

By the Committee on Judiciary and Representatives
Alexander, Putnam, Feeney, Albright, Stansel, J. Miller,
Kilmer, Russell, Tullis, Bense, Dockery, Peaden, Argenio,
Fasano, Sembler, Bainter, Kelly, Harrington, Minton, Futch, K.
Smith, Byrd, Spratt, Goode and Argenziano

1 A bill to be entitled

2 An act relating to private property rights

3 protection; amending s. 70.001, F.S., the "Bert

4 J. Harris, Jr., Private Property Rights

5 Protection Act"; providing that an action by a

6 governmental entity that involuntarily

7 decreases the density of development below one

8 residence per five acres creates a rebuttable

9 presumption that there is an "inordinate

10 burden" that qualifies the property owner for

11 relief under the act; providing determinations

12 to be made by the circuit court when a claim is

13 filed to seek compensation for such

14 governmental action; providing an effective

15 date.

16

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

18

19 Section 1. Paragraphs (d) and (e) of subsection (3),

20 paragraph (b) of subsection (5), and paragraph (a) of

21 subsection (6) of section 70.001, Florida Statutes, are

22 amended to read:

23 70.001 Private property rights protection.--

24 (3) For purposes of this section:

25 (d) The term "action of a governmental entity" means a

26 specific action of a governmental entity which affects real

27 property, including action on an application or permit. The

28 term also includes any action by a governmental entity which

29 involuntarily decreases the density of development below one

30 residence for every five acres.

31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

24 (5)

25 (b) If the property owner rejects the settlement offer
26 and the ripeness decision of the governmental entity or
27 entities, the property owner may file a claim for compensation
28 in the circuit court, a copy of which shall be served
29 contemporaneously on the head of each of the governmental
30 entities that made a settlement offer and a ripeness decision
31 that was rejected by the property owner. Actions under this

1 section shall be brought only in the county where the real
2 property is located. When a claim is filed to seek
3 compensation for any governmental action that involuntarily
4 decreases the density of development below one residence for
5 every five acres, there is a rebuttable presumption that the
6 governmental entity or entities have inordinately burdened the
7 property owner's real property.

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

1 automatically stay the proceedings; however, the court may
2 stay the proceedings during the pendency of the interlocutory
3 appeal. If the governmental entity does not prevail in the
4 interlocutory appeal, the court shall award to the prevailing
5 property owner the costs and a reasonable attorney fee
6 incurred by the property owner in the interlocutory appeal.

7 Section 2. This act shall take effect upon becoming a
8 law.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31