

HOUSE BILL No. 1121

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-13.

Synopsis: Protection of private property. Allows an owner of real property or a person with a vested right to a specific use of real property to seek compensation from a governmental entity if a specific action taken by the governmental entity inordinately burdened an existing use of the real property or a vested right to a specific use of the real property. Provides that statutes: (1) providing immunity from tort liability for governmental entities and employees when the loss occurs under certain circumstances; and (2) prohibiting the award of punitive damages against governmental entities and employees acting within the scope of their employment; do not apply to claims for inordinately burdening use of real property. Requires a property owner, before filing an action, to submit to the governmental entity the property owner's claim and an appraisal that supports the claim and demonstrates the loss in fair market value to the real property. Requires a governmental entity to which a property owner's claim is submitted to make a written settlement offer to the property owner and to issue a written statement identifying the property's allowable uses. Authorizes the property owner to file a civil action for compensation in the circuit or superior court of the county in which the real property is located, if the property owner rejects the settlement offer. Requires the court to 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 the governmental entity inordinately burdened that use or vested right. Specifies that if the court's determination is in the property owner's favor, 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. Provides for an award of reasonable costs and attorney's fees under certain circumstances.

Effective: July 1, 2017.

Miller D

January 5, 2017, read first time and referred to Committee on Judiciary.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1121

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-13-3-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) This chapter
3 applies only to a claim or suit in tort.

4 (b) The provisions of this chapter also apply to IC 34-30-14.

5 (c) **Sections 3 through 4 of this chapter do not apply to an action**
6 **brought under IC 34-13-10 (inordinately burdening use of real**
7 **property).**

8 SECTION 2. IC 34-13-10 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2017]:

11 **Chapter 10. Action Against Governmental Entity for**
12 **Inordinately Burdening Use of Real Property**

13 **Sec. 1. As used in this chapter, "action of a governmental**
14 **entity" means a specific action of a governmental entity that affects**
15 **real property, including an action on an application or permit.**

16 **Sec. 2. (a) As used in this chapter, "development" means:**

17 **(1) the carrying out of any building activity or mining**



- 1 operation;
- 2 (2) the making of any material change in the use or
- 3 appearance of any structure or land; or
- 4 (3) the dividing of land into three (3) or more parcels.
- 5 (b) For the purposes of this chapter, the following activities or
- 6 uses involve development:
- 7 (1) A reconstruction of, alteration of the size of, or material
- 8 change in the external appearance of a structure on land.
- 9 (2) A change in the intensity of use of land, such as an increase
- 10 in the number of dwelling units in a structure or on land or a
- 11 material increase in the number of businesses, manufacturing
- 12 establishments, offices, or dwelling units in a structure or on
- 13 land.
- 14 (3) Alteration of a shore or bank of a river, stream, lake,
- 15 pond, or canal.
- 16 (4) Commencement of drilling (except to obtain soil samples),
- 17 mining, or excavation on a parcel of land.
- 18 (5) Demolition of a structure.
- 19 (6) Clearing of land as an adjunct of construction.
- 20 (7) Deposit of refuse, solid or liquid waste, or fill on a parcel
- 21 of land.
- 22 (c) For the purposes of this chapter, the following operations or
- 23 uses do not involve development:
- 24 (1) Work by a highway or road agency or railroad company
- 25 for the maintenance or improvement of a road or railroad
- 26 track, if the work is carried out on land within the boundaries
- 27 of the right-of-way.
- 28 (2) Work by any utility and other persons engaged in the
- 29 distribution or transmission of gas, electricity, or water, for
- 30 the purpose of inspecting, repairing, renewing, or
- 31 constructing on established rights-of-way any sewers, mains,
- 32 pipes, cables, utility tunnels, power lines, towers, poles, tracks,
- 33 or the like.
- 34 (3) Work for the maintenance, renewal, improvement, or
- 35 alteration of any structure, if the work affects only the
- 36 interior or the color of the structure or the decoration of the
- 37 exterior of the structure.
- 38 (4) The use of any structure or land devoted to dwelling uses
- 39 for any purpose customarily incidental to the enjoyment of
- 40 the dwelling.
- 41 (5) The use of any land for the purpose of:
- 42 (A) growing plants, crops, trees, and other agricultural or



