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RESOLUTION NO. 03-28

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, EXPRESSING OPPOSITION TO SENATE BILL 1164 AND HOUSE BILL 113 WHICH SET FORTH AMENDMENTS TO THE BERT J. HARRIS, JR. ACT AND ANY AND ALL OTHER PROPOSED AMENDMENTS THAT WOULD SUBJECT LOCAL AND STATE GOVERNMENTS TO FURTHER LIABILITY FOR THE CONSTITUTIONAL EXERCISE OF THEIR LEGISLATIVE AND QUASI-JUDICIAL RESPONSIBILITIES AND POWERS; TRANSMITTING THE RESOLUTION TO THE PRESIDENT OF THE SENATE, SPEAKER OF THE HOUSE AND GOVERNOR; SETTING AN EFFECTIVE DATE.

WHEREAS, the Bert J. Harris, Jr. Private Property Rights Protection Act ("Harris Act"), as codified in Section 70.001 of the Florida Statutes, was enacted in 1995 to provide a limited remedy for property owners when their property has been "inordinately burdened" by the action of a governmental entity; and

WHEREAS, since its inception, numerous commentators and governments alike have expressed concern that the Harris Act is impermissibly vague, fraught with various problems in its application and interpretation, and has had a chilling effect upon numerous governments in their planning and zoning activities; and

WHEREAS, in the eight years since the enactment of the Harris Act, there have been over 258 claims asserted against local governments in Florida; and

WHEREAS, despite its various constitutional infirmities relating to, *inter alia*, its failure to define "inordinate burden" and "reasonable, investment-backed expectations;" the automatic ripeness provisions that appear to violate separation of powers doctrine; and the uncertainties inherent in its attempt to create a statute of limitations period; the Act nonetheless provided in clear language that it does "not affect the sovereign immunity of government"; and

WHEREAS, on July 18, 2002, a case affecting one of the cities of Florida, namely *Royal World Metropolitan, Inc. v. City of Miami Beach*, 11th Judicial Court Case No. 99-17243 (*Royal World*), resulted in a favorable summary judgment for the City which determined that the doctrine of sovereign immunity protects the City from liability for damages under the Harris Act and said case has been appealed and is pending in the Third District Court of Appeal as of the commencement of the 2003 Session of the Florida Legislature; and

WHEREAS, the legislation proposed via Senate Bill 1164 and House Bill 113, if constitutional, in part seeks to nullify the effect of the *Royal World* decision and adversely affect the ad valorem taxpaying public of Florida in as many as 258 other claims pending statewide, by not only amending the Harris Act to provide for a total waiver of sovereign immunity for government, but providing that such waiver is retroactive to May 11, 1995; and

1
2 **WHEREAS**, the economic impact of amending the Harris Act as proposed and making it
3 retroactive for eight (8) years would be devastating for the State and for local governments
4 statewide; and
5

6 **WHEREAS**, for example, the potential economic effect of eliminating sovereign immunity
7 in the City of Miami Beach is reflected by the amounts claimed in its pending eight Harris Act cases
8 which total \$24,817,750, exclusive of interest, attorney's fees, and court costs; and
9

10 **WHEREAS**, the amendments proposed in Senate Bill 1164 and House Bill 113 seek to
11 interfere with the pending judicial process in the *Royal World* case, as well as in numerous other
12 cases pending before various courts in the State of Florida; and
13

14 **WHEREAS**, that portion of the proposed legislation which seeks to abolish sovereign
15 immunity protection retroactive to May, 1995, if enacted, and determined to be constitutional,
16 would frustrate as much as eight years of litigation throughout the State (5 years in the City of
17 Miami Beach alone), the expenditures of inordinate amounts of public and private funds for
18 attorneys' and appraisers' fees and court costs, and potentially would set off a brand new round of
19 litigation between the public and private sectors; and
20

21 **WHEREAS**, the gross inequity of such a result is exacerbated when it is realized that the
22 actual value of the properties which are subject to pending claims have increased, in many cases in
23 exponential proportion in excess of their respective actual values since May, 1995, thereby creating
24 the possibility for unjustly enriching the respective owners far beyond any investment-backed
25 expectations; and
26

27 **WHEREAS**, of greater or equal impact, the proposed amendments, if enacted, will
28 seriously impair local governments in their efforts to comply with State-mandated requirements in
29 such areas as growth management, comprehensive planning, concurrency, protection of fragile,
30 environmentally sensitive areas such as wetlands, beachfronts and forestlands, concern with
31 carrying capacity, and many other quality of life concerns; and
32

33 **WHEREAS**, during the century and one half of Florida's existence, a comprehensive body
34 of law has developed through Court interpretation of the State and Federal Constitutions and
35 legislative enactment which has defined "takings" and the power and cost to the public incident to
36 the exercise of eminent domain, all of which have amply protected and amply protect private
37 ownership interests against the necessary as well as the arbitrary and capricious action of state and
38 local governments.
39

40 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**
41 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
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43 **Section 1.** The foregoing recitations are adopted in their entirety.

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Section 2. The Village of Palmetto Bay opposes the enactment of Senate Bill 1164 and House Bill 113 which set forth amendments to the Harris Act and further opposes any and all other proposed legislative enactments which would subject State and local governments to further liability for the constitutional exercise of their legislative and quasi-judicial responsibilities and powers.

Section 3. The Clerk is directed to provide certified copies of this Resolution to the President of the Senate, Speaker of the House, and the Governor.

Section 4. This Resolution shall become effective upon adoption.

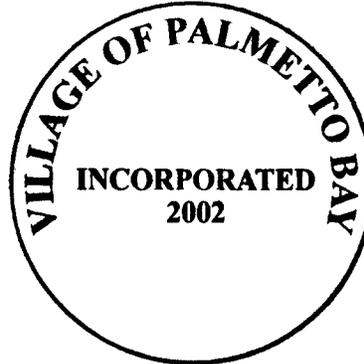
PASSED and ADOPTED this 7th day of April, 2003.

Attest: Meighan Pier
Meighan Pier
Village Clerk

Eugene P. Flinn, Jr.
Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:

Earl G. Gallop
Earl G. Gallop,
Village Attorney



FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>AYE</u>
Council Member Paul Neidhart	<u>AYE</u>
Council Member John Breder	<u>AYE</u>
Vice-Mayor Linda Robinson	<u>AYE</u>
Mayor Eugene P. Flinn, Jr.	<u>AYE</u>