

STORAGE NAME: h1889s1a.gg

DATE: April 23, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1889

RELATING TO: Private Property Rights Protection Act

SPONSOR(S): Representatives Putnam and Thrasher

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE YEAS 7 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 1
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The 1995 Legislature passed the "Bert J. Harris, Jr., Private Property Rights Protection Act" (private property act). The act provides protection for private property owners from losing the existing or future use of their property due to the application of inordinately burdensome laws and regulations by the state and its political entities. The act creates a cause of action for private property owners as to the application of any such law or regulation enacted on or before May 11, 1995.

HB 1889 moves the applicability date of the private property act from May 11, 1995, to May 11, 1990. This means that private property act provisions will be triggered by any post 1998 application of a law or regulation enacted after May 11, 1990, in a manner that creates an undue burden on private property owners.

The bill also provides that in determining the value of the property sought to be appropriated in eminent domain cases, if the property's use is an agricultural operation, income from farming is attributable to real estate.

This bill may have a fiscal impact on both state and local governments. However, it is not possible to determine the impacts at this time. See Section III, for discussion on the fiscal impacts of this bill.

The bill was substantially modified by an amendment adopted by the Committee on General Government Appropriations. See Section VI-Amendments or Committee Substitute Changes.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Bert Harris, Jr., Private Property Rights Protection Act (private property act) creates a legal remedy in circuit court for regulatory actions by governmental entities which inordinately burden private property owners. The law is prospective and applies to future applications of any law, rule, regulation, or ordinance enacted, after May 11, 1995, in a manner that would create an undue burden on private property owners and trigger the act.

The Office of the Attorney General estimates that the number of private property act cases filed in court is 14. Of these cases, four were filed in Dade County, four in Palm Beach county, two in Pinellas County, and one case each in Brevard, Broward, Monroe, and Sarasota Counties. Approximately 27 private property cases are presently seeking review under the Florida Land Use and Environmental Dispute Resolution Act.

At trials on petitions for eminent domain, a jury must determine the amount of compensation for the property to be acquired. The amount of compensation to be paid must include, in part, the following:

1. The value of the property sought to be appropriated; and
2. Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking are known as severance damages. When the action is by specified condemning authorities for the condemnation of a right-of-way and the effect of the taking of the property involved may damage or destroy an established business of more than five years' standing, owned by the party whose lands are being so taking, located upon adjoining lands owned or held by such party, severance damages include the probable damages to the business which the denial of the use of the property so taken may reasonably cause. Any person claiming the right to recover business damages must set forth in his or her written defenses the nature and extent of the damages.

B. EFFECT OF PROPOSED CHANGES:

The bill changes the applicability date of s. 70.001(12), Florida Statutes, from May 11, 1995, to May 11, 1990. Changing the dates would only affect post 1998 application of laws regardless of whether the trigger date is 1990 or 1995. The change in dates allows capture of any regulations or laws passed during the intervening five years.

The bill also provides that in determining the value of property sought to be appropriated in eminent domain cases, if the use of the property is an agricultural operation as defined in s. 570.02(1), F.S., income from farming is attributable to real estate. Subsection 570.02(1), F.S., defines the term "agriculture" as, *"the science and art of production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production. For*

the purposes of marketing and promotional activities, seafood shall also be included in this definition.”

By stating that income from farming is attributable to real estate, the bill provides for agricultural operations to be considered as businesses, and income received from agricultural lands be considered as business damages in condemnation proceedings.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Currently, a real property owner with a cause of action under the private property act may seek review of a development order, as defined in the private property act, under the Florida Land Use and Environmental Dispute Resolution Act. The latter act establishes an informal, non-judicial proceeding for private property owners seeking review under the Bert Harris Private Property Rights Act. However, private property owners are not required to invoke the procedures of the dispute resolution act in order for the claim of relief to be ripe for review by a court.

If this bill passes, the possibility of increased private property rights act cases exists; thereby, increasing the chances of more private property owners opting to adjudicate their applicable property disputes through mediation.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

None.

(3) any entitlement to a government service or benefit?

