



335706

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2011	.	
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The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (3), (4), (5), (6), (11), and (13)
of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.-

(3) For purposes of this section:

(a) The existence of a "vested right" is to be determined
by applying the principles of equitable estoppel or substantive
due process under the common law or by applying the statutory
law of this state.

(b) The term "existing use" means:



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14 1. An actual, present use or activity on the real property,
15 including periods of inactivity which are normally associated
16 with, or are incidental to, the nature or type of use; or

17 2. An activity or such reasonably foreseeable,
18 nonspeculative land uses which are suitable for the subject real
19 property and compatible with adjacent land uses and which have
20 created an existing fair market value in the property greater
21 than the fair market value of the actual, present use or
22 activity on the real property.

23 (c) The term "governmental entity" includes an agency of
24 the state, a regional or a local government created by the State
25 Constitution or by general or special act, any county or
26 municipality, or any other entity that independently exercises
27 governmental authority. The term does not include the United
28 States or any of its agencies, or an agency of the state, a
29 regional or a local government created by the State Constitution
30 or by general or special act, any county or municipality, or any
31 other entity that independently exercises governmental
32 authority, when exercising the powers of the United States or
33 any of its agencies through a formal delegation of federal
34 authority.

35 (d) The term "action of a governmental entity" means a
36 specific action of a governmental entity which affects real
37 property, including action on an application or permit.

38 (e) The terms "inordinate burden" and ~~or~~ "inordinately
39 burdened" mean that an action of one or more governmental
40 entities has directly restricted or limited the use of real
41 property such that the property owner is permanently unable to
42 attain the reasonable, investment-backed expectation for the



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43 existing use of the real property or a vested right to a
44 specific use of the real property with respect to the real
45 property as a whole, or that the property owner is left with
46 existing or vested uses that are unreasonable such that the
47 property owner bears permanently a disproportionate share of a
48 burden imposed for the good of the public, which in fairness
49 should be borne by the public at large. The terms "inordinate
50 burden" and ~~or~~ "inordinately burdened" do not include temporary
51 impacts to real property; impacts to real property occasioned by
52 governmental abatement, prohibition, prevention, or remediation
53 of a public nuisance at common law or a noxious use of private
54 property; or impacts to real property caused by an action of a
55 governmental entity taken to grant relief to a property owner
56 under this section. However, a moratorium on development, as
57 defined in s. 380.04, which is in effect for longer than 1 year
58 may, depending upon the circumstances, constitute an inordinate
59 burden as provided in this paragraph.

60 (f) The term "property owner" means the person who holds
61 legal title to the real property at issue. The term does not
62 include a governmental entity.

63 (g) The term "real property" means land and includes any
64 appurtenances and improvements to the land, including any other
65 relevant real property in which the property owner had a
66 relevant interest.

67 (4) (a) Not less than 120 ~~180~~ days before ~~prior to~~ filing an
68 action under this section against a governmental entity, a
69 property owner who seeks compensation under this section must
70 present the claim in writing to the head of the governmental
71 entity, except that if the property is classified as



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72 agricultural pursuant to s. 193.461, the notice period is 90
73 days. The property owner must submit, along with the claim, a
74 bona fide, valid appraisal that supports the claim and
75 demonstrates the loss in fair market value to the real property.
76 If the action of government is the culmination of a process that
77 involves more than one governmental entity, or if a complete
78 resolution of all relevant issues, in the view of the property
79 owner or in the view of a governmental entity to whom a claim is
80 presented, requires the active participation of more than one
81 governmental entity, the property owner shall present the claim
82 as provided in this section to each of the governmental
83 entities.

84 (b) The governmental entity shall provide written notice of
85 the claim to all parties to any administrative action that gave
86 rise to the claim, and to owners of real property contiguous to
87 the owner's property at the addresses listed on the most recent
88 county tax rolls. Within 15 days after the claim being
89 presented, the governmental entity shall report the claim in
90 writing to the Department of Legal Affairs, and shall provide
91 the department with the name, address, and telephone number of
92 the employee of the governmental entity from whom additional
93 information may be obtained about the claim during the pendency
94 of the claim and any subsequent judicial action.

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 or
100 other provisions controlling the development or use of land.



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101 2. Increases or modifications in the density, intensity, or
102 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 property.

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

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

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

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

116 11. No changes to the action of the governmental entity.
117

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

123 (d)1. Whenever a governmental entity enters into a
124 settlement agreement under this section which would have the
125 effect of a modification, variance, or a special exception to
126 the application of a rule, regulation, or ordinance as it would
127 otherwise apply to the subject real property, the relief granted
128 shall protect the public interest served by the regulations at
129 issue and be the appropriate relief necessary to prevent the



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130 governmental regulatory effort from inordinately burdening the
131 real property.

