

By Senator Simmons

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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          providing for a waiver of sovereign immunity for  
12          liability; providing for prospective application;  
13          providing an effective date.

14  
15           WHEREAS, the Legislature wishes to clarify its original  
16          intent with respect to allowing appropriate compensation for  
17          unduly burdened real property and to provide a waiver of  
18          sovereign immunity under section 70.001, Florida Statutes, the  
19          Bert J. Harris, Jr., Private Property Rights Protection Act, to  
20          conform statutory language to *Royal World Metropolitan, Inc. v.*  
21          *City of Miami Beach*, 863 So.2d 320 (Fla. 3rd D.C.A. 2003), and

22           WHEREAS, the Legislature wishes to emphasize the  
23          alternative bases under this act for determining an existing  
24          use, and to correct and to clarify that certain determinations  
25          under this act are questions of law and fact, considered in *City*  
26          *of Jacksonville v. Coffield*, 18 So.3d 589 (Fla. 1st D.C.A.  
27          2009), and

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

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

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

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

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

43 70.001 Private property rights protection.-

44 (3) For purposes of this section:

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

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

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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 action  
79 under this section against a governmental entity, a property  
80 owner who seeks compensation under this section must present the  
81 claim in writing to the head of the governmental entity, except  
82 that if the property is classified as agricultural pursuant to  
83 s. 193.461, the notice period is 90 days. The property owner  
84 must submit, along with the claim, a bona fide, valid appraisal  
85 that supports the claim and demonstrates the loss in fair market  
86 value to the real property. If the action of government is the  
87 culmination of a process that involves more than one

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88 governmental entity, or if a complete resolution of all relevant  
89 issues, in the view of the property owner or in the view of a  
90 governmental entity to whom a claim is presented, requires the  
91 active participation of more than one governmental entity, the  
92 property owner shall present the claim as provided in this  
93 section to each of the governmental entities.

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

98 1. An adjustment of land development or permit standards or  
99 other provisions controlling the development or use of land.

100 2. Increases or modifications in the density, intensity, or  
101 use of areas of development.

102 3. The transfer of developmental rights.

103 4. Land swaps or exchanges.

104 5. Mitigation, including payments in lieu of onsite  
105 mitigation.

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

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

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

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

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

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

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

122 (5) (a) During the 90-day-notice period or the 120-day-  
123 notice ~~180-day-notice~~ period, unless a settlement offer is  
124 accepted by the property owner, each of the governmental  
125 entities provided notice pursuant to paragraph (4) (a) shall  
126 issue a written ~~ripeness~~ decision identifying the allowable uses  
127 to which the subject property may be put. The failure of the  
128 governmental entity to issue such a written ~~ripeness~~ decision  
129 during the applicable 90-day-notice period or 120-day-notice  
130 ~~180-day-notice~~ period shall cause ~~be deemed to ripen~~ the prior  
131 action of the governmental entity to become its final decision,  
132 for purposes of this section, identifying the uses for the  
133 subject property, and shall operate as a ripeness decision that  
134 has been rejected by the property owner. Whether rendered by  
135 submission of a written decision during the 120-day-notice  
136 period or by failure to submit such a written decision, the  
137 final decision of the governmental entity produced under this  
138 paragraph operates as a final decision that has been rejected by  
139 the property owner. This final ~~The ripeness~~ decision, as a  
140 matter of law, constitutes the last prerequisite to judicial  
141 review on the merits, ~~and the matter shall be deemed ripe or~~  
142 ~~final~~ for the purposes of the judicial proceeding created by  
143 this section, notwithstanding the availability of other  
144 administrative remedies.

