

## CHAPTER 70

## RELIEF FROM BURDENS ON REAL PROPERTY RIGHTS

- 70.001 Private property rights protection.  
 70.51 Land use and environmental dispute resolution.  
 70.80 Construction of ch. 95-181.

**70.001 Private property rights protection.—**

(1) This act may be cited as the "Bert J. Harris, Jr., Private Property Rights Protection Act." The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section.

(3) For purposes of this section:

(a) The existence of a "vested right" is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

(b) The term "existing use" means an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

(c) The term "governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

(d) The term "action of a governmental entity" means a specific action of a governmental entity which affects

real property, including action on an application or permit.

(e) The terms "inordinate burden" or "inordinately burdened" mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. The terms "inordinate burden" or "inordinately burdened" do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.

(f) The term "property owner" means the person who holds legal title to the real property at issue. The term does not include a governmental entity.

(g) The term "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner had a relevant interest.

(4)(a) Not less than 180 days 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. 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 of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim being presented, the governmental entity shall report the claim in writing to the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

(c) During the 180-day-notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of developmental rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, special exception, or other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.
11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d).

(d)1. Whenever a governmental entity enters into a settlement agreement under this section which would have the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

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

(5)(a) During the 180-day-notice period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to paragraph (4)(a) shall issue a written ripeness decision identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a written ripeness decision during the 180-day-notice period shall be deemed to ripen the prior action of the governmental entity, and shall operate

as a ripeness decision that has been rejected by the property owner. The ripeness decision, as a matter of law, constitutes the last prerequisite to judicial review, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(b) If the property owner rejects the settlement offer and the ripeness decision of the governmental entity or entities, the property owner may file a claim for compensation in the circuit court, a copy of which shall be served contemporaneously on the head of each of the governmental entities that made a settlement offer and a ripeness decision that was rejected by the property owner. Actions under this section shall be brought only in the county where the real property is located.

(6)(a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and ripeness decision, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and ripeness decisions, are responsible for the action that imposed the inordinate burden on the real property of the property owner, the court shall determine the percentage of responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the ripeness decision, of the governmental entity or entities. In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement offer together with the ripeness decision has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim

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

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the settlement offer, including the ripeness decision, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 180-day-notice period.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the ripeness decision, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 180-day-notice period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed ripeness decision, except for the final written settlement offer or the final written ripeness decision, and any negotiations or rejections in regard to the formulation either of the settlement offer or the ripeness decision, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

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

(7)(a) The circuit court may enter any orders necessary to effectuate the purposes of this section and to make final determinations to effectuate relief available under this section.

(b) An award or payment of compensation pursuant to this section shall operate to grant to and vest in any governmental entity by whom compensation is paid the right, title, and interest in rights of use for which the compensation has been paid, which rights may become transferable development rights to be held, sold, or otherwise disposed of by the governmental entity. When there is an award of compensation, the court shall determine the form and the recipient of the right, title, and interest, as well as the terms of their acquisition.

(8) This section does not supplant methods agreed to by the parties and lawfully available for arbitration, mediation, or other forms of alternative dispute resolution, and governmental entities are encouraged to utilize

such methods to augment or facilitate the processes and actions contemplated by this section.

(9) This section provides a cause of action for governmental actions that may not rise to the level of a taking under the State Constitution or the United States Constitution. This section may not necessarily be construed under the case law regarding takings if the governmental action does not rise to the level of a taking. The provisions of this section are cumulative, and do not abrogate any other remedy lawfully available, including any remedy lawfully available for governmental actions that rise to the level of a taking. However, a governmental entity shall not be liable for compensation for an action of a governmental entity applicable to, or for the loss in value to, a subject real property more than once.

(10) This section does not apply to any actions taken by a governmental entity which relate to the operation, maintenance, or expansion of transportation facilities, and this section does not affect existing law regarding eminent domain relating to transportation.

(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. If an owner seeks relief from the governmental action through lawfully available administrative or judicial proceedings, the time for bringing an action under this section is tolled until the conclusion of such proceedings.

(12) No cause of action exists under this section as to the application of any law enacted on or before May 11, 1995, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date. A subsequent amendment to any such law, rule, regulation, or ordinance gives rise to a cause of action under this section only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule, regulation, or ordinance being amended.

