

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Commerce Committee
 2 Representative Grant, J. offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 99-248 and insert:

6 subject to paragraph (d).

7 (d)1. When a governmental entity enters into a settlement
 8 agreement under this section which would have the effect of a
 9 modification, variance, or a special exception to the
 10 application of a rule, regulation, or ordinance as it would
 11 otherwise apply to the subject real property, the relief granted
 12 shall protect the public interest served by the regulations at
 13 issue and be the appropriate relief necessary to prevent the
 14 governmental regulatory effort from inordinately burdening the
 15 real property. Settlement offers made pursuant to paragraph (c)
 16 shall be presumed to protect the public interest.

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17 2. When a governmental entity enters into a settlement
18 agreement under this section which would have the effect of
19 contravening the application of a statute as it would otherwise
20 apply to the subject real property, the governmental entity and
21 the property owner shall jointly file an action in the circuit
22 court where the real property is located for approval of the
23 settlement agreement by the court to ensure that the relief
24 granted protects the public interest served by the statute at
25 issue and is the appropriate relief necessary to prevent the
26 governmental regulatory effort from inordinately burdening the
27 real property.

28 3. When a residential property owner submits a claim under
29 this section which is based on a governmental entity's
30 application of a regulation or ordinance to more than one
31 residential parcel, and the governmental entity reaches a
32 settlement of such claim or the property owner secures a
33 judgment declaring an inordinate burden under paragraph (6) (a),
34 there shall be a presumption, rebuttable only by clear and
35 convincing evidence, that similarly situated residential
36 properties, as evaluated on a parcel-by-parcel basis, have been
37 inordinately burdened and are entitled to equivalent terms of
38 settlement or a judicial determination of an inordinate burden.
39 In such cases, the similarly situated residential property
40 owners must submit the appraisal specified in paragraph (a) not
41 less than 120 days before a trial on the merits of the damages

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42 portion of the proceedings pursuant to paragraph (6) (b). During
43 the 90-day-notice period of such claims, the governmental entity
44 is encouraged to negotiate terms of settlement consistent with
45 settlement agreements for similarly situated residential
46 parcels.

47
48 This paragraph applies to any settlement reached between a
49 property owner and a governmental entity regardless of when the
50 settlement agreement was entered so long as the agreement fully
51 resolves all claims asserted under this section.

52 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
53 ~~notice period~~, unless a settlement offer is accepted by the
54 property owner, each of the governmental entities provided
55 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a
56 written statement of allowable uses identifying the allowable
57 uses to which the subject property may be put. The failure of
58 the governmental entity to issue a statement of allowable uses
59 during the applicable 90-day-notice period ~~or 150-day-notice~~
60 ~~period~~ shall be deemed a denial for purposes of allowing a
61 property owner to file an action in the circuit court under this
62 section. If a written statement of allowable uses is issued, it
63 constitutes the last prerequisite to judicial review for the
64 purposes of the judicial proceeding created by this section,
65 notwithstanding the availability of other administrative
66 remedies.

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67 (b) If the property owner rejects the settlement offer and
68 the statement of allowable uses of the governmental entity or
69 entities, the property owner may file a claim for compensation
70 in the circuit court, a copy of which shall be served
71 contemporaneously on the head of each of the governmental
72 entities that made a settlement offer and a statement of
73 allowable uses that was rejected by the property owner. Actions
74 under this section shall be brought only in the county where the
75 real property is located.

76 (6) (a) The circuit court shall determine whether an
77 existing use of the real property or a vested right to a
78 specific use of the real property existed and, if so, whether,
79 considering the settlement offer and statement of allowable
80 uses, the governmental entity or entities have inordinately
81 burdened the real property. If the actions of more than one
82 governmental entity, considering any settlement offers and
83 statement of allowable uses, are responsible for the action that
84 imposed the inordinate burden on the real property of the
85 property owner, the court shall determine the percentage of
86 responsibility each such governmental entity bears with respect
87 to the inordinate burden. A governmental entity may take an
88 interlocutory appeal of the court's determination that the
89 action of the governmental entity has resulted in an inordinate
90 burden. An interlocutory appeal does not automatically stay the
91 proceedings; however, the court may stay the proceedings during

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Published On: 4/3/2019 7:09:35 PM

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92 the pendency of the interlocutory appeal. If the governmental
93 entity does not prevail in the interlocutory appeal, the court
94 shall award to the prevailing property owner the costs and a
95 reasonable attorney fee incurred by the property owner in the
96 interlocutory appeal.