- 1 forestry products;
 2 (B) raising livestock; or
 3 (C) other agricultural purposes.
 4 (6) A change in use of land or a structure from a use within a
 5 class specified in an ordinance or rule to another use in the
 6 same class.
 7 (7) A change in the ownership or form of ownership of any
 8 parcel or structure.
 9 (8) The creation or termination of rights of access, riparian
 10 rights, easements, covenants concerning development of land,
 11 or other rights in land.
 12 (d) "Development", as designated in an ordinance, rule, or
 13 development permit, includes all other development customarily
 14 associated with the development unless otherwise specified in the
 15 ordinance, rule, or permit.
 16 (e) If appropriate in the context, "development" refers to the act
 17 of developing or to the result of development.
 18 Sec. 3. As used in this chapter, "existing use" means:
 19 (1) an actual, present use of or activity on real property,
 20 including periods of inactivity that are normally associated
 21 with or incidental to the nature or type of use or activity on
 22 the real property; or
 23 (2) a reasonably foreseeable, nonspeculative land use or
 24 activity that:
 25 (A) is:
 26 (i) suitable for the real property; and
 27 (ii) compatible with adjacent land uses; and
 28 (B) would create a fair market value in the property
 29 greater than the fair market value of the actual, present
 30 use of or activity on the real property.
 31 Sec. 4. (a) As used in this chapter, "governmental entity" means
 32 any of the following:
 33 (1) The state of Indiana.
 34 (2) A county.
 35 (3) A city.
 36 (4) A town.
 37 (5) A township.
 38 (6) The following, if created by the Constitution of the State
 39 of Indiana or by a statute, ordinance, rule, or order of a
 40 governmental entity:
 41 (A) An agency.
 42 (B) An instrumentality.



- 1 (C) A board.
 2 (D) A commission.
 3 (E) A committee.
 4 (F) A council.
 5 (G) A department.
 6 (H) A district.
 7 (I) A public body corporate and politic.
 8 (b) The term does not include:
 9 (1) the United States or any of its agencies; or
 10 (2) any governmental entity exercising the powers of the
 11 United States or any of its agencies through a formal
 12 delegation of federal authority.
 13 Sec. 5. (a) As used in this chapter, "inordinate burden" or
 14 "inordinately burdened" means that an action of one (1) or more
 15 governmental entities has directly restricted or limited the use of
 16 real property such that:
 17 (1) the property owner is permanently unable to attain the
 18 reasonable, investment backed expectation for:
 19 (A) the existing use of the real property; or
 20 (B) a vested right to a specific use of the real property;
 21 with respect to the real property as a whole; or
 22 (2) the property owner is left with existing or vested uses that
 23 are unreasonable, such that the property owner permanently
 24 bears a disproportionate share of a burden imposed for the
 25 good of the public that in fairness should be borne by the
 26 public at large.
 27 (b) The terms do not include:
 28 (1) temporary effects to real property, except as provided in
 29 subsection (c);
 30 (2) effects to real property occasioned by governmental
 31 abatement, prohibition, prevention, or remediation of:
 32 (A) a public nuisance at common law; or
 33 (B) a noxious use of private property; or
 34 (3) effects to real property caused by an action of a
 35 governmental entity taken to grant relief to a property owner
 36 under this section.
 37 (c) A temporary effect on development that is in effect for
 38 longer than one (1) year may, depending upon the circumstances,
 39 constitute an inordinate burden for the purposes of this chapter.
 40 (d) In determining whether an action creates an inordinate
 41 burden under subsection (a)(1), consideration may be given to the
 42 factual circumstances leading to the time elapsed between



1 enactment of a law or regulation and the first application of the
2 law or regulation to the real property.

3 **Sec. 6. (a) As used in this chapter, "property owner" means the**
4 **person who holds legal title to real property or holds a vested right**
5 **to a specific use of real property.**

6 **(b) The term does not include a governmental entity.**

7 **Sec. 7. (a) As used in this section, "real property" means a**
8 **parcel of land.**

9 **(b) The term includes any appurtenances and improvements to**
10 **the real property, including any other relevant real property in**
11 **which the property owner has a relevant interest.**

12 **Sec. 8. (a) A property owner may bring an action against a**
13 **governmental entity under this chapter on the grounds that a**
14 **specific action taken by the governmental entity has inordinately**
15 **burdened:**

16 **(1) an existing use of the real property; or**

17 **(2) a vested right to a specific use of the real property.**

18 **(b) For purposes of this chapter, the existence of a vested right**
19 **to a specific use of real property shall be determined by applying:**

20 **(1) the principles of equitable estoppel or substantive due**
21 **process under the common law; or**

22 **(2) the statutory law of Indiana.**

23 **Sec. 9. (a) A property owner who files an action against a**
24 **governmental entity under this chapter must, at least:**

