

By Senator Albritton

26-01487-21

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1 A bill to be entitled
2 An act relating to governmental actions affecting
3 private property rights; amending s. 70.001, F.S.;
4 revising notice of claim requirements for property
5 owners; creating a presumption that certain settlement
6 offers protect the public interest; specifying that
7 property owners retain the option to have a court
8 determine awards of compensation; authorizing property
9 owners to bring claims against governmental entities
10 in certain circumstances; providing that property
11 owners are not required to submit formal development
12 applications or proceed through formal application
13 processes to bring claims in specified circumstances;
14 amending s. 70.45, F.S.; defining the term "imposed"
15 or "imposition"; authorizing property owners to bring
16 actions to declare prohibited exactions invalid;
17 providing applicability; amending s. 70.51, F.S.;
18 providing and revising definitions; providing for
19 resolution of disputes concerning comprehensive plan
20 amendments under the Florida Land Use and
21 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 related to the
27 tolling of certain administrative proceedings;
28 revising the time periods for a governmental entity to
29 respond to a request for relief; requiring mediations

26-01487-21

20211876__

30 to be conducted according to specified provisions;
31 requiring 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 related to
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 related to 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; providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Subsections (4), (5), and (6) and paragraph (a)
55 of subsection (11) of section 70.001, Florida Statutes, are
56 amended to read:

57 70.001 Private property rights protection.-

58 (4) (a) Not fewer ~~less~~ than 90 ~~150~~ days before ~~prior to~~

26-01487-21

20211876__

59 filing an action under this section against a governmental
60 entity, a property owner who seeks compensation under this
61 section must present the claim in writing to the head of the
62 governmental entity, ~~except that if the property is classified~~
63 ~~as agricultural pursuant to s. 193.461, the notice period is 90~~
64 ~~days~~. The property owner must submit, along with the claim, a
65 bona fide, valid appraisal that supports the claim and
66 demonstrates the loss in fair market value to the real property.
67 If the action of government is the culmination of a process that
68 involves more than one governmental entity, or if a complete
69 resolution of all relevant issues, in the view of the property
70 owner or in the view of a governmental entity to whom a claim is
71 presented, requires the active participation of more than one
72 governmental entity, the property owner shall present the claim
73 as provided in this section to each of the governmental
74 entities.

75 (b) The governmental entity shall provide written notice of
76 the claim to all parties to any administrative action that gave
77 rise to the claim, and to owners of real property contiguous to
78 the owner's property at the addresses listed on the most recent
79 county tax rolls. Within 15 days after the claim is presented,
80 the governmental entity shall report the claim in writing to the
81 Department of Legal Affairs, and shall provide the department
82 with the name, address, and telephone number of the employee of
83 the governmental entity from whom additional information may be
84 obtained about the claim during the pendency of the claim and
85 any subsequent judicial action.

86 (c) During the 90-day-notice period ~~or the 150-day-notice~~
87 ~~period~~, unless extended by agreement of the parties, the

26-01487-21

20211876__

88 governmental entity shall make a written settlement offer to
89 effectuate:

90 1. An adjustment of land development or permit standards or
91 other provisions controlling the development or use of land.

92 2. Increases or modifications in the density, intensity, or
93 use of areas of development.

94 3. The transfer of developmental rights.

95 4. Land swaps or exchanges.

96 5. Mitigation, including payments in lieu of onsite
97 mitigation.

98 6. Location on the least sensitive portion of the property.

99 7. Conditioning the amount of development or use permitted.

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

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

104 10. Purchase of the real property, or an interest therein,
105 by an appropriate governmental entity or payment of
106 compensation.

107 11. No changes to the action of the governmental entity.

108
109 If the property owner accepts a settlement offer, ~~either~~ before
110 or after filing an action, the governmental entity may implement
111 the settlement offer by appropriate development agreement; by
112 issuing a variance, a special exception, or any other
113 extraordinary relief; or by any other appropriate method,
114 subject to paragraph (d).

115 (d)1. When a governmental entity enters into a settlement
116 agreement under this section which would have the effect of a

26-01487-21

20211876__

117 modification, variance, or a special exception to the
118 application of a rule, regulation, or ordinance as it would
119 otherwise apply to the subject real property, the relief granted
120 shall protect the public interest served by the regulations at
121 issue and be the appropriate relief necessary to prevent the
122 governmental regulatory effort from inordinately burdening the
123 real property. Settlement offers made pursuant to paragraph (c)
124 shall be presumed to protect the public interest.

