

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
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.

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

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

70.001 Private property rights protection.—

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

(b) The governmental entity shall provide written notice

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

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

92 | 2. Increases or modifications in the density, intensity,
 93 | or 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
 99 | property.

100 | 7. Conditioning the amount of development or use

101 permitted.

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

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

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

109 11. No changes to the action of the governmental entity.
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111 If the property owner accepts a settlement offer, ~~either~~ before
112 or after filing an action, the governmental entity may implement
113 the settlement offer by appropriate development agreement; by
114 issuing a variance, a special exception, or any other
115 extraordinary relief; or by any other appropriate method,
116 subject to paragraph (d).

117 (d)1. When a governmental entity enters into a settlement
118 agreement under this section which would have the effect of a
119 modification, variance, or a special exception to the
120 application of a rule, regulation, or ordinance as it would
121 otherwise apply to the subject real property, the relief granted
122 shall protect the public interest served by the regulations at
123 issue and be the appropriate relief necessary to prevent the
124 governmental regulatory effort from inordinately burdening the
125 real property. Settlement offers made pursuant to paragraph (c)

126 shall be presumed to protect the public interest.

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

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

143 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
144 ~~notice period~~, unless a settlement offer is accepted by the
145 property owner, each of the governmental entities provided
146 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a
147 written statement of allowable uses identifying the allowable
148 uses to which the subject property may be put. The failure of
149 the governmental entity to issue a statement of allowable uses
150 during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice~~

151 ~~period~~ shall be deemed a denial for purposes of allowing a
152 property owner to file an action in the circuit court under this
153 section. If a written statement of allowable uses is issued, it
154 constitutes the last prerequisite to judicial review for the
155 purposes of the judicial proceeding created by this section,
156 notwithstanding the availability of other administrative
157 remedies.

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

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

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

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

201 case may be, and the fair market value of the real property, as
202 it existed at the time of the governmental action at issue, as
203 inordinately burdened, considering the settlement offer together
204 with the statement of allowable uses, of the governmental entity
205 or entities. In determining the award of compensation,
206 consideration may not be given to business damages relative to
207 any development, activity, or use that the action of the
208 governmental entity or entities, considering the settlement
209 offer together with the statement of allowable uses has
210 restricted, limited, or prohibited. The award of compensation
211 shall include a reasonable award of prejudgment interest from
212 the date the claim was presented to the governmental entity or
213 entities as provided in subsection (4).

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

226 ~~the knowledge available to the governmental entity or entities~~
227 ~~and the property owner during the 90-day notice period or the~~
228 ~~150-day notice period.~~

229 2. In any action filed pursuant to this section, the
230 governmental entity or entities are entitled to recover
231 reasonable costs and attorney fees incurred by the governmental
232 entity or entities from the date of the filing of the circuit
233 court action, if the governmental entity or entities prevail in
234 the action and the court determines that the property owner did
235 not accept a bona fide settlement offer, including the statement
236 of allowable uses, which reasonably would have resolved the
237 claim fairly to the property owner if the settlement offer had
238 been accepted by the property owner, based upon the knowledge
239 available to the governmental entity or entities and the
240 property owner during the 90-day notice period ~~or the 150-day~~
241 ~~notice period.~~

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

251 | this paragraph.

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

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

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

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

276 registered agent that the law or regulation may impact the
277 property owner's existing property rights and that the property
278 owner may have only 1 year after ~~from~~ receipt of the notice to
279 pursue any rights established under this section.

280 b. If the notice required in sub-subparagraph a. is not
281 provided to the property owner, the property owner may at any
282 time after enactment notify the head of the governmental entity
283 in writing via certified mail and, if available, e-mail that the
284 property owner deems the impact of the law or regulation on the
285 property owner's real property to be clear and unequivocal in
286 its terms and, as such, restrictive of uses allowed on the
287 property before the enactment. Within 45 days after receipt of a
288 notice under this sub-subparagraph, the governmental entity in
289 receipt of the notice must respond in writing via certified mail
290 and, if available, e-mail to describe the limitations imposed on
291 the property by the law or regulation. The property owner is not
292 required to formally pursue an application for a development
293 order, development permit, or building permit, as such will be
294 deemed a waste of resources and shall not be a prerequisite to
295 bringing a claim pursuant to paragraph (4) (a). However, any such
296 claim must be filed within 1 year after the date of the property
297 owner's receipt of the notice from the governmental entity of
298 the limitations on use imposed on the real property.

