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CS/CS/HB 701

2011 Legislature

1 A bill to be entitled
2 An act relating to property rights; amending s. 70.001,
3 F.S.; revising definitions; shortening a notice period for
4 certain actions; revising procedures for determining a
5 governmental entity's final decision identifying the
6 allowable uses for a property; defining what constitutes
7 first application of a law or regulation; clarifying the
8 waiver of sovereign immunity for liability; providing for
9 prospective application; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Paragraphs (b) and (e) of subsection (3),
14 paragraphs (a) and (c) of subsection (4), and subsections (5),
15 (6), (11), and (13) of section 70.001, Florida Statutes, are
16 amended to read:

17 70.001 Private property rights protection.—

18 (3) For purposes of this section:

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

20 1. An actual, present use or activity on the real
21 property, including periods of inactivity which are normally
22 associated with, or are incidental to, the nature or type of
23 use; or
24 2. Activity or such reasonably foreseeable, nonspeculative
25 land uses which are suitable for the subject real property and
26 compatible with adjacent land uses and which have created an
27 existing fair market value in the property greater than the fair

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28 market value of the actual, present use or activity on the real
29 property.

30 (e) The terms "inordinate burden" and ~~or~~ "inordinately
31 burdened":

32 1. Mean that an action of one or more governmental
33 entities has directly restricted or limited the use of real
34 property such that the property owner is permanently unable to
35 attain the reasonable, investment-backed expectation for the
36 existing use of the real property or a vested right to a
37 specific use of the real property with respect to the real
38 property as a whole, or that the property owner is left with
39 existing or vested uses that are unreasonable such that the
40 property owner bears permanently a disproportionate share of a
41 burden imposed for the good of the public, which in fairness
42 should be borne by the public at large.

43 2. ~~The terms "inordinate burden" or "inordinately~~
44 ~~burdened"~~ Do not include temporary impacts to real property;
45 impacts to real property occasioned by governmental abatement,
46 prohibition, prevention, or remediation of a public nuisance at
47 common law or a noxious use of private property; or impacts to
48 real property caused by an action of a governmental entity taken
49 to grant relief to a property owner under this section However,
50 a temporary impact on development, as defined in s. 380.04, that
51 is in effect for longer than 1 year may, depending upon the
52 circumstances, constitute an "inordinate burden" as provided in
53 this paragraph.

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55 In determining whether reasonable, investment-backed
56 expectations are inordinately burdened, consideration may be
57 given to the factual circumstances leading to the time elapsed
58 between enactment of the law or regulation and its first
59 application to the subject property.

60 (4) (a) Not less than 150 ~~180~~ days prior to filing an
61 action under this section against a governmental entity, a
62 property owner who seeks compensation under this section must
63 present the claim in writing to the head of the governmental
64 entity, except that if the property is classified as
65 agricultural pursuant to s. 193.461, the notice period is 90
66 days. The property owner must submit, along with the claim, a
67 bona fide, valid appraisal that supports the claim and
68 demonstrates the loss in fair market value to the real property.
69 If the action of government is the culmination of a process that
70 involves more than one governmental entity, or if a complete
71 resolution of all relevant issues, in the view of the property
72 owner or in the view of a governmental entity to whom a claim is
73 presented, requires the active participation of more than one
74 governmental entity, the property owner shall present the claim
75 as provided in this section to each of the governmental
76 entities.

77 (c) During the 90-day-notice period or the 150-day-notice
78 ~~180-day-notice~~ period, unless extended by agreement of the
79 parties, the governmental entity shall make a written settlement
80 offer to effectuate:

81 1. An adjustment of land development or permit standards
82 or other provisions controlling the development or use of land.

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83 2. Increases or modifications in the density, intensity,
84 or use of areas of development.

85 3. The transfer of developmental rights.

86 4. Land swaps or exchanges.

87 5. Mitigation, including payments in lieu of onsite
88 mitigation.

89 6. Location on the least sensitive portion of the
90 property.

91 7. Conditioning the amount of development or use
92 permitted.