125 2. When a governmental entity enters into a settlement
126 agreement under this section which would have the effect of
127 contravening the application of a statute as it would otherwise
128 apply to the subject real property, the governmental entity and
129 the property owner shall jointly file an action in the circuit
130 court where the real property is located for approval of the
131 settlement agreement by the court to ensure that the relief
132 granted protects the public interest served by the statute at
133 issue and is the appropriate relief necessary to prevent the
134 governmental regulatory effort from inordinately burdening the
135 real property.

136
137 This paragraph applies to any settlement reached between a
138 property owner and a governmental entity regardless of when the
139 settlement agreement was entered so long as the agreement fully
140 resolves all claims asserted under this section.

141 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
142 ~~notice period~~, unless a settlement offer is accepted by the
143 property owner, each of the governmental entities provided
144 notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a
145 written statement of allowable uses identifying the allowable

26-01487-21

20211876__

146 uses to which the subject property may be put. The failure of
147 the governmental entity to issue a statement of allowable uses
148 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~
149 ~~period~~ shall be deemed a denial for purposes of allowing a
150 property owner to file an action in the circuit court under this
151 section. If a written statement of allowable uses is issued, it
152 constitutes the last prerequisite to judicial review for the
153 purposes of the judicial proceeding created by this section,
154 notwithstanding the availability of other administrative
155 remedies.

156 (b) If the property owner rejects the settlement offer and
157 the statement of allowable uses of the governmental entity or
158 entities, the property owner may file a claim for compensation
159 in the circuit court, a copy of which shall be served
160 contemporaneously on the head of each of the governmental
161 entities that made a settlement offer and a statement of
162 allowable uses that was rejected by the property owner. Actions
163 under this section shall be brought only in the county where the
164 real property is located.

165 (6) (a) The circuit court shall determine whether an
166 existing use of the real property or a vested right to a
167 specific use of the real property existed and, if so, whether,
168 considering the settlement offer and statement of allowable
169 uses, the governmental entity or entities have inordinately
170 burdened the real property. If the actions of more than one
171 governmental entity, considering any settlement offers and
172 statement of allowable uses, are responsible for the action that
173 imposed the inordinate burden on the real property of the
174 property owner, the court shall determine the percentage of

26-01487-21

20211876__

175 responsibility each such governmental entity bears with respect
176 to the inordinate burden. A governmental entity may take an
177 interlocutory appeal of the court's determination that the
178 action of the governmental entity has resulted in an inordinate
179 burden. An interlocutory appeal does not automatically stay the
180 proceedings; however, the court may stay the proceedings during
181 the pendency of the interlocutory appeal. If the governmental
182 entity does not prevail in the interlocutory appeal, the court
183 shall award to the prevailing property owner the costs and a
184 reasonable attorney fee incurred by the property owner in the
185 interlocutory appeal.

186 (b) Following its determination of the percentage of
187 responsibility of each governmental entity, and following the
188 resolution of any interlocutory appeal, the court shall impanel
189 a jury to determine the total amount of compensation to the
190 property owner for the loss in value due to the inordinate
191 burden to the real property. The property owner retains the
192 option to forego a jury and elect to have the court determine
193 the award of compensation. The award of compensation shall be
194 determined by calculating the difference in the fair market
195 value of the real property, as it existed at the time of the
196 governmental action at issue, as though the owner had the
197 ability to attain the reasonable investment-backed expectation
198 or was not left with uses that are unreasonable, whichever the
199 case may be, and the fair market value of the real property, as
200 it existed at the time of the governmental action at issue, as
201 inordinately burdened, considering the settlement offer together
202 with the statement of allowable uses, of the governmental entity
203 or entities. In determining the award of compensation,

26-01487-21

20211876__

204 consideration may not be given to business damages relative to
205 any development, activity, or use that the action of the
206 governmental entity or entities, considering the settlement
207 offer together with the statement of allowable uses has
208 restricted, limited, or prohibited. The award of compensation
209 shall include a reasonable award of prejudgment interest from
210 the date the claim was presented to the governmental entity or
211 entities as provided in subsection (4).

212 (c)1. In any action filed pursuant to this section, the
213 property owner is entitled to recover reasonable costs and
214 attorney fees incurred by the property owner, from the
215 governmental entity or entities, according to their
216 proportionate share as determined by the court, from the date of
217 the presentation of the claim to the head of the governmental
218 entity pursuant to paragraph (4) (a) the filing of the circuit
219 ~~court action~~, if the property owner prevails in the action ~~and~~
220 ~~the court determines that the settlement offer, including the~~
221 ~~statement of allowable uses, of the governmental entity or~~
222 ~~entities did not constitute a bona fide offer to the property~~
223 ~~owner which reasonably would have resolved the claim, based upon~~
224 ~~the knowledge available to the governmental entity or entities~~
225 ~~and the property owner during the 90-day notice period or the~~
226 ~~150-day notice period.~~

