the settlement offer, the
 121 governmental entity may implement the settlement offer by
 122 appropriate development agreement; by issuing a variance,
 123 special exception, or other extraordinary relief; or by other
 124 appropriate method, subject to paragraph (d).

125 (5) (a) During the 90-day-notice period or the 120-day-
 126 notice ~~180-day-notice~~ period, unless a settlement offer is
 127 accepted by the property owner, each of the governmental
 128 entities provided notice pursuant to paragraph (4) (a) shall
 129 issue a written ~~ripeness~~ decision identifying the allowable uses
 130 to which the subject property may be put. The failure of the
 131 governmental entity to issue such a written ~~ripeness~~ decision
 132 during the applicable 90-day-notice period or 120-day-notice
 133 ~~180-day-notice~~ period shall cause ~~be deemed to ripen~~ the prior
 134 action of the governmental entity to become its final decision,
 135 for purposes of this section, identifying the uses for the
 136 subject property, ~~and shall operate as a ripeness decision that~~
 137 ~~has been rejected by the property owner.~~ Whether rendered by
 138 submission of a written decision during the 120-day-notice
 139 period or by failure to submit such a written decision, the
 140 final decision of the governmental entity produced under this

CS/HB 701

2011

141 paragraph operates as a final decision that has been rejected by
142 the property owner. This final ~~The ripeness~~ decision, as a
143 matter of law, constitutes the last prerequisite to judicial
144 review on the merits, ~~and the matter shall be deemed ripe or~~
145 ~~final~~ for the purposes of the judicial proceeding created by
146 this section, notwithstanding the availability of other
147 administrative remedies.

148 (b) If the property owner rejects the settlement offer and
149 the final ~~ripeness~~ decision of the governmental entity or
150 entities, the property owner may file a claim for compensation
151 in the circuit court, a copy of which shall be served
152 contemporaneously on the head of each of the governmental
153 entities that made a settlement offer and a final ~~ripeness~~
154 decision that was rejected by the property owner. Actions under
155 this section shall be brought only in the county where the real
156 property is located.

157 (6) (a) The circuit court shall determine whether an
158 existing use of the real property or a vested right to a
159 specific use of the real property existed and, if so, whether,
160 considering the settlement offer and final ~~ripeness~~ decision,
161 the governmental entity or entities have inordinately burdened
162 the real property. If the actions of more than one governmental
163 entity, considering any settlement offers and final ~~ripeness~~
164 decisions, are responsible for the action that imposed the
165 inordinate burden on the real property of the property owner,
166 the court shall determine the percentage of responsibility each
167 such governmental entity bears with respect to the inordinate
168 burden. A governmental entity may take an interlocutory appeal

CS/HB 701

2011

169 of the court's determination that the action of the governmental
170 entity has resulted in an inordinate burden. An interlocutory
171 appeal does not automatically stay the proceedings; however, the
172 court may stay the proceedings during the pendency of the
173 interlocutory appeal. If the governmental entity does not
174 prevail in the interlocutory appeal, the court shall award to
175 the prevailing property owner the costs and a reasonable
176 attorney fee incurred by the property owner in the interlocutory
177 appeal.

178 (b) Following its determination of the percentage of
179 responsibility of each governmental entity, and following the
180 resolution of any interlocutory appeal, the court shall impanel
181 a jury to determine the total amount of compensation to the
182 property owner for the loss in value due to the inordinate
183 burden to the real property. The award of compensation shall be
184 determined by calculating the difference in the fair market
185 value of the real property, as it existed at the time of the
186 governmental action at issue, as though the owner had the
187 ability to attain the reasonable investment-backed expectation
188 or was not left with uses that are unreasonable, whichever the
189 case may be, and the fair market value of the real property, as
190 it existed at the time of the governmental action at issue, as
191 inordinately burdened, considering the settlement offer together
192 with the final ~~ripeness~~ decision, of the governmental entity or
193 entities. In determining the award of compensation,
194 consideration may not be given to business damages relative to
195 any development, activity, or use that the action of the
196 governmental entity or entities, considering the settlement

197 offer together with the final ~~ripeness~~ decision, has restricted,
 198 limited, or prohibited. The award of compensation shall include
 199 a reasonable award of prejudgment interest from the date the
 200 claim was presented to the governmental entity or entities as
 201 provided in subsection (4).

202 (c)1. In any action filed pursuant to this section, the
 203 property owner is entitled to recover reasonable costs and
 204 attorney fees incurred by the property owner, from the
 205 governmental entity or entities, according to their
 206 proportionate share as determined by the court, from the date of
 207 the filing of the circuit court action, if the property owner
 208 prevails in the action and the court determines that the
 209 settlement offer, including the final ~~ripeness~~ decision, of the
 210 governmental entity or entities did not constitute a bona fide
 211 offer to the property owner which reasonably would have resolved
 212 the claim, based upon the knowledge available to the
 213 governmental entity or entities and the property owner during
 214 the 90-day-notice period or the 120-day-notice ~~180-day-notice~~
 215 period.

216 2. In any action filed pursuant to this section, the
 217 governmental entity or entities are entitled to recover
 218 reasonable costs and attorney fees incurred by the governmental
 219 entity or entities from the date of the filing of the circuit
 220 court action, if the governmental entity or entities prevail in
 221 the action and the court determines that the property owner did
 222 not accept a bona fide settlement offer, including the final
 223 ~~ripeness~~ decision, which reasonably would have resolved the
 224 claim fairly to the property owner if the settlement offer had

225 | been accepted by the property owner, based upon the knowledge
 226 | available to the governmental entity or entities and the
 227 | property owner during the 90-day-notice period or the 120-day-
 228 | notice ~~180-day-notice~~ period.

229 | 3. The determination of total reasonable costs and
 230 | attorney fees pursuant to this paragraph shall be made by the
 231 | court and not by the jury. Any proposed settlement offer or any
 232 | proposed ~~ripeness~~ decision, except for the final written
 233 | settlement offer or the final written ~~ripeness~~ decision, and any
 234 | negotiations or rejections in regard to the formulation either
 235 | of the settlement offer or the final ~~ripeness~~ decision, are
 236 | inadmissible in the subsequent proceeding established by this
 237 | section except for the purposes of the determination pursuant to
 238 | this paragraph.

239 | (d) Within 15 days after the execution of any settlement
 240 | pursuant to this section, or the issuance of any judgment
 241 | pursuant to this section, the governmental entity shall provide
 242 | a copy of the settlement or judgment to the Department of Legal
 243 | Affairs.

244 | (11) A cause of action may not be commenced under this
 245 | section if the claim is presented more than 1 year after a law
 246 | or regulation is first applied by the governmental entity to the
 247 | property at issue. For purposes of this section, enacting a law
 248 | or adopting a regulation does not constitute applying the law or
 249 | regulation to a property. If an owner seeks relief from the
 250 | governmental action through lawfully available administrative or
 251 | judicial proceedings, the time for bringing an action under this
 252 | section is tolled until the conclusion of such proceedings.

CS/HB 701

2011

253 (13) In accordance with s. 13, Art. X of the State
254 Constitution, the state, for itself and for its agencies or
255 political subdivisions, waives sovereign immunity for causes of
256 action based upon the application of any law, regulation, or
257 ordinance subject to this section, but only to the extent
258 specified in this section ~~This section does not affect the~~
259 ~~sovereign immunity of government.~~

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

264 Section 3. This act shall take effect July 1, 2011.