

Bill No. CS for SB 1164

Amendment No. \_\_\_\_ Barcode 211300

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Lee moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 3, between lines 18 and 19,		
15			
16	insert:		
17	Section 2. <u>Private property rights and regional</u>		
18	<u>reservoirs.--</u>		
19	<u>(1) The Legislature finds that construction of a</u>		
20	<u>regional reservoir designed to store more than 10 billion</u>		
21	<u>gallons of water may inordinately burden nearby real property</u>		
22	<u>because of the proximity of the reservoir and may result in a</u>		
23	<u>loss of value for the property owner. Therefore, a special</u>		
24	<u>district or regional water supply authority that is authorized</u>		
25	<u>to construct, operate, and maintain such a regional reservoir</u>		
26	<u>shall be deemed a governmental entity for purposes of section</u>		
27	<u>70.001, Florida Statutes, the Bert J. Harris, Jr., Private</u>		
28	<u>Property Rights Protection Act.</u>		
29	<u>(2) This section provides a cause of action for</u>		
30	<u>governmental actions that may not rise to the level of a</u>		
31	<u>taking under the State Constitution or the United States</u>		

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1 Constitution. This section may not necessarily be construed  
2 under the case law regarding takings if the governmental  
3 action does not rise to the level of a taking. The provisions  
4 of this section are cumulative and do not abrogate any other  
5 remedy lawfully available, including any remedy lawfully  
6 available for governmental actions that rise to the level of a  
7 taking. However, a governmental entity shall not be liable  
8 more than once for compensation due to an action of the  
9 governmental entity that results in a loss of value for a  
10 subject real property.

11 (3) Each owner of real property located within 10,000  
12 feet of a site selected for the construction of a regional  
13 reservoir as described in subsection (1) may present a claim  
14 for compensation in writing to the head of the governmental  
15 entity on or before December 31, 2004, for a loss in property  
16 value resulting from the proximity of the reservoir. For each  
17 claim presented under this section, section 70.001, Florida  
18 Statutes, applies, except when there is conflict with this  
19 act, the provisions of this act shall govern.

20 (a) The property owner must submit along with the  
21 claim a bona fide, valid appraisal that supports the claim and  
22 demonstrates the loss in fair market value to the real  
23 property.

24 (b) A claim under this section shall be presented only  
25 to the governmental entity that is authorized to construct,  
26 operate, and maintain the reservoir.

27 (c) This act is repealed effective January 1, 2005.  
28 However, the repeal of this act shall not affect a claim filed  
29 on or before December 31, 2004.

30 (4) The Legislature recognizes that construction and  
31 maintenance of the reservoir may not interfere with allowable

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1 uses of real property located within 10,000 feet of the  
2 reservoir. However, construction of the reservoir and its  
3 proximity to certain real property may result in an actual  
4 loss to the fair market value of the real property. Therefore,  
5 any offer of compensation by the governmental entity shall be  
6 based solely on the loss of value to the property owner as a  
7 result of the proximity of the reservoir and not on the  
8 effects the reservoir has on existing uses or on a vested  
9 right to a specific use of real property.

10 (a) Notwithstanding section 70.001, Florida Statutes,  
11 the governmental entity to whom a claim is presented shall,  
12 not later than 180 days after receiving such claim:

13 1. Make a written offer to purchase the real property  
14 if there is more than a 50-percent loss in value to the real  
15 property as a result of the proximity of the reservoir and if  
16 the property owner is a willing seller;

17 2. Make a written offer to purchase an interest in  
18 rights of use which may become transferable development rights  
19 to be held, sold, or otherwise disposed of by the governmental  
20 entity; or

21 3. Terminate negotiations because there is no  
22 measurable loss in value to the subject real property.

23 (b) An offer by the governmental entity to purchase  
24 the property in fee or purchase an interest in rights of use  
25 under this section shall cover the cost of the appraisal  
26 required in subsection (3).

27 (5) During the 180-day period, unless the property  
28 owner accepts a written offer for purchase pursuant to  
29 subparagraph (4)(a)1. or 2., the governmental entity shall  
30 issue a final decision stating that:

31 (a) The real property has a loss in value due to an

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1 inordinate burden on the property resulting from the proximity  
2 of the reservoir and the governmental entity and property  
3 owner cannot reach agreement on the amount of compensation; or

4 (b) There is no measurable loss in value to the real  
5 property resulting from the proximity of the reservoir.

6  
7 Failure of the governmental entity to issue a final decision  
8 as required by this subsection shall cause the written offer  
9 or termination of negotiations required in subsection (4) to  
10 operate as a final decision. As a matter of law, this final  
11 decision constitutes the last prerequisite to judicial review  
12 of the merits for the purposes of the judicial proceeding  
13 provided for in section 70.001, Florida Statutes.

14 (6) The circuit court, for purposes of this section,  
15 shall determine whether, considering the written offer and  
16 final decision, the governmental entity has inordinately  
17 burdened the subject real property. Following a determination  
18 that the governmental entity has inordinately burdened the  
19 real property, the court shall impanel a jury to determine the  
20 total amount of compensation to the property owner for the  
21 loss in value due to the inordinate burden to the subject real  
22 property.

23 (7) Pursuant to section 70.001, Florida Statutes, the  
24 court may award reasonable costs and attorney's fees and the  
25 court shall determine the amount. If the court awards the  
26 property owner reasonable costs and attorney's fees, the costs  
27 shall include the cost of the appraisal required in subsection  
28 (3).

29  
30 (Redesignate subsequent sections.)  
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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3            On page 1, line 12, after the semicolon,

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5 insert:

6            providing legislative findings with respect to  
7            loss of property values due to the proximity of  
8            a regional water reservoir; authorizing a cause  
9            of action for a property owner; specifying a  
10            period during which a property owner may  
11            present a claim for compensation to the  
12            governmental entity that constructs, operates,  
13            and maintains the reservoir; providing for  
14            future repeal of the act; providing  
15            requirements for the offer of compensation by a  
16            governmental entity; providing for judicial  
17            review under the Bert J. Harris, Jr., Private  
18            Property Rights Protection Act; providing for  
19            an award of costs and attorney's fees;

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