

1 A bill to be entitled
2 An act relating to private property rights protection;
3 amending s. 70.001, F.S.; revising legislative intent;
4 revising notice of claim requirements for property
5 owners; revising procedures for determination of
6 compensation; creating a presumption that certain
7 settlements of claims apply to all similarly situated
8 residential properties within a political subdivision
9 under certain circumstances; authorizing property
10 owners to bring claims against governmental entities
11 in certain circumstances; providing that property
12 owners are not required to submit formal development
13 applications or proceed through formal application
14 processes to bring claims in specified circumstances;
15 amending s. 70.45, F.S.; providing a definition;
16 authorizing property owners to bring actions to
17 declare prohibited exactions invalid; amending s.
18 70.51, F.S.; providing and revising definitions;
19 providing for resolution of disputes concerning
20 comprehensive plan amendments under the Florida Land
21 Use and Environmental Dispute Resolution Act; revising
22 requirements for initiating a proceeding under the
23 act; providing for an award of attorney fees and costs
24 to property owners who successfully bring actions to
25 compel a governmental entity to participate in certain

26 | proceedings; revising provisions concerning tolling of
27 | certain administrative proceedings; revising the time
28 | periods for a governmental entity to respond to a
29 | request for relief; requiring mediations to be
30 | conducted according to specified provisions; requiring
31 | the governmental entity's conduct in dispute
32 | resolution to be considered in determining whether
33 | regulatory efforts were unreasonable or unfairly
34 | burdened use of the property; revising the deadline
35 | for a magistrate to prepare and file a written
36 | recommendation; revising provisions concerning
37 | settlement agreements; specifying that a governmental
38 | entity has authority to rehear and reconsider certain
39 | actions pursuant to a special magistrate's
40 | recommendation; providing requirements for such
41 | rehearing and reconsideration; revising provisions
42 | concerning other remedies that may be pursued by a
43 | property owner; providing requirements for guidelines
44 | adopted by governmental entities for dispute
45 | resolution proceedings; specifying that certain
46 | settlement discussions are confidential; requiring
47 | that actions on proposed settlements be taken at open
48 | meetings; deleting obsolete language; amending s.
49 | 163.3181, F.S.; conforming provisions to changes made
50 | by the act; amending s. 337.25, F.S.; requiring the

51 Department of Transportation to afford a right of
 52 first refusal to the previous property owner before
 53 disposing of property in certain circumstances;
 54 providing an effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. Subsections (1), (4), (5), (6), and (11) of
 59 section 70.001, Florida Statutes, are amended to read:

60 70.001 Private property rights protection.—

61 (1) This act may be cited as the "Bert J. Harris, Jr.,
 62 Private Property Rights Protection Act." The Legislature
 63 recognizes that some laws, regulations, and ordinances of the
 64 state and political entities in the state, as applied, may
 65 inordinately burden, restrict, or limit private property rights
 66 without amounting to a taking under the State Constitution or
 67 the United States Constitution. The Legislature determines that
 68 there is an important state interest in protecting the interests
 69 of private property owners from such inordinate burdens. The
 70 Legislature further recognizes that it is in the public interest
 71 to ensure that all similarly situated residential properties are
 72 subject to the same rules and regulations. Therefore, it is the
 73 intent of the Legislature that, as a separate and distinct cause
 74 of action from the law of takings, the Legislature herein
 75 provides for relief, or payment of compensation, when a new law,

76 rule, regulation, or ordinance of the state or a political
77 entity in the state, as applied, unfairly affects real property.

78 (4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an
79 action under this section against a governmental entity, a
80 property owner who seeks compensation under this section must
81 present the claim in writing to the head of the governmental
82 entity, ~~except that if the property is classified as~~
83 ~~agricultural pursuant to s. 193.461, the notice period is 90~~
84 ~~days~~. The property owner must submit, along with the claim, a
85 bona fide, valid appraisal that supports the claim and
86 demonstrates the loss in fair market value to the real property.
87 If the action of government is the culmination of a process that
88 involves more than one governmental entity, or if a complete
89 resolution of all relevant issues, in the view of the property
90 owner or in the view of a governmental entity to whom a claim is
91 presented, requires the active participation of more than one
92 governmental entity, the property owner shall present the claim
93 as provided in this section to each of the governmental
94 entities.

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

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

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

110 1. An adjustment of land development or permit standards
111 or other provisions controlling the development or use of land.

112 2. Increases or modifications in the density, intensity,
113 or use of areas of development.

114 3. The transfer of developmental rights.

115 4. Land swaps or exchanges.

116 5. Mitigation, including payments in lieu of onsite
117 mitigation.

118 6. Location on the least sensitive portion of the
119 property.

120 7. Conditioning the amount of development or use
121 permitted.

122 8. A requirement that issues be addressed on a more
123 comprehensive basis than a single proposed use or development.

124 9. Issuance of the development order, a variance, a
125 special exception, or any other extraordinary relief.

126 10. Purchase of the real property, or an interest therein,
 127 by an appropriate governmental entity or payment of
 128 compensation.