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

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

97 10. Purchase of the real property, or an interest therein,
98 by an appropriate governmental entity or payment of
99 compensation.

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

101
102 If the property owner accepts the settlement offer, the
103 governmental entity may implement the settlement offer by
104 appropriate development agreement; by issuing a variance,
105 special exception, or other extraordinary relief; or by other
106 appropriate method, subject to paragraph (d).

107 (5) (a) During the 90-day-notice period or the 150-day-
108 notice ~~180-day-notice~~ period, unless a settlement offer is
109 accepted by the property owner, each of the governmental
110 entities provided notice pursuant to paragraph (4) (a) shall

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111 issue a written statement of allowable uses ~~ripeness decision~~
 112 identifying the allowable uses to which the subject property may
 113 be put. The failure of the governmental entity to issue a
 114 statement of allowable uses ~~written ripeness decision~~ during the
 115 applicable 90-day-notice period or 150-day-notice ~~180-day-notice~~
 116 period shall be deemed a denial for purposes of allowing a
 117 property owner to file an action in the circuit court under this
 118 section. If a written statement of allowable uses is issued, it
 119 ~~to ripen the prior action of the governmental entity, and shall~~
 120 ~~operate as a ripeness decision that has been rejected by the~~
 121 ~~property owner. The ripeness decision, as a matter of law,~~
 122 constitutes the last prerequisite to judicial review, ~~and the~~
 123 ~~matter shall be deemed ripe or final~~ for the purposes of the
 124 judicial proceeding created by this section, notwithstanding the
 125 availability of other administrative remedies.

126 (b) If the property owner rejects the settlement offer and
 127 the statement of allowable uses ~~ripeness decision~~ of the
 128 governmental entity or entities, the property owner may file a
 129 claim for compensation in the circuit court, a copy of which
 130 shall be served contemporaneously on the head of each of the
 131 governmental entities that made a settlement offer and a
 132 statement of allowable uses ~~ripeness decision~~ that was rejected
 133 by the property owner. Actions under this section shall be
 134 brought only in the county where the real property is located.

135 (6) (a) The circuit court shall determine whether an
 136 existing use of the real property or a vested right to a
 137 specific use of the real property existed and, if so, whether,
 138 considering the settlement offer and statement of allowable uses

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139 | ~~ripeness decision~~, the governmental entity or entities have
140 | inordinately burdened the real property. If the actions of more
141 | than one governmental entity, considering any settlement offers
142 | and statement of allowable uses ~~ripeness decisions~~, are
143 | responsible for the action that imposed the inordinate burden on
144 | the real property of the property owner, the court shall
145 | determine the percentage of responsibility each such
146 | governmental entity bears with respect to the inordinate burden.
147 | A governmental entity may take an interlocutory appeal of the
148 | court's determination that the action of the governmental entity
149 | has resulted in an inordinate burden. An interlocutory appeal
150 | does not automatically stay the proceedings; however, the court
151 | may stay the proceedings during the pendency of the
152 | interlocutory appeal. If the governmental entity does not
153 | prevail in the interlocutory appeal, the court shall award to
154 | the prevailing property owner the costs and a reasonable
155 | attorney fee incurred by the property owner in the interlocutory
156 | appeal.

157 | (b) Following its determination of the percentage of
158 | responsibility of each governmental entity, and following the
159 | resolution of any interlocutory appeal, the court shall impanel
160 | a jury to determine the total amount of compensation to the
161 | property owner for the loss in value due to the inordinate
162 | burden to the real property. The award of compensation shall be
163 | determined by calculating the difference in the fair market
164 | value of the real property, as it existed at the time of the
165 | governmental action at issue, as though the owner had the
166 | ability to attain the reasonable investment-backed expectation

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167 or was not left with uses that are unreasonable, whichever the
168 case may be, and the fair market value of the real property, as
169 it existed at the time of the governmental action at issue, as
170 inordinately burdened, considering the settlement offer together
171 with the statement of allowable uses ~~ripeness decision~~, of the
172 governmental entity or entities. In determining the award of
173 compensation, consideration may not be given to business damages
174 relative to any development, activity, or use that the action of
175 the governmental entity or entities, considering the settlement
176 offer together with the statement of allowable uses ~~ripeness~~
177 ~~decision~~ has restricted, limited, or prohibited. The award of
178 compensation shall include a reasonable award of prejudgment
179 interest from the date the claim was presented to the
180 governmental entity or entities as provided in subsection (4).