299 2. Otherwise, the law or regulation is first applied to
300 the property when there is a formal denial of a written request

301 for development or variance.

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

307 70.45 Governmental exactions.—

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

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

313 (2) In addition to other remedies available in law or
 314 equity, a property owner may bring an action in a court of
 315 competent jurisdiction under this section to declare a
 316 prohibited exaction invalid and recover damages caused by a
 317 prohibited exaction. Such action may ~~not~~ be brought by a
 318 property owner at the property owner's discretion when until a
 319 prohibited exaction is actually imposed or when it is required
 320 in writing as a final condition of approval for the requested
 321 use of real property. The right to bring an action under this
 322 section may not be waived. This section does not apply to impact
 323 fees adopted under s. 163.31801 or non-ad valorem assessments as
 324 defined in s. 197.3632.

325 (4) For each claim filed under this section, the

326 governmental entity has the burden of proving that the
327 challenged exaction has an essential nexus to a legitimate
328 public purpose and is roughly proportionate to the impacts of
329 the proposed use that the governmental entity is seeking to
330 avoid, minimize, or mitigate. The property owner has the burden
331 of proving damages that result from a prohibited exaction.

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

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

340 Section 4. Subsections (2), (3), and (4), paragraph (b) of
341 subsection (5), paragraphs (a), (b), and (c) of subsection (6),
342 subsections (8), (10), (11), (12), and (13), paragraph (a) of
343 subsection (15), paragraph (a) of subsection (16), and
344 subsections (17), (18), (19), (20), (21), (24), (25), (26),
345 (28), and (30) of section 70.51, Florida Statutes, are amended
346 to read:

347 70.51 Land use and environmental dispute resolution.—

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

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

351 (b) ~~(a)~~ "Development order" means any order, or notice of
352 proposed state or regional governmental agency action, which is
353 or will have the effect of granting, denying, or granting with
354 conditions an application for a development permit, and includes
355 the rezoning of a specific parcel. ~~Actions by the state or a~~
356 ~~local government on comprehensive plan amendments are not~~
357 ~~development orders.~~

358 (c) ~~(b)~~ "Development permit" means any building permit,
359 zoning permit, subdivision approval, certification, special
360 exception, variance, or any other similar action of local
361 government, as well as any permit authorized to be issued under
362 state law by state, regional, or local government which has the
363 effect of authorizing the development of real property
364 including, but not limited to, programs implementing chapters
365 125, 161, 163, 166, 187, 258, 372, 373, 378, 380, and 403.

366 (d) "Enforcement action" means any civil or administrative
367 action by a governmental entity intended to enforce any law,
368 ordinance, regulation, rule, or policy related to the
369 development or use of real property. The term includes, but is
370 not limited to, any action taken under chapter 162, such as a
371 notice of violation, order, or placement of a lien, or the
372 service of a notice of violation or an order to correct a
373 condition, or an equivalent action, by a state agency.

374 (e) ~~(f)~~ "Governmental entity" includes an agency of the
375 state, a regional or a local government created by the State

376 Constitution or by general or special act, any county or
377 municipality, or any other entity that independently exercises
378 governmental authority. The term does not include the United
379 States or any of its agencies.

380 ~~(f)~~~~(g)~~ "Land" or "real property" means land and includes
381 any appurtenances and improvements to the land, including any
382 other relevant real property in which the owner had a relevant
383 interest.

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

392 ~~(h)~~~~(e)~~ "Special magistrate" means a person selected by the
393 parties to perform the duties prescribed in this section. The
394 special magistrate must be a resident of the state and possess
395 experience and expertise in mediation and at least one of the
396 following disciplines and a working familiarity with the others:
397 land use and environmental permitting, land planning, land
398 economics, local and state government organization and powers,
399 and the law governing the same. A special magistrate is not
400 required to be a certified mediator.