129 11. No changes to the action of the governmental entity.
 130

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

137 (d)1. When a governmental entity enters into a settlement
 138 agreement under this section which would have the effect of a
 139 modification, variance, or ~~a~~ special exception to the
 140 application of a rule, regulation, or ordinance as it would
 141 otherwise apply to the subject real property, the relief granted
 142 shall protect the public interest served by the regulations at
 143 issue and be the appropriate relief necessary to prevent the
 144 governmental regulatory effort from inordinately burdening the
 145 real property. Settlement offers made pursuant to paragraph (c)
 146 shall be presumed to protect the public interest.

147 2. When a governmental entity enters into a settlement
 148 agreement under this section which would have the effect of
 149 contravening the application of a statute as it would otherwise
 150 apply to the subject real property, the governmental entity and

151 the property owner shall jointly file an action in the circuit
152 court where the real property is located for approval of the
153 settlement agreement by the court to ensure that the relief
154 granted protects the public interest served by the statute at
155 issue and is the appropriate relief necessary to prevent the
156 governmental regulatory effort from inordinately burdening the
157 real property.

158 3. When a residential property owner submits a claim under
159 this section which is based on a governmental entity's
160 application of a regulation or ordinance to more than one
161 residential parcel, and the governmental entity reaches a
162 settlement of such claim or the property owner secures a
163 judgment declaring an inordinate burden under paragraph (6) (a),
164 there shall be a presumption, rebuttable only by clear and
165 convincing evidence, that similarly situated residential
166 parcels, as evaluated on a parcel-by-parcel basis, have been
167 inordinately burdened and are entitled to equivalent terms of
168 settlement or a judicial determination of an inordinate burden.
169 In such cases, the similarly situated residential property
170 owners must submit the appraisal specified in paragraph (a) not
171 less than 120 days before a trial on the merits of the damages
172 portion of the proceedings pursuant to paragraph (6) (b). During
173 the 90-day-notice period of such claims, the governmental entity
174 is encouraged to negotiate terms of settlement consistent with
175 settlement agreements for similarly situated residential

176 parcels.

177

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

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

197 (b) If the property owner rejects the settlement offer and
198 the statement of allowable uses of the governmental entity or
199 entities, the property owner may file a claim for compensation
200 in the circuit court, a copy of which shall be served

201 contemporaneously on the head of each of the governmental
202 entities that made a settlement offer and a statement of
203 allowable uses that was rejected by the property owner. Actions
204 under this section shall be brought only in the county where the
205 real property is located.

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

226 interlocutory appeal.

227 (b) Following its determination of the percentage of
228 responsibility of each governmental entity, and following the
229 resolution of any interlocutory appeal, the court shall impanel
230 a jury to determine the total amount of compensation to the
231 property owner for the loss in value due to the inordinate
232 burden to the real property. The property owner retains the
233 option to forego a jury and elect to have the court determine
234 the award of compensation. The award of compensation shall be
235 determined by calculating the difference in the fair market
236 value of the real property, as it existed at the time of the
237 governmental action at issue, as though the owner had the
238 ability to attain the reasonable investment-backed expectation
239 or was not left with uses that are unreasonable, whichever the
240 case may be, and the fair market value of the real property, as
241 it existed at the time of the governmental action at issue, as
242 inordinately burdened, considering the settlement offer together
243 with the statement of allowable uses, of the governmental entity
244 or entities. ~~In determining the award of compensation,~~
245 ~~consideration may not be given to business damages relative to~~
246 ~~any development, activity, or use that the action of the~~
247 ~~governmental entity or entities, considering the settlement~~
248 ~~offer together with the statement of allowable uses has~~
249 ~~restricted, limited, or prohibited.~~ The award of compensation
250 shall include a reasonable award of prejudgment interest from

251 the date the claim was presented to the governmental entity or
252 entities as provided in subsection (4).

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

267 ~~2. In any action filed pursuant to this section, the~~
268 ~~governmental entity or entities are entitled to recover~~
269 ~~reasonable costs and attorney fees incurred by the governmental~~
270 ~~entity or entities from the date of the filing of the circuit~~
271 ~~court action, if the governmental entity or entities prevail in~~
272 ~~the action and the court determines that the property owner did~~
273 ~~not accept a bona fide settlement offer, including the statement~~
274 ~~of allowable uses, which reasonably would have resolved the~~
275 ~~claim fairly to the property owner if the settlement offer had~~

276 | ~~been accepted by the property owner, based upon the knowledge~~
277 | ~~available to the governmental entity or entities and the~~
278 | ~~property owner during the 90-day-notice period or the 150-day-~~
279 | ~~notice period.~~

280 | ~~2.3.~~ The determination of total reasonable costs and
281 | attorney fees pursuant to this paragraph shall be made by the
282 | court and not by the jury. Any proposed settlement offer or any
283 | proposed decision, except for the final written settlement offer
284 | or the final written statement of allowable uses, and any
285 | negotiations or rejections in regard to the formulation ~~either~~
286 | of the settlement offer or the statement of allowable uses, are
287 | inadmissible in the subsequent proceeding established by this
288 | section except for the purposes of the determination pursuant to
289 | this paragraph.

