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LEGISLATIVE ACTION

Senate

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House

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Floor: 2/AD/2R

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04/27/2011 10:26 AM

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Senator Simmons moved the following:

**Senate Amendment**

Delete lines 97 - 273

and insert:

(4) (a) Not less than 150 ~~180~~ days before ~~prior to~~ filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days. The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property.



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14 If the action of government is the culmination of a process that  
15 involves more than one governmental entity, or if a complete  
16 resolution of all relevant issues, in the view of the property  
17 owner or in the view of a governmental entity to whom a claim is  
18 presented, requires the active participation of more than one  
19 governmental entity, the property owner shall present the claim  
20 as provided in this section to each of the governmental  
21 entities.

22 (b) The governmental entity shall provide written notice of  
23 the claim to all parties to any administrative action that gave  
24 rise to the claim, and to owners of real property contiguous to  
25 the owner's property at the addresses listed on the most recent  
26 county tax rolls. Within 15 days after the claim being  
27 presented, the governmental entity shall report the claim in  
28 writing to the Department of Legal Affairs, and shall provide  
29 the department with the name, address, and telephone number of  
30 the employee of the governmental entity from whom additional  
31 information may be obtained about the claim during the pendency  
32 of the claim and any subsequent judicial action.

33 (c) During the 90-day-notice period or the 150-day-notice  
34 ~~180-day-notice period~~, unless extended by agreement of the  
35 parties, the governmental entity shall make a written settlement  
36 offer to effectuate:

- 37 1. An adjustment of land development or permit standards or  
38 other provisions controlling the development or use of land.
- 39 2. Increases or modifications in the density, intensity, or  
40 use of areas of development.
- 41 3. The transfer of developmental rights.
- 42 4. Land swaps or exchanges.



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43           5. Mitigation, including payments in lieu of onsite  
44 mitigation.

45           6. Location on the least sensitive portion of the property.

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

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

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

51           10. Purchase of the real property, or an interest therein,  
52 by an appropriate governmental entity or by payment of  
53 compensation.

54           11. No changes to the action of the governmental entity.

55  
56 If the property owner accepts the settlement offer, the  
57 governmental entity may implement the settlement offer by  
58 appropriate development agreement; by issuing a variance,  
59 special exception, or other extraordinary relief; or by other  
60 appropriate method, subject to paragraph (d).

61           (d)1. Whenever a governmental entity enters into a  
62 settlement agreement under this section which would have the  
63 effect of a modification, variance, or a special exception to  
64 the application of a rule, regulation, or ordinance as it would  
65 otherwise apply to the subject real property, the relief granted  
66 shall protect the public interest served by the regulations at  
67 issue and be the appropriate relief necessary to prevent the  
68 governmental regulatory effort from inordinately burdening the  
69 real property.

70           2. Whenever a governmental entity enters into a settlement  
71 agreement under this section which would have the effect of



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72 contravening the application of a statute as it would otherwise  
73 apply to the subject real property, the governmental entity and  
74 the property owner shall jointly file an action in the circuit  
75 court where the real property is located for approval of the  
76 settlement agreement by the court to ensure that the relief  
77 granted protects the public interest served by the statute at  
78 issue and is the appropriate relief necessary to prevent the  
79 governmental regulatory effort from inordinately burdening the  
80 real property.

81 (5) (a) During the 90-day-notice period or the 150-day-  
82 notice ~~180-day-notice period~~, unless a settlement offer is  
83 accepted by the property owner, each of the governmental  
84 entities provided notice pursuant to paragraph (4) (a) shall  
85 issue a written statement of allowable uses ~~ripeness decision~~  
86 identifying the allowable uses to which the subject property may  
87 be put. The failure of the governmental entity to issue a  
88 written statement of allowable uses ~~ripeness decision~~ during the  
89 applicable 90-day-notice period or 150-day-notice ~~180-day-notice~~  
90 period shall be deemed a denial for purposes of allowing a  
91 property owner to file an action in the circuit court under this  
92 section. If a written statement of allowable uses is issued, it  
93 ~~to ripen the prior action of the governmental entity, and shall~~  
94 ~~operate as a ripeness decision that has been rejected by the~~  
95 ~~property owner. The ripeness decision, as a matter of law,~~  
96 constitutes the last prerequisite to judicial review, ~~and the~~  
97 ~~matter shall be deemed ripe or final~~ for the purposes of the  
98 judicial proceeding created by this section, notwithstanding the  
99 availability of other administrative remedies.