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

404 (3) Any owner who believes that a development order,
405 either separately or in conjunction with other development
406 orders, a comprehensive plan amendment, or an enforcement action
407 of a governmental entity~~;~~ is unreasonable or unfairly burdens
408 the use of the owner's real property~~;~~ may apply within 30 days
409 after receipt of the order, comprehensive plan amendment, or
410 notice of the governmental action for relief under this section.

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

426 within 10 days after receipt of the request.

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

430 (b) Any substantially affected party who submitted oral or
431 written testimony, sworn or unsworn, of a substantive nature
432 which stated with particularity objections to or support for any
433 development order, comprehensive plan amendment, ~~at issue~~ or
434 enforcement action at issue. Notice under this paragraph is
435 required only if that party indicated a desire to receive notice
436 of any subsequent special magistrate proceedings occurring on
437 the development order, comprehensive plan amendment, or
438 enforcement action. Each governmental entity must maintain in
439 its files relating to each particular development order,
440 comprehensive plan amendment, or enforcement action ~~orders~~ a
441 mailing list of persons who have presented oral or written
442 testimony and who have requested notice.

443 (6) The request for relief must contain:

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

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

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

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

467 (10) (a) Before initiating a special magistrate proceeding
468 to review a local development order, comprehensive plan
469 amendment, or local enforcement action, the owner must exhaust
470 all nonjudicial local government administrative appeals if the
471 appeals take no longer than 4 months. Once nonjudicial local
472 administrative appeals are exhausted and the development order,
473 comprehensive plan amendment, or enforcement action is final, or
474 within 4 months after issuance of the development order, denial
475 of the comprehensive plan amendment, or notice of the

476 enforcement action if the owner has pursued local administrative
477 appeals even if the appeals have not been concluded, the owner
478 may initiate a proceeding under this section. Initiation of a
479 proceeding tolls rendition or effectiveness of the development
480 order, denial of the comprehensive plan amendment, the time for
481 seeking judicial review of a local government development order
482 or enforcement action until the special magistrate's
483 recommendation is acted upon by the local government. Election
484 by the owner to file for judicial review of a local government
485 development order, comprehensive plan amendment, or enforcement
486 action before ~~prior to~~ initiating a proceeding under this
487 section waives any right to a special magistrate proceeding.

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

498 (11) The initial party to the proceeding is the
499 governmental entity that issues the development order or
500 comprehensive plan amendment to the owner or that is taking the

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

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

HB 421

2021

526 impact their substantial interests, including denial of the
527 development order or comprehensive plan amendment or application
528 of an enforcement action.

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

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

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

551 include a brief statement explaining the public purpose of the
552 regulations on which the development order, comprehensive plan
553 amendment, or enforcement action is based.

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

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

HB 421

2021

576 with authority to bind their respective parties to a solution.
577 The mediation shall be conducted according to ss. 44.401-44.406.

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

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

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

596 (a) The history of the real property, including when it
597 was purchased, how much was purchased, where it is located, the
598 nature of the title, the composition of the property, and how it
599 was initially used.

600 (b) The history or development and use of the real

601 property, including what was developed on the property and by
602 whom, if it was subdivided and how and to whom it was sold,
603 whether plats were filed or recorded, and whether infrastructure
604 and other public services or improvements may have been
605 dedicated to the public.

606 (c) The history of environmental protection and land use
607 controls and other regulations, including how and when the land
608 was classified, how use was proscribed, and what changes in
609 classifications occurred.

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

612 (e) The reasonable expectations of the owner at the time
613 of acquisition, or immediately before ~~prior to~~ the
614 implementation of the regulation at issue, whichever is later,
615 under the regulations then in effect and under common law.

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

626 | purpose and allow for reduced restrictions on the use of the
 627 | property.

628 | (g) Uses authorized for and restrictions placed on similar
 629 | property.

630 | (h) Whether the governmental entity attempted to resolve
 631 | the dispute in good faith, including, but not limited to,
 632 | adhering to the deadlines provided in this section.

633 | (i)~~(h)~~ Any other information determined relevant by the
 634 | special magistrate.

