

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 113 w/CS Private Property Rights
SPONSOR(S): Kottkamp; and others
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 1164, 1st Eng.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 1 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veterans' Affairs</u>	<u>13 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
3) <u>State Administration</u>	<u></u>	<u>Bond</u>	<u>Everhart</u>
4) <u>Judiciary</u>	<u></u>	<u></u>	<u></u>
5) <u>Transportation & Econ. Dev. Approp. (Sub)</u>	<u></u>	<u></u>	<u></u>
6) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Bert J. Harris, Jr., Private Property Rights Act's (Harris Act) creates a cause of action providing compensation to a landowner when a state or local government law, rule, regulation, or ordinance unfairly affects real property.

This bill amends the Harris Act to exclude uniform laws enacted or regulations adopted to protect public safety, such as building codes and fire codes; specifies what constitutes a final decision that is a prerequisite to a claim under the Harris Act; provides that the application of a governmental action affecting real property, not the enactment or adoption of a regulation, starts the applicable one year statute of limitations; and provides a specific waiver of sovereign immunity.

The fiscal impact of the bill is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0113d.sa.doc
DATE: April 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Bert J. Harris Private Property Rights Act

The Bert J. Harris, Jr., Private Property Rights Protection Act (Harris Act), s. 70.001, F.S., was enacted in 1995, by ch. 95-181, L.O.F. The Harris Act creates a cause of action providing for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state enacted after May 11, 1995, as applied, unfairly affects real property. This cause of action was intended as a separate and distinct cause of action from the laws of taking under the State Constitution and the United States Constitution.

Royal World Metropolitan, Inc., v. City of Miami Beach

A property owner of a parcel on Collins Avenue and about 57th Street had a permit to construct a 33 story condominium. Subsequent to obtaining the permit, the economy changed and the property owner received a new permit to construct an apartment building of approximately 27 to 30 floors. No construction followed, and the permit expired. Some two years later, the City of Miami Beach enacted three city-wide zoning ordinances. These ordinances established new height and density restrictions for development in the area which included the property owner's property.¹ The property owners, Royal World Metropolitan, Inc. and BCOM, Inc./Royal World, instituted an action for inverse condemnation against the City of Miami Beach. In their complaint, the property owners claimed that the City had violated the Harris Act by inordinately burdening their vested rights to construct the site as they had planned.²

The trial court found that the ordinances were enacted “pursuant to basic governmental functions performed by the legislative...branch” and were thus considered inherent acts of governing. As such, the trial court ruled that the defense of sovereign immunity acts as a shield against liability for the legislative or quasi-legislative acts of municipalities complained of by the plaintiff.³ The trial court later held that the exercise of the power by a municipality to grant or refuse a building permit or license is a purely governmental function. That “[t]here has never been, and is presently not tort liability imposed for peculiarly governmental functions such as permitting. Like legislative acts or functions, governmental acts or functions are immune from liability.” (citations omitted) Finally, “[a]ll commentary

¹ According to a representative of the Office of the City Attorney of the City of Miami Beach Robert Dixon, Deputy City Attorney, City of Miami Beach, 2/5/03.

² *Royal World Metropolitan, Inc. v. City of Miami Beach*, 11th Judicial Circuit, Miami-Dade County, Case No. 99-17243-CA-23.

³ *Id.* Order Granting Motion for Partial Summary Judgment, issued July 18, 2002.

with regard to the Harris Act specifically advises that with the passage of the Act, sovereign immunity still remains effective and serves as a viable defense against liability.”⁴

Effect of Bill

This bill amends the Bert J. Harris, Jr., Private Property Rights Act’s (Harris Act) to amend the definition of “action of a governmental entity”. An action of a governmental entity is the list or definition of what types of governmental actions that can be sued upon under the Harris Act. The amended definition excludes actions to enforce compliance with uniform laws enacted or regulations adopted to protect public safety, such as building codes and fire codes. Additionally, excluded are actions involving the construction, expansion, or maintenance of capital facilities.

The Harris Act requires the affected government to give notice of a claim filed to the Department of Legal Affairs. This bill changes the required notice to provide that it is to be furnished to the “state land planning agency” instead.⁵

The Harris Act requires a potential claimant to give notice of the claimant’s intent to seek relief under the Harris Act. Upon the expiration of the 180 day notice period, the claim is deemed “ripe”, which is a prerequisite for the filing of a civil action. This bill deletes references to the term “ripe”, and specifies that either a final decision denying the claim or a failure to furnish the claimant with a written decision during the 180-day period qualify as the prerequisite for filing a civil cause of action.

The Harris Act contains a one-year statute of limitations for the filing of a claim under the Harris Act. This bill provides that mere adoption of a law or regulation does not start the time running under the statute of limitations; only application of the law or regulation to the specific property will start the running of the statute of limitations.

This Harris Act provides that it “does not affect the sovereign immunity of government.” This bill provides a specific waiver of sovereign immunity for purposes of the Harris Act.

C. SECTION DIRECTORY:

Section 1. Amends the Bert J. Harris, Jr., Private Property Rights Act, s. 70.001, F.S.

Section 2. Provides an effective date of January 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could expose the state to claims based upon its adoption of any regulation that alters the density, intensity, or use of real property.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁴ *Id.* Order Denying Motion for Rehearing, issued October 24, 2002.