25 **(1) one hundred fifty (150) days; or**

26 **(2) in the case of real property assessed as agricultural land**
27 **under IC 6-1.1-4-13, ninety (90) days;**

28 **before filing the action, submit to the governmental entity, along**
29 **with the property owner's claim, a bona fide, valid appraisal that**
30 **supports the claim and demonstrates the loss in fair market value**
31 **to the real property. To the extent a person is required to file a**
32 **notice of claim under IC 34-13-3, the periods described in this**
33 **section do not toll or otherwise affect the periods for filing a notice**
34 **of claim under IC 34-13-3.**

35 **(b) If:**

36 **(1) the action of a governmental entity alleged by the property**
37 **owner to have inordinately burdened an existing use of real**
38 **property or a vested right to a specific use of real property is**
39 **the culmination of a process that involves more than one (1)**
40 **governmental entity; or**

41 **(2) a complete resolution of all relevant issues, in the view of:**

42 **(A) the property owner; or**



1 **(B) a governmental entity to which a claim is submitted**
 2 **under this section;**
 3 **requires the active participation of more than one (1)**
 4 **governmental entity;**
 5 **the property owner must submit the claim under this section to**
 6 **each of the governmental entities.**

7 **(c) If:**

8 **(1) the property owner believes; or**

9 **(2) a governmental entity to which a claim is presented under**
 10 **this section asserts;**

11 **that a complete resolution of all issues relevant to the property**
 12 **owner's claim requires the active participation of more than one**
 13 **(1) governmental entity, the property owner shall present the claim**
 14 **under this section to each of the governmental entities whose**
 15 **participation is believed or asserted under this subsection to be**
 16 **required for a complete resolution of all issues.**

17 **Sec. 10. (a) A governmental entity to which a property owner's**
 18 **claim is submitted under section 9 of this chapter shall provide**
 19 **written notice of the claim:**

20 **(1) to all parties to any administrative action that gave rise to**
 21 **the claim; and**

22 **(2) to owners of real property contiguous to the real property**
 23 **that is the subject of the claim, at the addresses listed on the**
 24 **most recent county tax rolls.**

25 **(b) Not later than fifteen (15) days after a claim is submitted to**
 26 **a governmental entity under section 9 of this chapter, the**
 27 **governmental entity shall:**

28 **(1) report the claim in writing to the office of the attorney**
 29 **general; and**

30 **(2) provide the office of the attorney general with the name,**
 31 **address, and telephone number of an employee of the**
 32 **governmental entity from whom additional information may**
 33 **be obtained about the claim during the pendency of the claim**
 34 **and any subsequent judicial action.**

35 **Sec. 11. (a) Before the end of the applicable period specified in**
 36 **section 9(a) of this chapter, unless that period is extended by**
 37 **agreement of the parties, a governmental entity to which a**
 38 **property owner's claim is submitted under section 9 of this chapter**
 39 **shall make a written settlement offer to carry out one (1) or more**
 40 **of the following:**

41 **(1) An adjustment of land development or permit standards**
 42 **or other provisions controlling the development or use of the**



- 1 real property.
- 2 **(2) Increases or modifications in the allowed density, intensity,**
- 3 **or use of areas of development.**
- 4 **(3) The transfer of developmental rights.**
- 5 **(4) Land swaps or exchanges.**
- 6 **(5) Mitigation, including payments instead of onsite**
- 7 **mitigation.**
- 8 **(6) Confining the action of the governmental entity to the least**
- 9 **sensitive part of the property.**
- 10 **(7) Conditioning the amount of development or use permitted.**
- 11 **(8) A requirement that issues be addressed on a basis more**
- 12 **comprehensive than a single proposed use or development.**
- 13 **(9) Issuance of a development order, a variance, a special**
- 14 **exception, or other extraordinary relief.**
- 15 **(10) Purchase of the real property, or an interest in the real**
- 16 **property, by an appropriate governmental entity or payment**
- 17 **of compensation.**
- 18 **(11) No changes to the action of the governmental entity.**
- 19 **(b) If a property owner accepts a settlement offer made by a**
- 20 **governmental entity with regard to an action of the governmental**
- 21 **entity alleged by the property owner to have inordinately burdened**
- 22 **an existing use of real property or a vested right to a specific use of**
- 23 **real property, either before or after filing an action under this**
- 24 **chapter, the governmental entity may implement the settlement**
- 25 **offer:**
- 26 **(1) by entering into an appropriate development agreement;**
- 27 **(2) by issuing a variance, a special exception, or other**
- 28 **extraordinary relief; or**
- 29 **(3) by another appropriate method, subject to subsection (c).**
- 30 **(c) If a governmental entity enters into a settlement agreement**
- 31 **under this section that would have the effect of a modification,**
- 32 **variance, or special exception to the application of a rule,**
- 33 **regulation, or ordinance of the governmental entity as it would**
- 34 **otherwise apply to the real property, the relief granted to the**
- 35 **property owner:**
- 36 **(1) must protect the public interest served by the rule,**
- 37 **regulation, or ordinance; and**
- 38 **(2) must be the appropriate relief necessary to prevent the**
- 39 **governmental action from inordinately burdening the use of**
- 40 **or right to the real property.**
- 41 **(d) When a governmental entity enters into a settlement**
- 42 **agreement under this section that would have the effect of**