227 2. In any action filed pursuant to this section, the
228 governmental entity or entities are entitled to recover
229 reasonable costs and attorney fees incurred by the governmental
230 entity or entities from the date of the filing of the circuit
231 court action, if the governmental entity or entities prevail in
232 the action and the court determines that the property owner did

26-01487-21

20211876__

233 not accept a bona fide settlement offer, including the statement
234 of allowable uses, which reasonably would have resolved the
235 claim fairly to the property owner if the settlement offer had
236 been accepted by the property owner, based upon the knowledge
237 available to the governmental entity or entities and the
238 property owner during the 90-day-notice period ~~or the 150-day-~~
239 ~~notice period.~~

240 3. The determination of total reasonable costs and attorney
241 fees pursuant to this paragraph shall be made by the court and
242 not by the jury. Any proposed settlement offer or any proposed
243 decision, except for the final written settlement offer or the
244 final written statement of allowable uses, and any negotiations
245 or rejections in regard to the formulation either of the
246 settlement offer or the statement of allowable uses, are
247 inadmissible in the subsequent proceeding established by this
248 section except for the purposes of the determination pursuant to
249 this paragraph.

250 (d) Within 15 days after the execution of any settlement
251 pursuant to this section, or the issuance of any judgment
252 pursuant to this section, the governmental entity shall provide
253 a copy of the settlement or judgment to the Department of Legal
254 Affairs.

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

259 (a) For purposes of determining when this 1-year claim
260 period accrues:

261 1.a. A law or regulation is first applied upon enactment

26-01487-21

20211876__

262 and notice as provided for in this sub-subparagraph ~~subparagraph~~
263 if the impact of the law or regulation on the real property is
264 clear and unequivocal in its terms and notice is provided by
265 mail to the affected property owner or registered agent at the
266 address referenced in the jurisdiction's most current ad valorem
267 tax records. The fact that the law or regulation could be
268 modified, varied, or altered under any other process or
269 procedure does not preclude the impact of the law or regulation
270 on a property from being clear or unequivocal pursuant to this
271 sub-subparagraph ~~subparagraph~~. Any notice under this sub-
272 subparagraph ~~subparagraph~~ shall be provided after the enactment
273 of the law or regulation and shall inform the property owner or
274 registered agent that the law or regulation may impact the
275 property owner's existing property rights and that the property
276 owner may have only 1 year after ~~from~~ receipt of the notice to
277 pursue any rights established under this section.

278 b. If the notice required in sub-subparagraph a. is not
279 provided to the property owner, the property owner may at any
280 time after enactment notify the head of the governmental entity
281 in writing via certified mail and, if available, e-mail that the
282 property owner deems the impact of the law or regulation on the
283 property owner's real property to be clear and unequivocal in
284 its terms and, as such, restrictive of uses allowed on the
285 property before the enactment. Within 45 days after receipt of a
286 notice under this sub-subparagraph, the governmental entity in
287 receipt of the notice must respond in writing via certified mail
288 and, if available, e-mail to describe the limitations imposed on
289 the property by the law or regulation. The property owner is not
290 required to formally pursue an application for a development

26-01487-21

20211876__

291 order, development permit, or building permit, as such will be
292 deemed a waste of resources and shall not be a prerequisite to
293 bringing a claim pursuant to paragraph (4) (a). However, any such
294 claim must be filed within 1 year after the date of the property
295 owner's receipt of the notice from the governmental entity of
296 the limitations on use imposed on the real property.

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

300 Section 2. Present paragraphs (c), (d), and (e) of
301 subsection (1) of section 70.45, Florida Statutes, are
302 redesignated as paragraphs (d), (e), and (f), respectively, a
303 new paragraph (c) is added to that subsection, and subsections
304 (2), (4), and (5) of that section are amended, to read:

305 70.45 Governmental exactions.—

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

307 (c) "Imposed" or "imposition" as it relates to a prohibited
308 exaction or condition of approval refers to the time at which
309 the property owner must comply with the prohibited exaction or
310 condition of approval.

311 (2) In addition to other remedies available in law or
312 equity, a property owner may bring an action in a court of
313 competent jurisdiction under this section to declare a
314 prohibited exaction invalid and recover damages caused by a
315 prohibited exaction. Such action may ~~not~~ be brought by a
316 property owner at the property owner's discretion when until a
317 prohibited exaction is actually imposed or when it is required
318 in writing as a final condition of approval for the requested
319 use of real property. The right to bring an action under this

26-01487-21

20211876__

320 section may not be waived. This section does not apply to impact
321 fees adopted under s. 163.31801 or non-ad valorem assessments as
322 defined in s. 197.3632.