None.

b. If an agency or program is eliminated or reduced: **Not applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility: **Not applicable.**

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom: **Not applicable.**

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

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- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment: **Not applicable.**

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

- (2) Who makes the decisions?

- (3) Are private alternatives permitted?

- (4) Are families required to participate in a program?

- (5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

- (2) service providers?

- (3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Sections 70.001(12) and 73.071(3), Florida Statutes

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See Fiscal Comments.

2. Direct Private Sector Benefits:

The bill's eminent domain provisions may increase compensation to property owners as it provides for attribution of income from farming to real estate in determining the value of the property sought to be appropriated.

3. Effects on Competition, Private Enterprise and Employment Markets:

See Fiscal Comments.

D. FISCAL COMMENTS:

This bill may have a fiscal impact on both state and local governments. What determines the impact is the number and resolution of private property rights cases and the amount of property taken in eminent domain proceedings.

The bill could increase the number of private property rights act cases by expanding the applicability date of s. 70.001(12), F.S. It may, in effect, increase the number of laws, rules or ordinances that real property owners could challenge under the private property rights act.

Generally, based on the private property rights act, the government may have to pay compensation to the affected property owners whether its response is to halt all actions which could possibly affect property values, to grant all requests for the use of property, or to take a middle position to deny some and grant others. This bill increases the likelihood of the government experiencing a heavier fiscal impact than originally anticipated under the private property act. However, the bill does not necessarily mean that state and local governments will experience an increased fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill may effectively increase the current required compensation to be paid by government entities for actions which inordinately burden uses of real property under the Bert Harris, Jr. Private Property Protection Act (private property act). Therefore, the bill could be considered a general law requiring the county or municipal government to expend funds.

Under Article VII, section 18 of the Florida Constitution, if the Legislature enacts a general law requiring local government to expend funds, local government is not bound by it unless: the Legislature determines that the law fulfills an important state interest and passes it by two-thirds vote of each house; appropriates money to pay for the mandate or allows the local government to pass measures to pay for the mandate; the mandated expenditure is required of all persons similarly situated, including state and local government; the expenditure is a federal requirement.

The Legislature has declared that the private property rights act fulfills an important state interest, and passed the measure with more than the requisite two-thirds vote. Thus, the act, although potentially a mandate, would still bind local governments.

As an aggregate of the private property rights act, this bill, if passed, would continue to bind local governments to take action requiring expenditure of money subject to the same local mandate criteria as the private property rights act.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of municipalities or counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax revenues shared with counties or municipalities.

V. COMMENTS:

According to a Senate analysis of CS/CS/SB 92, the application of the language "income from farming is attributable to real estate" is uncertain to the extent it would include income which would have been earned from future crops. A consequence of this change would be reflected in the method of appraisal used. The cost, comparable sales, and income approaches are sensitive to the specific nature and use of the property, which may or may not be its highest and best based upon current use. Whether individual agricultural properties identified for a taking are cultivated at their highest and best use will be a significant factor in assessing the cost impact of this provision.

Proponents of having income from farming attributable to real estate in eminent domain cases state that each part of an agricultural operation functions as a part of the whole. By providing that farm income is attributable to real estate, the bill requires that consideration be given to the actual success or failure of a particular farm as an assembled economic unit, assuring that the price paid bears relation to the present value of the anticipated future return of the same farm.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

House Bill 1889 was amended to include a provision specifying that in determining the value of property sought to be appropriated in eminent domain cases, if the property is used for an agricultural operation, income from farming is attributable to real property.

The Committee on General Government Appropriations adopted a strike-all amendment on April 12, 1998 that eliminated the original bill provisions, retaining only the changes regarding valuation of property. Specifically, where the income approach to value is used to value the property sought to be acquired, and when the highest and best use of the property sought to be acquired is in agriculture, income from agriculture is attributable to real estate for purposes of compensation.

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VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

Prepared by:

Legislative Research Director:

Susan D. Reese

Susan D. Reese

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Cynthia P. Kelly

Cynthia P. Kelly