

West's Florida Statutes Annotated
Title VI. Civil Practice and Procedure (Chapters 45-89) (Refs & Annos)
Chapter 70. Relief from Burdens on Real Property Rights (Refs & Annos)

West's F.S.A. § 70.001

70.001. Private property rights protection

Effective: October 1, 2015
Currentness

(1) This act may be cited as the “Bert J. Harris, Jr., Private Property Rights Protection Act.” The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section.

(3) For purposes of this section:

(a) The existence of a “vested right” is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

(b) The term “existing use” means:

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

2. Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

(c) The term “governmental entity” includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity

that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

(d) The term “action of a governmental entity” means a specific action of a governmental entity which affects real property, including action on an application or permit.

(e) The terms “inordinate burden” and “inordinately burdened”:

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

2. Do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section. However, a temporary impact on development, as defined in s. 380.04, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an “inordinate burden” as provided in this paragraph.

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

(f) The term “property owner” means the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity. The term does not include a governmental entity.

(g) The term “real property” means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

(4)(a) Not less than 150 days 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. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(b) The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is presented, the governmental entity shall report the claim in writing to the

Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

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

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.
11. No changes to the action of the governmental entity.

If the property owner accepts a settlement offer, either before or after filing an action, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d).

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

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

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

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

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

(6)(a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that imposed the inordinate burden on the real property of the property owner, the court shall determine the percentage of responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

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

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

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

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed decision, except for the final written settlement offer or the final written statement of allowable uses, and any negotiations or rejections in regard to the formulation either of the settlement offer or the statement of allowable uses, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

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

(7)(a) The circuit court may enter any orders necessary to effectuate the purposes of this section and to make final determinations to effectuate relief available under this section.

(b) An award or payment of compensation pursuant to this section shall operate to grant to and vest in any governmental entity by whom compensation is paid the right, title, and interest in rights of use for which the compensation has been paid, which rights may become transferable development rights to be held, sold, or otherwise disposed of by the governmental entity. When there is an award of compensation, the court shall determine the form and the recipient of the right, title, and interest, as well as the terms of their acquisition.

(8) This section does not supplant methods agreed to by the parties and lawfully available for arbitration, mediation, or other forms of alternative dispute resolution, and governmental entities are encouraged to utilize such methods to augment or facilitate the processes and actions contemplated by this section.

(9) This section provides a cause of action for governmental actions that may not rise to the level of a taking under the State Constitution or the United States Constitution. This section may not necessarily be construed under the case law regarding takings if the governmental action does not rise to the level of a taking. The provisions of this section are cumulative, and do not abrogate any other remedy lawfully available, including any remedy lawfully available for governmental actions that rise to the level of a taking. However, a governmental entity shall not be liable for compensation for an action of a governmental entity applicable to, or for the loss in value to, a subject real property more than once.

(10)(a) This section does not apply to any actions taken by a governmental entity which relate to the operation, maintenance, or expansion of transportation facilities, and this section does not affect existing law regarding eminent domain relating to transportation.

(b) This section does not apply to any actions taken by a county with respect to the adoption of a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program, unless such adoption incorrectly applies an aspect of the Flood Insurance Rate Map to the property in such a way as to, but not limited to, incorrectly assess the elevation of the property.

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

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

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

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

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

(12) No cause of action exists under this section as to the application of any law enacted on or before May 11, 1995, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date. A subsequent amendment to any such law, rule, regulation, or ordinance gives rise to a cause of action under this section only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule, regulation, or ordinance being amended.

(13) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section.

Credits

Added by Laws 1995, c. 95-181, § 1, eff. Oct. 1, 1995. Amended by Laws 2006, c. 2006-255, § 1, eff. June 20, 2006; Laws 2011, c. 2011-191, § 1, eff. July 1, 2011; Laws 2012, c. 2012-94, § 2, eff. July 1, 2012; Laws 2015, c. 2015-142, § 1, eff. Oct. 1, 2015.

West's F. S. A. § 70.001, FL ST § 70.001

Current with chapters from the 2020 Second Regular Session of the 26th Legislature in effect through October 01, 2020

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Notes Of Decisions

Validity

Bert J. Harris, Jr., Private Property Rights Protection Act, which required governmental entities to provide relief to property owners for “inordinate” regulatory burdens imposed on their property, did not unconstitutionally delegate legislative power to the courts, despite county’s contention that it contained no standards, conditions, or criteria to guide the judiciary in interpreting it; Act contained definitions, time periods, settlement options, and other requirements and guidance for the judiciary to enable it to make the determinations required under the statute. *Brevard County v. Stack*, App. 5 Dist., 932 So.2d 1258 (2006) , review denied 949 So.2d 197 . Constitutional Law 🔑 2403 ; Counties 🔑 132

Bert J. Harris, Jr., Private Property Rights Protection Act, which required governmental entities to provide relief to property owners for “inordinate” regulatory burdens imposed on their property, did not violate separation of powers doctrine, despite county’s contention that it enlarged the judiciary’s interpretation of a taking under state constitution; Act clearly created a new cause of action, independent from a taking. *Brevard County v. Stack*, App. 5 Dist., 932 So.2d 1258 (2006) , review denied 949 So.2d 197 . Constitutional Law 🔑 2382 ; Counties 🔑 132