1 contravening the application of a statute as it would otherwise
2 apply to the real property, the governmental entity and the
3 property owner shall jointly file an action in the circuit or superior
4 court of the county in which the real property is located for the
5 court's approval of the settlement agreement to ensure that the
6 relief granted protects the public interest served by the statute and
7 is the appropriate relief necessary to prevent the governmental
8 action from inordinately burdening the use of or right to the real
9 property. This subsection applies to any settlement reached
10 between a property owner and a governmental entity under this
11 chapter, regardless of when the settlement agreement was entered,
12 if the agreement fully resolves all claims to which the settlement
13 agreement applies.

14 **Sec. 12. (a)** During the applicable period specified in section 9(a)
15 of this chapter, unless a settlement offer is accepted by the
16 property owner under section 11 of this chapter, each
17 governmental entity provided notice of the property owner's claim
18 under section 9 of this chapter shall issue a written statement
19 identifying the allowable uses to which the property may be put.

20 **(b)** The failure of a governmental entity to issue a statement of
21 allowable uses within the period specified by subsection (a)
22 constitutes a denial of the property owner's claim for purposes of
23 allowing a property owner to file an action in the circuit or
24 superior court under this chapter.

25 **(c)** A statement of allowable uses issued by a governmental
26 entity under this section constitutes the last prerequisite to judicial
27 review for the purposes of a judicial proceeding under this chapter,
28 notwithstanding the availability of other administrative remedies.

29 **Sec. 13. (a)** If a property owner rejects a settlement offer made
30 under section 11 of this chapter and the statement of allowable uses
31 issued under section 12 of this chapter by one (1) or more
32 governmental entities, the property owner may file a claim for
33 compensation in the circuit or superior court of the county in
34 which the real property is located.

35 **(b)** A property owner filing a claim under subsection (a) shall
36 contemporaneously serve a copy of the claim on each governmental
37 entity that made a settlement offer under section 11 of this chapter
38 and a statement of allowable uses under section 12 of this chapter
39 that the property owner rejected.

40 **Sec. 14. (a)** The court in which a property owner files a claim for
41 compensation under section 13 of this chapter shall determine:

42 **(1)** whether an existing use of the real property or a vested



1 right to a specific use of the real property existed; and
 2 (2) if an existing use of the real property or a vested right to
 3 a specific use of the real property did exist, whether the
 4 governmental entity or entities inordinately burdened the
 5 existing use or vested right, considering any settlement offer
 6 made under section 11 of this chapter and statement of
 7 allowable uses issued under section 12 of this chapter.

8 (b) If the court, considering any settlement offer made under
 9 section 11 of this chapter and statement of allowable uses issued
 10 under section 12 of this chapter, determines that the actions of
 11 more than one (1) governmental entity are responsible for
 12 imposing the inordinate burden, the court shall determine the
 13 percentage of responsibility each governmental entity bears with
 14 respect to the inordinate burden.

15 (c) A governmental entity may seek an interlocutory appeal of
 16 the court's determination under subsection (b) that the action of
 17 the governmental entity has resulted in an inordinate burden. An
 18 interlocutory appeal taken under this subsection does not
 19 automatically stay the proceedings. However, the court may stay
 20 the proceedings during the pendency of an interlocutory appeal. If
 21 the governmental entity does not prevail in the interlocutory
 22 appeal, the court shall award to the prevailing property owner the
 23 reasonable costs and attorney's fees incurred by the property
 24 owner in the interlocutory appeal.