132 2. Whenever a governmental entity enters into a settlement
133 agreement under this section which would have the effect of
134 contravening the application of a statute as it would otherwise
135 apply to the subject real property, the governmental entity and
136 the property owner shall jointly file an action in the circuit
137 court where the real property is located for approval of the
138 settlement agreement by the court to ensure that the relief
139 granted protects the public interest served by the statute at
140 issue and is the appropriate relief necessary to prevent the
141 governmental regulatory effort from inordinately burdening the
142 real property.

143 (5) (a) During the 90-day-notice period or the 120-day-
144 notice ~~180-day-notice period~~, unless a settlement offer is
145 accepted by the property owner, each of the governmental
146 entities provided notice pursuant to paragraph (4) (a) shall
147 issue a written statement of allowable uses ~~ripeness decision~~
148 identifying the allowable uses to which the subject property may
149 be put. The failure of the governmental entity to issue a
150 written statement of allowable uses ~~ripeness decision~~ during the
151 applicable 90-day-notice period or 120-day-notice ~~180-day-notice~~
152 period shall be deemed a denial for purposes of allowing a
153 property owner to file an action in the circuit court under this
154 section. If a written statement of allowable uses is issued, it
155 ~~to ripen the prior action of the governmental entity, and shall~~
156 ~~operate as a ripeness decision that has been rejected by the~~
157 ~~property owner. The ripeness decision, as a matter of law,~~
158 constitutes the last prerequisite to judicial review, ~~and the~~



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159 ~~matter shall be deemed ripe or final~~ for the purposes of the
160 judicial proceeding created by this section, notwithstanding the
161 availability of other administrative remedies.

162 (b) If the property owner rejects the settlement offer and
163 the statement of allowable uses ~~ripeness decision~~ of the
164 governmental entity or entities, the property owner may file a
165 claim for compensation in the circuit court, a copy of which
166 shall be served contemporaneously on the head of each of the
167 governmental entities that made a settlement offer and a
168 ripeness decision that was rejected by the property owner.
169 Actions under this section shall be brought only in the county
170 where the real property is located.

171 (6) (a) The circuit court shall determine whether an
172 existing use of the real property or a vested right to a
173 specific use of the real property existed and, if so, whether,
174 considering the settlement offer and statement of allowable uses
175 ~~ripeness decision~~, the governmental entity or entities have
176 inordinately burdened the real property. If the actions of more
177 than one governmental entity, considering any settlement offers
178 and statements of allowable uses ~~ripeness decisions~~, are
179 responsible for the action that imposed the inordinate burden on
180 the real property of the property owner, the court shall
181 determine the percentage of responsibility each such
182 governmental entity bears with respect to the inordinate burden.
183 A governmental entity may take an interlocutory appeal of the
184 court's determination that the action of the governmental entity
185 has resulted in an inordinate burden. An interlocutory appeal
186 does not automatically stay the proceedings; however, the court
187 may stay the proceedings during the pendency of the



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188 interlocutory appeal. If the governmental entity does not
189 prevail in the interlocutory appeal, the court shall award to
190 the prevailing property owner the costs and a reasonable
191 attorney fee incurred by the property owner in the interlocutory
192 appeal.

193 (b) Following its determination of the percentage of
194 responsibility of each governmental entity, and following the
195 resolution of any interlocutory appeal, the court shall impanel
196 a jury to determine the total amount of compensation to the
197 property owner for the loss in value due to the inordinate
198 burden to the real property. The award of compensation shall be
199 determined by calculating the difference in the fair market
200 value of the real property, as it existed at the time of the
201 governmental action at issue, as though the owner had the
202 ability to attain the reasonable investment-backed expectation
203 or was not left with uses that are unreasonable, whichever the
204 case may be, and the fair market value of the real property, as
205 it existed at the time of the governmental action at issue, as
206 inordinately burdened, considering the settlement offer together
207 with the statement of allowable uses ~~ripeness decision~~, of the
208 governmental entity or entities. In determining the award of
209 compensation, consideration may not be given to business damages
210 relative to any development, activity, or use that the action of
211 the governmental entity or entities, considering the settlement
212 offer together with the statement of allowable uses ~~ripeness~~
213 ~~decision~~ has restricted, limited, or prohibited. The award of
214 compensation shall include a reasonable award of prejudgment
215 interest from the date the claim was presented to the
216 governmental entity or entities as provided in subsection (4).