(13) This section does not affect the sovereign immunity of government.

History.—s. 1, ch. 95-181.

#### **70.51 Land use and environmental dispute resolution.—**

(1) This section may be cited as the "Florida Land Use and Environmental Dispute Resolution Act."

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

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

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

(c) "Special master" means a person selected by the parties to perform the duties prescribed in this section. The special master must be a resident of the state and possess experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting, land planning, land economics, local and state government organization and powers, and the law governing the same.

(d) "Owner" means a person with a legal or equitable interest in real property who filed an application for a development permit for the property at the state, regional, or local level and who received a development order, or who holds legal title to real property that is subject to an enforcement action of a governmental entity.

(e) "Proposed use of the property" means the proposal filed by the owner to develop his real property.

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

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

(3) Any owner who believes that a development order, either separately or in conjunction with other development orders, or an enforcement action of a governmental entity, is unreasonable or unfairly burdens the use of his real property, may apply within 30 days after receipt of the order or notice of the governmental action for relief under this section.

(4) To initiate a proceeding under this section, an owner must file a request for relief with the elected or appointed head of the governmental entity that issued the development order or orders, or that initiated the enforcement action. The head of the governmental entity may not charge the owner for the request for relief and must forward the request for relief to the special master who is mutually agreed upon by the owner and the governmental entity within 10 days after receipt of the request.

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

(a) Owners of real property contiguous to the owner's property at the address on the latest county tax roll.

(b) Any substantially affected party who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for any development order at issue or enforcement action at issue. Notice under this paragraph is required only if that party indicated a desire to receive notice of any subsequent special master proceedings occurring on the development order or enforcement action. Each governmental entity must maintain in its files relating to particular development orders a mailing list of persons who have presented oral or written testimony and who have requested notice.

(6) The request for relief must contain:

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

(b) A summary of the development order or description of the enforcement action. A copy of the development order or the documentation of an enforcement action at issue must be attached to the request.

(c) A brief statement of the impact of the development order or enforcement action on the ability of the owner to achieve the proposed use of the property.

(d) A certificate of service showing the parties, including the governmental entity, served.

(7) The special master may require other information in the interest of gaining a complete understanding of the request for relief.

(8) The special master may conduct a hearing on whether the request for relief should be dismissed for failing to include the information required in subsection (6). If the special master dismisses the case, the special master shall allow the owner to amend the request and refile. Failure to file an adequate amended request within the time specified shall result in a dismissal with prejudice as to this proceeding.

(9) By requesting relief under this section, the owner consents to grant the special master and the parties reasonable access to the real property with advance notice at a time and in a manner acceptable to the owner of the real property.

(10)(a) Before initiating a special master proceeding to review a local development order or local enforcement action, the owner must exhaust all nonjudicial local government administrative appeals if the appeals take no longer than 4 months. Once nonjudicial local administrative appeals are exhausted and the development order or enforcement action is final, or within 4 months after issuance of the development order or notice of the enforcement action if the owner has pursued local administrative appeals even if the appeals have not been concluded, the owner may initiate a proceeding under this section. Initiation of a proceeding tolls the time for seeking judicial review of a local government development order or enforcement action until the special master's recommendation is acted upon by the local government. Election by the owner to file for judicial review of a local government development order or enforcement action prior to initiating a proceeding under this section waives any right to a special master proceeding.

(b) If an owner requests special master relief from a development order or enforcement action issued by a state or regional agency, the time for challenging agency action under s. 120.57 is tolled. If an owner chooses to bring a proceeding under s. 120.57 before initiating a special master proceeding, then the owner waives any right to a special master proceeding unless all parties consent to proceeding to mediation.

(11) The initial party to the proceeding is the governmental entity that issues the development order to the owner or that is taking the enforcement action. In those instances when the development order or enforcement action is the culmination of a process involving more than one governmental entity or when a complete resolution of all relevant issues would require the active par-

ticipation of more than one governmental entity, the special master may, upon application of a party, join those governmental entities as parties to the proceeding if it will assist in effecting the purposes of this section, and those governmental entities so joined shall actively participate in the procedure.