323 (4) For each claim filed under this section, the
324 governmental entity has the burden of proving that the
325 challenged exaction has an essential nexus to a legitimate
326 public purpose and is roughly proportionate to the impacts of
327 the proposed use that the governmental entity is seeking to
328 avoid, minimize, or mitigate. The property owner has the burden
329 of proving damages that result from a prohibited exaction.

330 (5) The court may award attorney fees and costs to the
331 prevailing party; however, if the court determines that the
332 challenged exaction which is the subject of the claim lacks an
333 essential nexus to a legitimate public purpose, the court shall
334 award attorney fees and costs to the property owner.

335 Section 3. The amendments made by this act to ss. 70.001
336 and 70.45, Florida Statutes, apply to claims made in response to
337 actions taken by governmental entities on or after July 1, 2021.

338 Section 4. Subsections (2), (3), and (4), paragraph (b) of
339 subsection (5), paragraphs (a), (b), and (c) of subsection (6),
340 subsections (8) and (10) through (13), paragraph (a) of
341 subsection (15), paragraph (a) of subsection (16), and
342 subsections (17) through (21), (24), (25), (26), (28), and (30)
343 of section 70.51, Florida Statutes, are amended to read:

344 70.51 Land use and environmental dispute resolution.—

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

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

348 (b) ~~(a)~~ "Development order" means any order, or notice of

26-01487-21

20211876__

349 proposed state or regional governmental agency action, which is
350 or will have the effect of granting, denying, or granting with
351 conditions an application for a development permit, and includes
352 the rezoning of a specific parcel. ~~Actions by the state or a~~
353 ~~local government on comprehensive plan amendments are not~~
354 ~~development orders.~~

355 (c) ~~(b)~~ "Development permit" means any building permit,
356 zoning permit, subdivision approval, certification, special
357 exception, variance, or any other similar action of local
358 government, as well as any permit authorized to be issued under
359 state law by state, regional, or local government which has the
360 effect of authorizing the development of real property
361 including, but not limited to, programs implementing chapters
362 125, 161, 163, 166, 187, 258, 372, 373, 378, 380, and 403.

363 (h) ~~(e)~~ "Special magistrate" means a person selected by the
364 parties to perform the duties prescribed in this section. The
365 special magistrate must be a resident of the state and possess
366 experience and expertise in mediation and at least one of the
367 following disciplines and a working familiarity with the others:
368 land use and environmental permitting, land planning, land
369 economics, local and state government organization and powers,
370 and the law governing the same. A special magistrate is not
371 required to be a certified mediator.

372 (d) "Enforcement action" means any civil or administrative
373 action by a governmental entity intended to enforce any law,
374 ordinance, regulation, rule, or policy related to the
375 development or use of real property. The term includes, but is
376 not limited to, any action taken under chapter 162, such as a
377 notice of violation, order, or placement of a lien, or the

26-01487-21

20211876__

378 service of a notice of violation or an order to correct a
379 condition, or an equivalent action, by a state agency.

380 (g)~~(d)~~ "Owner" means a person with a legal or equitable
381 interest in real property who filed an application for a
382 development permit for the property at the state, regional, or
383 local level and who received a development order, who filed a
384 comprehensive plan amendment, or who holds legal title to or who
385 has a legal or equitable interest in real property that is
386 subject to, or is otherwise a person subject to, an enforcement
387 action of a governmental entity.

388 (i)~~(e)~~ "Proposed Use of the property" means the proposal
389 filed by the owner to develop his or her real property or the
390 actual use of the property giving rise to an enforcement action.

391 (e)~~(f)~~ "Governmental entity" includes an agency of the
392 state, a regional or a local government created by the State
393 Constitution or by general or special act, any county or
394 municipality, or any other entity that independently exercises
395 governmental authority. The term does not include the United
396 States or any of its agencies.

397 (f)~~(g)~~ "Land" or "real property" means land and includes
398 any appurtenances and improvements to the land, including any
399 other relevant real property in which the owner had a relevant
400 interest.

401 (3) Any owner who believes that a development order, either
402 separately or in conjunction with other development orders, a
403 comprehensive plan amendment, or an enforcement action of a
404 governmental entity~~,~~ is unreasonable or unfairly burdens the use
405 of the owner's real property~~,~~ may apply within 30 days after
406 receipt of the order, comprehensive plan amendment, or notice of

26-01487-21

20211876__

407 the governmental action for relief under this section.