25 Sec. 15. (a) If the court determines under section 14(a) of this
 26 chapter that an existing use of the real property or a vested right
 27 to a specific use of the real property existed and that the
 28 governmental entity or entities inordinately burdened the existing
 29 use or vested right, and after:

30 (1) the determination by the court of the percentage of
 31 responsibility of each governmental entity under section 14(b)
 32 of this chapter; and

33 (2) the resolution of any interlocutory appeal made under
 34 section 14(c) of this chapter;

35 the court shall impanel a jury to determine the total amount of
 36 compensation to the property owner for the loss in value due to the
 37 inordinate burden.

38 (b) The award of compensation to the property owner must be
 39 determined by calculating the difference between:

40 (1) the fair market value of the real property, as it existed at
 41 the time of the governmental action at issue, if the use of or
 42 right to the property had not been inordinately burdened; and



1 **(2) the fair market value of the real property, as it existed at**
2 **the time of the governmental action at issue, as inordinately**
3 **burdened, considering any settlement offer made under**
4 **section 11 of this chapter and statement of allowable uses**
5 **issued under section 12 of this chapter by the governmental**
6 **entity or entities.**

7 **(c) In the determination of the award of compensation,**
8 **consideration may not be given to business damages relative to any**
9 **development, activity, or use that the action of the governmental**
10 **entity or entities has restricted, limited, or prohibited.**

11 **(d) The award of compensation must include a reasonable**
12 **award of prejudgment interest from the date the claim was**
13 **submitted to the governmental entity or entities under section 9 of**
14 **this chapter.**

15 **Sec. 16. (a) In an action filed under this chapter, a property**
16 **owner is entitled to recover from the governmental entity or**
17 **entities, according to the proportionate share of each as**
18 **determined by the court under section 14(b) of this chapter,**
19 **reasonable costs and attorney's fees incurred by the property**
20 **owner from the date of the filing of the action, if:**

21 **(1) the property owner prevails in the action; and**

22 **(2) the court determines that any settlement offer made under**
23 **section 11 of this chapter and any statement of allowable uses**
24 **issued under section 12 of this chapter by the governmental**
25 **entity or entities did not constitute a bona fide offer to the**
26 **property owner that reasonably would have resolved the**
27 **property owner's claim, based upon the knowledge available**
28 **to:**

29 **(A) the governmental entity or entities; and**

30 **(B) the property owner;**

31 **during the applicable period specified in section 9(a) of this**
32 **chapter.**

33 **(b) In an action filed under this chapter, the governmental entity**
34 **or entities are entitled to recover reasonable costs and attorney's**
35 **fees incurred by the governmental entity or entities from the date**
36 **of the filing of the action, if:**

37 **(1) the governmental entity or entities prevail in the action;**

38 **(2) the court determines that the governmental entity or**
39 **entities made a bona fide settlement offer under section 11 of**
40 **this chapter, including a statement of allowable uses under**
41 **section 12 of this chapter, that, based on the knowledge**
42 **available to:**



- 1 (A) the governmental entity or entities; and
 2 (B) the property owner;
 3 during the applicable period specified in section 9(a) of this
 4 chapter, would have resolved the claim fairly to the property
 5 owner if accepted by the property owner; and
 6 (3) the property owner did not accept the offer.
- 7 (c) The determination of total reasonable costs and attorney's
 8 fees under this section shall be made by the court and not by the
 9 jury.
- 10 (d) The following are not admissible in a proceeding under this
 11 chapter except for purposes of the determination of reasonable
 12 costs and attorney's fees under this section:
- 13 (1) A proposed settlement offer, except for the final settlement
 14 offer or final statement of allowable uses.
 15 (2) Negotiations or rejections in regard to the formulation of
 16 either the settlement offer or the statement of allowable uses.
- 17 **Sec. 17. Not later than fifteen (15) days after:**
 18 (1) the execution of a settlement; or
 19 (2) the issuance of a judgment;
 20 under this chapter, the governmental entity shall provide a copy of
 21 the settlement or judgment to the office of the attorney general.
- 22 **Sec. 18. (a) A circuit or superior court may:**
 23 (1) enter any orders necessary to carry out the purposes of
 24 this chapter; and
 25 (2) make final determinations to carry out the relief available
 26 under this chapter.
- 27 (b) An award or payment of compensation under this chapter
 28 grants to and vests in the governmental entity that pays the
 29 compensation the right, title, and interest in the rights of use for
 30 which the compensation is paid. The rights of the governmental
 31 entity may become transferable development rights to be held,
 32 sold, or otherwise disposed of by the governmental entity. When an
 33 award of compensation is made under this chapter, the court shall
 34 determine:
 35 (1) the form of the right, title, and interest;
 36 (2) the recipient of the right, title, and interest; and
 37 (3) the terms of the acquisition of the right, title, and interest.
- 38 **Sec. 19. This chapter does not supplant lawfully available**
 39 **methods for arbitration, mediation, or other forms of alternative**
 40 **dispute resolution that may be agreed to by the parties.**
 41 **Governmental entities are encouraged to use those methods to**
 42 **augment or facilitate the processes and actions contemplated by**



