

By Senator Flores

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1 A bill to be entitled
2 An act relating to takings claims within areas of
3 critical state concern; providing a short title;
4 creating s. 380.0501, F.S.; providing for the
5 apportionment of awards of damages for takings claims
6 within areas of critical state concern; providing that
7 certain governmental entities are liable only for
8 certain postjudgment interest; providing construction;
9 requiring local governments to be reimbursed for
10 specified amounts under certain circumstances;
11 providing an effective date.

12
13 WHEREAS, the Florida Environmental Land and Water
14 Management Act of 1972 authorizes the Administration Commission
15 to designate areas of critical state concern, and

16 WHEREAS, the designated areas of critical state concern in
17 this state are Big Cypress Area, encompassing portions of
18 Collier, Miami-Dade, and Monroe Counties; Green Swamp Area,
19 encompassing portions of Polk and Lake Counties; Key West Area
20 in Monroe County; Florida Keys Area in Monroe County; and
21 Apalachicola Bay Area in Franklin County, and

22 WHEREAS, the Department of Economic Opportunity must review
23 and approve land development regulations or local comprehensive
24 plans or amendments submitted by an area of critical state
25 concern, and

26 WHEREAS, this state, through its chapter 380 oversight
27 authority over development in the Florida Keys, limits the
28 number of building permits that Monroe County and its
29 municipalities may issue each year for construction of new

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30 housing units on undeveloped lots, and

31 WHEREAS, this state imposes such growth limits in the
32 Florida Keys and Key West Areas of Critical State Concern in
33 order to provide for safe and timely hurricane evacuation of
34 residents and visitors from the Florida Keys due to the limited
35 capacity of the Overseas Highway, the sole evacuation route for
36 most of the Keys, and

37 WHEREAS, Monroe County adopted its rate of growth ordinance
38 in 1992 as a direct result of state-imposed legislative and
39 administrative mandates that limit residential growth, and

40 WHEREAS, the number of privately owned, buildable, vacant
41 parcels in the Florida Keys vastly exceeds the number of permits
42 allocated by the state-imposed growth limits and the Florida
43 Keys is fast approaching "buildout," at which point no more
44 permits are to be allocated by the state, and

45 WHEREAS, the state-imposed growth limits have already
46 prompted a number of inverse condemnation and other property
47 rights-related suits when property owners have been unable to
48 obtain permits to build on undeveloped lots, and

49 WHEREAS, the state and the local governments in Monroe
50 County have been operating under a long-standing partnership
51 governing the joint defense of these cases through mutual
52 litigation support and cooperation in exchange for an
53 understanding that each entity would bear half of any liability
54 imposed, and

55 WHEREAS, the joint defense partnership has resulted in
56 successful defenses in 26 of the 28 claims to date, and

57 WHEREAS, property owners in areas of critical state concern
58 who obtain inverse condemnation and other property rights-

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59 related compensation awards deserve to have their awards paid in
60 a timely manner, and

61 WHEREAS, current law hinders the ability of the state to
62 meet its own obligation to expeditiously compensate the property
63 owners, and

64 WHEREAS, when a court has determined that a parcel has been
65 taken as a result of the state-imposed growth limits, the
66 Legislature should provide the property owner with a more
67 expedient and certain process for recovering the compensation
68 due him or her from the local government and the state, as
69 guaranteed under the United States Constitution and the Florida
70 Constitution, NOW, THEREFORE,

71

72 Be It Enacted by the Legislature of the State of Florida:

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74 Section 1. This act may be cited as the "Florida Keys
75 Property Rights Protection Act."

76 Section 2. Section 380.0501, Florida Statutes, is created
77 to read:

78 380.0501 Apportionment of awards of damages for takings
79 claims within an area of critical state concern.-

80 (1) In a state court proceeding brought for inverse
81 condemnation, or any other property rights-related action for
82 compensation in which the state is named as a codefendant with a
83 local government located in an area of critical state concern or
84 is named as a third-party defendant by a local government
85 located in an area of critical state concern, the court shall
86 require the state and the local government to each pay half of
87 any award of compensation, costs, attorney fees, and prejudgment

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88 interest to the property owner if:

89 (a) The court has found both the state and the local
90 government liable for the taking; and

91 (b) The regulation restricting development or use of the
92 property was mandated or approved by the state land planning
93 agency or the Administration Commission under s. 380.05.

94 (2) The state court shall enter separate judgments against
95 the state and local government for the apportioned amounts.

96 (3) A governmental entity named as a judgment debtor in a
97 judgment entered under this section is only liable for
98 postjudgment interest on the judgment entered against it and is
99 not liable for postjudgment interest on the judgment entered
100 against the other governmental entity. This section does not
101 prohibit a court from awarding a separate judgment for attorney
102 fees and costs pursuant to the limitations set forth in this
103 section.

104 (4) If, before the date of enactment of this section, a
105 state court has entered a judgment jointly and severally against
106 the state and a local government in a case that satisfies the
107 conditions in paragraphs (1) (a) and (b), the state must
108 reimburse the local government for 50 percent of the total
109 amount the local government paid to satisfy that judgment.

110 (5) If a federal court grants any award of compensation,
111 costs, attorney fees, or prejudgment interest on a claim for
112 inverse condemnation or any other property rights-related action
113 against a local government located in an area of critical state
114 concern and the claim involves a land development regulation
115 mandated or approved by the state land planning agency or the
116 Administration Commission under s. 380.05, the state must

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117 reimburse the local government for 50 percent of the total
118 amount the local government paid, inclusive of interest, costs,
119 and attorney fees.

120 Section 3. This act shall take effect upon becoming a law.