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

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

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

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

318 b. If the notice required in sub-subparagraph a. is not
319 provided to the property owner, the property owner may at any
320 time after enactment notify the governmental entity in writing
321 that the property owner deems the impact of the law or
322 regulation on the property owner's real property to be clear and
323 unequivocal in its terms and, as such, restrictive of uses
324 allowed on the property before the enactment. Within 45 days
325 after receipt of a notice under this sub-subparagraph, the

326 governmental entity in receipt of the notice must respond in
327 writing to state whether the law or regulation is applicable to
328 the real property in question and provide a description of the
329 limitations imposed on the property by the law or regulation. If
330 the governmental entity concludes that the law or regulation is
331 applicable by imposing new limitations on the uses of the
332 property, the property owner is not required to formally pursue
333 an application for a development order, development permit, or
334 building permit as such will be deemed a waste of resources and
335 shall not be a prerequisite to bringing a claim pursuant to
336 paragraph (4) (a). However, any such claim must be filed within 1
337 year after the date of the property owner's receipt of the
338 notice from the governmental entity of the limitations on use
339 imposed on the real property.

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

343 Section 2. Paragraphs (c) through (e) of subsection (1) of
344 section 70.45, Florida Statutes, are redesignated as paragraphs
345 (d) through (f), respectively, a new paragraph (c) is added to
346 that subsection, and subsections (2), (4), and (5) of that
347 section are amended, to read:

348 70.45 Governmental exactions.—

349 (1) As used in this section, the term:

350 (c) "Imposed" or "imposition" as it relates to a

351 prohibited exaction or condition of approval refers to the time
 352 at which the property owner must comply with the prohibited
 353 exaction or condition of approval.

354 (2) In addition to other remedies available in law or
 355 equity, a property owner may bring an action in a court of
 356 competent jurisdiction under this section to declare a
 357 prohibited exaction invalid and recover damages caused by a
 358 prohibited exaction. Such action may not be brought until a
 359 prohibited exaction is actually imposed or required in writing
 360 as a final condition of approval for the requested use of real
 361 property. The right to bring an action under this section may
 362 not be waived. This section does not apply to impact fees
 363 adopted under s. 163.31801 or non-ad valorem assessments as
 364 defined in s. 197.3632.

365 (4) For each claim filed under this section, the
 366 governmental entity has the burden of proving that the
 367 challenged exaction has an essential nexus to a legitimate
 368 public purpose and is roughly proportionate to the impacts of
 369 the proposed use that the governmental entity is seeking to
 370 avoid, minimize, or mitigate. The property owner has the burden
 371 of proving damages that result from a prohibited exaction.

372 (5) The court may award attorney fees and costs to the
 373 prevailing party; however, if the court determines that the
 374 challenged exaction which is the subject of the claim lacks an
 375 essential nexus to a legitimate public purpose, the court shall

376 award attorney fees and costs to the property owner.

377 Section 3. Subsections (2), (3), and (4), paragraph (b) of
378 subsection (5), paragraphs (a), (b), and (c) of subsection (6),
379 subsections (8), (10), (11), (12), and (13), paragraph (a) of
380 subsection (15), paragraph (a) of subsection (16), and
381 subsections (17), (18), (19), (20), (21), (24), (25), (26),
382 (28), and (30) of section 70.51, Florida Statutes, are amended
383 to read:

384 70.51 Land use and environmental dispute resolution.—

385 (2) As used in this section, the term:

386 (a) "Comprehensive plan amendment" means a governmental
387 action subject to s. 163.3181(4).

388 (b)~~(a)~~ "Development order" means any order, or notice of
389 proposed state or regional governmental agency action, which is
390 or will have the effect of granting, denying, or granting with
391 conditions an application for a development permit, and includes
392 the rezoning of a specific parcel. ~~Actions by the state or a~~
393 ~~local government on comprehensive plan amendments are not~~
394 ~~development orders.~~

395 (c)~~(b)~~ "Development permit" means any building permit,
396 zoning permit, subdivision approval, certification, special
397 exception, variance, or any other similar action of local
398 government, as well as any permit authorized to be issued under
399 state law by state, regional, or local government which has the
400 effect of authorizing the development of real property

401 including, but not limited to, programs implementing chapters
402 125, 161, 163, 166, 187, 258, 372, 373, 378, 380, and 403.

403 (d) "Enforcement action" means any civil or administrative
404 action by a governmental entity intended to enforce any law,
405 ordinance, regulation, rule, or policy related to the
406 development or use of real property. The term includes, but is
407 not limited to, any action taken under chapter 162, such as a
408 notice of violation, order, or placement of a lien, or the
409 service of a notice of violation or an order to correct a
410 condition, or an equivalent action, by a state agency.

411 (e)~~(f)~~ "Governmental entity" includes an agency of the
412 state, a regional or a local government created by the State
413 Constitution or by general or special act, any county or
414 municipality, or any other entity that independently exercises
415 governmental authority. The term does not include the United
416 States or any of its agencies.