⁵ The current state land planning agency is the Department of Community Affairs. This phrase was apparently chosen to accommodate the potential that DCA may be merged into the Department of State.

1. Revenues:

None.

2. Expenditures:

The fiscal impacts of this bill are indeterminate since the bill is intended only to clarify the applicability of the Bert J. Harris Private Property Rights Protection Act.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Local Affairs Subcommittee Meeting on March 27, 2003

The Local Affairs Subcommittee, at its meeting on March 27, 2003, had six amendments before it for consideration. The amendments were as follows:

Amendment No.1 by Representative Kottkamp – Addressed below, except that it was later discovered that a clause was missing from the amendment so that it did not in fact mirror SB 1164.

Amendment No. 1 by Rep. Kottkamp conforms the bill, as filed, to SB 1164.

Amendment No. 1 changes the bill as filed to remove amendment of the definition of “action of a governmental entity” as found in s. 70.001(3)(d), F.S.

The amendment provides that within 15 days of the presentation of a *Harris Act* claim, the governmental entity receiving the claim shall report the claim in writing to the state planning agency rather than to the Department of Legal Affairs.

The amendment changes the bill as filed to reword the amendment to s. 70.001(5)(a), F.S., to provide that the written decision of the governmental entity issued within 180 days following the presentation of a *Harris* Act claim constitutes the governmental entities' final decisions identifying the uses for the property. Further, the amendment provides that the written decision, or failure to issue a written decision, operates as a final decision that has been rejected by the property owner. Finally, the amendment removes references to a "ripeness decision" and provides that the final decision constitutes, as a matter of law, the last prerequisite to judicial review of the merits.

The amendment changes the bill as filed to remove references in s. 70.001(11)(c), F.S., to development approval or variance that alters the density, intensity, or use of the owner's property. Additionally, the amendment adds language that provides that the enactment of a law or regulation does not constitute application of that law or regulation.

The amendment continues to provide a waiver of sovereign immunity and its retroactive application to May 11, 1995.

Amendment No. 2 by Representative Kottkamp – amends Amendment No. 1 to remove the language that provides for the retroactive affect of the sovereign immunity waiver. Additionally, the Amendment amends the title to conform.

Amendment No. 3 by Representative M. Davis – A Strike All Amendment conformed the bill as filed to SB 1164.

Amendment No. 4 by Representative Wishner — Deleted lines 58 through 62 of the Strike All Amendment (No. 3), thereby removing language concerning the waiver of sovereign immunity.

Amendment No. 5. by Representative Robaina – Removed line 62 of the Strike All Amendment (No. 3), and replaced the line with language that provided for prospective operation of the act and provided that it would only apply to claims arising after the effective date of the act.

Amendment No. 6 by Representative Robaina – Removed line 63 of the Strike All Amendment (No. 3), and replaced the line with language that provided that the act would become effective on January 1, 2004.

At the Local Affairs Subcommittee meeting on March 27, 2003, the Sponsor withdrew Amendment Nos. 1 and 2. The Subcommittee voted to favorably recommend Amendment Nos. 3, 4 and 6. Amendment No. 5 was not favorably recommended. However, after recommending the amendments, and while in the process of taking testimony from members of the public, the bill was temporarily passed.

Local Affairs Subcommittee Meeting on April 10, 2003

The Local Affairs Subcommittee, at its meeting on April 10, 2003, took up the bill that was temporarily passed. After hearing once again from the Sponsor, public testimony was heard and completed. Then, on a Motion for Reconsideration, Amendment No. 4 by Representative Wishner was reconsidered and voted upon unfavorably. The bill with Amendment Nos. 3 and 6 was recommended favorably to the full committee.

Committee on Local Government & Veterans' Affairs April 21, 2003

The Committee on Local Government & Veterans' Affairs, at its meeting on April 21, 2003, adopted five amendments as indicated below:

- Amendment No. 3 by Representative M. Davis – A Strike All amendment that accomplishes the following objectives:
 - Provides that the state land planning agency will be responsible for tracking Harris Act claims rather than the Department of Legal Affairs.
 - Changes the bill as filed to reword the amendment to s. 70.001(5)(a), F.S., to provide that the written decision of the governmental entity issued within 180 days following the presentation of a *Harris Act* claim constitutes the governmental entities' final decisions identifying the uses for the property. Further, the amendment provides that the written decision, or failure to issue a written decision, operates as a final decision that has been rejected by the property owner. Finally, the amendment removes references to a "ripeness decision" and provides that the final decision constitutes, as a matter of law, the last prerequisite to judicial review of the merits.
 - Provides that the application not the enactment or adoption of a regulation serves as the precedent for a Harris Act claim.
 - Clarifies that sovereign immunity is waived for purposes of the Act.
 - Provides an effective date of July 1, 2003.
- Amendment No. 6 by Representative Robiana – Changes the effective date of the bill to January 1, 2004, from July 1, 2003.
- Amendment No. 8 by Representative Sorensen was a Substitute Amendment for Amendment No. 7 by Representative Wishner – Clarifies that the sovereign immunity waiver is to be applied prospectively.
- Amendment No. 9 by Representative Sorensen - Removes the two Whereas clauses from the bill's preamble.
- Amendment No. 10 by Representative Wishner – Provides that the Harris Act does not apply to certain government actions.