100 (b) If the property owner rejects the settlement offer and



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101 the statement of allowable uses ~~ripeness decision~~ of the  
102 governmental entity or entities, the property owner may file a  
103 claim for compensation in the circuit court, a copy of which  
104 shall be served contemporaneously on the head of each of the  
105 governmental entities that made a settlement offer and a  
106 statement of allowable uses ~~ripeness decision~~ that was rejected  
107 by the property owner. Actions under this section shall be  
108 brought only in the county where the real property is located.

109 (6) (a) The circuit court shall determine whether an  
110 existing use of the real property or a vested right to a  
111 specific use of the real property existed and, if so, whether,  
112 considering the settlement offer and statement of allowable uses  
113 ~~ripeness decision~~, the governmental entity or entities have  
114 inordinately burdened the real property. If the actions of more  
115 than one governmental entity, considering any settlement offers  
116 and statements of allowable uses ~~ripeness decisions~~, are  
117 responsible for the action that imposed the inordinate burden on  
118 the real property of the property owner, the court shall  
119 determine the percentage of responsibility each such  
120 governmental entity bears with respect to the inordinate burden.  
121 A governmental entity may take an interlocutory appeal of the  
122 court's determination that the action of the governmental entity  
123 has resulted in an inordinate burden. An interlocutory appeal  
124 does not automatically stay the proceedings; however, the court  
125 may stay the proceedings during the pendency of the  
126 interlocutory appeal. If the governmental entity does not  
127 prevail in the interlocutory appeal, the court shall award to  
128 the prevailing property owner the costs and a reasonable  
129 attorney fee incurred by the property owner in the interlocutory



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130 appeal.

131 (b) Following its determination of the percentage of  
132 responsibility of each governmental entity, and following the  
133 resolution of any interlocutory appeal, the court shall impanel  
134 a jury to determine the total amount of compensation to the  
135 property owner for the loss in value due to the inordinate  
136 burden to the real property. The award of compensation shall be  
137 determined by calculating the difference in the fair market  
138 value of the real property, as it existed at the time of the  
139 governmental action at issue, as though the owner had the  
140 ability to attain the reasonable investment-backed expectation  
141 or was not left with uses that are unreasonable, whichever the  
142 case may be, and the fair market value of the real property, as  
143 it existed at the time of the governmental action at issue, as  
144 inordinately burdened, considering the settlement offer together  
145 with the statement of allowable uses ~~ripeness decision~~, of the  
146 governmental entity or entities. In determining the award of  
147 compensation, consideration may not be given to business damages  
148 relative to any development, activity, or use that the action of  
149 the governmental entity or entities, considering the settlement  
150 offer together with the statement of allowable uses ~~ripeness~~  
151 ~~decision~~ has restricted, limited, or prohibited. The award of  
152 compensation shall include a reasonable award of prejudgment  
153 interest from the date the claim was presented to the  
154 governmental entity or entities as provided in subsection (4).

155 (c)1. In any action filed pursuant to this section, the  
156 property owner is entitled to recover reasonable costs and  
157 attorney fees incurred by the property owner, from the  
158 governmental entity or entities, according to their



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159 proportionate share as determined by the court, from the date of  
160 the filing of the circuit court action, if the property owner  
161 prevails in the action and the court determines that the  
162 settlement offer, including the statement of allowable uses  
163 ~~ripeness decision~~, of the governmental entity or entities did  
164 not constitute a bona fide offer to the property owner which  
165 reasonably would have resolved the claim, based upon the  
166 knowledge available to the governmental entity or entities and  
167 the property owner during the 90-day-notice period or the 150-  
168 day-notice ~~180-day-notice~~ period.

169 2. In any action filed pursuant to this section, the  
170 governmental entity or entities are entitled to recover  
171 reasonable costs and attorney fees incurred by the governmental  
172 entity or entities from the date of the filing of the circuit  
173 court action, if the governmental entity or entities prevail in  
174 the action and the court determines that the property owner did  
175 not accept a bona fide settlement offer, including the statement  
176 of allowable uses ~~ripeness decision~~, which reasonably would have  
177 resolved the claim fairly to the property owner if the  
178 settlement offer had been accepted by the property owner, based  
179 upon the knowledge available to the governmental entity or  
180 entities and the property owner during the 90-day-notice period  
181 or the 150-day-notice ~~180-day-notice~~ period.