

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

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

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

55

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

57

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

60 70.001 Private property rights protection.—

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

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

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

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

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

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

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

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

114 3. The transfer of developmental rights.

115 4. Land swaps or exchanges.

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

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

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

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

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

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

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

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

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

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

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

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

176 parcels.

177

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

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

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



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

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

226 interlocutory appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

348 70.45 Governmental exactions.—

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

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

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

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

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

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

376 | award attorney fees and costs to the property owner.

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

384 |       70.51 Land use and environmental dispute resolution.—

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

480 (6) The request for relief must contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



601 appropriate, to the owner.

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

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

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

626 all information offered at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

704 3. The transfer of development rights.

705 4. Land swaps or exchanges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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