408 (4) To initiate a proceeding under this section, an owner
409 must file a request for relief with the elected or appointed
410 head of the governmental entity that issued the development
411 order or orders, denied the comprehensive plan amendment, or
412 ~~that~~ initiated the enforcement action. Filing may be by
413 electronic mail to the official e-mail address of the head of
414 the governmental entity, by hand delivery to such person, or by
415 United States mail to such person at his or her official
416 address. Formal service of process is not required for such
417 filing. The process shall be considered initiated as of the date
418 the petition is filed with the head of the governmental entity
419 pursuant to this subsection. The head of the governmental entity
420 may not charge the owner for the request for relief and must
421 forward the request for relief to the special magistrate who is
422 mutually agreed upon by the owner and the governmental entity
423 within 10 days after receipt of the request.

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

427 (b) Any substantially affected party who submitted oral or
428 written testimony, sworn or unsworn, of a substantive nature
429 which stated with particularity objections to or support for any
430 development order, comprehensive plan amendment, ~~at issue~~ or
431 enforcement action at issue. Notice under this paragraph is
432 required only if that party indicated a desire to receive notice
433 of any subsequent special magistrate proceedings occurring on
434 the development order, comprehensive plan amendment, or
435 enforcement action. Each governmental entity must maintain in

26-01487-21

20211876__

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

440 (6) The request for relief must contain:

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

443 (b) A summary of the development order or comprehensive
444 plan amendment or a description of the enforcement action. A
445 copy of the development order or comprehensive plan amendment or
446 the documentation of an enforcement action at issue must be
447 attached to the request.

448 (c) A brief statement of the impact of the development
449 order, denial of the comprehensive plan amendment, or
450 enforcement action on the ability of the owner to achieve the
451 ~~proposed~~ use of the property.

452 (8) The special magistrate has the sole authority to
453 determine whether a request for relief is complete and was
454 timely filed and may conduct a hearing on whether the request
455 for relief should be dismissed for failing to include the
456 information required in subsection (6). If the special
457 magistrate dismisses the case, the special magistrate shall
458 allow the owner to amend the request and refile. Failure to file
459 an adequate amended request within the time specified shall
460 result in a dismissal with prejudice as to this proceeding. A
461 property owner who is successful in a suit to require a
462 governmental entity to participate in a proceeding under this
463 section shall be awarded attorney fees and costs.

464 (10) (a) Before initiating a special magistrate proceeding

26-01487-21

20211876__

465 to review a local development order, comprehensive plan
466 amendment, or local enforcement action, the owner must exhaust
467 all nonjudicial local government administrative appeals if the
468 appeals take no longer than 4 months. Once nonjudicial local
469 administrative appeals are exhausted and the development order,
470 comprehensive plan amendment, or enforcement action is final, or
471 within 4 months after issuance of the development order, denial
472 of the comprehensive plan amendment, or notice of the
473 enforcement action if the owner has pursued local administrative
474 appeals even if the appeals have not been concluded, the owner
475 may initiate a proceeding under this section. Initiation of a
476 proceeding tolls rendition or effectiveness of the development
477 order, denial of the comprehensive plan amendment, the time for
478 seeking judicial review of a local government development order
479 or enforcement action until the special magistrate's
480 recommendation is acted upon by the local government. Election
481 by the owner to file for judicial review of a local government
482 development order, comprehensive plan amendment, or enforcement
483 action before ~~prior to~~ initiating a proceeding under this
484 section waives any right to a special magistrate proceeding.

485 (b) If an owner requests special magistrate relief from a
486 development order, comprehensive plan amendment, or enforcement
487 action issued by a state or regional agency, the time for
488 challenging agency action under ss. 120.569 and 120.57 is tolled
489 until the agency acts upon the recommendation of the special
490 magistrate or the proceeding is terminated by the owner. If an
491 owner chooses to bring a proceeding under ss. 120.569 and 120.57
492 before initiating a special magistrate proceeding, then the
493 owner waives any right to a special magistrate proceeding unless

26-01487-21

20211876__

494 all parties consent to proceeding to mediation.

495 (11) The initial party to the proceeding is the
496 governmental entity that issues the development order or
497 comprehensive plan amendment to the owner or that is taking the
498 enforcement action. In those instances when the development
499 order, comprehensive plan amendment, or enforcement action is
500 the culmination of a process involving more than one
501 governmental entity or when a complete resolution of all
502 relevant issues would require the active participation of more
503 than one governmental entity, the special magistrate may, upon
504 application of a party, join those governmental entities as
505 parties to the proceeding if it will assist in effecting the
506 purposes of this section, and those governmental entities so
507 joined shall actively participate in the procedure.