- 1 this chapter.
- 2 **Sec. 20. (a) This chapter:**
- 3 (1) provides a cause of action in the case of governmental
- 4 actions that may not rise to the level of a taking under the
- 5 Constitution of the State of Indiana or the Constitution of the
- 6 United States; and
- 7 (2) may not necessarily be construed under case law
- 8 regarding takings if the governmental action does not rise to
- 9 the level of a taking.
- 10 (b) The provisions of this chapter are cumulative and do not
- 11 abrogate any other remedy lawfully available, including any
- 12 remedy lawfully available for governmental actions that rise to the
- 13 level of a taking. However, a governmental entity is not liable for
- 14 compensation for an action of the governmental entity applicable
- 15 to, or for the loss in value to, a real property more than once.
- 16 **Sec. 21. (a) This chapter:**
- 17 (1) does not apply to any action taken by a governmental
- 18 entity relating to the operation, maintenance, or expansion of
- 19 transportation facilities; and
- 20 (2) does not affect the law regarding eminent domain relating
- 21 to transportation.
- 22 (b) This chapter does not apply to any action taken by a county
- 23 with respect to the adoption of a flood insurance rate map issued
- 24 by the Federal Emergency Management Agency for the purpose of
- 25 participating in the National Flood Insurance Program, unless the
- 26 adoption incorrectly applies an aspect of the flood insurance rate
- 27 map to the property in such a way as to incorrectly assess the
- 28 elevation of the property.
- 29 **Sec. 22. (a) A property owner may not commence an action**
- 30 **against a governmental entity under this chapter if the property**
- 31 **owner's claim is presented more than one (1) year after the**
- 32 **governmental entity first applied to the property the law or**
- 33 **regulation alleged by the property owner to inordinately burden an**
- 34 **existing use of the real property or a vested right to a specific use**
- 35 **of the real property.**
- 36 (b) The following apply for the purposes of determining when
- 37 a law or regulation first applied to a property under subsection (a):
- 38 (1) A law or regulation is first applied upon enactment and
- 39 notice if:
- 40 (A) the effect of the law or regulation on the real property
- 41 is clear and unequivocal in its terms; and
- 42 (B) notice is provided by mail to the affected property



- 1 owner or registered agent of the property owner at the
 2 address referenced in the jurisdiction's most current ad
 3 valorem property tax records.
- 4 (2) If subdivision (1) does not apply, a law or regulation is
 5 first applied to the property when there is a formal denial of
 6 a written request by the property owner for development or
 7 a variance.
- 8 (c) The fact that a law or regulation could be modified, varied,
 9 or altered under any other process or procedure does not preclude
 10 the effect of the law or regulation on a property from being clear
 11 or unequivocal for the purposes of subsection (b)(1)(A).
- 12 (d) For the purposes of subsection (b)(1)(B), a notice:
 13 (1) must be provided after the enactment of the law or
 14 regulation; and
 15 (2) must inform the property owner or registered agent of the
 16 property owner that:
 17 (A) the law or regulation may affect the property owner's
 18 existing property rights; and
 19 (B) the property owner may have only one (1) year from
 20 receipt of the notice to pursue any rights established under
 21 this chapter.
- 22 (e) If a property owner seeks relief from a governmental action
 23 through lawfully available administrative or judicial proceedings,
 24 the time for bringing an action under this chapter based on the
 25 governmental action is tolled until the conclusion of the
 26 administrative or judicial proceedings.
- 27 **Sec. 23. (a)** A cause of action does not exist under this chapter
 28 as to the application of:
 29 (1) a law enacted; or
 30 (2) a rule, regulation, or ordinance adopted;
 31 before July 1, 2017.
- 32 (b) An amendment to a law, rule, regulation, or ordinance after
 33 June 30, 2017, may give rise to a cause of action under this chapter
 34 only to the extent that the application of the amendatory language
 35 imposes an inordinate burden apart from the law, rule, regulation,
 36 or ordinance being amended.