Bert J. Harris, Jr., Private Property Rights Protection Act, which required governmental entities to provide relief to property owners for “inordinate” regulatory burdens imposed on their property, did not violate due process, despite county’s contentions that Act allowed local governments to contract away their police powers and required them to buy such powers back; legislature acted within its authority to pass laws for the benefit of its citizens as a whole in passing Act, and Act did not affect the inherent power of a governmental entity, but rather created a new cause of action and required the entity to provide relief in one form or another to aggrieved property owners. *Brevard County v. Stack*, App. 5 Dist., 932 So.2d 1258 (2006) , review denied 949 So.2d 197 . Constitutional Law 🔑 4070 ; Counties 🔑 132

Construction and application

Under Florida doctrine of equitable estoppel, when a property owner incurs a substantial investment of time or money in reasonable reliance on existing laws and with no reason to know that the laws are likely to change, he may acquire a vested right in a building permit. *Coral Springs Street Systems, Inc. v. City of Sunrise*, C.A.11 (Fla.)2004, 371 F.3d 1320 . Zoning And Planning 1352 ; Zoning And Planning 1451

Grandfather provision of Bert J. Harris, Jr., Private Property Rights Protection Act, which stated that the remedy the Act provided to owners of property inordinately burdened by government action did not apply “to the application of any law enacted,” or ordinance adopted, on or before a particular date, barred owner of historic residence from maintaining claim against city under the Act arising out of city’s refusal to allow historic residence to be demolished, even though building was designated a landmark after the relevant date and city denied permission to demolish after such date, where ordinance pursuant to which city designated residence a landmark, and pursuant to which it denied owner’s request for a demolition permit, was enacted prior to such date. *Cascar, LLC v. City of Coral Gables*, App. 3 Dist., 274 So.3d 1231 (2019) . Environmental Law 84

The Bert J. Harris, Jr., Private Property Rights Protection Act serves as a mechanism to protect and compensate any landowner whose property is affected by government action not rising to the level of a taking. *Vale v. Palm Beach County*, App. 4 Dist., 259 So.3d 951 (2018) . Municipal Corporations 1017

The term “nonspeculative land use,” within the “existing use” provision of the Bert J. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018) , review denied 2018 WL 6506035 . Zoning and Planning 1576

Bert J. Harris, Jr., Private Property Protection Act does not apply to property that has suffered diminution in value or other loss as result of its proximity to the property that is subject to a government action. *Hardee County v. FINR II, Inc.*, 221 So.3d 1162 (2017) , rehearing denied 2017 WL 3015682 . Municipal Corporations 1017

Bert J. Harris, Jr., Private Property Protection Act must be narrowly construed as altering the common law and waiving sovereign immunity by providing, as a separate and distinct cause of action from the law of takings, for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political

entity in the state unfairly affects real property. *Hardee County v. FINR II, Inc.*, 221 So.3d 1162 (2017) , rehearing denied 2017 WL 3015682 . Statutes 1242

The Bert J. Harris, Jr., Private Property Protection Act does not apply to claims arising from government action that regulates property adjacent to the claimant's property. *Hardee County v. FINR II, Inc.*, 221 So.3d 1162 (2017) , rehearing denied 2017 WL 3015682 . Appeal And Error 3173

The Bert Harris Act contains a very narrow waiver of sovereign immunity, and such waiver statutes are strictly construed. *Bair v. City of Clearwater*, App. 2 Dist., 196 So.3d 577 (2016) . States 191.7

Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order against homeowner's demolition and reconstruction of home, where city did not apply a law, rule, regulation, or ordinance, but merely requested additional information regarding the project, and requested revisions to plans. *Bair v. City of Clearwater*, App. 2 Dist., 196 So.3d 577 (2016) . Municipal Corporations 1016

Bert Harris Act's waiver of sovereign immunity did not apply to city's alleged reliance on Federal Emergency Management Agency (FEMA) guidelines in issuing stop-work order for work being done on homeowners' property, where city never argued it had the authority to administer or apply FEMA regulations. *Bair v. City of Clearwater*, App. 2 Dist., 196 So.3d 577 (2016) . Municipal Corporations 1016

Bert Harris Act was not only intended to bar claims of application of an ordinance that occurred prior to Act's enactment date, but was intended to bar claims based on the application of grandfathered legislation after its effective date, and to only allow claims based on newly imposed requirements that were the result of an amendment after Act's enactment date and that inordinately burdened real property. *Bair v. City of Clearwater*, App. 2 Dist., 196 So.3d 577 (2016) . Municipal Corporations 1017

The Bert J. Harris Jr., Private Property Rights Protection Act establishes broad protection for property owners who suffer economic loss from governmental property regulations and actions. *FINR II, Inc. v. Hardee County*, App. 2 Dist., 164 So.3d 1260 (2015) , review granted 182 So.3d 632 , decision disapproved 221 So.3d 1162 , rehearing denied 2017 WL 3015682 . Municipal Corporations 1017