417 (f)~~(g)~~ "Land" or "real property" means land and includes
418 any appurtenances and improvements to the land, including any
419 other relevant real property in which the owner had a relevant
420 interest.

421 (g)~~(d)~~ "Owner" means a person with a legal or equitable
422 interest in real property who filed an application for a
423 development permit for the property at the state, regional, or
424 local level and who received a development order, who filed a
425 comprehensive plan amendment, or who holds legal title to or who

426 has a legal or equitable interest in real property that is
427 subject, or is otherwise a person subject to, to an enforcement
428 action of a governmental entity.

429 (h) ~~(e)~~ "Proposed Use of the property" means the proposal
430 filed by the owner to develop his or her real property or the
431 actual use of the property giving rise to an enforcement action.

432 (i) ~~(e)~~ "Special magistrate" means a person selected by the
433 parties to perform the duties prescribed in this section. The
434 special magistrate must be a resident of the state and possess
435 experience and expertise in mediation and at least one of the
436 following disciplines and a working familiarity with the others:
437 land use and environmental permitting, land planning, land
438 economics, local and state government organization and powers,
439 and the law governing the same. A special magistrate is not
440 required to be a certified mediator.

441 (3) Any owner who believes that a development order,
442 either separately or in conjunction with other development
443 orders, a comprehensive plan amendment, or an enforcement action
444 of a governmental entity~~,~~ is unreasonable or unfairly burdens
445 the use of the owner's real property~~,~~ may apply within 30 days
446 after receipt of the order or notice of the governmental action
447 for relief under this section.

448 (4) To initiate a proceeding under this section, an owner
449 must file a request for relief with the elected or appointed
450 head of the governmental entity that issued the development

451 order or orders, denied the comprehensive plan amendment, or
452 ~~that~~ initiated the enforcement action. Filing may be by
453 electronic mail to the official email address of the head of the
454 governmental entity, by hand delivery to such person, or by
455 United States mail to such person at his or her official
456 address. Formal service of process is not required for such
457 filing. The process shall be considered initiated as of the date
458 the petition is filed with the head of the governmental entity
459 pursuant to this subsection. The head of the governmental entity
460 may not charge the owner for the request for relief and must
461 forward the request for relief to the special magistrate who is
462 mutually agreed upon by the owner and the governmental entity
463 within 10 days after receipt of the request.

464 (5) The governmental entity with whom a request has been
465 filed shall also serve a copy of the request for relief by
466 United States mail or by hand delivery to:

467 (b) Any substantially affected party who submitted oral or
468 written testimony, sworn or unsworn, of a substantive nature
469 which stated with particularity objections to or support for any
470 development order, comprehensive plan amendment, ~~at issue~~ or
471 enforcement action at issue. Notice under this paragraph is
472 required only if that party indicated a desire to receive notice
473 of any subsequent special magistrate proceedings occurring on
474 the development order, comprehensive plan amendment, or
475 enforcement action. Each governmental entity must maintain in

476 its files relating to each particular development order,
477 comprehensive plan amendment, or enforcement action ~~orders~~ a
478 mailing list of persons who have presented oral or written
479 testimony and who have requested notice.

480 (6) The request for relief must contain:

481 (a) A brief statement of the owner's ~~proposed~~ use of the
482 property.

483 (b) A summary of the development order or comprehensive
484 plan amendment or a description of the enforcement action. A
485 copy of the development order or comprehensive plan amendment or
486 the documentation of an enforcement action at issue must be
487 attached to the request.

488 (c) A brief statement of the impact of the development
489 order, denial of the comprehensive plan amendment, or
490 enforcement action on the ability of the owner to achieve the
491 ~~proposed~~ use of the property.

492 (8) The special magistrate has the sole authority to
493 determine whether a request for relief is complete and was
494 timely filed and may conduct a hearing on whether the request
495 for relief should be dismissed for failing to include the
496 information required in subsection (6). If the special
497 magistrate dismisses the case, the special magistrate shall
498 allow the owner to amend the request and refile. Failure to file
499 an adequate amended request within the time specified shall
500 result in a dismissal with prejudice as to this proceeding. A

501 property owner who is successful in a suit to require a
 502 governmental entity to participate in a proceeding under this
 503 section shall be awarded attorney fees and costs.

504 (10) (a) Before initiating a special magistrate proceeding
 505 to review a local development order, comprehensive plan
 506 amendment, or local enforcement action, the owner must exhaust
 507 all nonjudicial local government administrative appeals if the
 508 appeals take no longer than 4 months. Once nonjudicial local
 509 administrative appeals are exhausted and the development order, ,
 510 comprehensive plan amendment, or enforcement action is final, or
 511 within 4 months after issuance of the development order, denial
 512 of the comprehensive plan amendment, or notice of the
 513 enforcement action if the owner has pursued local administrative
 514 appeals even if the appeals have not been concluded, the owner
 515 may initiate a proceeding under this section. Initiation of a
 516 proceeding tolls the rendition or effectiveness of the
 517 development order, denial of the comprehensive plan amendment,
 518 ~~time for seeking judicial review of a local government~~
 519 ~~development order~~ or enforcement action until the special
 520 magistrate's recommendation is acted upon by the local
 521 government. Election by the owner to file for judicial review of
 522 a local government development order, comprehensive plan
 523 amendment, or enforcement action before ~~prior to~~ initiating a
 524 proceeding under this section waives any right to a special
 525 magistrate proceeding.