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

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

154 (6) (a) The circuit court shall determine whether an  
155 existing use of the real property or a vested right to a  
156 specific use of the real property existed and, if so, whether,  
157 considering the settlement offer and final ~~ripeness~~ decision,  
158 the governmental entity or entities have inordinately burdened  
159 the real property. If the actions of more than one governmental  
160 entity, considering any settlement offers and final ~~ripeness~~  
161 decisions, are responsible for the action that imposed the  
162 inordinate burden on the real property of the property owner,  
163 the court shall determine the percentage of responsibility each  
164 such governmental entity bears with respect to the inordinate  
165 burden. A governmental entity may take an interlocutory appeal  
166 of the court's determination that the action of the governmental  
167 entity has resulted in an inordinate burden. An interlocutory  
168 appeal does not automatically stay the proceedings; however, the  
169 court may stay the proceedings during the pendency of the  
170 interlocutory appeal. If the governmental entity does not  
171 prevail in the interlocutory appeal, the court shall award to  
172 the prevailing property owner the costs and a reasonable  
173 attorney fee incurred by the property owner in the interlocutory  
174 appeal.

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175 (b) Following its determination of the percentage of  
176 responsibility of each governmental entity, and following the  
177 resolution of any interlocutory appeal, the court shall impanel  
178 a jury to determine the total amount of compensation to the  
179 property owner for the loss in value due to the inordinate  
180 burden to the real property. The award of compensation shall be  
181 determined by calculating the difference in the fair market  
182 value of the real property, as it existed at the time of the  
183 governmental action at issue, as though the owner had the  
184 ability to attain the reasonable investment-backed expectation  
185 or was not left with uses that are unreasonable, whichever the  
186 case may be, and the fair market value of the real property, as  
187 it existed at the time of the governmental action at issue, as  
188 inordinately burdened, considering the settlement offer together  
189 with the final ripeness decision, of the governmental entity or  
190 entities. In determining the award of compensation,  
191 consideration may not be given to business damages relative to  
192 any development, activity, or use that the action of the  
193 governmental entity or entities, considering the settlement  
194 offer together with the final ripeness decision, has restricted,  
195 limited, or prohibited. The award of compensation shall include  
196 a reasonable award of prejudgment interest from the date the  
197 claim was presented to the governmental entity or entities as  
198 provided in subsection (4).

199 (c)1. In any action filed pursuant to this section, the  
200 property owner is entitled to recover reasonable costs and  
201 attorney fees incurred by the property owner, from the  
202 governmental entity or entities, according to their  
203 proportionate share as determined by the court, from the date of

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204 the filing of the circuit court action, if the property owner  
205 prevails in the action and the court determines that the  
206 settlement offer, including the final ~~ripeness~~ decision, of the  
207 governmental entity or entities did not constitute a bona fide  
208 offer to the property owner which reasonably would have resolved  
209 the claim, based upon the knowledge available to the  
210 governmental entity or entities and the property owner during  
211 the 90-day-notice period or the 120-day-notice ~~180-day-notice~~  
212 period.

213 2. In any action filed pursuant to this section, the  
214 governmental entity or entities are entitled to recover  
215 reasonable costs and attorney fees incurred by the governmental  
216 entity or entities from the date of the filing of the circuit  
217 court action, if the governmental entity or entities prevail in  
218 the action and the court determines that the property owner did  
219 not accept a bona fide settlement offer, including the final  
220 ~~ripeness~~ decision, which reasonably would have resolved the  
221 claim fairly to the property owner if the settlement offer had  
222 been accepted by the property owner, based upon the knowledge  
223 available to the governmental entity or entities and the  
224 property owner during the 90-day-notice period or the 120-day-  
225 notice ~~180-day-notice~~ period.

226 3. The determination of total reasonable costs and attorney  
227 fees pursuant to this paragraph shall be made by the court and  
228 not by the jury. Any proposed settlement offer or any proposed  
229 ~~ripeness~~ decision, except for the final written settlement offer  
230 or the final written ~~ripeness~~ decision, and any negotiations or  
231 rejections in regard to the formulation either of the settlement  
232 offer or the final ~~ripeness~~ decision, are inadmissible in the



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233 subsequent proceeding established by this section except for the  
234 purposes of the determination pursuant to this paragraph.

235 (d) Within 15 days after the execution of any settlement  
236 pursuant to this section, or the issuance of any judgment  
237 pursuant to this section, the governmental entity shall provide  
238 a copy of the settlement or judgment to the Department of Legal  
239 Affairs.

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

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

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

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