The Bert J. Harris Jr., Private Property Rights Protection Act was enacted to provide relief to those property owners who do not have an action for inverse condemnation or regulatory taking. *FINR II, Inc. v. Hardee County*, App. 2 Dist., 164 So.3d 1260 (2015) , review granted 182 So.3d 632 , decision disapproved 221 So.3d 1162 , rehearing denied 2017 WL 3015682 . Municipal Corporations 1017

Bert J. Harris, Jr., Private Property Rights Protection Act did not apply to property owners' action asserting that city's construction and operation of a fire station next to their property "inordinately burdened" their property pursuant to the Act, where their property was not itself subject to any governmental regulatory action. *City of Jacksonville v. Smith*, App. 1 Dist., 159 So.3d 888 (2015) , rehearing denied, review granted 173 So.3d 965 , certified question dismissed 220 So.3d 1118 . Eminent Domain 266

Failure to comply with statutory procedural requirements for a claim for compensation by a landowner who suffers a regulatory burden will result in a dismissal of the lawsuit. *Wendler v. City of St. Augustine*, App. 5 Dist., 108 So.3d 1141 (2013) , review denied 122 So.3d 867 . Eminent Domain 277

The plain and unambiguous language of the Bert J. Harris, Jr., Private Property Rights Protection Act established the Act was limited to "as-applied" challenges, and did not provide for facial challenges based on the mere enactment of a new ordinance or regulation, and thus, city's mere adoption of an ordinance creating height and setback restrictions on property in general commercial zone did not give rise to an action against city by property owner pursuant to the Act, where city had taken no further action concerning application of the ordinance to the particular piece of property. *M & H Profit, Inc. v. City of Panama City*, App. 1 Dist., 28 So.3d 71 (2009) , rehearing denied, review denied 41 So.3d 218 . Zoning And Planning 1576

Landowner's action under the Harris Private Property Protection Act, seeking relief from citation issued by city arising out of a change in zoning, was subject to the four-year catch-all statute of limitations governing actions other than for recovery of real property, rather than the one year allowed for presentation of claims under the Harris Act; one-year period for presentation of claims was a pre-suit condition, not a statute of limitations. *Russo Associates, Inc. v. City of Dania Beach Code Enforcement Bd.*, App. 4 Dist., 920 So.2d 716 (2006) , on remand 2007 WL 7240401 . Zoning And Planning 1605

Bert J. Harris, Jr., Private Property Rights Protection Act creates a cause of action where a law, regulation, or ordinance, as applied inordinately burdens, restricts, or limits use of property without amounting to a taking. *Palm Beach Polo, Inc. v. Village of Wellington*, App. 4 Dist., 918 So.2d 988 (2006), review denied 929 So.2d 1053. Municipal Corporations 1017

Section within Harris Act which states, “[t]his section does not affect the sovereign immunity of government” does not bar a private property rights claim against a government agency pursuant to the Act, but merely preserves the sovereign immunity benefits that governmental entities otherwise enjoy, where the clear legislative intent of the Act is to protect private property interests against “inordinately burdensome” governmental regulation, which do not necessarily amount to a constitutional taking. *Royal World Metropolitan, Inc. v. City of Miami Beach*, App. 3 Dist., 863 So.2d 320 (2003), rehearing denied, review denied 895 So.2d 404. Municipal Corporations 723

The Bert J. Harris, Jr., Private Property Rights Protection Act, Chapter 95-181, Laws of Florida, does not provide for recovery of damages to property that is not the subject of governmental action or regulation, but which may have incidentally suffered a diminution in value or other loss as a result of the regulation of the subject property. *Florida Op. Atty. Gen.*, 95-78, Dec. 7, 1995 (1995 WL 750474).

Construction with other laws

The law of regulatory takings is insufficient to provide relief to private property owners whose property is burdened by regulation unless those owners were either ousted from, or deprived of, all beneficial use of their property. *Brevard County v. Stack*, App. 5 Dist., 932 So.2d 1258 (2006), review denied 949 So.2d 197. Eminent Domain 🔑 2.1

Purpose

Bert J. Harris, Jr. Private Property Rights Protection Act creates a separate and distinct cause of action for property owners where governmental regulation has inordinately burdened the property, but does not amount to a taking under the Florida or federal constitutions. *Holmes v. Marion County*, App. 5 Dist., 960 So.2d 828 (2007), rehearing denied. Eminent Domain 🔑 2.1

Existing use

Landowner acquired right to challenge property's existing wetland designation when he purchased property, and thus his claims of inverse condemnation, partial inverse condemnation, and violation of Bert J. Harris, Jr., Private Property Rights Protection Act were not barred as matter of law on grounds that they existed prior to his acquisition of property. *Jamieson v. Town of Fort Myers Beach*, App. 2 Dist., 292 So.3d 880 (2020), on remand 2020 WL 3163970. Eminent Domain 2.10(1)

The use of landowner's property as a concrete batch plant was per se compatible with the surrounding land uses pursuant to the Bert J. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018), review denied 2018 WL 6506035. Zoning and Planning 1242

