



ESSENTIAL ECONOMIC DEVELOPMENT LAW

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The image features a decorative background on the left side, consisting of a vertical strip of the Florida state flag. The flag is white with a blue vertical stripe on the left and a red vertical stripe on the right. In the center of the white stripe is a circular seal depicting a landscape with palm trees, a bay, and a ship. The seal is surrounded by a gold border with the text "STATE OF FLORIDA" and "1845".

**THE USE OF TAX
INCREMENT FINANCING
FOR ECONOMIC
DEVELOPMENT**

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What is Tax Increment Financing?

- Tax increment financing is a unique tool available to cities and counties for redevelopment activities. It is used to leverage public funds to promote private sector activity in the targeted area.
- The dollar value of all real property in the Community Redevelopment Area is determined as of a fixed date, also known as the “frozen value.”
- Taxing authorities, which contribute to the tax increment, continue to receive property tax revenues based on the frozen value. These frozen value revenues are available for general government purposes. However, any tax revenues from increases in real property value, referred to as “increment,” are deposited into the Community Redevelopment Agency Trust Fund and dedicated to the redevelopment area.
- It is important to note that property tax revenue collected by the School Board and any special district are not affected under the tax increment financing process. Further, unlike in some states, Florida taxing entities write a check to the CRA trust fund, after monies are received from the tax collector.
- The tax increment revenues can be used immediately, saved for a particular project, or can be bonded to maximize the funds available. Any funds received from a tax increment financing area must be used for specific redevelopment purposes within the targeted area, and not for general government purposes.

The seal of the State of Florida is visible in the top left corner, featuring a palm tree, a sun, and a ship, surrounded by the words "STATE OF FLORIDA" and "1845".

State v. Miami Beach Redevelopment Agency, 392 So.2d (Fla. 1980)

Financing plan proposed by city redevelopment agency through issuance of bonds with respect to redevelopment project in a blighted area did not come within constitutional referendum requirement for ad valorem taxation where statute and bond resolutions declared that there was no pledge on the county and city ad valorem taxing power, statute provided that bond holders' lien attached only after revenues were deposited in trust fund, and ad valorem tax was not necessarily deposited directly into fund, but was merely the measure of contributions county and city would make annually from its general operating revenues until bonds had been paid.

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Strand v. Escambia County, **992 So.2d 150 (Fla. 2008)**

County had authority to issue tax-increment-financed bonds to fund a road-construction project in an improvement district without first obtaining approval through a referendum; non-ad valorem revenues were to be used only as a supplemental source of funding in the event that the improvement district's trust fund revenues were insufficient for debt service, and county expressly did not covenant to maintain services or programs for the purpose of generating income to repay the bonds.

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How can TIF \$\$\$ be spent?

Fla. Stat. 163.370(2)

- a) Make and execute contracts
- b) Disseminate slum clearance
- c) Undertake and carryout redevelopment and related activities
- d) To provide for furnishing or repair of specified infrastructure
- e) Within a community development area: make building inspections, acquire property, insure property, enter into contracts, solicit proposals for parcel redevelopment

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How can TIF \$\$\$ be spent? cont...

Fla. Stat. 163.370(2)

- f) Invest funds in reserves
- g) Borrow money and apply for loans, grants, etc... for financial assistance
- h) Surveys
- i) Develop, test, and report methods and techniques for elimination of blight
- j) Apply for, accept, and utilize federal grants
- k) Relocation assistance

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How can TIF \$\$\$ be spent? cont...

Fla. Stat. 163.370(2)

- l) Expenditures relating to zoning and rezoning
- m) Close, vacate, plain or re-plan streets, roads, etc...
- n) Administration purposes
- o) Develop and implement community policing innovations

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The following projects may not be paid for or financed by increment revenues: (Fla. Stat. 163.70(3))

- (a) Construction or expansion of administrative buildings for public bodies or police and fire buildings, unless each taxing authority agrees to such method of financing for the construction or expansion, or unless the construction or expansion is contemplated as part of a community policing innovation.

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The following projects may not be paid for or financed by increment revenues: (Fla. Stat. 163.70(3) cont...

(b) Installation, construction, reconstruction, repair, or alteration of any publicly owned capital improvements or projects if such projects or improvements were scheduled to be installed, constructed, reconstructed, repaired, or altered within 3 years of the approval of the community redevelopment plan by the governing body pursuant to a previously approved public capital improvement or project schedule or plan of the governing body which approved the community redevelopment plan unless and until such projects or improvements have been removed from such schedule or plan of the governing body and 3 years have elapsed since such removal or such projects or improvements were identified in such schedule or plan to be funded, in whole or in part, with funds on deposit within the community redevelopment trust fund.

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The following projects may not be paid for or financed by increment revenues: (Fla. Stat. 163.70(3) cont...

(c) General government operating expenses unrelated to the planning and carrying out of a community redevelopment plan.



INVERSE CONDEMNATION AND THE “BERT J. HARRIS ACT”

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Inverse Condemnation

- Physical
- As Applied
- Facial

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Physical (per se)

- Eminent Domain
- Trespass on, invasion of, or occupation by a governmental entity of an owner's property
- Requires "just compensation"
- *Loretto v. Teleprompter Manhattan CATV Corp*, 458 U.S. 419 (1982)

The seal of the United States Supreme Court is visible in the top left corner, featuring a central figure holding a scale and a sword, surrounded by the words "SUPREMACY UNDER LAW" and "1789".