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217 (c)1. In any action filed pursuant to this section, the
218 property owner is entitled to recover reasonable costs and
219 attorney fees incurred by the property owner, from the
220 governmental entity or entities, according to their
221 proportionate share as determined by the court, from the date of
222 the filing of the circuit court action, if the property owner
223 prevails in the action and the court determines that the
224 settlement offer, including the statement of allowable uses
225 ~~ripeness decision~~, of the governmental entity or entities did
226 not constitute a bona fide offer to the property owner which
227 reasonably would have resolved the claim, based upon the
228 knowledge available to the governmental entity or entities and
229 the property owner during the 90-day-notice period or the 120-
230 day-notice ~~180-day-notice~~ period.

231 2. In any action filed pursuant to this section, the
232 governmental entity or entities are entitled to recover
233 reasonable costs and attorney fees incurred by the governmental
234 entity or entities from the date of the filing of the circuit
235 court action, if the governmental entity or entities prevail in
236 the action and the court determines that the property owner did
237 not accept a bona fide settlement offer, including the statement
238 of allowable uses ~~ripeness decision~~, which reasonably would have
239 resolved the claim fairly to the property owner if the
240 settlement offer had been accepted by the property owner, based
241 upon the knowledge available to the governmental entity or
242 entities and the property owner during the 90-day-notice period
243 or the 120-day-notice ~~180-day-notice~~ period.

244 3. The determination of total reasonable costs and attorney
245 fees pursuant to this paragraph shall be made by the court and



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246 not by the jury. Any proposed settlement offer or any proposed
247 statement of allowable uses ~~ripeness decision~~, except for the
248 final written settlement offer or the final written ripeness
249 decision, and any negotiations or rejections in regard to the
250 formulation either of the settlement offer or the statement of
251 allowable uses ~~ripeness decision~~, are inadmissible in the
252 subsequent proceeding established by this section except for the
253 purposes of the determination pursuant to this paragraph.

254 (d) Within 15 days after the execution of any settlement
255 pursuant to this section, or the issuance of any judgment
256 pursuant to this section, the governmental entity shall provide
257 a copy of the settlement or judgment to the Department of Legal
258 Affairs.

259 (11) A cause of action may not be commenced under this
260 section if the claim is presented more than 1 year after a law
261 or regulation is first applied by the governmental entity to the
262 property at issue. For purposes of this section, enacting a law
263 or adopting a regulation does not constitute the application of
264 the law or regulation to a property. If an owner seeks relief
265 from the governmental action through lawfully available
266 administrative or judicial proceedings, the time for bringing an
267 action under this section is tolled until the conclusion of such
268 proceedings.

269 (13) This section waives sovereign immunity solely to the
270 extent provided herein; however, this section does not otherwise
271 affect the sovereign immunity of government.

272 Section 2. The amendments to s. 70.001, Florida Statutes,
273 made by this act apply prospectively only and do not apply to
274 any claim or action filed under s. 70.001, Florida Statutes,



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275 which is pending on the effective date of this act.

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

277
278 ===== T I T L E A M E N D M E N T =====

279 And the title is amended as follows:

280 Delete everything before the enacting clause
281 and insert:

282 A bill to be entitled
283 An act relating to property rights; amending s.
284 70.001, F.S.; redefining the terms "inordinate burden"
285 and "inordinately burdened" as they relate to the Bert
286 J. Harris, Jr., Private Property Rights Protection
287 Act" to specify that a moratorium on development in
288 effect for longer than a specified period constitutes
289 an inordinate burden; revising the time within which a
290 property owner who seeks compensation must present the
291 claim in writing to the head of the governmental
292 entity; revising the time within which a governmental
293 entity must make a written settlement offer to a
294 claimant; revising the time within which a
295 governmental entity that has provided notice must
296 issue a written statement of allowable uses, rather
297 than a ripeness decision, which identifies the
298 allowable uses to which the subject property may be
299 put; providing that the failure of the governmental
300 entity to issue a written statement of allowable uses
301 during the applicable revised notice requirement is
302 deemed a denial for purposes of allowing a property
303 owner to file an action in the circuit court;



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304 providing that if a written statement of allowable
305 uses is issued, it constitutes the last prerequisite
306 to judicial review; conforming terminology to changes
307 made by the act; providing that enacting a law or
308 adopting a regulation does not constitute the
309 application of the law or regulation to a property;
310 providing for application of sovereign immunity;
311 providing for application of the act; providing an
312 effective date.