An analysis of nonspeculative land use pursuant to the Bert J. Harris, Jr. Property Rights Protection Act's existing use provision only comes into play when a party is arguing that it may have been able to use its land in the future for a purpose not expressly provided for by the zoning code at the time of the government action. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018), review denied 2018 WL 6506035. Zoning And Planning 1235

A planned concrete batch plant on property that was originally zoned light industrial but later rezoned general industrial following local protests was an existing use under the Bert J. Harris, Jr. Property Rights Protection Act, where the old zoning code expressly provided for allowance of a concrete batch plant. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018), review denied 2018 WL 6506035. Zoning and Planning 1242

Appraisal filed by waterfront residential property owner, in support of his claim pursuant to the Bert Harris Private Property Protection Act that city and county had inordinately burdened an existing or vested right to a specific use of his real property through new use restrictions, was insufficient to support a cause of action under the Act, where it conditioned the property's preordinance and postordinance values on the potential of bundling property owner's property with several adjoining properties for one joint retail/office/service (ROS) use,

and did not provide opinions as to the value of just property owner's parcel before and after the enactment of new use restrictions. *Turkali v. City of Safety Harbor*, App. 2 Dist., 93 So.3d 493 (2012) . Eminent Domain 267 ; Eminent Domain 277

Property owner's planned development of property into eight single-family units was not an existing use of the property, nor did he have a vested right to develop the property prior to city's closing and abandoning public road near property, and thus city's closure of the road did not inordinately burden an existing use or vested right in violation of Bert J. Harris, Jr., Private Property Rights Protection Act, even though property owner speculated that road would not be closed and that he could develop property regardless of whether road was closed; at time of application to close road, property owner only had option to purchase the property, and after learning of application, property owner took actions with full notice that development was merely a possibility. *City of Jacksonville v. Coffield*, App. 1 Dist., 18 So.3d 589 (2009) , rehearing denied, review denied 23 So.3d 711 . Municipal Corporations 663(1)

Condominium developer's intended use of land, zoned for single family residence, for condominiums, did not fall within statutory definition of existing use under statute allowing property owners who suffer inordinate regulatory burdens to existing or reasonably foreseeable land uses to be compensated by the government entity creating the burden, even though county misinformed developer regarding allowable uses of property; use of property for condominiums was not reasonable given property's low intensity and coastal lake zoning designation. *Citrus County v. Halls River Development, Inc.*, App. 5 Dist., 8 So.3d 413 (2009) , rehearing denied, review denied 23 So.3d 712 . Zoning And Planning 1229

Inordinate burden

Landowner had reasonable investment backed expectations under the "inordinate burden" prong of the Bert J. Harris, Jr. Property Rights Protection Act, for the development of a concrete batch plant on his property that was originally zoned light industrial but later rezoned general industrial, even though the overall undertaking might have been expensive and a significant task, where plant was a permitted use under the light industrial zone, landowner was led to believe that approval was inevitable throughout the site-plan approval process, landowner obtained services of an expert engineer who told him that development was feasible, the property abutted a railroad, and landowner was able to install a spur to facilitate importation and exportation of materials. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018) , review denied 2018 WL 6506035 . Zoning And Planning 1576

Whether a landowner's expectations for development are "reasonable" and "investment-backed" under the "inordinate burden" prong of the Bert Harris, Jr. Property Rights Protection Act depends on the physical and regulatory aspects of the property. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018) , review denied 2018 WL 6506035 . Zoning And Planning 1656

Prerequisites for bringing suit

Outdoor advertising company did not incur significant expenses in reliance on former sign ordinance, so as to give rise to vested right in sign permits, based on equitable estoppel, that could be basis for constitutional challenge despite passage of new ordinance. *Seay Outdoor Advertising, Inc. v. City of Mary Esther, Fla.*, C.A.11 (Fla.)2005, 397 F.3d 943 . Estoppel 62.4

Outdoor advertising company did not have vested right in sign permit under Florida law, so as to preclude determination that company's commercial-speech challenge to sign code was rendered moot by city's amendment of code, where there was no equitable estoppel in that company incurred no significant expenses in reliance on prior law, and city did not act in bad faith, in that it promptly changed code after it received one letter from company and before company sued it. *Coral Springs Street Systems, Inc. v. City of Sunrise*, C.A.11 (Fla.)2004, 371 F.3d 1320 . Constitutional Law 977 ; Constitutional Law 2641

Under Florida law, the doctrine of equitable estoppel may be invoked against a local government when a property owner (1) in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired. *Coral Springs Street Systems, Inc. v. City of Sunrise*, C.A.11 (Fla.)2004, 371 F.3d 1320 . Estoppel 62.4

Under Florida law, doctrine of promissory estoppel can be applied against government entity by property owner only where property owner (1) in good faith, (2) upon some act or omission of government, (3) has made such a substantial change in position, or has incurred such extensive obligations and expenses, that it would be highly inequitable and unjust not to apply estoppel doctrine. In re Jet 1 Center, Inc., Bkrcty.M.D.Fla.2005, 335 B.R. 771, stay denied. Estoppel 62.1