As Applied

- 1) The **economic impact** of the regulation on the owner
- 2) **Character** of the governmental action
- 3) Interference with **investment-backed expectations**

Penn Central Trans. Co. v. NY, 438 U.S. 104
(1978)

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Facial

- 1) Does the regulation advance a substantial state interest?
- 2) Is the landowner left with an economically viable use of his land?

Agins v. City of Tiburon, 447 U.S. 255 (1980)

- Modified by *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005)

Should the public be forced to bear the cost of the regulation ?(due process)

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Bert J. Harris

- Bert J. Harris, Jr., Private Property Rights Protection Act, Fla. Stat. § 70.001
- Inordinate Burden
- Created a new cause of action for private property owners whose real property has been partially diminished in value due to a new regulatory action of state or local government.
- Designed to reach beyond the law of regulatory takings

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Bert J. Harris (Cont...)

- Provides a formal process for addressing and resolving differences between landowners and governments
- A landowner must show, with an appraisal in hand, that a specific action of a state, regional or local government has caused a permanent and “inordinate burden” on the owner’s property.
- The owner may demonstrate such an “inordinate burden” by showing either:
 - (1) that the property has been unfairly singled out to bear a “disproportionate” share of the regulatory burden imposed to meet a legitimate governmental end

OR

- (2) that the owner is now permanently unable to attain reasonable, investment-backed expectations for use of the property.

Owner may be entitled to FMV

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2011 Amendments to Bert J. Harris

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act (act), to provide that a moratorium on “development” that is in effect for longer than one year is not a temporary impact to real property for purposes of the act, and therefore, may constitute an “inordinate burden.”

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2011 Amendments to Bert J. Harris cont...

The 2011 Amendments modify the ripeness provisions to specifically provide that failure to issue a written “statement of allowable uses” during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. The issuance or failure to issue a written decision operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

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2011 Amendments to Bert J. Harris cont...

The 2011 Amendments clarify the definition (structurally) of an "existing use" by separating the definition into two parts:

An "existing use" can mean either:

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

The background of the slide features a stylized Texas state flag with a white star on a blue vertical stripe and red and white horizontal stripes. In the upper left corner, there is a circular gold seal of the State of Texas, depicting a landscape with a river, palm trees, and a building, surrounded by the words "THE STATE OF TEXAS".

2011 Amendments to Bert J. Harris cont...

The 2011 Amendments specifically state that the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for purposes of the act.

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2011 Amendments to Bert J. Harris cont...

A cause of action cannot be brought under the act more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue.

In *Citrus County v. Halls River Development*, 8 So.3d 413 (Fla. 5th DCA 2009) and *M&H Profit, Inc. v. Panama City*, 28 So.3d 71 (Fla. 1st DCA 2009), the First and Fifth District Courts of Appeal both issued recent opinions characterized by some as contrary interpretations of the same provision within the act.

The 2011 Amendments clarify that under the Act, “enacting a law or adopting a regulation does not constitute applying the law or regulation to a property.”

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MUNICIPAL ECONOMIC DEVELOPMENT POWERS

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Fla. Stat. 166.021(8)(b)

The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.

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Fla. Stat. 166.021(8)(c)


For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

The background of the slide features a stylized representation of the Florida state flag. On the left side, there is a vertical blue stripe with a white five-pointed star. To the right of the stripe is a white field. In the top-left corner, there is a circular seal of the State of Florida, which depicts a landscape with palm trees, a bay, and a ship. The seal is surrounded by a red ribbon-like border.

NEW LIMITATIONS ON ACCESS TO PUBLIC RECORDS AND MEETINGS IN GOVERNMENT CONTRACTING




- Florida's Constitution guarantees an open and transparent form of government.
- Laws such as the Public Records Act and the Sunshine Law provide for the public's right to obtain government records and attend government meetings.

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- Those laws, however, also have exemptions that make certain meetings and records confidential and off-limits to the public.
 - On June 2, 2011 Florida amended the Public Records Act & Sunshine Law to expand some exemptions and create others.

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2011 Amendments to the Sunshine Law

- Public attendance now precluded at “any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation.”
- Additionally, “any portion of a team meeting at which negotiation strategies are discussed” may also be closed to the public.

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- The public can no longer observe oral presentations where bidders and proposers discuss their submissions and qualifications and answer questions before the selection committee.
 - Further, the public can no longer attend committee meetings where the public agency discusses strategies for selecting and negotiating with the top-ranked bidder or proposer.

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However...

- The statute mandates the recording of such meetings. No portion of an exempt meeting can be held off the record.
- The recordings can be obtained through a public records request, either at the time that the notice of intended award is posted or 30 days after bids or proposals are opened, whichever is earlier.


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2011 Amendments to the Public Records Act

Still provides that sealed bids, proposals, or replies received by agency pursuant to a competitive solicitation are exempt from disclosure until an agency posts its intended decision, but

- increases the waiting period to 30 days after the opening of the bids, proposals, or final replies, if the intended award is not issued during that time period.

This change also applies to any materials handed out during oral presentations to the selection committee


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Similar to the amendment to the Sunshine Law, if the agency decides to reject all bids or proposals resolicit the project, the original bid or proposal submitted will be exempt from disclosure for up to 12 months after the original notice rejecting all bids or proposals is submitted.

* Notably, the amendments do not exempt other potentially important material from public records requests, such as, bid tabulation sheets, communications among an agency's staff members, or agency analysis of the project.



CONFLICTS IN VOTING

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Fla. Stat. 112.3143 – Voting Conflicts

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss... Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

CONCLUSION:

“The Devil is in the details.”



Thank you