(12) Within 21 days after receipt of the request for relief, any owner of land contiguous to the owner's property and any substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the development order or enforcement action at issue may request to participate in the proceeding. Those persons may be permitted to participate in the hearing but shall not be granted party or intervenor status. The participation of such persons is limited to addressing issues raised regarding alternatives, variances, and other types of adjustment to the development order or enforcement action which may impact their substantial interests, including denial of the development order or application of an enforcement action.

(13) Each party must make efforts to assure that those persons qualified by training or experience necessary to address issues raised by the request or by the special master and further qualified to address alternatives, variances, and other types of modifications to the development order or enforcement action are present at the hearing.

(14) The special master may subpoena any nonparty witnesses in the state whom the special master believes will aid in the disposition of the matter.

(15)(a) The special master shall hold a hearing within 45 days after his receipt of the request for relief unless a different date is agreed to by all the parties. The hearing must be held in the county in which the property is located.

(b) The special master must provide notice of the place, date, and time of the hearing to all parties and any other persons who have requested such notice at least 40 days prior to the hearing.

(16)(a) Fifteen days following the filing of a request for relief, the governmental entity that issued the development order or that is taking the enforcement action shall file a response to the request for relief with the special master together with a copy to the owner. The response must set forth in reasonable detail the position of the governmental entity regarding the matters alleged by the owner. The response must include a brief statement explaining the public purpose of the regulations on which the development order or enforcement action is based.

(b) Any governmental entity that is added by the special master as a party must file a response to the request for relief prior to the hearing but not later than 15 days following its admission.

(c) Any party may incorporate in the response to the request for relief a request to be dropped from the proceeding. The request to be dropped must set forth facts and circumstances relevant to aid the special master in ruling on the request. All requests to be dropped must be disposed of prior to conducting any hearings on the merits of the request for relief.

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

(a) The first responsibility of the special master is to facilitate a resolution of the conflict between the owner and governmental entities to the end that some modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties may be reached. Accordingly, the special master shall act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution. The parties shall be represented at the mediation by persons with authority to bind their respective parties to a solution, or by persons with authority to recommend a solution directly to the persons with authority to bind their respective parties to a solution.

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

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

(18) The circumstances to be examined in determining whether the development order or enforcement action, or the development order or enforcement action in conjunction with regulatory efforts of other governmental parties, is unreasonable or unfairly burdens use of the property may include, but are not limited to:

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

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

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

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

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

(f) The public purpose sought to be achieved by the development order or enforcement action, including the nature and magnitude of the problem addressed by the underlying regulations on which the development order or enforcement action is based; whether the development order or enforcement action is necessary to the achievement of the public purpose; and whether there are alternative development orders or enforcement action conditions that would achieve the public purpose and allow for reduced restrictions on the use of the property.

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

(h) Any other information determined relevant by the special master.

(19) Within 14 days after the conclusion of the hearing, the special master shall prepare and file with all parties a written recommendation.

(a) If the special master finds that the development order at issue, or the development order or enforcement action in combination with the actions or regulations of other governmental entities, is not unreasonable or does not unfairly burden the use of the owner's property, the special master must recommend that the development order or enforcement action remain undisturbed and the proceeding shall end, subject to the owner's retention of all other available remedies.

(b) If the special master finds that the development order or enforcement action, or the development order or enforcement action in combination with the actions or regulations of other governmental entities, is unreasonable or unfairly burdens use of the owner's property, the special master, with the owner's consent to proceed, may recommend one or more alternatives that protect the public interest served by the development order or enforcement action and regulations at issue but allow for reduced restraints on the use of the owner's real property, including, but not limited to:

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

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

3. The transfer of development rights.

4. Land swaps or exchanges.

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

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

7. Conditioning the amount of development or use permitted.

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

9. Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action.

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

(c) This subsection does not prohibit the owner and governmental entity from entering in to an agreement as to the permissible use of the property prior to the special master entering a recommendation. An agreement for a

permissible use must be incorporated in the special master's recommendation.

(20) The special master's recommendation is a public record under chapter 119. However, actions or statements of all participants to the special master proceeding are evidence of an offer to compromise and inadmissible in any proceeding, judicial or administrative.