County's rezoning of golf course to create a residential development did not directly restrict or limit landowners' properties that were part of a planned development unit which was adjacent to golf course, and therefore the Bert J. Harris, Jr., Private Property Rights Protection Act, protecting property affected by government action not rising to the level of a taking, did not apply, despite claim that landowners' properties were holistically integrated with, and not merely adjacent to, golf course, where landowners did not hold legal title to golf course. Vale v. Palm Beach County, App. 4 Dist., 259 So.3d 951 (2018). Zoning and Planning 1576

After city enacted height ordinance, developer was not entitled to compensation under prior version of Bert J. Harris, Jr. Private Property Rights Protection Act, under which a property owner may seek relief, payment, or compensation when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property, where developer never asked city to act through permit or variance application, waiver request, or otherwise. GSK Hollywood Development Group, LLC v. City of Hollywood, App. 4 Dist., 246 So.3d 501 (2018). Zoning and Planning 1576

A claim under the prior version of the Bert J. Harris, Jr. Private Property Rights Protection Act, under which a property owner may seek relief, payment, or compensation when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property, does not ripen until the governmental entity specifically applies the law or ordinance to the property in question. GSK Hollywood Development Group, LLC v. City of Hollywood, App. 4 Dist., 246 So.3d 501 (2018). Municipal Corporations 1016

Valid Bert Harris Act claims are predicated on the application of laws, rules, regulations, or ordinances. Bair v. City of Clearwater, App. 2 Dist., 196 So.3d 577 (2016). Municipal Corporations 1017

Amendments to county's land use plan were applied to property owners' rural lands by their very terms, as required to give rise to a cause of action under the Bert J. Harris Private Property Rights Act; under the amendments, property owners' lands were designated as sending lands, a classification under which previous potential uses of the lands were prohibited and residential development was restricted. Hussey v. Collier County, App. 2 Dist., 158 So.3d 661 (2014). Zoning and Planning 1587

Property owner's informal discussions with city planning manager regarding application of ordinance that placed height and setback restrictions on structures in general commercial zone did not constitute a specified application of the ordinances to owner's particular property so as to give rise to an action under the Bert J. Harris, Jr., Private Property Rights Protection Act; these were informal communications with the city that constituted nothing more than statements that the general restrictions throughout the zoning district applied to owner's property just as they applied to every other property within the zoning classification. M & H Profit, Inc. v. City of Panama City, App. 1 Dist., 28 So.3d 71 (2009), rehearing denied, review denied 41 So.3d 218. Zoning And Planning 1576

The mere enactment of a general police power ordinance or regulation does not give rise to a Bert J. Harris, Jr., Private Property Rights Protection Act claim. M & H Profit, Inc. v. City of Panama City, App. 1 Dist., 28 So.3d 71 (2009), rehearing denied, review denied 41 So.3d 218. Municipal Corporations 1017

Developer that purchased, at a bankruptcy auction, large tract of land that was subject to a development plan requiring the preservation and restoration of a forest located within the tract was not entitled to compensation pursuant to Bert J. Harris, Jr., Private Property Rights Protection Act, which created a cause of action for property owners whose property was unfairly burdened by regulation; purchaser had no reasonable, investment-backed expectation of being able to develop the forest, as it had been designated a natural reserve long before purchaser acquired the tract, and any development density attributable to it was transferred to other property within the tract. Palm Beach Polo, Inc. v. Village of Wellington, App. 4 Dist., 918 So.2d 988 (2006), review denied 929 So.2d 1053. Zoning And Planning 1450

Equitable estoppel may apply to a local government's exercise of zoning power when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change

in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired. *Verizon Wireless Personal Communications, L.P. v. Sanctuary at Wulfert Point Community Ass'n, Inc.*, App. 2 Dist., 916 So.2d 850 (2005), rehearing denied. Zoning And Planning 1770

Property owner failed to comply with prerequisites for bringing suit under Bert J. Harris, Jr., Private Property Rights Protection Act, which created a cause of action for property owners aggrieved by governmental action that did not rise to level of a taking, by failing to present to the city any appraisal supporting the claim prior to bringing suit and by presenting his claim less than 180 days before he filed action, requiring dismissal of complaint. *Sosa v. City of West Palm Beach*, App. 4 Dist., 762 So.2d 981 (2000), rehearing denied. Municipal Corporations 741.50 ; Municipal Corporations 742(3)

Causes of action

Quarter-mile setback around phosphate mining company's property was not a property right for which adjacent landowner operating neurological rehabilitation center could state a claim under the Bert J. Harris, Jr., Private Property Protection Act when county reduced setback to 150 feet; setback was created by police power as a land use designation for the general welfare. *Hardee County v. FINR II, Inc.*, 221 So.3d 1162 (2017), rehearing denied 2017 WL 3015682. Municipal Corporations 1017

Even if city had been delegated authority by Federal Emergency Management Agency (FEMA) to administer and apply FEMA regulations when it issued stop-work order against homeowners, such application did not give rise to cause of action under Bert Harris Act; actions that inordinately burden real property under the Act did not include a municipality that independently exercised governmental authority when exercising the powers of the United States or any of its agencies. *Bair v. City of Clearwater*, App. 2 Dist., 196 So.3d 577 (2016). Zoning and Planning 1576