526 (b) If an owner requests special magistrate relief from a
527 development order, comprehensive plan amendment, or enforcement
528 action issued by a state or regional agency, the time for
529 challenging agency action under ss. 120.569 and 120.57 is tolled
530 until the agency acts upon the recommendation of the special
531 magistrate or the proceeding is terminated by the owner. If an
532 owner chooses to bring a proceeding under ss. 120.569 and 120.57
533 before initiating a special magistrate proceeding, then the
534 owner waives any right to a special magistrate proceeding unless
535 all parties consent to proceeding to mediation.

536 (11) The initial party to the proceeding is the
537 governmental entity that issues the development order or
538 comprehensive plan amendment to the owner or that is taking the
539 enforcement action. In those instances when the development
540 order, comprehensive plan amendment, or enforcement action is
541 the culmination of a process involving more than one
542 governmental entity or when a complete resolution of all
543 relevant issues would require the active participation of more
544 than one governmental entity, the special magistrate may, upon
545 application of a party, join those governmental entities as
546 parties to the proceeding if it will assist in effecting the
547 purposes of this section, and those governmental entities so
548 joined shall actively participate in the procedure.

549 (12) Within 21 days after the date of notice provided
550 under subsection (5) ~~receipt of the request for relief~~, any

551 owner of land contiguous to the owner's property and any
552 substantially affected person who submitted oral or written
553 testimony, sworn or unsworn, of a substantive nature which
554 stated with particularity objections to or support for the
555 development order, comprehensive plan amendment, or enforcement
556 action at issue may make a written request to participate in the
557 hearing by transmitting such request to the official who signed
558 the notice proceeding. Those persons may be permitted to
559 participate in the hearing but shall not be granted party or
560 intervenor status. The participation of such persons is limited
561 to addressing issues raised regarding alternatives, variances,
562 and other types of adjustment to the development order,
563 comprehensive plan amendment, or enforcement action which may
564 impact their substantial interests, including denial of the
565 development order or comprehensive plan amendment or application
566 of an enforcement action.

567 (13) Each party must make efforts to assure that those
568 persons qualified by training or experience necessary to address
569 issues raised by the request or by the special magistrate and
570 further qualified to address alternatives, variances, and other
571 types of modifications to the development order, comprehensive
572 plan amendment, or enforcement action are present at the
573 hearing.

574 (15) (a) The special magistrate shall hold a hearing within
575 60 ~~45~~ days after his or her receipt of the request for relief

576 unless a different date is agreed to by all the parties. The
577 hearing must be held in the county in which the property is
578 located.

579 (16) (a) Five days after the date on which the special
580 magistrate is selected, or 21 days after the date on which the
581 petition is served ~~Fifteen days following the filing of a~~
582 ~~request for relief, whichever is earlier,~~ the governmental
583 entity that issued the development order or comprehensive plan
584 amendment or that is taking the enforcement action shall file a
585 response to the request for relief with the special magistrate
586 together with a copy to the owner. The response must set forth
587 in reasonable detail the position of the governmental entity
588 regarding the matters alleged by the owner. The response must
589 include a brief statement explaining the public purpose of the
590 regulations on which the development order, comprehensive plan
591 amendment, or enforcement action is based.

592 (17) In all respects, the hearing must be informal and
593 open to the public and does not require the use of an attorney.
594 The hearing must operate at the direction and under the
595 supervision of the special magistrate. The object of the hearing
596 is to focus attention on the impact of the governmental action
597 giving rise to the request for relief and to explore
598 alternatives to the development order, comprehensive plan
599 amendment, or enforcement action and other regulatory efforts by
600 the governmental entities in order to recommend relief, when

601 appropriate, to the owner.

602 (a) The first responsibility of the special magistrate is
603 to facilitate a resolution of the conflict between the owner and
604 governmental entities to the end that some modification of the
605 owner's ~~proposed~~ use of the property or adjustment in the
606 development order, comprehensive plan amendment, or enforcement
607 action or regulatory efforts by one or more of the governmental
608 parties may be reached. Accordingly, the special magistrate
609 shall act as a facilitator or mediator between the parties in an
610 effort to effect a mutually acceptable solution. The parties
611 shall be represented at the mediation by persons with authority
612 to bind their respective parties to a solution, or by persons
613 with authority to recommend a solution directly to the persons
614 with authority to bind their respective parties to a solution.
615 The mediation shall be conducted according to ss. 44.401-44.406.