97 (b) Following its determination of the percentage of
98 responsibility of each governmental entity, and following the
99 resolution of any interlocutory appeal, the court shall impanel
100 a jury to determine the total amount of compensation to the
101 property owner for the loss in value due to the inordinate
102 burden to the real property. The property owner retains the
103 option to forego a jury and elect to have the court determine
104 the compensation. The award of compensation shall be determined
105 by calculating the difference in the fair market value of the
106 real property, as it existed at the time of the governmental
107 action at issue, as though the owner had the ability to attain
108 the reasonable investment-backed expectation or was not left
109 with uses that are unreasonable, whichever the case may be, and
110 the fair market value of the real property, as it existed at the
111 time of the governmental action at issue, as inordinately
112 burdened, considering the settlement offer together with the
113 statement of allowable uses, of the governmental entity or
114 entities. ~~In determining the award of compensation,~~
115 ~~consideration may not be given to business damages relative to~~
116 ~~any development, activity, or use that the action of the~~

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117 ~~governmental entity or entities, considering the settlement~~
118 ~~offer together with the statement of allowable uses has~~
119 ~~restricted, limited, or prohibited.~~ The award of compensation
120 shall include a reasonable award of prejudgment interest from
121 the date the claim was presented to the governmental entity or
122 entities as provided in subsection (4).

123 (c)1. In any action filed pursuant to this section, the
124 property owner is entitled to recover reasonable costs and
125 attorney fees incurred by the property owner, from the
126 governmental entity or entities, according to their
127 proportionate share as determined by the court, from the date of
128 the claim with the governmental entity pursuant to paragraph
129 (4) (a) filing of the circuit court action, if the property owner
130 prevails in the action ~~and the court determines that the~~
131 ~~settlement offer, including the statement of allowable uses, of~~
132 ~~the governmental entity or entities did not constitute a bona~~
133 ~~fide offer to the property owner which reasonably would have~~
134 ~~resolved the claim, based upon the knowledge available to the~~
135 ~~governmental entity or entities and the property owner during~~
136 ~~the 90-day notice period or the 150-day notice period.~~

137 ~~2. In any action filed pursuant to this section, the~~
138 ~~governmental entity or entities are entitled to recover~~
139 ~~reasonable costs and attorney fees incurred by the governmental~~
140 ~~entity or entities from the date of the filing of the circuit~~
141 ~~court action, if the governmental entity or entities prevail in~~

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142 ~~the action and the court determines that the property owner did~~
143 ~~not accept a bona fide settlement offer, including the statement~~
144 ~~of allowable uses, which reasonably would have resolved the~~
145 ~~claim fairly to the property owner if the settlement offer had~~
146 ~~been accepted by the property owner, based upon the knowledge~~
147 ~~available to the governmental entity or entities and the~~
148 ~~property owner during the 90-day notice period or the 150-day~~
149 ~~notice period.~~

150 2.3. The determination of total reasonable costs and
151 attorney fees pursuant to this paragraph shall be made by the
152 court and not by the jury. Any proposed settlement offer or any
153 proposed decision, except for the final written settlement offer
154 or the final written statement of allowable uses, and any
155 negotiations or rejections in regard to the formulation ~~either~~
156 of the settlement offer or the statement of allowable uses, are
157 inadmissible in the subsequent proceeding established by this
158 section except for the purposes of the determination pursuant to
159 this paragraph.

160 (d) Within 15 days after the execution of any
161

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163 **T I T L E A M E N D M E N T**

164 Remove line 6 and insert:
165 compensation; creating a presumption that certain
166 settlements of