

By Senator Kirkpatrick

5-1417-00

1                                   A bill to be entitled  
2           An act protecting private property rights;  
3           amending s. 70.001, F.S.; redefining the term  
4           "action of a governmental entity" and the terms  
5           "inordinate burden" or "inordinately burdened";  
6           providing that specified action by a  
7           governmental entity creates a rebuttable  
8           presumption of inordinate burden; providing  
9           criteria for the court to consider in claims  
10          for compensation; providing an effective date.

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

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14           Section 1. Paragraphs (d) and (e) of subsection (3),  
15 paragraph (b) of subsection (5), and paragraph (a) of  
16 subsection (6) of section 70.001, Florida Statutes, are  
17 amended to read:

18           70.001 Private property rights protection.--

19           (3) For purposes of this section:

20           (d) The term "action of a governmental entity" means a  
21 specific action of a governmental entity which affects real  
22 property, including action on an application or permit. The  
23 term also includes any action by a governmental entity which  
24 decreases or modifies the density, intensity, or use of areas  
25 of development below the equivalent of one residence for every  
26 5 acres.

27           (e) The terms "inordinate burden" or "inordinately  
28 burdened" mean that an action of one or more governmental  
29 entities has directly restricted or limited the use of real  
30 property such that the property owner is permanently unable to  
31 attain the reasonable, investment-backed expectation for the

1 existing use of the real property or a vested right to a  
2 specific use of the real property with respect to the real  
3 property as a whole, or that the property owner is left with  
4 existing or vested uses that are unreasonable such that the  
5 property owner bears permanently a disproportionate share of a  
6 burden imposed for the good of the public, which in fairness  
7 should be borne by the public at large. Any action by a  
8 governmental entity which involuntarily decreases or modifies  
9 the density, intensity, or use of areas of development below  
10 the equivalent of one residence for every 5 acres creates a  
11 rebuttable presumption that the governmental action  
12 inordinately burdens the real property.The terms "inordinate  
13 burden" or "inordinately burdened" do not include temporary  
14 impacts to real property; impacts to real property occasioned  
15 by governmental abatement, prohibition, prevention, or  
16 remediation of a public nuisance at common law or a noxious  
17 use of private property; or impacts to real property caused by  
18 an action of a governmental entity taken to grant relief to a  
19 property owner under this section.

20 (5)

21 (b) If the property owner rejects the settlement offer  
22 and the ripeness decision of the governmental entity or  
23 entities, the property owner may file a claim for compensation  
24 in the circuit court, a copy of which shall be served  
25 contemporaneously on the head of each of the governmental  
26 entities that made a settlement offer and a ripeness decision  
27 that was rejected by the property owner. Actions under this  
28 section shall be brought only in the county where the real  
29 property is located. When a claim is filed to seek  
30 compensation for any governmental action that involuntarily  
31 decreases or modifies the density, intensity, or use of areas

1 of development below the equivalent of one residence for every  
2 5 acres, there is a rebuttable presumption that the  
3 governmental entity has inordinately burdened the property  
4 owner's real property.

5 (6)(a) When a claim is filed to seek compensation for  
6 any governmental action that involuntarily decreases or  
7 modifies the density, intensity, or use of areas of  
8 development below the equivalent of one residence for every 5  
9 acres, the circuit court shall determine whether an existing  
10 use of the real property or a vested right to a specific use  
11 of the real property existed and, if so, whether the  
12 governmental entity's action did not, ~~considering the~~  
13 ~~settlement offer and ripeness decision, the governmental~~  
14 ~~entity or entities have~~ inordinately burden ~~burdened~~ the real  
15 property. The circuit court shall consider the settlement  
16 offer and ripeness decision when it determines whether the  
17 governmental entity's action did not cause an inordinate  
18 burden. If the actions of more than one governmental entity,  
19 considering any settlement offers and ripeness decisions, are  
20 responsible for the action that imposed the inordinate burden  
21 on the real property of the property owner, the court shall  
22 determine the percentage of responsibility each such  
23 governmental entity bears with respect to the inordinate  
24 burden. A governmental entity may take an interlocutory  
25 appeal of the court's determination that the action of the  
26 governmental entity has resulted in an inordinate burden. An  
27 interlocutory appeal does not automatically stay the  
28 proceedings; however, the court may stay the proceedings  
29 during the pendency of the interlocutory appeal. If the  
30 governmental entity does not prevail in the interlocutory  
31 appeal, the court shall award to the prevailing property owner

1 the costs and a reasonable attorney fee incurred by the  
2 property owner in the interlocutory appeal.

3 Section 2. This act shall take effect upon becoming a  
4 law.

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7 SENATE SUMMARY

8 Provides that an action by a governmental entity which  
9 involuntarily changes the density of development below  
10 the equivalent of one residence per 5 acres creates a  
11 rebuttable presumption of inordinate burden that  
12 qualifies a property owner for relief under the "Bert J.  
13 Harris, Jr., Private Property Rights Protection Act."  
14 Provides criteria for the court to consider in claims for  
15 compensation under the act.  
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