508 (12) Within 21 days after the date on which the notice was
509 provided under subsection (5) ~~receipt of the request for relief~~,
510 any owner of land contiguous to the owner's property and any
511 substantially affected person who submitted oral or written
512 testimony, sworn or unsworn, of a substantive nature which
513 stated with particularity objections to or support for the
514 development order, comprehensive plan amendment, or enforcement
515 action at issue may make a written request to participate in the
516 hearing by transmitting such request to the official who signed
517 the notice ~~proceeding~~. Those persons may be permitted to
518 participate in the hearing but shall not be granted party or
519 intervenor status. The participation of such persons is limited
520 to addressing issues raised regarding alternatives, variances,
521 and other types of adjustment to the development order,
522 comprehensive plan amendment, or enforcement action which may

26-01487-21

20211876__

523 impact their substantial interests, including denial of the
524 development order or comprehensive plan amendment or application
525 of an enforcement action.

526 (13) Each party must make efforts to assure that those
527 persons qualified by training or experience necessary to address
528 issues raised by the request or by the special magistrate and
529 further qualified to address alternatives, variances, and other
530 types of modifications to the development order, comprehensive
531 plan amendment, or enforcement action are present at the
532 hearing.

533 (15) (a) The special magistrate shall hold a hearing within
534 60 ~~45~~ days after his or her receipt of the request for relief
535 unless a different date is agreed to by all the parties. The
536 hearing must be held in the county in which the property is
537 located.

538 (16) (a) Five days after the date on which the special
539 magistrate is selected, or 21 days after the date on which the
540 petition is served ~~Fifteen days following the filing of a~~
541 ~~request for relief, whichever is earlier,~~ the governmental
542 entity that issued the development order or comprehensive plan
543 amendment or that is taking the enforcement action shall file a
544 response to the request for relief with the special magistrate
545 together with a copy to the owner. The response must set forth
546 in reasonable detail the position of the governmental entity
547 regarding the matters alleged by the owner. The response must
548 include a brief statement explaining the public purpose of the
549 regulations on which the development order, comprehensive plan
550 amendment, or enforcement action is based.

551 (17) In all respects, the hearing must be informal and open

26-01487-21

20211876__

552 to the public and does not require the use of an attorney. The
553 hearing must operate at the direction and under the supervision
554 of the special magistrate. The object of the hearing is to focus
555 attention on the impact of the governmental action giving rise
556 to the request for relief and to explore alternatives to the
557 development order, comprehensive plan amendment, or enforcement
558 action and other regulatory efforts by the governmental entities
559 in order to recommend relief, when appropriate, to the owner.

560 (a) The first responsibility of the special magistrate is
561 to facilitate a resolution of the conflict between the owner and
562 governmental entities to the end that some modification of the
563 owner's ~~proposed~~ use of the property or adjustment in the
564 development order, comprehensive plan amendment, or enforcement
565 action or regulatory efforts by one or more of the governmental
566 parties may be reached. Accordingly, the special magistrate
567 shall act as a facilitator or mediator between the parties in an
568 effort to effect a mutually acceptable solution. The parties
569 shall be represented at the mediation by persons with authority
570 to bind their respective parties to a solution, or by persons
571 with authority to recommend a solution directly to the persons
572 with authority to bind their respective parties to a solution.
573 The mediation shall be conducted according to ss. 44.401-44.406.

574 (b) If an acceptable solution is not reached by the parties
575 after the special magistrate's attempt at mediation, the special
576 magistrate shall consider the facts and circumstances set forth
577 in the request for relief and any responses and any other
578 information produced at the hearing in order to determine
579 whether the action by the governmental entity or entities is
580 unreasonable or unfairly burdens the real property.

26-01487-21

20211876__

581 (c) In conducting the hearing, the special magistrate may
582 hear from all parties and witnesses that are necessary to an
583 understanding of the matter. The special magistrate shall weigh
584 all information offered at the hearing.

585 (18) The circumstances to be examined in determining
586 whether the development order, comprehensive plan amendment, or
587 enforcement action, or the development order, comprehensive plan
588 amendment, or enforcement action in conjunction with regulatory
589 efforts of other governmental parties, is unreasonable or
590 unfairly burdens use of the property may include, but are not
591 limited to:

592 (a) The history of the real property, including when it was
593 purchased, how much was purchased, where it is located, the
594 nature of the title, the composition of the property, and how it
595 was initially used.

596 (b) The history or development and use of the real
597 property, including what was developed on the property and by
598 whom, if it was subdivided and how and to whom it was sold,
599 whether plats were filed or recorded, and whether infrastructure
600 and other public services or improvements may have been
601 dedicated to the public.

602 (c) The history of environmental protection and land use
603 controls and other regulations, including how and when the land
604 was classified, how use was proscribed, and what changes in
605 classifications occurred.