(21) Within 45 days after receipt of the special master's recommendation, the governmental entity responsible for the development order or enforcement action and other governmental entities participating in the proceeding must consult among themselves and each governmental entity must:

(a) Accept the recommendation of the special master as submitted and proceed to implement it by development agreement, when appropriate, or by other method, in the ordinary course and consistent with the rules and procedures of that governmental entity. However, the decision of the governmental entity to accept the recommendation of the special master with respect to granting a modification, variance, or special exception to the application of statutes, rules, regulations, or ordinances as they would otherwise apply to the subject property does not require an owner to duplicate previous processes in which the owner has participated in order to effectuate the granting of the modification, variance, or special exception;

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

(c) Reject the recommendation as submitted by the special master. Failure to act within 45 days is a rejection unless the period is extended by agreement of the owner and issuer of the development order or enforcement action.

(22) If a governmental entity accepts the special master's recommendation or modifies it and the owner rejects the acceptance or modification, or if a governmental entity rejects the special master's recommendation, the governmental entity must issue a written decision within 30 days that describes as specifically as possible the use or uses available to the subject real property.

(23) The procedure established by this section may not continue longer than 165 days, unless the period is extended by agreement of the parties. A decision describing available uses constitutes the last prerequisite to judicial action and the matter is ripe or final for subsequent judicial proceedings unless the owner initiates a proceeding under s. 120.57. If the owner brings a proceeding under s. 120.57, the matter is ripe when the proceeding culminates in a final order whether further appeal is available or not.

(24) The procedure created by this section is not itself, nor does it create, a judicial cause of action. Once the governmental entity acts on the special master's recommendation, the owner may elect to file suit in a court of competent jurisdiction. Invoking the procedures of this section is not a condition precedent to filing a civil action.



(25) Regardless of the action the governmental entity takes on the special master's recommendation, a recommendation that the development order or enforcement action, or the development order or enforcement action in combination with other governmental regulatory actions, is unreasonable or unfairly burdens use of the owner's real property may serve as an indication of sufficient hardship to support modification, variances, or special exceptions to the application of statutes, rules, regulations, or ordinances to the subject property.

(26) A special master's recommendation under this section constitutes data in support of, and a support document for, a comprehensive plan or comprehensive plan amendment, but is not, in and of itself, dispositive of a determination of compliance with chapter 163. Any comprehensive plan amendment necessary to carry out the approved recommendation of a special master under this section is exempt from the twice-a-year limit on plan amendments and may be adopted by the local government amendments in s. 163.3184(16)(d).

(27) The special master shall send a copy of the recommendation in each case to the Department of Legal Affairs. Each governmental entity, within 15 days after its action on the special master's recommendation, shall notify the Department of Legal Affairs in writing as to what action the governmental entity took on the special master's recommendation.

(28) Each governmental entity may establish procedural guidelines to govern the conduct of proceedings authorized by this section, which must include, but are not limited to, payment of special master fees and

expenses, including the costs of providing notice and effecting service of the request for relief under this section, which shall be borne equally by the governmental entities and the owner.

(29) This section shall be liberally construed to effect fully its obvious purposes and intent, and governmental entities shall direct all available resources and authorities to effect fully the obvious purposes and intent of this section in resolving disputes. Governmental entities are encouraged to expedite notice and time-related provisions to implement resolution of disputes under this section. The procedure established by this section may be used to resolve disputes in pending judicial proceedings, with the agreement of the parties to the judicial proceedings, and subject to the approval of the court in which the judicial proceedings are pending. The provisions of this section are cumulative, and do not supplant other methods agreed to by the parties and lawfully available for arbitration, mediation, or other forms of alternative dispute resolution.

(30) This section applies only to development orders issued, modified, or amended, or to enforcement actions issued, on or after October 1, 1995.

**History.**—s. 2, ch. 95-181.

**70.80 Construction of ch. 95-181.**—It is the express declaration of the Legislature that ss. 70.001 and 70.50 have separate and distinct bases, objectives, applications, and processes. It is therefore the intent of the Legislature that ss. 70.001 and 70.50 are not to be construed in *pari materia*.

**History.**—s. 3, ch. 95-181.