616 (b) If an acceptable solution is not reached by the
617 parties after the special magistrate's attempt at mediation, the
618 special magistrate shall consider the facts and circumstances
619 set forth in the request for relief and any responses and any
620 other information produced at the hearing in order to determine
621 whether the action by the governmental entity or entities is
622 unreasonable or unfairly burdens the real property.

623 (c) In conducting the hearing, the special magistrate may
624 hear from all parties and witnesses that are necessary to an
625 understanding of the matter. The special magistrate shall weigh

626 all information offered at the hearing.

627 (18) The circumstances to be examined in determining
628 whether the development order, comprehensive plan amendment, or
629 enforcement action, or the development order, comprehensive plan
630 amendment, or enforcement action in conjunction with regulatory
631 efforts of other governmental parties, is unreasonable or
632 unfairly burdens use of the property may include, but are not
633 limited to:

634 (a) The history of the real property, including when it
635 was purchased, how much was purchased, where it is located, the
636 nature of the title, the composition of the property, and how it
637 was initially used.

638 (b) The history or development and use of the real
639 property, including what was developed on the property and by
640 whom, if it was subdivided and how and to whom it was sold,
641 whether plats were filed or recorded, and whether infrastructure
642 and other public services or improvements may have been
643 dedicated to the public.

644 (c) The history of environmental protection and land use
645 controls and other regulations, including how and when the land
646 was classified, how use was proscribed, and what changes in
647 classifications occurred.

648 (d) The present nature and extent of the real property,
649 including its natural and altered characteristics.

650 (e) The reasonable expectations of the owner at the time

651 of acquisition, or immediately before ~~prior to~~ the
652 implementation of the regulation at issue, whichever is later,
653 under the regulations then in effect and under common law.

654 (f) The public purpose sought to be achieved by the
655 development order, comprehensive plan amendment, or enforcement
656 action, including the nature and magnitude of the problem
657 addressed by the underlying regulations on which the development
658 order, comprehensive plan amendment, or enforcement action is
659 based; whether the development order, comprehensive plan
660 amendment, or enforcement action is necessary to the achievement
661 of the public purpose; and whether there are alternative
662 development orders, comprehensive plan amendments, or
663 enforcement action conditions that would achieve the public
664 purpose and allow for reduced restrictions on the use of the
665 property.

666 (g) Uses authorized for and restrictions placed on similar
667 property.

668 (h) Whether the governmental entity attempted to resolve
669 the dispute in good faith, including, but not limited to,
670 adhering to the deadlines provided in this section.

671 ~~(i)-(h)~~ Any other information determined relevant by the
672 special magistrate.

673 (19) Within 14 days after the conclusion of the hearing,
674 or when the parties propose a settlement agreement for entry by
675 the special magistrate pursuant to subsection (22), the special

676 | magistrate shall prepare and file with all parties a written
 677 | recommendation.

678 | (a) If the special magistrate finds and concludes that the
 679 | development order at issue, or the development order,
 680 | comprehensive plan amendment, or enforcement action in
 681 | combination with the actions or regulations of other
 682 | governmental entities, is not unreasonable or does not unfairly
 683 | burden the use of the owner's property, the special magistrate
 684 | must recommend that the development order, comprehensive plan
 685 | amendment, or enforcement action remain undisturbed and the
 686 | proceeding shall end, subject to the owner's retention of all
 687 | other available remedies.

688 | (b) If the special magistrate finds and concludes that the
 689 | development order, comprehensive plan amendment, or enforcement
 690 | action, or the development order, comprehensive plan amendment,
 691 | or enforcement action in combination with the actions or
 692 | regulations of other governmental entities, is unreasonable or
 693 | unfairly burdens use of the owner's property, the special
 694 | magistrate, with the owner's consent to proceed, may recommend
 695 | one or more alternatives that protect the public interest served
 696 | by the development order, comprehensive plan amendment, or
 697 | enforcement action and regulations at issue but allow for
 698 | reduced restraints on the use of the owner's real property,
 699 | including, but not limited to:

700 | 1. An adjustment of land development or permit standards

701 or other provisions controlling the development or use of land.

702 2. Increases or modifications in the density, intensity,
703 or use of areas of development.

704 3. The transfer of development rights.

705 4. Land swaps or exchanges.

706 5. Mitigation, including payments in lieu of onsite
707 mitigation.

708 6. Location on the least sensitive portion of the
709 property.

710 7. Conditioning the amount of development or use
711 permitted.

712 8. A requirement that issues be addressed on a more
713 comprehensive basis than a single ~~proposed~~ use or development.

714 9. Rehearing or reconsideration and issuance of the
715 development order, comprehensive plan amendment, or enforcement
716 action with or without modifications or additional stipulations,
717 or a variance, special exception, or other extraordinary relief,
718 including withdrawal of the enforcement action.

719 10. Purchase of the real property, or an interest therein,
720 by an appropriate governmental entity.