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

608 (e) The reasonable expectations of the owner at the time of
609 acquisition, or immediately before ~~prior to~~ the implementation

26-01487-21

20211876__

610 of the regulation at issue, whichever is later, under the
611 regulations then in effect and under common law.

612 (f) The public purpose sought to be achieved by the
613 development order, comprehensive plan amendment, or enforcement
614 action, including the nature and magnitude of the problem
615 addressed by the underlying regulations on which the development
616 order, comprehensive plan amendment, or enforcement action is
617 based; whether the development order, comprehensive plan
618 amendment, or enforcement action is necessary to the achievement
619 of the public purpose; and whether there are alternative
620 development orders, comprehensive plan amendments, or
621 enforcement action conditions that would achieve the public
622 purpose and allow for reduced restrictions on the use of the
623 property.

624 (g) Uses authorized for and restrictions placed on similar
625 property.

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

629 (i) ~~(h)~~ Any other information determined relevant by the
630 special magistrate.

631 (19) Within 14 days after the conclusion of the hearing, or
632 when the parties propose a settlement agreement for entry by the
633 special magistrate pursuant to subsection (22), the special
634 magistrate shall prepare and file with all parties a written
635 recommendation.

636 (a) If the special magistrate finds and concludes that the
637 development order at issue, or the development order,
638 comprehensive plan amendment, or enforcement action in

26-01487-21

20211876__

639 combination with the actions or regulations of other
640 governmental entities, is not unreasonable or does not unfairly
641 burden the use of the owner's property, the special magistrate
642 must recommend that the development order, comprehensive plan
643 amendment, or enforcement action remain undisturbed and the
644 proceeding shall end, subject to the owner's retention of all
645 other available remedies.

646 (b) If the special magistrate finds and concludes that the
647 development order, comprehensive plan amendment, or enforcement
648 action, or the development order, comprehensive plan amendment,
649 or enforcement action in combination with the actions or
650 regulations of other governmental entities, is unreasonable or
651 unfairly burdens use of the owner's property, the special
652 magistrate, with the owner's consent to proceed, may recommend
653 one or more alternatives that protect the public interest served
654 by the development order, comprehensive plan amendment, or
655 enforcement action and regulations at issue but allow for
656 reduced restraints on the use of the owner's real property,
657 including, but not limited to:

658 1. An adjustment of land development or permit standards or
659 other provisions controlling the development or use of land.

660 2. Increases or modifications in the density, intensity, or
661 use of areas of development.

662 3. The transfer of development rights.

663 4. Land swaps or exchanges.

664 5. Mitigation, including payments in lieu of onsite
665 mitigation.

666 6. Location on the least sensitive portion of the property.

667 7. Conditioning the amount of development or use permitted.

26-01487-21

20211876__

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

670 9. Rehearing or reconsideration and issuance of the
671 development order, comprehensive plan amendment, or enforcement
672 action with or without modifications or additional stipulations,
673 or a variance, special exception, or other extraordinary relief,
674 including withdrawal of the enforcement action.

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

677 (c) If the parties reach a proposed settlement agreement at
678 any time before the special magistrate enters a recommendation,
679 which agreement may remain subject to approval by the
680 governmental entity, the parties may request that the special
681 magistrate transmit the settlement agreement to the governmental
682 entity as the special magistrate's findings and recommendation
683 for consideration and approval by the governmental entity, and
684 the special magistrate need not include the findings or
685 conclusions set forth in paragraph (a) or paragraph (b) This
686 ~~subsection does not prohibit the owner and governmental entity~~
687 ~~from entering into an agreement as to the permissible use of the~~
688 ~~property prior to the special magistrate entering a~~
689 ~~recommendation. An agreement for a permissible use must be~~
690 ~~incorporated in the special magistrate's recommendation.~~

691 (d) This section provides legislative authority for the
692 governmental entity or tribunal to rehear and reconsider its
693 prior action on a development order, comprehensive plan
694 amendment, or enforcement action pursuant to, and in
695 consideration of, a special magistrate's recommendation,
696 regardless of whether existing statutes, rules, ordinances, or

26-01487-21

20211876__

697 regulations provide for such a procedure. Any such rehearing or
698 reconsideration shall be at a public hearing noticed and
699 otherwise conducted in the same manner as the original hearing.
700 The tribunal shall treat the special magistrate's findings, or a
701 settlement agreement, as evidence for modification of its prior
702 development order, comprehensive plan amendment, or enforcement
703 action, and shall provide an opportunity for any person who
704 participated in the original hearing or the special magistrate's
705 proceeding to provide additional evidence and testimony. The
706 tribunal's action on the special magistrate's recommendation
707 shall then become the final order on the development order,
708 comprehensive plan amendment, or enforcement action.