Homeowners did not have a cause of action under Bert Harris Act based on city's use of flood insurance maps and studies from after Act's enactment in determining that homeowner's property was in a flood zone, and requiring improvements to meet city's flood resistance standards; any reliance on post-enactment portions of the flood standards did not inordinately burden homeowners' property. *Bair v. City of Clearwater*, App. 2 Dist., 196 So.3d 577 (2016). Zoning and Planning 1576

Property owner, whose property was adjacent to land owned by phosphate company that conducted mining operations, could maintain cause of action under the Bert J. Harris Jr., Private Property Rights Protection Act for the alleged diminution in value of its property caused by county's reduction of setback for mining operations on the phosphate company's property; county's reduction of the mining setback directly affected adjacent property owner's alleged vested right and reasonable investment-backed expectation to expand its neurological rehabilitation facility and to develop its land consistent with its designation as a rural center. *FINR II, Inc. v. Hardee County*, App. 2 Dist., 164 So.3d 1260 (2015), review granted 182 So.3d 632, decision disapproved 221 So.3d 1162, rehearing denied 2017 WL 3015682. Zoning and Planning 1226 ; Zoning and Planning 1263

Bert J. Harris Jr., Private Property Rights Protection Act provides a cause of action to owners of real property that has been inordinately burdened and diminished in value due to governmental action directly taken against an adjacent property. *FINR II, Inc. v. Hardee County*, App. 2 Dist., 164 So.3d 1260 (2015), review granted 182 So.3d 632, decision disapproved 221 So.3d 1162, rehearing denied 2017 WL 3015682. Municipal Corporations 1017

Settlement agreements

Trial court was required to make findings regarding whether relief granted by settlement agreement protected public interest served by statute and was the appropriate relief necessary to prevent government regulatory effort from inordinately burdening the property before approving settlement agreement between property owners, city, and Department of Economic Opportunity (DEO) regarding property owners' Bert Harris Act claim stemming from city's amendment of comprehensive plan in such a way as to limit use of property. *Rainbow River Conservation, Inc. v. Rainbow River Ranch, LLC*, App. 5 Dist., 189 So.3d 312 (2016). Compromise, Settlement, And Release 665

Trial court could not approve settlement of property owners' claims against county under the Bert J. Harris, Jr., Private Property Rights Protection Act that would have the effect of contravening the application of other statutes that would otherwise apply to the subject property; contravention of statutes was limited to settlements reached during the presuit phase of proceedings under the Act, and property owners had filed lawsuits seeking compensation more than four years before the settlement was reached. *Collier County v. Hussey*, App. 2 Dist., 147 So.3d 35 (2014), rehearing denied. Counties 204(5)

Fact that property owner did not file lawsuit against county under the Bert J. Harris, Jr., Private Property Rights Protection Act did not preclude owner and county from settling owner's claim under the Act; owner had filed a claim and presuit notice period had expired by time parties entered into settlement agreement resolving owner's separate action concerning development rights, and Act contemplated the resolution of claims without resort to a lawsuit, even during the presuit period. *Charlotte County Park of Commerce, LLC v. Charlotte County*, App. 2 Dist., 927 So.2d 236 (2006). Counties 204(5)

Jurisdiction

Trial court lacked jurisdiction to review settlement agreement between county and property owners under provision of Bert J. Harris, Jr., Private Property Rights Protection Act mandating review of a settlement of claims under the Act "which would have the effect of contravening the application of a statute," so as "to ensure that the relief granted protects the public interest served by the statute"; provision applied only to settlements reached during the presuit phase of proceedings under the Act, and property owners had filed lawsuits seeking compensation more than four years before the settlement was reached. *Collier County v. Hussey*, App. 2 Dist., 147 So.3d 35 (2014), rehearing denied. Counties 204(5)

Appellate court did not have jurisdiction over an interlocutory appeal by county and Department of Environmental Protection (DEP) from a trial court order finding that the county and DEP were liable to property owner for inordinately burdening the owner's property; county had denied property owner's zoning application to use property as a landfill, and DEP had refused to issue a general permit to allow property owner to put its property to such use. *Osceola County v. Best Diversified, Inc.*, App. 5 Dist., 830 So.2d 139 (2002), rehearing denied. Environmental Law 644; Zoning And Planning 1582

Parties

A town council which has received a pre-suit notice letter under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting pursuant to § 286.011(8) to discuss settlement negotiations. *Florida Op. Atty. Gen.*, 2009-25, June 11, 2009 (2009 WL 1643401).