181 (c)1. In any action filed pursuant to this section, the
182 property owner is entitled to recover reasonable costs and
183 attorney fees incurred by the property owner, from the
184 governmental entity or entities, according to their
185 proportionate share as determined by the court, from the date of
186 the filing of the circuit court action, if the property owner
187 prevails in the action and the court determines that the
188 settlement offer, including the statement of allowable uses
189 ~~ripeness decision~~, of the governmental entity or entities did
190 not constitute a bona fide offer to the property owner which
191 reasonably would have resolved the claim, based upon the
192 knowledge available to the governmental entity or entities and
193 the property owner during the 90-day-notice period or the 150-
194 day-notice ~~180-day-notice~~ period.

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195 2. In any action filed pursuant to this section, the
196 governmental entity or entities are entitled to recover
197 reasonable costs and attorney fees incurred by the governmental
198 entity or entities from the date of the filing of the circuit
199 court action, if the governmental entity or entities prevail in
200 the action and the court determines that the property owner did
201 not accept a bona fide settlement offer, including the statement
202 of allowable uses ~~ripeness decision~~, which reasonably would have
203 resolved the claim fairly to the property owner if the
204 settlement offer had been accepted by the property owner, based
205 upon the knowledge available to the governmental entity or
206 entities and the property owner during the 90-day-notice period
207 or the 150-day-notice ~~180-day-notice~~ period.

208 3. The determination of total reasonable costs and
209 attorney fees pursuant to this paragraph shall be made by the
210 court and not by the jury. Any proposed settlement offer or any
211 proposed ~~ripeness~~ decision, except for the final written
212 settlement offer or the final written statement of allowable
213 uses ~~ripeness decision~~, and any negotiations or rejections in
214 regard to the formulation either of the settlement offer or the
215 statement of allowable uses ~~ripeness decision~~, are inadmissible
216 in the subsequent proceeding established by this section except
217 for the purposes of the determination pursuant to this
218 paragraph.

219 (d) Within 15 days after the execution of any settlement
220 pursuant to this section, or the issuance of any judgment
221 pursuant to this section, the governmental entity shall provide

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222 a copy of the settlement or judgment to the Department of Legal
223 Affairs.

224 (11) A cause of action may not be commenced under this
225 section if the claim is presented more than 1 year after a law
226 or regulation is first applied by the governmental entity to the
227 property at issue.

228 (a) For purposes of determining when this 1-year claim
229 period accrues:

230 1. A law or regulation is first applied upon enactment and
231 notice as provided for in this subparagraph, if the impact of
232 the law or regulation on the real property is clear and
233 unequivocal in its terms and notice is provided by mail to the
234 affected property owner or registered agent at the address
235 referenced in the jurisdiction's most current ad valorem tax
236 records. The fact that the law or regulation could be modified,
237 varied, or altered under any other process or procedure does not
238 preclude the impact of the law or regulation on a property from
239 being clear or unequivocal pursuant to this subparagraph. Any
240 notice under this subparagraph shall be provided after the
241 enactment of the law or regulation and shall inform the property
242 owner or registered agent that the law or regulation may impact
243 the property owner's existing property rights and that the
244 property owner may have only 1 year from receipt of the notice
245 to pursue any rights established under this section.

246 2. Otherwise, the law or regulation is first applied to
247 the property when there is a formal denial of a written request
248 for development or variance.

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249 **(b)** If an owner seeks relief from the governmental action
250 through lawfully available administrative or judicial
251 proceedings, the time for bringing an action under this section
252 is tolled until the conclusion of such proceedings.

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.