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

714 (21) Within 45 days after receipt of the special
715 magistrate's findings and recommendation, the governmental
716 entity responsible for the development order, comprehensive plan
717 amendment, or enforcement action and other governmental entities
718 participating in the proceeding must consult among themselves
719 and each governmental entity must:

720 (a) Accept or modify the recommendation of the special
721 magistrate, including any proposed settlement agreement, as
722 submitted and proceed to implement it by development agreement,
723 when appropriate, by rehearing or reconsidering the development
724 order or enforcement action, or by other method, in the ordinary
725 course and consistent with the rules and procedures of that

26-01487-21

20211876__

726 governmental entity. However, the decision of the governmental
727 entity to accept the recommendation of the special magistrate
728 with respect to rehearing or reconsidering the prior development
729 order or enforcement action or granting a modification,
730 variance, or special exception to the application of statutes,
731 rules, regulations, or ordinances as they would otherwise apply
732 to the subject property does not require an owner to duplicate
733 previous processes in which the owner has participated in order
734 to effectuate the granting of the modification, variance, or
735 special exception; or

736 ~~(b) Modify the recommendation as submitted by the special~~
737 ~~magistrate and proceed to implement it by development agreement,~~
738 ~~when appropriate, or by other method, in the ordinary course and~~
739 ~~consistent with the rules and procedures of that governmental~~
740 ~~entity; or~~

741 (b)(e) Reject the recommendation as submitted by the
742 special magistrate. Failure to act within 45 days is a rejection
743 unless the period is extended by agreement of the owner and
744 issuer of the development order, comprehensive plan amendment,
745 or enforcement action.

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

753 (25) Regardless of the action the governmental entity takes
754 on the special magistrate's findings and recommendation, a

26-01487-21

20211876__

755 recommendation that the development order, comprehensive plan
756 amendment, or enforcement action, or the development order,
757 comprehensive plan amendment, or enforcement action in
758 combination with other governmental regulatory actions, is
759 unreasonable or unfairly burdens use of the owner's real
760 property may serve as an indication of sufficient hardship to
761 support waivers of or modification, variances, or special
762 exceptions to the application of statutes, rules, regulations,
763 or ordinances to the subject property, whether as a part of the
764 implementation of the recommendation, in a subsequent
765 application, or in an administrative or judicial challenge to
766 the action of the governmental entity. However, the special
767 magistrate's findings and recommendation are not preclusive to
768 any issue or defense in any subsequent administrative or
769 judicial proceeding.

770 (26) A special magistrate's findings and recommendation
771 under this section constitutes data in support of, and a support
772 document for, a comprehensive plan or comprehensive plan
773 amendment, but is not, in and of itself, dispositive of a
774 determination of compliance with chapter 163.

775 (28) Each governmental entity may establish procedural
776 guidelines to govern the conduct of proceedings authorized by
777 this section, which must include, but are not limited to,
778 payment of special magistrate fees and expenses, including the
779 costs of providing notice and effecting service of the request
780 for relief under this section, which shall be borne equally by
781 the governmental entities and the owner. Such guidelines may not
782 modify the requirements and relief provided by this section in
783 any way.

26-01487-21

20211876__

784 (30) In order to encourage the resolution of disputes, and
785 regardless of whether the parties are engaged in pending
786 litigation recently before a court or administrative agency, a
787 governmental entity may conduct meetings following the
788 procedures in s. 286.011(8) at any time after the governmental
789 entity responds in writing to a request for relief to discuss
790 settlement strategies, but shall not take action on a proposed
791 settlement agreement except at a noticed public meeting This
792 ~~section applies only to development orders issued, modified, or~~
793 ~~amended, or to enforcement actions issued, on or after October~~
794 ~~1, 1995.~~

795 Section 5. Subsection (4) of section 163.3181, Florida
796 Statutes, is amended to read:

797 163.3181 Public participation in the comprehensive planning
798 process; intent; alternative dispute resolution.-

799 (4) If a local government denies an owner's request for an
800 amendment to the comprehensive plan which is applicable to the
801 property of the owner, the owner may initiate a dispute
802 resolution proceeding under s. 70.51 ~~the local government must~~
803 ~~afford an opportunity to the owner for informal mediation or~~
804 ~~other alternative dispute resolution. The costs of the mediation~~
805 ~~or other alternative dispute resolution shall be borne equally~~
806 ~~by the local government and the owner. If the owner requests~~
807 ~~mediation, the time for bringing a judicial action is tolled~~
808 ~~until the completion of the mediation or 120 days, whichever is~~
809 ~~earlier.~~

810 Section 6. This act shall take effect July 1, 2021.