721 (c) If the parties reach a proposed settlement agreement
722 at any time before the special magistrate enters a
723 recommendation, which agreement may remain subject to approval
724 by the governmental entity, the parties may request that the
725 special magistrate transmit the settlement agreement to the

726 governmental entity as the special magistrate's findings and
727 recommendation for consideration and approval by the
728 governmental entity, and the special magistrate need not include
729 the findings or conclusions set forth in paragraph (a) or
730 paragraph (b) ~~This subsection does not prohibit the owner and~~
731 governmental entity from entering into an agreement as to the
732 permissible use of the property prior to the special magistrate
733 entering a recommendation. An agreement for a permissible use
734 must be incorporated in the special magistrate's recommendation.

735 (d) This section provides legislative authority for the
736 governmental entity or tribunal to rehear and reconsider its
737 prior action on a development order, comprehensive plan
738 amendment, or enforcement action pursuant to, and in
739 consideration of, a special magistrate's recommendation
740 regardless of whether existing statutes, rules, ordinances, or
741 regulations provide for such a procedure. Any such rehearing or
742 reconsideration shall be at a public hearing noticed and
743 otherwise conducted in the same manner as the original hearing.
744 The tribunal shall treat the special magistrate's findings, or a
745 settlement agreement, as evidence for modification of its prior
746 development order, comprehensive plan amendment, or enforcement
747 action, and shall provide an opportunity for any person who
748 participated in the original hearing or the special magistrate's
749 proceeding to provide additional evidence and testimony. The
750 tribunal's action on the special magistrate's recommendation

751 shall then become the final order on the development order,
752 comprehensive plan amendment, or enforcement action.

753 (20) The special magistrate's recommendation and findings
754 are ~~is~~ a public record under chapter 119. However, actions or
755 statements of all participants to the special magistrate
756 mediation proceeding ~~proceeding~~ are evidence of an offer to compromise and
757 inadmissible in any proceeding, judicial or administrative.

758 (21) Within 45 days after receipt of the special
759 magistrate's recommendation, the governmental entity responsible
760 for the development order, comprehensive plan amendment, or
761 enforcement action and other governmental entities participating
762 in the proceeding must consult among themselves and each
763 governmental entity must:

764 (a) Accept or modify the recommendation of the special
765 magistrate, including any proposed settlement agreement, as
766 submitted and proceed to implement it by development agreement,
767 when appropriate, by rehearing or reconsidering the development
768 order or enforcement action, or by other method, in the ordinary
769 course and consistent with the rules and procedures of that
770 governmental entity. However, the decision of the governmental
771 entity to accept the recommendation of the special magistrate
772 with respect to rehearing or reconsidering the prior development
773 order or enforcement action or granting a modification,
774 variance, or special exception to the application of statutes,
775 rules, regulations, or ordinances as they would otherwise apply

776 to the subject property does not require an owner to duplicate
 777 previous processes in which the owner has participated in order
 778 to effectuate the granting of the modification, variance, or
 779 special exception;

780 ~~(b) Modify the recommendation as submitted by the special~~
 781 ~~magistrate and proceed to implement it by development agreement,~~
 782 ~~when appropriate, or by other method, in the ordinary course and~~
 783 ~~consistent with the rules and procedures of that governmental~~
 784 ~~entity; or~~

785 (b)(e) Reject the recommendation as submitted by the
 786 special magistrate. Failure to act within 45 days is a rejection
 787 unless the period is extended by agreement of the owner and
 788 issuer of the development order, comprehensive plan amendment,
 789 or enforcement action.

790 (24) The procedure created by this section is not itself,
 791 nor does it create, a judicial cause of action. Once the
 792 governmental entity acts on the special magistrate's
 793 recommendation, the owner may pursue whatever administrative or
 794 judicial remedies are applicable ~~elect to file suit in a court~~
 795 ~~of competent jurisdiction~~. Invoking the procedures of this
 796 section is not a condition precedent to filing a civil action.

797 (25) Regardless of the action the governmental entity
 798 takes on the special magistrate's findings and recommendation, a
 799 recommendation that the development order, comprehensive plan
 800 amendment, or enforcement action, or the development order,

801 comprehensive plan amendment, or enforcement action in
802 combination with other governmental regulatory actions, is
803 unreasonable or unfairly burdens use of the owner's real
804 property may serve as an indication of sufficient hardship to
805 support waivers of or modification, variances, or special
806 exceptions to the application of statutes, rules, regulations,
807 or ordinances to the subject property, whether as a part of the
808 implementation of the recommendation, in a subsequent
809 application, or in an administrative or judicial challenge to
810 the action of the governmental entity. However, the special
811 magistrate's findings and recommendations are not preclusive to
812 any issue or defense in any subsequent administrative or
813 judicial proceeding.

814 (26) A special magistrate's findings and recommendation
815 under this section constitutes data in support of, and a support
816 document for, a comprehensive plan or comprehensive plan
817 amendment, but is not, in and of itself, dispositive of a
818 determination of compliance with chapter 163.