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

640 | (a) If the special magistrate finds and concludes that the
 641 | development order at issue, or the development order,
 642 | comprehensive plan amendment, or enforcement action in
 643 | combination with the actions or regulations of other
 644 | governmental entities, is not unreasonable or does not unfairly
 645 | burden the use of the owner's property, the special magistrate
 646 | must recommend that the development order, comprehensive plan
 647 | amendment, or enforcement action remain undisturbed and the
 648 | proceeding shall end, subject to the owner's retention of all
 649 | other available remedies.

650 | (b) If the special magistrate finds and concludes that the

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

- 662 1. An adjustment of land development or permit standards
663 or other provisions controlling the development or use of land.
- 664 2. Increases or modifications in the density, intensity,
665 or use of areas of development.
- 666 3. The transfer of development rights.
- 667 4. Land swaps or exchanges.
- 668 5. Mitigation, including payments in lieu of onsite
669 mitigation.
- 670 6. Location on the least sensitive portion of the
671 property.
- 672 7. Conditioning the amount of development or use
673 permitted.
- 674 8. A requirement that issues be addressed on a more
675 comprehensive basis than a single ~~proposed~~ use or development.

676 9. Rehearing or reconsideration and issuance of the
677 development order, comprehensive plan amendment, or enforcement
678 action with or without modifications or additional stipulations,
679 or a variance, special exception, or other extraordinary relief,
680 including withdrawal of the enforcement action.

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

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

697 (d) This section provides legislative authority for the
698 governmental entity or tribunal to rehear and reconsider its
699 prior action on a development order, comprehensive plan
700 amendment, or enforcement action pursuant to, and in

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

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

720 (21) Within 45 days after receipt of the special
 721 magistrate's findings and recommendation, the governmental
 722 entity responsible for the development order, comprehensive plan
 723 amendment, or enforcement action and other governmental entities
 724 participating in the proceeding must consult among themselves
 725 and each governmental entity must:

726 (a) Accept or modify the recommendation of the special
727 magistrate, including any proposed settlement agreement, as
728 submitted and proceed to implement it by development agreement,
729 when appropriate, by rehearing or reconsidering the development
730 order or enforcement action, or by other method, in the ordinary
731 course and consistent with the rules and procedures of that
732 governmental entity. However, the decision of the governmental
733 entity to accept the recommendation of the special magistrate
734 with respect to rehearing or reconsidering the prior development
735 order or enforcement action or granting a modification,
736 variance, or special exception to the application of statutes,
737 rules, regulations, or ordinances as they would otherwise apply
738 to the subject property does not require an owner to duplicate
739 previous processes in which the owner has participated in order
740 to effectuate the granting of the modification, variance, or
741 special exception; or

742 ~~(b) Modify the recommendation as submitted by the special~~
743 ~~magistrate and proceed to implement it by development agreement,~~
744 ~~when appropriate, or by other method, in the ordinary course and~~
745 ~~consistent with the rules and procedures of that governmental~~
746 ~~entity; or~~

747 (b)(e) Reject the recommendation as submitted by the
748 special magistrate. Failure to act within 45 days is a rejection
749 unless the period is extended by agreement of the owner and
750 issuer of the development order, comprehensive plan amendment,

751 or enforcement action.

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

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

776 (26) A special magistrate's findings and recommendation
 777 under this section constitutes data in support of, and a support
 778 document for, a comprehensive plan or comprehensive plan
 779 amendment, but is not, in and of itself, dispositive of a
 780 determination of compliance with chapter 163.

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

790 (30) In order to encourage the resolution of disputes, and
 791 regardless of whether the parties are engaged in pending
 792 litigation recently before a court or administrative agency, a
 793 governmental entity may conduct meetings following the
 794 procedures in s. 286.011(8) at any time after the governmental
 795 entity responds in writing to a request for relief to discuss
 796 settlement strategies, but shall not take action on a proposed
 797 settlement agreement except at a noticed public meeting ~~This~~
 798 ~~section applies only to development orders issued, modified, or~~
 799 ~~amended, or to enforcement actions issued, on or after October~~
 800 ~~1, 1995.~~

HB 421

2021

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

803 163.3181 Public participation in the comprehensive
804 planning process; intent; alternative dispute resolution.-

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

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