Pleadings

Landowner, in seeking declaratory judgment finding that any continuation of its existing zoning request was futile as a matter of law after county amended its comprehensive plan and that any claims for remedy for injury to landowner's private property rights under the Florida Constitution or Florida laws were ripe for adjudication, failed to make allegations sufficient to meet the jurisdictional requirements of the declaratory judgment act; complaint did not purport to assert any type of takings claim, nor that landowner was in doubt regarding the existence of a right, power, privilege, or immunity. *Golfrock v. Lee County*, App. 2 Dist., 247 So.3d 37 (2018). Declaratory Judgment 315

Issue of whether property owner and county, who entered into settlement agreement resolving owner's lawsuit concerning development rights, intended to settle owner's claim under the Bert J. Harris, Jr., Private Property Rights Protection Act could not be determined from the face of the pleadings in owner's subsequent action to enforce development rights allegedly obtained by virtue of the settlement, even though settlement agreement, which was attached to the complaint, recited the parties' intent to settle owner's claim under the Act and released county from any future claims under the Act; owner may not have received consideration for the release. *Charlotte County Park of Commerce, LLC v. Charlotte County*, App. 2 Dist., 927 So.2d 236 (2006). Counties 122(1); Public Contracts 187

Burden of proof

To prevail under the Bert J. Harris, Jr., Private Property Rights Protection Act for property that is affected by government action not rising to the level of a taking, the property owner is required to show that a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to

a specific use of real property. *Vale v. Palm Beach County*, App. 4 Dist., 259 So.3d 951 (2018) . Municipal Corporations 1017

The party seeking relief pursuant to the Bert J. Harris, Jr. Property Rights Protection Act for property that is affected by government action not rising to the level of a taking bears the burden of proof. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018) , review denied 2018 WL 6506035 . Municipal Corporations 1035

Limitation of actions

The four year statute of limitations applicable to property owners' Harris Act action was tolled during the period of time property owners sought relief from county's action in amending its comprehensive plan to establish a Rural Fringe Mixed-Use District (RFMD) that included property owners' rural lands through lawfully available administrative or judicial proceedings, and thus, the cause of action accrued, and the four year statute of limitations began to run on the date the district court affirmed a Department of Administrative Hearings (DOAH) determination that county's RFMD amendments were proper, thereby ending property owners' administrative and judicial proceeding. *Hussey v. Collier County*, App. 2 Dist., 158 So.3d 661 (2014) . Zoning and Planning 1607

Property owner that challenged county commission's denial of an excavation permit adequately alleged that it presented its claim under the Bert J. Harris, Jr., Private Property Rights Protection Act within one year after the law or regulation at issue was "first applied" to its property, as required by the Act, even though claim was presented more than one year after commission voted to deny the permit; owner alleged that the permit denial first applied on the date county commission signed written ordinance reducing the vote to a written decision, rather than date of the oral vote, and that its claim was presented less than one year after the written ordinance was signed. *P.I.E., LLC v. DeSoto County*, App. 2 Dist., 133 So.3d 577 (2014) . Eminent Domain 277

One-year time period for landowners to file claim with city, seeking compensation for burdening of property right based on city's denial of building demolition permit, ran from date of denial of permit application, rather than from date of enactment of ordinance amendment which set forth general standards for demolition of historic structures; impact of amendment was not readily ascertainable at time of enactment, since under amended ordinance, city retained significant discretion to grant or deny a demolition request. *Wendler v. City of St. Augustine*, App. 5 Dist., 108 So.3d 1141 (2013) , review denied 122 So.3d 867 . Eminent Domain 277

Four-year limitations period for actions relating to planning of real property applied to landowners' action against city under Harris Act, seeking compensation for burdening of property right based on city's denial of building demolition permit, even though Act provided only a one-year period for filing a claim with the appropriate government entity; filing of claim with government entity was merely a presuit condition to filing lawsuit. *Wendler v. City of St. Augustine*, App. 5 Dist., 108 So.3d 1141 (2013) , review denied 122 So.3d 867 . Eminent Domain 288(1)

One-year limitations period applicable to condominium developer's claim pursuant to statute allowing property owners who suffer inordinate regulatory burdens to existing or reasonably foreseeable land uses to be compensated by the government entity creating the burden, accrued on the date the statute was amended and first impacted the land in question by changing its zoning designation from mixed use to low intensity coastal and lakes. *Citrus County v. Halls River Development, Inc.*, App. 5 Dist., 8 So.3d 413 (2009) , rehearing denied, review denied 23 So.3d 712 . Limitation of Actions 58(1)

Estoppel

Property owners did not have vested right, by virtue of equitable estoppel, to develop their properties into mixed use waterfront development and, thus, were not entitled to damages on their claim against town under Bert J. Harris, Jr. Private Property Rights Protection Act arising out of town's rejection of proposed amendment to its comprehensive land-use plan that would have permitted the development; comprehensive plan expressly prohibited the development when owners bought the properties, and any assurances by town officials that plan would be amended to authorize the development could not be relied on in good faith, since such officials lacked authority to unilaterally amend the plan. *Town of Ponce Inlet v. Pacetta, LLC*, App. 5 Dist., 120 So.3d 27 (2013) , rehearing and rehearing en banc denied, on remand 2013 WL 8114486 , review denied 139 So.3d 299 . Zoning and Planning 1152 ; Zoning and Planning 1332(3)