819 (28) Each governmental entity may establish procedural
820 guidelines to govern the conduct of proceedings authorized by
821 this section, which must include, but are not limited to,
822 payment of special magistrate fees and expenses, including the
823 costs of providing notice and effecting service of the request
824 for relief under this section, which shall be borne equally by
825 the governmental entities and the owner. Such guidelines may not

826 modify the requirements and relief provided by this section in
 827 any way.

828 (30) In order to encourage the resolution of disputes, and
 829 regardless of whether the parties are engaged in pending
 830 litigation presently before a court or administrative agency, a
 831 governmental entity may conduct meetings following the
 832 procedures in s. 286.011(8) at any time after the governmental
 833 entity responds in writing to a request for relief to discuss
 834 settlement strategies, but shall not take action on a proposed
 835 settlement agreement except at a noticed public meeting ~~This~~
 836 ~~section applies only to development orders issued, modified, or~~
 837 ~~amended, or to enforcement actions issued, on or after October~~
 838 ~~1, 1995.~~

839 Section 4. Subsection (4) of section 163.3181, Florida
 840 Statutes, is amended to read:

841 163.3181 Public participation in the comprehensive
 842 planning process; intent; alternative dispute resolution.-

843 (4) If a local government denies an owner's request for an
 844 amendment to the comprehensive plan which is applicable to the
 845 property of the owner, the owner may initiate a dispute
 846 resolution proceeding under s. 70.51 ~~the local government must~~
 847 ~~afford an opportunity to the owner for informal mediation or~~
 848 ~~other alternative dispute resolution. The costs of the mediation~~
 849 ~~or other alternative dispute resolution shall be borne equally~~
 850 ~~by the local government and the owner. If the owner requests~~

851 ~~mediation, the time for bringing a judicial action is tolled~~
852 ~~until the completion of the mediation or 120 days, whichever is~~
853 ~~earlier.~~

854 Section 5. Subsection (4) of section 337.25, Florida
855 Statutes, is amended to read:

856 337.25 Acquisition, lease, and disposal of real and
857 personal property.—

858 (4) The department may convey, in the name of the state,
859 any land, building, or other property, real or personal, which
860 was acquired under subsection (1) and which the department has
861 determined is not needed for the construction, operation, and
862 maintenance of a transportation facility. When such a
863 determination has been made, property may be disposed of through
864 negotiations, sealed competitive bids, auctions, or any other
865 means the department deems to be in its best interest, with due
866 advertisement for property valued by the department at greater
867 than \$10,000. A sale may not occur at a price less than the
868 department's current estimate of value, except as provided in
869 paragraphs (a)-(d). The department may afford a right of first
870 refusal to the local government or other political subdivision
871 in the jurisdiction in which the parcel is situated, except in a
872 conveyance transacted under paragraph (a), paragraph (c), or
873 paragraph (e). Notwithstanding any provision of this section to
874 the contrary, before any conveyance under this subsection may be
875 made, except a conveyance under paragraph (a) or paragraph (c),

876 the department shall first afford a right of first refusal to
877 the previous property owner for the department's current
878 estimate of value of the property. The right of first refusal
879 shall be made in writing and sent to the previous owner via
880 certified mail or hand delivery, effective upon receipt. The
881 right of first refusal shall provide the previous owner with a
882 minimum of 15 days to exercise the right in writing and sent to
883 the originator of the offer via certified mail or hand delivery,
884 effective upon dispatch. The previous owner shall have a minimum
885 of 60 days after exercising its right of first refusal to close.
886 If the previous owner does not exercise its right of first
887 refusal, the department may not deviate in any material respect
888 from the offer made to the previous owner unless it first
889 provides the previous owner with the right of first refusal
890 under the new terms. The same procedure shall apply to any
891 subsequent iterations of the sale terms.

892 (a) If the property has been donated to the state for
893 transportation purposes and a transportation facility has not
894 been constructed for at least 5 years, plans have not been
895 prepared for the construction of such facility, and the property
896 is not located in a transportation corridor, the governmental
897 entity may authorize reconveyance of the donated property for no
898 consideration to the original donor or the donor's heirs,
899 successors, assigns, or representatives.

900 (b) If the property is to be used for a public purpose,

901 the property may be conveyed without consideration to a
902 governmental entity.

903 (c) If the property was originally acquired specifically
904 to provide replacement housing for persons displaced by
905 transportation projects, the department may negotiate for the
906 sale of such property as replacement housing. As compensation,
907 the state shall receive at least its investment in such property
908 or the department's current estimate of value, whichever is
909 lower. It is expressly intended that this benefit be extended
910 only to persons actually displaced by the project. Dispositions
911 to any other person must be for at least the department's
912 current estimate of value.

913 (d) If the department determines that the property
914 requires significant costs to be incurred or that continued
915 ownership of the property exposes the department to significant
916 liability risks, the department may use the projected
917 maintenance costs over the next 10 years to offset the
918 property's value in establishing a value for disposal of the
919 property, even if that value is zero.

920 (e) If, at the discretion of the department, a sale to a
921 person other than an abutting property owner would be
922 inequitable, the property may be sold to the abutting owner for
923 the department's current estimate of value.

924 Section 6. This act shall take effect July 1, 2020.