Governmental entities

Failure by trial court that awarded partial summary judgment as to liability to property owners in their action under the Bert J. Harris, Jr., Private Property Rights Protection Act, which required governmental entities to provide relief to property owners for "inordinate" regulatory burdens imposed on their property, to make certain findings required by the Act necessitated remand; trial court failed to make a finding as to an existing use or vested right to a specific use of the real property, or as to whether the real property was inordinately burdened by county ordinance, in light of settlement offer and ripeness decision. *Brevard County v. Stack*, App. 5 Dist., 932 So.2d 1258 (2006), review denied 949 So.2d 197. Appeal And Error 4742

An amendment to a town charter proposed and approved pursuant to § 166.031(1), as well as any new rules, regulations, or ordinances adopted by the town to effectuate the terms of the amendment, constitute 'action(s) of a governmental entity' as that term is defined and used in the Bert J. Harris, Jr., Private Property Rights Protection Act. Authority to determine whether such actions give rise to a claim under the Act is expressly vested in the judicial branch. *Florida Op.Atty.Gen.*, 2006-31, July 21, 2006 (2006 WL 2053475).

Sufficiency of evidence

County's denial of three-year extension of special use permit for landfill did not inordinately burden owners' property, and thus was not compensable under Bert J. Harris, Jr. Private Property Rights Protection Act, even though owners were lawfully operating landfill under time-limited permit when Act became law, inasmuch as such lawful operation did not cause landfill to become "existing use" that county had to automatically re-permit indefinitely to avoid liability under the Act. *Holmes v. Marion County*, App. 5 Dist., 960 So.2d 828 (2007), rehearing denied. Eminent Domain 🗝️ 2.10(6)

Review

The District Court of Appeal would review de novo the trial court's finding that landowner's use of property as a concrete batch plant was an existing use and that the county, which rezoned the area, did not inordinately burden the property, on appeal of judgment for county in action alleging a violation of the Bert J. Harris, Jr. Property Rights Protection Act for property that is affected by government action not rising to the level of a taking. *Ocean Concrete, Inc. v. Indian River County, Board of County Commissioners*, App. 4 Dist., 241 So.3d 181 (2018), review denied 2018 WL 6506035. Zoning And Planning 1576

Editor's and Revisor's Notes (1)

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

Laws 2006, c. 2006-255, § 1, in subsec. (4), inserted “, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days” at the end of the first sentence of par. (a), and inserted a reference to the 90-day-notice period in the introduction of par. (c); in subsec. (5)(a), inserted references to the 90-day-notice period throughout; and in subsec. (6)(c), inserted references to the 90-day-notice period in subpars. 1. and 2.

Laws 2011, c. 2011- 191, § 1, in subsec. (3)(b), inserted subparagraph designations; in subsec. (3)(e), inserted subparagraph designations, added a new second sentence, relating to temporary impacts on development, in subpar. 2, and added a concluding paragraph, relating to determination of whether certain expectation are inordinately burdened; in subsec. (4)(a), substituted a reference to 150 days for a reference to 180 days in the first sentence; in subsec. (4)(c), substituted a reference to a 150-day notice period for a 180-day notice period in the introductory paragraph, and added “or payment of compensation” at the end of subpar. 10.; rewrote subsec. (5)(a); in subsecs. (5)(a) and (6), substituted references to statements of allowable uses for references to ripeness decisions throughout; in subsecs. (6)(c)1. and (6)(c)2., substituted references to a 150-day notice period for references to a 180-day notice period throughout; rewrote subsecs. (11) and (13); and made nonsubstantive language and punctuation changes throughout. Subsecs. (5)(a), (11), and (13) formerly read:

“(5)(a) During the 90-day-notice period or the 180-day-notice period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to paragraph (4)(a) shall issue a written ripeness decision identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a written ripeness decision during the applicable 90-day-notice period or 180-day-notice period shall be deemed to ripen the prior action of the governmental entity, and shall operate as a ripeness decision that has been rejected by the property owner. The ripeness decision, as a matter of law, constitutes the last prerequisite to judicial review, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.”

“(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. If an owner seeks relief from the governmental action through lawfully available administrative or judicial proceedings, the time for bringing an action under this section is tolled until the conclusion of such proceedings.”

“(13) This section does not affect the sovereign immunity of government.”

Laws 2011, c. 2011-191, § 2, provides:

“The amendments to s. 70.001, Florida Statutes, made by this act apply prospectively only and do not apply to any claim or action filed under s. 70.001, Florida Statutes, which is pending on the effective date of this act [July 1, 2011].”

Laws 2012, c. 2012-94, § 2, reenacted subsec. (12) for the purpose of a cross reference to § 373.4131 in a reference thereto.

Laws 2015, c. 2015-142, § 1, in subsec. (3), substituted “that is the subject of and directly impacted by the action of a governmental entity” for “at issue” at the end of the first sentence of par. (f), and added the last sentence, relating to what the term “real property” includes and made a nonsubstantive language change in par. (g); in subsec. (4), inserted “either before or after filing an action,” following “settlement offer,” in the conclusion of par. (b), added the conclusion, relation to application of the paragraph, in par. (d), and made nonsubstantive language changes throughout; and in subsec. (10), designated the former subsection as par. (a), and added par. (b), relating to application of the subsection.